

the construction and maintenance agreement, except to the extent a construction and maintenance agreement or Preliminary Exhibit A requires modification due to an ATC included in Appendix 2 to Exhibit 2 or due to DB Contractor's design. In such event, DB Contractor shall be responsible for obtaining the required modifications to the construction and maintenance agreement or Preliminary Exhibit A in accordance with Section 6.10.2.1. In the event of a conflict between an approved Preliminary Exhibit A or construction and maintenance agreement and the Design-Build Specifications, the approved Preliminary Exhibit A or construction and maintenance agreement shall govern and control.

### **6.10.1 Railroad Documents**

The following documents ("Railroad Documents") were included in a folder labeled "Railroad Documents" in the Reference Information Documents prior to the Proposal Due Date: "I-35 NEX UPRR Exhibit A 01/14/2021". If the final executed version of a construction and maintenance agreement with a railroad contains conditions or requirements that differ materially from those contained in the applicable Railroad Documents pertaining to that railroad, and such changed conditions or requirements (a) increase DB Contractor's Direct Costs by more than \$10,000 or result in a delay to the Critical Path and (b) were not caused by the acts or omissions of any DB Contractor-Related Entity, including modifications to the Schematic Design or the Railroad Documents that were initiated by DB Contractor, DB Contractor shall be entitled to a Change Order for certain costs and for delays to the Critical Path resulting from such material changes in conditions and requirements to the extent permitted by this Section 6.10.1. The Change Order shall be in the amount of the incremental increase in DB Contractor's Direct Costs to comply with the changed conditions or requirements. For Change Orders that include an extension of a Completion Deadline, the amount of the Change Order shall also include Project Overhead to the extent permitted by Section 4.6.6.2.2 of the General Conditions. Any Change Order will be subject to the requirements and limitations in Section 4.6 of the General Conditions, including Section 4.6.6.2.3 and Section 4.6.6.3.

### **6.10.2 Railroad Agreement Delay**

**6.10.2.1** TxDOT shall be responsible for negotiating and entering into construction and maintenance agreements necessary for the Schematic Design, provided that DB Contractor shall be responsible for cooperating and coordinating with TxDOT, including by providing any schematics, plans or other information within 14 days of a request by TxDOT or the railroad for such schematics, plans or other information. Notwithstanding anything to the contrary in the Contract Documents, DB Contractor shall be responsible for obtaining any approvals from railroads or agreements with railroads, including construction and maintenance agreements or modifications thereto, that are necessary to implement an ATC included in Appendix 2 to Exhibit 2 or are due to DB Contractor's design. The term "Railroad Agreement Delay" means a delay to a Critical Path that is directly attributable to the failure of TxDOT and a railroad to execute a construction and maintenance agreement within the time periods set forth in this Section 6.10.2.1, as applicable. DB Contractor shall be entitled to a time extension extending affected Completion Deadlines for delays to the Critical Path and increasing the Price for certain additional costs incurred directly attributable to a Railroad Agreement Delay as follows:

In the event a Preliminary Exhibit A (draft or final) pertaining to the applicable construction and maintenance agreement was included in the RIDs prior to the Proposal Due Date, then DB Contractor shall be entitled to a time extension extending the applicable Completion Deadlines for any Railroad Agreement Delay if the construction and maintenance agreement is not executed within 365 days after the Effective Date. For Change Orders extending a Completion Deadline in accordance with this Section 6.10.2.1, DB Contractor shall be entitled to Project Overhead to the extent permitted by Section 4.6.6.2 of the General Conditions. Except to the extent that this Section 6.10.2.1 allows compensation for Project Overhead, Change Orders under this Section 6.10.2.1 shall not include compensation for delay or disruption damages.

**6.10.2.2** DB Contractor shall not be entitled to any relief for Railroad Agreement Delays unless the delays and the effects of such delays are beyond the control of the DB Contractor-Related Entities and are