



# City of Fullerton Mills Act Program, Guidelines & Application

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**Community & Economic Development Department**  
CITY OF FULLERTON | 303 WEST COMMONWEALTH AVENUE | FULLERTON, CA 92832



# Mills Act Program Summary

Mills Act properties reflect the diversity of Fullerton's architectural and cultural heritage. The Mills Act Program is a partnership between the historic property owner and the City to preserve these important historic resources in our community. The Mills Act Program is intended to offset the costs of rehabilitation and maintenance of your historic property. Mills Act properties become the best representations of the commitment and care for historic buildings and we look forward to working with you to determine if the Mills Act Program is a good fit for you and your historic property. Should you have any questions about the Mills Act Program, please contact:

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The Mills Act Program is a voluntary historic preservation program, enabled by California Government Code, Article 12, Sections 50280-50290, established in 1972. The Mills Act allows a City to enter into a Historic Property Preservation Agreement (also referred to as a Mills Act Contract) with owners of qualified historic properties. Under the terms of the Mills Act Contract, the property owner agrees to preserve, maintain, and rehabilitate the historic property in conformance with the Secretary of the Interior's Standards for the Treatment of Historic Properties and with local historic preservation standards.

Under a Mills Act Contract, the historic property is reassessed by the Orange County Assessor's Office to determine the "Historical Property Value." The Historical Property Value is based on the property's income-producing potential (generally from rental income) and is used to determine property taxes under the Mills Act Contract. The amount of property tax reduction varies based on each property's income-producing potential and current assessed value.

## Eligible Properties

Pursuant to Section 439 of the Revenue and Taxation Code, a "qualified historical property" is defined as a privately owned property that is not exempt from property taxation and is listed on any national, state or local historic register. The Fullerton Plan contains several historic designations based on the level of significance, these designations include:

- National Register
- Local Landmark
- Significant Property
- Potential/Possible Significant Property
- Historic Districts / Preservation Zones



With the exception of Potential/Possible Significant Properties and properties within Preservation Zones, which would be determined on a case-by-case basis based on the age and historic/architectural integrity of the structure, properties listed in any of the above categories would be eligible for a Mills Act Contract subject to the additional eligibility criteria listed below.



### ***Additional Eligibility Criteria -***

- Property must be privately owned.
- Property must be subject to property taxation.
- Property must have an assessed valuation of less than \$800,000 dollars.
- Property must be residential in nature / use.

## **Mills Act Contract Responsibilities**

The Mills Act is not intended to be a subsidy for those seeking to remodel their property or a tool to assist with mortgage payments. The purpose of the program is for the funds saved in property taxes to be utilized for the rehabilitation and maintenance of the property and all work must conform to the Federal Guidelines developed for the treatment of historic properties, known as the Secretary of the Interior's Standards for Rehabilitation. In general, the total cost estimate in your Rehabilitation/Maintenance Plan should equal the approximate amount of property tax savings over the first ten year term of the contract.

Under a Mills Act Contract, you are not required to return a building to its appearance during a specific historic period; however, you are required to complete work that supports the long-term preservation of the building. Examples of appropriate work items under a Mills Act Contract include:

- Seismic retrofit
- Re-roofing
- Plumbing repair/upgrades
- Electrical repair/upgrades
- Mechanical repair/upgrades
- Window repair
- Siding repair and repainting

All work must be related to the exterior or building systems. Cosmetic improvements to the interior of historic buildings, such as kitchen or bathroom renovations, are not considered eligible work items under the Mills Act Program. All work on a property with a Mills Act Contract must be in conformance with the Secretary's Standards. Property owners considering applying for a Mills Act Contract should first familiarize themselves with the applicable historic preservation regulations prior to submitting your application. For the application, property owners are required to submit a description of work, timeline, and cost estimates for rehabilitation of the property during the first ten year term of the Contract (see Rehabilitation/Maintenance Plan). Please note that the Rehabilitation/Maintenance Plan is binding on all future property owners, so it should address the critical preservation needs of the property and not the personal preferences of the property owner.

## **Mills Act Property Tax Assessment**

Mills Act properties are re-assessed annually by the Orange County Assessor's Office through a methodology determined by the State of California. Under the Mills Act, three property values are determined:

1. Base Year Value, or the purchase price under Proposition 13 with an annual 2% rate of increase.
2. Fair Market Value, or the potential sale value of the property at the time of the assessment.



### 3. Historical Property Value, calculated as described below.

The Historical Property Value is based on the property's ability to produce income. For owner-occupied property, income is based on potential rental value. For multi-family properties, income is based on actual rent rolls. The property's income less expenses is then divided by a capitalization rate to establish the Historical Property Value.

The Assessor will base property taxes on the lowest of these three values. Depending on when the property was purchased and the assessed value, this generally results in a sizable property tax reduction. Entering into a Mills Act Contract does not guarantee a reduction in property taxes; you are most likely to benefit from a Mills Act contract if you have purchased the property within the past 10 years.

