

RESOLUTION NO. 2024-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, APPROVING A REIMBURSEMENT AGREEMENT WITH THE CALIFORNIA HIGH SPEED RAIL AUTHORITY FOR REIMBURSEMENT OF COSTS RELATED TO THE REVIEW OF TECHNICAL STUDIES, LEGAL DOCUMENTS, AND DESIGN PLANS FOR THE HIGH SPEED RAIL PROJECT

WHEREAS, reimbursement funds are available from the California High Speed Rail Authority for staffing and other resource costs for City's that provide services during the planning phase of the California High Speed Rail project; and

WHEREAS, the City of Merced estimates that the total cost to provide these services is \$300,000.00; and

WHEREAS, the California High Speed Rail Authority administers the funds through reimbursement agreements as shown in Exhibit "A," attached hereto and incorporated herein by this reference; and

WHEREAS, The City of Merced desires to receive funds from the California High Speed Rail Authority for work related to the planning phase of this project.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED
DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS
FOLLOWS:**

SECTION 1. The Reimbursement Agreement by and between the California High Speed Rail Authority and the City of Merced, attached hereto as Exhibit "A," is approved.

SECTION 2. The City Manager is authorized to execute the Agreement and approve amendments, in a form approved by the City Attorney, to extend the term and/or increase the amount of funds to be reimbursed to the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 2024, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:
MATTHEW SERRATTO, MAYOR

Mayor

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

BY: Craig Cornwell 12-22-2023
City Attorney Date

SCO ID:

STATE OF CALIFORNIA - DEPARTMENT OF GENERAL SERVICES

STANDARD AGREEMENT

STD 213 (Rev. 04/2020)

AGREEMENT NUMBER	PURCHASING AUTHORITY NUMBER (If Applicable)
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1. This Agreement is entered into between the Contracting Agency and the Contractor named below:

CONTRACTING AGENCY NAME

CONTRACTOR NAME

2. The term of this Agreement is:

START DATE

THROUGH END DATE

3. The maximum amount of this Agreement is:

4. The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of the Agreement.

Exhibits	Title	Pages
Exhibit A	Scope of Work	
Exhibit B	Budget Detail and Payment Provisions	
Exhibit C *	General Terms and Conditions	

Items shown with an asterisk (), are hereby incorporated by reference and made part of this agreement as if attached hereto.*

These documents can be viewed at <https://www.dgs.ca.gov/OLS/Resources>

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES HERETO.

CONTRACTOR

CONTRACTOR NAME (if other than an individual, state whether a corporation, partnership, etc.)

CONTRACTOR BUSINESS ADDRESS	CITY	STATE	ZIP
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PRINTED NAME OF PERSON SIGNING	TITLE
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CONTRACTOR AUTHORIZED SIGNATURE	DATE SIGNED
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STATE OF CALIFORNIA

CONTRACTING AGENCY NAME

CONTRACTING AGENCY ADDRESS	CITY	STATE	ZIP
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PRINTED NAME OF PERSON SIGNING	TITLE
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CONTRACTING AGENCY AUTHORIZED SIGNATURE	DATE SIGNED
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CALIFORNIA DEPARTMENT OF GENERAL SERVICES APPROVAL	EXEMPTION (If Applicable)
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**EXHIBIT A
SCOPE OF WORK**

1. BACKGROUND AND PURPOSE

- A. The California High-Speed Rail Authority (“**Authority**”) is responsible for the planning, design, construction, and operation of the first high-speed rail system in the nation (“**Project**”). The California high-speed rail system will connect the mega-regions of the state, contribute to economic development and a cleaner environment, create jobs, and preserve agricultural and protected lands. When it is completed, it will run from San Francisco to the Los Angeles basin in under three hours at speeds of over 200 miles per hour.
- B. The Authority may enter into agreements with private and public entities for design, construction, and operation of high-speed rail trains, including all tasks and segments thereof pursuant to California Public Utilities Code section 185036. Additional authority for the Authority to enter into this Agreement (“**Agreement**”) includes, but is not limited to, California Public Utilities Code sections 185500 et seq.
- C. This Agreement is between the Authority, an agency of the State of California, and the City of Merced (“**Contractor**”), a California Corporation, herein after referred to collectively as Parties.
- D. To facilitate the construction of the high-speed rail system (“**System**”), specifically the eventual design and possible relocation of certain facilities that conflict with the System, the Authority requires the Contractor to perform the work as described in Section 2 of this Exhibit A (“**Work**”).
- E. All inquiries regarding this Agreement will be directed to the project representatives identified below as “**Contract Manager**”:

AUTHORITY	CONTRACTOR
Contract Manager: Paul Swearingen	Contract Manager: Frank Quintero
Address: 355 South Grand Ave, Suite 2050 Los Angeles, CA 90071	Address: 678 W 18 th Street Merced, CA 95360
Phone: (916)908-1284	Phone: (209) 564-0582 or (209) 385-6826
Fax:	Fax:
Email: paul.swearingen@hsr.ca.gov	Email: Quinterof@Cityofmerced.org

The Contractor’s Contract Manager is responsible for the day-to-day project status, decisions, and communications with the Authority’s Contract Manager. The Contractor may change its Contract Manager by giving written notice to the Authority, but the Authority reserves the right to approve any substitution of the Contract Manager. This approval shall not be unreasonably withheld.

