

**STATE OF LOUISIANA**

**US 90 (I-49 SOUTH)**  
**ALBERTSON'S PARKWAY TO**  
**AMBASSADOR CAFFERY**  
**DESIGN-BUILD PROJECT**

**LAFAYETTE PARISH**

**STATE PROJECT NO. H.010620**  
**FEDERAL AID PROJECT NO. H010620**

**REQUEST FOR PROPOSALS**  
**CONTRACT DOCUMENTS**

**DB SECTION 107**  
**LEGAL RELATIONS AND**  
**RESPONSIBILITY TO THE PUBLIC**



**DB SECTION 107**

**LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC**

**DB 107-1 LAWS TO BE OBSERVED**

The Design-Builder shall keep informed of and comply with all federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority which affect those employed on the Work or which affect the conduct of the Work. The Design-Builder shall indemnify the state and its representatives against any claim or liability arising from violation of any such law, bylaw, ordinance, code, regulation, order, or decree, whether by the Design-Builder or the Design-Builder's employees, Subcontractors of any tier, or employees of Subcontractors of any tier.

Soil and soil moving Equipment operating in regulated areas will be subject to plant quarantine regulations. These regulations provide for cleaning soil from Equipment before it is moved from regulated areas to prevent spread of harmful agricultural pests from areas quarantined by the state or United States Department of Agriculture (USDA). Complete information may be obtained from the appropriate district office of the USDA Plant Protection Division.

When the Louisiana Department of Transportation and Development (LA DOTD) is the contracting agency, any litigation arising under or related to the Contract or the award thereof must be instituted in the 19th Judicial District Court in and for the Parish of East Baton Rouge, State of Louisiana.

**DB 107-2 PERMITS AND LICENSES, TAXES, AND INSURANCE**

**DB 107-2.1 Permits and Licenses**

The Design-Builder shall procure temporary permits and licenses for the Work; pay charges, fees, and taxes; and give notices necessary to due and lawful prosecution of the work.

**DB 107-2.2 Insurance**

The Design-Builder shall maintain, at a minimum, the following insurance coverages:

- A) Professional liability coverage with combined single limits of \$3 million per claim and \$6 million aggregate during the period starting on the date of Notice to Proceed (NTP) and ending on the Final Acceptance date. The policy must have a retroactive date no later than the date on which the Request for Proposals (RFP) was issued and must have a five year extended reporting period with respect to events which occurred but were not reported during the term of the policy. The policy must protect against any negligent act, error, or omission arising out of the professional services that includes coverage for acts by others for whom the Design-Builder is legally responsible. The policy must apply to the activities of all design, engineering, and construction management professionals assigned to the Project. The LA DOTD and the State of Louisiana must not be named insureds under the policy, but the policy must include an endorsement to provide them and their respective officers, directors, agents, and employees with vicarious liability coverage;

## Louisiana Department of Transportation and Development

---

- B) Workers' compensation insurance in compliance with state law, with the exception that the Design-Builder's employer liability is to be at least \$1 million when Work is to be over water and involves maritime exposures. For the coverage provided in this DB Section 107-2.2 the Design-Builder's insurer will have no right of recovery or subrogation against the State of Louisiana or the LA DOTD;
- C) Commercial General Liability (CGL) insurance with a combined single limit per occurrence for bodily injury and property damage. The aggregate loss limit must be on a per project basis. This insurance must include coverage for bodily injury fire legal liability, premises-operation; broad form contractual liability; products and completed operation; use of contractors and subcontractors; personal injury; broad form property damage; and explosion, collapse, and underground (XCU) coverage. The required limits must be not less than \$2 million per occurrence, with annual aggregates of \$4 million. The policy must include products and completed operations extended coverage for a minimum of five years following Final Acceptance. If the Design-Builder's CGL insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the annual aggregate limits must apply separately to the Project, or the Design-Builder may obtain separate insurance to provide the required limit which must not be subject to depletion because of claims arising out of any other project or activity of the Design-Builder. Any such excess insurance must be at least as broad as the Design-Builder's primary insurance. The Design-Builder shall be the named insured and the LA DOTD, the State of Louisiana, and their respective officers, directors, agents, and employees must be additional insureds with respect to liability arising out of the acts or omissions of the Design-Builder, its Subcontractors, and any Persons for whom the Design-Builder is legally or contractually responsible, whether occurring on or off the Site;
- D) Umbrella excess coverage for its excess coverage for CGL, with a required combined single limit amount of insurance of \$10 million. This limit of liability must apply "collectively" and not "separately" for the Design-Builder and Subcontractors on the Project;
- E) A separate Owner's Protective Liability (OPL) policy must be supplied by the Design-Builder naming the LA DOTD and the State of Louisiana as named insureds. The required combined single OPL limit amount must be \$10 million;
- F) Environmental liability insurance during the period starting on the date of issuance of the NTP to design the improvements and ending on the date of Final Acceptance, with a five year extended reporting period with respect to events which occurred but were not reported during the term of the policy. The policy must cover professional errors and omissions related to environmental remediation Work performed by, and environmental losses resulting from, the Design-Builder or its Subcontractors and any Persons for whom the Design-Builder is legally or contractually responsible. The required combined single environmental liability limit amount must be \$2 million. The Design-Builder shall be the named insured and the LA DOTD, the State of Louisiana, and their respective officers, directors, agents, and employees must be additional insureds with respect to liability arising out of the acts or omissions of the Design-Builder, its Subcontractors, and any Persons for whom the Design-Builder is legally or contractually responsible, whether occurring on or off the Site;
- G) Business automobile liability insurance with a combined single limit per occurrence for bodily injury and property damage. This insurance must include bodily injury and

property damage coverage arising from the ownership, maintenance, or use of all owned/leased automobiles, hired automobiles, and non-owned automobiles used in the performance of the of the Work, including loading and unloading. The required combined single limit amount of insurance must be \$1 million. The Design-Builder shall be the named insured and the LA DOTD, the State of Louisiana, and their respective officers, directors, agents, and employees must be additional insureds with respect to liability arising out of the acts or omissions of the Design-Builder, its Subcontractors, and any Persons for whom the Design-Builder is legally or contractually responsible, whether occurring on or off of the Site; and

- H) If this Project includes work within a railway ROW, Railroad Protective Liability Insurance must be purchased on behalf of the railway by the Design-Builder. The standards for Railroad Protective Liability Insurance must be in accordance with provisions of the Federal Aid Policy Guide (FAPG) Part 646 as amended. The limits of liability must be as follows: Combined Single Limit for Bodily Injury Liability, Property Damage Liability, and Physical Damage to Property: \$2 million per occurrence with an aggregate of \$6 million for the term of the policy. The Design-Builder shall furnish to the railway the Railroad Protective Liability Insurance Policy and certificates evidencing the CGL coverage required above. The Railroad Protective Liability Insurance Policy and insurance certificates must be approved by the railway before any Work may be started on the railway's property by the Design-Builder or its Subcontractors. In addition, the Design-Builder shall furnish evidence of commitment by the insurance company to notify the railway and the Department's Project Manager in writing of any material change, expiration, or cancellation of the policy not less than 30 Calendar Days before such change, expiration, or cancellation is effective. The insurance specified must be kept in force until Final Acceptance of the Contract.

The following must be included as provisions in each policy:

- 1) The insurance company(ies) issuing the policy(ies) must have no recourse against the State of Louisiana and the LA DOTD for payment of any premiums or for assessments under any form of the policy; and
- 2) Any and all deductibles and self-insured retentions in the above described insurance policy(ies) must be assumed by and be at the sole risk of the Design-Builder.