## Mills Act Contract Terms

Mills Act Contracts run for a ten year term and are automatically renewed each year on the anniversary of the Contract's approval by City Council. In effect, the contract is always 10 years away from termination, unless the property owner or the City submits a notice of non-renewal. The property owner must provide written notice of non-renewal to the City at least 90 days prior to the renewal date, or another year is automatically added to the Contract. Following submittal of a notice of non-renewal, the contract will be terminated at the end of the current ten year term.

If the City finds that the property owner is in breach of the contract terms, the City may initiate proceedings to cancel the Contract. The property owner may also petition the City for immediate cancellation. A penalty of 12.5% of the property's assessed fair market value will be imposed for a cancelled contract. If you are unable to complete items on your Mills Act scope of work within the proposed timeline due to unforeseen circumstances, please contact City staff as soon as possible to discuss an amendment to the Rehabilitation/Maintenance Plan. The Mills Act Contract is a legally binding document recorded against the property. The Contract runs with the property and is binding on all future owners. Property owners are encouraged to seek independent counsel on the nature, extent, and duration of their rights and obligations under the contract terms.

## Mills Contract Process

Application Submittal - Pursuant to the adopted guidelines, the City may process no more than ten (10) Mills Act Contracts per calendar year. Applications are accepted on a first-come, first-served basis and must be received no later than August 1<sup>st</sup> of each year. Applications are accepted by appointment only. Please contact Planning Division staff prior to submitting your application to discuss whether your property is a good candidate for a Mills Act Contract and to set up an appointment. Following receipt of the application and required fee, staff will review your application to determine if it is complete and meets the requirements of the Mills Act Program.





## Pre-Approval Inspection and Pre-Contract Rehabilitation

- After your application has been reviewed, staff will schedule a pre-approval inspection. The pre-approval inspection is required under State law enabling the Mills Act Program and will include both the exterior and interior of the property. The property owner must be present for the inspection. The primary purpose of the inspection is to discuss what items, if any, are required to be completed pre-contract and what can be included in the proposed ten year Rehabilitation / Maintenance Plan. Pre-contract improvements are those that will return any lost historic



integrity and character to an altered residence in order to qualify the property for a Mills Act Contract. Properties with a high level of historic integrity may require only minor pre-contract work to qualify, and some of the improvements reference below may be deferred to be included in the Rehabilitation/Maintenance Plan. The most common pre-contract improvements include:

- Cleanup of unkempt or overgrown landscaping.
- Removal or replacement of incompatible fencing in front or visible side yards.
- Removal of window or wall air conditioning units that are visible from the public right-of-way.
- Removal of metal awnings that are not historic features of the residence.
- Removal of canvas awnings that obscure window sizes or shapes.
- Removal of security screen doors from the front door.
- Relocation of visible television antennas or dishes to not be visible from the public right-of-way, or removal if no longer in use.
- Removal of non-historic features added to front yards including inappropriate plantings, planters, or edging of incompatible style or material (ex. scalloped concrete edging).

Other potential pre-contract improvements in order to make the property more competitive for approval of a Mills Act Contract include:

- Replacement of a non-historic materials on exterior walls, such as inappropriate stucco over an earlier stucco finish or aluminum or vinyl siding over wood siding.
- Removal of any non-historic porches or porte-cocheres, porch features or cladding materials (such as tile or brick).
- Replacement of inappropriate metal or vinyl windows visible from the public right-of-way with windows that reproduce the historic details, including frame and casing. The new windows must be based on other intact examples on the house or, if all are missing, earlier photographic evidence or approved examples from houses of similar age and style.
- Broken, excessively dirty or worn window screens. Replacement screens should be wood-frame, if appropriate to the era or style of the house, or metal-frame screens painted to match the trim. Replacement with appropriate wood screens and hardware may be part of the Rehabilitation / Maintenance Plan.



**City Council Review** - After the pre-approval inspection, staff will prepare a report making a recommendation to the City Council regarding approval of the Mills Act Contract. Mills Act Contracts are presented to City Council at a regularly scheduled public hearing, typically in early December. The City Council is not required to approve all Mills Act contracts and may modify or reprioritize the Rehabilitation/Maintenance Plan based on preservation priorities. The City Council's decision on the Mills Act Contract is final. When the total number of Mills Act Contracts approved reaches 50, the City Council shall be required to adopt a Resolution reauthorizing the program and specifying how many additional Mills Act Contracts will be considered.

