


Office of the City Manager

ACTION CALENDAR  
December 14, 2004

To: Honorable Mayor and  
Members of the City Council

From:  Phil Kamlarz, City Manager

Subject: Request for City to enter into Mills Act Contract with owners of 2426 Fulton Street

RECOMMENDATION:

Adopt a Resolution authorizing the City manager to execute a Mills Act Contract and any amendment with Dajun Yu for the restoration of historic property at 2426 Fulton Street in order to obtain property tax reduction for a period of ten years.

FISCAL IMPACTS OF RECOMMENDATION:

The City currently has six properties that have used the Mills Act program to restore and stabilize a City of Berkeley Landmark. So far, the impact resulting from the diversion of tax money has been negligible. The tax benefit will not exceed the total cost of the proposed improvements, which the applicant has indicated will be at least \$171,610.

BACKGROUND:

On February 24, 1998, the Berkeley City Council passed resolution number 59,355 - N.S. which authorized the use of Mills Act Agreements to allow owners of historic properties to voluntarily enter into individual contracts with the City, in order to obtain property tax reduction in exchange for maintaining and/or restoring their historic property. To date, six properties have contracted with the City to take advantage of this program.

On May 5, 2003 the Landmarks Preservation Commission designated this property as a City of Berkeley Landmark, enabling the property owner to take advantage of the Mills Act.

On July 12, 2004, the Landmarks Preservation Commission reviewed the proposed rehabilitation and preservation project for 2426 Fulton Street and voted to recommend that the City Council adopt the Mills Act contract. After preparing the contract and revising the original improvement schedule, the property owner is now ready to proceed with signing of the contract.

December 14, 2004

The property owners at 2426 Fulton Street identified projects to be completed on their property in the next ten years. The list of projects for the property is detailed in Exhibit B of the attached Mills Act contract.

RATIONALE FOR RECOMMENDATION:

In order to qualify for Mills Act considerations, a property must meet the following criteria:

**1. Is the property a 'Qualified historical property'?**

The property is eligible for the Mills Act program because it is a City of Berkeley Landmark, as designated by the LPC on May 5, 2003.

**2. Does the contract adequately meet the requirements for Mills Act Contracts as set in California Government Code Sections 50820 et seq.?**

The signed contract has been approved in form by the City Attorney's Office and conforms to all relevant City and State regulations.

**3. Do the type of improvements outlined in the Mills Act Applications meet the standards set by the City Council, which requires that all tax savings be used for improvements, and the rules and regulations outlined in the California Government Code, specifically Section 50281 (b)(1)?**

The contract includes a comprehensive list of projects that the property owner has agreed to complete within the 10-year contract period. The property owner has identified eight improvement projects to be completed in the contract period, including seismic retrofit, exterior repainting, installation of powered and insulated garage doors, outside decks and stairs repair, roof replacement, chimney repair, installation of new windows, fence repair/installation.

The Landmarks Preservation Commission concluded that the improvements listed above meet the standards adopted by the City Council in 1998. The costs of the proposed improvements are anticipated to exceed the tax savings and the types of improvements would satisfy the California Government Code rules and regulations.

CONTACT PERSON:

Mark Rhoades, 981-7410  
Land Use Planning Manager

Approved by:



Daniel Marks, Director  
Planning and Development Department

**Attachments:**

1. Draft Resolution
2. Mills Act Contract for 2426 Fulton Street

RESOLUTION NO. -N.S.

AUTHORIZING THE CITY MANAGER TO EXECUTE A MILLS ACT CONTRACT AND ANY AMENDMENTS WITH DAJUN YU FOR THE RESTORATION OF HISTORIC PROPERTY AT 2426 FULTON STREET IN ORDER TO OBTAIN PROPERTY TAX REDUCTION FOR A PERIOD OF TEN YEARS

WHEREAS, on February 24, 1998, the Berkeley City Council adopted Resolution No. 59,355-N.S. which authorized the use of Mills Act Agreements; and

WHEREAS, on May 5, 2003, 2426 Fulton Street was designated as a City of Berkeley Landmark; and

WHEREAS, on July 12, 2004, the Landmarks Preservation Commission reviewed the proposed projects listed in this contract and recommended that the City Council enter into a contract with the property owner; and

WHEREAS, the City's Mills Act Program procedure requires each contract to be approved by the City Council and signed by the City Manager; and

WHEREAS, on December 14, 2004, the City Council, in light of all the evidence, found that the contract was consistent with the purposes of the Mills Act program.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that this Resolution is hereby adopted to authorize the City Manager to execute a Mills Act contract and any amendments with Dajun Yu for the restoration of historic property at 2426 Fulton Street in order to obtain property tax reduction for a period of ten years.

