



Office of the City Manager

CONSENT CALENDAR
September 18, 2007

To: Honorable Mayor and
Members of the City Council

From: *PK* Phil Kamlarz, City Manager

Submitted by: Dan Marks, Director, Planning and Development

Subject: Contract: Mills Act – 2501-2527 Rose Walk

RECOMMENDATION

Adopt a Resolution to direct the City Manager to enter into a Mills Act contract for 2501-2527 Rose Walk.

INTRODUCTION

On February 24, 1998, the Berkeley City Council passed Resolution No. 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, nine properties have contracted with the City to take advantage of this program.

FISCAL IMPACTS OF RECOMMENDATION

The City currently has eight properties that are using a Mills Act program to restore and stabilize a City of Berkeley Landmark. Below is a chart that indicates the Mills Act Contracts fiscal impact on the City General Fund since the inception of the Mills Act Program in 1998 through September 21, 2006. Staff has requested current data from the Alameda County Assessor’s Office in but has not received the information in time to include it in this report.

Table: Fiscal Effect of Mills Act Contracts on City of Berkeley

City of Berkeley Mills Act Contracts In effect as of Sept. 12, 2006		Dollar amount used to fund Mills Act-related Property Tax reductions for properties where the City has entered into such contracts, which is diverted from City of Berkeley General Fund (property tax revenues that otherwise would have been transferred from Alameda County to the City of Berkeley) in (dollars in each calendar year).							
Address	CC Contract	2000	2001	2002	2003	2004	2005	2006	Total
2188 Marin Ave.	12/14/99		\$1770	\$2112	\$2124	\$2110	\$2168	\$2159	\$12,443
1 Maybeck Twin Drive	12/14/99		\$814	\$698	\$3915	\$3941	\$4122	\$4231	\$17,721

1841 Marin Ave.	11/13/01			\$236	\$330	\$292	\$348	\$329	\$1,535
2237 Carlton St.	10/22/02				\$930	\$904	\$995	\$1015	\$3,844
883 Arlington Ave.	12/17/03					\$4416	\$5037	\$5135	\$14,588
2601-2603 Hillegass Ave.	12/17/03					\$2314	\$2437	\$2524	\$7,275
2430 Fulton St.								\$2999	\$2,999
59-61 Panoramic Way	11/8/06								
Total for all addresses			\$2584	\$3046	\$7299	\$13977	\$15107	\$18392	\$60,405

Note: Staff currently does not have data on whether or not the reduction in the assessed property value effects the collection of the other various ad valorem taxes (such as the city's GO bonds, the BUSD GO bonds, etc).

BACKGROUND

On February 25, 1991, the Rose Walk Area was designated a City of Berkeley Landmark; 2501-2527 Rose Walk is part of the Rose Walk Area, and the property owner is eligible to take advantage of the Mills Act.

On May 3, 2007, the Landmarks Preservation Commission reviewed the proposed rehabilitation and preservation project for 2501-2527 Rose Walk and voted to recommend that the City Council adopt the Mills Act contract.

The property owner of 2501-2527 Rose Walk identified projects to be completed on the property over the next ten years. The list of projects for the property is included as Exhibit B of the attached Mills Act contract, and is summarized on the next page.

The Landmarks Preservation Commission concluded that the improvements 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.

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 part of the Rose Walk Area a designated City of Berkeley Landmark, enabling the property owner to take advantage of the Mills Act.

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 five improvement projects to be completed in the contract period, including roof work, seismic upgrade, exterior restoration, interior restoration, and an upgrade of the electrical system.

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.

ALTERNATIVE ACTIONS CONSIDERED

The alternative action would have been for the City not to enter into the contract with the applicant, which would potentially lead to the continued deterioration of a structure that has been designated a City landmark, contrary to City policy to promote maintenance and restoration of historically significant structures.

CONTACT PERSON

Debbie Sanderson, Acting Land Use Planning Manager, 981-7410

Attachments:

- 1: Resolution
- 2: Mills Act Contract – 2501-2527 Rose Walk

RESOLUTION NO. ##,###-N.S.

CONTRACT: MILLS ACT FOR THE RESTORATION OF HISTORIC PROPERTY AT
2501-2527 ROSE WALK

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 February 25, 1991, the Rose Walk Area was designated a City of Berkeley Landmark; and

WHEREAS, 2501-2527 Rose Walk is part of the Landmark Designated Rose Walk Area and eligible to take advantage of the Mills Act; and

WHEREAS, on May 3, 2007, 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 owners; 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 September 18, 2007 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 the City Manager is authorized to execute a Mills Act contract and any amendments with Rose Walk LLC for the restoration of the historic properties at 2501-2527 Rose Walk in order to obtain property tax reduction for a period of ten years. A record copy of such contract and amendments to be on file in the Office of the City Clerk.

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**

**Rose Walk LLC
Property located at 2501-2527 Rose Walk
Berkeley, CA 94708**

**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 **Rose Walk LLC**, the owner of the structures located at 2501-2527 Rose Walk, in the City of Berkeley hereinafter referred to as "Owners".

RECITALS

Owners possess and own 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 (**Designated by the Landmarks Preservation Commission on February 25, 1991**):

Both City and Owners 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 Owners desire to enter into a contract pursuant to the provisions of the Government Code for the dual purpose of providing for the retention of Owners' 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 Owners 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. Owners 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. Owners 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 Owners'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 Owners 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. Owners shall promptly pay the requested amount within 45 days of receipt.

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

5. Owners agree 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 Owners or City at least ninety (90) days prior to the anniversary date.
7. Upon receipt by the Owners of a notice from the City of non-renewal, the Owners 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 Owners 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 Owners: Rose Walk LLC
P.O. Box 964
Tiburon, CA 94920

Continued Eligibility (California Government Code Section 50282.d)

10. The Owners 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. Owners 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 Owners, its Agents or Invitees, (c) the condition of the Historic Property, or (d) any construction or other work undertaken by Owners 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. Owners shall defend the City from any claim even if such claim is groundless, fraudulent or false. Owners'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 Owners 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 owners 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 owners 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 owners have 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 owners of property and shall be published pursuant to Section 6061.

20. If a contract is cancelled under Section 18, the owners 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 landowners 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.

In witness whereof, City and Owners have executed this Agreement on the day and year first written below.

Property Owners

Owners date

City of Berkeley, a municipal corporation of the State of California

By _____
City Manager date

On _____ before me, _____

personally appeared _____,

personally known to me OR

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.

WITNESS my hand and official seal:

SIGNATURE OF NOTARY

Mills Act Contract

Attachment 2
Page 8 of 9
2501-2527 Rose Walk
Rose Walk LLC
Page 8 of 9

**EXHIBIT A
LEGAL DESCRIPTION**

County: Alameda

Assessor Parcel Number: 060-2468-007-02 & 060-2468-010-01

Subdivision: Hopkins Terrace Map No. 4

Map Reference: 2-C4 / 609-H7

Census Tract/block: 4215.00 / 3

EXHIBIT B

LIST OF IMPROVEMENTS

1. Roof construction at a cost of \$100,000
2. Termite work at a cost of \$75,000
3. Seismic upgrade at a cost of \$75,000
4. Exterior restoration at a cost of \$50,000
5. Additional exterior restoration at a cost of \$50,000
6. Interior restoration at a cost of \$180,000
7. Additional interior restoration at a cost of \$180,000
8. Additional interior restoration at a cost of \$180,000
9. Electrical upgrade at a cost of \$27,000