**Contract Execution** - After City Council approval of the Contract, the property owner must execute the Historic Property Preservation Agreement. The property owner must sign and have notarized the Agreement with the attached Notary Acknowledgement and return two original



copies to the City Clerk. The Mayor, City Attorney, and City Clerk will sign both copies of the Mills Act Contracts. The date on the Contract will be the date that City Council took action on approval of the Contracts. The property owner must then pick up both copies of the signed contracts from the City Clerk and have them recorded at the Orange County Clerk - Recorder Department (located at 12 Civic Center Plaza, Santa Ana, CA 92701) on or before December 31<sup>st</sup>. The property owner is required to pay all fees related to recording. Contracts must be recorded on or before December 31<sup>st</sup> to go into effect for the following tax year.

**Property Tax Reduction** - Following recording of the Contract, the Assessor's Office will re-assess the property using the Mills Act Historical Property Value. The Assessor typically re-assesses properties in the spring and summer following recording of the Contract. The property tax reduction may not be reflected in your property tax bill until the fall or winter after the Contract is recorded.

## Mills Act Program Fees

The Mills Act Contract application processing fee is \$1,520, payable to the City of Fullerton. Following approval of the Contract, an annual processing fee of \$85 is required. Fees are subject to change by Resolution of the City Council and all fees are non-refundable.

## Mills Act Contract Holder Obligations

**Annual Progress Report** - Under the terms of the Contract, the City requires property owners to submit an annual progress report describing the work completed on the property during the previous year. Progress reports are included in the application and available on the City's website and should be mailed to the following address:



City of Fullerton  
Community and Economic Development Department - Planning Division  
303 West Commonwealth Avenue, Fullerton, CA 92832

**Five Year Inspections** - Mills Act Contract properties are required to be inspected once every five years. Inspections will include the exterior and interior of the building, and the property owner must be present at the inspection. City Staff will contact the property owner in advance of the inspection period to set up a time and date for the inspection.

**Ten Year Rehabilitation/Maintenance Plan** - At least 90-days prior to the end of the first ten (10) year term of the Contract, the property owner is required to submit a Rehabilitation / Maintenance Plan for the next ten year term of the Contract. Any changes to the Rehabilitation / Maintenance Plan must be approved by City staff. Failure to comply with the terms of the Plan may result in termination of the Agreement.

## Mills Act / Historic Preservation Resources

- Secretary of the Interior Standards – <https://www.nps.gov/tps/standards.htm>
- Fullerton Local History Room - [https://www.fullertonlibrary.org/local\\_history/default.asp](https://www.fullertonlibrary.org/local_history/default.asp)
- Fullerton Heritage - <https://www.fullertonheritage.org/>
- State Office of Historic Preservation - <https://ohp.parks.ca.gov/>
- Preserve OC - <https://www.preserveorangecounty.org/>

## Frequently Asked Questions

### **Q: Is there a fee for the Mills Act Program in Fullerton?**

A: There is a fee to apply for the Mills Act program. These fees are to cover the City's costs for preparing and reviewing the Mills Act Contract and preparing the associated reports and conducting inspections.

### **Q: How are my property tax savings calculated if I am awarded a Mills Act Contract?**

A: There are a number of factors that contribute to a property tax savings calculation. For an explanation of how your property tax will be calculated and an estimate of how much you may save under the Mills Act Program, you may call the Mills Act contact at the Orange County Assessor's Office at: **(714) 834-2959**.

### **Q: When would I receive my property tax reduction?**

A: Mills Act Contracts are awarded and recorded by the end of the calendar year. Tax savings are seen on the following year's tax bill. For example, if you are approved for the 2020 Mills Act Class your Contract would be recorded in December of 2020 and you would see your tax savings on your 2021 tax bill.

### **Q: What if I want to cancel my Mills Act Contract?**

A: Mills Act Contracts may be canceled by the owner at any time. The owner will need to submit a letter to the City explaining their desire to end the Contract. The Mills Act Contract has a term of 10 years and automatically renews at the end of each year. Once the owner cancels their Contract, they will remain under Contract for the rest of the 10 year term. During that time, the owner will still be responsible for maintaining the historic integrity of their property, but their tax savings will gradually decrease.



**Q: How is the program enforced?**

A: All Mills Act Contracts are enforced through regular inspections, which evaluate everything visible from the public right-of-way. Mills Act property owners are notified of the inspection results by mail and told if they are in compliance or if there are outstanding issues that need to be resolved.

**Q: What happens if a Mills Act property changes ownership?**

A: Mills Act Contracts remain with the property. When a property with a Mills Act Contract is sold, the new owner will automatically assume the reduced tax rate and all the obligations of owning a Mills Act property. It is important that sellers of Mills Act properties disclose the Mills Act requirements to the new property owners, as well as any unfinished maintenance items from their 10-Year Rehabilitation / Maintenance Plan, as the new owners will be required to comply with the same requirements of the program.



**Q: What happens if I do not fulfill my obligation under my Rehabilitation/Maintenance Plan or other contract provisions?**

A: The City strives to work with property owners to stay in compliance with their Mills Act Contracts and to get back into compliance if any items require attention. However, if a property continues to remain out of compliance after a series of attempts by staff to remedy the situation, State law allows the City to cancel the owner's Mills Act Contract and fine the owner 12.5% of the fair market value of the property.