Insurance is to be placed with insurance companies authorized in the State of Louisiana with an A. M. Best's rating of A-: VI or higher. This rating requirement may be waived for Workers' Compensation coverage only.

Should any policies be canceled, the Design-Builder shall immediately notify the Louisiana Department of Transportation and Development.

Upon failure of the Design-Builder to furnish, deliver, and maintain such insurance as required or provide proof of insurance on a yearly basis or as requested by the LA DOTD, this Contract, at the election of the LA DOTD, may be immediately declared suspended, discontinued, or terminated or payment on Price Center (PC) 1 may be suspended until the Design-Builder provides evidence of compliance. Failure of the Design-Builder to maintain any required insurance will not relieve the Design-Builder from any liability under the Contract, nor will the insurance requirements be construed to conflict with the obligations of the Design-Builder concerning indemnification under this DB Section 107-2.2.

The Design-Builder is responsible for requiring and verifying that all Subcontractors working on the Project maintain appropriate types and levels of insurance coverage.

**DB 107-2.2.1 Verification of Coverage**

A) Policies

Concurrently with the Design-Builder's execution hereof, the Design-Builder shall deliver to the LA DOTD the following items:

- 1) A certificate of insurance with respect to each policy required to be provided by the Design-Builder under this DB Section 107-2.2; and
- 2) Copies of all endorsements to the policies that set forth the required additional insureds and other amendments to the policy forms.

The LA DOTD will have no duty to pay or perform under this Contract until such certificate(s) and endorsements, in compliance with all requirements of this DB Section 107-2.2, have been provided. Upon the LA DOTD's request, certified, true, and exact copies of each of the insurance policies (including renewal policies) required under this DB Section 107-2.2 must be provided to the LA DOTD.

B) Renewal Policies

The Design-Builder shall promptly deliver to the LA DOTD a certificate of insurance and copies of all endorsements with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverages for the terms specified herein. Such certificate must be delivered not less than 45 Calendar Days prior to the expiration date of any policy and must bear a notation evidencing payment of the premium therefor. If requested by the LA DOTD from time to time, certified duplicate copies of the renewal policy must also be provided.

**DB 107-2.2.2 Endorsements and Waivers**

All insurance policies required to be provided by the Design-Builder hereunder must contain or be endorsed to comply with the following provisions, provided that, for the Workers' Compensation policy, only the following clauses (D) and (F) are applicable:

- A) For claims covered by the insurance specified herein, said insurance coverage must be primary insurance with respect to the insureds, additional insureds, and their respective members, directors, officers, employees, agents, and consultants and must specify that coverage continues notwithstanding the fact that the Design-Builder has left the Site. Any insurance or self-insurance beyond that specified in this Contract that is maintained by an insured or additional insured must be in excess of such insurance and will not contribute with it;
- B) Any failure on the part of a named insured to comply with reporting provisions or other conditions of the policies, any breach of warranty, any action or inaction of a named insured or others, any foreclosure relating to the Project, or any change in ownership of all or any portion of the Project must not affect coverage provided to the other insureds or additional insureds (and their respective members, directors, officers, employees, agents, and consultants);

- C) The insurance must apply separately to each insured and additional insured against whom a claim is made or suit is brought, except with respect to the aggregate limits of the insurer's liability;
- D) Each policy must be endorsed to state that coverage will not be suspended, voided, canceled, modified, or reduced in coverage or in limits except after 30 Calendar Days' prior written notice by certified mail, return receipt requested, has been given to the LA DOTD. Such endorsement must not include any limitation of liability of the insurer for failure to provide such notice;
- E) All endorsements adding additional insureds to required policies must be on a form providing additional insureds with coverage for "completed operations";
- F) Each policy must provide coverage on an "occurrence" basis and not a "claims made" basis (with the exception of professional liability policies);
- G) The CGL insurance policy must be endorsed to state that coverage for Subcontractor employees will not be excluded; and
- H) The automobile liability insurance policy must be endorsed to include Motor Carrier Act Endorsement-Hazardous materials clean up (MCS-90).

**DB 107-2.2.3 Waivers of Subrogation**

The LA DOTD and Design-Builder waive all rights against each other and their respective members, directors, officers, employees, agents, and consultants for any claims, but only to the extent covered by insurance obtained pursuant to this DB Section 107-2.2, except such rights as they may have to the proceeds of such insurance and provided further that the Design-Builder shall not be entitled to additional compensation or time extension under this Contract to the extent compensated by any insurance specified herein. The Design-Builder shall require all Subcontractors to provide similar waivers in writing each in favor of all other parties enumerated above. Each policy, including Workers' Compensation, must include a waiver of any right of subrogation against the additional insureds (and their respective members, directors, officers, employees, agents, and consultants).

**DB 107-2.2.4 Commercial Unavailability of Required Coverages**

If, through no fault of the Design-Builder, any of the coverages required in this DB Section 107-2.2 (or any of the required terms of such coverages, including policy limits) become unavailable or are available only with commercially unreasonable premiums, the LA DOTD will work with the Design-Builder to find commercially reasonable alternatives to the required coverages that are acceptable to the LA DOTD. The Design-Builder shall not be entitled to any increase in the Lump Sum Contract Price for increased costs resulting from the unavailability of coverage and the requirement to provide acceptable alternatives. The LA DOTD will be entitled to a reduction in the Lump Sum Contract Price if it agrees to accept alternative policies providing less than equivalent coverage, based on other evidence of insurance premiums as of the Proposal due date. The LA DOTD's right to a reduction in the Lump Sum Contract Price as set forth in the preceding sentence will be without regard to the insurance costs expended by the Design-Builder for the less than equivalent coverage or on other insurance required under this DB Section 107-2.2.

**DB 107-2.2.5 Prosecution of Claims**

Unless otherwise directed by the LA DOTD in writing, the Design-Builder shall be responsible for reporting and processing all potential claims by the LA DOTD or Design-Builder against the insurance required to be provided under this DB Section 107-2.2. The Design-Builder agrees to report timely to the insurer(s) any and all matters which may give rise to an insurance claim and to promptly and diligently pursue any and all insurance claims on behalf of the LA DOTD, whether for defense or indemnity or both. The LA DOTD agrees to promptly notify the Design-Builder of the LA DOTD's incidents, potential claims, and matters which may give rise to an insurance claim by the LA DOTD, to tender its defense or the claim to the Design-Builder, and to cooperate with the Design-Builder as necessary for the Design-Builder to fulfill its duties hereunder.

**DB 107-2.2.6 Louisiana Department of Transportation and Development's Right to Remedy Breach by the Design-Builder**

If the Design-Builder or any Subcontractor fails to provide insurance as required herein, the LA DOTD will have the right, but not the obligation, to purchase such insurance or to suspend the Design-Builder's right to proceed until proper evidence of insurance is provided. Any amounts paid by the LA DOTD will, at the LA DOTD's sole option, be deducted from amounts payable to the Design-Builder or reimbursed by the Design-Builder upon demand, with interest thereon from the date of payment by the LA DOTD to the reimbursement date, at the maximum rate allowable under applicable law. Nothing herein will preclude the LA DOTD from exercising its rights and remedies under DB Section 108-8 as a result of the failure of the Design-Builder or any Subcontractor to satisfy the obligations of this DB Section 107-2.2.

**DB 107-2.2.7 Disclaimer**

The Design-Builder and each Subcontractor has the responsibility to make sure that their insurance programs fit their particular needs, and it is their responsibility to arrange for and secure any insurance coverage which they deem advisable, whether or not specified herein.

**DB 107-3 PATENTED DEVICES, MATERIALS, AND PROCESSES**

If the Design-Builder uses any design, device, Material, or process covered by patent or copyright, the Design-Builder shall be responsible for such use. The Design-Builder and Surety must indemnify the state and any affected third party or political subdivision from claims for infringement due to the use of any such patented design, device, Material, or process or any trademark or copyright and must indemnify the state for any costs, expenses, and damages due to any infringement during prosecution or after completion of the Work.

