



CITY OF TUSTIN



MILLS ACT PROGRAM GUIDELINES & APPLICATION

Community Development Department
300 Centennial Way
Tustin, CA 92780

What is the Mills Act Program?

- Adopted by the California Legislature in 1972, the Mills Act grants local governments the authority to grant property tax relief to 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. It is intended to offset the costs of rehabilitation and maintenance of your historic property in accordance with the Secretary of Interiors Standards for the Treatment of Historic Properties (Secretary's Standards) and with local historic preservation standards.
- The Mills Act Program is a voluntary historic preservation program, enabled by California Government Code, Article 12, Sections 50280-50290. *In June of 1997, the Tustin City Council authorized the implementation of a Mills Act program in the City of Tustin and established a policy for historic property preservation agreements by resolution.*
- 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 contract. The amount of property tax reduction varies based on each property's income-producing potential and current assessed value.

Mills Act Eligibility

Pursuant to City Council's direction, the Mills Act program is made available to the owners of residential properties with an "A," "B," or "C" rating in the 1990 Tustin Historical Resources Survey. Residential properties with equivalent ratings in the 2003 Historical Resources Survey are also eligible to participate. Commercial and industrial properties are not eligible for the Mills Act Program. You can view the historic resources surveys to check your availability here:

- 1990: <https://www.tustinca.org/DocumentCenter/View/2000/City-of-Tustin-Historical-Survey-1990-PDF?bidId=>
- 2003: <https://www.tustinca.org/DocumentCenter/View/613/2003-Tustin-Historical-Resources-Survey---Building-Information-PDF?bidId=>

What You Need to Know About Your Responsibility Under a Mills Act Contract

Mills Act contracts are intended for property owners who are planning to maintain, preserve and/or rehabilitate their historic properties. Property tax savings under a Mills Act Contract are

intended to offset the costs of preserving and rehabilitating historic residential structures in Tustin. It is not intended to be a subsidy for remodeling or a tool to assist with mortgage payments.

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 Retrofits
- Plumbing, electrical or mechanical upgrades
- Siding repair
- Re-Roofing
- Window repair and maintenance

All work must be related to the exterior or building systems. Interior improvements, such as kitchen or bathroom renovations, are not eligible work items under the Mills Act Program.

The *Secretary's Standards* are federal guidelines for historic preservation, created and interpreted by the National Park Service (NPS).

More information is available on the NPS website:

<http://www.nps.gov/tps/standards.htm>.

The *Cultural Resources District Residential Design Guidelines* are available on the City of Tustin website:

<https://www.tustinca.org/DocumentCenter/View/606/Cultural-Resources-District-Residential-Design-Guidelines-PDF?bidId=>

All work on a property with a Mills Act Contract must be in conformance with the Secretary's Standards and the City of Tustin Cultural Resources District Residential Design Guidelines.

It is important for applicants to become familiar with the applicable historic preservation requirements when deciding whether to apply for a Mills Act Contract.

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. The proposed work is identified in the Rehabilitation/ Maintenance Plan, which is

binding on all future property owners. The pre-application inspection will also help you determine what needs to be included in your Maintenance and Rehabilitation Plan. These items could include restoring windows to their original condition, cracked driveway or walkway repair or replacement, landscape improvements and/or maintenance, front fencing maintenance or removal, replacement doors or windows, etc. Only items on the exterior of the property or systems of the building (such as plumbing or electrical work) may be included in the Maintenance Plan.

How Your Property Taxes Will Change Under The Mills Act

The State of California State Board of Equalization provides the Guidelines for the Assessment of Enforceably Restricted Historical Properties. Mills Act properties are re-assessed annually by the Orange County Office of the Assessor through a methodology determined by these Guidelines.

For owner-occupied property, property, income is based on potential rental value. The property's income less expenses is then divided by a capitalization rate to establish the Historical Property Value. For more information on the methodology, please visit the Office of Historic Preservation website: http://ohp.parks.ca.gov/?page_id=21412

The County Assessor will base property taxes on the lowest of these three (3) 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 ten (10) years.

For additional guidance on the Mills Act historical property valuation from the Orange County Assessor, see: <https://www.tustinca.org/DocumentCenter/View/4919/OC-Assessor-Mills-Act-Packet-2019-PDF>

The Contract Terms

Mills Act Contracts run for a ten (10) 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 ten (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 (10) year term.