The Authority may change its Contract Manager at any time without an amendment, by giving written notice to the Contractor.

**EXHIBIT A
 SCOPE OF WORK**

2. SCOPE OF WORK, TASKS, DELIVERABLES, AND SCHEDULE

- A. The Authority shall provide the Contractor with a Limited Notice to Proceed (“LNTP”) outlining the scope of Work to commence under this Agreement, as well as a proposed alignment, segment number(s), and any other information about the Project segment(s) to assist the Contractor in the investigation of its existing facilities for conflicts with the Project’s proposed alignment. No Work shall be initiated by the Contractor before execution of the Agreement and issuance of a LNTP.
- B. The Contractor will be reimbursed for its actual, reasonable, and necessary expenses in its performance of the following activities, as specifically set forth in one or more LNTPs:

	Task	Description	Deliverable	Schedule
1.	Technical/Engineering Review Support	Time to review technical/preliminary engineering documents.	Comments on technical/preliminary engineering documents.	Through expiration or termination of the Agreement. All comments to be provided within fourteen (14) calendar days of request.*
2.	Technical/Engineering Review Support	Time for identifying all existing conflicts.	Report(s) identifying all conflicts and suggesting mitigations.	Through expiration or termination of the Agreement. All reports and suggestions to be provided within fourteen (14) calendar days of request.*
3.	Technical/Engineering Review Support	Time for coordination with the Authority and its representatives.	Participate in coordination activities, attend meetings as requested in writing by the Authority, prepare responses, and approve meeting minutes.	Through expiration or termination of the Agreement. All responses to be provided within fourteen (14) calendar days of request.*
4.	Right-of-way Support	Time for property rights research.	Supply most current property rights documentation, including prior rights and updates to those rights.	Through expiration or termination of the Agreement. Prior rights documentation to be provided within thirty (30) calendar days of request and of any change to those rights.*

* Unless otherwise specified in an applicable Master Agreement or Utility Agreement.

EXHIBIT A
SCOPE OF WORK

- C. Except as specifically set forth above, the Contractor acknowledges the following costs shall not be reimbursed: (i) reviewing and/or providing comments on environmental documents (including, but not limited to, environmental impact statements and environmental impact reports); (ii) attending meetings, unless requested in writing by the Authority; (iii) acquisition of real property, which shall be handled through the property acquisition process; (iv) attorney fees; (v) coordination and construction activities; (vi) construction, materials, or inspection; and (vii) travel expenses.

3. SCHEDULE OF SERVICES

- A. Performance of the Work described in Section 2 shall commence upon receipt of an LNTP. Unless terminated as provided herein, the Work shall continue until the earlier of (i) completion of the Work; or (ii) expiration of the term.

The remainder of this page is intentionally left blank.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

1. BUDGET CONTINGENCY CLAUSE

- A. It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years, if applicable covered under this Agreement does not appropriate sufficient funds for the Work identified in Exhibit A. In this event, the Authority shall have no liability to pay any funds whatsoever to the Contractor or to furnish any other considerations under this Agreement and the Contractor shall not be obligated to perform any provision of this Agreement.
- B. After execution or commencement of this Agreement, if funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this Project, the Authority shall have the option to either: 1) cancel this Agreement with no further liability occurring to the Authority; or 2) offer an amendment to the Agreement to reflect the reduced amount.
- C. This Agreement is valid and enforceable only if sufficient funds are made available to the State of California by the United States Government or the California State Legislature for the purpose of this Authority program. In addition, this Agreement is subject to any additional restrictions, limitations, conditions, or any statute enacted by the United States of America or State Legislature during the Agreement term, that affects the provisions, terms, or funding of this Agreement in any manner.

2. COMPENSATION, INVOICING, AND PAYMENT

- A. The maximum amount of this Agreement is an estimate, and the actual amount of Work requested by the Authority may be less. No payment shall be made to the Contractor in advance of services rendered.
- B. The Contractor shall not be entitled to payment for Work performed prior to receipt of a LNTP from the Authority's Contract Manager. No Work shall begin before that time.
- C. Invoices shall include:
 - a. The Agreement number;
 - b. Date prepared;
 - c. Billing period;
 - d. Actual hours worked (by individual name and position);
 - e. A narrative of the Work performed, including the associated LNTP number;
 - f. Actual costs for salaries (by position), fringe, and overhead; and
 - g. All allowable subcontractor or vendor direct costs, which shall be supported by receipts.