If the Design-Builder submits proposed plans, specifications, manufacturer's data, or any other information or documents to the LA DOTD for any purpose which may be protected by copyright or trade secret protection, the Design-Builder shall first obtain permission or license from the licensor or any other party having a proprietary interest in such documents or information and shall hold harmless, indemnify, and defend the LA DOTD at the Design-Builder's sole cost from any damages, expenses, or actions arising out of or related to use by the LA DOTD of information or documents supplied by the Design-Builder to the LA DOTD.

**DB 107-4 RESTORATION OF SURFACES OPENED BY PERMIT**

The right to construct or reconstruct any utility services in the Highway or to grant permits for same, at any time, is reserved by the LA DOTD for proper authorities of the municipality in which the Work is done and the Design-Builder shall not be entitled to damages either for digging up of the Highway or delays occasioned thereby.

When an individual, corporation, or any other legal entity is authorized through an executed permit from the LA DOTD, the Design-Builder shall allow parties bearing such permits to make openings in the Highway. The Design-Builder shall, when ordered, make all necessary repairs due to such openings. Payment for such work will be made as Extra Work or as provided in this Contract and will be subject to the same conditions as original Work performed.

**DB 107-5 SANITARY CODE AND SAFETY PLAN**

The Design-Builder shall not require any worker to Work under conditions which are unsanitary, hazardous, or dangerous to health or safety. The Design-Builder shall maintain the Work in a sanitary, safe, and non-hazardous condition.

The Design-Builder shall provide and maintain in a neat, sanitary condition, restrooms and other such accommodations for use of employees and LA DOTD personnel. Such facilities must comply with requirements of the state and local Boards of Health or other bodies or tribunals having jurisdiction.

**DB 107-5.1 Design-Builder's Safety Obligations**

The Design-Builder shall perform all actions necessary for safety and be solely and completely responsible for conditions on the site, including safety of all persons and property on the site during the Contract. This requirement applies continuously for the duration of the Contract and will not be limited to normal business hours or other time constraints or be reduced or diminished in any way because the Design-Builder is not given sole possession of the site. The Design-Builder is fully responsible for the safety of workers engaged upon the Project and all other persons working at or visiting the site and the protection of the public in the vicinity.

**DB 107-5.2 Design-Builder's Safety Plan**

The Design-Builder shall submit a written Project-specific Safety Plan which documents the Design-Builder's safety policy and which identifies and addresses specific health and safety concerns to be encountered on the Project to the LA DOTD for review and Approval. Before the Work begins, and periodically throughout the Project, the Design-Builder's Project supervision staff must meet with the Department's Project Manager to review and discuss the status of safety issues on the Project. An appropriate notice must be posted at the job site that the Project's Safety Plan is available for examination by any worker employed on the Project.

The Design-Builder shall implement, review, and update the Safety Plan and introduce a program for assuring that the Safety Plan is followed at all times. The Design-Builder shall coordinate with all authorities and relevant entities as necessary to ensure compliance with the Safety Plan.

The Department's Project Manager or designated representative will monitor and audit the Design-Builder's safety performance.



The Design-Builder's Safety Plan must provide for the following:

- A) Planning, management, and design to avoid hazards;
- B) Detection of potential hazards;
- C) Timely correction of hazards;
- D) Dedication to the protection of the public and the workers;
- E) Active participation of all persons involved with the Contract;
- F) Dedicated safety staff;
- G) Liaison with the Louisiana Department of Transportation and Development's safety monitoring staff; and
- H) Safety training and safety meetings.

The Design-Builder shall ensure that all its employees and those of the Subcontractors of any tier (including labor-only) are under an obligation at all times to fully conform to the provisions of the Safety Plan. In the event that the Design-Builder's employees or its Subcontractors fail to conform to the provisions of the Safety Plan, the Design-Builder shall take appropriate disciplinary measures. Such measures will include suspension, removal of offending employees from the site, and dismissal. The obligations and requirements of this DB Section 107-5.2 must be included in the terms and conditions of employment of all employees of the Design-Builder and all Subcontractors of any tier, including labor-only Subcontractors.

**DB 107-5.3     Content of the Safety Plan**

The Safety Plan must be comprehensive and include all required actions, activities, rules, and mitigation relative to the safety of the Work. It must include the following items:

- A) A policy statement indicating the Design-Builder's commitment to safety, goals stated as maximum lost hours, and no loss of life goals;
- B) Identification of LA DOTD and Design-Builder safety officers, including responsibility definitions, an organization chart, reporting procedures, safety inspection procedures, and audit programs;
- C) References to all applicable governmental rules;
- D) An education and training plan for required training for all workers, including a separate program and Hazardous Materials communications plan for workers involved with hazardous and contaminated substances remediation, required toolbox meetings, and required posting of information;
- E) Procedures to address Project health and safety concerns, including housekeeping, Material handling and storage, personal protective equipment, wall and floor openings, scaffolds, ladders, welding, flame cutting, electrical Equipment, lock-out or tag-out, motor vehicles, heavy Equipment, small tools, concrete forms, steel erection, cranes and hoisting, Work platforms, fire prevention and protection, sanitation, confined space entry, blasting and explosives, and other items;
- F) Industrial hygiene, including respiratory protection, noise, Hazardous Materials, and lists of hazardous chemicals present;

- G) Fire protection and prevention;
- H) Emergency and rescue procedures, including detailed procedures for all types of emergencies, such as, medical, fire, chemical spill, property damage, bomb threat, severe weather, flooding, explosion, and earthquakes;
- I) Incident investigation, reporting, and record keeping;
- J) Policy for substance abuse;
- K) Security provisions;
- L) Safety requirements and procedures for surveyors and engineering personnel conducting site investigations and verification sampling and testing; and
- M) Procedures for compelling worker compliance with health and safety requirements.

The Safety Plan must contain a list of the detailed safety procedures to be followed. Safety procedures must be prepared separately for individual activities and these detailed procedures must be appendices to the Safety Plan.

Certain of these items may be submitted in the format of the Design-Builder's health and safety program, with the Project's Safety Plan limited to Project-specific issues.

The Design-Builder shall be responsible for ensuring that each Subcontractor employed on the Project complies with this requirement. The Design-Builder shall provide to the LA DOTD a Project Safety Plan covering all Work to be done by a specific Subcontractor prior to that Subcontractor starting Work. As an alternative, the Design-Builder may provide a certification that all activities performed by, and workers employed by, Subcontractors will be subject to the Design-Builder's Project Safety Plan. Submission of the required Project Safety Plan by the Design-Builder and its acceptance by the LA DOTD will not be construed to imply approval of any particular method or sequence for addressing health and safety concerns or to relieve the Design-Builder from the responsibility to adequately protect the health and safety of all workers involved in the Project as well as any members of the public who are affected by the Project.

**DB 107-5.4 Submittal of the Safety Plan**

Prior to the start of any field Work or construction, the Design-Builder shall submit its Safety Plan to the Department's Project Manager for written Approval. Upon receipt of Approval, the Design-Builder shall issue the complete Safety Plan, which will be based on the Design-Builder's Safety Plan along with the incorporated comments of the Department's Project Manager and any other required updating. The Safety Plan will be a controlled document to be issued by the Design-Builder to, at least, the following persons:

- A) The Department's Project Manager;
- B) The Louisiana Department of Transportation and Development's designated representative(s);
- C) The Louisiana Department of Transportation and Development's safety monitoring coordinator;
- D) The Design-Builder's Project Manager;
- E) The Design-Builder's safety manager; and

- F) Subcontractors of any tier, including labor-only Subcontractors.

