

OFFICIAL BUSINESS:

Document entitled to free recording
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Recording requested by and
when recorded return to:

City of Sacramento

Community Development Department
300 Richards Blvd. 3rd Floor
Sacramento, CA 95811
Attn: Sean de Courcy

MILLS ACT HISTORICAL PROPERTY CONTRACT

This MILLS ACT HISTORICAL PROPERTY CONTRACT ("**Contract**"), dated _____, for purposes of identification only, is by and between the City of Sacramento, a California municipal corporation (the "**City**") and _____ (the "**Owner**").

Background

- A. California Government Code section 50280 et seq. (attached as Exhibit C), commonly referred to as the "**Mills Act**", authorizes cities and counties to enter into contracts with owners of qualified historical properties whereby the property owner agrees to preserve, restore, and rehabilitate their historical property, thereby enhancing a locality's civic identity and character. By entering into a Mills Act contract, the owner qualifies the property for an assessment of valuation in accordance with California Revenue and Taxation Code section 439 et seq., which may result in tax savings to the property owner.
- B. The City's Mills Act program, set forth in City Code section 17.604.720, implements the Mills Act.
- C. The Owner holds fee title to the property located at _____ and Parcel Number: _____, in Sacramento, California (the "**Property**"). The Property is listed on the _____ and is therefore a "qualified historical property" as defined in Government Code section 50280.1.

With these Background facts in mind, the City and the Owner agree as follows:

- 1. Effective date.** This Contract is effective on the date it is recorded (the “**Effective Date**”).
- 2. Contract term.** The initial term of the Contract is 10 years. Each year, on the anniversary of the Effective Date, a year shall be automatically added to the term unless notice of nonrenewal is given as provided in section 3, below.
- 3. Nonrenewal.** If either the Owner or the City desires in any year not to renew the Contract, that party shall serve written notice on the other party in advance of the annual renewal date. The notice is effective only if served by the Owner on the City at least 90 days prior to the annual renewal date or by the City to the Owner at least 60 days prior to the annual renewal date.

The Owner, within 15 days of receipt of a notice of nonrenewal from the City, may file a written protest with the City in accordance with Government Code section 50282. The City retains, however, sole discretion to not renew the Contract.

The City may, at any time prior to the renewal date, withdraw its notice of nonrenewal.

If either the Owner or the City serves a notice of nonrenewal in any year (and the City does not withdraw its notice), the Contract shall expire at the end of the term then remaining.

- 4. Preservation, restoration, and rehabilitation of the Property.** During the term of this Contract, the Owner shall preserve, restore, and rehabilitate the Property in a manner consistent with the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior’s Standards for the Treatment of Historic Properties, and the State Historical Building Code. Further, the Owner shall preserve, restore, and rehabilitate the Property in accordance with the Rehabilitation/Restoration/Maintenance Plan attached as Exhibit A, as it may be amended from time to time, and the Maintenance and Rehabilitation Standards and Conditions attached as Exhibit B. The Owner understands and agrees that the Rehabilitation/Restoration/Maintenance Plan will be periodically updated throughout the term of this Contract to require additional work by the Owner.
- 5. Information and inspection.** The Owner agrees to furnish the City with any and all information requested by the City to determine the Property’s eligibility as a qualified historical property and determine the Owner’s compliance with the terms of this Contract.

Upon reasonable advance notice, the Owner shall allow periodic inspections of the Property, not less than every five years and prior to entering a new contract, by the City, the Sacramento County Assessor, the State Department of Parks and Recreation, and the State Board of Equalization as may be necessary to determine the Owner's compliance with this Contract.

6. Breach of Contract; remedies.

6.1 Notice of breach; opportunity to cure. If the Owner breaches any provision of this Contract or the Mills Act, the City may give written notice to the Owner by registered or certified mail detailing the Owner's violations. If the violations are not corrected to the reasonable satisfaction of the City within 30 days after the date of notice of violation, or within such reasonable time as may be required to cure the violation (provided the acts to cure the violation are commenced within 30 days and thereafter diligently pursued to completion), the City, following a noticed public hearing in accordance with Government Code sections 50284 and 50285, may declare the Owner to be in breach of this Contract.

6.2. Remedies. If the City Council determines in a noticed public hearing, as set forth in section 6.1, above, the Owner has breached any of the conditions of the Contract or the Mills Act, or allowed the Property to deteriorate to the point that it no longer meets the standards for a qualified historical property, the City shall do one of the following:

- 1) Cancel the Contract. If the Contract is cancelled under this section, the Owner shall pay a cancellation fee equal to 12 ½ percent of the current fair market value of the property (as though the property were free of the contractual restriction), as determined by the Sacramento County Assessor, to the Sacramento County Auditor in accordance with Government Code section 50286; or
- 2) Bring an action in court to enforce the Contract including, but not limited to, an action to enforce the Contract by specific performance, injunction, or receivership.

