Title: (Contract For Review) Railyards Infrastructure Grant Project Delivery Agreement for the California Department of Parks and Recreation Grant

Location: District 3

Recommendation: Accept and publish for review a Resolution: 1) authorizing the City Manager or the City Manager’s designee to execute the Railyards Infrastructure Grant Project Delivery Agreement between the City of Sacramento and Downtown Railyard Venture, LLC, in an amount not to exceed $30 million; 2) rescinding Sections 2 and 3 of Resolution No. 2022-0002; 3) establishing the Sacramento Railyards Rehabilitation Project (T15225700); 4) authorizing the City Manager or the City Manager’s Designee to establish the revenue and expenditure budgets in the amount of $30 million (Other Capital Grants, Fund 3704) for the Sacramento Railyards Rehabilitation Project (T15225700); and continue to June 28, 2022 for approval.

Contact: Marco Gonzalez, Senior Development Project Manager, (916) 808-5757, mgonzalez@cityofsacramento.org, Leslie Fritzsche, Economic Investment Manager, (916) 808-5450, lfritzsche@cityofsacramento.org; Office of Innovation and Economic Development.

Presenter: None

Attachments:
1-Description/Analysis
2-Railyards Infrastructure Grant Project Delivery Agreement
3-Project Scope
4-Resolution 2022-0002
5-Resolution
6-Exhibit A: Railyards Infrastructure Grant Project Delivery Agreement between the City of Sacramento and DRV
Description/Analysis

Issue Detail: As part of the Budget Act of 2021 (Senate Bill 129, Chapter 96), the State of California is providing the City of Sacramento with $30 million for the rehabilitation of the Sacramento Railyards (Railyards). On January 4, 2022, City Council approved acceptance of the $30 million grant from the State of California. These funds will be used to pay for a portion of the remaining infrastructure that must be built in the Railyards to catalyze development of the Railyards. The recommendation contained in this staff report is to enter into the Railyards Infrastructure Grant Project Delivery Agreement (Project Delivery Agreement, Attachment 2) with Downtown Railyard Venture, LLC (DRV), the majority property owner and master developer of the Railyards, to allow it to use the grant funds to construct the infrastructure improvements.

Using the grant funds, DRV will construct the Project Scope (Scope) (Attachment 3) in accordance with the Project Delivery Agreement and the Grant Agreement, including bid and award processes that are consistent with the State and City requirements. The Scope includes construction of roadway, transit, sewer, and drainage infrastructure for North B Street, 7th Street, Summit Tunnel Drive, 6th Street, Camille Lane, and Stevens Street, and south of the Tracks.

On January 4, 2022 the City Council approved Resolution 2022-0002 (Attachment 4) authorizing the City Manager or the City Manager’s designee to: 1) accept a $30 million grant from the California Department of Parks and Recreation for the rehabilitation of the Sacramento Railyards; 2) establish the Sacramento Railyards Rehabilitation Project (G02180310); and 3) establish the revenue and expenditure budgets in the amount of $30 million for the Sacramento Railyards Rehabilitation Project (G02180310, Fund 2702).

Section 1 of Resolution 2022-0002 will remain unchanged. The fund and project number referenced in Sections 2 and 3 of Resolution No. 2022-0002, however, need to be rescinded to identify the project as a capital project, for grant reporting purposes.

Execution of the Project Delivery Agreement, establishment of the Sacramento Railyards Rehabilitation Project along with budgetary adjustments are necessary to implement the Sacramento Railyards Rehabilitation Project.

Policy Considerations: The Sacramento City Code Section 4.04.020 and Council Rules of Procedure (Chapter 7, Section E.2.d) mandate that unless waived by a 2/3 vote of the City Council, all labor agreements, and all agreements greater than $1,000,000 shall be made available to the public at least ten (10) days prior to council action.

Economic Impacts: Not applicable.

Environmental Considerations:
California Environmental Quality Act (CEQA): On November 10, 2016, the City Council approved the Railyards Specific Plan Update, KP Medical Center, MLS Stadium & Stormwater Outfall project and certified a subsequent environmental impact report (SEIR) (SCH 2006032058) along with adopting a mitigation monitoring and reporting program (MMRP) (Resolution No. 2016-0379). On November 14, 2016, Staff filed a Notice of Determination with the Sacramento County Clerk and the California Office of Planning and Research, State Clearinghouse. The subject activity seeks grant funding to support development associated with the approved Railyards Specific Plan Update, KP Medical Center, MLS Stadium & Stormwater Outfall project, which was included in the analysis conducted in the certified SEIR. No further environmental review required.

Sustainability: Not applicable.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: The funding from the state will support development of the Railyards and allow the City of Sacramento to accelerate development in the Specific Plan area, consistent with the 2035 General Plan. As the master developer of the Railyards, DRV has significant experience planning and implementing the construction of infrastructure in the Railyards. Partnering with DRV to deliver the Scope will catalyze development of housing, the Central Shops District, office, retail, and entertainment on the site.

Financial Considerations: As part of the Budget Act of 2021 (Senate Bill 129, Chapter 96), the State of California is providing the City of Sacramento with $30 million for the rehabilitation of the Sacramento Railyards (Railyards). To support the continued rehabilitation of the Railyards, staff recommends executing the Project Delivery Agreement with DRV in an amount not to exceed $30 million, establishing the Sacramento Railyards Rehabilitation Project (T15225700) along with the revenue and expenditure budgets in the amount of $30 million in the Other Capital Grant Fund (Fund 3704).

Under the Project Delivery Agreement, the City of Sacramento may seek up to $750,000 in direct reimbursement from the State of California for costs related to administration of the grant. If the State determines specific costs incurred by the City are not eligible for reimbursement under the grant, DRV will be responsible for paying these costs.

Local Business Enterprise (LBE): Not applicable.
GENERAL INFORMATION (REQUIRED)

Original Contract #: (supplements only): ________ Supplement/Addendum #: ________________
Assessor’s Parcel Number(s): ____________________________________________________________
Contract Effective Date: ________ Contract Expiration Date (if applicable): ________
$ Amount (Not to Exceed): $ 30,000,000.00 Adjusted $ Amount (+/-): ________________
Other Party: Downtown Railyard Venture, LLC
Project Title: RAILYARDS INFRASTRUCTURE GRANT PROJECT DELIVERY AGREEMENT
Project #: __________________________________ Bid/RFQ/RFP #: ________________
City Council Approval: YES if YES, Council File ID#: 2022-01160

CONTRACT PROCESSING CONTACTS

Department: Economic Development Project Manager: Marco Gonzalez
Contract Coordinator: Tiana Jordan Email: TJordan@cityofsacramento.org

DEPARTMENT REVIEW AND ROUTING

Accounting: ________________________________ (Signature) ________________________________ (Date)
Supervisor: ________________________________ (Signature) ________________________________ (Date)
Division Manager: __________________________ (Signature) ________________________________ (Date)
Other: ________________________________ (Signature) ________________________________ (Date)

SPECIAL INSTRUCTION/COMMENTS (i.e. recording requested, other agency signatures required, etc.)

[ ] Recording Requested [ ] Other Party Signature Required

---------------------FOR CLERK & IT DEPARTMENTS ONLY – DO NOT WRITE BELOW THIS LINE---------------------

CC Rev. 12.19.2018
RAILYARDS INFRASTRUCTURE GRANT
PROJECT DELIVERY AGREEMENT

This RAILYARDS INFRASTRUCTURE GRANT PROJECT DELIVERY AGREEMENT dated May 31, 2022, for purposes of identification, is between the CITY OF SACRAMENTO, a municipal corporation (the "City"), and DOWNTOWN RAILYARD VENTURE, LLC, a Delaware limited liability company ("DRV").

Background

The Sacramento Railyards is a major urban infill project located within the Central City adjacent to downtown Sacramento. The Sacramento Railyards Specific Plan, which includes design guidelines, along with the related entitlements identifies the public improvements required for this mixed-use development. DRV currently owns approximately 166 acres of the Sacramento Railyards (Assessor Parcel Numbers 002-0010-074, -075, -076, and -077) (the “Property”). On November 16, 2016, the Sacramento City Council approved a subsequent environmental impact report for the Sacramento Railyards Specific Plan Update, KP Medical Center, MLS Stadium, & Stormwater Outfall.

The State of California allocated $30,000,000 for the rehabilitation of the Sacramento Railyards in the 2021 – 2022 California State Budget (SB 129, Chapter 69, Statutes of 2021, as amended by SB 170, Chapter 240, Statutes of 2021, Section 96, Item 3790-004-0001). The State of California’s Department of Parks and Recreation is making this funding available to the City through a local assistance specified grant. The City, in consultation with DRV, has developed a project scope for the grant agreement that includes construction of public infrastructure on or adjacent to the Property, which is identified in the Railyards Specific Plan and related entitlements. The City intends to accept the public infrastructure once it is complete.

The City and DRV agree that allowing DRV to use state grant funds to design and construct public infrastructure that benefits the Railyards furthers their mutual interest in promoting development of this important project.

With these background facts in mind, the City and DRV agree as follows:

1. Definitions. All capitalized terms used in this agreement, but not expressly defined in this agreement, have the meanings ascribed to them in the Grant Agreement. In addition, the following definitions apply:

   “Advance Account” means the separate, interest-bearing account to hold Advance payments of Grant Funds.

   “Advance Account Balance” means an amount equal to the difference between the balance of Grant Funds in the Advance Account and all approved payments from the Advance Account that have yet to post to the Advance Account.

   “Deposit” means an electronic transfer of funds to the City that is made (i) in a manner directed by the City, and (ii) in an amount equal to the amount of a request for payment.

   “Documented Invoice” means a written request for payment for costs incurred that (i) includes sufficient detail and supporting documentation to demonstrate that the costs are Eligible Costs
under the Grant Agreement and are not reimbursed through other grant programs, (ii) includes sufficient detail and supporting documentation to demonstrate compliance with prevailing wages laws, (iii) includes sufficient detail and supporting documentation to allow the City to complete a Payment Request Form, Grant Expenditure Form, or both, and if required under section 9.(b)(i), (iv) is accompanied by a Deposit.

“Grant Agreement” means the grant contract identified as State contract number C5054071 between the City and the State, as it may be amended from time to time. The Grant Agreement is attached as exhibit 1.

“Grant Funds” means the funds that the State provides to the City under the Grant Agreement and any interest that the City earns on such funds.

“Management Fee” means a fee charged by DRV to perform construction coordination and management obligations under the Grant Agreement and this agreement.