The Contractor shall only be paid for claimed costs or expenses that are within the scope of work, included in a LNTP, and (1) identified on the Attachment 1 – Rates and Budget Details; or (2) approved in advance by the Authority pursuant to the requirements of Section 2, Subsection I of this Exhibit B.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- D. For services satisfactorily rendered in accordance with the terms of this Agreement and approved by the Contract Manager, and upon receipt and approval of the invoices, the Authority shall reimburse the Contractor for actual costs incurred for (i) direct labor, (ii) fringe and overhead rates, and (iii) other direct costs, limited to approved subcontractors and vendors. Any approved subcontractor and vendors shall be subject to the same reimbursement provisions.
- E. The Contractor shall provide one (1) electronic original copy of the invoice for payment. Invoices shall be submitted no more than monthly in arrears and no later than thirty (30) calendar days after completion of each billing period or upon completion of a task to:

Financial Office
California High-Speed Rail Authority
770 L Street, Suite 620 MS 3
Sacramento, CA 95814
accountspayable@hsr.ca.gov

AND

The Contractor shall also electronically submit one (1) additional courtesy copy of the invoice and supporting documentation to the Authority's Contract Manager or designee at the email address identified in Exhibit A.

- F. The date of invoice delivery shall be the date the Authority receives the electronic original copy to the Financial Office at the email address listed in Section 2, Subsection E of this Exhibit B.
- G. Payments shall be made to the Contractor for undisputed invoices. If the Authority's Financial Office disputes an invoice, it shall notify the Contractor within fifteen (15) working days of receipt of the invoice and pay undisputed portions of the invoice in accordance with the Agreement. The invoice may be disputed if additional evidence is required to determine the invoice's validity, deliverables for the billing period have not been received and approved, the invoice contains inaccuracies, or the invoice does not otherwise comply with the terms of this Agreement. If a disputed invoice, or any disputed portion thereof, is resolved, the Contractor shall issue a new invoice for the resolved amount and the Authority shall pay the invoice in accordance with the terms of this Agreement.
- H. The Contractor's staff will be reimbursed at actual costs not to exceed the hourly rates set forth in Attachment 1 – Rates and Budget Details or as later augmented pursuant to Exhibit B, Section 2, Subsection I. However, the Contractor acknowledges that "staff time" does not include time for attorneys, subcontractors, and vendors. Subcontractor and vendor costs shall only be reimbursed if necessary to augment Contractor's staff. Subcontractor and vendor rates must be included in Attachment 1 – Rates and Budget Details or approved by the Authority's Contract Manager pursuant to Section 2, Subsection I of this Exhibit B.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

- I. Positions and/or rates listed in Attachment 1 – Rates and Budget Details, may be changed without an amendment to the Agreement. A request for change must be in writing, on the Contractor’s letterhead, and (1) identify the position and rate that is requested to be added, changed, or removed; (2) specify the reason for any position or rate change; and (3) provide documentation supporting any position or rate change, such as a Board of Directors’ Resolution, a new union contract, or equivalent official document. There shall be no change in the positions or rates without written approval by the Authority’s Contract Manager.
- J. The Contractor shall retain adequate back-up documentation to verify all Contractor services performed and associated expenses invoiced for payment under this Agreement for audit purposes, which shall be made available to the Authority upon request. The Contractor shall include appropriate provisions in each of its subcontracts to secure adequate backup documentation to verify services performed by all subcontractors and associated expenses invoiced for payment under this Agreement.

3. COST PRINCIPLES

- A. The Contractor agrees to comply with the federal cost principles applicable to the FRA Grant Cooperative Agreement No. FR-HSR-0118012, as amended (FY 10 Grant) and/or the amended FRA Grant Cooperative Agreement No. FR-HSR-0009-10-01-06 (America Recovery and Reinvestment Act [ARRA] Grant) and/or any future FRA, United States Department of Transportation (U.S. DOT), or other federal agency Grant/Cooperative Agreement requirements. These provisions include but are not limited to, the applicable provisions of 2 C.F.R. Part 200 (including § 200.101), the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and DOT’s implementing regulations at 2 C.F.R Part 1201. If applicable, this compliance also includes the OMB Circular A-87, as amended, Cost Principles for State and Local Governments and 48 C.F.R, Part 31 Contract Cost Principles and Procedures.
- B. Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable are subject to repayment by the Contractor to the Authority.
- C. Any subcontract/subagreement equal to or greater than \$25,000 entered into as a result of this Agreement, shall contain all the provisions of this clause.

The remainder of this page is intentionally left blank.

EXHIBIT B
BUDGET DETAIL AND PAYMENT PROVISIONS

4. CONTINGENT FEE

- A. The Contractor warrants, by execution of this Agreement, that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, with the exception of bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the Authority has the right to annul this Agreement without liability, to pay only for the value of the Work actually performed, or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

The remainder of this page is intentionally left blank.

EXHIBIT C
GENERAL TERMS AND CONDITIONS AND CONTRACTOR CERTIFICATIONS

GENERAL TERMS AND CONDITIONS

GTC 04/2017

Under the California High-Speed Rail Authority's standardized agreement process, a hardcopy of Exhibit C, GTC 04/2017, is not included in the Agreement but is incorporated herein by reference. As indicated on the STD 213, a copy of Exhibit C can be found at the [Department of General Services State Contract Language Page](#).