7. Eminent domain; cancellation. If 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 City Council to frustrate the purpose of this Contract, this Contract shall be cancelled. No cancellation fee pursuant to Government Code section 50286 shall be imposed if the Contract is canceled pursuant to this section.

8. **Waiver.** The City does not waive any claim of default by the Owner if the City does not enforce any provision of or cancel this Contract. All other remedies at law or in equity that are not otherwise provided for in this Contract are available to the City to pursue in the event there is a breach of this Contract. No waiver by the City of any breach or default under this Contract shall be deemed to be a waiver of any other subsequent breach thereof of default hereunder.

9. **Binding effect of contract; covenants run with the land.** The Owner hereby voluntarily subjects the Property to the covenants, conditions, and restrictions set forth in this Contract. The City and the Owner hereby declare their specific intent that the covenants, conditions, and restrictions 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, conditions, and restrictions expressed in this Contract, regardless of whether such provisions are set forth in such contract, deed, or other instrument.

The City and the Owner hereby declare their understanding and intent that the burden of the covenants, conditions, and restrictions set forth in this Contract touch and concern the land in that Owner's legal interest in the Property may be rendered less valuable thereby. The City and the Owner hereby further declare their understanding and intent that the benefit of such covenants, conditions, 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 the Owner.

10. **Indemnity.** The Owner shall defend, hold harmless and indemnify the City, its officers and employees, and each and every one of them, from and against any and all actions, damages, costs, liabilities, claims, demands, losses, judgments, penalties, costs and expenses of every type and description, including, but not limited to, any fees or costs reasonably incurred by the City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), including but not limited to Liabilities arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, arising out of or in any way connected with 1) Owner's activities in connection with the Property; 2) any restrictions on the use or development of the Property from application of the city code or other law or from enforcement of this Contract; 3) the direct or indirect use of the Property by the Owner,

any sub-consultant, subcontractor or agent, lessee, licensee, invitee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable; or 4) any performance of or failure to perform this Contract by the Owner, any sub-consultant, subcontractor or agent, lessee, licensee, invitee, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, whether or not (i) such Liabilities are caused in part by a party indemnified hereunder or (ii) such Liabilities are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for any damage or expense for death or bodily injury to persons or damage to property to the extent arising from the sole negligence or willful misconduct of the City, its agents, servants, or independent contractors who are directly responsible to the City, except when such agents, servants, or independent contractors are under the direct supervision and control of the Owner.

The Owner's obligation to defend, hold harmless and indemnify shall survive the termination, cancellation, or expiration of this Contract and shall not be restricted to insurance proceeds, if any, received by the City, its elected officials, employees, or agents.

11. **Insurance.** The Owner shall secure adequate liability insurance to cover activities on the Property under this Contract, including coverage for any third parties on the Property.
12. **Recordation.** No later than 20 days after the parties execute and enter into this Contract, the City shall cause this Contract to be recorded in the Office of the County Recorder of the County of Sacramento.
13. **Fees.** The Owner agrees to pay any fees, as adopted by the City Council, associated with the administration of this Contract, including inspection of the Property.
14. **Miscellaneous provisions.**
 - 14.1 **Entire contract.** This document, including all exhibits, contains the entire contract between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of the Contract. No alteration to this Contract is valid unless approved in writing by the parties in accordance with the city code.
 - 14.2 **Public record.** The Owner understands that this Contract is a public record under the California Public Records Act and will be disclosed to the public upon request. The Owner further understands that all information provided to the City in connection with this Contract will also be disclosed to the public upon request.

14.3 Notices. Any notice required under this Contract or by reason of the application of any law will be deemed to have been given by a party on the business day immediately following the day of personal delivery to a recognized overnight courier or on the third business day after deposit in the U.S. mail, postage prepaid and addressed as follows:

If to the City:

Sean de Courcy
Preservation Director
City of Sacramento
Community Development Department
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811
Phone: (916) 808-2796
Email: sdecourcy@cityofsacramento.org

with a copy to:

Henry Feuss
Preservation Planner
City of Sacramento
Community Development Department
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811
Phone: (916) 808-5880
Email: hfeuss@cityofsacramento.org

If to the Owner:

Name: _____
Address: _____
Phone: _____
Email: _____

14.4 Mutually drafted. This Contract shall be deemed to be the joint work product of the parties and any rule of construction that a document shall be interpreted or construed against a drafter of such document shall not be applicable.

