

**ATTACHMENT TO
SPECIAL PROVISIONS SP-1**

**ATTACHMENT “B”
FEDERAL CLAUSES**

**ATTACHMENT “B”
TABLE OF CONTENTS**

B1.0 General..... 1

B1.1 NO GOVERNMENT OBLIGATION TO THIRD PARTIES..... 1

B1.2 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS 1

B1.3 ACCESS TO RECORDS AND REPORTS 1

B1.4 FEDERAL CHANGES 2

B1.5 CIVIL RIGHTS REQUIREMENTS..... 2

B1.6 DISADVANTAGED BUSINESS ENTERPRISES (DBE)..... 3

B1.7 GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) 4

B1.8 LOBBYING..... 5

B1.9 CLEAN AIR REQUIREMENTS 5

B1.10 CLEAN WATER REQUIREMENTS 5

B1.11 FLY AMERICA REQUIREMENTS..... 5

B1.12 BUY AMERICA REQUIREMENTS..... 5

B1.13 CARGO PREFERENCE REQUIREMENTS 6

B1.14 ENERGY CONSERVATION REQUIREMENTS 6

B1.15 RECYCLED PRODUCTS 6

B1.16 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS 6

B1.17 CONTRACT WORK HOURS AND SAFETY STANDARDS 11

B1.18 ADA ACCESS 12

B1.19 TEXT MESSAGING WHILE DRIVING 12

B1.20 SEISMIC SAFETY 13

B1.21 PRIVACY ACT..... 13

B1.22 TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS 13

B1.23 DRUG AND ALCOHOL TESTING..... 14

B1.24 INCORPORATION OF FTA TERMS 14

B2.0 EXHIBIT B1.6.....B-15

EXHIBIT B1.6(a).....B-16,17

SPECIAL PROVISIONS
ATTACHMENT B
FEDERAL CLAUSES

B1.0 GENERAL

The Design-Builder understands that Federal laws, regulations, policies, and related administrative practices applicable to this Contract on the date signed may be modified from time to time. The Design-Builder agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if the City issues a written determination otherwise. To achieve compliance with changing Federal requirements, the Design-Builder agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

B1.1 No Government Obligation to Third Parties

(a) The City and the Design-Builder acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, the Design-Builder, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

(b) The Design-Builder agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B1.2 Program Fraud and False or Fraudulent Statements and Related Acts

(a) The Design-Builder acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and 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 the underlying Contract, the Design-Builder certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Design-Builder 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 on the Design-Builder to the extent the Federal Government deems appropriate.

(b) The Design-Builder 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 FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the Design-Builder, to the extent the Federal Government deems appropriate.

(c) The Design-Builder shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

B1.3 Access to Records and Reports

Honolulu High-Capacity Transit Corridor Project

(a) The Design-Builder shall provide the City, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Design-Builder which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Design-Builder shall, pursuant to 49 C.F.R. 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the Design-Builder's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The Design-Builder shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The Design-Builder shall maintain all books, records, accounts and reports required under this Contract for a period of not less than three years after the date of termination or expiration of this Contract, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Design-Builder shall maintain the same until the City, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

B1.4 Federal Changes

The Design-Builder shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the FTA, as they may be amended or promulgated from time to time during the term of this Contract. The Design-Builder's failure to so comply shall constitute a material breach of this Contract.

B1.5 Civil Rights Requirements

The Design-Builder shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Design-Builder shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Design-Builder shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Contract:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Design-Builder shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement 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), 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 Design-Builder shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin,

Honolulu High-Capacity Transit Corridor Project

sex, or age. Such action shall include, but not be limited to, 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 Design-Builder shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Design-Builder shall refrain from discrimination against present and prospective employees for reason of age. In addition, the Design-Builder shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Design-Builder shall comply with the requirements of the 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. In addition, the Design-Builder shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The Design-Builder shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

B1.6 Disadvantaged Business Enterprises (DBE)

(a) DBE Assurances. The Design-Builder and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Design-Builder shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Design-Builder to carry out these requirements is a material breach of this Contract, which may result in termination of this Contract or such other remedy, as the City deems appropriate.

The above paragraph shall be included in each subcontract the Design-Builder signs with a subcontractor.

