DAVIS-BACON ACT

Davis-Bacon Requirements

7. MINIMUM STATE WAGE RATES

A. The minimum wage rates to be used for this Contract are shown on the schedules on the following pages. The rates shown on these schedules are the minimum to be paid during the life of the Contract. It is, therefore, the responsibility of bidders to inform themselves as to the local labor conditions such as the length of the work day and work week, overtime compensation, health and welfare contributions, labor supply and prospective changes or adjustment of rates. In the event of conflict between the schedules for any classifications, the greater amount for the classification shall prevail as the minimum wage rate.

B. If the Contractor finds it necessary during the progress of the work to secure a minimum wage rate for some additional classification, he shall make a request for such additional classification to the Authority, who in turn will obtain the additional classification and corresponding minimum wage rate from the State Department of Labor and Industries and advise the Contractor of the same. These additional classifications and minimum wage rates are then to be considered a part of the Contract, and the Contractor shall have no claim for additional compensation because of the additional classification and minimum wage rates.

C. Where a question arises as to the classification in the schedule of the Department of Labor and Industries in which any employee is to be included, the decision is to be made by the State Department of Labor and Industries, through their duly authorized representative.

D. Within three days from the date of the first advertisement or call for bids, two or more employers of labor, or two or more members of a labor organization, or the awarding officer or official, or five or more residents of the town or towns where the public works are to be constructed, may appeal to the associate commissioners for a wage determination, or a classification of employment as made by the Commissioner, by serving on the Commissioner a written notice to that effect. Thereupon the Commissioner shall immediately cause the associate commissioners to hold a public hearing on the Commissioner's action appealed from. The associate commissioners shall render their decision not later than three (3) days after the closing of the hearing. The decision of a majority of the associate commissioners shall be final, and notice thereof shall be given forthwith to the awarding official or public body. (Section 27A, Chapter 149, General Laws, Commonwealth of Massachusetts).

E. Payments by employers to health and welfare plans under collective bargaining agreements or understandings between organized labor and employers shall be included for the purpose of establishing minimum wage rates as herein provided, (Section 26, Chapter 149, General Laws, Commonwealth of Massachusetts).

F. The aforesaid rates of wages in the schedule of wage rates shall include payments by employers to health and welfare plans as provided in the previous section, and such payments shall be considered as payments to persons under this section performing work as herein provided. Any employer engaged in the construction of such works who does not make payments to health and welfare plan where

such payments are included in said rates of wages shall pay the amount of said payments directly to each employee engaged in said construction. (Section 27, Chapter 149, General Laws, as amended).

G. The Contractor's attention is directed to further minimum wage provisions under Paragraph ___ of the Supplementary Conditions. In cases of conflict, the higher rate shall apply.

U. LABOR PROVISIONS.

1. Labor Provisions - Construction

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 rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the 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 Contractor 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 (a) (1) (iv) of 29 CFR Sec. 5.5; also, regular contributions 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. 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 CFR Sec. 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 classification and wage rates conformed under paragraph (a) (1) (ii) of 29 CFR Sec. 5.5 and the Davis-Bacon Poster (WH-132) shall be posted at all times by the Contractor 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) The Contracting Office shall require that any class of laborers or mechanics 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 Office shall approve an additional classification and wage rate and fringe benefits therefor, only when the following criteria have been met:

(a) The work to be performed by the classification requested is not performed by a classification in the wage determination: and

(b) The classification is utilized in the area by the construction industry: and

(c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(3) If the contractor 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 Administration of the Wage and hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 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 a 30 day period that additional time is necessary.

(4) 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.

(5) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraph (a) (1) (B) or (C) of 29 CFR Sec. 5.5 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.

(6) Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor 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.

(7) If the Contractor does not make payments to a trustee or other third person the Contractor 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 Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(8) (A) The contracting officer shall require that any class of laborers or mechanics 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 therefor only when the following criteria have been met:

(a) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(b) The classification is utilized in the area by the construction industry; and

(c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor 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, 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.

(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 with 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.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (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.

2. **Withholding**

DOT 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 Contractor 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 of advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor

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 Department of Transportation may, after written notice to the Contractor, sponsor, applicant, or owner, take such any further payment, advance, or guarantee of funds until such violations have ceased.

3. **Payrolls and Basic Records**

   a. Payrolls and basic records relating thereto shall be maintained by the Contractor 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 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 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 CFR Sec. 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 Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program has been communicated in writing to the labors or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices and 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.

   b. The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Transportation if the Department of Transportation is a party to the Contract, but if the Department of Transportation is not such a party, the Contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the Department of Transportation. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Sec. 5.5 (a) (3) (I) of regulations, 29 CFR Part 5. This information may be 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, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

   c. Each payroll submitted shall be accompanied by a "Statement of Compliance", signed by the Contractor 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:

(1) That the payroll for the payroll period contains the information required to be maintained under Sec. 5.5 (a) (3) (I) of regulations, 29 CFR Part 5 and that such information is correct and complete.