**Q: Am I guaranteed a Mills Act Contract if I submit an application and complete all the pre-contract rehabilitation?**

A: No. When a property owner applies for a Mills Act Contract, a Contract is never guaranteed, even if they complete every item described to them throughout the application process. The final decision whether to grant or not grant a Mills Act Contract is made by the City Council.





# Mills Act Application Checklist

<input type="checkbox"/>	<p><b>Mills Act Contract Application</b></p> <ul style="list-style-type: none"> <li>▪ Fill in required owner and property information. All property owners must sign and date the application. If the property is owned by a trust, corporation or other legal entity, the officers or trustees signing for the entity must include their titles on the application form.</li> </ul>
<input type="checkbox"/>	<p><b>Rehabilitation / Maintenance Plan</b></p> <ul style="list-style-type: none"> <li>▪ List and description of work items with anticipated timing and cost estimates.</li> </ul>
<input type="checkbox"/>	<p><b>Mills Act Tax Assessment Worksheet</b></p>
<input type="checkbox"/>	<p><b>Photograph Inventory of the Property</b></p> <ul style="list-style-type: none"> <li>▪ Black and white photographs of the entire property, including all building elevations and yards or open spaces. Photographs may be obtained with a digital camera and printed on high quality photographic paper at 8" by 10". Prints should be numbered with pencil on the back of the image and accompanied by a photo index with labels identifying the location or building feature, property address, and date of image.</li> </ul>
<input type="checkbox"/>	<p><b>Site Plan</b></p> <ul style="list-style-type: none"> <li>▪ The site plan must be drawn to scale on 8½" by 11" or 11" by 17" paper. The site plan should identify all major site features, including all buildings, hardscape and major landscape features. The site plan must include a north arrow, street names, and property and building dimensions.</li> </ul>
<input type="checkbox"/>	<p><b>Property Tax Bill</b></p> <ul style="list-style-type: none"> <li>▪ Copy of the most recent property tax bill. If the property was recently purchased and you have not received a property tax bill, this may be submitted at a later date.</li> </ul>
<input type="checkbox"/>	<p><b>Grant Deed</b></p> <ul style="list-style-type: none"> <li>▪ Copy of the grant deed showing current property owners. The grant deed must include the legal description of the property. If the property is owned by a trust, corporation, or other legal entity, the articles of incorporation must be included with the grant deed. Officers or trustees who sign the application form must be clearly identified with their titles and relationship to the ownership entity in the articles of incorporation.</li> </ul>
<input type="checkbox"/>	<p><b>Termite Condition Report</b></p> <ul style="list-style-type: none"> <li>▪ Copy of report must be dated within six months of application submittal.</li> </ul>
<input type="checkbox"/>	<p><b>Title Insurance Policy</b></p> <ul style="list-style-type: none"> <li>▪ A Title Insurance Policy is only required if the property was purchased within three months of the application submittal.</li> </ul>
<input type="checkbox"/>	<p><b>Application Fee - \$1,520.00 (Checks made Payable to the City of Fullerton)</b></p> <ul style="list-style-type: none"> <li>▪ This fee is non-refundable.</li> </ul>
<input type="checkbox"/>	<p><b>Property Owner Authorization Form (Master Application Form)</b></p>



# City of Fullerton - Mills Act Application

Property Information	
Property Address:	
Property Purchase Date:	
Assessor's Parcel Number:	
Existing Use:	
Historic Eligibility Type [check all that apply]:	<input type="checkbox"/> National Register <input type="checkbox"/> California Register <input type="checkbox"/> Fullerton Historic Register <input type="checkbox"/> Preservation Zone / Historic District <input type="checkbox"/> Other: _____
Date of Construction:	
Historic Name (If applicable):	
Architectural Style:	
Architect, If Known:	
Owner Information	
Property Owner(s):	
Owner(s) Mailing Address:	
Contact Information:	Telephone No.: _____ Alt. Telephone No.: _____ Email Address: _____
Acknowledgement	
I am (we are) the present owner(s) of the property described above. I (we) have read the application, know and understand the contents thereof, and hereby apply for a Mills Act Contract.	