“Railyards Infrastructure” means the infrastructure segments that are included in the Grant Scope, as it may be amended from time to time, which are identified as 1a, 1b, 1c, 1d, 2a, 2b, 2d, 2e, 3b, 3c, 3d, and 3e, shown, and described in exhibit 2.

“Railyards Infrastructure Segment” means the individual infrastructure segments that compose the Railyards Infrastructure.

“State” means the State of California.

2. **Term.** This agreement takes effect as described in section 22 and remains in effect until the later of (i) five years after the State makes the final payment of Grant Funds to the City, and (ii) one year after the State completes an audit of the Grant Agreement, subject to early termination under section 11.

3. **Grant Agreement.** DRV shall (i) comply with all the terms of the Grant Agreement that apply to the City, except for those which by their nature can only be performed by the City, and (ii) to the extent that the City’s ability to fulfill its obligations or exercise its rights under the Grant Agreement depends on DRV’s assistance, assist the City in fulfilling its obligations or exercising its rights under the Grant Agreement.

4. **Grant Funds.** (a) $30,000,000 is the maximum amount of Grant Funds available to the City under the Grant Agreement.

(b) The City may seek reimbursement directly from the State under the Grant Agreement for all Eligible Costs that it incurs as the grantee in administering the Grant Agreement and as the government entity with permitting authority for the Railyards Infrastructure. The total amount of reimbursement for such Eligible Costs is capped at $750,000.

(c) The amount of Management Fees for which DRV may receive payment under this agreement is limited as follows:
(i) For each Documented Invoice, the amount of Management Fees payable is capped at 3% of Eligible Costs excluding the Management Fee.

(ii) The total amount of Management Fees payable under this agreement is capped at $1,000,000.

5. Additional Costs. There may be costs that the City will incur as the government entity with permitting authority for the Railyards Infrastructure and in administering this agreement that are not Eligible Costs under the Grant Agreement. The City shall notify DRV within a reasonable time after it identifies additional costs. DRV shall pay the City these additional costs within thirty business days after the City delivers a request for payment as provided in section 8, unless the parties jointly request from the State, and the State issues, a policy directive that the additional costs are Eligible Costs. If the State issues such a policy directive, DRV is not obligated to pay the costs covered by the policy directive, and the City may seek reimbursement for these costs as Eligible Costs (which will count toward the cap under section 4(b)).

6. Railyards Infrastructure. In addition to complying with the Grant Agreement, DRV shall design, construct, and dedicate the Railyards Infrastructure as follows:

(a) DRV shall obtain all permits and other governmental approvals required to construct the Railyards Infrastructure, including encroachment permits for all work performed within existing public rights-of-way.

(b) DRV shall enter into all contracts necessary to design and construct the Railyards Infrastructure, including contracting for labor compliance to ensure that DRV’s contractors comply with all City and state prevailing wage laws.

(c) DRV shall design, furnish, construct and install the Railyards Infrastructure in accordance with the City’s Standard Specifications For Public Construction approved by the City Council on November 10, 2020 (Resolution 2020-0354) and the Sacramento Railyards Specific Plan and Design Guidelines. The City shall cooperate with DRV’s efforts to gain approval of the plans and specifications for the Railyards Infrastructure by endeavoring to implement an informal expedited review process of such materials by the applicable departments within the City. The City makes no representation or warranty regarding the timing or approval the plans and specifications submitted by DRV for the Railyards Infrastructure.

(d) DRV shall comply with all City and state laws and regulations related to construction of public works projects, including competitive bidding, obtaining 100% payment and performance bonds, and prevailing wage laws.

(e) DRV shall include in each contract to construct Railyards Infrastructure within existing public rights-of-way provisions naming the City as an intended beneficiary of the contract and requiring the contractor to name the City as an obligee on the contractor’s performance bond.
(f) DRV shall require its contractors to name the City and the State as additional insureds on the contractors’ commercial general liability and automobile liability policies.

(g) DRV shall construct to completion, at no cost to the City, each Railyards Infrastructure Segment for which DRV awards a construction contract and issues a notice to proceed, regardless of whether there are sufficient Grant Funds to pay to complete construction.

(h) DRV shall perform all work on the Railyards Infrastructure at the places, with the materials, in the manner, and at the grades, as shown on the approved plans and specifications, and to the satisfaction of the City.

(i) DRV shall obtain notices of completion for all the Railyards Infrastructure for which DRV awarded construction contracts and issued notices to proceed by the later of (i) December 31, 2023, and (ii) the date to complete the Railyards Infrastructure stated in the Grant Agreement, as it may be amended from time to time. The City shall evaluate the seeking of an extension from the State of the date to complete the Railyards Infrastructure stated in the Grant Agreement upon the written request of DRV, which notice shall include a summary of the basis for such extension and any additional information requested by the City. Subject to the foregoing, the parties anticipate that such extension will be necessary and will reasonably cooperate with each other to gain approval from the State; provided that no representation or warranty is made by either party on obtaining such extension.

(j) DRV shall provide the City with irrevocable offers to dedicate the easements required for the Railyards Infrastructure Segments for which DRV awards construction contracts and issues notices to proceed using the form attached as exhibit L to the amended and restated Railyards development agreement between the City and DRV (City Agreement No. 2008-0150-1).

(k) Title to, and ownership of, the Railyards Infrastructure constructed under this agreement will vest absolutely in the City upon the City’s acceptance of the completed Railyards Infrastructure.

(l) Except as otherwise expressly provided in this agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, DRV guarantees all work executed by or on behalf of DRV and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to the City as a part of the work pursuant to this agreement, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of each Railyards Infrastructure Segment by the City. DRV shall repair or replace any or all of the work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within the one-year guarantee period without expense or charge of any nature whatsoever to the City.

(m) Except as provided in section 6.(n), below, if DRV fails to comply with the conditions of the guarantee in section 6.(l), above, within ten days after being notified of the defect in writing, the
City will have the right, but not the obligation, to repair, or obtain the repair of, the defect and DRV shall pay to the City on demand all costs and expenses of the repair.

(n) If any defect in workmanship or materials covered by the guarantee in section 6.(l), above, results in a condition that constitutes an immediate hazard to the health or safety, or any property interest, or any person, the City may immediately repair, or cause to be repaired, either temporarily or permanently, as determined by the City in its sole discretion and judgement, the defect. DRV shall pay to the City on demand all costs and expense of the repair.

(o) Due to the ongoing construction at the Sacramento Railyards, City may issue a notice of completion for a Railyard Infrastructure Segment, but not accept that segment until City determines that it should be open to the public. As a result, DRV shall maintain and repair each Railyard Infrastructure Segment until City accepts it. DRV shall guarantee landscape maintenance for each completed Railyard Infrastructure Segment until the Railyards community facilities district takes over maintenance of the improvements, but DRV will not be obligated to guarantee maintenance for more than one year after City issues the notice of completion for the improvements.

(p) The City’s obligation to make final payment to DRV is conditioned on DRV, directly or through its contractors, providing security in a form and amount satisfactory to the City to secure performance of DRV’s warranty obligations under section 6(l) – (n).

(q) Notwithstanding any other provision of this agreement to the contrary, if DRV determines, through the bid process set forth in section 6.(d), that the prospective cost to construct one or more of the Railyard Infrastructure Segments would exceed the remaining Grant Funds (“Unfunded Railyard Infrastructure Segments”), DRV may provide the City with written notice of such conclusion, which includes a reasonably detailed cost analysis supporting such conclusion (“Excess Cost Notice”), in accordance with section 13. If the City and DRV are unable to agree upon alternative funding sources for the Unfunded Railyard Infrastructure Segments within thirty days following the City’s receipt of the Excess Cost Notice, the Unfunded Railyard Infrastructure Segments shall be removed from the definition of “Railyard Infrastructure” under this agreement and DRV shall have no further obligation to construct the Unfunded Railyard Infrastructure Segments pursuant to this agreement. Neither the City nor DRV makes any form of representation or warranty regarding the identification of or availability of any alternative funding sources described in the preceding sentence.

(r) DRV shall (i) award a construction contract and issue a notice to proceed for Railyards Infrastructure Segment 1a before DRV submits requests for payment under section 8 that total $15 million, and (ii) construct Railyards Infrastructure Segment 1a to completion before the closeout of the Grant Agreement. If DRV fails to comply with the requirements in (i) of this subsection, the City may suspend payments to DRV under section 9 until DRV does comply.

7. **Advance Account.** The City, in its sole discretion, may seek Advance payments of Grant Funds from the State. Upon the City’s request, DRV shall assist the City in preparing the Advance justifications
required to obtain Advance payments under the Grant Agreement. Under the terms of the Grant Agreement, the City must place all Advance payments into the Advance Account.

8. **Payment Requests.** This section provides the exclusive method by which DRV may submit requests for payment. DRV shall submit requests for payment as follows:

(a) DRV shall submit an initial Documented Invoice to the City that covers all costs that DRV has incurred from July 1, 2021, to date for which it will request payment. DRV shall submit this initial Documented Invoice no later than July 1, 2022.

(b) Beginning on the last business day of the month after DRV submits the initial Documented Invoice, and continuing on a monthly basis after that, DRV shall submit a Documented Invoice to the City that covers all costs that DRV has incurred since the previous Documented Invoice for which it will request payment.

(c) As part of the Documented Invoice covering the final payment to DRV under this agreement, DRV shall provide the City with copies of all records as provided in section 12(b), below.

(d) The City shall determine whether a request for payment submitted by DRV meets the requirements of a Documented Invoice no later than 15 days after DRV submits the request.

9. **Payments to DRV.** Except as provided in section 6(r), if the City determines that a request for payment submitted by DRV meets the requirements of a Documented Invoice, the City shall make payment to DRV within 30 days after such determination as follows, subject to the availability of Grant Funds described in section 9.(a) and 9.(b) below (as applicable):

(a) **Advance Account.** The City shall rely on the Advance Account as the first means of paying a Documented Invoice, subject to the following:

(i) If the Advance Account Balance is sufficient to pay the full amount of the Documented Invoice, the City shall make full payment to DRV using Grant Funds in the Advance Account.

