

WHEN RECORDED, MAIL TO:

City of Oakland
Bureau of Planning, Historic Preservation
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

**MILLS ACT AGREEMENT FOR
PRESERVATION OF HISTORIC PROPERTY**

This Agreement is entered into this ____ day of _____, 20____, by and between the City of Oakland, a municipal corporation (hereinafter referred to as “City”), and _____ (hereinafter referred to as “Owner(s)”), owner(s) of the structure located at _____ in the City of Oakland (Exhibit A: Legal Description of Property).

RECITALS

Owner(s) possess(es) and own(s) real property located within the City and described in Exhibit A (“Property”) attached and made a part hereof.

The Property is a Qualified Historic Property within the meaning of California Government Code Section 50280.1, in that it is a privately owned property that is not exempt from property taxation and is on the City of Oakland’s Local Register of Historic Resources.

Both City and Owner(s) desire to carry out the purposes of Sections 50280 *et seq.* of the California Government Code and Section 439 of the California Revenue and Taxation Code.

Both Owner(s) and City desire to enter into an Agreement to preserve the Property so as to retain its characteristics of cultural, historical and architectural significance and to qualify the Property for an assessment of valuation pursuant to Section 439.2(a) of the Revenue and Taxation Code of the State of California.

NOW, THEREFORE, both Owner(s) and City, in consideration of the mutual promise, covenants and conditions contained herein and the substantial public benefit to be derived therefrom, do hereby agree as follows:

- 1) **Effective Date and Term of Agreement (California Government Code Section 50281.a)** The term of this Agreement shall be effective commencing on **December 31, 20__** and shall remain in effect for a term of ten (10) years thereafter. Each year, upon the anniversary of the effective date of this Agreement (hereinafter “renewal date”), one (1) year shall automatically be added to the term of the Agreement, unless timely notice of nonrenewal, as provided in paragraph 2, is given. If either City or Owner(s) serves written notice to the other of nonrenewal in any year, the Agreement shall remain in effect for the balance of the term then remaining, either from its original execution or from the last renewal of the Agreement, whichever may apply.
- 2) **Notice of Nonrenewal (California Government Code Section 50282, California Revenue and Taxation Code Section 439.3)** If City or Owner(s) desire in any year not to renew the Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of the Agreement as follows:
- Owner(s) must serve written notice of nonrenewal at least ninety (90) days prior to the renewal date; or
 - City must serve written notice within sixty (60) days prior to the renewal date. Owner(s) may make a written protest of the notice. City may, at any time prior to the annual renewal date of the Agreement, withdraw its notice of nonrenewal to Owner(s).
 - If the City or Owner(s) serve notice of intent in any year to not renew the Agreement, the existing Agreement shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the Agreement, as the case may be.
 - Any notice required to be given by the terms of this Agreement shall be provided by U.S. mail or hand delivery at the address of the respective parties as specified below or at any other address as may be later specified in writing by the parties hereto.

To City: City of Oakland
Bureau of Planning, Historic Preservation
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612-2032

To Owner(s):

Oakland CA 946__

~~e. Any change of ownership or contact information shall be provided by Owner to City within 60 days.~~

- 3) **Valuation of Historical Property (California Revenue and Taxation Code, Section 439.2)** During the term of this Agreement, Owner(s) are entitled to seek

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assessment of valuation of the Historical Property pursuant to the provisions of Section 439 et. seq. of the California Revenue and Taxation Code.

4) Preservation/Rehabilitation and Maintenance of Property (California Government Code Section 50281(b)(1)) During the term of this Agreement, the Property shall be subject to the following conditions, requirements and restrictions:

- a. Owner(s) agree to preserve/rehabilitate and maintain cultural, historical and architectural characteristics of the Property during the term of this Agreement as set forth in the attached schedule of improvements, which has been reviewed by the Landmarks Preservation Advisory Board and approved by the City Council (Exhibit B attached and made a part hereof). No demolition or other work may occur which would adversely impact the cultural, historical and architectural characteristics of the Property during the term of this Agreement.
- b. All work on the Property shall meet, at a minimum, the Secretary of Interior's Standards for Rehabilitation of Historic Properties (Exhibit C attached and made a part hereof), the Minimum Property Maintenance Standards (Exhibit D attached and made a part hereof), the State Historical Building Code as determined applicable by the City of Oakland, and all required review and conditions of the Landmarks Preservation Advisory Board, the Planning Commission, the City Council, and/or the Department of Planning and Building of the City of Oakland.
- c. If the schedule set out in Exhibit B is not complied with, then City will use the following process to determine whether the Owner(s) are making good faith progress on the schedule of work. Upon City's request, the Owner(s) shall timely submit documentation of expenditures made to accomplish the next highest priority improvement project for the property within the last 24 months. The Owner(s) shall be determined to be in substantial compliance when the expenditures are equal to or greater than the property tax savings provided by the Property being in the Mills Act Program. This schedule set out in Exhibit B shall be revised to reflect the schedule change. The Department of Planning and Building's Director, or his/her designee, shall have the ability to administratively adjust the schedule timeline, in concurrence with the Property Owners(s), only by written recorded instrument executed by the parties hereto.
- d. Owner(s) shall, within five (5) days of notice from the City, furnish City with any information City shall require to enable City to determine (i) the Property's present state, (ii) its continuing eligibility as a Qualified Historic Property, and (iii) whether the Owner is in compliance with this Agreement.

- 5) **Destruction through “Acts of God” or “Acts of Nature”** To the extent authorized by state law, Owner(s) shall not be held responsible for replacement/repair of the Property if it is Damaged or Destroyed through “Acts of God/Nature”, such as slide, flood, tornado, lightning or earthquake. Damaged or Destroyed means that the property is no longer restorable to a condition eligible for historic designation due to substantial loss of integrity, as determined by a historic architect meeting the minimum qualifications contained within the Secretary of the Interior’s Standards for the Treatment of Historic Properties.
- 6) **Inspections (California Government Code Section 50281(b)(2))** Every five years from the original execution of this Agreement, Owner(s) agrees to permit examinations/inspections, by appointment, of the interior and exterior of the Property by one or more of the following: City staff, Members of the Landmarks Preservation Advisory Board, representatives of the County Assessor’s Office, representatives of the State Board of Equalization and representatives of the Department of Parks and Recreation, as may be necessary to determine the Owner’s compliance with this Agreement. Such examination/inspection shall be upon not less than five (5) days written or oral notice.
- 7) **Payment of Fees (California Government Code Section 50281.1)** The Owner shall pay the City a fee established pursuant to the City’s Master Fee Schedule, for costs related to the preparation and review of the Agreement and related documents at the time of application.
- 8) **Binding on Successors and Assigns (California Government Code Section 50281(b)(3))** Owner agrees that this Agreement shall be binding upon and inure to the benefit of all parties herein, their heirs, successors in interest, legal representatives, assigns and all persons acquiring any part or portion of the Property, whether by operation of law or otherwise, and that any such person(s) shall have the same rights and obligations under this Agreement.
- 9) **Cancellation (California Government Code Section 50284)** City, following a duly noticed public hearing before the City Council, as set forth in California Government Code Section 50285, may cancel this Agreement if it determines that Owner(s): (a) have breached any of the conditions of the Agreement; (b) have allowed the property to deteriorate to the point that it no longer meets the standards for being on the City’s Local Register of Historic Resources; or (c) if the Owner(s) have failed to restore or rehabilitate the Property in the manner specified in paragraph 4 of this Agreement.

In the event of cancellation, Owner(s) shall be subject to payment of those cancellation fees set forth in California Government Code Section 50286, described herein. Upon cancellation, Owner(s) shall pay a cancellation fee of twelve and one-half percent (12 ½%) of the current fair market value of the Property at the time of cancellation, as determined by the County Assessor as though the Property were free of any restrictions pursuant to this Agreement.

10) **No Compensation** Owner shall not receive any payment from City in consideration of the obligations imposed under this Agreement, it being recognized and agreed that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the Property's assessed value on account of the restrictions required for the preservation of the Property.

11) **Enforcement of Agreement (California Government Code Section 50284)** As an alternative to cancellation of the Agreement for breach of any condition as provided in paragraph 9, City may, in its sole discretion, specifically enforce, or enjoin the breach of the terms of this Agreement. In the event of a default, under the provisions of this Agreement by the Owners, City shall give written notice to Owners by registered or certified mail. If such a violation is not corrected to the reasonable satisfaction of City within thirty (30) days thereafter, or if not corrected within such a reasonable time as may be required to cure the breach or default if said breach or default cannot be cured within thirty (30) days provided that acts to cure the breach or default may be commenced within (30) days and must thereafter be diligently pursued to completion by Owners, then City may, without further notice, declare a default under the terms of this Agreement and may bring any action necessary to specifically enforce the obligations of Owners arising out of the terms of this Agreement, apply to any violation by Owners or apply for such other relief as may be appropriate.