If you do not have internet access, or otherwise cannot access the GTC 04/2017, please contact the Contracts and Procurement Branch below to receive a copy:

Contracts and Procurement Branch
(916) 324-1541
770 L Street, Suite 620 MS3
Sacramento, California 95814
contracts@hsr.ca.gov

The remainder of this page is intentionally left blank.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

1. TERMINATION

- A. This Agreement may be terminated at any time by mutual agreement of the Parties in writing.
- B. Termination for Convenience. The Authority reserves the right to terminate this Agreement upon thirty (30) calendar days' written notice to the Contractor, if terminated for the convenience of the Authority. In the event of such termination for convenience, the Authority shall pay the Contractor for all Work performed prior to the effective date of termination pursuant to the payment provisions of this Agreement.
- C. Termination for Cause. In accordance with Section 7 of Exhibit C: GTC 04/2017, the Authority reserves the right to terminate this Agreement immediately in the event of breach or failure of performance by the Contractor.
- D. Notice of Termination for Subcontractors, Suppliers, and Service Providers. The Contractor shall notify any subcontractor and service or supply vendor providing services under this Agreement of the early termination date of this Agreement. Failure to notify any subcontractor and service or supply vendor shall result in the Contractor being liable for any termination costs incurred by any subcontractor and service or supply vendor for Work performed under this Agreement, except those specifically agreed to by the Authority in writing.
- E. Contractor Claims After Early Termination. The Contractor agrees to release the Authority from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by the Contractor of payment for costs actually incurred for Work performed prior to receipt of the notice of termination and actual costs incurred as a result of termination.

2. PURCHASE OF EQUIPMENT

- A. No equipment is approved for purchase.

3. SUBCONTRACTING

- A. Unless specifically noted otherwise, any subcontract/subagreement entered into as a result of this Agreement that is equal to or greater than \$25,000 shall contain all the applicable provisions stipulated in this Agreement.
- B. This Agreement does not create a contractual relationship between the Authority and any approved subcontractor. A subcontract shall not relieve the Contractor of performance of its duties hereunder. The Contractor shall be responsible for any and all acts and omissions of its subcontractors and their employees.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

- C. The Contractor's obligation to pay its subcontractors is independent of the Authority's obligation to pay the Contractor. The Contractor shall pay its subcontractor within ten (10) working days from receipt of each payment made to the Contractor by the Authority.

4. PUBLIC RECORDS; CONFLICTS OF INTEREST

- A. This Agreement shall not limit or infringe on either Party's duty to comply with the California Public Records Act, Government Code section 6250 et seq.
- B. The Contractor and its employees, and all its subcontractors and employees, shall comply with the Authority's Conflict of Interest Code and Organizational Conflict of Interest Policy.
- C. Any subcontract equal to or greater than \$25,000, entered into as a result of this Agreement, shall contain all of the provisions of this clause.

5. NONDISCRIMINATION COMPLIANCE

- A. During the performance of this Agreement, the Contractor and its subcontractors shall not deny the Agreement's benefits to any person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. The Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code § 12900 et seq.), the regulations promulgated thereunder (Cal. Code Regs., tit. 2, § 11000 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code §§ 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.
- C. The Contractor shall permit access by representatives of the Department of Fair Employment and Housing to the awarding state agency upon reasonable notice at any time during normal business hours, but in no case upon less than twenty-four (24) hours' notice, to its books, records, accounts, other sources of information, and facilities as said Department or Agency shall require to ascertain compliance with this clause.
- D. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

- E. The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts entered into as a result of this Agreement.

6. STOP WORK

- A. The Authority's Contract Manager may, at any time, by written notice to the Contractor, require the Contractor to stop all or any part of the Work in this Agreement.
- B. Upon receipt of such stop Work order, the Contractor shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to Work stopped.
- C. The Contractor shall resume the stopped Work only upon receipt of written instruction from the Authority's Chief Administrative Officer canceling the stop Work order. An equitable adjustment may be made by the Authority based on a written request by the Contractor for such equitable adjustment. Such adjustment request must be made by the Contractor within thirty (30) days from the date of receipt of the stop Work notice.

7. HEADINGS AND RULES OF CONSTRUCTION

- A. The headings appearing in this contract have been inserted for the purpose of convenience and ready reference and do not define, limit, or extend the scope or intent of the clauses.