(ii) If the Advance Account Balance is not sufficient to pay the full amount of the Documented Invoice, the City shall promptly notify DRV, and the following terms will apply:

(1) If the Advance Account Balance is greater than zero, the City shall use the Grant Funds in the Advance Account to make a partial payment to DRV in an amount equal to the Advance Account Balance. The City shall pay the balance of the amount due under the Documented Invoice after making the partial payment in accordance with subsections (a)(ii)(2) and (a)(iii)(3).
(2) If the Advance Account Balance is zero and the State has notified the City that it will make an additional Advance payment of Grant Funds, then once the State makes the Advance payment of Grant Funds, the City shall use the Grant Funds in the Advance Account to make payment to DRV in an amount equal to the lesser to the Advance Account Balance and the full amount of the Documented Invoice. If the Advance Account Balance is not sufficient to pay the full amount of the Documented Invoice, then the City shall continue to use the process in this subsection until the Documented Invoice is paid in full, except as provided in subsection (a)(ii)(3).

(3) If the Advance Account Balance is zero and the State has notified the City that it will not make any additional Advance payments of Grant Funds, then the City shall make payment to DRV using the reimbursement process in section 9.(b) below.

(b) State Reimbursement. The City shall rely on the reimbursement process in this subsection as the means of paying a Documented Invoice only if required under section 9.(a)(ii)(3), above. The reimbursement process includes the following steps in the following order:

(i) DRV shall provide the City with a Deposit.

(ii) The City shall pay the Documented Invoice using City funds.

(iii) The City shall seek reimbursement from the State for the payment of the paid Documented Invoices using City funds.

(iv) The City shall return the Deposit to DRV if the City receives reimbursement from the State for 100% of the payment; if the City receives reimbursement from the State for less than 100% of the payment, the City shall return the corresponding percentage of the Deposit to DRV.

(c) DRV has no recourse against City for the State’s decisions regarding reimbursements and the time in which it takes the City and State to issue payments or return Deposits. DRV acknowledges that the State may take a considerable time to make the final payment under the Grant Agreement.

10. Indemnity and Release. DRV shall indemnify, defend and hold harmless the City (including its officers, employees and agents) from and against any and liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys' fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the extent arising from any acts or omissions of DRV (including its officers, employees, contractors, subcontractors, and agents) in connection with the design and construction of the Railyards Infrastructure under this agreement, except to the extent arising from the sole active...
negligence or willful misconduct of the City. DRV hereby waives and releases any and all Claims of whatever sort or nature which may arise against City in connection with the City’s review and inspection of the design and construction of the Railyards Infrastructure, except those resulting from the sole active negligence or willful misconduct of the City.

DRV shall indemnify, defend and hold harmless the City from and against all demands and claims filed by the State against the City due to DRV’s improper invoices or failure to comply with any term of the Grant Agreement.

11. Default. The occurrence of any one or more of the following events will be a breach by DRV under this agreement and the City will be entitled to cancel this agreement by providing DRV with notice as provided in section 13:

(a) After delivery of a written notice of default that includes a cure period of at least 30 days, and the expiration of the cure period, DRV’s failure to comply with the terms of this agreement.

(b) After delivery of a written notice of default and expiration of any cure period stated in the notice, DRV’s failure to comply with any material term of the Grant Agreement.

(c) DRV’s voluntary or involuntary filing of bankruptcy protection or appointment of a receiver.

12. Records and Audits. In addition to complying with all the terms of the Grant Agreement relating to records and audits that apply to the City, DRV shall do the following:

(a) DRV shall make its records, employees, and property related to this agreement and the Grant Agreement available to the City’s Accounting Manager (the “Accounting Manager”), the City Auditor, and any independent auditor at all reasonable times so that the Accounting Manager, City Auditor, or an independent auditor may inspect and copy such records to determine whether DRV has complied with this agreement and the Grant Agreement. If the City requests, DRV shall obtain and provide to the City, at DRV’s sole cost, an independent financial audit of DRV’s use of the Grant Funds.

(b) All records related to this agreement and the Grant Agreement are public records for purposes of the California Public Records Act. DRV shall, at no cost to the City, provide the City with copies of all records related to this agreement and the Grant Agreement as part of its final payment request.

(c) Upon demand by the City, given in accordance with section 13, DRV shall reimburse the City for all Grant Funds that the City or State determines were not expended in accordance with this agreement or the Grant Agreement, with reimbursement to be by check payable to the City and delivered to the City at the address shown in section 13. Before the City makes a demand under this subsection (c), the City shall provide DRV with notice of the City’s or State’s determination
about the expenditure of Grant Funds and 14 days to provide a written response, which DRV shall give in accordance with section 13.

13. Notices. Any notice, request, report, or demand under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 13 to the persons identified below or their successors. A mailed notice, application, request, report, or demand will be effective or will be considered to have been given on the third calendar day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice, application, request, report, or demand sent in any other manner will be effective or will be considered properly given when actually delivered. Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

If to the City:
City of Sacramento
Office of the City Manager
915 I Street, 5th Floor
Sacramento, California 95814
Attention: Assistant City Manager

If to DRV:
Downtown Railyard Venture, LLC
3140 Peacekeeper Way
McClellan, California 95652
Attention: Manager and General Counsel

14. Assignments. (a) Except as provided in section 14(b), a party may not assign or otherwise transfer this agreement or any interest in it without the other party’s prior written consent, which the other party may withhold in its sole discretion. An assignment or other transfer made contrary to this section 14 is void.

(b) DRV may, without the prior approval of the City, assign its right to receive payments under this agreement to any third-party lender, except that such an assignment will not (i) otherwise modify, effect, or alter DRV’s obligations under this agreement, or (ii) make any third-party lender an intended beneficiary of this agreement.

15. Binding effect. This agreement binds and inures to the benefit of the parties’ successors and assigns.

16. Time of Essence. Time is of the essence in performing this agreement.
17. Severability. If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

18. Waiver. A party’s failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party’s waiver of another party’s breach of any provision in this agreement is not a continuing waiver or a waiver of any later breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

19. Interpretation. This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits 1 and 2 are part of this agreement.

20. Attorneys’ fees. The parties must bear their own costs and attorneys’ fees incurred in connection with this agreement.

21. No Third-Party Beneficiaries. This agreement is solely for the benefit of the City and DRV. It is not intended to benefit any third parties.

22. Effective date. This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

23. Counterparts. The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.

24. Electronic signatures. The parties agree that this agreement may be electronically signed. The parties agree that the electronic signatures appearing on this agreement are the same as handwritten signatures for all purposes.

25. Integration and modification. This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.
CITY OF SACRAMENTO,
a Municipal Corporation

By: ______________________
Michael Jasso, Assistant City Manager
Howard Chan, City Manager

Date: ______________________

ATTEST:

____________________________
Assistant City Clerk

APPROVED AS TO FORM:

____________________________
Senior Deputy City Attorney

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By: LDK VENTURES, LLC, a California limited liability company
Its: Member

By: [Signature]
Name: Larry D. Kelley, Jr.
Title: Manager

Date: Jun 14, 2022

Michael Sparks (Jun 14, 2022 18:17 PDT)
Exhibit 1
February 17, 2022

Marco Gonzalez
Railyards Development Project Manager
City of Sacramento, Economic Development
915 I Street, 3rd Floor
Sacramento, CA 95814

Re: Project Name: Sacramento Railyards
    Program Name: General Fund
    Specified Grants
    Project Number: SG-34-013
    Contract Number: C5054071

Dear Marco Gonzalez:

Enclosed for your files is a copy of the fully executed contract and contract provisions for the above referenced project. Refer to your procedural guide for grant process information. Please remember that you must comply with all applicable state and federal laws and regulations including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and the laws and codes pertaining to individuals with disabilities.

If you have any questions, please contact me at (619) 627-0918 or email me at Mary.Baum@parks.ca.gov.

Sincerely,

Mary Baum
Project Officer

Enclosure(s)
GRANTEE
City of Sacramento

GRANT PERFORMANCE PERIOD is from July 01, 2021 through June 30, 2024

CONTRACT PERFORMANCE PERIOD is from July 01, 2021 through June 30, 2024

The GRANTEE agrees to the terms and conditions of this Contract, and the State of California, acting through its Director of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below. The GRANTEE agrees to complete the GRANT SCOPE(s) as defined in the GRANT SCOPE /Cost Estimate Form of the application(s) filed with the State of California.

Total State grant amount not to exceed $30,000,000.00

The General and Special Provisions attached are made a part of and incorporated into the Contract.

City of Sacramento
GRANTEE

By Michael Jasso
[Signature ofAuthorized Representative]

Address 915 I Street, Sacramento, CA 95814

Title City Manager, Assistant City Manager

Date 2/8/2022

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By [Signature of Authorized Representative]

Date 2/17/2022

CERTIFICATION OF FUNDING
(For State Use Only)

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I. RECITALS

This CONTRACT is entered into between the California Department of Parks and Recreation (hereinafter referred to as "GRANTOR," "DEPARTMENT" or "STATE") and City of Sacramento (hereinafter referred to as "GRANTEE").

The DEPARTMENT hereby grants to GRANTEE a sum (also referred to as "GRANT MONIES") not to exceed $30,000,000, subject to the terms and conditions of this AGREEMENT and the 2021/22 California State Budget, Chapter 21, statutes of 2021, Item number - 3790-101-0001 (appropriation chapter and budget item number hereinafter referred to as "SPECIFIED GRANT"). These funds shall be used for completion of the GRANT SCOPE(S).

The Grant Performance Period is from _July 01, 2021_ to _June 30, 2024_.

II. GENERAL PROVISIONS

A. Definitions

As used in this CONTRACT, the following words shall have the following meanings:

1. The term "APPLICATION" means the individual project APPLICATION packet for a project pursuant to the enabling legislation and/or grant program PROCEDURAL GUIDE requirements.

2. The term "CONTRACT PERFORMANCE PERIOD" means the duration of time during which this CONTRACT is in effect.

3. The term "DEPARTMENT" or "STATE" means the California Department of Parks and Recreation.

4. The term "DEVELOPMENT" means capital improvements to real property by means of, but not limited to, construction, expansion, and/or renovation, of permanent or fixed features of the property.

5. The term "GRANTEE" means the party described as the GRANTEE in Section I of this AGREEMENT.

6. The term "GRANT PERFORMANCE PERIOD" means the period of time during which eligible costs may be incurred by the GRANTEE and paid for by the DEPARTMENT, as specified in the fully executed CONTRACT.

7. The term "GRANT PROJECT" means all real estate, leases, subleases, buildings, and other property acquired or developed with GRANT monies.
8. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE/Cost Estimate Form found in each of the APPLICATIONS submitted pursuant to this grant.

9. The term "PROCEDURAL GUIDE" means the document identified as the "Procedural Guide for Sacramento Rail Yard Grant". The PROCEDURAL GUIDE provides the procedures and policies controlling the administration of the grant.

