

*Recording Requested by and When
Recorded Please Mail to:*

Shelley Chapel
Deputy City Clerk
City of National City
1243 National City Boulevard
National City, CA 91950-4301

APN(s): 556-232-20-00

Above Space for Recorder's Use Only.

MILLS ACT CONTRACT

For property located at 520 'F' Avenue

THIS MILLS ACT CONTRACT ("Contract") is entered into by and between THE CITY OF NATIONAL CITY, a municipal corporation ("CITY") and Christine E. and William R. Dunfey, & Joseph Dzida ("OWNER").

RECITALS

WHEREAS, California Government Code Section 50280, et seq., referred to as the Mills Act, authorizes cities to enter into contracts with the owners of "qualified historic properties," defined in Government Code Section 50280.1, to provide for the use, maintenance, and restoration of such historic properties so as to retain their characteristics as properties of historic significance.

WHEREAS, OWNER possesses fee title to that certain real property, together with associated structures and improvements thereon, Assessor's Parcel No. 556-232-20-00, and located at the street address 520 'F' Avenue, National City, California (the "Historic Site"), on property generally described as:

LOT 16 AND THE SOUTH 20 FEET OF LOT 17, BLOCK 43 OF MCCOY'S
SUBDIVISION OF 10 ACRE LOT 11 OF QUARTER SECTION 155 OF RANCHO DE
LA NATION, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF
CALIFORNIA, ACCORDING TO MAP THEREOF NO. 6, FILED IN THE OFFICE OF
THE COUNTY RECORDER OF SAN DIEGO COUNTY, APRIL 22, 1881.

WHEREAS, the City Council of the City of National City designated the above property as a Historic Site and it is so listed and currently eligible for listing in the “List of Identified Historic Sites in National City.” A copy of such listing is attached to this Contract as **Attachment A**.

WHEREAS, City and OWNER, for their mutual benefit, now desire to enter into this Contract both to protect and preserve the characteristics of historic significance of the Historic Site and to qualify the Historic Site for an assessment of valuation pursuant to the provisions of Article 1.9 (commencing with Section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code, and of Article 12 (commencing with Section 50280) of Chapter 1 of Part 1 of Division 1 of the California Government Code.

AGREEMENT

NOW THEREFORE, in consideration of the mutual benefits and covenants, CITY and OWNER agree as follows:

1. Effective Date and Term of Contract. This Contract shall be effective and commence on October 4, 2022 (“Effective Date”), and shall remain in effect for a term of ten (10) years thereafter. The initial ten-year term, and any extension pursuant to Section 2, shall collectively be referred to hereafter as the “Term.”

2. Automatic Renewal and Notice of Non-Renewal.
 - a. Renewal. Each year on the anniversary of the effective date of this Contract (the “Renewal Date”), a year shall automatically be added to the initial term of this Contract unless notice of non-renewal is served as provided herein.

 - b. Non-Renewal. If either OWNER or CITY desires, in any year, not to renew this Contract, OWNER or CITY shall serve written notice of non-renewal on the other party in advance of the annual Renewal Date of the Contract. Unless such notice is served by OWNER to CITY, in writing to the City Council, at least ninety (90) days prior to the annual Renewal Date, or served by CITY to OWNER at least sixty (60) days prior to the annual Renewal Date, one (1) year shall automatically be added to the Term as provided herein. If either CITY or OWNER serve notice to the other of non-renewal in any year, the Contract shall remain in effect for the balance of the Term then remaining, either from its original execution or from the last renewal of the Contract, whichever may apply.