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Owner Name (Print)

\_\_\_\_\_  
Owner Name (Print)

Staff Use Only	
Date Received:	
Received By:	



# Mills Act Tax Assessment Worksheet

Annual Property Income		
<b>Monthly Rental Income</b>	<i>An estimate of monthly rental income is required, even if the property is owner occupied. For single-family residences, a realtor may be able to assist you in determining the potential rental income from your property.</i>	
<b>Annual Rental Income</b>	<i>Multiple monthly rental income by 12.</i>	
Annual Operating Expenses		
<b>Insurance</b>		
<b>Utilities</b>	<i>Electricity, Water, Gas.</i>	
<b>Maintenance</b>	<i>General Repairs, Cleaning, Painting, Landscaping.</i>	
<b>Total Expenses</b>	<i>Add total expenses. Total expenses typically equal approximately 25% of annual rental income.</i>	
Annual Net Income		
<b>Net Total</b>	<i>Annual rental income minus total expenses.</i>	
Capitalization Rate		
<b>Interest Rate Component</b>	<i>Fixed interest rate established by the Board of Equalization for most recent year. [4.0%]</i>	
<b>Historic Property Tax Risk Component</b>	<i>4.0% for single-family residences 2.0% for all other properties</i>	
<b>Property Tax Component</b>	<i>Fixed Component [1.0%]</i>	
<b>Amortization Component</b>	<i>Based on life of improvements. [Typically 0.67%]</i>	
<b>Capitalization Rate</b>	<i>Add individual components above.</i>	
Assessed Value		
<b>Historic Property Value</b>	<i>Net total divided by capitalization rate.</i>	
<b>Current Assessed Value</b>	<i>From current property tax bill.</i>	
Estimated Tax Reduction		
<b>Current Tax</b>	<i>General levy tax portion only. Does not include sewer assessments, bond issues, or other voter indebtedness.</i>	
<b>Estimated Tax under Mills Act</b>	<i>1.0% of Historical Property Value. Provided as an estimate of potential tax savings.</i>	



# Sample Historic Property Preservation Agreement

## **HISTORIC PROPERTY PRESERVATION AGREEMENT (MILLS ACT CONTRACT)**

THIS HISTORIC PROPERTY PRESERVATION AGREEMENT (the "Agreement") is made and entered into as of the date of execution by the City (herein referred to as the "Effective Date"), and is being entered into by and between the CITY OF FULLERTON, a municipal corporation ("City"), and \_\_\_\_\_ (referred to herein as the "Owner"), with reference to the following:

### **RECITALS**

WHEREAS, the Mills Act (Government Code Section 50280 et seq.) provides cities with the opportunity to contract with owners of qualified historical properties whereby the owner promises to preserve, restore and rehabilitate the property in return for a reduced property tax assessment; and

WHEREAS, the City is dedicated to the protection and stabilization of property values through maintaining and upgrading its older housing stock, through the use of incentives such as the Mills Act; and

WHEREAS, the Mills Act will also have beneficial effects on City businesses, economic stability and community pride by preserving important neighborhood resources; and

WHEREAS, the use of the Mills Act will fulfill one of the City's 2012 Historic Preservation Chapter of the Fullerton Plan; specifically, "Support projects, programs, policies and regulations to promote the maintenance, restoration and rehabilitation of historical resources" (Policy P4.3); and

WHEREAS, it is the City's expectation that the Owner will use the property tax savings accrued under this Agreement for improvements to the "Historic Property" (as defined below). To that end, as a condition of renewal, the City will require a revised schedule of improvements every ten years showing a plan for improvements commensurate with the tax savings; and

WHEREAS, Owner possesses fee simple title in and to that certain real property, together with associated structures and improvements thereon, located at \_\_\_\_\_ in the City of Fullerton, County of Orange, State of California, having Assessor's Parcel Number XXX-XXX-XX and more specifically described in Exhibit A, which exhibit is attached hereto and made a part hereof (herein referred to as the "Historic Property"); and

WHEREAS, the Historic Property is a qualified historical property under the Mills Act in that it is privately owned property which is not exempt from property taxation and is listed on the National Register of Historic Places, California Register of Historical Resources or Register of Historical Landmarks, California Points of Historical Interest, or on a City of Fullerton Historic Register, or is an eligible property within a Preservation Zone; and

WHEREAS, Owner, in consideration for abiding by the terms of this Agreement shall be entitled to a reassessment of valuation of the Historic Property and any corresponding reduction in property taxes pursuant to the provisions of the California Revenue and Taxation Code; and

WHEREAS, the City and Owner for their mutual benefit, now desire to enter into this Agreement to limit the use of the Historic Property to prevent inappropriate alterations, to ensure that characteristics of historical significance are preserved and maintained in an exemplary manner, and to carry out the purposes of Article 12 (commencing with Section 50280) of Chapter 1, Part 1, Division 1 of Title 5 of the California Government Code and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.