If the City finds that the property owner has not complied with the Rehabilitation/Maintenance Plan within the proposed timeline and 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 ½ percent 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. Property owners are encouraged to seek independent counsel on the nature, extent, and duration of their rights and obligations under the contract terms.

The Approval Process

Pre-Application Inspection

- Prior to submitting your application, a pre-application inspection of the exterior of the property is required. The inspection is conducted by Planning and Building staff. The purpose of the inspection is to inspect the condition of the property and discuss any potential items for restoration that may need to be completed in the first ten (10) years of the Agreement and to identify items that need to be remedied, pre-application, such as:
 - ❖ Clean up of unkempt or overgrown landscaping;
 - ❖ Removal of awnings that are not historic features of the residence or obscure window sizes or shapes;
 - ❖ Removal of security screen doors from the front door;
 - ❖ Any electrical, plumbing or other exterior item that is not in compliance with the Tustin Building Code;
 - ❖ Modifications to the structure that were not completed without the benefit of a building permit; and
 - ❖ Conditions that make the property look run down, including plant material and/or fencing that obscures the property or is in poor condition.
- If corrections are identified during the inspection, you will receive written notification of such and the corrections must be completed before your application submittal will be accepted. The pre-approval inspection is required under State law enabling the Mills Act Program and will include only the exterior of the property. Inspections will be scheduled starting annually in August. The property owner must be present for the inspection. The inspection provides you and staff time to discuss any corrections that need to be made and the process for moving forward with your application.

Application Submittal

Once your pre-application inspection and corrections are completed and approved by staff, you may submit your application for the Mills Act contract. There is no cap on the number of Mills Act Contracts accepted per year. Complete applications must be received no later than October 1. Applications are accepted by appointment only. Please contact Planning Division staff prior to submitting your application to set up an appointment. Schedule an appointment here: TustinPlanning@tustinca.org. Following receipt of the application and required fee, City staff will review the submitted materials and determine if the application is complete. To be

scheduled for a hearing, your application must be complete and include all attachments and required documents.

Mills Act Program Application Fees: \$500.00

Fees are subject to change by Resolution of the City Council.

Maintenance and Rehabilitation Plan

In addition to the items identified in your pre-application inspection, a Ten (10) year Maintenance and Rehabilitation Plan is required with your application. Generally, the Maintenance and Rehabilitation Plan will include short and long range plans to maintain the property including painting, driveway repair, etc.

All Mills Act properties are required to be maintained in a superior manner. All current building and zoning codes will be enforced. The following are examples of conditions that are not permissible:

- Dilapidated buildings or features such as fences, roofs, doors, walls and windows.
- Abandoned or discarded objects, equipment or materials such as automobiles, automobile parts, furniture, appliances, containers, lumber or similar items stored outdoors but within property lines.
- Stagnant water or open excavations.
- Any device, decoration or structure, which is unsightly by reason of height, condition or location.
- Peeling exterior paint.
- Unremoved/uncovered graffiti.
- Overgrown or dead landscaping, exposed bald areas within yards or grounds, and broken walkways or driveways that could cause injury.
- Yards or porches cluttered with items that detract from the appearance of the property.
- Trash containers that are not stored out of view of the public right-of-way.

City Council Review

After your application is determined complete, 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 as a group at a regularly scheduled public hearing, typically in December. The City Council's decision on the Mills Act application is final.

Contract Execution and Recordation

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 the original document to the

Community Development Department. The Community Development Director, and City Attorney will sign the Mills Act Contract. The contract must be recorded with the Orange County Recorder on or before December 31 to go into effect for the following tax year. Recording the contract can be accomplished through the City Clerk's Office at City Hall or at the Orange County Recorder's Office in Santa Ana. The property owner is required to pay all fees related to recording.

Congratulations, You Have a Mills Act Contract! What Now?

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 Tustin
Community Development Department
Planning Division
300 Centennial Way
Tustin, CA 92780

Five Year Inspections

Under the State legislation enabling Mills Act Contracts, the City is required to inspect Mills Act properties once every five (5) years. Inspections will include the exterior of the property and will include maintenance conditions and Ten-Year Plan items will be evaluated. All inspections will be conducted from the sidewalk and evaluate everything visible from the public right-of-way.