Other controlled copies will be distributed as determined by the Design-Builder and the Department's Project Manager. Uncontrolled copies will be issued as considered necessary by the Design-Builder.

The Design-Builder shall maintain a traceable record of the issuance of the controlled copies including numbering and acknowledgement of receipt. Revisions of the Safety Plan must be issued to all recipients of the controlled copies and managed in the same way as the controlled copies.

#### **DB 107-5.5 Revisions to the Safety Plan and Procedures**

The Department's Project Manager may require a revision to the Safety Plan or any safety procedure in order to ensure compliance with the Contract. The Design-Builder shall, following discussion with the Department's Project Manager, issue such revision within 30 Calendar Days of receipt of the instruction. A revision must include additions, omissions, or revisions, as applicable.

The Design-Builder shall review the Safety Plan and any safety procedure in order to revise it in accordance with activities and experiences on the site. Such revision, from time to time, will enhance the standards of safety being implemented on the site. At the very least, procedures must be reviewed and new procedures issued whenever the character or extent of any activity is changed or a new activity of a different nature is introduced which necessitates such revision.

In addition to such revision, the Design-Builder shall make a formal review of the Safety Plan once every 12 months on or near the anniversary of NTP. Such formal review must consider all matters pertaining to safety planning and implementation, including, accident reports, inspections, audits, suggestions from meetings, and other sources, such as, the Department's Project Manager and hazard analysis reviews. Within seven Calendar Days of finishing this review, the Design-Builder shall issue a review report to the Department's Project Manager, giving the conclusions of the review and identifying the revisions to be made to the Safety Plan.

Within 30 Calendar Days of the issue of the review report, the Design-Builder shall issue a revised Safety Plan for review and written Approval by the Department's Project Manager.

#### **DB 107-5.6 The Design-Builder's Safety Organization**

The Design-Builder shall designate a member of its board of directors, if it is a corporation or a Joint Venture (JV), or a principal of its organization who will be responsible and directly accountable to the LA DOTD in all matters concerning safety. The Design-Builder shall also require the Design-Builder's Project Manager to be responsible and directly accountable to this designated safety board member or principal in all matters concerning construction safety.

The Design-Builder shall appoint, within 30 Calendar Days of NTP, a safety manager whose Project duties will be solely connected with the safety aspects of the Project and who will report directly to the designated safety board member or principal. Such an appointment will be subject to written acceptance by the Department's Project Manager. The safety manager must be suitably qualified and experienced. The safety manager will implement, maintain, and monitor compliance with the Safety Plan and all safety procedures, and be based full-time at the site.

The Design-Builder shall provide and maintain an organizational structure that will ensure the effective control of the Project's safety assurance tasks by the Design-Builder's safety staff. Such staff must be

engaged solely in safety assurance. Responsibilities and task subdivision must be clearly identified in the Safety Plan, and must show direct lines of communication and reporting between the Design-Builder's safety manager and the designated safety board member or principal and between the Design-Builder's safety manager and the Design-Builder's Project Manager.

The Design-Builder shall not remove the appointed safety manager without the prior written consent of the Department's Project Manager. The Design-Builder shall nominate any replacement at the same time consent is sought.

If the safety manager is removed, a suitably qualified and immediately available replacement must be proposed to the Department's Project Manager for Approval within 14 Calendar Days of receipt of the notice requiring the removal.

The Design-Builder shall provide adequate numbers of supporting staff for the safety manager, in the sole determination of the LA DOTD, including a deputy to act in his/her absence.

The Design-Builder shall not commence any Work on the site until the safety manager has been appointed and accepted by the Department's Project Manager and has commenced duties on the site.

The Design-Builder shall ensure that all Subcontractors of any tier whatsoever, including labor-only Subcontractors, will provide adequate safety staff, as solely determined by the LA DOTD.

Each Subcontractor of every tier, including labor-only Subcontractors, must have a safety supervisor who has appropriate experience and training, as determined by the LA DOTD. Each Subcontractor safety supervisor must be responsible for implementing and maintaining its respective safety plan. Subcontractor safety supervisors must devote a substantial amount of their time to such duties. All Subcontractor safety plans must at all times conform to the Design-Builder's Safety Plan.

Breaches of the Design-Builder's Safety Plan or other conduct prejudicial to safety may be cause for the Department's Project Manager to require the removal of any employee, including the Design-Builder's Project Manager or safety manager, from the site.

The Design-Builder shall give authority to the safety manager and safety staff to issue stop orders that instruct employees of the Design-Builder and its Subcontractors of any tier, including labor-only Subcontractors, to cease operations and take urgent and appropriate action to make the site safe and prevent unsafe working practices or other infringements of the Safety Plan or breach of any governmental rules.

The Design-Builder shall require its safety manager to verify by inspection that the requirements of this DB Section 107-5 and the Design-Builder's Safety Plan and safety procedures are being strictly complied with. In the event of any non-compliance, the safety manager will forthwith issue an instruction to stop Work until the non-compliance is rectified. If the Design-Builder considers the non-compliance to be of a minor nature implementation may be delayed 24 hours, with the LA DOTD's consent. If the Department's Project Manager states that such delay is acceptable, the Design-Builder may suspend implementing the instruction for 24 hours and resume working. During the 24-hour period, the Design-Builder must rectify the non-compliance.

No Work will be performed on site unless the Design-Builder's safety manager or designated deputy is on site. Work must not be performed at the site unless the specified safety supervisors are on the site.

The Design-Builder shall make provisions for local emergency service to respond to any emergencies or problems at the Project site and shall provide adequate emergency medical care to personnel working on the site. The Design-Builder shall also have personnel trained in First Aid and CPR at the Project site at all times that Work is on-going.

**DB 107-5.7     Safety Considerations in Design**

The Design-Builder shall identify and analyze the hazards and risks associated with the Work, including during construction and its ultimate use, and shall design the Work so as to eliminate, mitigate, or control such hazards.

**DB 107-6        SITE SECURITY**

**DB 107-6.1     Requirements**

The Design-Builder shall be responsible for the security of the site and the Work, including the facilities provided by the Design-Builder for the LA DOTD, from the date the Project is released to the Design-Builder until Final Acceptance. This includes the protection of offices, workshops, Equipment, Material, and the Work from damage by vandalism, flood, storm, fire, and theft.

The site must be adequately protected at all times to prevent unauthorized access onto the site, particularly to areas of high safety risk. This protection must include security fencing at areas of high safety risk to the public as well as areas with high risk of vandalism and other areas where necessary for the Design-Builder to fulfill obligations under the Contract. All necessary access for the public through the site must be adequately protected.

The Design-Builder shall provide adequate lighting and guarding at main security areas, such as, offices, facilities for the LA DOTD provided by the Design-Builder, Work areas, and storage yards.

The Design-Builder shall establish and maintain a system and people to control and guide visitors to and around the site.

**DB 107-6.2     Site Security Plan**

The Design-Builder shall prepare and submit to the Department's Project Manager, for written Approval, a Site Security Plan within 60 Calendar Days of NTP, describing the Design-Builder's procedures for securing the site. The Site Security Plan must include the security requirements described in DB Section 107-6.1. If the Department's Project Manager objects to the Site Security Plan, it must be amended so as to resolve all objections. The Design-Builder shall review and update the Site Security Plan on a regular basis, and provide copies of any changes to the Department's Project Manager.

**DB 107-6.3     Reports**

The Design-Builder shall submit a security report, reporting any security-related incident, with the monthly progress report.

**DB 107-7 PUBLIC CONVENIENCE AND SAFETY**

The Design-Builder shall conduct the Work to assure the least possible obstruction to traffic. The Project site and haul routes must be kept reasonably free from dust and in such condition that the public can travel in safety.

