

**MEMORANDUM OF AGREEMENT  
BETWEEN THE CITY OF SAN JOSE,  
THE REDEVELOPMENT AGENCY OF  
THE CITY OF SAN JOSE  
AND THE  
CALIFORNIA STATE HISTORIC PRESERVATION OFFICER  
REGARDING THE DOWNTOWN MIXED USE DEVELOPMENT PROJECT,  
CITY OF SAN JOSE, SANTA CLARA COUNTY**

This **MEMORANDUM OF AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2003 by and among the lead agency, City of San Jose, a municipal corporation ("CITY"), the funding applicant, Redevelopment Agency of the City of San Jose, a public agency ("SJRA"), and the California State Historic Preservation Officer, a public appointee ("SHPO"), in connection with the Downtown Mixed Use Development Project described below.

**RECITALS**

**WHEREAS**, the City has determined that the development of Blocks C, D, and E of the Downtown Core of the City of San Jose, identified in Attachment A and commonly known and referred to as the "Downtown Mixed Use Development Project," will have an effect on the San Jose Downtown Commercial District, a property listed in the National Register of Historic Places, and may have an effect upon historic and/or prehistoric archeological properties (Historic Properties), and has consulted with the California State Historic Preservation Officer (SHPO) pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f); and

**WHEREAS**, the SJRA is proposing to use HUD loan funds applied for under section 108 of Title I of the Housing and Community Development Act of 1974, as amended (the "Act"), and 24 CFR Part 570, Subpart M and a Brownfields Economic Development Initiative (BEDI) Grant under Section 108 (q) of the Housing and Community Development Act of 1974, as amended by section 232(a) of the Multifamily Housing Property Disposition Reform Act of 1994, codified at 42 U.S.C. 5308(q) to assist in the undertaking; and

**WHEREAS**, the City is a Certified Local Government (CLG) pursuant to § 101 of the NHPA and its implementing regulations found at 36 CFR Part 61;

**WHEREAS**, SJRA has entered into an agreement with the CIM Group for the development of the Downtown Mixed Use Development Project; and

**NOW, THEREFORE**, CITY, SJRA, and the SHPO agree, that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

## STIPULATIONS

CITY, as lead agency, and SJRA, as the funding applicant and project proponent shall ensure that the following measures are carried out:

### 1. Design Development

The City and SJRA shall ensure that the design of the undertaking is compatible with the historic and architectural qualities of the historic properties and is consistent with *The Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings* (National Park Service, 1995), and that design and specifications for the project are developed in consultation with the City through its Historic Landmarks Commission ("HLC"). To avoid an adverse effect to the Downtown Commercial Historic District, the SJRA will insure that the plans developed for the Downtown Mixed Use Development Project are sympathetic to and recognize the scale, massing, construction, and context of the historic buildings in the Project's Area of Potential Effect (APE). The SJRA shall not proceed with any portion of the Downtown Mixed Use Development Project without first affording the HLC the opportunity to review the 50% design development documents to determine whether an adverse effect to the historic district has been avoided. If the HLC does not comment on designs within 15 days from the submittal of designs to the HLC, the SJRA may assume that the designs are adequate and proceed with the project in accordance with those designs.

### 2. Archaeological Treatment Plan

The City and SJRA will ensure that the treatment of archaeological resources will be implemented prior to the start of new construction activities as described in the report entitled *Historic Report for the Downtown Mixed Use Development Project, San Jose, California, Volume II: Archaeological Treatment Plan*, prepared by Jones & Stokes for the SJRA May 2003, and included in this MOA as Attachment B.

### 3. Curation

The City and SJRA will ensure that the all materials and records resulting from the implementation of the *Archaeological Treatment Plan* will be curated by a facility meeting the standards of 36 CFR Part 79.

