

MILLS ACT HISTORICAL PROPERTY CONTRACT
BETWEEN THE CITY OF HAYWARD, A CALIFORNIA
CHARTER CITY AND XXXXXXXXXXXXXXX

THIS AGREEMENT, dated for convenience this ____ day of _____, 2016, is by and between XXXXXXXXXXXX., (“Owner”) and the CITY OF HAYWARD, a public body of the State of California (“City”);

RECITALS:

WHEREAS, California Government Code Sections 50280, et seq. authorize cities to enter into contracts with the owners of qualified historical properties to provide for the use, maintenance, restoration of such historical properties so as to retain their characteristics as properties of historical significance; and

WHEREAS, Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, commonly known as the _____ and located at the street address _____, Hayward, California #####-####, (hereinafter such property shall be referred to as the “Property”.) A legal description of the Property and Rehabilitation/Restoration/Maintenance Plan (hereinafter referred to as the “Plan”) for the Property is attached hereto, marked as Exhibit “A”, and is incorporated herein by this reference; and

WHEREAS, Property is a qualified historical property as defined by Hayward Municipal Code Section 10-27.020(i); and

WHEREAS, City and Owner, for their mutual benefits, now desire to enter into this agreement both to protect and preserve the characteristics of historical significance of the Property and to qualify the Property for an assessment of valuation pursuant to the provisions of Section 439, et seq., of the California Revenue and Taxation Code.

NOW, THEREFORE, Owner and the City agree as follows:

AGREEMENT:

1. Effective Date and Term. The effective date of this contract shall commence on the date it is recorded (“Effective Date”), and shall remain in effect for a term of ten (10) years thereafter. Each year upon the anniversary of the effective date, such initial term will automatically be extended, subject to paragraph 2, below.
2. Renewal. Each year on the anniversary of the effective date of this Agreement (“Renewal Date”), a year shall automatically be added to the initial term of this Agreement unless notice of nonrenewal is mailed as provided herein. If either Owner or City desires in any year not to renew

the Agreement, Owner or City shall serve written notice of nonrenewal of the Agreement on the other party in advance of the annual renewal date of the Agreement. Unless such notice is served by Owner to City at least ninety (90) days prior to the annual renewal date, or served by City to owner at least sixty (60) days prior to the annual renewal date, one (1) year shall automatically be added to the term of the Agreement as provided herein. Upon receipt by Owner of a notice of nonrenewal from City, Owner 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 to Owner of nonrenewal. If either City or Owner serves 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.

3. Standards for Historical Property. During the term of this Agreement, the Property shall be subject to the following conditions, requirements and restrictions:
 - a. Owner shall preserve and maintain the characteristics of historical significance of the Property in accordance with the Plan, the rules and regulations of the Office of Historic Preservation of the State of California Department of Parks and Recreation, the United States Secretary of the Interior's Standard of Rehabilitation, and the California Historical Building Code. Attached hereto, marked as Exhibit B, and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Property, which shall apply to such property throughout the term of this Agreement.
 - b. Owner shall restore and rehabilitate the property according to the Plan, the rules and regulations of the Office of Historic Preservation of the State of California Department of Parks and Recreation, the United States Secretary of the Interior's Standard of Rehabilitation (Exhibit "B"), and the California Historical Building Code.
 - c. Owner shall allow reasonable periodic examination, by prior appointment, of the interior and exterior of the property by representatives of the City, prior to any new agreement and every 5 years thereafter, and as may be necessary to determine owner's compliance with the terms and provisions of this Agreement.
4. Provision of Information of Compliance. Owner hereby agrees to furnish City with any and all information requested by the City which may be necessary or advisable to determine compliance with the terms and provisions of this Agreement.
5. Fees. Owner agrees to pay any such fees associated with the administration and enforcement of this Agreement, so long as the fee does not exceed the City's reasonable cost of providing the service pursuant to this article for which the fee is charged.
6. Notice to Office of Historic Preservation: Within six months of entering into the contract, the Owner shall provide written notice of the contract to the Office of Historic Preservation.

7. Cancellation. City, following a duly noticed public hearing as set forth in California Government Code Sections 50280, et seq., may cancel this Agreement if it determines that Owner breached any of the conditions of this Agreement or has allowed the property to deteriorate to the point that it now fails to meet the requirements of Hayward Municipal Code Section 10-27.060. City may also cancel this Agreement if it determines that the Owner has failed to restore or rehabilitate the property in the manner specified in Paragraph 3 of this Agreement, including but not limited to Owner's failure to comply with the Plan and/or Owner's failure to complete the rehabilitation and restoration identified in the Plan as provided for in the Plan. In the event of cancellation of this agreement by the City, Owner shall pay the State of California 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 without regard to any restrictions on the property imposed pursuant to this agreement. Payment of the fee shall be made in accordance with the provisions of subsection (b) of Section 50286 of the Government Code.