8. NON-WAIVER

- A. Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of the Agreement at any time shall not affect the validity of this Agreement in whole or in part and shall not in any way limit or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision, any course of dealing or custom of the trade notwithstanding. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Furthermore, if the Parties make and implement any interpretation of the Agreement without documenting such interpretation by an instrument in writing signed by both Parties, such interpretation and implementation thereof will not be binding in the event of any future disputes. The consent by one Party to any act by the other Party requiring such consent shall not be deemed to render unnecessary the obtaining of consent to any subsequent act for which consent is required, regardless of whether similar to the act for which consent is given.
- B. No act, delay, or omission done, suffered, or permitted by one Party or its agents shall be deemed to waive, exhaust, or impair any right, remedy, or power of such Party under any Agreement, or to relieve the other Party from the full performance of its obligations under the Agreement. No remedy available in this Agreement is intended to be exclusive of any other remedy, and every remedy shall be cumulative and shall be in addition to every other remedy provided therein or available at law or in equity. No custom or practice between the Parties in the administration of the terms of the Agreement shall be construed to waive or lessen the right of a Party to insist upon performance by the other Party in strict compliance with the terms of the Agreement.

**EXHIBIT D
SPECIAL TERMS AND CONDITIONS**

- C. No waiver of any term, covenant, or condition of the Agreement shall be valid unless in writing and signed by the Party providing the waiver.

9. ENTIRE AGREEMENT

- A. This Agreement, with its Exhibits and Attachments stated on the STD 213 represents the entire and integrated agreement between the Authority and the Contractor, and supersedes and replaces all prior and contemporaneous understandings, agreements, arrangements, negotiations, and representations, whether written or oral, with respect to the subject matter hereof.

10. COUNTERPARTS

- A. This Agreement may be executed in any number of counterparts and each such counterpart shall be deemed to be an original instrument, all of which together shall constitute one and the same instrument. Counterparts of this Agreement may be exchanged via email or other electronic means, and any email or electronic exchange of a Party's signature, or any digital signature of a Party, which complies with the Uniform Electronic Transactions Act, shall be deemed to be an original signature for all purposes.

11. EXECUTIVE ORDER N-6-22 – RUSSIA SANCTIONS

- A. On March 4, 2022, Governor Gavin Newsom issued Executive Order [N-6-22](#) (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. By submitting a bid or proposal, Contractor represents that it is not a target of Economic Sanctions. Should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for rejection of the Contractor's bid/proposal any time prior to contract execution, or, if determined after contract execution, shall be grounds for termination by the State.

The remainder of this page is intentionally left blank.

EXHIBIT E

SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS

All terms in Exhibit E must be included in all subcontracts and lower-tier subcontracts regardless of amount expended, unless otherwise noted.

1. FEDERAL REQUIREMENTS

- A. The Contractor understands that the Authority has received Federal funding from the Federal Rail Administration (FRA) and may receive additional Federal funding from the FRA, U.S. DOT and/or other Federal agencies, and acknowledges that it is required to comply with all applicable federal laws, regulations, policies, and related administrative practices, whether or not they are specifically referenced herein. The Contractor acknowledges that federal laws, regulations, policies, and related administrative practices may change and that such changed requirements will apply. The Contractor shall ensure compliance by its Subcontractors and include appropriate flow down provisions in each of its lower-tier Subcontracts entered into as a result of this Agreement as required by applicable federal laws, regulations, policies, and related administrative practices, whether or not specifically referenced herein.
- B. Notwithstanding anything to the contrary contained in this Agreement, all FRA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests, which would cause the Authority to be in violation of FRA requirements.
- C. References to the amended Federal Railroad Administration Grant Cooperative Agreement No. FR-HSR-0009-10-01-06 (ARRA Grant) provisions herein are also deemed to apply in principle to the FRA Grant Cooperative Agreement No. FR-HSR-0118012, as amended (FY 10 Grant) and/or any future FRA, U.S. DOT, or other Federal agency Grant/Cooperative Agreement requirements, including but not limited to reporting requirements and related obligations. The Contractor acknowledges that it is required to comply with, and adhere to, all requisite Federal requirements from the FRA, UD DOT and/or other Federal agencies that apply, or will apply.

2. COMPLIANCE WITH FEDERAL REQUIREMENTS

The Contractor's failure to comply with federal requirements shall constitute a breach of this Agreement.

3. FEDERAL LOBBYING ACTIVITIES CERTIFICATION

The Contractor certifies, to the best of its knowledge and belief, that:

- A. No state or federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any state or Federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a member of the Legislature or Congress in connection with the awarding of any State or Federal agreement, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal agreement, grant, loan, or cooperative agreement.

EXHIBIT E

SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS

- B. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this agreement, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- C. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. section 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.
- D. The Contractor also agrees that by signing this document, it shall require that the language of this certification be included in all lower-tier Subcontracts, which exceed \$100,000, and that all such Subcontractors shall certify and disclose accordingly.