12) **Indemnification** Owner shall indemnify, defend (with counsel reasonably acceptable to City) and hold harmless the City of Oakland, and all of its Councilmembers, boards, commissions, departments, agencies, attorneys, agents, officers, and employees (individually and collectively, the "City") from and against any and all actions, causes of actions, liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses (collectively called "Claims") incurred in connection with or arising in whole or in part from this Agreement, including without limitation:

- a. any accident, injury to or death of a person, loss of or damage to property occurring in or about the Property;
- b. the use or occupancy of the Property by Owner, its Agents or Invitees;
- c. the condition of the Property; or
- d. any construction or other work undertaken by Owner on the Property.

This indemnification shall include, without limitation, reasonable fees for attorneys, consultants and experts and related costs and City's cost of investigating any Claims. Owner shall defend the City from any and all Claims even if such Claim is groundless, fraudulent or false. Owner's obligations under this Paragraph shall survive termination of this Agreement.

- 13) **Governing Law** This Agreement shall be construed and enforced in accordance with the laws of the State of California.
- 14) **Amendments** This Agreement may be amended in whole or in part only by a written recorded instrument executed by the parties hereto in the same manner as this Agreement.
- 15) **No Waiver** No failure by the City to insist on the strict performance of any obligation of Owner under this Agreement or to exercise any right, power or remedy arising out of a breach hereof, shall constitute a waiver of such breach or of City's right to demand strict compliance with any terms of this Agreement. No acts or admissions by City, or any agent(s) of City, shall waive any or all of City's right under this agreement.
- 16) **Severability** If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 17) **Recording with Alameda County (California Government Code Section 50282(e))** No later than 20 days after execution of this Agreement, the Owner shall record with the county recorder a copy of the Agreement and provide proof of such to the City.
- 18) **Notice to State Office of Historic Preservation** The Owner shall provide written notice of the Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement, and provide City with a copy of such notice.
- 19) **Eminent Domain (California Government Code Section 50288)** In the event that the Property is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the legislative body to frustrate the purpose of the Agreement, such Agreement shall be canceled and no fee shall be imposed under Paragraph 9. This Agreement shall be deemed null and void for all purposes of determining the value of the Property so acquired.
- 20) **General Provisions** None of the terms, provisions, or conditions of this Agreement shall be deemed to create a partnership, joint venture, or joint enterprise between any of the parties hereto, or any of their heirs, successors or assigns.
- 21) **Attorney's Fees** In the event legal proceedings are brought by any party or parties hereto, to enforce or restrain a violation of any of the covenants, reservations or restrictions contained herein, or to determine the rights and duties of any party hereunder, the prevailing party in such proceeding may recover its

reasonable attorney's fees in addition to court costs and other relief ordered by the court.

22) **Complete Agreement** This Agreement represents the complete understandings and agreement of the parties and no prior oral or written understandings are in force and effect.

23) **Headings** The headings in this Agreement are for reference and convenience of the parties and do not represent substantive provisions of this Agreement.

IN WITNESS WHEREOF, City and Owners have executed the Agreement on the day and year first written above.

Property Owner(s):

date

date

City of Oakland:

date
City Administrator

APPROVED AS TO FORM AND LEGALITY

date
City Attorney

EXHIBITS

- EXHIBIT A: Legal Description of Property
- EXHIBIT B: Schedule of Improvements
- EXHIBIT C: The Secretary of the Interior's Standards for Rehabilitation
- EXHIBIT D: Minimum Property Maintenance Standards

EXHIBIT C: SECRETARY OF THE INTERIOR'S STANDARDS FOR THE TREATMENT OF HISTORIC PROPERTIES - Standards for Rehabilitation

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.
9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

EXHIBIT D: MINIMUM PROPERTY MAINTENANCE STANDARDS

The following conditions are prohibited:

Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls, windows, broken windows, peeling exterior paint, broken structures;

Graffiti;

Incomplete exterior construction where no building inspections have been requested for six or more months, or for work which does not require a building permit, where there has been no significant progress for 90 days.