- (1) Protest. Upon receipt by OWNER of a notice of non-renewal from CITY, OWNER may make a written protest of the notice to the City Council. Any protest must be received by the CITY no later than 15 days from the date of the notice of non-renewal.
 - c. Withdrawal of Non-Renewal. CITY may, at any time prior to the Renewal Date of the Contract, withdraw its notice of non-renewal.
 - d. City Non-Renewal. If CITY serves notice of non-renewal in any year, the existing Term of the Contract shall remain in effect for the balance of the period remaining since the original execution or the last renewal of the Contract, as the case may be.
3. *[Reserved]*
4. Eligibility. To be eligible for this Contract, the Historic Site shall be listed and shall remain eligible for listing in the “List of Identified Historic Sites in National City.” (**Attachment A.**)
5. Standards for Historic Site. During the Term, the Historic Site shall be subject to the following conditions, requirements, and restrictions:
 - a. OWNER shall preserve and maintain the characteristics of the cultural and historical significance of the Historic Site, and, when necessary, restore and rehabilitate the Historic Site to conform to the rules and regulations of the Office of Historic Preservation of the Department of California State Parks, the United States Secretary of the Interior’s Standards for Rehabilitation, and the State Historical Building Code, as amended from time to time. Work shall be done in accordance with the maintenance schedule drafted by the OWNER, attached to this Contract as **Attachment B**.
 - b. OWNER shall maintain all buildings, structures, yards and other improvements 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) Scrap lumber, junk, trash, or debris;
 - (3) 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 swimming pools or spas;
 - (5) Any device, decoration, design, structure or vegetation which is unsightly by reason of its height, condition, or its inappropriate location.
- c. Five years after the Effective Date, and every five years thereafter, City shall inspect the interior and exterior of the Historic Site to determine OWNER'S continued compliance with the Contract. Inspections required by this Section must:
- (1) Be scheduled by prior appointment between City and OWNER, and
 - (2) Occur no later than thirty days from the five-year anniversary described in this Section.
- d. OWNER shall allow visibility of the exterior of the structure from the public right-of-way. OWNER shall not block the view to the exterior of structure with any new structure, such as walls, fences, or shrubbery.
- e. If OWNER applies to CITY for a permit for demolition, substantial exterior alteration, or removal of the Historic Site, OWNER shall attend and participate in a scheduled hearing regarding such application before the board or commission designated by the City Council to oversee CITY'S historic resources prior to the issuance of such permit. CITY will endeavor to schedule such hearing within three (3) weeks after OWNER submits such application to CITY.
- f. Notwithstanding the foregoing Section 5(e), if OWNER applies to CITY for a permit for the demolition, substantial exterior alteration, or removal of the Historic Site, OWNER shall comply with all CITY and State of California environmental regulations, policies, and requirements prior to CITY'S issuance of the requested permit.
6. Information of Compliance. OWNER hereby agrees to furnish CITY with any and all information requested by CITY which CITY deems necessary or helpful to determine compliance with the terms and provisions of this Contract.
7. Breach of Contract; Cancellation. If CITY determines that the OWNER has breached any of the conditions of the Contract, or have allowed the Historic Site

to deteriorate to the point that it no longer meets the standards for a “qualified historical property” as defined by Government Code Section 50280.1, CITY shall do one of the following:

- a. Public Hearing. Cancel this Contract after CITY has given written notice of, and has held, a public hearing on the proposed cancellation. Notice of such hearing shall be mailed to the last known address of the OWNER within the historic zone and shall be published pursuant to Government Code Section 6061. If CITY cancels the Contract pursuant to Section 7(a), OWNER shall pay those cancellation fees set forth in Government Code Section 50286.
 - b. Court Action. Bring any action in court, pursuant to Section 14(e) necessary to enforce the Contract, including, but not limited to, an action to enforce the Contract by specific performance or injunction.
8. OWNER’S Cancellation Alternative. As an alternative to cancellation of the Contract, OWNER may bring any action in court, pursuant to Section 14(e), necessary to enforce the Contract, including, but not limited to, an action to enforce the Contract by specific performance or injunction.
9. Binding Effect of Contract. OWNER hereby subjects the Historic Site to the covenants, reservations, and restrictions set forth in this Contract. CITY and OWNER hereby declare their specific intent that the covenants, reservations, and restrictions as set forth in this Contract shall be deemed covenants running with the land and shall pass to and be binding upon OWNER’S successors and assigns in title or interest to the Historic Site. Each and every contract, deed, or other instrument hereinafter executed, covering or conveying the Historic Site, 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 Contract regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument. CITY and OWNER hereby declare their understanding and intent that the burden of the covenants, reservations, and restrictions set forth herein touch and concern the land, in that OWNER’S legal interest in the Historic Site is rendered less valuable thereby. CITY and OWNER hereby further declare their understanding and intent 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 Historic Site for the benefit of CITY, the public, and OWNER.