4. DEBARMENT AND SUSPENSION

- A. This Agreement is a covered transaction for purposes of 2 C.F.R. 1200. As such, the Contractor is required to comply with applicable provisions of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. section 6101 note, and U.S. Department of Transportation (DOT) regulations, "Non-procurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopt and supplement the provisions of U.S. OMB "Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement)," 2 C.F.R. Part 180.
- B. To the extent required by the aforementioned U.S. DOT regulations and U.S. OMB guidance, the Contractor must verify that each subcontractor is not excluded or disqualified in accordance with said regulations by reviewing the "Excluded Parties Listing System" at <http://www.sam.gov/portal/public/SAM/>. The Contractor shall obtain appropriate certifications from each such subcontractor and provide such certifications to the Authority. The Contractor's signature affixed herein shall also constitute a certification under penalty of perjury under the laws of the State of California that the Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager:
 - a. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency;
 - b. Has not had one or more public transactions (federal, state, and/or local) terminated within the preceding three (3) years for cause or default;

EXHIBIT E

SUPPLEMENTAL TERMS AND CONDITIONS FOR CONTRACTS USING FEDERAL FUNDS

- c. Has not been convicted within the preceding three (3) years of any of the offenses listed in Title 2 C.F.R. section 180.800, subdivision (a), or had a civil judgment rendered against it for one of those offenses within that time period; and
 - d. Is not presently indicted for or otherwise criminally or civilly charged by a government entity (federal, state, and/or local) with commission of any of the offenses listed in Title 2 C.F.R. section 180.800.
- C. Should the Contractor or any subcontractor become excluded or disqualified as defined in this Section during the life of the Agreement, the Contractor shall immediately inform the Authority of this exclusion or disqualification. The Contractor shall include a term or condition in the contract documents for each lower-tier covered transaction, assuring that, to the extent required by the U.S. DOT regulations and U.S. OMB guidance, each subcontractor will review the "Excluded Parties Listing System," will obtain certifications from lower-tier subcontractors, and will include a similar term or condition in each of its lower-tier covered transactions.

5. SITE VISITS

The Contractor acknowledges that the FRA, through its authorized representatives, has the right, at all reasonable times, to make site visits to review Project accomplishments and for other reasons. If any site visit is made by the FRA on the premises of the Contractor or any of its subcontractors under this Agreement, the Contractor shall provide, and shall require its subcontractors to provide, all reasonable facilities and assistance for the safety and convenience of the FRA representatives in the performance of their duties. All site visits and evaluations shall be performed in such a manner as will not unduly delay Work being conducted by the Contractor or subcontractor.

6. SAFETY OVERSIGHT

- A. To the extent applicable, the Contractor shall comply with any federal regulations, laws, or policies and other guidance that the FRA or U.S. DOT may issue pertaining to safety oversight in general, and in the performance of this Agreement, in particular.

7. ENVIRONMENTAL PROTECTION

The Contractor and any subcontractor under this Agreement shall comply with all applicable environmental requirements and regulations, including any amendments, as follows:

- A. Clean Air. The Contractor shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. sections 7401 et seq. The Contractor shall report each violation to the Authority, and acknowledges that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate Environmental Protection Agency (EPA) Regional Office.

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- B. Clean Water. The Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. sections 1251 et seq. The Contractor shall report each violation to the Authority, and acknowledges that the Authority shall, in turn, report each violation as required to assure notification to the FRA and the appropriate EPA Regional Office.
- C. Energy Conservation. The Contractor will comply with the mandatory standards and policies relating to energy efficiency contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. section 6421 et seq.
- D. Agreement Not to Use Violating Facilities. The Contractor agrees not to use any facility that is listed on the List of Violating Facilities maintained by the EPA to perform Work hereunder. The Contractor shall promptly notify the Authority if the Contractor or any subcontractor receives any communication from the EPA indicating that any facility that will be used to perform Work pursuant to this Agreement is under consideration to be listed on the EPA's List of Violating Facilities; provided, however, that the Contractor's duty of notification hereunder shall extend only to those communications of which it is aware or should reasonably have been aware.
- E. Environmental Protection. The Contractor shall comply with all applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. section 4321 et seq.
- F. Incorporation of Provisions. The Contractor shall include the above provisions 7.A through 7.F in every subcontract hereunder exceeding \$50,000, financed in whole or in part with federal assistance provided by the FRA.

8. CIVIL RIGHTS

- A. The following requirements apply to this Agreement:
- B. Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. section 2000d; section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. section 6102; section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. section 12132; and 49 U.S.C. section 306, the Contractor will not discriminate against any individual because of race, color, religion, national origin, sex, age or disability in any activities leading up to or in performance of this Agreement. In addition, the Contractor will comply with applicable federal implementing regulations and other implementing requirements that the FRA may issue.
- C. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this Agreement:
 - a. Race, Color, Religion, National Origin, or Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. section 2000e, the Contractor will comply with all applicable equal opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment

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Opportunity, Department of Labor,” including 41 C.F.R 60 et seq. (which implements Executive Order No. 11246, “Equal Employment Opportunity,” as amended by Executive Order No. 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, national origin, sex, or age. Such action shall include the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor will comply with any implementing requirements the FRA may issue.