When the Highway under construction is to be kept open for traffic, the subgrade and surfacing will be kept reasonably free from dust and in such condition that the public can travel in safety. Safety and convenience of the general public and the residents along the Work, and protection of persons and property, must be a primary responsibility of the Design-Builder.

When the Design-Builder works at night, adequate artificial lighting, signs, flaggers, or other traffic controls must be provided to protect workers, the Work, and the traveling public. If the Department's Project Manager finds that the night work is so hazardous as to preclude the beginning or require the discontinuing of such Work, the Design-Builder shall immediately cease all such operations.

**DB 107-8 NAVIGABLE WATERS AND WETLANDS**

All Work in, over, or adjacent to navigable waters or wetlands must be conducted in accordance with rules and regulations of the United States (US) Army Corps of Engineers and US Coast Guard.

Navigable clearances on waterways must not be infringed upon, and existing navigable depths must not be impaired except as allowed by permits issued by the responsible agency.

The LA DOTD will obtain a permit from the US Coast Guard and US Army Corps of Engineers relative to approval of construction plans for bridges, causeways, embankments, dredging, and spoil disposal for Work in navigable waters or wetlands. The Design-Builder will be furnished a copy of the permit and must comply with all provisions and conditions of the permit. When required by permit, upon completion and before Final Acceptance of the Project, the Design-Builder shall furnish the Department's Project Manager 8 by 10 inch color photographs of any Bridges from abutment to abutment, two photographs looking upstream and two looking downstream. The prints must be glossy finish, mounted on linen. These photographs will be furnished at no direct pay.

The Design-Builder shall prepare reproducible drawings complying with the standards of the US Coast Guard and the US Army Corps of Engineers showing falsework construction, test piles or other temporary pile driving operations, erection sequence, temporary navigational lighting, location of Equipment and barges in the navigable limits, and other drawings required by the permit agencies. Drawing sizes must be 8 by 10 1/2 inches with a one inch border on the top or short side. The drawings must be submitted to the Department's Project Manager for transmittal to the appropriate agency. Construction of falsework, test pile operations and erection, or operation of construction Equipment within the navigable limits must not commence until drawings are approved.

The Design-Builder shall display lights on Equipment operating, berthed, or moored in navigable streams, and provide temporary navigational lighting on temporary and permanent construction in the navigable limits as required by the US Coast Guard.

Should the Design-Builder sink, lose, or throw overboard any Material, machinery, or Equipment which may be dangerous to navigation, the Material, machinery, or Equipment must be immediately removed or

recovered. The Design-Builder shall give immediate notice of such obstruction to proper authorities and, if required, shall mark or buoy such obstruction until it is removed.

The Design-Builder shall not deposit excavated material into the water way or wetland without a permit from the appropriate agency.

All operations in connection with the Work must be in accordance with permits, rules, and regulations of the US Army Corps of Engineers and the US Coast Guard. Deviations therefrom will be only by special permission or special permit which will be the responsibility of the Design-Builder. Failure of the Design-Builder to become familiar with the terms, conditions, and provisions of the permits, rules, and regulations applicable to the Work will not relieve the Design-Builder of responsibility under this Contract.

The Design-Builder shall conduct operations to cause minimum interference with marine operations. If such interference is necessary, the Design-Builder shall notify the Department's Project Manager, in writing, sufficiently in advance so that the LA DOTD may obtain approval from the US Coast Guard at least three weeks prior to said interference.

Copies of Louisiana Department of Transportation and Development-obtained permits are available from the Department's Project Manager.

Copies of any special permits obtained by the Design-Builder must be submitted immediately to the Department's Project Manager.

**DB 107-9      BARRICADES AND WARNING SIGNS**

The Design-Builder shall provide, erect, and maintain necessary barricades, suitable lights, danger signals, signs, and other traffic control devices, including flaggers, and shall take all necessary precautions for protection of the Work and safety of the public. Highways closed to traffic must be protected by effective barricades. Suitable warning signs must be provided to direct traffic.

The Design-Builder shall erect and maintain warning signs in advance of any place on the Project where operations may interfere with traffic and at intermediate points where new Work crosses or coincides with an existing Road.

Barricades, warning signs, lights, temporary signals, and other protective devices must conform to the details shown on the plans and the Manual of Uniform Traffic Control Devices (MUTCD).

**DB 107-10      USE OF EXPLOSIVES**

Explosives must not be used without written approval. When explosives are used, the Design-Builder shall not endanger life or property. The use of explosives must be in compliance with all laws and ordinances. The Design-Builder shall be responsible for all damage resulting from the use of explosives.

Explosives must be securely stored, in compliance with all laws and ordinances. Such storage places must be clearly marked. When no local laws or ordinances apply, satisfactory storage must be provided no closer than 1,000 feet (304.8 meters) from any Road, building, or place of human occupancy.

The Design-Builder shall notify, in writing, each utility company, railroad, and affected property owner having facilities in proximity to the site of Work of the intention to use explosives. Such notices must be given sufficiently in advance to enable them to protect their property from damage.

**DB 107-11      PRESERVATION OF PUBLIC AND PRIVATE PROPERTY**

The Design-Builder shall be responsible for preservation of public and private property and shall protect from disturbance and damage all land monuments, property line markers, or horizontal and vertical control monuments, such as, those established by the US Coast and Geodetic Survey, National Geodetic Survey, Louisiana Geodetic Survey, LA DOTD, US Army Corps of Engineers, or US Geological Survey.

Before removing and/or resetting any survey monuments, the Design-Builder shall give sufficient written advance notice to the Department's Project Manager for coordination with the appropriate agency. The Design-Builder shall not disturb or move any such monument without written approval. The Design-Builder shall give immediate written notice to the Department's Project Manager of damage to survey monuments. The Department's Project Manager will designate the location and manner in which monuments are to be reset in accordance with current LA DOTD procedures.

The Design-Builder shall be responsible for damage to property during the Work due to any negligent act, omission, or misconduct in executing the Work, or due to defective Work or Materials. This responsibility will not end until Final Acceptance. However, Final Acceptance does not relieve the Design-Builder's obligations regarding damage to property pursuant to any guaranty or warranty under the terms of the Contract.

When damage is done to public or private property by the Design-Builder due to any negligent act, omission, or misconduct in execution of the Work, or in consequence of non-execution thereof by the Design-Builder, such property must be restored at the Design-Builder's expense to a condition similar or equal to that existing before such damage was done by repairing, rebuilding, or otherwise acceptably restoring as directed or making good such damage in an acceptable manner.

**DB 107-12      ENVIRONMENTAL PROTECTION**

The Design-Builder shall comply with federal, state, and local laws and regulations controlling pollution of the environment, including, air, water, and noise. The Design-Builder shall take precautions to prevent pollution of waters and wetlands with fuels, oils, asphalts, chemicals, or other harmful materials and to prevent pollution of the atmosphere from particulate and gaseous matter.

Construction operations in rivers, streams, lakes, tidal waters, reservoirs, canals, and other impoundments will be restricted to areas where it is necessary to perform filling or excavation to accomplish the Work and areas which must be entered to construct temporary or permanent Structures. As soon as conditions permit, streams and impoundments must be cleared of obstructions placed therein or caused by construction operations.

Frequent fording of streams with construction Equipment will not be permitted.

No residue from dust collectors or washers will be dumped into a stream.



Attention is further directed to the federal, state, and local air pollution control programs and their rules and regulations regarding air pollution, especially open burning, fugitive dust, and asphaltic concrete plant restrictions.