## AGREEMENT

NOW, THEREFORE, both Owner and City, in consideration of the mutual promises, covenants and conditions contained herein and the substantial public benefits to be derived there from, do hereby agree as follows:

1. **AGREEMENT SUBJECT TO GOVERNMENT CODE SECTIONS 50280 50290.** This Agreement is made pursuant to California Government Code Sections 50280 through 50290 and Article 1.9 (commencing with Section 439) of Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code and is subject to all of the provisions of those statutes. To the extent any of the provisions in this Agreement are inconsistent with the pertinent provisions of the Government and Revenue and Taxation Code, they are superseded by those Code Sections.
2. **ASSESSMENT OF VALUATION.** Property tax relief afforded to Owner pursuant to Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code will be determined solely by the Orange County Assessor. City makes no representations regarding the actual tax savings any person may realize by entering into this Agreement.
3. **PRESERVATION OF PROPERTY.** Owner agrees to preserve and maintain the Historic Property and its character defining features. Character defining features include, but are not necessarily limited to, the general architectural form, style, materials, design, scale, details, mass, roof line and other aspects of the appearance of the exterior of the Historic Property.

The Secretary of the Interior's Standards for Rehabilitation (Exhibit B) and City's minimum maintenance standards (Exhibit C), attached hereto and incorporated herein by reference, shall constitute the minimum standards and conditions for preservation, restoration, and rehabilitation of the Historic Property, and shall apply to the Historic Property throughout the term of this Agreement. Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the California Department of Parks and Recreation, the U.S. Secretary of the Interior's Standards for Rehabilitation, the State Historical Building Code, and the City of Fullerton Historic Preservation Design Standards.

As consideration for the City to enter into this Agreement, the Owner agrees, at its own cost and expense, to complete, or cause to be completed, the work or improvements described in Exhibit D within the times established therefor in Exhibit D. The Owner shall secure any and all permits which may be required by the City or any other governmental agency affected by the construction of the work or improvements. The Owner accepts responsibility for and shall be responsible for identification of and compliance with all applicable laws pertaining to the construction and installation of the work or improvements described on Exhibit D and the contract or contracts pertaining thereto. The Owner will neither seek to hold nor hold the City liable for, and will hold the City harmless with respect to, any consequences of any failure by the Owner to correctly determine the applicability of any such requirements to any contract he/she/they enter into. In addition to the foregoing, the Owner hereby agrees to and will comply with all applicable local, state, and federal statutes, regulations, rules, codes (including building codes), ordinances, and other requirements of governmental authorities now or hereafter in effect ("Applicable Laws") pertaining to the use of the Historic Property. Owner must give the City immediate written notice on Owner's becoming aware that the use or condition of the Historic Property is in violation of any Applicable Laws.

4. **INSPECTIONS AND ANNUAL REPORTING.** Owner agrees to permit the periodic examination, by prior appointment, of the interior and exterior of the Historic Property by the County Assessor, the State Department of Parks and Recreation, the State Board of Equalization and the City as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. Owner agrees to provide the City with a report as to the status of the Historic Property annually within thirty (30) days following each anniversary of the Effective Date of this Agreement. The annual report shall provide substantiation reasonably satisfactory to the City's Community and Economic Development Director that Owner has completed the work required by Exhibit D for the twelve month period preceding each anniversary of this Agreement, and whether the Historic Property has undergone any changed conditions, and whether Owner has received any public funds from other sources designated for the preservation or maintenance of the Historic Property and from whom such funds have been received.



5. **PAYMENT OF ANNUAL INSPECTION FEE.** The Owner shall pay the City an annual fee for each required inspection of the Historic Property for the purpose of covering the reasonable cost of performing required inspections as work is completed. Said fee shall be payable to the City of Fullerton and shall be remitted to the Planning Division upon demand and prior to the required inspection. The amount of the annual inspection fee shall be established by the City Council and may be revised from time to time.
6. **TERM.** The term of this contract is for a period of ten (10) years. The initial term of this Agreement shall be from, 20\_\_ to and including, 20\_\_.
7. **AUTOMATIC RENEWAL.** On each yearly anniversary of the Effective Date of this Agreement (hereinafter referred to as the "renewal date"), one year shall be added automatically to the initial term of this Agreement, unless notice of non-renewal is given as provided in this Agreement.
8. **EFFECT OF OUTSIDE FUNDS.** If Owner receives funds designated for the preservation or maintenance of the Historic Property from any other public agency, this Agreement shall not be renewed except upon the vote of the City Council.
9. **NOTICE OF NONRENEWAL.** If in any year either the Owner or City desires not to renew this Agreement, that party shall serve written notice of nonrenewal on the other party in advance of the annual renewal date. Unless the notice is served by Owner to City at least ninety (90) days, or by City to Owner at least sixty (60) days prior to the renewal date, one year shall automatically be added to the term of the Agreement. Within fifteen (15) days of receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. Upon receipt of such a protest the City Council shall set a hearing prior to the expiration of the renewal date of this Agreement or toll the renewal date until such hearing can reasonably held. Owner may furnish the City Council with any information which the Owner deems relevant; and shall furnish the City Council with any information it may require. At any time prior to the renewal date, City may withdraw its notice of nonrenewal.
10. **EFFECT OF NOTICE NOT TO RENEW.** If in any year either party serves notice of intent not to renew this Agreement, this Agreement shall remain in effect for the balance of the period remaining since the original execution date if not yet renewed, or the last renewal date of the Agreement, as the case may be.
11. **UPDATE OF IMPROVEMENT SCHEDULE.** At least ninety (90) days prior to the tenth (10th) anniversary of the Effective Date of this Agreement, and ninety (90) days prior to every tenth (10th) anniversary thereafter, Owner shall provide City with an updated schedule of improvements and maintenance items for the City's review and approval. Such updated schedule shall contain a list of proposed improvements and/or revisions to be accomplished during the next succeeding ten (10) years of the Agreement and a schedule for the construction of such improvements. Within thirty (30) days after the City's receipt of said updated schedule, the City's Director of Community and Economic Development shall either approve or disapprove such proposed schedule of proposed improvements, or shall respond in writing by stating what further information, if any, the City reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Owner shall promptly furnish to the City such further information as may be reasonably requested.
12. **INDEPENDENT ADVICE OF COUNSEL.** The Owner, and each of them, represent and declare that in executing this Agreement he/she/they have relied solely upon his/her/their own judgment, belief and knowledge, and the advice and recommendations of his/her/their own independently selected counsel, concerning the nature, extent and duration of his/her/their rights and claims, and that he/she/they have not been influenced to any extent whatsoever in executing the same by the City or by any person representing the City.
13. **FURNISHING OF INFORMATION.** Owner shall furnish City with any information City shall require in order to enable City to determine eligibility of the Historic Property to be classified as a Historic Property.
14. **ENFORCEMENT OF AGREEMENT.** In lieu of and/or in addition to any provisions to cancel the Agreement as referenced herein, City may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any breach of the terms of this Agreement, to recover damages for any breach, or to obtain any



