RESOLUTION NO. ___

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AN HISTORICAL PROPERTY CONTRACT WITH KELLI NAKAMURA AND ERIC LEE FOR THE MARK AND HAZEL HOPKINS HOUSE LOCATED AT 485 SOUTH 16TH STREET (APN: 467-50-050)

FILE NO. MA22-001

WHEREAS, California Government Code Section 50280, et seq. and Chapter 13.48 of Title 13 of the San José Municipal Code authorize the City of San José to enter into agreements with owners of qualified historical property to provide for the use, maintenance and restoration of such historical property to retain its characteristics as a property of historical significance; and

WHEREAS, Kelli Nakamura and Eric Lee possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 485 South 16th Street, (the Hopkins House"); and

WHEREAS, the City of San José and Kelli Nakamura and Eric Lee, for their mutual benefit, now desire to enter into an agreement both to protect and preserve the characteristics of historical significance of the Hopkins House and to qualify the Hopkins House for an assessment of valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, on November 2, 2022, the Historic Landmarks Commission conducted a public hearing on a Historical Property Contract for the Hopkins House, attached and incorporated as Exhibit "A" (the "Agreement"), and recommended approval of the Agreement; and

WHEREAS, a copy of the Agreement upon which such recommendation was made is on file in the Office of the City Clerk of the City of San José; and

WHEREAS, the Director of Planning, Building and Code Enforcement duly noticed a public hearing on said Agreement before the City Council for November 29, 2022, or as soon thereafter as said matter could be heard, where the City Council provided all persons full opportunity to be heard and considered all evidence and testimony presented regarding the Agreement;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1. In accordance with the provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, this Council does hereby approve the Historical Property Contract (the "Agreement") with Kelli Nakamura and Eric Lee, owners of the Mark and Hazel Hopkins House located at 485 South16th Street and makes the following findings:

A. The Agreement is consistent with the General Plan, in that preservation of specific structures is a part of the Envision San José 2040 General Plan Historic Preservation Goal 13, and Historic Preservation Policy LU-13.6 and Policy LU-13.13.

   1) The Agreement advances Historic Preservation Goal 13 by preserving the sense of place and historic integrity of the Craftsman style Historical Landmark and promoting awareness of its historic architecture that is part of San José's community identity.

   2) The Agreement implements Historic Preservation Policy LU-13.6 because it requires the property owners to commit to a ten-year work plan to invest in the maintenance and rehabilitation of the house and to conduct the work in conformance with the requirements of the Historic Preservation

Ordinance, the Secretary of the Interior's Standards for the Treatment of Historic Properties, and "Your Old House Guide for Preserving San José Homes." These requirements would support Historic Preservation Policy LU-13.6.

3) The Agreement implements Historic Preservation Policy LU-13.13 by utilizing a property tax incentive to foster the preservation and rehabilitation of the Historical Landmark which is architecturally significant.

B. The Agreement provides greater protection for the property than is otherwise provided by the provisions of San José Municipal Code Chapter 13.48 in that the owner, in partnership with the City, must use a portion of the property tax relief to rehabilitate and maintain the property in accordance with the preservation plan, attached as Exhibit "3" of the Agreement,

C. The Agreement complies with the requirements of Section 13.48.520 of the San José Municipal Code, which requires contracts to incorporate the Municipal Code's required provisions for Historical Property Contracts, including the following:

1) A description of the landmark property subject to the Agreement;

2) A provision that the term of the Agreement is a minimum period of ten years;

3) Specific conditions requiring preservation of the landmark;

4) A provision for the periodic examination of property; and

5) A requirement that the property owner annually expend an amount equal to the annual tax savings resulting from the Agreement, and a provision that the Agreement is binding upon—and shall inure to the benefit of—all successors in interest of the owners in the property.

SECTION 2. Pursuant to the San José Municipal Code, Chapter 13.48, the City Clerk is hereby directed to provide the Agreement to the owner of the historical landmark for their signature and directed to record the Agreement in the Office of the Recorder of the County of Santa Clara.