(b) Prompt Payment. The Design-Builder shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by the City. Full and prompt payment by the Design-Builder to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. The City has established a race neutral annual overall DBE goal of 3.83% for fiscal year 2010. Although the City has not established a DBE contract goal for this contract, DBE firms and small businesses shall have an equal opportunity to participate in the Contract. The Design-Builder shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 CFR 26.51(b) as practicable to afford opportunities to DBEs to participate in the Contract. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and

Honolulu High-Capacity Transit Corridor Project

(3) A DBE firm must be certified by the Hawai'i State Department of Transportation before its participation is reportable under paragraph (d) below;

(d) Reports to the City. The Design-Builder shall report its DBE participation obtained through race-neutral means throughout the period of performance. The Design-Builder shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the Design-Builder to DBE subcontractors. Payments to the Design-Builder will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in EXHIBIT B1.6. The FINAL REPORT OF DBE PARTICIPATION and INSTRUCTIONS FOR COMPLETING THE FINAL REPORT OF DBE PARTICIPATION shall be submitted with the final invoice or request for payment under this contract, as set forth in EXHIBIT B1.6a).

(e) Records. On request, the Design-Builder shall make available for inspection, and assure that its subcontractors make available for inspection:

- (1) Records of prompt payments made in accordance with Section 1.6(b), above;
- (2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Contract;
- (3) The dollar amount and nature of work of each DBE subcontractor;
- (4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and
- (5) Other related materials and information.

(f) The Design-Builder shall promptly notify the City, whenever a DBE subcontractor performing work related to this Contract is terminated or fails to complete its work. The Design-Builder shall also promptly notify the City of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

B1.7 Government-Wide Debarment and Suspension (Nonprocurement)

(a) This Contract is a covered transaction for purposes of 2 CFR 180.220(b) and 2 CFR 1200.220. As such, the Design-Builder is required to verify that none of the Design-Build Team, its principals, as defined at 2 CFR 180.995, or affiliates, as defined at 2 CFR 180.905, are excluded or disqualified as defined at 2 CFR 180.940 and 2 CFR 180.935.

(b) The Design-Builder is required to comply with 2 CFR 180 Subpart C, as supplemented by 2 CFR 1200 Subpart C, and must include the requirement to comply with 2 CFR 180, Subpart C, as supplemented by 2 CFR 1200 Subpart C, in any lower tier covered transaction equal to or exceeding \$25,000 it enters into. By signing the Contract, the Design-Builder certifies as follows:

The certification in this clause is a material representation of fact relied upon by the City and County of Honolulu (the City). If it is later determined that the Design-Builder knowingly rendered an erroneous certification, in addition to remedies available to the City, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Design-Builder agrees to comply with the requirements of 2 CFR 180, Subpart C, as supplemented by 2 CFR Subpart C, throughout the Contract period. The

Honolulu High-Capacity Transit Corridor Project

Design-Builder further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

B1.8 Lobbying

The "CERTIFICATION REGARDING LOBBYING," as executed by the Design-Builder in Exhibit 8 of the Proposal is incorporated herein by reference. The Design-Builder and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the City.

B1.9 Clean Air Requirements

(a) The Design-Builder shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Design-Builder shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The Design-Builder shall include the above clause in each subcontract exceeding \$100,000.

B1.10 Clean Water Requirements

(a) The Design-Builder shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The Design-Builder shall report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The Design-Builder shall include the above clause in each subcontract exceeding \$100,000.

B1.11 Fly America Requirements

(a) The Design-Builder shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that the City and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Design-Builder shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(b) The Design-Builder shall include the requirements of this section in all subcontracts that may involve international air transportation.

B1.12 Buy America Requirements

The Design-Builder shall comply with 49 U.S.C. § 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7.

Honolulu High-Capacity Transit Corridor Project

B1.13 Cargo Preference Requirements

(a) The Design-Builder shall use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels.

(b) The Design-Builder shall furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, D.C. 20590 and to the City (through the Design-Builder in the case of a subcontractor’s bill-of-lading).

(c) The Design-Builder shall include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

B1.14 Energy Conservation Requirements

(a) The Design-Builder shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The Design-Builder shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

B1.15 Recycled Products

The Design-Builder agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

B1.16 Davis-Bacon and Copeland Anti-Kickback Acts

The following requirements of the Davis-Bacon and Copeland Anti-Kickback Acts are added to Section 4.10 of the GCDB:

(a) Minimum wages

(1) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Design-Builder and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions

Honolulu High-Capacity Transit Corridor Project

made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Design-Builder and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (i) Except with respect to helpers as defined as 29 C.F.R. 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (ii) The classification is utilized in the area by the construction industry; and
- (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2)(B) If the Design-Builder and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(2)(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(2)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (2)(A)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

- (3) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or

Honolulu High-Capacity Transit Corridor Project

mechanics includes a fringe benefit which is not expressed as an hourly rate, the Design-Builder shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Design-Builder does not make payments to a trustee or other third person, the Design-Builder may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Design-Builder to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Design-Builder under this contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Design-Builder or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the City may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c) Payrolls and basic records.