other remedy consistent with the purpose of this Agreement. In the event of a default under the provisions of this Agreement by Owner, City shall give written notice to Owner specifying the alleged grounds for the default. Said notice shall be given by registered or certified mail addressed to the address stated in this Agreement. If such violation(s) is not corrected to the reasonable satisfaction of the City within thirty (30) days from the receipt of the notice of violation, or within such reasonable time as may be required to cure the breach or default, provided that acts to cure, correct or remedy such breach or default are commenced within thirty (30) days and thereafter diligently pursued to completion, then City may, without further notice, institute legal action. Except as otherwise expressly stated in this Agreement, the rights and remedies of the City are cumulative, and the exercise by the City of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the Owner. Any failure or delay by the City in asserting any of its right and remedies as to a breach of any of the covenants, conditions or agreements set forth herein shall not operate as a waiver of such breach or of any such rights or remedies, or deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce such rights or remedies. A waiver by the City of a breach shall not be construed as a waiver of any succeeding breach of the same or other covenants, conditions or agreements set forth in this Agreement.

15. CANCELLATION. City may cancel this Agreement if City determines Owner has breached any of the conditions or covenants of this Agreement or has allowed the Historic Property to deteriorate to the point that it no longer meets the standards for a qualified historical property. City may also cancel this Agreement if it determines Owner has failed to restore or rehabilitate the Historic Property in the manner specified in this Agreement.
16. NOTICE OF CANCELLATION. This Agreement cannot be canceled until after City has given notice and has held a public hearing as required by Government Code Section 50285. Notice of the hearing shall be mailed to the last known address of each owner of property within 300 feet of the Historic Property and shall be published in accordance with Government Code Section 6061.
17. CANCELLATION FEE. If City cancels this Agreement in accordance with Section 15 above, Owner shall pay a cancellation fee of twelve and one-half percent (12.5%) of the current fair market value of the Historic Property at the time of cancellation. The current fair market value shall be determined by the County Assessor as though the Historic Property were free of the restriction on the Historic Property imposed pursuant to this Agreement. The cancellation fee shall be paid to the County Auditor at such time and in such manner as the County Auditor shall prescribe.
18. NOTICES. All notices required by or provided for in the Agreement shall be given in writing and may be mailed or delivered in person at the address of the respective parties as specified below or at any other address as may be later specified by the parties. Deposit of notice in the mail, postage prepaid, shall be deemed receipt of the notice.

City of Fullerton  
Attn.: City Manager  
303 West Commonwealth Avenue  
Fullerton, CA 92832

19. NO COMPENSATION. Owner shall not receive any payment from the City in consideration of the obligations imposed under this Agreement. The Owner acknowledges and agrees that the consideration for the execution of this Agreement is the substantial public benefit to be derived therefrom and the advantage that will accrue to Owner as a result of the effect upon the assessed value of the Historic Property on account of the restrictions on the use and preservation of the Historic Property.
20. REMEDY IF AGREEMENT HELD NOT ENFORCEABLE. In the event it is finally determined this Agreement does not constitute an enforceable restriction within the meaning of the applicable provisions of the California Government Code and the California Revenue and Taxation Code, except for an unenforceability arising from the cancellation or nonrenewal of this Agreement, then this Agreement shall be null and void and without further effect and the Historic Property subject to this Agreement shall from that time be free from any restriction whatsoever under this Agreement without any payment or further act of the parties to this Agreement.