Following the inspection, Mills Act property owners will receive a letter by mail, notifying them of the inspection results and explaining whether or not they comply. Should the property be deemed noncompliant, the owner will be given a reasonable deadline to make the improvements, with an extension granted if the owner has shown good-faith efforts to make the improvements.

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 (10) year term of the Contract. Please contact staff in advance of the ten (10) year anniversary of your Contract to discuss the remaining critical work items for your historic property.

FREQUENTLY ASKED QUESTIONS: (For website only)

Q: I have owned my house for 25 years and have substantial rehabilitation plans. Will I receive any benefit from the Mills Act program?

A. Generally, properties that have been under the same ownership for a long time (e.g., pre-Prop 13), where the property taxes are already low compared to homes sold at the peak of the market, will most likely not benefit from the Mills Act. However, there are a number of factors that contribute to the property tax savings calculation. For an explanation of how your property tax will be calculated and an estimate of how much may save under the Mills Act Program, you may call the Mills Act contact at the Orange County Assessor's Office at (74) 834-3959.

Q. When will 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 were approved for the Mills Act in 2020, your contract would be recorded in December of 2020 and you would see your tax savings on your 2021 tax bill, etc.

Q. What if I ever 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 Community Development Department explaining their desire to end the Contract. The Mills Act Contract has a term of ten (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 ten (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. 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 of 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 ten (10) year 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 the Mills Act?

A. City staff 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. Are we obligated to complete everything on the Rehabilitation Plan?

A. Yes. The Mills Act will not necessarily pay for the entire rehabilitation of the property. It is meant to offset costs enough to incentivize the work to happen. The Rehabilitation Plan is meant to help establish and prioritize rehabilitation needs for the property.

Q. Can we move around the order of our rehabilitation plan after our Mills Act Contract has been recorded?

A. Yes, work with the Community Development Department to ensure that important items are dealt with first (such as foundation issues before landscaping).

Q. The back of my property is not visible. Are there any different considerations for reviewing work on this part of the house?

A. This would need to be reviewed on a case-by-case basis. There may be fewer historic features on the rear of the property; however, it would need to comply with the Conditions of Approval identified in the contract as Exhibit "A"

Q. Can I use hollow dual pane to replace single layer glass on my windows?

A. The use of alternative materials or systems can be looked on a case-by-case-basis. Maintaining historical appearance and historic materials is important. Typically, for divided light wood sash windows, dual glazed units cannot maintain the historical appearance of the window, as the wood elements (muntins and mullions) generally need to be thicker to accommodate dual glazing.

Q. How is the installation of solar panels viewed by the Mills Act?

A. Solar panels can be visually intrusive and detract from the historical appearance of a property as viewed from the public right-of-way. Solar panels are best placed on areas not visible from the street and in a way that does not cause adverse impacts to historic elements.

Q. Could adding insulation to a home and other energy conservation projects be added to the Rehabilitation Plan?

A. Yes. In many cases, performing an energy audit can assist in identifying areas that need to be addressed. Too often, people are sold on replacing windows instead of insulating walls and roofs that represent greater uninsulated areas of the building.

Q. After we get the Mills Act, can we add to the property? How is that assessed by the Assessor?

A. Yes. The design of the addition would need to conform to the Cultural Resources District Residential Design Guidelines and the Secretary of Interiors Standards for Rehabilitation. New construction generally receives less property tax reduction. It is advisable to discuss any proposed new construction on the property with the County Assessor's office before moving forward.

APPLICATION CHECKLIST

	Pre-application inspection of exterior of the property by City Staff.
	Mills Act Contract application: Complete 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 entity, the officers or trustees signing for the entity must include their titles on the application form.
	Rehabilitation/Maintenance Plan: List and description of work items with anticipated timing and cost estimates.
	Monthly Maintenance Costs and Rental Amount: Provide a minimum of three (3) rental advertisements for similar properties in the area If your property is presently rented, please submit copies of receipts, bills, and statements documenting monthly maintenance costs and a copy of the rental/lease agreement Identify monthly costs for maintenance, repairs and utilities
	Legal Description: Copy of the grant deed showing current property owners and 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.
	Application Fee: Fee of \$500.00 payable to the City of Tustin. The fee is non-refundable.