(1) Payrolls and basic records relating thereto shall be maintained by the Design-Builder during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Design-Builder shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2)(A) The Design-Builder shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the City for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5. This information may be

Honolulu High-Capacity Transit Corridor Project

submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Design-Builder is responsible for the submission of copies of payrolls by all subcontractors.

(2)(B) Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Design-Builder or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 C.F.R. part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(2)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(2)(D) The falsification of any of the above certifications may subject the Design-Builder or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(3) The Design-Builder or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Design-Builder or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Design-Builder, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

(d) Apprentices and trainees.

(1) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an

Honolulu High-Capacity Transit Corridor Project

apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Design-Builder as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

Where a Design-Builder is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Design-Builder will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) Trainees - Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the Design-Builder will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) Equal employment opportunity – The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

(e) Compliance with Copeland Act requirements – The Design-Builder shall comply with the

Honolulu High-Capacity Transit Corridor Project

requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(f) Subcontracts – The Design-Builder or subcontractor shall insert in any subcontracts the clauses contained in 29 C.F.R. 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Design-Builder shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

(g) Contract termination: debarment – A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a Design-Builder and a subcontractor as provided in 29 C.F.R. 5.12.

(h) Compliance with Davis-Bacon and Related Act requirements – All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) Disputes concerning labor standards – Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Design-Builder (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(j) Certification of eligibility

(1) By entering into this contract, the Design-Builder certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

B1.17 Contract Work Hours and Safety Standards

(a) Overtime requirements – No Design-Builder or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) Violation: liability for unpaid wages; liquidated damages – In the event of any violation of the clause set forth in paragraph (a) of this section the Design-Builder and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Design-Builder and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without

Honolulu High-Capacity Transit Corridor Project

payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) Withholding for unpaid wages and liquidated damages – The City shall upon its own action or upon written request of an authorized representative of the U.S. DOL withhold or cause to be withheld, from any moneys payable on account of work performed by the Design-Builder or subcontractor under any such contract or any other Federal contract with the same Design-Builder, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Design-Builder, such sums as may be determined to be necessary to satisfy any liabilities of such Design-Builder or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) Subcontracts – The Design-Builder or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (d) of this section and also a clause requiring the subs to include these clauses in any lower tier subcontracts. The Design-Builder shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

B1.18 ADA Access

The Design-Builder shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the Design-Builder agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

B1.19 Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and DOT Order 3902.10, Text Messaging While December 30, 2009, the Design-Builder is encouraged to comply with the terms of the following:

(a) Definitions:

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The Design-Builder is encouraged to:

(1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:

(A) Design-Builder-owned or Design-Builder-rented vehicles or City-owned, leased or rented vehicles;

Honolulu High-Capacity Transit Corridor Project

(B) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or

(C) Any vehicle, on or off duty, and using an employer supplied electronic device.

(2) Conduct workplace safety initiatives in a manner commensurate with the Design-Builder's size, such as:

(A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(B) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.

(3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision and include this Special Provision in each sub-agreement, lease, and sub-contract at each tier financed with Federal assistance provided by the Federal Government.

B1.20 Seismic Safety

The Design-Builder shall ensure that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the U.S. Department of Transportation's Seismic Safety Regulations (49 C.F.R. Part 41) and shall certify to compliance to the extent required by the regulation. The Design-Builder also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

B1.21 Privacy Act

Contracts Involving Federal Privacy Act Requirements - The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

B1.22 Transit Employee Protective Agreements

Honolulu High-Capacity Transit Corridor Project

The Design-Builder shall comply with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. § 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. The Design-Builder shall include the applicable requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA.

B1.23 Drug and Alcohol Testing

The Design-Builder agrees to establish and implement a drug and alcohol testing program that complies with 49 C.F.R. Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Hawaii, or the City, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 C.F.R. Parts 653 and 654 and review the testing process. The Design-Builder agrees further to certify annually its compliance with Parts 653 and 654 and to submit the Management Information System (MIS) reports as directed by the City. To certify compliance, the Design-Builder shall use the following “Annual Substance Abuse Certification” until otherwise directed by the City:

Annual Substance Abuse Certification

As required by FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” at 49 C.F.R. Part 655, subpart I, the [insert Design-Builder’s name] certifies that it has established and implemented an alcohol misuse and anti-drug program, and has complied with or will comply with all applicable requirements of FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 C.F.R. Part 655.

B1.24 Incorporation of FTA Terms

This Attachment B of these Special Provisions includes, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Design-Builder shall not perform any act, fail to perform any act, or refuse to comply with any City requests which would cause the City to be in violation of the FTA terms and conditions.

(a) The Design-Builder shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.