

RESOLUTION NO. _____

**A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN
JOSE APPROVING A HISTORICAL PROPERTY
CONTRACT FOR THE NEIFING HOUSE LOCATED AT
1169 MAGNOLIA AVENUE (APN: 261-20-040)**

FILE NO. MA21-002

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 the owners of qualified historical property to provide for the use, maintenance and restoration of such historical property so to retain its characteristics as a property of historical significance; and

WHEREAS, Arthur Kao and Rachel Sussman possess fee title in and to that certain real property, together with associated structures and improvements thereon, generally located at the street address 1169 Magnolia Avenue, (hereinafter referred to as the “Historic Landmark”) and

WHEREAS, the subject property upon which the Historical Landmark is situated is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, the City of San José and Arthur Kao and Rachel Sussman, for their mutual benefit, now desire to enter into an 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 valuation pursuant to the provisions of Chapter 3, of Part 2, of Division 1 of the California Revenue and Taxation Code; and

WHEREAS, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Historic Landmarks Commission did, on October 6, 2021, at 6:30 p.m., conduct a public hearing on a Historical Property Contract for the Historical Landmark attached hereto as Exhibit “B” (hereinafter “Agreement”); and the Historic Landmarks Commission recommended to approve 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, within the time and in the manner provided by said Chapter 13.48 of Title 13, the Council did give notice that on October 26, 2021, at 1:30 p.m., or as soon thereafter as said matter could be heard, this Council would, in the City Hall of the City of San José, 200 East Santa Clara Street, San José, California, hold a public hearing on said Agreement at which hearing any and all persons interested in said Agreement could appear, in person or virtually, and avail themselves of an opportunity to be heard and to present their views with respect to said proposed Agreement; and

WHEREAS, at the aforesaid time and place set for hearing, or to which the hearing was continued, this Council duly met, convened, and gave all persons full opportunity to be heard to present their views with respect to said proposed 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 with Arthur Kao and Rachel Sussman, owners of “The Neifing House” located at 1169 Magnolia Avenue 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 promoting a greater sense of historic awareness of the late nineteenth century construction methods and architecture of the Stick style house. In its setting in the Hanchett and Hester Park Conservation Area, the architectural features of the house contribute toward a sense of place within the Hester District which dates to 1890.
 - 2) The Agreement implements Historic Preservation Policy LU-13.6 because it requires the property owner to commit to a ten-year work plan to invest in the maintenance and rehabilitation 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 address 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 house which has architectural significance as a Stick style house constructed in 1892.

- B. The Agreement would provide greater protection for the Historical Landmark 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, Exhibit “C” of the Agreement; and
- C. The Agreement complies with the requirements of Section 13.48.520 of Chapter 13.48 of Title 13 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 Contract, 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 notify the owner of the Historical Landmark subject to the Agreement and directed to record the Agreement in the Office of the Recorder of the County of Santa Clara.

ADOPTED this _____ day of _____ 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

EXHIBIT "A"

**LEGAL DESCRIPTION
FOR
THE NEIFING HOUSE
1169 MAGNOLIA AVENUE
SAN JOSE, CA 95126**

**FILE NO. MA21-002
APN: 261-20-040**

The land referred to is situated in the County of Santa Clara, City of San Jose, State of California, and is described as follows:

Lot 79 and 80, as shown on that certain Map entitled "Map of Schiele Subdivision No. 2 Being a Part of Rancho Los Coches", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on May 26th, 1890 in Book E of Maps, at Page(s) 8 and 9.

APN: 261-20-040

EXHIBIT “B”

**HISTORICAL PROPERTY CONTRACT
FOR
THE NEIFING HOUSE
1169 MAGNOLIA AVENUE
MA21-002**

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between the City of San José, a municipal corporation (hereinafter referred to as the “CITY”) and Arthur Kao and Rachel Sussman (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 José 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 Neifing House located at 1169 Magnolia Avenue (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 “A” 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 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 _____ (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 enforceably 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 October 6, 2021. 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 “B”, 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 José 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 “C,” attached hereto and incorporated herein by this reference, within any timelines that may be set forth in said Exhibit C.

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 have 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: Arthur Kao and Rachel Sussman
1169 Magnolia Avenue
San José, CA 95126

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.

Signature page follows

APPROVED AS TO FORM:

RENE ORTEGA
Senior Deputy City Attorney

“CITY”

CITY OF SAN JOSE, a municipal
corporation

By _____
TONI J. TABER, CMC
City Clerk

“OWNER”

By _____
ARTHUR KAO
Property Owner

“OWNER”

By _____
RACHEL SUSSMAN
Property Owner

EXHIBIT "A"
LEGAL DESCRIPTION
FOR
THE NEIFING HOUSE
1169 MAGNOLIA AVENUE
SAN JOSE, CA 95126

FILE NO. MA21-002
APN: 261-20-040

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Lot 79 and 80, as shown on that certain Map entitled "Map of Schiele Subdivision No. 2 Being a Part of Rancho Los Coches", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on May 26th, 1890 in Book E of Maps, at Page(s) 8 and 9.

APN: 261-20-040

EXHIBIT “B”

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 “C”

PRESERVATION PLAN
FOR
THE NEIFING HOUSE
1169 Magnolia Avenue
San José, CA 95112

FILE NO. MA21-002
APN: 467-41-054

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	Install historically appropriate wood window screens for all of the home's original windows. Make and install bronze historic landmark plaque.
2	Remove the upper front deck on the east side of the house to expose the original distinctive bow window, trim, and brick.
3	Repair and restore rear foundation and footings. Remove porch enclosure with modern metal-frame windows at rear of house and replace with period-appropriate open porch and wood windows as was on the original house.
4	Repair front and side brick foundation which currently has significant water damage. Remove damaged brick chimney (no fireplace in house currently) which is an earthquake safety hazard.
5	Restore damaged side porch steps and replace railing with wood balusters to match those from the front porch. Upgrade electrical and plumbing as necessary.
6	Fix east side kitchen window and replace with double-hung sash window and original window trim. Repaint exterior of home.
7	Repair and restore damaged front porch and front porch steps. Restore balusters on railing of steps to match original as seen on historic photograph.
8	Restore decorative details of wood window trim. Repair and repaint deteriorated wood at other points around the exterior of home.
9	Recreate (from original historical photograph) and install roof finials. Repair, restore and install original wrought iron side gate (found in garage).
10	Refinish front and side doors of home (currently painted) to original stained wood

	finish. Re-roofing, as necessary.
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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 José 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.