[Insert application (2 pages) here]

**MILLS ACT CONTRACT
ANNUAL PROGRESS REPORT**

Property Address: _____
 Owner(s) of Property _____
 Owner(s) Mailing Address (If Different): _____

WORK COMPLETED DURING PRIOR YEAR

Please add additional pages as necessary to describe all work completed during the previous year. Include photographs of the completed work.

YEAR COMPLETED	DESCRIPTION OF WORK	COST

I am (we are) the present owner(s) of the property described above. I (we) hereby acknowledge that the information presented above is accurate.

 Owner Signature Date

 Owner Signature Date

Owner Name (Print) Date

Owner Name (Print) Date

SAMPLE MILLS ACT CONTRACT

This contract is provided as a sample. Please do not sign or have notarized until Instructed by staff.

WHEN RECORDED MAIL TO:

Director of Community Development
City of Tustin
300 Centennial Way
Tustin, CA 92780-3767

Exempt from SB2 fee per Government Code 27388.1(a)(1)(2)(D)

SPACE ABOVE THIS LINE FOR RECORDER'S USE

HISTORIC PROPERTY PRESERVATION AGREEMENT

This Agreement is entered into this _____ day of December, _____, by and between the City of Tustin ("City"), a municipal corporation, and _____ ("Owner").

RECITALS

WHEREAS, pursuant to Government Code Section 50280 et seq. (the "Mills Act"), the City of Tustin is authorized to contract with the owner of a Qualified Historical Property to restrict the use of the property and to provide for its appropriate use, maintenance and rehabilitation so that it retains its historic characteristics; and

WHEREAS, the City Council has approved by resolution the use of such contracts to encourage the preservation of Qualified Historical Property in the City; and

WHEREAS, the property which is the subject of this Agreement is identified as Assessor Parcel Number _____, commonly known as _____, Tustin, California. A legal description of the Property is attached hereto, marked as Exhibit "A," and is incorporated herein by this reference; and

WHEREAS, the property that is subject to this Agreement is listed in the City of Tustin Historical Resources Survey, which satisfies the requirements of Government Code Section 50280.1 as a Qualified Historical Property; and

WHEREAS, the property is residentially zoned and has a _____ rating in the _____ City of Tustin Historical Resources Survey, all of which satisfies the criteria established by City Council Resolution No. 97-50.

WHEREAS, the City and Owner, for their mutual benefits, now desire to enter into this Agreement to limit the use of the property to prevent inappropriate alterations and ensure that the character-defining features are preserved and maintained in an exemplary manner, and to carry out the purposes of California Government Code, Chapter 1, Part 5 of Division 1 of Title 5, Article 12, Sec. 50280 et seq., and to qualify for an assessment of valuation pursuant to Article 1.9, Sec. 439 et seq., Chapter 3, Part 2 of Division 1 of the California Revenue and Taxation Code.

NOW, THEREFORE, based on the above recitals and the mutual promises and covenants contained herein, the parties agree as follows:

AGREEMENT

1. Property Subject to this Agreement

The property which is the subject of this Agreement is identified as Assessor Parcel Number _____ commonly known as _____, Tustin, California (the "Property"). A legal description of the Property is attached hereto, marked as Exhibit "A," and is incorporated herein by this reference.

2. Definitions

Except as otherwise defined herein, the following words and phrases have the following meanings:

"Serve notice" means to follow the notice procedures of Section 13.

"Owner" means the property owner(s) of record of the Property and includes assignees with rights of possession and successors in interest to the Owner signing this agreement.

"Qualified Historical Property" means privately owned property which is not exempt from property taxation and which meets the criteria set forth in Government Code Section 50280.1.

3. Commencement, Term and Renewal of Agreement

- A. This Agreement shall become effective on the date first above written, and unless canceled pursuant to Section 11, shall remain in effect for a term of ten (10) years.
- B. Each year, upon the anniversary of the effective date of this Agreement, the term shall automatically be extended for one additional year unless written notice of nonrenewal is served as provided herein. See Section 13 for procedures on service of notice.
- C. If Owner or City desires in any year not to renew this Agreement, such party shall serve written notice of nonrenewal on the other party.
 - (1) If served by Owner, notice of renewal must be served on City at least ninety (90) days prior to the annual renewal date.
 - (2) If served by City, notice of renewal must be served on Owner at least sixty (60) days prior to the annual renewal date.
 - (3) Failure to meet the notice deadlines above will result in one year being automatically added to the term of this Agreement.
- D. Within fifteen (15) calendar days of the date of the City's notice of nonrenewal, Owner may make a written protest to the City.
 - (1) Upon receipt of such protest, the City Council shall schedule a hearing on the matter prior to the annual renewal date.
 - (2) At such hearing, Owner may present any information which Owner deems relevant.