- b. Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. section 623, the Contractor will refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor will comply with any implementing requirements the FRA may issue.
 - c. Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. section 12112, the Contractor will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R Part 1630, pertaining to employment of persons with disabilities. Further, in accordance with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. section 794, the Contractor will comply with the requirements of U.S. DOT, “Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance,” 49 C.F.R. Part 27, pertaining to persons with disabilities. In addition, the Contractor will comply with any implementing requirements the FRA may issue.
- C. The Contractor also agrees not to discriminate on the basis of drug abuse, in accordance with the Drug Abuse Office and Treatment Act of 1972 (Pub.L. No. 92-255), as amended, or alcohol abuse, in accordance with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (Pub.L. No. 91-616), as amended, and to comply with sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. § 290 dd), as amended, relating to confidentiality of alcohol and drug abuse patient records. In addition, the Contractor will comply with applicable federal implementing regulations and other implementing requirements that the FRA may issue.
- D. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with federal assistance provided by the FRA, modified only if necessary to identify the affected parties.

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9. ARRA FUNDED PROJECT

- A. Funding for this Agreement has been provided through the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. No. 111-5). All contractors, including both prime and subcontractors, are subject to audit by appropriate federal or state entities. The state has the right to cancel, terminate, or suspend the Agreement if any contractor or subcontractor fails to comply with the reporting and operational requirements contained herein.

10. ENFORCEABILITY

- A. The Contractor agrees that if the Contractor or one of its subcontractors fails to comply with all applicable federal and State of California requirements governing the use of ARRA funds, the state may withhold or suspend, in whole or in part, funds awarded under the program, or recover misspent funds allowing an audit. This provision is in addition to all other remedies available to the state under all applicable state and federal laws.

11. PROHIBITION ON USE OF ARRA FUNDS

- A. The Contractor agrees in accordance with ARRA section 1604 that none of the funds made available under this Agreement may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

12. ACCESS AND INSPECTION OF RECORDS

- A. In accordance with ARRA sections 902, 1514, and 1515, the Contractor agrees that it shall permit the State of California, the United States Comptroller General, the United States Department of Transportation Secretary, or their representatives or the appropriate Inspector General appointed under sections 3 or 8G of the United States Inspector General Act of 1978, or his representative, to:
 - a. Access and reproduce any books, documents, papers and records of the Contractor that directly pertain to, and involve transactions relating to, this Agreement for the purposes of making audits, examinations, excerpts and transcriptions; and
 - b. Interview any officer or employee of the Contractor or any of its subcontractors regarding the activities funded with funds appropriated or otherwise made available by ARRA.
- B. Pursuant to 49 C.F.R. section 18.26, subdivision (i)(11), 49 C.F.R. section 19.26 or U.S. OMB Circular A-133 (whichever applicable), the Contractor will maintain all books, records, accounts, and reports required under this Agreement for a period of not less than three (3) years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case the Contractor will maintain same until the Authority, the FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims, or exceptions

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related thereto. The Contractor shall notify the Authority not less than six (6) months prior to disposal of any books, records, accounts and reports required under this Agreement.

- C. The Contractor will comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, Title 5 U.S.C. section 552, subdivision (a).

The Contractor shall include this provision in all lower-tier subcontracts.

13. WHISTLEBLOWER PROTECTION

The Contractor agrees that both it and its subcontractors shall comply with section 1553 of the ARRA, which prohibits all non-federal contractors, including the state, and all contractors of the state, from discharging, demoting, or otherwise discriminating against an employee for disclosures by the employee that the employee reasonably believes are evidence of:

- A. Gross mismanagement of a contract relating to ARRA funds;
- B. Gross waste of ARRA funds;
- C. A substantial and specific danger to the public health or safety related to the implementation or use of ARRA funds;
- D. An abuse of authority related to implementation or use of ARRA funds; or
- E. A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contractor) awarded or issued relating to ARRA funds.

The Contractor agrees that it and its subcontractors shall post notice of the rights and remedies available to employees under section 1553 of Title XV of Division A of the ARRA.

14. FRAUD AND FALSE CLAIMS ACT

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986 (6 C.F.R. Part 13), as amended, 31 U.S.C. section 3801 et seq., and the U.S. DOT regulations Program Fraud Civil Remedies (49 C.F.R. Part 31), apply to its actions pertaining to this Project. Upon execution of this Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or it causes to be made, pertaining to this Agreement or the FRA-assisted project for which Work is being performed under this Agreement. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 as cited above on the Contractor to the extent the federal government deems appropriate.

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- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the federal government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FRA, the federal government reserves the right to impose the penalties of 18 U.S.C. section 1001 or any other applicable law on the Contractor, to the extent the federal government deems appropriate.
- C. The Contractor agrees that it shall promptly notify the Authority and shall refer to an appropriate federal inspector general any credible evidence that a principal, employee, agent, subcontractor, or other person has committed a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving ARRA funds.
- D. The Contractor will include the above paragraphs in each subcontract financed in whole or in part with federal assistance provided by the FRA. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to the provisions.