B. Project Execution

1. Subject to the availability of GRANT MONIES, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this CONTRACT, in consideration of, and on condition that, the sum be expended in carrying out the purposes as set forth in the scope described in the enabling legislation and referenced in the APPLICATION, Section I of this CONTRACT, and under the terms and conditions set forth in this CONTRACT.

The GRANTEE shall assume any obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE(S).

During the CONTRACT PERFORMANCE PERIOD, the GRANTEE agrees to submit any proposed change or alteration from the original GRANT SCOPE(S) in writing to the STATE for prior approval. This applies to any and all proposed changes that will occur after STATE has approved the APPLICATION. Changes in the GRANT SCOPE(S) must first be approved in writing by the STATE.

2. The GRANTEE shall complete the GRANT SCOPE(S) in accordance with the time of the Performance Period set forth in Section I of this CONTRACT, and under the terms and conditions of this contract.

3. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq., Title 14, California Code of Regulations, Section 15000 et seq.).

4. The GRANTEE shall comply with all applicable current laws and regulations affecting DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and the California Unruh Act (California Civil Code §51 et seq.)

C. Project Costs

1. GRANTEE agrees to abide by the PROCEDURAL GUIDE.

2. GRANTEE acknowledges that STATE may make reasonable changes to its procedures as set forth in the PROCEDURAL GUIDE. If STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.
D. Project Administration

1. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If grant monies are advanced and not expended, the unused portion of the grant and any interest earned shall be returned to the STATE within 60 days after project completion or end of the GRANT PERFORMANCE PERIOD, whichever is earlier.

2. During the GRANT PERFORMANCE PERIOD, the GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made a specific request. All such project status reports shall be signed and certified as complete and accurate by the authorized representative of the GRANTEE. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the GRANT PERFORMANCE PERIOD, whichever is earlier. The GRANT PERFORMANCE PERIOD is identified in Section I of this CONTRACT.

3. The GRANTEE shall make property or facilities acquired and/or developed pursuant to this contract available for inspection upon request by the STATE.

E. Project Termination

1. Project Termination refers to the non-completion of a GRANT SCOPE. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.

2. The GRANTEE may unilaterally rescind this contract at any time prior to the commencement of the project. The commencement of the project means the date of the letter notifying GRANTEE of the award or when the funds are appropriated, whichever is later. After project commencement, this contract may be rescinded, modified or amended only by mutual CONTRACT in writing between the GRANTEE and the STATE, unless the provisions of this contract provide that mutual CONTRACT is not required.

3. Failure by the GRANTEE to comply with the terms of the (a) PROCEDURAL GUIDE, (b) this CONTRACT or any other grant contracts, specified or general, that GRANTEE has entered into with STATE or any other department, agency, commission or other subdivision of California State government, may be cause for suspension of all obligations of the STATE unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this CONTRACT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.

4. Any breach of any term, provision, obligation or requirement of this CONTRACT by the GRANTEE shall be a default of this CONTRACT. In the case of any default by GRANTEE, STATE shall be entitled to all remedies available under law and equity, including but not limited to: a) Specific Performance; b) Return of all GRANT
MONIES; c) Payment to the STATE of the fair market value of the project property or the actual sales price, whichever is higher; and d) Payment to the STATE of the costs of enforcement of this CONTRACT, including but not limited to court and arbitration costs, fees, expenses of litigation, and reasonable attorney fees.

5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete and the GRANT PROJECT is open to the public.

F. Budget Contingency Clause

If funding for any fiscal year is reduced or deleted by the budget act for purposes of this program, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a CONTRACT amendment to GRANTEE to reflect the reduced grant amount. This Paragraph shall not require the mutual CONTRACT as addressed in Paragraph E, subsection 2, of this CONTRACT.

G. Hold Harmless

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this CONTRACT except claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.

2. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.

3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the GRANTEE agrees to pay the STATE's litigation costs, expenses, and reasonable attorney fees.

4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

H. Financial Records

1. The GRANTEE shall maintain satisfactory financial accounts, documents, including loan documents, and all other records for the project and shall make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project termination or final payment.

2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of STATE funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount, source and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.

3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this contract or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this CONTRACT, and shall provide copies of all such records to STATE in its certified status reports upon request by the STATE. Such accounts, documents, and records shall be retained by the GRANTEE for at least five years following final payment.

4. The GRANTEE shall use a generally accepted accounting system.
I. Use of Facilities

1. The GRANTEE agrees that the GRANTEE shall operate and maintain, and retain full control of the property acquired or developed with the GRANT MONIES, for the duration of the CONTRACT PERFORMANCE PERIOD.

2. The GRANTEE agrees that, during the CONTRACT PERFORMANCE PERIOD, the GRANTEE shall use the property acquired or developed with grant funds under this CONTRACT only for the purposes of this grant and no other use, sale, assignment, transfer, mortgage, or other disposition or change of the control or use of the property or of any interest in the property to one not consistent with the grant purpose shall be permitted except as authorized by the DEPARTMENT and the property shall be replaced with property of equivalent value and usefulness as determined by the STATE.

3. The property acquired or developed may be transferred or assigned to another entity only if the successor entity assumes the obligations imposed under this CONTRACT and only with the prior approval of STATE.

4. Any real Property (including any portion of it or any interest in it, including any leases) may not be used as security or collateral for any debt, loan or mitigation, without the prior written approval of the STATE, provided that such approval shall not be unreasonably withheld as long as the purposes for which the grant was awarded are maintained. Any such permission that is granted does not make STATE a guarantor or a surety for any debt, loan or mitigation, nor does it waive STATE’s rights to enforce performance under the CONTRACT.

5. All real property (including any portion or interest in it, including any leases), or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of grant monies received from STATE or the pro-rated full market value of the real property, including improvements, at the time of sale, whichever is higher.

6. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

J. Nondiscrimination

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or facility developed pursuant to this CONTRACT.
2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project contract or under provisions of the enabling legislation and/or grant program.

K. Severability

If any provision of this CONTRACT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the CONTRACT which can be given effect without the invalid provision or application, and to this end the provisions of this CONTRACT are severable.

L. Liability

1. STATE assumes no responsibility for assuring the safety or standards of construction, site improvements or programs related to the GRANT SCOPE. The STATE’S rights under this CONTRACT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

2. GRANTEE shall ensure that any contractor hired has adequate liability insurance, performance bond, or other security necessary to protect the GRANTEE interest and the STATE’s interest against poor workmanship, fraud, or other potential loss associated with the completion of the GRANT PROJECT.

M. Assignability

Without the written consent of the STATE, the GRANTEE’S interest in and control of any portion of the GRANT PROJECT and responsibilities under this CONTRACT shall not be assignable or transferable by the GRANTEE either in whole or in part.

N. Use of Grant Monies

GRANTEE shall not use any grant funds (including any portion thereof) for the purpose of making any leverage loan, pledge, promissory note or similar financial device or transaction, without: 1) the prior written approval of the STATE; and 2) any financial or legal interests created by any such leverage loan, pledge, promissory note or similar financial device or transaction in the project property shall be completely subordinated to this CONTRACT through a Subordination Agreement provided and approved by the STATE, signed by all parties involved in the transaction, and recorded in the County Records against the fee title of the project property.
O. Section Headings

The headings and captions of the various sections of this CONTRACT have been inserted only for the purpose of convenience and are not a part of this CONTRACT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this CONTRACT.

P. Waiver

Any failure by a party to enforce its rights under this CONTRACT, in the event of a breach or default, shall not be construed as a waiver of said rights; and the waiver of any breach or default under this CONTRACT shall not be construed as a waiver of any subsequent breach.

City of Sacramento
GRANTEE

By: Michael Jasso (Feb 8, 2022 15:56 PST)
Signature of Authorized Representative

Title: Assistant City Manager, Michael Jasso
Date: 2/8/2022

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By: Cristelle Fazeli
Signature of Authorized Representative

Title: Supervisor
Date: 2/17/2022
LEGEND

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<td>1c</td>
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<td>2b</td>
<td>Summit Tunnel - Storm Drain 5th to 6th</td>
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<td>2d</td>
<td>Summit Tunnel - 6th to 7th</td>
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<td>2e</td>
<td>(Downstream connection of Summit Tunnel Sewer to Railyards Blvd)</td>
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SACRAMENTO RAILYARDS STATE GRANT PROJECT
3/8/22
RESOLUTION NO. 2022-0002

Adopted by the Sacramento City Council

January 4, 2022

Accept and Appropriate $30,000,000 in Grant Funding for the Rehabilitation of the Sacramento Railyards as Provided in the 2021-2022 State Budget

BACKGROUND

A. As part of the Budget Act of 2021 (Senate Bill 129, Section 96), the State of California is providing the City with $30 million in funding for the rehabilitation of the Sacramento Railyards.

B. The purpose of this resolution is to authorize the City Manager or his designee to accept the $30 million in funding and take related budget actions.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager or the City Manager’s designee is authorized to accept the $30 million in grant funds from the State of California for the rehabilitation of the Sacramento Railyards.

Section 2. The City Manager or the City Manager’s designee is authorized to establish the Sacramento Railyards Rehabilitation Project (G02180310).

Section 3. The City Manager or the City Manager’s designee is authorized to establish the revenue and expenditure budgets in the amount of $30 million to the Sacramento Railyards Rehabilitation Project (G02180310, Fund 2702).
Adopted by the City of Sacramento City Council on January 4, 2022, by the following vote:

Ayes: Members Ashby, Guerra, Harris, Jennings, Loloee, Schenirer, Valenzuela, Vang, and Mayor Steinberg

Noes: None

Abstain: None

Absent: None

Attest: Mindy Cuppy, City Clerk

The presence of an electronic signature certifies that the foregoing is a true and correct copy as approved by the Sacramento City Council.
RESOLUTION NO.
Adopted by the Sacramento City Council

CALIFORNIA DEPARTMENT OF PARKS AND RECREATION GRANT FOR REHABILITATION OF THE SACRAMENTO RAILYARDS: APPROVAL OF PROJECT DELIVERY AGREEMENT, ESTABLISH CAPITAL IMPROVEMENT PROJECT AND BUDGETARY ADJUSTMENTS FOR THE SACRAMENTO RAILYARDS REHABILITATION PROJECT (T15225700)

BACKGROUND

A. As part of the Budget Act of 2021 (Senate Bill 129, Chapter 96), the State of California is providing the City of Sacramento with $30,000,000 for the rehabilitation of the Sacramento Railyards (Railyards). These funds will be used to pay for a portion of the remaining infrastructure that must be built in the Railyards.