The Design-Builder shall maintain and operate Equipment to minimize noise and vibration. Engines must be equipped with properly functioning mufflers. The Design-Builder shall assure the activities near noise and vibration sensitive areas, such as, churches, hospitals, and schools, are not unduly disruptive.

**DB 107-13      SOIL EROSION**

The Design-Builder shall schedule and conduct its Work to minimize soil erosion and to minimize silting and muddying of streams, rivers, irrigation systems, impoundments (lakes and reservoirs), and lands adjacent to or affected by the Work. Construction of drainage facilities and performance of other Work which will contribute to the control of erosion and sedimentation must be carried out in conjunction with earthwork operations or as soon thereafter as practicable. The area of bare soil exposed at any one time by construction operations must be kept to a minimum. Prior to the start of the applicable construction, the Design-Builder shall submit to the Department's Project Manager for acceptance schedules for accomplishment of temporary and permanent erosion control Work as are applicable for clearing and grubbing, grading, Bridges, and other Structures at watercourses, construction, and paving. In addition, the Design-Builder shall also submit for acceptance at the same time its proposed method of erosion control on haul roads and borrow pits and its plan for disposal of surplus excavated Material. No Work will be started until the erosion control schedules and methods of operation have been accepted by the Department's Project Manager. If conditions change during construction, the Design-Builder may be required to submit a revised schedule for acceptance as directed by the Department's Project Manager. Whenever the Design-Builder's operations, carried out in accordance with the accepted erosion control schedule, result in a situation where appropriate temporary erosion control measures are not shown on the Design Plans the Design-Builder shall conduct the Work in accordance with Section 204 of the LA DOTD Standard Specifications. In carrying out the control measures under this Section 107-13, the Design-Builder shall be guided by, but not limited to, the following controls:

- A) When borrow Material is obtained from other than commercially operated sources, erosion of the borrow site must be so controlled both during and after completion of the Work that erosion will be minimized and minimal sediment will enter waterways, impoundments, or adjacent properties. Waste or spoil areas and construction roads must be located, constructed, and maintained in a manner that will minimize sediment entering waterways and impoundments. The Design-Builder shall submit grading plans for all borrow pits or areas or spoil or waste areas to the Department's Project Manager for acceptance prior to the start of Work on, or the use of, such areas. The grading plans must indicate the sequence of operations, temporary slopes, and other factors which may have an influence on erosion control;
- B) When Work areas or gravel pits are located in or adjacent to live waterways and impoundments, such areas must be separated from the rest of the waterway or impoundment by a dike or other barrier to minimize sediment entering a flowing waterway or impoundment. Care must be taken during the construction and removal of such barriers to minimize the muddying of a waterway or impoundment; and
- C) Water from aggregate washing or other operations containing sediment must be treated by filtration, settling basin, or other means sufficient to reduce the turbidity so as not to cause a substantial visible contrast to natural conditions.

No payment will be made for any labor, Material, or Equipment needed for soil erosion abatement as described above.

When it becomes necessary, the Department's Project Manager will inform the Design-Builder of unsatisfactory construction procedures and operations insofar as erosion control is concerned. If the unsatisfactory construction procedures and operations are not corrected promptly, the Department's Project Manager may suspend the performance of any or all of other construction until the unsatisfactory condition has been corrected, with all costs of such action(s) to be borne by the Design-Builder.

**DB 107-14      AIR NAVIGATION**

The Design-Builder shall obtain a permit (or a determination of no hazard to air navigation) from the Federal Aviation Administration (FAA) for all permanent Structures and temporary Structures (such as, equipment, falsework, or construction cranes).

The Design-Builder shall complete a separate FAA Notice of Proposed Construction or Alteration for both the permanent Structure and any temporary Structures. The Design-Builder shall receive any appropriate approvals or clearances from the FAA pursuant to the Notice of Proposed Construction or Alteration prior to commencing with any construction on the Project in accordance with the notice. The FAA Notice of Proposed Construction or Alteration may be applied for electronically at the FAA's Web site, <http://oeaaa.faa.gov>, and using the E-filing area.

The Notice of Proposed Construction or Alteration must be submitted for review and approval to the FAA, with a copy to the Department's Project Manager. Construction and operations in connection with the Work for protection of aerial navigation must be in accordance with the approved permit or Notice of Proposed Construction or Alteration and applicable federal regulations. Failure of the Design-Builder to be familiar with applicable rules and regulations of the FAA will not relieve the Design-Builder of responsibility under this Contract.

**DB 107-15      DAMAGE CLAIMS**

The Design-Builder shall indemnify the LA DOTD and its officers and employees from all suits, actions, or claims brought because of injuries or damage sustained by any person or property due to operations of the Design-Builder or its Subcontractors, vendors, or suppliers; due to negligence in safeguarding the Work; due to use of unacceptable Materials in constructing the Work; due to any negligent act, omission, or misconduct of the Design-Builder or its Subcontractors, vendors, or suppliers; or because of claims or amounts recovered from infringements of patent, trademark, or copyright by the Design-Builder or its Subcontractors, vendors, or suppliers or from claims or amounts arising or recovered under the Workers' Compensation Act or other law, ordinance, order, or decree. Any money due the Design-Builder as considered necessary by the LA DOTD for such purpose may be retained for use of the state or, in case no money is due, the Surety bond may be held until such suits, actions, or claims for injuries or damages have been settled and suitable evidence to that effect furnished to the LA DOTD, except that money due the Design-Builder will not be withheld when the Design-Builder produces satisfactory evidence that adequate Workers' Compensation, Public Liability, and Property Damage Insurance are in effect.

**DB 107-16 OPENING SECTIONS TO TRAFFIC**

Opening of sections of the Work to traffic prior to completion of the entire Contract may be desirable from a traffic service standpoint, or may be necessary due to conditions inherent in the Work or by changes in the Design-Builder's Work schedule, or may be required due to conditions or events unforeseen at the time of the Contract. Such openings must be made when directed and will not constitute acceptance of the Work nor a part thereof or a waiver of any provisions of the Contract.

The Contract will specify, insofar as possible, which sections will be opened prior to completion of the Contract. On any section opened by order of the Department's Project Manager, when not specified, the Design-Builder shall not assume any expense entailed in maintaining the Road for traffic. Such expense will be borne by the LA DOTD or compensated in accordance with DB Section 109-8. On portions of the Project which are ordered to be opened for traffic, in the case of unforeseen necessity not the fault of the Design-Builder, compensation for additional expense to the Design-Builder and allowance of additional time for completion of other Work on the opened portions of the Project will be as set forth in a Change Order mutually agreed on by the Department's Project Manager and the Design-Builder.

When the Design-Builder's progress is undesirably slow in completing shoulders, drainage Structures, or other features of the Work, the Department's Project Manager may notify the Design-Builder in writing and establish therein a reasonable period of time in which the Work is to be completed. If the Design-Builder fails to make a reasonable effort toward completion in this time period, the Department's Project Manager may order all or a Section of the Project opened to traffic. On such Sections ordered to be opened, the Design-Builder shall conduct the remainder of construction operations to cause the least obstruction to traffic and shall not receive any added compensation due to the added cost of the Work by reason of opening such Section to traffic.

On any Section opened to traffic under the foregoing conditions, whether specified in the Contract or opened by necessity of the Design-Builder's operations or unforeseen necessity, any damage to the Highway not attributable to traffic which occurs on such Section (except slides) will be repaired by the Design-Builder at no direct pay. Removal of slides must be done by the Design-Builder on a basis agreed to prior to removal of such slide.