Please submit to the Alameda County Recorder's Office for recording with the deed to the property,  
1106 Madison Street, Room 121, Oakland, 94607  
Phone #510-272-6362

One copy of the fully executed form should then be returned to this office. Owner shall request a copy at  
time of recording.

Recording Requested By: City of Berkeley

DATE OF MAILING: \_\_\_\_\_

WHEN RECORDED, MAIL TO:

Landmarks Preservation Commission Secretary  
City of Berkeley  
Planning and Development Department  
2120 Milvia Street  
Berkeley, CA 94704

**MILLS ACT CONTRACT  
FOR THE PRESERVATION OF HISTORIC PROPERTY**

**Dajun Yu  
2426 Fulton St.  
Berkeley, CA 94704**

**MILLS ACT CONTRACT  
FOR THE PRESERVATION OF HISTORIC PROPERTY**

This Contract is entered into by and between the City Of Berkeley, a municipal corporation, hereinafter referred to as "City", and **Dajun Yu**, the owners of the structure located Address, in the City of Berkeley hereinafter referred to as "Owner".

**RECITALS**

Owner possesses and owns real property located within City and described in Exhibit A ("Property") attached and made a part hereof.

The Property is qualified historical property in that it is privately owned property which is not exempt from property taxation and is a City of Berkeley Landmark (**May 5, 2003**):

Both City and Owner desire to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1 of Division 1 of Title 5 of the California Government Code and Article 19 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.

Both City and Owner desire to enter into a contract pursuant to the provisions of the Government Code for the dual purpose of providing for the retention of Owner's Property and qualifying the Property for an assessment of valuation pursuant to Section 1161 of the Revenue and Taxation Code of the State of California.

NOW, THEREFORE, in consideration of the mutual benefits and covenants contained herein and the substantial public benefits to be derived therefrom, City and Owner agree as follows:

**Term (California Government Code Section 50281)**

1. The term of this agreement shall be ten (10) years commencing upon the date of execution by the City, subject to section 6, below.

**Rehabilitation and Maintenance (California Government Code Section 50281.b.1)**

2. Owner agrees to preserve and properly maintain the Property during the term of this Contract as set forth in Exhibit B hereto according to certain standards and requirements. Such standards and requirements shall include but not be limited to the Secretary of Interior's Standards for Rehabilitation of Historic Properties, the Office of Historic Preservation of the Department of Parks and Recreation, the state Historical Building Code as determined as applicable by the City of Berkeley and all required review and conditions of the Landmarks Preservation Commission, the Current Planning Division, the Building and Safety Division and all other applicable agencies of the City of Berkeley.

**Inspections (California Government Code Section 50281.b.2)**

3. Owner also agrees to provide for such periodic examination of the interior and exterior of the Property by the City Landmarks Preservation Commission staff, including Commissioners and city employees, representatives of the County Assessor's office and 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 the Contract. Such examination shall be upon not less than five (5) days written or oral notice.

**Payment of Fees (California Government Code Section 50281.1)**

4. Within one month of execution of this agreement, City shall tender to Owner a written accounting of its reasonable costs related to the preparation and approval of the Agreement as provided for in Government Code Section 50281.1. Owner shall promptly pay the requested amount within 45 days of receipt.

**Binding on Successors and Assigns (California Government Code Section 50281.b.3)**

5. Owner agrees that this Contract shall be binding upon and inure to the benefit of all successors in interest of the Owners and that any successors in interest shall have the same rights and obligations under this Contract, and that this Contract may be recorded.

**Renewal (California Government Code Section 50282)**

6. The parties hereto agree that on each anniversary date of this Contract, a year shall be added automatically to the initial term as specified in paragraph 1 above unless notice in writing of non-renewal is given by Owner or City at least ninety (90) days prior to the anniversary date.
7. Upon receipt by the Owner of a notice from the City of non-renewal, the Owner may make a written protest of the notice of non-renewal. The City Council may, at any time prior to the renewal date, withdraw the notice of non-renewal.
8. If the City or 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.
9. Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by the parties hereto.

To City: City of Berkeley  
2120 Milvia Street  
Berkeley, CA 94704  
Attn: Landmarks Preservation Commission Secretary

To Owner: **Dajun Yu**  
**6729 Kit Lane**  
**Castro Valley, CA 94552**

**EXHIBIT A  
LEGAL DESCRIPTION**

CITY OF BERKELEY

**PARCEL ONE:**

A PORTION OF LOT 4, BLOCK 3, "PROPERTY OF THE COLLEGE HOMESTEAD ASSOCIATION," FILED MAY 15, 1866, IN BOOK T OF DEEDS, PAGE 799, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERN LINE OF FULTON STREET, DISTANT THEREON NORTHERLY 185 FEET FROM THE INTERSECTION THEREOF WITH THE NORTHERN LINE OF DWIGHT WAY, AS SAID STREET AND WAY ARE SHOWN ON THE MAP HEREIN REFERRED TO; THENCE NORTHERLY, ALONG SAID LINE OF FULTON STREET, 40 FEET; THENCE AT RIGHT ANGLES WESTERLY, 150 FEET; THENCE AT RIGHT ANGLES SOUTHERLY, 40 FEET; THENCE AT RIGHT ANGLES EASTERLY, 150 FEET TO THE POINT OF BEGINNING.