ADOPTED this ___ day of _____ 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

DRAFT – Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.

EXHIBIT "A"
HISTORICAL PROPERTY CONTRACT
FOR
THE HOPKINS HOUSE
485 S. 16TH STREET
MA22-001

THIS AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2022, by and between the City of San Jose, a municipal corporation (hereinafter referred to as the "CITY") and Kelli Nakamura and Eric Lee (hereinafter referred to as the "OWNER").

R E C I T A L S

WHEREAS, California Government Code Section 50280, *et seq*. and Chapter 13.48 of the San Jose Municipal Code authorize CITY to enter into contracts with the owner of a qualified historical property to provide for the use, maintenance and restoration of such historical property so as to retain its characteristics as property of historical significance; and

WHEREAS, OWNER possesses fee title in and to that certain real property, together with associated structures and improvements thereon, known as the Mark and Hazel Hopkins House located at 485 South 16th Street (hereinafter such property and structures shall be referred to as the "Historical Landmark" or the "Historical Landmark Property"), and a legal description of the Historical Landmark Property is attached hereto as Exhibit "1" and incorporated herein by this reference; and

WHEREAS, CITY and OWNER for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historical Landmark and to qualify the Historical Landmark for an assessment of

T-509/1973509
Council Agenda: 11-29-2022
Item No.: 10.1(a)(2)
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valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code.

AGREEMENT

NOW, THEREFORE, CITY and OWNER, in consideration of the mutual covenants and conditions set forth herein, do hereby agree as follows:

1. Effective Date and Term of Agreement. This Agreement shall be effective and commence on November 29, 2022 (the "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 as provided in Section 2 below, subject to cancellation as provided in Section 6 below.

2. Renewal. Each year on the anniversary of the Effective Date of this Agreement (hereinafter referred to as the "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 OWNER desires in any year to not renew the Agreement, OWNER shall serve written notice of nonrenewal of this Agreement on CITY in advance of the annual Renewal Date of this Agreement. Unless such notice is served by OWNER to CITY at least ninety (90) days prior to the annual Renewal Date, one (1) year shall automatically be added to the term of the Agreement as provided herein. If OWNER serves notice to CITY of nonrenewal in any year, the Agreement shall remain in effect, and the Historical Landmark Property shall remain restricted, for the balance of the term then remaining, either from its original execution or from the past renewal of the Agreement, whichever may apply. The Director of Planning, Building and Code Enforcement shall record the Notice of Nonrenewal and file a copy with the Assessor of Santa Clara County. Nonrenewal shall not be deemed a cancellation pursuant to Section 6 of this Agreement.

3. Standards for Historical Property. During the term of this Agreement, the Historical Landmark shall be subject to the following conditions, requirements and restrictions:

a. OWNER shall preserve and maintain the characteristics of historical significance of the Historical Landmark in no less than equal to the condition of the Historical Landmark Property as of November 29, 2022. OWNER of the Historical Landmark Property shall allow CITY to inspect the interior and exterior of the Historical Landmark Property to determine with OWNER the specific conditions of the Historical Landmark Property requiring preservation, restoration and/or rehabilitation to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of CITY as of the Effective Date. Attached hereto as Exhibit "2", and incorporated herein by this reference, is a list of those minimum standards and conditions for maintenance, use and preservation of the Historical Landmark, which shall apply to such Historical Landmark Property and with which OWNER shall comply fully throughout the term of this Agreement.

b. OWNER shall, where necessary or required, restore and rehabilitate the Historical Landmark Property in full accordance with the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, the United States Secretary of the Interior Standards for Rehabilitation, the California State Historical Building Code, and the requirements of CITY, including any permits or approvals granted pursuant to Chapter 13.48 of the San Jose Municipal Code. Without limiting the forgoing, OWNER shall perform all of the restoration and rehabilitation activities of the Historical Landmark Property set forth on Exhibit "3," attached hereto and incorporated herein by this reference, within any timelines that may be set forth in said Exhibit 3.