10. Processing Fee. OWNER shall pay to CITY a processing fee of \$2,270.00.
11. Notice. Any notice required to be given by the terms of this Contract shall be provided at the address of the respective parties as specified below or at any other address as may be later specified by either party.

To CITY:

City of National City
Director of Community Development
1243 National City Boulevard
National City, CA 91950

To OWNER:

Christine E. and William R. Dunfey, &
Joseph Dzida
7993 Via Hoja
Carlsbad, CA 92009

12. Indemnity and Hold Harmless of City. OWNER shall defend, indemnify and hold harmless the CITY, its officers, officials, agents, employees, and volunteers against and from any and all liability, loss, damages to property, injuries to, or death, of any person or persons, and all claims, demands, suits, actions, proceedings, reasonable attorneys' fees, and defense costs, of any kind or nature, including workers' compensation claims, of or by anyone whomsoever, resulting from or arising out of the OWNER'S performance or other obligations, including (a) maintenance of the Historic Site by OWNER or any contractor, subcontractor, agent, lessee, or any other person under this Contract, and also arising out of (b) any restrictions on the use or development of the Historic Site, from application or enforcement of the National City Municipal Code or from enforcement of this Contract; provided, however, that this indemnification and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of the CITY, its agents, officers, employees or volunteers. CITY will cooperate reasonably in the defense of any action, and OWNER shall employ competent counsel, reasonably acceptable to the City Attorney of the City of National City.

The indemnity, defense, and hold harmless obligations contained herein shall survive the termination of this Agreement for any alleged or actual omission, act, or negligence under this Agreement that occurred during the Term of this Agreement and shall not be restricted to insurance proceeds, if any, received by the CITY, officers, officials, agents, employees, and volunteers.

13. Eminent Domain. If the Historic Site is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the CITY to frustrate the

purpose of this Contract, the Contract shall be canceled and no fee shall be imposed under Government Code Section 50286. The Contract shall be deemed null and void for all purposes of determining the value of the property so acquired.

14. General Provisions.

- a. None of the terms, provisions, or conditions of this Contract shall be deemed to create a partnership between the parties and any of their heirs, successors, or assigns, nor shall such terms, provisions, or conditions cause them to be considered joint ventures or members of any joint enterprise.
- b. All of the agreements, rights, covenants, reservations, and restrictions contained in this Contract shall be binding upon and shall inure to the benefit of the parties herein, their heirs, successors, legal representatives, assigns and all persons acquiring any part or portion of the Historic Site, whether by operation of law or in any manner whatsoever.
- c. If any of the provisions of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be effected thereby.
- d. This Contract shall not take effect unless and until OWNER'S signature is notarized by a notary public. Furthermore, if an agent or representative of OWNER signs this Contract on behalf of OWNER, the agent or representative must furnish proof to the satisfaction of CITY, that the agent or representative has authority to act on OWNER'S behalf.
- e. This Contract shall be governed by the laws of the State of California. The venue for any action shall be a court of competent jurisdiction in the County of San Diego, State of California.
- f. OWNER or an agent of OWNER shall provide written notice of this Contract to the State Office of Historic Preservation within six (6) months of entering into the Contract.

15. Consultation with State Commission. CITY and OWNER may consult with the State Historical Resources Commission for its advice and counsel on matters relevant to historical property contracts.

18. Statutory References: A reference anywhere in this Contract to a Government Code section, or other statutory authority, means a reference to that section as may be later amended.

CITY OF NATIONAL CITY

OWNERS OF RECORD

Date: October 4, 2022

Date: _____

By: _____
Alejandra Sotelo-Solis, Mayor

By: _____
Christine E. Dunfey
(Notarized Signature)

Date: _____

Date: _____

Attest:

By: _____
Shelley Chapel, Deputy City Clerk

By: _____
William R. Dunfey
(Notarized Signature)

APPROVED AS TO FORM:

Date: _____

Barry J. Schultz
Interim City Attorney

By: _____
Joseph Dzida
(Notarized Signature)

OWNER PLEASE HAVE NOTARY PUBLIC ATTACH A SEPARATE PROOF OF NOTARY PAGE WITH SIGNATURE AND SEAL.