B. On January 4, 2022, the City Council approved Resolution 2022-0002 authorizing the City Manager or the City Manager’s designee to: 1) accept a $30 million grant from the California Department of Parks and Recreation for the rehabilitation of the Sacramento Railyards; 2) establish the Sacramento Railyards Rehabilitation Project (G02180310); 3) and establish revenue and expenditure budgets in the amount of $30 million to the Sacramento Railyards Rehabilitation Project (G02180310, Fund 2702). Upon further consideration, staff determined that this should have been established as Capital Improvement Project.

C. The establishment of a Capital Improvement Project for the Sacramento Railyards Rehabilitation Project (T15225700) and the appropriation of funds will allow staff to complete a portion of the remaining infrastructure that must be built in the Railyards.

D. As the majority property owner and master developer of the Railyards, Downtown Railyard Venture (DRV) has significant experience planning and implementing the construction of infrastructure in the Railyards. Partnering with DRV to deliver the Scope will catalyze development of housing, the Central Shops District, office, retail, and entertainment on the site.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. The City Manager or City Manager’s designee is authorized to execute the Railyards Infrastructure Grant Project Delivery Agreement between the City of Sacramento and DRV in an amount not to exceed $30 million that is attached as Exhibit A.

Section 2. Sections 2 and 3 of Resolution No. 2022-0002 are rescinded.

Section 3. The Sacramento Railyards Rehabilitation Project (T15225700) is established as a new Capital Improvement Project.
Section 4. The City Manager or City Manager’s designee is authorized to establish the revenue and expenditure budgets in the Sacramento Railyards Rehabilitation Project (T15225700) in the amount of $30,000,000 (Other Capital Grants, Fund 3704).

Section 5. Exhibit A is a part of this resolution.

Table of Contents:

Exhibit A: Railyards Infrastructure Grant Project Delivery Agreement between the City of Sacramento and DRV
Exhibit A
RAILYARDS INFRASTRUCTURE GRANT
PROJECT DELIVERY AGREEMENT

This RAILYARDS INFRASTRUCTURE GRANT PROJECT DELIVERY AGREEMENT dated May 31, 2022, for purposes of identification, is between the CITY OF SACRAMENTO, a municipal corporation (the "City"), and DOWNTOWN RAILYARD VENTURE, LLC, a Delaware limited liability company ("DRV").

Background

The Sacramento Railyards is a major urban infill project located within the Central City adjacent to downtown Sacramento. The Sacramento Railyards Specific Plan, which includes design guidelines, along with the related entitlements identifies the public improvements required for this mixed-use development. DRV currently owns approximately 166 acres of the Sacramento Railyards (Assessor Parcel Numbers 002-0010-074, -075, -076, and -077) (the “Property”). On November 16, 2016, the Sacramento City Council approved a subsequent environmental impact report for the Sacramento Railyards Specific Plan Update, KP Medical Center, MLS Stadium, & Stormwater Outfall.

The State of California allocated $30,000,000 for the rehabilitation of the Sacramento Railyards in the 2021 – 2022 California State Budget (SB 129, Chapter 69, Statutes of 2021, as amended by SB 170, Chapter 240, Statutes of 2021, Section 96, Item 3790-004-0001). The State of California’s Department of Parks and Recreation is making this funding available to the City through a local assistance specified grant. The City, in consultation with DRV, has developed a project scope for the grant agreement that includes construction of public infrastructure on or adjacent to the Property, which is identified in the Railyards Specific Plan and related entitlements. The City intends to accept the public infrastructure once it is complete.

The City and DRV agree that allowing DRV to use state grant funds to design and construct public infrastructure that benefits the Railyards furthers their mutual interest in promoting development of this important project.

With these background facts in mind, the City and DRV agree as follows:

1. Definitions. All capitalized terms used in this agreement, but not expressly defined in this agreement, have the meanings ascribed to them in the Grant Agreement. In addition, the following definitions apply:

   “Advance Account” means the separate, interest-bearing account to hold Advance payments of Grant Funds.

   “Advance Account Balance” means an amount equal to the difference between the balance of Grant Funds in the Advance Account and all approved payments from the Advance Account that have yet to post to the Advance Account.

   “Deposit” means an electronic transfer of funds to the City that is made (i) in a manner directed by the City, and (ii) in an amount equal to the amount of a request for payment.

   “Documented Invoice” means a written request for payment for costs incurred that (i) includes sufficient detail and supporting documentation to demonstrate that the costs are Eligible Costs
under the Grant Agreement and are not reimbursed through other grant programs, (ii) includes sufficient detail and supporting documentation to demonstrate compliance with prevailing wages laws, (iii) includes sufficient detail and supporting documentation to allow the City to complete a Payment Request Form, Grant Expenditure Form, or both, and if required under section 9.(b)(i), (iv) is accompanied by a Deposit.

“Grant Agreement” means the grant contract identified as State contract number C5054071 between the City and the State, as it may be amended from time to time. The Grant Agreement is attached as exhibit 1.

“Grant Funds” means the funds that the State provides to the City under the Grant Agreement and any interest that the City earns on such funds.

“Management Fee” means a fee charged by DRV to perform construction coordination and management obligations under the Grant Agreement and this agreement.

“Railyards Infrastructure” means the infrastructure segments that are included in the Grant Scope, as it may be amended from time to time, which are identified as 1a, 1b, 1c, 1d, 2a, 2b, 2d, 2e, 3b, 3c, 3d, and 3e, shown, and described in exhibit 2.

“Railyards Infrastructure Segment” means the individual infrastructure segments that compose the Railyards Infrastructure.

“State” means the State of California.

2. Term. This agreement takes effect as described in section 22 and remains in effect until the later of (i) five years after the State makes the final payment of Grant Funds to the City, and (ii) one year after the State completes an audit of the Grant Agreement, subject to early termination under section 11.

3. Grant Agreement. DRV shall (i) comply with all the terms of the Grant Agreement that apply to the City, except for those which by their nature can only be performed by the City, and (ii) to the extent that the City’s ability to fulfill its obligations or exercise its rights under the Grant Agreement depends on DRV’s assistance, assist the City in fulfilling its obligations or exercising its rights under the Grant Agreement.

4. Grant Funds. (a) $30,000,000 is the maximum amount of Grant Funds available to the City under the Grant Agreement.

(b) The City may seek reimbursement directly from the State under the Grant Agreement for all Eligible Costs that it incurs as the grantee in administering the Grant Agreement and as the government entity with permitting authority for the Railyards Infrastructure. The total amount of reimbursement for such Eligible Costs is capped at $750,000.

(c) The amount of Management Fees for which DRV may receive payment under this agreement is limited as follows:
(i) For each Documented Invoice, the amount of Management Fees payable is capped at 3% of Eligible Costs excluding the Management Fee.

(ii) The total amount of Management Fees payable under this agreement is capped at $1,000,000.

5. **Additional Costs.** There may be costs that the City will incur as the government entity with permitting authority for the Railyards Infrastructure and in administering this agreement that are not Eligible Costs under the Grant Agreement. The City shall notify DRV within a reasonable time after it identifies additional costs. DRV shall pay the City these additional costs within thirty business days after the City delivers a request for payment as provided in section 8, unless the parties jointly request from the State, and the State issues, a policy directive that the additional costs are Eligible Costs. If the State issues such a policy directive, DRV is not obligated to pay the costs covered by the policy directive, and the City may seek reimbursement for these costs as Eligible Costs (which will count toward the cap under section 4(b)).

6. **Railyards Infrastructure.** In addition to complying with the Grant Agreement, DRV shall design, construct, and dedicate the Railyards Infrastructure as follows:

(a) DRV shall obtain all permits and other governmental approvals required to construct the Railyards Infrastructure, including encroachment permits for all work performed within existing public rights-of-way.

(b) DRV shall enter into all contracts necessary to design and construct the Railyards Infrastructure, including contracting for labor compliance to ensure that DRV’s contractors comply with all City and state prevailing wage laws.

(c) DRV shall design, furnish, construct and install the Railyards Infrastructure in accordance with the City’s Standard Specifications For Public Construction approved by the City Council on November 10, 2020 (Resolution 2020-0354) and the Sacramento Railyards Specific Plan and Design Guidelines. The City shall cooperate with DRV’s efforts to gain approval of the plans and specifications for the Railyards Infrastructure by endeavoring to implement an informal expedited review process of such materials by the applicable departments within the City. The City makes no representation or warranty regarding the timing or approval the plans and specifications submitted by DRV for the Railyards Infrastructure.

(d) DRV shall comply with all City and state laws and regulations related to construction of public works projects, including competitive bidding, obtaining 100% payment and performance bonds, and prevailing wage laws.

(e) DRV shall include in each contract to construct Railyards Infrastructure within existing public rights-of-way provisions naming the City as an intended beneficiary of the contract and requiring the contractor to name the City as an obligee on the contractor’s performance bond.
(f) DRV shall require its contractors to name the City and the State as additional insureds on the contractors’ commercial general liability and automobile liability policies.

(g) DRV shall construct to completion, at no cost to the City, each Railyards Infrastructure Segment for which DRV awards a construction contract and issues a notice to proceed, regardless of whether there are sufficient Grant Funds to pay to complete construction.

(h) DRV shall perform all work on the Railyards Infrastructure at the places, with the materials, in the manner, and at the grades, as shown on the approved plans and specifications, and to the satisfaction of the City.

(i) DRV shall obtain notices of completion for all the Railyards Infrastructure for which DRV awarded construction contracts and issued notices to proceed by the later of (i) December 31, 2023, and (ii) the date to complete the Railyards Infrastructure stated in the Grant Agreement, as it may be amended from time to time. The City shall evaluate the seeking of an extension from the State of the date to complete the Railyards Infrastructure stated in the Grant Agreement upon the written request of DRV, which notice shall include a summary of the basis for such extension and any additional information requested by the City. Subject to the foregoing, the parties anticipate that such extension will be necessary and will reasonably cooperate with each other to gain approval from the State; provided that no representation or warranty is made by either party on obtaining such extension.

(j) DRV shall provide the City with irrevocable offers to dedicate the easements required for the Railyards Infrastructure Segments for which DRV awards construction contracts and issues notices to proceed using the form attached as exhibit L to the amended and restated Railyards development agreement between the City and DRV (City Agreement No. 2008-0150-1).

(k) Title to, and ownership of, the Railyards Infrastructure constructed under this agreement will vest absolutely in the City upon the City’s acceptance of the completed Railyards Infrastructure.

(l) Except as otherwise expressly provided in this agreement, and excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, DRV guarantees all work executed by or on behalf of DRV and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to the City as a part of the work pursuant to this agreement, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of each Railyards Infrastructure Segment by the City. DRV shall repair or replace any or all of the work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within the one-year guarantee period without expense or charge of any nature whatsoever to the City.

(m) Except as provided in section 6.(n), below, if DRV fails to comply with the conditions of the guarantee in section 6.(l), above, within ten days after being notified of the defect in writing, the
City will have the right, but not the obligation, to repair, or obtain the repair of, the defect and DRV shall pay to the City on demand all costs and expenses of the repair.

(n) If any defect in workmanship or materials covered by the guarantee in section 6.(l), above, results in a condition that constitutes an immediate hazard to the health or safety, or any property interest, or any person, the City may immediately repair, or cause to be repaired, either temporarily or permanently, as determined by the City in its sole discretion and judgement, the defect. DRV shall pay to the City on demand all costs and expense of the repair.

(o) Due to the ongoing construction at the Sacramento Railyards, City may issue a notice of completion for a Railyard Infrastructure Segment, but not accept that segment until City determines that it should be open to the public. As a result, DRV shall maintain and repair each Railyard Infrastructure Segment until City accepts it. DRV shall guarantee landscape maintenance for each completed Railyard Infrastructure Segment until the Railyards community facilities district takes over maintenance of the improvements, but DRV will not be obligated to guarantee maintenance for more than one year after City issues the notice of completion for the improvements.

(p) The City’s obligation to make final payment to DRV is conditioned on DRV, directly or through its contractors, providing security in a form and amount satisfactory to the City to secure performance of DRV’s warranty obligations under section 6(l) – (n).

(q) Notwithstanding any other provision of this agreement to the contrary, if DRV determines, through the bid process set forth in section 6.(d), that the prospective cost to construct one or more of the Railyard Infrastructure Segments would exceed the remaining Grant Funds (“Unfunded Railyard Infrastructure Segments”), DRV may provide the City with written notice of such conclusion, which includes a reasonably detailed cost analysis supporting such conclusion (“Excess Cost Notice”), in accordance with section 13. If the City and DRV are unable to agree upon alternative funding sources for the Unfunded Railyard Infrastructure Segments within thirty days following the City’s receipt of the Excess Cost Notice, the Unfunded Railyard Infrastructure Segments shall be removed from the definition of “Railyard Infrastructure” under this agreement and DRV shall have no further obligation to construct the Unfunded Railyard Infrastructure Segments pursuant to this agreement. Neither the City nor DRV makes any form of representation or warranty regarding the identification of or availability of any alternative funding sources described in the preceding sentence.

(r) DRV shall (i) award a construction contract and issue a notice to proceed for Railyards Infrastructure Segment 1a before DRV submits requests for payment under section 8 that total $15 million, and (ii) construct Railyards Infrastructure Segment 1a to completion before the closeout of the Grant Agreement. If DRV fails to comply with the requirements in (i) of this subsection, the City may suspend payments to DRV under section 9 until DRV does comply.

7. **Advance Account.** The City, in its sole discretion, may seek Advance payments of Grant Funds from the State. Upon the City’s request, DRV shall assist the City in preparing the Advance justifications
required to obtain Advance payments under the Grant Agreement. Under the terms of the Grant Agreement, the City must place all Advance payments into the Advance Account.

8. **Payment Requests.** This section provides the exclusive method by which DRV may submit requests for payment. DRV shall submit requests for payment as follows:

(a) DRV shall submit an initial Documented Invoice to the City that covers all costs that DRV has incurred from July 1, 2021, to date for which it will request payment. DRV shall submit this initial Documented Invoice no later than July 1, 2022.

(b) Beginning on the last business day of the month after DRV submits the initial Documented Invoice, and continuing on a monthly basis after that, DRV shall submit a Documented Invoice to the City that covers all costs that DRV has incurred since the previous Documented Invoice for which it will request payment.

(c) As part of the Documented Invoice covering the final payment to DRV under this agreement, DRV shall provide the City with copies of all records as provided in section 12(b), below.

(d) The City shall determine whether a request for payment submitted by DRV meets the requirements of a Documented Invoice no later than 15 days after DRV submits the request.

9. **Payments to DRV.** Except as provided in section 6(r), if the City determines that a request for payment submitted by DRV meets the requirements of a Documented Invoice, the City shall make payment to DRV within 30 days after such determination as follows, subject to the availability of Grant Funds described in section 9.(a) and 9.(b) below (as applicable):

(a) **Advance Account.** The City shall rely on the Advance Account as the first means of paying a Documented Invoice, subject to the following:

(i) If the Advance Account Balance is sufficient to pay the full amount of the Documented Invoice, the City shall make full payment to DRV using Grant Funds in the Advance Account.

(ii) If the Advance Account Balance is not sufficient to pay the full amount of the Documented Invoice, the City shall promptly notify DRV, and the following terms will apply:

(1) If the Advance Account Balance is greater than zero, the City shall use the Grant Funds in the Advance Account to make a partial payment to DRV in an amount equal to the Advance Account Balance. The City shall pay the balance of the amount due under the Documented Invoice after making the partial payment in accordance with subsections (a)(ii)(2) and (a)(iii)(3).
(2) If the Advance Account Balance is zero and the State has notified the City that it will make an additional Advance payment of Grant Funds, then once the State makes the Advance payment of Grant Funds, the City shall use the Grant Funds in the Advance Account to make payment to DRV in an amount equal to the lesser to the Advance Account Balance and the full amount of the Documented Invoice. If the Advance Account Balance is not sufficient to pay the full amount of the Documented Invoice, then the City shall continue to use the process in this subsection until the Documented Invoice is paid in full, except as provided in subsection (a)(ii)(3).

(3) If the Advance Account Balance is zero and the State has notified the City that it will not make any additional Advance payments of Grant Funds, then the City shall make payment to DRV using the reimbursement process in section 9.(b) below.

(b) State Reimbursement. The City shall rely on the reimbursement process in this subsection as the means of paying a Documented Invoice only if required under section 9.(a)(ii)(3), above. The reimbursement process includes the following steps in the following order:

(i) DRV shall provide the City with a Deposit.

(ii) The City shall pay the Documented Invoice using City funds.

(iii) The City shall seek reimbursement from the State for the payment of the paid Documented Invoices using City funds.

(iv) The City shall return the Deposit to DRV if the City receives reimbursement from the State for 100% of the payment; if the City receives reimbursement from the State for less than 100% of the payment, the City shall return the corresponding percentage of the Deposit to DRV.

(c) DRV has no recourse against City for the State’s decisions regarding reimbursements and the time in which it takes the City and State to issue payments or return Deposits. DRV acknowledges that the State may take a considerable time to make the final payment under the Grant Agreement.

10. Indemnity and Release. DRV shall indemnify, defend and hold harmless the City (including its officers, employees and agents) from and against any and liabilities, penalties, losses, damages, costs, expenses (including reasonable attorneys’ fees, whether for outside counsel or the City Attorney), causes of action, claims, or judgments (collectively, "Claims") arising by reason of any death, bodily injury, personal injury, property damage, losses related to independent contractors, products and equipment, explosion, collapse, underground hazards or violation of any law or regulation to the extent arising from any acts or omissions of DRV (including its officers, employees, contractors, subcontractors, and agents) in connection with the design and construction of the Railyards Infrastructure under this agreement, except to the extent arising from the sole active
negligence or willful misconduct of the City. DRV hereby waives and releases any and all Claims of
whatever sort or nature which may arise against City in connection with the City’s review and
inspection of the design and construction of the Railyards Infrastructure, except those resulting from
the sole active negligence or willful misconduct of the City.

DRV shall indemnify, defend and hold harmless the City from and against all demands and claims
filed by the State against the City due to DRV’s improper invoices or failure to comply with any term
of the Grant Agreement.

11. Default. The occurrence of any one or more of the following events will be a breach by DRV under
this agreement and the City will be entitled to cancel this agreement by providing DRV with notice as
provided in section 13:

(a) After delivery of a written notice of default that includes a cure period of at least 30 days,
and the expiration of the cure period, DRV’s failure to comply with the terms of this
agreement.

(b) After delivery of a written notice of default and expiration of any cure period stated in the
notice, DRV’s failure to comply with any material term of the Grant Agreement.

(c) DRV’s voluntary or involuntary filing of bankruptcy protection or appointment of a receiver.

12. Records and Audits. In addition to complying with all the terms of the Grant Agreement relating to
records and audits that apply to the City, DRV shall do the following:

(a) DRV shall make its records, employees, and property related to this agreement and the Grant
Agreement available to the City’s Accounting Manager (the “Accounting Manager”), the City
Auditor, and any independent auditor at all reasonable times so that the Accounting Manager,
City Auditor, or an independent auditor may inspect and copy such records to determine
whether DRV has complied with this agreement and the Grant Agreement. If the City requests,
DRV shall obtain and provide to the City, at DRV’s sole cost, an independent financial audit of
DRV’s use of the Grant Funds.

(b) All records related to this agreement and the Grant Agreement are public records for purposes
of the California Public Records Act. DRV shall, at no cost to the City, provide the City with copies
of all records related to this agreement and the Grant Agreement as part of its final payment
request.

(c) Upon demand by the City, given in accordance with section 13, DRV shall reimburse the City for
all Grant Funds that the City or State determines were not expended in accordance with this
agreement or the Grant Agreement, with reimbursement to be by check payable to the City and
delivered to the City at the address shown in section 13. Before the City makes a demand under
this subsection (c), the City shall provide DRV with notice of the City’s or State’s determination
about the expenditure of Grant Funds and 14 days to provide a written response, which DRV shall give in accordance with section 13.

13. Notices. Any notice, request, report, or demand under this agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this section 13 to the persons identified below or their successors. A mailed notice, application, request, report, or demand will be effective or will be considered to have been given on the third calendar day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice, application, request, report, or demand sent in any other manner will be effective or will be considered properly given when actually delivered. Any party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

If to the City:
City of Sacramento
Office of the City Manager
915 I Street, 5th Floor
Sacramento, California 95814
Attention: Assistant City Manager

If to DRV:
Downtown Railyard Venture, LLC
3140 Peacekeeper Way
McClellan, California 95652
Attention: Manager and General Counsel

14. Assignments. (a) Except as provided in section 14(b), a party may not assign or otherwise transfer this agreement or any interest in it without the other party’s prior written consent, which the other party may withhold in its sole discretion. An assignment or other transfer made contrary to this section 14 is void.