**DB 107-17 HAZARDOUS MATERIAL REPORTING AND CLEAN-UP OF SPILLS**

The Design-Builder shall be responsible for reporting and cleaning up spills associated with construction of the Project, and shall report and respond to spills of Hazardous Materials such as gasoline, diesel fuel, motor oils, solvents, chemicals, toxic and corrosive substances, and other Material that are a threat to public health or the environment. The Design-Builder shall be responsible for reporting past spills encountered during construction and current spills not associated with construction. Reports must be made immediately to the Department's Project Manager if on state ROW or to the property owner if outside of state ROW. Unreported spills identified after construction and associated with construction of the Project will be cleaned up by the Design-Builder. Failure to report or respond to a spill will result in the Design-Builder bearing the full cost of remediation of clean-up of such unreported spills.

The LA DOTD will be responsible for any delay costs and expenses due to it or the Design-Builder making a new discovery of Hazardous Materials that are not identified in the Contract Documents. The Design-Builder is responsible for all costs and expenses, including delay costs and expenses, for all Hazardous Material spills that are identified in the Contract Documents or that are caused by the Design-Builder or any of its Subcontractors or the Design-Builder's or Subcontractor's employees or agents.

**DB 107-18 DESIGN-BUILDER'S RESPONSIBILITY FOR THE WORK**

Until Final Acceptance, the Design-Builder shall have the charge and care of the Work and shall take every precaution against damage to any part thereof by action of the elements, vandalism, or theft or from other cause, whether arising from execution or non execution of the Work. The Design-Builder shall rebuild, repair, restore, or pay for damages, including theft and vandalism, to the Work before Final Acceptance and shall bear the expense thereof, except for guard rail and permanent impact attenuators must be repaired as soon as possible after damage. If the Department's Project Manager determines that the Design-Builder's operation did not contribute to the damages, the LA DOTD will reimburse the Design-Builder for such repairs by force account in accordance with DB Section 109-8.1.2.

In case of suspension of Work, the Design-Builder shall be responsible for the Project. The Design-Builder shall take such precautions as necessary to prevent damage to the Project, maintain traffic, provide for normal drainage, and erect any necessary temporary Structures, signs, or other facilities at no direct pay. During such period of suspension, the Design-Builder shall acceptably maintain all living Material in newly established plantings, seedings, and soddings furnished under the Contract and shall take adequate precautions to protect new tree growth and other important vegetative growth against damage. Should suspension of the Work not be attributed to any actions of the Design-Builder, the Design-Builder shall be reimbursed for additional Work in accordance with DB Section 109-8.

**DB 107-19 UTILITY PROPERTY AND SERVICES**

The Design-Builder's operations adjacent to properties of railway and utility companies or adjacent to other property, damage to which might result in considerable expense, loss, or inconvenience, must not commence until after all arrangements necessary for the protection thereof have been made.

In the event of interruption of utility services due to accidental breakage or being exposed or unsupported, the Design-Builder shall promptly notify the proper authority and shall cooperate with such authority in restoration of service. If utility service is interrupted, continuous cooperation will be required until service is restored. No Work will be undertaken around fire hydrants until provisions for continued service have been approved by the local fire authority.

**DB 107-20 ACQUISITION AND CONVEYANCE OF REAL PROPERTY**

The LA DOTD has identified property to be used for the Project, the boundaries of which are depicted in the Contract Documents.

Any additional ROW required due to design changes originated by the Design-Builder and deemed necessary by the LA DOTD will be acquired by the LA DOTD. Additional ROW acquisitions may cause Project delays. The LA DOTD will only be responsible for time and cost impacts associated with acquisition of additional ROW in the case of a Necessary Basic Project Configuration Change (*see* DB Section 104-8.2.2). If additional ROW is required for the Design-Builder's convenience or if additional ROW is needed for a reason other than a Necessary Basic Project Configuration Change, the LA DOTD will conduct the acquisition of the ROW, but the Design-Builder will be responsible for all costs and delays associated with the additional ROW and its acquisition.

The Design-Builder shall cooperate with the LA DOTD in the completion of Project design and identification of final ROW requirements and construction impacts. It is expected that the Design-Builder

will identify any additional ROW needs no later than the Definitive Design Review for any affected Project component.

The Design-Builder shall coordinate with the LA DOTD regarding any design features that may impact properties, even though no property acquisition is contemplated. The intent is to avoid damages to properties not previously identified and addressed.

**DB 107-20.1 Coordination**

The Design-Builder shall not enter onto parcels until the Louisiana Department of Transportation and Development has obtained the legal right to do so.

**DB 107-20.2 Change in Project Design**

If the Design-Builder identifies additional parcels to be acquired and/or modifications to the ROW limits (fee takings, easements, or other property rights), the Design-Builder shall prepare and submit to the LA DOTD new or revised surveys, legal descriptions, ROW maps, and justification of the need for additional ROW. The LA DOTD will review the request, determine whether the proposed acquisition is appropriate and necessary, and notify the Design-Builder regarding the minimum time required to complete the acquisition. If the Design-Builder and LA DOTD agree to the additional acquisition, the Design-Builder shall prepare any additional documents necessary for the LA DOTD to proceed with the acquisition.

If the LA DOTD determines that the acquisition is appropriate and required for the Project, the LA DOTD will acquire the ROW in accordance with LA DOTD procedures and The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, subject to the conditions specified in this DB Section 107-20.2 regarding allocation of time and cost responsibilities.

**DB 107-20.3 Temporary Construction Easements**

The Design-Builder shall be responsible to identify, prepare, and submit to the LA DOTD new or revised surveys, legal descriptions, ROW maps, and justification of the need for the acquisition of all temporary construction easements not previously obtained by the LA DOTD at no change in Contract Time or Lump Sum Contract Price. The LA DOTD will acquire the temporary construction easements on behalf of the Design-Builder.

**DB 107-21 PERSONAL LIABILITY OF PUBLIC OFFICIALS**

In carrying out the provisions of this Contract or in exercising any authority granted to them by the Contract, there will be no liability upon the Secretary, Chief Engineer, Department's Project Manager, or their authorized representatives, either personally or as officials of the state, it being understood that in such matters they act solely as representatives of the state.

**DB 107-22 NO WAIVER OF LEGAL RIGHTS**

Upon completion of the Work, the LA DOTD will make final inspection and then notify the Design-Builder of Final Acceptance within 30 Calendar Days. Such Final Acceptance will not prevent the LA DOTD from correcting any measurement, estimate, or certificate made before or after completion of the Work, nor will the LA DOTD be prevented from recovering from the Design-Builder, its Surety, or both

such overpayment as it may sustain by failure of the Design-Builder to fulfill obligations under the Contract. A waiver by the LA DOTD of any breach of any part of the Contract will not be a waiver of any other breach.

The Design-Builder, without prejudice to the terms of the Contract, shall be liable to the LA DOTD for latent defects, fraud, or such mistakes as may amount to fraud, or as regards the LA DOTD's rights under any warranty or guaranty.

**DB 107-23      THIRD PARTY LIABILITY**

It is agreed between the parties executing the Contract that it is not intended by any provisions of the Contract to create the public nor any member thereof as a third-party beneficiary hereunder, nor to authorize anyone not a party to this Contract to maintain a suit for personal injuries or property damage pursuant to the Contract.

**DB 107-24      ANTI-TRUST VIOLATIONS**

By execution of the Contract, the Design-Builder conveys to the LA DOTD all rights, title, and interest in and to all causes of action it may acquire under federal and state anti-trust laws relating to the goods or services purchased by the LA DOTD pursuant to the Contract.

**DB 107-25      THE DESIGN-BUILDER'S RESPONSIBILITY FOR THE TRAVELING PUBLIC**

The Design-Builder shall conduct Work within the construction zone so that there will be minimal hazard to anyone transiting the Work Site on the open lanes of travel. To keep hazards to a minimum, the Design-Builder shall, as far as practical, keep Equipment, Material, and workers from intruding into the travel lanes; remove any hazardous construction debris deposited on those lanes on a continuous and regular basis; inspect and repair the travel lanes; and remove obstacles deposited by the public as they transit the Work site.