c. OWNER shall allow reasonable periodic examinations, by prior appointment, of the interior and exterior of the Historical Landmark Property by CITY

and the County of Santa Clara as may be necessary to determine OWNER's compliance with this Agreement, which periodic examinations shall occur at least five (5) years after the Effective Date of this original Agreement and then at least every five (5) years thereafter.

d. OWNER shall annually expend an amount equal to a minimum of ten percent (10%) of the tax savings attributed to this Agreement to the preservation and maintenance of the Historical Landmark Property and make this documentation available to the CITY at the time of the respective periodic examination described above.

4. Force Majeure. OWNER shall not be held responsible for repair or replacement of the Historical Landmark if damaged or destroyed through “Acts of God,” such as flood, tornado, lightning, earthquake or fire or other cause resulting therefrom; CITY shall, however, have the right to cancel this Agreement pursuant to terms of Section 6, Cancellation.

5. Provisions of Information of Compliance. OWNER hereby agree to furnish CITY with any and all information requested by CITY that may be necessary or advisable to determine compliance with the terms and provisions of this Agreement. OWNER shall retain, store and preserve during the term of this Agreement all records that are related to or that evidence the eligibility of the Historical Landmark or OWNER compliance with the terms and provisions of this Agreement.

6. Cancellation. CITY, following a duly noticed public hearing, may cancel this Agreement or bring any action in court necessary to enforce this Agreement (including without limitation an action to enforce this Agreement by specific performance or injunction) if it has been determined by enforcement staff with CITY’s Planning, Building and Code Enforcement Department that OWNER has breached any of the provisions or conditions of this Agreement, has allowed the Historical Landmark

Property to deteriorate to the point that it no longer meets the standards for a qualified historical property, or has otherwise failed to restore or rehabilitate the Historical Landmark Property or Historical Landmark in the manner specified in this Agreement. In the event of cancellation pursuant to this Section 6, OWNER may be subject to payment of those cancellation fees set forth in the California Government Code. Prior to any procedures set forth in this Section, CITY shall give notice of breach to OWNER, and OWNER shall have one hundred and twenty (120) days to cure such breach to the reasonable satisfaction of CITY.

7. Binding Effect of Agreement. This Agreement shall be binding upon, and inure to the benefit of, all successors in interest of OWNER. A successor in interest shall have the same rights and obligations under this Agreement as OWNER.

8. Notice. 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.

CITY: City Clerk
City of San José
200 East Santa Clara Street
San José, CA 95113

OWNERS: Kelli Nakamura and Eric Lee
485 South 16th Street
San Jose, CA 95112

9. General Provisions.

a. None of the terms, provisions or conditions of this Agreement shall be deemed to create a partnership between the parties hereto and any of their heirs, successors or assigns, nor shall such terms, provisions or conditions cause them to be considered joint ventures or members of any joint enterprise.

b. OWNER agrees to and shall hold CITY and its elected officials, officers, agents and employees harmless from liability from damage or claims for damage for personal injuries, including death, and claims for property damage which may arise from the direct use or operations of OWNER or those of OWNER's contractor, subcontractor, agent, employee or other person acting on OWNER'S behalf which relate to the use, operation and maintenance of the Historical Landmark. OWNER hereby agrees to and shall defend the CITY and its elected officials, officers, agents and employees with respect to any and all actions for damages caused by, or alleged to have been caused by, reason of OWNER'S activities in connection with the Historical Landmark. This hold harmless provision applies to all damages and claims for damages suffered, or alleged to have been suffered, by reason of the operations referred to in this Agreement regardless of whether or not the CITY prepared, supplied or approved the plans, specifications or other documents for the Historical Landmark.

c. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

"CITY"

CITY OF SAN JOSE, a municipal corporation

APPROVED AS TO FORM:

By _____
TONI J. TABER, CMC
City Clerk

_____
DANIEL ZAZUETA
Senior Deputy City Attorney

"OWNER"