4. Should any signatory object at any time to the manner in which the terms of this MOA are implemented, the City and SJRA shall consult with the objecting party(ies) to resolve the objection. If the City determines within fifteen (15) days after receipt that such objections cannot be resolved, the City will forward all documentation relevant to the dispute to the Advisory Council on Historic Preservation (ACHP) in accordance with 36 CFR §§ 800.2(b) and 800.6(b)(2). The Council will provide comments within thirty (30) days after receipt of

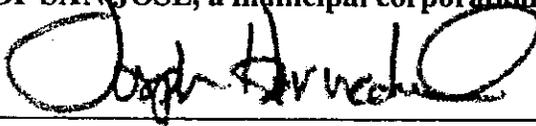
relevant documentation. The City, in reaching a final decision regarding the dispute, shall take ACHP comments, if any, into account. The City's and SJRA's responsibility to carry out all other actions under this MOA that are not the subject of the dispute will remain unchanged.

5. At any time during implementation of the measures stipulated in this MOA, should an objection to any such measure or its manner of implementation be raised in writing by a member of the public, the City and SJRA shall take the objection into account and consult, as needed, with the objecting party and the SHPO, as needed, for a period of time not to exceed fifteen (15) days. If the City and SJRA are unable to resolve the conflict, the City will forward all documentation relevant to the dispute to the ACHP, following the terms outlined in stipulation 4, above.
6. The City and SJRA shall notify the SHPO as soon as practicable if it appears that any action covered by this MOA will affect a previously unidentified property that may be eligible for inclusion in the National Register of Historic Places (with the exception of archeological properties discussed in Stipulation 2) or affect a known historic property in an unanticipated manner. The City and SJRA shall stop construction in the vicinity of the discovery and take all reasonable measures to avoid or minimize harm to the property and proceed pursuant to 36 CFR § 800.13(b).
7. If any signatory believes that the terms of this MOA cannot be carried out, or that an amendment to its terms should be made, that signatory shall immediately consult with the other parties to develop amendments pursuant to 36 CFR §§ 800.6(c)(7) and 800.6(c)(8). If this MOA is not amended as provided for in this stipulation, any signatory may terminate it, whereupon the City shall proceed in accordance with 36 CFR § 800.6(c)(8).
8. If either the terms of this MOA or the undertaking have not been carried out within five (5) years following the date of execution of the MOA, the signatories shall reconsider its terms. If the signatories agree to amend the MOA, they shall proceed in accordance with the amendment process referenced in stipulation 7, above.

**EXECUTION** of this MOA evidences that the CITY and SJRA have afforded the ACHP a reasonable opportunity to comment on the undertaking and its effects on historic properties, that the CITY and SJRA have taken into account the effects of the undertaking on Historic properties, and that the City has satisfied its responsibilities under Section 106 of the National Historic Preservation Act and applicable implementing regulations.

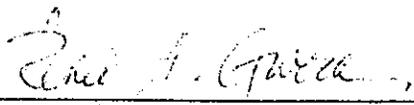
**SIGNATORY PARTIES:**

**CITY OF SAN JOSE, a municipal corporation**

By:   
Stephen M. Haase, AICP, Director  
Planning, Building & Code Enforcement

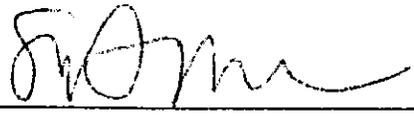
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Approved as to Form:



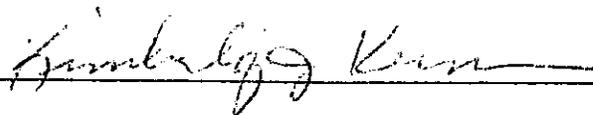
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**CITY OF SAN JOSE REDEVELOPMENT AGENCY**

By:   
Susan Shick, Executive Director

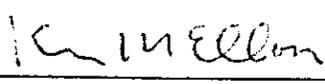
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Approved as to Form:



Date: 6/03/03

**CALIFORNIA STATE HISTORIC PRESERVATION OFFICER**

By:   
Dr. Knox Mellon, State Historic Preservation Officer

Date: 6/24/03