Notification that a hazard to the public exists may be received through the Design-Builder's inspections, from the LA DOTD's employees, or the public. In any case, corrective action must be taken to remedy the hazard within a reasonable time after notification is received. The Design-Builder shall have a contact number answerable on a 24 hour basis so that action can be initiated quickly when hazards are identified.

All claims from the public for losses that are alleged to have occurred within the construction zone will be handled by the Design-Builder, even though a Subcontractor may have introduced the hazard that caused the damage. The Design-Builder shall designate, before the Work commences, the individuals who will be responsible for response to third party claims. The individuals will provide claimants with a written outline of the Design-Builder's claims procedure, along with a written copy of the Design-Builder's name, address, and telephone number and the name and title of the Design-Builder's individual assigned to damage claim response. The Design-Builder shall maintain a status report of all claims filed and the status of such claims. This report must contain, at a minimum, the name, address, and telephone number of the claimant; the nature of the claim; pertinent findings regarding the claim; and a statement regarding the resolution of the claim. This report must be available to the Department's Project Manager upon request.

The Design-Builder shall establish a local contact number for the purpose of filing claims and post that telephone number conspicuously so that claimants can contact the right person quickly. In addition, the Design-Builder's name, address, and telephone number must be posted at each approach to the construction zone. All construction vehicles (whether Design-Builder, Subcontractor, or privately owned) working at the construction zone must have clean and unobstructed license plates and be marked legibly with the appropriate company name.

**DB 107-26      ARCHEOLOGICAL AND HISTORICAL FINDINGS**

If the Design-Builder encounters cultural artifacts or archaeological or historical sites, operations must be discontinued. The Department's Project Manager will contact the proper authorities in order that an appropriate assessment may be made to determine the disposition thereof and necessary actions relative to the site. When directed, the Design-Builder shall excavate the site to preserve the artifacts encountered. Such excavation will be paid for as Extra Work, including an appropriate adjustment in Contract Time. Borrow and muck disposal areas furnished by the Design-Builder will be subject to such assessment prior to use.

**DB 107-27      RAILWAY PROVISIONS**

All Work to be performed by the Design-Builder in construction on railway ROW shall be in accordance with the provisions of this DB Section 107-27.

The Design-Builder shall indemnify the railway and its officers and employees from all suits, actions, or claims brought because of injuries or damages sustained by any person or property due to operations of the Design-Builder; due to negligence in safeguarding the Work; due to use of unacceptable Materials in constructing the Work; due to any negligent act, omission, or misconduct of the Design-Builder; or due to claims or amounts recovered from infringements of patent, trademark, or copyright.

Upon completion of the work, the Design-Builder shall, within ten Calendar Days, remove from within the limits of the railway's ROW all machinery, Equipment, surplus Materials, falsework, rubbish, or temporary buildings of the Design-Builder, and restore the railway's premises substantially to their former condition satisfactory to the railway's representative. Should the Design-Builder fail to make such removal and restoration within ten Calendar Days, the railway shall have the right to make such removal or restoration. The expense incurred will be chargeable to the Project on the railway's force account statement and the LA DOTD will reimburse the railway for such work. The amount will be deducted from payments due the Design-Builder.

All costs incurred under this DB Section 107-27 and any other provisions of the Contract Documents must be included in the Lump Sum Contract Price.

Prior to Final Acceptance of the Project, the Design-Builder shall secure a Certificate of Release from the railroad company and furnish same to the LA DOTD stating that the Design-Builder has satisfactorily restored the railway's premises and has completed payments for all railway services performed for the Design-Builder's account, and that the railway waives all claims for damages due to the Design-Builder's operations within railway ROW under the Contract. If the Design-Builder is unable to secure a Certificate of Release from the railway, the Design-Builder shall submit an executed Contractor's Affidavit to the Department's Project Manager.

**DB 107-28     DISPUTES RESOLUTION**

**DB 107-28.1     Scope of the Procedure**

The following dispute resolution procedure covers all disputes between the LA DOTD and the Design-Builder arising from this Contract. This procedure is non-binding. Compliance with this procedure is a condition precedent to any litigation in East Baton Rouge Parish and Louisiana. All communications, testimony, and documents prepared for use in this procedure by either party from the time of filing the claim until the conclusion of the procedure shall be deemed to be settlement negotiations and not admissible in any subsequent litigation. The result of the dispute resolution process shall not be admissible in any subsequent litigation, except to enforce the terms of settlement.

**DB 107-28.2     Continuation of Performance**

At all times during the pendency of a dispute under this procedure, the Design-Builder shall continue Work pursuant to the terms of this Contract and the LA DOTD shall continue to pay the Design-Builder. After resolution, the Design-Builder shall pay any amounts due after conclusion of the dispute resolution procedure.

**DB 107-28.3     Informal Mediation by the Louisiana Department of Transportation and Development Chief Engineer**

If a dispute arises between the LA DOTD and Design-Builder regarding this Contract, the party seeking to invoke this dispute resolution procedure shall submit an outline statement of its position regarding the dispute to the LA DOTD's Chief Engineer and the other party. Within 15 Working Days after the submission of the dispute to the LA DOTD's Chief Engineer, the parties shall meet with the LA DOTD's Chief Engineer to attempt to resolve the dispute through the informal mediation process. If within 20 Working Days after the submission to the LA DOTD's Chief Engineer the parties cannot resolve the dispute, the dispute shall be submitted to the process established in DB Section 107-28.4 and the dispute shall be resolved in accordance with that process.

**DB 107-28.4     Formal Mediation**

The LA DOTD and Design-Builder agree that if the informal mediation process described in DB Section 107-28.3 fails, then the parties will submit to at least four hours of formal mediation, as described below, conducted by United States Arbitration & Mediation (USA&M) or its affiliated offices.

A) Mediator

The mediator will be a USA&M mediator located in an office to be agreed upon by the LA DOTD and the Design-Builder. The LA DOTD and Design-Builder recognize that at the formal mediation and at every other point in the proceedings, neither USA&M nor the mediator will be acting as a legal advisor representative for any or all parties.

B) Formal Mediation Procedure

The formal mediation will involve the LA DOTD and Design-Builder meeting with a mediator in an attempt to reach a voluntary settlement for any dispute that rises to the level of formal mediation. Formal mediation involves no court procedures or rules of evidence, and the mediator will not render a binding decision or force an agreement on the LA DOTD and Design-Builder.



The LA DOTD and Design-Builder shall consult with legal counsel before signing documents which result from the formal mediation.

C) Confidentiality

The LA DOTD and Design-Builder recognize that formal mediation proceedings are settlement negotiations, and that all offers, promises, conduct, and statements, whether written or verbal, made in the course of the proceedings, are inadmissible in any arbitration or court proceeding, to the extent allowed by Louisiana state law. The LA DOTD and Design-Builder agree to not subpoena or otherwise require the mediator or USA&M employees to testify or produce records, notes, or work product in any future proceedings, and no recording or stenographic record will be made of the formal mediation session. Evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the formal mediation session. In the event the parties do reach a settlement agreement, the terms of that settlement will be admissible in any court or arbitration proceeding required to enforce it, unless the parties agree otherwise. Information disclosed to the mediator in a private caucus shall remain confidential unless the party authorizes disclosure.

D) Costs

The LA DOTD and Design-Builder will share equally in the costs of the formal mediation.

**DB 107-28.4 Judicial Authority**

The process contained in this DB Section 107-28 must be exhausted prior to an appeal to any judicial authority.