By _____
KELLI NAKAMURA
Property Owner

"OWNER"

By _____
ERIC LEE
Property Owner

EXHIBIT "1"

LEGAL DESCRIPTION
FOR
THE HOPKINS HOUSE
485 SOUTH 16TH STREET
SAN JOSE, CA 95112

FILE NO. MA22-001
APN: 467-50-050

Beginning at a point on the Southwesterly line of Sixteenth Street (formerly Crittenden Street) at the most Easterly corner of Lot 7 of Block 83 as said Lot is shown upon that certain Map entitled, "Map of Naglee Park Tract Survey No. 4", in the City of San Jose, County of Santa Clara, State of California, as said Map was filed for record in the office of the Recorder of Santa Clara County, in Book "L" of Maps, at Page 100; thence from said point of beginning South 49° 20' West along the Southeasterly line of said Lot 7, 129.93 feet to the most Southerly corner thereof, said corner also being in the most Westerly corner of that certain parcel of land described in the deed to Hazel W. Hopkins, filed for record in the office of the Recorder of Santa Clara County, on September 4, 1917 in Book 462 of Deeds, at Page 287; thence running South 30° 40' East along the Southwesterly line of said lands conveyed to Hopkins 97.45 feet to the intersection thereof with a line that is parallel to and Northwesterly 60 feet measured at right angles from the Northwesterly line of William Street as said William Street is shown upon the Map hereinabove referred to; thence North 59° 20' 30" East along said parallel line 127.96 feet to the intersection thereof with the Southwesterly line of Sixteenth Street; thence North 30° 40' West along the Southwesterly line of Sixteenth Street 120.03 feet to the point of beginning.

Assessor's Parcel Numbers(s): 467-50-050

EXHIBIT "2"

HISTORIC PRESERVATION RULES AND REGULATIONS

OWNER shall, where necessary, restore and rehabilitate the Historical Landmark and shall do so only in full accordance and compliance with the rules and regulations of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings, as the same may be amended from time to time.

A summary of the Secretary of the Interior's Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring and Reconstructing Historic Buildings (the "Standards") is provided below for convenient reference. OWNER shall comply with the Standards in effect when OWNER commences any rehabilitation or restoration work on the Historical Landmark.

The Standards (Department of the Interior Regulations, 36 CFR 67) pertain to historic buildings of all materials, construction, types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1) A property shall be used for its historic purposes 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 element 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 archaeological 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 "3"

PRESERVATION PLAN
FOR
THE HOPKINS HOUSE
485 S. 16th Street
San José, CA 95112

MA22-001

APN: 467-50-050

OWNER shall annually expend tax savings attributed to this Agreement for the preservation and maintenance of the Historical Landmark. The rehabilitation of the Historical Landmark shall be completed on or before the 10th anniversary of the Effective Date of this Agreement, and such rehabilitation shall include all the following tasks:

Scope of Work

Year	Work Plan Description
1	Repair and repaint dry rot damaged barge boards and exterior siding. Install historic bronze plaque to display in front of house
2	Repair and restore original wood windows
3	Repair foundation (rear) and waterproof basement to prevent leaks.
4	Replace composition shingle roofing, repair/replace downspouts.
5	Repair balcony at rear of the house
6	Upgrade electrical wiring from knob & tube
7	Repaint exterior of the house
8	Repair foundation (front) and waterproof basement to prevent leaks.
9	Repair concrete (front porch, back stairs). Maintenance and pruning of heritage trees (Palm and Pine trees).
10	Repair and repaint chimney.

All work shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties and "Your Old House guide for preserving San Jose Homes."

After the 10th Anniversary date of the Effective Date of this Agreement, the property owner shall expend tax savings attributed to this Agreement for the continued preservation and maintenance of the Historic Landmark. More specifically, the property

owner shall perform and complete, without limitation, the following tasks each year: Maintenance, Painting, and Repairs.