15. REPORTING REQUIREMENTS

- A. The Contractor agrees, upon request by the Authority in writing, to provide the Authority with the following information:
- B. The total amount of funds received by the Contractor during the time period defined in the Authority's request;
- C. The amount of funds actually expended or obligated during the time period requested;
- D. A detailed list of all projects or activities for which funds were expended or obligated, including:
 - a. The name of the project or activity;
 - b. A description of the project activity;
 - c. An evaluation of the completion status of the project or activity; and
 - d. An estimate of the number of jobs created and/or retained by the project or activity.
- E. For any contracts or subcontracts equal to or greater than \$25,000:
 - a. The name of the entity receiving the contract;
 - b. The amount of the contract;
 - c. The transaction type;
 - d. The North American Industry Classification System (NAICS) code or Catalog of Federal Domestic Assistance (CFDA) number, if known;

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- e. The location of the entity receiving the contract;
 - f. The primary location of the contract, including city, state, congressional district, and county;
 - g. The Data Universal Numbering System (DUNS) number, or name and zip code for the entity headquarters, if known;
 - h. A unique identifier of the entity receiving the contract and the parent entity of the Contractor, should the entity be owned by another; and
 - i. The names and total compensation of the five most highly compensated officers of the company if received:
 - 1. 80% or more of its annual gross revenues in federal awards;
 - 2. \$25,000,000 or more in annual gross revenue from federal awards; and
 - 3. If the public does not have access to information about the compensation of senior executives through periodic reports filed under section 13, subdivision (a) or section 15, subdivision (d) of the Securities Exchange Act of 1934, or section 6104 of Internal Revenue Code of 1986.
 - j. Any other information reasonably requested by the State of California or required by state or federal law or regulation.
- F. Standard data elements and federal instruction for use in complying with reporting requirements under section 1512 of the ARRA are pending review by the federal government and were published in the Federal Register on April 1, 2009 (74 Fed. Reg. 14824), and are to be provided online at www.FederalRegister.gov. The additional requirements will be added to this Agreement by amendment.

16. REPRINTS OF PUBLICATIONS

- A. Whenever an employee of a Contractor-related entity writes an article regarding the Project, or otherwise resulting from Work under this Agreement, that is published in a scientific, technical, or professional journal or publication, the Contractor shall ensure that the Authority is sent two reprints of the publication, clearly referenced with the appropriate identifying information.
- B. An acknowledgment of FRA support and a disclaimer must appear in any publication, whether copyrighted or not, based on or developed under the Agreement, in the following terms:
 - a. “This material is based upon work supported by the Federal Railroad Administration under a grant/cooperative agreement FR-HSR-0009-10-01-05, dated December 5, 2012. Any opinions, findings, and conclusions or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the Federal Railroad

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Administration and/or U.S. DOT.”

17. LABOR PROVISIONS

- A. 49 U.S.C. 24405, subdivision (b) provides that any person conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided through this Agreement shall be considered a “rail carrier,” as defined by 49 U.S.C. 10102, subdivision (5), for the purposes of Title 49, U.S.C., and any other statute that adopts that definition or in which that definition applies, including the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.), the Railway Labor Act (43 U.S.C. § 151 et seq.), and the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.). To the extent required by 49 U.S.C. 24405, subdivision (b) and other laws referenced above, the Contractor shall reflect these provisions in its agreements funded in whole or in part by this Agreement with entities operating rail services over such rail infrastructure.

18. LABOR PROTECTIVE ARRANGEMENTS

- A. The Contractor will comply with the applicable protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), 45 U.S.C. 836, with respect to employees affected by actions taken in connection with the Project. The Contractor will also include the applicable protective arrangements established by the U.S. DOL under 45 U.S.C. 836 in its arrangements with entities operating rail services over rail infrastructure constructed as part of this Agreement.

19. PROHIBITION OF TRAFFICKING IN PERSONS

- A. The Contractor agrees that during the term of this Agreement, in accordance with section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. section 7104(g)), the Contractor and its employees, and its Subcontractors (of any tier), and all of their employees, shall not engage in severe forms of trafficking in persons, procure a commercial sex act, or use forced labor in the performance of this Agreement.

This provision must be included in all Subcontract agreements.

20. PROHIBITION OF TEXT MESSAGING WHILE DRIVING

- A. The Contractor agrees to adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers, including policies that bar text messaging while driving company-owned, leased, or rented vehicles or privately-owned vehicles when performing work under this Agreement. See Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving,” Oct. 1, 2009 (available at <http://www.gpo.gov/fdsys/pkg/FR-2009-10-06/pdf/E9-24203.pdf>) and DOT 3902.10 “Text Messaging While Driving,” Dec. 30, 2009, as implemented by Financial Assistance Policy Letter (No. FAP-2019-01, Feb. 2, 2010, available at http://www.dot.gov/sites/dot.dev/files/docs/FAPL_2010-01.pdf).

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ATTACHMENT 1 - RATES AND BUDGET DETAILS

Position and Title	Labor Rate per Hour	Overhead Percentage	Fringe Percentage	Fully Loaded Rate per Hour

Consultants	Labor Rate per Hour	Overhead Percentage	Fringe Percentage	Fully Loaded Rate per Hour

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