14.5 Severability. If any portion of this Contract or the application thereof to any person or circumstance is held invalid or unenforceable, the remainder of this Contract shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

- 14.6 Choice of law; venue.** This Contract shall be governed, construed, and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Contract shall lie exclusively in the state trial court or federal district court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in those courts, and consent to service of process issued by those courts.
- 14.7 Further assurances.** The parties, at any time after the execution of this Contract will execute, acknowledge, and deliver any further assignments, conveyances, and other assurances, documents, and instruments reasonably requested by the other party for the purpose of performing the obligations created hereunder.
- 14.8 Third parties.** This Contract is made and entered into for the sole protection and benefit of the parties and their successors and assigns, and no other person or entity is a third-party beneficiary of or has any direct or indirect cause of action or claim in connection with the Contract or any other related document to which that person or entity is not a party.
- 14.9 Relationship of the parties.** Nothing in this Contract should be deemed or construed to create between the parties a joint venture, partnership, or any other relationship of association other than that described herein.
- 14.10 Authority to sign.** The person signing this Contract represents that he or she is the Owner of the Property or is authorized to sign on behalf of the Owner and that no further action beyond his or her signature is required to bind the Owner to this Contract.

(Signature Page Follows)

CITY OF SACRAMENTO

By: _____
Thomas S. Pace, Community Development
Department Director

Date: _____

APPROVED TO AS FORM:

By: _____
City Attorney

ATTEST:

By: _____
City Clerk

OWNER

By: _____
[Signature]

[Print Name]

Title: _____

Date: _____

OWNER

By: _____
[Signature]

[Print Name]

Title: _____

Date: _____

OWNER ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Sacramento

On _____, before me, _____, personally appeared
(Insert name and title of officer)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

(Signature) (Seal)

EXHIBIT B

HISTORICAL PROPERTY STANDARDS AND CONDITIONS

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.

Property Maintenance

All buildings, structures, yards and other improvements shall be properly maintained. All current building and zoning codes will be enforced. The following conditions are prohibited:

1. Dilapidated buildings or features such as fences, roofs, doors, walls and windows.
2. Abandoned or discarded objects, equipment or materials such as automobiles, automobile parts, furniture, appliances, containers, lumber or similar items stored outside but within property lines.
3. Stagnant water or open excavations.
4. Any device, decoration or structure, which is unsightly by reason of its height, condition or location.
5. Peeling exterior paint or unremoved/uncovered graffiti.
6. Overgrown landscaping, exposed bald areas within yards or grounds and broken hardscape features which could cause injury.
7. Other substandard conditions as cited by members of the Historic Preservation Commission or Historic Preservation Staff.

Conditions

This Historical Property Contract provides the potential for property tax reduction in exchange for contract to rehabilitate and maintain an historic building. Existing conditions not in conformance with the Secretary of the Interior's Standards, may be required to be removed and the original conditions remedied as part of this contract.

EXHIBIT C
THE MILLS ACT

ARTICLE 12. Historical Property Contracts [50280 - 50290] (Article 12 added by Stats. 1972, Ch. 1442.)

50280.

Upon the application of an owner or the agent of an owner of any qualified historical property, as defined in Section 50280.1, the legislative body of a city, county, or city and county may contract with the owner or agent to restrict the use of the property in a manner which the legislative body deems reasonable to carry out the purposes of this article and of Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code. The contract shall meet the requirements of Sections 50281 and 50282.

(Amended by Stats. 1985, Ch. 965, Sec. 1.7.)

50280.1.

“Qualified historical property” for purposes of this article, means privately owned property which is not exempt from property taxation and which meets either of the following:

- (a) Listed in the National Register of Historic Places or located in a registered historic district, as defined in Section 1.191-2(b) of Title 26 of the Code of Federal Regulations.
- (b) Listed in any state, city, county, or city and county official register of historical or architecturally significant sites, places, or landmarks.

(Added by Stats. 1985, Ch. 965, Sec. 2.)

50281.

Any contract entered into under this article shall contain the following provisions:

- (a) The term of the contract shall be for a minimum period of 10 years.
- (b) Where applicable, the contract shall provide the following:
 - (1) For the preservation of the qualified historical property and, when necessary, to restore and rehabilitate the property to conform to the rules and regulations of the Office of Historic Preservation of the Department of Parks and Recreation, the United States Secretary of the Interior’s Standards for Rehabilitation, and the State Historical Building Code.
 - (2) For an inspection of the interior and exterior of the premises by the city, county, or city and county, prior to a new agreement, and every five years thereafter, to determine the owner’s compliance with the contract.
 - (3) For it to be binding upon, and inure to the benefit of, all successors in interest of the owner. A successor in interest shall have the same rights and obligations under the contract as the original owner who entered into the contract.

(Amended by Stats. 2013, Ch. 210, Sec. 6.5. (SB 184) Effective January 1, 2014.)

50281.1.

The legislative body entering into a contract described in this article may require that the property owner, as a condition to entering into the contract, pay a fee that shall not exceed the reasonable cost of providing the service pursuant to this article for which the fee is charged.

(Amended by Stats. 2011, Ch. 278, Sec. 2. (AB 654) Effective January 1, 2012.)

50282.

(a) Each contract shall provide that on the anniversary date of the contract or such other annual date as is specified in the contract, a year shall be added automatically to the initial term of the contract unless notice of nonrenewal is given as provided in this section. Each contract shall also provide that after five years, and every five years thereafter, the city, county, or city and county shall inspect the interior and exterior of the premises to determine the owner's continued compliance with the contract. If the property owner or the legislative body desires in any year not to renew the contract, that party shall serve written notice of nonrenewal of the contract on the other party in advance of the annual renewal date of the contract. Unless the notice is served by the owner at least 90 days prior to the renewal date or by the legislative body at least 60 days prior to the renewal date, one year shall automatically be added to the term of the contract.

(b) Upon receipt by the owner of a notice from the legislative body of nonrenewal, the owner may make a written protest of the notice of nonrenewal. The legislative body may, at any time prior to the renewal date, withdraw the notice of nonrenewal.

(c) If the legislative body or the owner serves notice of intent in any year not to renew the contract, the existing contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the contract, as the case may be.

(d) The owner shall furnish the legislative body with any information the legislative body shall require in order to enable it to determine the eligibility of the property involved.

(e) No later than 20 days after a city or county enters into a contract with an owner pursuant to this article, the clerk of the legislative body shall record with the county recorder a copy of the contract, which shall describe the property subject thereto. From and after the time of the recordation, this contract shall impart a notice thereof to all persons as is afforded by the recording laws of this state.

(Amended by Stats. 2011, Ch. 278, Sec. 3. (AB 654) Effective January 1, 2012.)

50284.

If the legislative body determines that the owner has breached any of the conditions of the contract provided for in this article or has allowed the property to deteriorate to the

point that it no longer meets the standards for a qualified historical property, the legislative body shall do one of the following:

- (a) Cancel the contract by following the procedures specified in Sections 50285 and 50286.
- (b) Bring any action in court necessary to enforce a contract, including, but not limited to, an action to enforce the contract by specific performance or injunction.

(Amended by Stats. 2011, Ch. 278, Sec. 4. (AB 654) Effective January 1, 2012.)

50285.

No contract shall be canceled under Section 50284 until after the legislative body has given notice of, and has held, a public hearing on the matter. Notice of the hearing shall be mailed to the last known address of each owner of property within the historic zone and shall be published pursuant to Section 6061.

(Added by Stats. 1972, Ch. 1442.)

50286.

- (a) If a contract is canceled under Section 50284, the owner shall pay a cancellation fee equal to 12-1/2 percent of the current fair market value of the property, as determined by the county assessor as though the property were free of the contractual restriction.
- (b) The cancellation fee shall be paid to the county auditor, at the time and in the manner that the county auditor shall prescribe, and shall be allocated by the county auditor to each jurisdiction in the tax rate area in which the property is located in the same manner as the auditor allocates the annual tax increment in that tax rate area in that fiscal year.
- (c) Notwithstanding any other law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238.02 of the Education Code, as implemented pursuant to Section 42238.03 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for purposes of Article 4 (commencing with Section 2570) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

(Amended by Stats. 2013, Ch. 47, Sec. 109. (AB 97) Effective July 1, 2013.)

50287.

As an alternative to cancellation of the contract for breach of any condition, a landowner that is a party to the contract may bring any action in court necessary to enforce a contract, including, but not limited to, an action to enforce the contract by specific performance or injunction.

(Amended by Stats. 2011, Ch. 278, Sec. 5. (AB 654) Effective January 1, 2012.)

50288.

In the event that property subject to contract under this article 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 contract, such contract shall be canceled and no fee shall be imposed under Section 50286. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

(Amended by Stats. 1974, Ch. 544.)

50289.

In the event that property restricted by a contract with a county under this article is annexed to a city, the city shall succeed to all rights, duties, and powers of the county under such contract.

(Added by Stats. 1972, Ch. 1442.)

50290.

Local agencies and owners of qualified historical properties may consult with the State Historical Resources Commission for its advice and counsel on matters relevant to historical property contracts.

(Amended by Stats. 1985, Ch. 965, Sec. 8.)