(3) Based on Owner's protest and the information presented at the hearing, the City Council may withdraw the City's notice of nonrenewal at any time prior to the annual renewal date.

E. Any notice of nonrenewal which has not been withdrawn prior to the next annual renewal date, shall be recorded with the Orange County Recorder.

F. After the annual renewal date, the parties may agree at any time, by written and recorded instrument, to reinstate the ten-year term of this Agreement and renewal provisions hereof.

G. Unless this Agreement is otherwise canceled as provided in Section 11, after notice of nonrenewal has been served and not withdrawn, this Agreement shall remain in effect for the balance of the term remaining, including any prior renewal term.

4. Recordation of Agreement

The City Clerk shall record this Agreement with the Orange County Recorder within twenty (20) days of its execution by both parties.

5. Notice to Office of Historic Preservation

Owner shall provide, or cause to be provided, written notice of this Agreement to the State Office of Historic Preservation within six months of the effective date of this Agreement. The City shall provide owner with the applicable address.

6. Standards and Conditions for Maintenance of Property

The Property shall be subject to the standards and conditions set forth in Exhibit "B", which is attached to this Agreement and incorporated herein by this reference.

7. Periodic Examination of Property

Upon prior notice, Owner shall allow the reasonable periodic examination of the interior and exterior of the premises of the Property by representatives of City, the Orange County Assessor, the State Department of Parks and Recreation, and the State Board of Equalization, as may be necessary to determine Owner's compliance with the terms of this Agreement.

8. Furnishing Information

Owner shall furnish City with any and all information requested by City, which may be necessary or desirable to determine Owner's compliance with this Agreement.

9. Enforcement of Agreement

In lieu of and/or in addition to any provisions to cancel this Agreement, City may bring an action in court to enforce this Agreement, including, but not limited to, an action to enforce this Agreement by specific performance or by injunction. If the City determines there is a violation of the provisions of this Agreement by Owner, and City decides to enforce rather than cancel the Agreement, City shall send written notice to Owner in accordance with Section 13. If such violation is not corrected to the reasonable satisfaction of the City within thirty (30) days after the date the notice of violation is sent by mail, or within such longer period of time as specified or agreed to by City, then City may, without further notice, declare a default under the terms of this Agreement and bring any action necessary to specifically

enforce the obligations of Owner under this Agreement, including, but not limited to, bringing actions for specific performance or injunctive relief.

10. Binding Effect on Successors and Assigns/Covenants Run with the Land

- A. This Agreement is binding upon and inures to the benefit of all successors in interest to Owner, to Owner's assigns and all person acquiring any part or portion of the Property, whether by operation of law or otherwise.
- B. The Owner hereby subjects the Property to the covenants, reservations and restrictions as set forth in this Agreement, including Exhibit "B". City and Owner hereby declare their specific intent that the covenants, reservations and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors and assigns in title or interest to the Property. Each and every contract, deed or other instrument hereinafter executed, covering or conveying the Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. City and Owner hereby declare their understandings and intents that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that the value of the Owner's legal interest in the Property may be affected thereby. City and Owner hereby further declare their understandings and intents that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the historic characteristics and significance of the Property for the benefit of the public and Owner.

11. Cancellation of Agreement

- A. City may cancel this Agreement if it determines, after a duly noticed public hearing as provided herein, that Owner has committed any of the following acts:
 - (1) Owner has failed to maintain, restore or rehabilitate the Property in accordance with the terms, standards and conditions set forth in Exhibit "B".
 - (2) Owner has allowed the Property to deteriorate to the point that it no longer meets the City's standards for a Qualified Historical Property.
 - (3) Owner has violated one or more provisions of this Agreement.An Owner who does not occupy the Property, shall, nevertheless be responsible at all times under this Agreement, for the condition of the Property and compliance with this Agreement.
- B. City shall serve written notice of proposed cancellation on Owner stating the grounds for cancellation and setting a public hearing date on the matter. Notice of the hearing shall also be sent by U.S. mail to the last known address of each owner of Qualified Historical Property in the City, and shall be published pursuant to Government Code Section 6061.
- C. Upon cancellation of this Agreement as provided in Subsection A, above, Owner shall pay a cancellation fee of 12½ percent of the current fair market value of the Property, as determined by the County Assessor as though the property were free of the

contractual restriction. The cancellation fee shall be paid to the County Auditor in the manner prescribed by the County Auditor