(b) DRV may, without the prior approval of the City, assign its right to receive payments under this agreement to any third-party lender, except that such an assignment will not (i) otherwise modify, effect, or alter DRV’s obligations under this agreement, or (ii) make any third-party lender an intended beneficiary of this agreement.

15. Binding effect. This agreement binds and inures to the benefit of the parties’ successors and assigns.

16. Time of Essence. Time is of the essence in performing this agreement.
17. **Severability.** If a court with jurisdiction rules that any nonmaterial part of this agreement is invalid, unenforceable, or contrary to law or public policy, then the rest of this agreement remains valid and fully enforceable.

18. **Waiver.** A party’s failure to insist on strict performance of this agreement or to exercise any right or remedy upon breach of this agreement will not constitute a waiver of the performance, right, or remedy. A party’s waiver of another party’s breach of any provision in this agreement is not a continuing waiver or a waiver of any later breach of the same or any other provision. A waiver is binding only if set forth in a writing signed by the waiving party.

19. **Interpretation.** This agreement is to be interpreted and applied in accordance with California law, except that that the rule of interpretation in California Civil Code section 1654 will not apply. Exhibits 1 and 2 are part of this agreement.

20. **Attorneys’ fees.** The parties must bear their own costs and attorneys’ fees incurred in connection with this agreement.

21. **No Third-Party Beneficiaries.** This agreement is solely for the benefit of the City and DRV. It is not intended to benefit any third parties.

22. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.

23. **Counterparts.** The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.

24. **Electronic signatures.** The parties agree that this agreement may be electronically signed. The parties agree that the electronic signatures appearing on this agreement are the same as handwritten signatures for all purposes.

25. **Integration and modification.** This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. It supersedes all prior or contemporaneous agreements, representations, and negotiations—written, oral, express, or implied—and may be modified only by another written agreement signed by both parties.
CITY OF SACRAMENTO,
a Municipal Corporation

By: __________________________
Michael Jasso, Assistant City Manager
Howard Chan, City Manager

Date: _________________________

ATTEST:

______________________________
Assistant City Clerk

APPROVED AS TO FORM:

______________________________
Senior Deputy City Attorney

DOWNTOWN RAILYARD VENTURE, LLC,
a Delaware limited liability company

By: LDK RAILYARD, LLC, a California limited liability company
Its: Manager

By: LDK VENTURES, LLC, a California limited liability company
Its: Member

By: [Signature] [Jun 14, 2022 12:14 HST]
Name: Larry D. Kelley, Jr.
Title: Manager

Date: ________________

Jun 14, 2022
Exhibit 1
February 17, 2022

Marco Gonzalez
Railyards Development Project Manager
City of Sacramento, Economic Development
915 I Street, 3rd Floor
Sacramento, CA 95814

Re: Project Name: Sacramento Railyards
   Program Name: General Fund
   Specified Grants
   Project Number: SG-34-013
   Contract Number: C5054071

Dear Marco Gonzalez:

Enclosed for your files is a copy of the fully executed contract and contract provisions for the above referenced project. Refer to your procedural guide for grant process information. Please remember that you must comply with all applicable state and federal laws and regulations including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and the laws and codes pertaining to individuals with disabilities.

If you have any questions, please contact me at (619) 627-0918 or email me at Mary.Baum@parks.ca.gov.

Sincerely,

Mary Baum
Project Officer

Enclosure(s)
State of California - Natural Resources Agency  
Department of Parks and Recreation  
GRANT CONTRACT  
General Fund  
Specified Grants  

GRANTEE  
City of Sacramento  

GRANT PERFORMANCE PERIOD is from  
July 01, 2021 through June 30, 2024  

CONTRACT PERFORMANCE PERIOD is from  
July 01, 2021 through June 30, 2024  

The GRANTEE agrees to the terms and conditions of this Contract, and the State of California, acting through its Director of Parks and Recreation, pursuant to the State of California, agrees to fund the total State grant amount indicated below. The GRANTEE agrees to complete the GRANT SCOPE(s) as defined in the GRANT SCOPE /Cost Estimate Form of the application(s) filed with the State of California.

Total State grant amount not to exceed  
$30,000,000.00  

The General and Special Provisions attached are made a part of and incorporated into the Contract.

City of Sacramento  
GRANTEE  
By  
Michael Jasso  

STATE OF CALIFORNIA  
DEPARTMENT OF PARKS AND RECREATION  

By  
Cristelle Fazeli  

Address  
915 I Street, Sacramento, CA 95814  

Title  
City Manager, Assistant City Manager  

Date  
2/8/2022  

Date  
2/17/2022  

CERTIFICATION OF FUNDING  
(For State Use Only)  

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I. RECITALS

This CONTRACT is entered into between the California Department of Parks and Recreation (hereinafter referred to as "GRANTOR," "DEPARTMENT" or "STATE") and City of Sacramento (hereinafter referred to as "GRANTEE").

The DEPARTMENT hereby grants to GRANTEE a sum (also referred to as "GRANT MONIES") not to exceed $30,000,000, subject to the terms and conditions of this AGREEMENT and the 2021/22 California State Budget, Chapter 21, statutes of 2021, Item number – 3790-101-0001 (appropriation chapter and budget item number hereinafter referred to as "SPECIFIED GRANT"). These funds shall be used for completion of the GRANT SCOPE(S).

The Grant Performance Period is from July 01, 2021 to June 30, 2024.

II. GENERAL PROVISIONS

A. Definitions

As used in this CONTRACT, the following words shall have the following meanings:

1. The term "APPLICATION" means the individual project APPLICATION packet for a project pursuant to the enabling legislation and/or grant program PROCEDURAL GUIDE requirements.

2. The term "CONTRACT PERFORMANCE PERIOD" means the duration of time during which this CONTRACT is in effect.

3. The term "DEPARTMENT" or "STATE" means the California Department of Parks and Recreation.

4. The term "DEVELOPMENT" means capital improvements to real property by means of, but not limited to, construction, expansion, and/or renovation, of permanent or fixed features of the property.

5. The term "GRANTEE" means the party described as the GRANTEE in Section I of this AGREEMENT.

6. The term "GRANT PERFORMANCE PERIOD" means the period of time during which eligible costs may be incurred by the GRANTEE and paid for by the DEPARTMENT, as specified in the fully executed CONTRACT.

7. The term "GRANT PROJECT" means all real estate, leases, subleases, buildings, and other property acquired or developed with GRANT monies.
8. The term "GRANT SCOPE" means the items listed in the GRANT SCOPE/Cost Estimate Form found in each of the APPLICATIONS submitted pursuant to this grant.

9. The term "PROCEDURAL GUIDE" means the document identified as the "Procedural Guide for Sacramento Railyards Specified Grant." The PROCEDURAL GUIDE provides the procedures and policies controlling the administration of the grant.

B. Project Execution

1. Subject to the availability of GRANT MONIES, the STATE hereby grants to the GRANTEE a sum of money not to exceed the amount stated in Section I of this CONTRACT, in consideration of, and on condition that, the sum be expended in carrying out the purposes as set forth in the scope described in the enabling legislation and referenced in the APPLICATION, Section I of this CONTRACT, and under the terms and conditions set forth in this CONTRACT.

   The GRANTEE shall assume any obligation to furnish any additional funds that may be necessary to complete the GRANT SCOPE(S).

   During the CONTRACT PERFORMANCE PERIOD, the GRANTEE agrees to submit any proposed change or alteration from the original GRANT SCOPE(S) in writing to the STATE for prior approval. This applies to any and all proposed changes that will occur after STATE has approved the APPLICATION. Changes in the GRANT SCOPE(S) must first be approved in writing by the STATE.

2. The GRANTEE shall complete the GRANT SCOPE(S) in accordance with the time of the Performance Period set forth in Section I of this CONTRACT, and under the terms and conditions of this contract.

3. The GRANTEE shall comply with the California Environmental Quality Act (Public Resources Code, Section 21000, et seq., Title 14, California Code of Regulations, Section 15000 et seq.).

4. The GRANTEE shall comply with all applicable current laws and regulations affecting DEVELOPMENT projects, including, but not limited to, legal requirements for construction contracts, building codes, health and safety codes, and laws and codes pertaining to individuals with disabilities, including but not limited to the Americans With Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and the California Unruh Act (California Civil Code §51 et seq.)

C. Project Costs

1. GRANTEE agrees to abide by the PROCEDURAL GUIDE.

2. GRANTEE acknowledges that STATE may make reasonable changes to its procedures as set forth in the PROCEDURAL GUIDE. If STATE makes any changes to its procedures and guidelines, STATE agrees to notify GRANTEE within a reasonable time.
D. Project Administration

1. If GRANT MONIES are advanced for DEVELOPMENT projects, the advanced funds shall be placed in an interest bearing account until expended. Interest earned on the advanced funds shall be used on the project as approved by the STATE. If grant monies are advanced and not expended, the unused portion of the grant and any interest earned shall be returned to the STATE within 60 days after project completion or end of the GRANT PERFORMANCE PERIOD, whichever is earlier.

2. During the GRANT PERFORMANCE PERIOD, the GRANTEE shall submit written project status reports within 30 calendar days after the STATE has made a specific request. All such project status reports shall be signed and certified as complete and accurate by the authorized representative of the GRANTEE. In any event, the GRANTEE shall provide the STATE a report showing total final project expenditures within 60 days of project completion or the end of the GRANT PERFORMANCE PERIOD, whichever is earlier. The GRANT PERFORMANCE PERIOD is identified in Section I of this CONTRACT.

3. The GRANTEE shall make property or facilities acquired and/or developed pursuant to this contract available for inspection upon request by the STATE.

E. Project Termination

1. Project Termination refers to the non-completion of a GRANT SCOPE. Any grant funds that have not been expended by the GRANTEE shall revert to the STATE.

2. The GRANTEE may unilaterally rescind this contract at any time prior to the commencement of the project. The commencement of the project means the date of the letter notifying GRANTEE of the award or when the funds are appropriated, whichever is later. After project commencement, this contract may be rescinded, modified or amended only by mutual CONTRACT in writing between the GRANTEE and the STATE, unless the provisions of this contract provide that mutual CONTRACT is not required.