If damage directly related to the event of a natural disaster has made the preservation, restoration or rehabilitation work outlined in Exhibit A infeasible, the City may cancel this agreement without the owner being required to pay the cancellation fee as described in the previous paragraph, to the extent that non-payment is permitted by law.

8. Enforcement of Agreement. In lieu of and/or in addition to any provisions to cancel the agreement as referenced herein, City may 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 Owner, City shall give written notice to Owner by register or certified mail addressed to the address stated in the Agreement, and if such a violation is not correct to the reasonable satisfaction of the 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 must be commenced within thirty (30) days and must thereafter be diligently pursued to completion by Owner), 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 Owner pursuant to the terms of this Agreement, apply to any court, state or federal, for injunctive relief against any violation by Owner, or apply for such other relief as may be appropriate. City does not waive any claim of default by Owner if City does not enforce or cancel this Agreement. All other remedies at law or in equity which are not otherwise provided for in this Agreement or in City's regulations governing historic properties are available to the City to pursue in the event that there is a breach of this Agreement. No waiver of any breach or default under this Agreement shall be deemed to a waiver of any other subsequent breach thereof or default hereunder.
9. Binding Effective of Agreement. The Owner hereby voluntarily subjects the Property described in Exhibit "A" hereto to the covenants, reservations and restrictions as set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Property.

Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement whether or not such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that Owner's legal interest in the Property is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Property for the benefit of the public and Owner.

10. Indemnification. It is understood and agreed that Owner shall indemnify, defend, and hold City, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, use of property, or any violation of any federal, state, or municipal law or ordinance, or other cause in connection with the negligent or intentional acts or omissions of Owner, its employees, subcontractors, or agents or on account of the performance or character of this work, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Owner to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code.

11. Notices. Notices required by this agreement shall be personally delivered or mailed, postage prepaid, as follows:

To Owner:

XXXXXXXXXXXXXXXXXXXXXX

To the City:

Office of the City Manager
Attn: Kelly McAdoo, City Manager
777 B Street, 4th Floor
Hayward, CA 94541-5007

To the California Office of Historic Preservation:

California Office of Historic Preservation
RE: Notice of Hayward Mills Act
1725 23rd Street, Suite 100
Sacramento, CA 95816

Each party shall provide the other party with telephone and written notice of any change in address as soon as practicable.

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

12. Recordation. No later than twenty (20) days after the parties execute and enter into this Agreement, City shall cause this Agreement to be recorded in the Office of the County Recorder of the County of Alameda.
13. Amendments. This agreement may be modified or amended only by a written document executed by both Owner and City's City Manager and approved as to form by the City Attorney. Such document shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.
14. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.
15. No Third Party Rights. The parties intend not to create rights in, or to grant remedies to, any third party as a beneficiary of this Agreement or of any duty, covenant, obligation, or undertaking established herein.
16. Severability. Should any part of this Agreement be declared by a final decision by a court of tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, absent the unexcised portion can be reasonably interpreted to give effect to the intentions of the parties.
17. Compliance with Laws. In the performance of this Agreement, Owner shall abide by and conform to any and all applicable laws of the United States, the State of California, and the City Charter and Ordinances of City.
18. Controlling Law. This Agreement and all matters relating to it shall be governed by the laws of the State of California.
19. Whole Agreement. This Agreement has six pages excluding the exhibits described on its signature page. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

20. Multiple Copies of Agreement. Multiple copies of this Agreement may be executed but the parties agree that the agreement on file in the office of City's City Clerk is the version of the agreement that shall take precedence should any differences exist among counterparts of the document.

IN WITNESS WHEREOF, Consultant has executed this agreement, and the City, by its City Manager, who is authorized to do so, has executed this agreement.

Owner:

Dated: _____ By _____
XXXXXXXX, Owner

City:

Dated: _____ By _____
Kelly McAdoo, City Manager

APPROVED AS TO FORM:
Michael S. Lawson, City Attorney

ATTEST:

Miriam Lens, City Clerk

By: _____

Attachments:

- Exhibit A Legal Description of Property and Rehabilitation/Restoration/Maintenance Plan
- Exhibit B Secretary of the Interior's Standards for Rehabilitation

Exhibit A:
**Legal Description of Property and
Rehabilitation/Restoration/Maintenance Plan**

DRAFT

Exhibit B:
Secretary of the Interior's Standards for Rehabilitation

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.
2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.
3. Each property will 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 elements from other historic properties, will not be undertaken.
4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.
5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.
6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.
7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.
8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.
9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.
10. New additions and adjacent or related new construction will 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.