**PARCEL TWO:**

A PORTION OF LOT 3, BLOCK 3, PROPERTY OF THE COLLEGE HOMESTEAD ASSOCIATION, FILED MAY 15, 1866, IN BOOK T OF DEEDS, PAGE 799, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERN LINE OF FULTON STREET, DISTANT THEREON 185 FEET NORTHERLY FROM THE INTERSECTION THEREOF WITH THE NORTHERN LINE OF DWIGHT WAY, AS SAID STREET AND WAY ARE SHOWN ON THE MAP HEREIN REFERRED TO; THENCE AT RIGHT ANGLES WESTERLY 150 FEET FROM THE POINT OF BEGINNING OF THE PROPERTY HEREBY DESCRIBED, THENCE WESTERLY AND AT RIGHT ANGLES TO SAID LINE OF FULTON STREET 1 FOOT 6 INCHES; THENCE AT RIGHT ANGLES NORTHERLY 40 FEET; THENCE AT RIGHT ANGLES EASTERLY 1 FOOT 6 INCHES; THENCE AT RIGHT ANGLES SOUTHERLY 40 FEET TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NO. 055-1890-002

**Continued Eligibility (California Government Code Section 50282.d)**

10. The Owner shall furnish the City with such information as the legislative body shall require in order to enable it to determine the continued eligibility of the property involved.

**Indemnification**

11. Owner shall indemnify, defend and hold harmless the City and all of its boards, commissions, departments, agencies, agents and employees (individually and collectively, the "City") from and against any and all liabilities, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses incurred in connection with or arising in whole or in part from (a) any accident, injury to or death of a person, loss of or damage to property occurring in or about the Historic Property, (b) the use or occupancy of the Historic Property by Owner, its Agents or Invitees, (c) the condition of the Historic Property, or (d) any construction or other work undertaken by Owner on the Historic Property. This indemnification shall include, without limitation, reasonable fees for attorneys, consultants and experts and related costs and City's cost of investigating any claim. Owner shall defend the City from any claim even if such claim is groundless, fraudulent or false. Owner's obligations under this Paragraph shall survive termination of this Agreement.

**Governing Law**

12. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**Amendments**

13. 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.

**No Implied Waiver**

14. 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.

**Severability**

15. 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.

**Charter Provisions**

16. This Agreement is governed by and subject to the provisions of the Charter of the City.

**Recording with Alameda County (California Government Code Section 50282.e)**

17. No later than 20 days after a city 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 recordation, this contract shall impart a notice thereof to all persons as is afforded by the recording laws of this state.

**Cancellation (California Government Code Section 50284 - 50286)**

18. The legislative body may cancel a contract if it 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 may also cancel a contract if it determines that the owner has failed to restore or rehabilitate the property in the manner specified in the contract.
19. No contract shall be canceled under Section 18 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 owner of property and shall be published pursuant to Section 6061.
20. If a contract is cancelled under Section 18, 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.  
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.  
Notwithstanding any other provision of law, revenue received by a school district pursuant to this section shall be considered property tax revenue for the purposes of Section 42238 of the Education Code, and revenue received by a county superintendent of schools pursuant to this section shall be considered property tax revenue for the purposes of Article 3 (commencing with Section 2550) of Chapter 12 of Part 2 of Division 1 of Title 1 of the Education Code.

**Action to enforce contract (California Government Code Section 50287)**

21. As an alternative to cancellation of the contract for breach of any condition, the county, city, or any landowner 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.

**Eminent domain (California Government Code Section 50288)**

22. 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 20. Such contract shall be deemed null and void for all purposes of determining the value of the property so acquired.



Exhibit B

List of Improvements

1. Seismic Retrofit of main house and repair of garage at a cost of \$120,000  
(includes electrical and plumbing upgrade)
2. Repaint entire exterior at a cost of \$10,000.
1. Install powered and insulated garage doors at a cost of \$3,000.
2. Repair outside decks and stairs on backside at a cost of \$11,000.
3. Replace entire roof at a cost of \$8,100.
4. Repair two (2) chimneys at a cost of \$3,000.
5. Install energy saving double pane windows at a cost of \$8,500.
6. Repair outside deck and stairs on North side at a cost of \$8,000.
7. Repair incomplete fence on North side at a cost of \$3,500.
8. Install low iron fence in front yard at a cost of \$3,800.