- D. City may also cancel this Agreement, at Owner's request, if the Property is acquired in whole or in part by eminent domain or by an entity authorized to exercise the power of eminent domain, and if City determines that such acquisition frustrates the purpose of this Agreement. Under these circumstances, no cancellation fee shall be imposed upon Owner.
- E. City may also cancel this Agreement, at Owner's request, if so much of the Property has been destroyed, in whole or in part and that, in the sole opinion of the City, the historic value of the Property has been destroyed. Under these circumstances, no cancellation fee shall be imposed upon Owner. City may cancel this Agreement, at Owner's request, if the Property is damaged by fire, earthquake, or other Act of God or accidental cause to the extent that (1) the then fair market value of the structure is reduced by 51 percent or more; or (2) 51 percent or more of the structure's floor area is destroyed or irreparably damaged; or (3) 51 percent or more of the structure's historic features are destroyed or irreparably damaged; or (4) the cost to the Owner (exclusive of insurance proceeds) to restore the structure to its prior condition would exceed \$10,000.00. Owner shall reimburse City for all expenses incurred by City in determining the extent of damage or destruction. If the Owner desires to cancel this Agreement under this Section, written notice shall be given to the City within 90 days after such damage or destruction occurs. In the event the Owner desires to cancel this Agreement due to the circumstances outlined above, owner or City may request a hearing before the City Council to determine (a) the extent of diminution of value, (b) the extent of the damage or destruction to the floor area of said Structure, and/or (c) extent of damage or destruction to the character defining features of said structure.

12. Waiver

The waiver by City of the performance of any covenant or condition of this Agreement shall not be considered a waiver of subsequent performance of that or any other covenant or condition of this Agreement.

13. Notice

Any notice required to be given pursuant to this Agreement shall be sent by certified mail, postage prepaid, return receipt requested, addressed as follows or addressed as later specified by either party:

To City: City of Tustin
Community Development Department
Attn: Community Development Director
300 Centennial Way
Tustin, CA 92780

To Owner: _____

Tustin, CA 92780

Notice shall be deemed sent or "served" upon the date of deposit in the United States Mail.

14. Fee to Administer Mills Act Program

At the time established by City Council resolution, Owner shall pay City a fee, established by City Council resolution, pursuant to Government Code Section 5028.1. This fee is to cover City's costs of administering the Mills Act Program in the City.

15. Defense, Indemnification and Hold Harmless

- A. Owner shall defend, indemnify and hold harmless City, its officials, employees, and agents against and from all claims arising from Owner's performance under this Agreement, or from any activity, work, or omissions by Owner or caused by Owner in connection with this Agreement.
- B. Owner shall further defend, indemnify and hold harmless City, its officials, employees, and agents against and from all costs, attorneys' fees, and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. In case of any action or proceeding brought against City by reason of such claim, Owner, upon notice from City, shall defend same at Owner's sole expense by counsel satisfactory to City.

16. Entire Agreement

This Agreement and the Exhibits attached hereto constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior discussions, negotiations, and agreements whether oral or written.

17. Amendment

This Agreement shall only be amended by written instrument, signed by both parties and recorded in the Office of the Orange County Recorder.

18. Miscellaneous Provisions

- A. None of the terms, provisions or conditions contained in this Agreement shall be deemed to create a partnership, a joint venture, or a joint enterprise between the parties hereto.
- B. This Agreement shall be construed in accordance with the laws of the State of California.
- C. In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by a Court of competent jurisdiction or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions shall not be affected.
- D. Owner understands that it is Owner's responsibility to apply for the reassessment of valuation afforded by this Agreement pursuant to Chapter 3, Part 2, of Division 1 of the California Revenue and Taxation Code.