21. **ACQUISITION OF PROPERTY BY EMINENT DOMAIN; CANCELLATION OF CONTRACT; INAPPLICABILITY TO DETERMINATION OF VALUE.** In the event that the Historic Property is acquired in whole or 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 to frustrate the purpose of the Agreement, the Agreement shall be cancelled and no fee shall be imposed under Section 17, above. The Agreement shall be deemed null and void for all purposes of determining the value of the Historic Property so acquired. If, subsequent to the filing of an action in eminent domain, the proposed condemnation is abandoned by the condemning agency, the restrictions on the use of the Historic Property included in this Agreement shall, without further agreement of the parties, be reinstated and the terms of this Agreement shall continue in full force and effect.
22. **EFFECT OF AGREEMENT.** 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 the parties hereto to be considered joint ventures or members of any joint enterprise.
23. **INSURANCE.** Owner shall maintain during the life of this Agreement a homeowner's insurance policy.
24. **SUCCESSORS AND ASSIGNS.** This Agreement is binding upon and shall inure to the benefit of all successors in interest of the Owner. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who entered into this Agreement.
25. **REQUIREMENTS RELATED TO TRANSFER OF HISTORIC PROPERTY.** In the event of any sale, transfer, assignment or conveyance of the Historic Property (herein referred to as a "Transfer"), the Owner agrees that, at least thirty (30) days prior to such Transfer, it shall give written notice to the City of such proposed Transfer, including the name(s) of the transferee(s). In addition, the Owner and the proposed transferee(s) shall enter into and deliver to the City through the escrow for the Transfer of the Historic Property an assignment and assumption agreement in a form satisfactory to the City's Attorney or such other evidence as may be satisfactory to the City that the transferee(s) has (have) assumed the Owner's obligations set forth in this Agreement. Upon the Transfer of the Historic Property and the assumption of the obligations hereunder by the transferee(s), the Owner's liability for performance shall be terminated as to any obligation to be performed hereunder after the date of such Transfer.
26. **RECORDATION.** No later than twenty (20) days after the parties execute and enter into this Agreement, City shall cause this Agreement to be recorded in the Office of the County Recorder of the County of Orange.
27. **AMENDMENTS.** This Agreement may be amended, in whole or in part, only by a written and recorded instrument executed by the parties hereto, except that the Director of Community and Economic Development is authorized to amend the list of required projects in Exhibit D to be consistent with realized tax savings.
28. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and re-attached to any other counterpart of this Agreement identical in form hereto but having attached to it one or more additional signature pages.
29. **ADMINISTRATION.** This Agreement shall be administered by the City's Director of Community and Economic Development (or their designee) following approval of this Agreement by the City. The City shall maintain authority of this Agreement through the City's Director of Community and Economic Development (or their designee). The City's Director of Community and Economic Development shall have the authority to issue interpretations, waive provisions and enter into amendments of this Agreement on behalf of the City so long as such actions do not change the uses permitted on the Historic Property or the purpose of this Agreement, and such amendments may include extensions of time specified in Exhibit D. All other waivers or amendments shall require the written approval and consent of the City Council.





IN WITNESS WHEREOF, the City and the Owner have executed this Agreement.

“OWNER”

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

\_\_\_\_\_

“CITY”

CITY OF FULLERTON, a municipal corporation

Dated: \_\_\_\_\_, 20\_\_

By: \_\_\_\_\_

Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney



**EXHIBIT "A"**

LEGAL DESCRIPTION OF HISTORIC PROPERTY

[To be inserted.]

APN: \_\_\_\_\_



## EXHIBIT "B"

### SECRETARY OF THE INTERIOR'S STANDARDS FOR REHABILITATION

1. A property shall be used for its historic purpose 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 elements 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 archeological 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"**

### **CITY OF FULLERTON HISTORIC PROPERTY**

#### **MAINTENANCE STANDARDS**

All buildings, structures, yards and other improvements shall be maintained in a manner which does not detract from the appearance of the immediate neighborhood. The following conditions are prohibited:

1. Dilapidated, deteriorating, or unrepaired structures, such as: fences, roofs, doors, walls and windows.
2. Publicly visible storage of scrap lumber, junk, trash or debris.
3. Publicly visible storage of abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers or similar items.
4. Stagnant water or excavations, including pools or spas.
5. Any device, decoration, design, structure or vegetation that is unsightly by reason of its height, condition, or its inappropriate location.





**EXHIBIT "D"**

**REHABILITATION / MAINTENANCE PLAN**

[To be inserted.]