3. Failure by the GRANTEE to comply with the terms of the (a) PROCEDURAL GUIDE, (b) this CONTRACT or any other grant contracts, specified or general, that GRANTEE has entered into with STATE or any other department, agency, commission or other subdivision of California State government, may be cause for suspension of all obligations of the STATE unless the STATE determines that such failure was due to no fault of the GRANTEE. In such case, STATE may reimburse GRANTEE for eligible costs properly incurred in performance of this CONTRACT despite non-performance of the GRANTEE. To qualify for such reimbursement, GRANTEE agrees to mitigate its losses to the best of its ability.

4. Any breach of any term, provision, obligation or requirement of this CONTRACT by the GRANTEE shall be a default of this CONTRACT. In the case of any default by GRANTEE, STATE shall be entitled to all remedies available under law and equity, including but not limited to: a) Specific Performance; b) Return of all GRANT
MONIES; c) Payment to the STATE of the fair market value of the project property or the actual sales price, whichever is higher; and d) Payment to the STATE of the costs of enforcement of this CONTRACT, including but not limited to court and arbitration costs, fees, expenses of litigation, and reasonable attorney fees.

5. The GRANTEE and the STATE agree that if the GRANT SCOPE includes DEVELOPMENT, final payment may not be made until the work described in the GRANT SCOPE is complete and the GRANT PROJECT is open to the public.

F. Budget Contingency Clause

If funding for any fiscal year is reduced or deleted by the budget act for purposes of this program, the STATE shall have the option to either cancel this contract with no liability occurring to the STATE, or offer a CONTRACT amendment to GRANTEE to reflect the reduced grant amount. This Paragraph shall not require the mutual CONTRACT as addressed in Paragraph E, subsection 2, of this CONTRACT.

G. Hold Harmless

1. The GRANTEE shall waive all claims and recourse against the STATE including the right to contribution for loss or damage to persons or property arising from, growing out of or in any way connected with or incident to this CONTRACT except claims arising from the concurrent or sole negligence of the STATE, its officers, agents, and employees.

2. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, damages, costs, expenses or liability costs arising out of the ACQUISITION, DEVELOPMENT, construction, operation or maintenance of the property described as the project which claims, demands or causes of action arise under California Government Code Section 895.2 or otherwise except for liability arising out of the concurrent or sole negligence of the STATE, its officers, agents, or employees.

3. The GRANTEE agrees that in the event the STATE is named as codefendant under the provisions of California Government Code Section 895 et seq., the GRANTEE shall notify the STATE of such fact and shall represent the STATE in the legal action unless the STATE undertakes to represent itself as codefendant in such legal action in which event the GRANTEE agrees to pay the STATE’s litigation costs, expenses, and reasonable attorney fees.

4. The GRANTEE and the STATE agree that in the event of judgment entered against the STATE and the GRANTEE because of the concurrent negligence of the STATE and the GRANTEE, their officers, agents, or employees, an apportionment of liability to pay such judgment shall be made by a court of competent jurisdiction. Neither party shall request a jury apportionment.
5. The GRANTEE shall indemnify, hold harmless and defend the STATE, its officers, agents and employees against any and all claims, demands, costs, expenses or liability costs arising out of legal actions pursuant to items to which the GRANTEE has certified. The GRANTEE acknowledges that it is solely responsible for compliance with items to which it has certified.

H. Financial Records

1. The GRANTEE shall maintain satisfactory financial accounts, documents, including loan documents, and all other records for the project and shall make them available to the STATE for auditing at reasonable times. The GRANTEE also agrees to retain such financial accounts, documents and records for five years following project termination or final payment.

2. The GRANTEE shall keep such records as the STATE shall prescribe, including records which fully disclose (a) the disposition of the proceeds of STATE funding assistance, (b) the total cost of the project in connection with such assistance that is given or used, (c) the amount, source and nature of that portion of the project cost supplied by other sources, and (d) any other such records that will facilitate an effective audit.

3. The GRANTEE agrees that the STATE shall have the right to inspect and make copies of any books, records or reports pertaining to this contract or matters related thereto during regular office hours. The GRANTEE shall maintain and make available for inspection by the STATE accurate records of all of its costs, disbursements and receipts with respect to its activities under this CONTRACT, and shall provide copies of all such records to STATE in its certified status reports upon request by the STATE. Such accounts, documents, and records shall be retained by the GRANTEE for at least five years following final payment.

4. The GRANTEE shall use a generally accepted accounting system.
I. Use of Facilities

1. The GRANTEE agrees that the GRANTEE shall operate and maintain, and retain full control of the property acquired or developed with the GRANT MONIES, for the duration of the CONTRACT PERFORMANCE PERIOD.

2. The GRANTEE agrees that, during the CONTRACT PERFORMANCE PERIOD, the GRANTEE shall use the property acquired or developed with grant funds under this CONTRACT only for the purposes of this grant and no other use, sale, assignment, transfer, mortgage, or other disposition or change of the control or use of the property or of any interest in the property to one not consistent with the grant purpose shall be permitted except as authorized by the DEPARTMENT and the property shall be replaced with property of equivalent value and usefulness as determined by the STATE.

3. The property acquired or developed may be transferred or assigned to another entity only if the successor entity assumes the obligations imposed under this CONTRACT and only with the prior approval of STATE.

4. Any real Property (including any portion of it or any interest in it, including any leases) may not be used as security or collateral for any debt, loan or mitigation, without the prior written approval of the STATE, provided that such approval shall not be unreasonably withheld as long as the purposes for which the grant was awarded are maintained. Any such permission that is granted does not make STATE a guarantor or a surety for any debt, loan or mitigation, nor does it waive STATE’s rights to enforce performance under the CONTRACT.

5. All real property (including any portion or interest in it, including any leases), or rights thereto, acquired with GRANT MONIES shall be subject to an appropriate form of restrictive title, rights, or covenants approved by the STATE. If the project property is taken by use of eminent domain, GRANTEE shall reimburse STATE an amount at least equal to the amount of grant monies received from STATE or the pro-rated full market value of the real property, including improvements, at the time of sale, whichever is higher.

6. If eminent domain proceedings are initiated against GRANTEE, GRANTEE shall notify STATE within 10 days of receiving the complaint.

J. Nondiscrimination

1. The GRANTEE shall not discriminate against any person on the basis of sex, race, color, national origin, age, religion, ancestry, sexual orientation, or disability in the use of any property or facility developed pursuant to this CONTRACT.
2. The GRANTEE shall not discriminate against any person on the basis of residence except to the extent that reasonable differences in admission or other fees may be maintained on the basis of residence and pursuant to law.

3. All facilities shall be open to members of the public generally, except as noted under the special provisions of this project contract or under provisions of the enabling legislation and/or grant program.

K. Severability

If any provision of this CONTRACT or the application thereof is held invalid, that invalidity shall not affect other provisions or applications of the CONTRACT which can be given effect without the invalid provision or application, and to this end the provisions of this CONTRACT are severable.

L. Liability

1. STATE assumes no responsibility for assuring the safety or standards of construction, site improvements or programs related to the GRANT SCOPE. The STATE’S rights under this CONTRACT to review, inspect and approve the GRANT SCOPE and any final plans of implementation shall not give rise to any warranty or representation that the GRANT SCOPE and any plans or improvements are free from hazards or defects.

2. GRANTEE shall ensure that any contractor hired has adequate liability insurance, performance bond, or other security necessary to protect the GRANTEE interest and the STATE’s interest against poor workmanship, fraud, or other potential loss associated with the completion of the GRANT PROJECT.

M. Assignability

Without the written consent of the STATE, the GRANTEE’S interest in and control of any portion of the GRANT PROJECT and responsibilities under this CONTRACT shall not be assignable or transferable by the GRANTEE either in whole or in part.

N. Use of Grant Monies

GRANTEE shall not use any grant funds (including any portion thereof) for the purpose of making any leverage loan, pledge, promissory note or similar financial device or transaction, without: 1) the prior written approval of the STATE; and 2) any financial or legal interests created by any such leverage loan, pledge, promissory note or similar financial device or transaction in the project property shall be completely subordinated to this CONTRACT through a Subordination Agreement provided and approved by the STATE, signed by all parties involved in the transaction, and recorded in the County Records against the fee title of the project property.
O. Section Headings

The headings and captions of the various sections of this CONTRACT have been inserted only for the purpose of convenience and are not a part of this CONTRACT and shall not be deemed in any manner to modify, explain, or restrict any of the provisions of this CONTRACT.

P. Waiver

Any failure by a party to enforce its rights under this CONTRACT, in the event of a breach or default, shall not be construed as a waiver of said rights; and the waiver of any breach or default under this CONTRACT shall not be construed as a waiver of any subsequent breach.

City of Sacramento
GRANTEE

By: Michael Jasso
Signature of Authorized Representative
Title: Assistant City Manager, Michael Jasso
Date: 2/8/2022

STATE OF CALIFORNIA
DEPARTMENT OF PARKS AND RECREATION

By: Cristelle Fazeli
Signature of Authorized Representative
Title: Supervisor
Date: 2/17/2022
Exhibit 2
**LEGEND**

<table>
<thead>
<tr>
<th>Grant Designation</th>
<th>Infrastructure Segment</th>
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<tbody>
<tr>
<td>1a</td>
<td>Storm Drain Line (SOTA) North (Camille to Tracks)</td>
</tr>
<tr>
<td>1b</td>
<td>Camille (Telegrapher) - Bercut to 5th</td>
</tr>
<tr>
<td>1c</td>
<td>Camille (Telegrapher) - 5th to 6th</td>
</tr>
<tr>
<td>1d</td>
<td>Stevens - 5th to 6th</td>
</tr>
<tr>
<td>2a</td>
<td>6th Street - RYB to North B</td>
</tr>
<tr>
<td>2b</td>
<td>Summit Tunnel - Storm Drain 5th to 6th</td>
</tr>
<tr>
<td>2d</td>
<td>Summit Tunnel - 6th to 7th</td>
</tr>
<tr>
<td>2e</td>
<td>Judah Street Sewer</td>
</tr>
<tr>
<td></td>
<td>(Downstream connection of Summit Tunnel Sewer to Railyards Blvd)</td>
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<tr>
<td>3b</td>
<td>7th Street Widening - Tracks to NB</td>
</tr>
<tr>
<td>3c</td>
<td>7th Street - East RT Station</td>
</tr>
<tr>
<td>3d</td>
<td>7th Street - Flood Wall</td>
</tr>
<tr>
<td>3e</td>
<td>NB Street - 6th to 7th</td>
</tr>
</tbody>
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SACRAMENTO RAILYARDS
STATE GRANT PROJECT
3/8/22