19. Authority to Enter Agreement

Each person executing this Agreement warrants that they have the authority to enter into this Agreement on behalf of the party for whom they sign.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY OF TUSTIN

By: _____

Justina L. Willkom
Community Development Director

Approved as to Form

City Attorney

Owner

Date: _____

By: _____

Date: _____

By: _____

SIGNATURES ARE TO BE NOTARIZED

IF THIS CONTRACT IS PROPOSED TO BE SIGNED BY THE PROPERTY OWNER'S AGENT, THE CITY WILL REQUIRE WRITTEN EVIDENCE OF THE AGENT'S AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE OWNER. THE WRITTEN EVIDENCE MUST BE REVIEWED AND APPROVED BY THE CITY ATTORNEY.

EXHIBIT "A"
LEGAL DESCRIPTION

APN:

SAMPLE

EXHIBIT "B"

HISTORICAL PROPERTY PRESERVATION

TERMS, STANDARDS AND CONDITIONS

1. To have a baseline for comparison when future maintenance or alterations are being evaluated and for reconstruction of portions in the event of a disaster, Owner shall create a black and white 35 mm (or equivalent) and digital photographic portfolio showing all elevations of all buildings and structures from at least three angles, all character-defining exterior details, and other details of special interest. A copy of the portfolio shall be submitted to the Community Development Department within one year of the effective date of this Agreement. All structures, the entire grounds, and all major landscape features shall be included in the portfolio and copies of existing site plans, floor plans, architectural elevations and historical photographs that may be in Owner's possession.
2. Owner shall preserve, maintain, and, if indicated in the schedule for repair and rehabilitation, restore or rehabilitate Property and its character-defining features, notably the general architectural form, style, materials, design, scale, proportions, organization of windows, doors, and other openings, textures, details, mass, roof line, porch and other aspects of the appearance of the exterior to the satisfaction of City.
3. 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 shall be prohibited:
 - a. Dilapidated, deteriorating, or unrepaired structures, such as fences, roofs, doors, walls and windows.
 - b. Publicly visible storage of scrap lumber, junk, trash or debris.
 - c. Publicly visible storage of abandoned, discarded or unused objects or equipment, such as automobiles, automobile parts, furniture, stoves, refrigerators, cans, containers or similar items.
 - d. Stagnant water or excavations, including pools or spas.
 - e. Any device, decoration, design, structure or vegetation that is unsightly by reason of its height, condition, or its inappropriate location.
4. All changes to Property and any structures thereon shall comply with applicable City zoning and specific plans, City regulations and guidelines, and 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 and the Regular Code and/or the State Historical Building Code, as deemed appropriate by the Building Official.
5. City shall be notified by Owner of changes to character-defining exterior features prior to their execution, such as major landscaping projects, exterior door replacement or exterior alterations requiring a building permit.
6. City shall be notified prior to the exterior non-emergency repair and rehabilitation of any structure on the Property.
7. The following are prohibited without the prior written consent of the City:

Demolition of any structure on the Property.

Exterior alterations or additions not in keeping with the standards listed above.

8. The following are prohibited at any time:

Dilapidated, deteriorating or unrepaired structures such as fences, roofs, doors, walls and windows;

Storage of scrap lumber, junk, trash, debris, discarded or unused objects such as cars, appliances or furniture;

Stagnant water and unfilled excavations; and

Any other device, decoration, structure or vegetation which is unsightly by reason of its height, condition or inappropriate location, as determined by City.

9. Landscaping shall be maintained in a manner so as to enable the public to see the historic features of the Property from the street and shall be watered and maintained in accordance with recognized landscaping practices.

10. Owner shall make improvements to the property as described in the following schedule for repair and rehabilitation, unless changes to the schedule are approved in writing by the City and Owner. The improvements noted in the schedule may be completed prior to the year indicated and shall be completed to the satisfaction of the City no later than one (1) year following the year indicated.

Schedule for Repair and Rehabilitation

Year 10: Repaint the exterior of the house and garage.

11. Owner shall provide the City with a written annual report which specifies actions taken by Owner to fulfill the requirements of the Agreement. The annual report shall be submitted to the City on an annual basis at times specified by the City.

EXHIBIT C

SECRETARY OF INTERIORS 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 'D'
REHABILITATION / MAINTENANCE PLAN
[To be inserted]

SAMPLE