(2) 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 CFR Part 3.

(3) 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.

d. 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 29 CFR Sec. 5.5.

e. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

f. The Contractor or subcontractor shall make the records required under paragraph (a) (3) (I) of 29 CFR Sec. 5.5 available for inspection, copying, or transcription by authorized representatives of the Department of Transportation or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal Agency 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. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Sec. 5.12.

4. **Apprentices and Trainees - Apprentices**

a. 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 apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training, or with a State Apprenticeship and Training or a

State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an 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 Contractor as to the entire work force under the registered program. Any worker listed on the payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above shall not be paid less than the applicable wage determination for the work actually performed. In addition, any apprentice performing work on the job site in excess of the ration permitted under the registered program shall not be paid less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor 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 level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits, in accordance with the provisions of the apprentice program. If the apprentice 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 determines that a different practice prevails for the applicable apprentice classification, fringe benefits 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 Contractor 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.

b. **Trainees** Except as provided in 29 CFR Sec. 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, evidence 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's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provision of the trainees program. If the trainees 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's 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 not be paid 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 ration

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 Contractor 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.

c. **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 CFR Part 30.

5. **Compliance with Copeland Act Requirements**

The Contractor shall comply with the requirements of the 29 CFR Part 3, which are incorporated by reference.

6. **Subcontracts**

The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 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 prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. **Contract Termination: Debarment**

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. **Compliance with Davis-Bacon and Related Act Requirements**

All rulings and interpretations of the Davis-Bacon and related acts contained in 29 CFR Parts 1,3 and 5 are herein incorporated by reference in this contract.

9. **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 the Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting Agency, the U.S. Department of Labor, or the employees or their representatives.

10. **Certification of Eligibility**

By entering into this Contract, the Contractor 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 CFR Sec. 5.12 (a) (1).

a. 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 CFR Sec. 5.12(a) (1).

b. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S. C. Sec. 1001.

11. **Overtime Requirements**

No Contractor 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 work week in which he or she is employed on such work to work in excess of eight hours in any calendar day or in excess of forty hours in such work week unless such laborer or mechanic receives compensation at a rate of pay for all hours worked in excess of eight hours, in any calendar day or in excess of forty hours in such work week, whichever is greater.

12. **Violation: Liability for Unpaid Wages: Liquidated Damages**

In the event of any violation of the clause set forth in subparagraph (b) (1) 29 CFR Sec. 5.5, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), 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 subparagraph (b) (1) of 29 CFR Sec. 5.5 in the sum of $10 for each calendar day or which such individual was required or permitted to work in excess of eight hours or in excess of the standard work week of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (b) (1) or 29 CFR Sec. 5.

13. **Withholding for Unpaid Wages and Liquidated Damages**

The Department of Transportation or the recipient 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 any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b) (2) of 29 CFR Sec. 5.5.

14. **Nonconstruction Contracts**

In addition to the clauses contained in 29 CFR Sec. 5.5 (b) (10) through (14), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR Sec. 5.1., the recipient shall insert a clause requiring that the Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the names and address of each employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient shall require the Contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Transportation and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during work hours on the job.

15. **Subcontracts**

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph 1 through 12 of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraph 1 through 14 of this paragraph.

16. **Certified Payroll - Construction Projects (11/7/77)**

The Authority shall obtain from each Contractor and subcontractor a certified copy of each weekly payroll within seven days after the regular payroll date. Following a review by the Authority for compliance with State and Federal Labor Laws, the payroll copy shall be retained at the project site for later review by the Federal Transportation Administration. A Contractor may use the Department of Labor Form WH-347, "Optional Payroll Form", which provides all the necessary payroll information and certifications. This Department of Labor Form may be purchased at nominal cost from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. However, the Contractor may use his own payroll form provided it includes the same information and certifications as the Department of Labor Form WH-348, "Statement of Compliance".

17. **Minority Business Enterprise Policy.** It is the policy of the Department of Transportation that minority business enterprises, as defined in 49 CFR Part 23, shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the MBE requirements of 49 CFR Part 23 apply to this agreement.

18. **MBE Obligation.** The Authority and its contractors agree to ensure that minority business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this Agreement. In this regard the Authority and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that minority business enterprises have the maximum opportunity to compete for and perform contracts. The Authority and its contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of DOT assisted contracts.

CC. MINIMUM FEDERAL WAGE RATES

Minimum wages to be paid on this construction project have been established by Wage Predetermination Decisions of the U. S. Secretary of Labor. These wage rates must be prominently posted at the construction site.

1. Wage Determination Decision

   Wage predetermination decisions of the U. S. Secretary of Labor are incorporated herein as follows: