THIS INDEPENDENT ENGINEER'S AGREEMENT (this Independent Engineer's Agreement) is made on [●]

AMONG

(1) REGIONAL TRANSPORTATION DISTRICT (RTD);

(2) DENVER TRANSIT PARTNERS, LLC, a limited liability company formed under the laws of the State of Delaware (the Concessionaire and, together with RTD, each, an Appointer and, collectively, the Appointers); and

(3) [●] (the Independent Engineer and, together with the Appointers, each, a Party and, collectively, the Parties).

WHEREAS

(A) RTD and the Concessionaire have entered into an agreement (the Concession Agreement), a copy of which is attached hereto as Exhibit A, pursuant to which RTD has granted to the Concessionaire certain rights in respect of the Eagle Project.

(B) It is a requirement of the Concession Agreement pursuant to Section 22.8(a) therein, that the Appointers appoint the Independent Engineer, to perform certain services in relation to the Eagle Project as described herein.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Capitalized terms used and not otherwise defined in this Independent Engineer's Agreement have the respective meanings assigned to such terms in the Concession Agreement. In addition, the following terms have the meanings specified below:

Additional Fee means the fee for the Additional Services calculated on such basis as the Independent Engineer and the Appointers agree and subject to Section 11 (Additional Services).

Additional Services means the additional services which the Independent Engineer is requested to perform from time to time in accordance with Section 11 (Additional Services) of this Independent Engineer's Agreement.

Additional Services Document has the meaning specified in Section 11 (Additional Services).

Assignee has the meaning specified in Section 4.1 (Notice of Assignment).

Assignor has the meaning specified in Section 4.1 (Notice of Assignment).

Concessionaire Indemnity Limit means 50% of the Fee.

Concessionaire Representative has the meaning specified in Section 6.4 (The Appointers' Representatives).
**Delegated Person** has the meaning specified in Section 6.8 (*Further Delegations*).

**Department Program** has the meaning given to it in Section 8-17.5-101, Colorado Revised Statutes.

**E-Verify Program** has the meaning given to it in Section 8-17.5-101, Colorado Revised Statutes.

**Fee** has the meaning given to it in Section 13.1.

**Independent Engineer's Team** means the employees and personnel of the Independent Engineer specified in Annex 2 and as such team is modified from time to time in accordance with the provisions of this Independent Engineer's Agreement.

**Indemnity Limit** means the total of RTD Indemnity Limit plus the Concessionaire Indemnity Limit.

**Information** has the meaning specified in Section 17.1(d).

**IE Manager** has the meaning specified in Section 10.1 (*Independent Engineer's Personnel*).

**Representatives** means the Concessionaire Representative and the RTD Representative.

**RTD Indemnity Limit** means 50% of the Fee.

**RTD Representative** has the meaning specified in Section 6.4 (*The Appointers' Representatives*).

**Services** means the services that the Independent Engineer is required to perform pursuant to this Independent Engineer's Agreement, as set out in Part A of Annex 1.

1.2 Unless the context otherwise clearly requires:

(a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined;

(b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms;

(c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";

(d) the word "will" shall be construed to have the same meaning and effect as the word "shall";

(e) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein);
(f) any reference herein to any Person, or to any Person in a specified capacity, shall be construed to include such Person's successors and assigns or such Person's successors in such capacity, as the case may be;

(g) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Independent Engineer's Agreement in its entirety and not to any particular provision hereof;

(h) all references herein to Sections, Parts and Annexes shall be construed to refer to Sections and Parts of and Annexes to, this Independent Engineer's Agreement. The Annexes to this Independent Engineer's Agreement are an integral part hereof. The provisions of this Independent Engineer's Agreement shall prevail over the provisions of the Annexes to the extent of any inconsistency.

(i) the headings used in this Independent Engineer's Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Independent Engineer's Agreement; and

(j) references to this Independent Engineer's Agreement or to any other agreement or document relating to the Eagle Project includes a reference to this Independent Engineer's Agreement, or, as the case may be, such other agreement or document as amended, supplemented or assigned from time to time.

1.3 If there is any conflict between the provisions of the Concession Agreement and this Independent Engineer's Agreement, the provisions of the Concession Agreement shall prevail. The Independent Engineer acknowledges and agrees that the provisions of the Concession Agreement take precedence over and supersede the provisions of this Independent Engineer's Agreement.

2. TERM

2.1 This Independent Engineer's Agreement shall become effective on the execution of this Independent Engineer's Agreement by each of the Parties.

2.2 The Independent Engineer shall commence the performance of the Services on the earlier of the date falling 60 days after the Phase 1 Effective Date or receipt of written instruction to commence by mutual agreement of the Appointers.

2.3 Unless this Independent Engineer's Agreement is terminated earlier in accordance with Section 22.8 (Independent Engineer) of the Concession Agreement and the provisions of this Independent Engineer's Agreement, the Independent Engineer shall perform the Services until the earlier of (a) issuance of the last Final Completion Certificate or (b) the End Date.

3. APPOINTMENT OF THE INDEPENDENT ENGINEER

3.1 The Appointers hereby together appoint the Independent Engineer pursuant to Section 22.8(a) of the Concession Agreement.
3.2 The Independent Engineer hereby agrees to serve as the Independent Engineer in accordance with the provisions of this Independent Engineer’s Agreement and Sections 26.3(c), 28.2 (Revenue Service Commencement Certificates), 28.4 (Final Completion Certificates), 28.5 (Issuance of Revenue Service Commencement Certificates and Final Completion Certificates) and Attachment 13 (Compensation Following Termination) of the Concession Agreement.

3.3 Each Appointer acknowledges, and the Independent Engineer accepts, that the Independent Engineer is an independent contractor and is not an agent, employee or representative of either of the Appointers. Neither Appointer is responsible or liable for the Independent Engineer's acts or omissions, including the acts or omissions of its agents, employees, representatives or subcontractors.

3.4 The Appointers agree to act in good faith towards the Independent Engineer at all times and shall cooperate with each other generally in relation to all matters relating to the duties of the Independent Engineer and the implementation of the Eagle Project.

3.5 The Independent Engineer agrees to perform its obligations under this Independent Engineer's Agreement objectively and impartially, to comply with Good Industry Practice and Applicable Requirements, and shall not place the interests of either Appointer above those of the other Appointer.

3.6 The Independent Engineer agrees that while this Independent Engineer's Agreement is in force it will not provide services of any description to any person, entity or third party (a) in connection with the Eagle Project or (b) on any other project or matter to the extent such person, entity or third party is itself providing services of any description in connection with the Eagle Project, in each case without the prior written consent of both the Appointers (such consent not to be unreasonably withheld or delayed).

4. APPOINTERS’ ASSIGNMENT

Notice of Assignment

4.1 The Parties acknowledge and agree that the rights and obligations of either Appointer (such assigning party, the Assignor) may be assigned to a permitted assignee of the Assignor (the Assignee) in accordance with Section 48 (Assignment) of the Concession Agreement. The Independent Engineer hereby consents to such assignment and agrees to do all acts and execute all documents that are reasonably required to effect such an assignment.

Consequences of Assignment

4.2 As a result of such assignment described in Section 4.1 (Notice of Assignment):

(a) the rights and obligations imposed on the Assignor under this Independent Engineer's Agreement shall be transferred to the Assignee;

(b) all references to the Assignor in this Independent Engineer's Agreement, except in this Section 4.2 shall be deemed to be references to the Assignee; and
(c) the Assignor shall be released from the rights and obligations under this Independent Engineer's Agreement other than any accrued but non-discharged liability and any existing breach by the Assignor of this Independent Engineer's Agreement.

Notification by the Assignor

4.3 The Assignor shall provide notice to the Independent Engineer when the assignment described in Section 4.1 (Notice of Assignment) has been effected.

5. REPRESENTATIONS AND WARRANTIES

5.1 The Independent Engineer hereby represents and warrants that:

(a) the Independent Engineer is a [●] duly organized, validly existing and, where legally applicable, in good standing under the laws of [●] and has the corporate power and authority to transact the business it transacts and proposes to transact, to execute and deliver this Independent Engineer's Agreement and to perform the provisions hereof;

(b) this Independent Engineer's Agreement has been duly authorized by all necessary corporate action on the part of the Independent Engineer, and this Independent Engineer's Agreement constitutes a legal, valid and binding obligation of the Independent Engineer enforceable against the Independent Engineer in accordance with its terms, except as such enforceability may be limited by (i) applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

(c) the execution, delivery and performance by the Independent Engineer of this Independent Engineer's Agreement and the performance by the Independent Engineer of its obligations hereunder will not:

   (i) contravene, result in any breach of, or constitute a default under, any agreement, contract, instrument or other undertaking to which the Independent Engineer is a party or which is binding on the Independent Engineer or any of its property or assets;

   (ii) conflict with or result in a breach of the articles, bylaws or other governing documents of the Independent Engineer;

   (iii) violate any Applicable Requirement; or

   (iv) result in a conflict of interest with its current or former clients that could prevent it from providing the Services in an objective, accurate, and unbiased manner;

(d) there are no actions, suits, investigations or proceedings pending against the Independent Engineer or, to the knowledge of the Independent Engineer,
threatened against or affecting the Independent Engineer in any court or before any arbitrator of any kind or before or by any Relevant Authority that, individually or in the aggregate, could reasonably be expected to have a material adverse effect on the business or condition (financial or otherwise) of the Independent Engineer; and

(e) no event has occurred and no condition exists that is likely to result in the debarment or suspension of the Independent Engineer from contracting with the United States Federal government or any department, agency or instrumentality thereof, and the Independent Engineer is not and has not been subject to any such debarment or suspension.

5.2 The Independent Engineer acknowledges that the Appointers have entered into this Independent Engineer's Agreement in reliance on the above representations made by the Independent Engineer.

6. OBLIGATIONS OF THE APPOINTERs

General

6.1 The Appointers shall use best efforts to:

(a) supply (or arrange for others, including the Project Contractors, and any Subcontractor, to supply) to the Independent Engineer, without charge and in such reasonable time as not to delay or disrupt the performance of the Services and any Additional Service, all necessary and relevant data, records and information in its possession or under its control and which are required from time to time under the provisions of the Concession Agreement and this Independent Engineer's Agreement;

(b) allow the Independent Engineer such access to the Sites, the Work, and the Eagle Project as the Independent Engineer may require for the performance by the Independent Engineer of its obligations under this Independent Engineer's Agreement; and

(c) ensure that the Independent Engineer has access to the Project Contractors and any of their Subcontractors as it may require for the performance by the Independent Engineer of its obligations under this Independent Engineer's Agreement.

6.2 The Appointers shall pay the Fee and any Additional Fee in accordance with the provisions of this Independent Engineer's Agreement.

Facilities

6.3 The Concessionaire shall provide the Independent Engineer with office space and facilities on the Site reasonably necessary for the exercise of its rights and obligations under this Independent Engineer's Agreement, including the office space, facilities, storage space and parking areas referred to in Section 10.1 (Offices and Office Facilities) of Attachment 9 (Project and Construction Management).
The Appointers' Representatives

6.4 Without prejudice to the role of RTD's Representative as set out in Section 8.1 (RTD's Representative) of the Concession Agreement, RTD shall designate a representative to act on its behalf under this Independent Engineer's Agreement (the RTD Representative), and the Concessionaire shall designate a representative to act on its behalf under this Independent Engineer's Agreement (the Concessionaire Representative and, together with the RTD Representative, the Representatives and each individually, a Representative).

6.5 The Appointers shall each give notice to the Independent Engineer of the name and contact details of their respective representatives within 15 days after the date of this Independent Engineer's Agreement and at least 15 days before appointing a replacement Representative.

6.6 Subject to the provisions of the Concession Agreement (including Section 8 (RTD's Representative) thereof), each Representative shall, subject, in the case of RTD's Representative to the provisions of Section 8 (RTD's Representative) of the Concession Agreement and unless and until the Party that appointed such Representative notifies the Independent Engineer otherwise, have the full authority of the appointing Party to act on its behalf under this Independent Engineer's Agreement, except that the Representatives shall not have the authority to:

(a) amend this Independent Engineer's Agreement;
(b) terminate this Independent Engineer's Agreement; or
(c) relieve the Independent Engineer of any of its duties, obligations or responsibilities under this Independent Engineer's Agreement.

6.7 The Representatives shall be responsible for communicating to the Project Contractors any opinion, certificate or valuation, or other determination of the Independent Engineer, which opinions, certificates, valuations or other determinations the Parties agree shall be limited to (a) resolution of disputes (except with respect to disputes regarding Financing Costs, which disputes shall be resolved in accordance with the Dispute Resolution Procedures) by the Independent Engineer regarding Construction Payments under Section 26.3(c) of the Concession Agreement and (b) in connection with the issuance of Revenue Service Commencement Certificates and of Final Completion Certificates in accordance with Section 28.5 (Issuance of Revenue Service Commencement Certificates and Final Completion Certificates) of the Concession Agreement.

Further Delegations

6.8 The Representatives may from time to time delegate any of their duties to any Person (a Delegated Person) and may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy of it has been delivered to the other Parties to this Independent Engineer's Agreement.

6.9 A Delegated Person shall be a suitably qualified person and competent to carry out its duties.
6.10 Any determination, approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a Delegated Person, in accordance with the delegation, shall have the same effect as though the act had been an act of the relevant Representative. However:

(a) any failure to disapprove any part of the Work or the Eagle Project shall not imply acceptance of such part of the Work or the Eagle Project by the Representative or a determination by the Representative as to the compliance of such part of the Eagle Project with the requirements set out in the Concession Agreement, and shall therefore not prejudice the right of the relevant Representative to reject any part of the Work or the Eagle Project, plant or materials; and

(b) if the Independent Engineer questions any determination or instruction of a Delegated Person, the Independent Engineer may refer the matter to the relevant Representative, who shall promptly confirm, reverse or vary the determination or instruction.

Instructions

6.11 The Appointers may each issue instructions and representations to the Independent Engineer, which may be necessary for the Independent Engineer to perform its obligations under this Independent Engineer’s Agreement in accordance with Sections 26.3(c), 28.2 (Revenue Service Commencement Certificates), 28.4 (Final Completion Certificates), 28.5 (Issuance of Revenue Service Commencement Certificates and Final Completion Certificates) and Attachment 13 (Compensation Following Termination) of the Concession Agreement. Any such instruction shall be in writing, shall be simultaneously copied to the other Appointer, and shall state the obligations to which it relates and relevant provisions of this Independent Engineer's Agreement.

7. RIGHTS AND OBLIGATIONS OF THE INDEPENDENT ENGINEER

General

7.1 The Independent Engineer agrees to impartially and independently perform the Services and the Additional Services in accordance with the provisions and on the terms and conditions set out in this Independent Engineer’s Agreement and the Concession Agreement and in accordance with all instructions and directions given to it by the Appointers, unless it would be illegal to do so.

7.2 The Independent Engineer shall submit to the Appointers a monthly report detailing the Services and the Additional Services provided in the previous month. Where invoices are provided monthly in accordance with Section 13.3, the monthly report shall include the details required in Section 13.3.

7.3 If either Appointer arranges for the provision of services other than the Services from any entity other than the Independent Engineer, the Independent Engineer shall cooperate with such entities but shall not be responsible for the services of such entities.
Performance Standards

7.4 In performing its obligations hereunder, the Independent Engineer shall:

(a) exercise all the skill, care, judgment and diligence in accordance with generally accepted professional standards expected from a qualified and competent consulting Independent Engineer under similar circumstances in compliance with the provisions of the Concession Agreement and any other relevant documents provided by the Appointers from time to time;

(b) where the Services include the exercise of discretion or performance of duties authorized or required by the provisions of the Concession Agreement, the Independent Engineer shall if authorized to give its decision, opinion or approval, or otherwise take any action which may affect the rights and obligations of the parties under the Concession Agreement, exercise such discretion fairly and impartially between the Appointers in an independent manner and having regard to all the relevant circumstances and set out its opinion or determination in a certificate which it shall provide to the Representatives at the time it is required to give such decision, opinion or approval, or takes such action in accordance as specified in the Concession Agreement; and

(c) re-work or re-perform any work or task carried out by the Independent Engineer or the Independent Engineer's Team which does not conform with the requirements of this Independent Engineer's Agreement and the cost of any re-work or re-performance will be the sole responsibility of the Independent Engineer.

7.5 The Independent Engineer acknowledges that it has received a copy of and understands each of the Concession Agreement and the Design/Build Contract (with the exception of certain commercial terms not provided by the Appointers and not required for the performance of the Services by the Independent Engineer), together with all the attachments thereto, insofar as they relate to, affect or may affect the construction or operation of the Eagle Project and the performance by the Independent Engineer of its obligations under this Independent Engineer's Agreement.

7.6 The Independent Engineer shall perform the Services so as not to cause or contribute to any breach by the Concessionaire or RTD under the Concession Agreement or any other Project Agreement, or by the Concessionaire or the Project Contractors under the Design/Build Contract, the Rolling Stock Supply Contract or the O&M Contract, or by any Subcontractor under any Subcontract, or by the Concessionaire, any Project Contractor or RTD under any other agreement in respect of the Eagle Project, the relevant provisions of which are provided to the Independent Engineer by the Appointers from time to time.

8. Authority of the Independent Engineer

8.1 The Independent Engineer shall act (i) on the mutually agreed instructions of the Appointers, as notified from time to time to the Independent Engineer by the Appointers and to be given in accordance with the Concession Agreement (except in respect of the Additional Services), and (ii) as otherwise permitted or required under this Independent Engineer's Agreement.
Engineer's Agreement and by agreement of the Parties under the Concession Agreement. If the Independent Engineer receives any instruction or direction outside the scope of the Services (or, if applicable, the Additional Services), or any instruction which conflicts with another instruction received by it, the Independent Engineer shall not comply with such instruction, and shall immediately refer the matter to the Appointers.

8.2 The Independent Engineer shall not do any of the following:

(a) execute any document or enter into any agreement on behalf of either of the Appointers, or otherwise bind or commit either of the Appointers to any arrangement;

(b) agree on behalf of either Appointer to any amendment to the terms and conditions of any agreement or arrangement between such party and any third party, or any waiver, compromise or abandonment of any of the obligations of either of the Appointers; or

(c) give any consents or approvals reserved to the Concessionaire or RTD under the provisions of the Concession Agreement.

8.3 The Independent Engineer shall have no authority to act as agent on behalf of either Appointer.

8.4 The Independent Engineer may not give instructions to the Project Contractors or any Subcontractor, except in cases of emergency that create an immediate need and serious threat to public health, safety or security, when it may instruct a Project Contractor or any Subcontractor to suspend work and shall immediately inform the Appointers, fully explaining to the Appointers the reasons for such instruction.

9. PROCEDURES

9.1 The Independent Engineer shall promptly request from the Appointers such instructions and information as are reasonably necessary for the proper performance of the Services and the Additional Services by the Independent Engineer.

9.2 The Independent Engineer shall keep the Appointers fully and properly informed of all matters arising from the performance of the Services and the Additional Services as they occur or as the Appointers may otherwise require, and shall provide copies of such documents and correspondence as shall be necessary for such purposes to the Appointers, or as the Appointers may otherwise request.

10. INDEPENDENT ENGINEER'S PERSONNEL

10.1 The Independent Engineer shall appoint one of the Independent Engineer's Team as its manager (the IE Manager) to direct and control the performance by the Independent Engineer of the Services and the Additional Services. The IE Manager shall have full authority to act on behalf of the Independent Engineer for all purposes in connection with the Eagle Project and in accordance with this Independent Engineer's Agreement. The IE Manager shall work exclusively on the Eagle Project for the duration of this Independent
Engineer’s Agreement. The Independent Engineer shall also appoint a substitute IE Manager to carry out the tasks of the IE Manager when the IE Manager is unavailable.

10.2 The Independent Engineer shall use the Independent Engineer's Team for the performance of the Services and the Additional Services and the Independent Engineer shall procure that such persons shall be available as may be necessary to properly perform the Services and the Additional Services and otherwise as may be required by the Appointers. The Independent Engineer's personnel engaged in performing the Services and the Additional Services shall be suitably qualified and competent to carry out the roles they are to undertake.

10.3 Subject to Section 10.4, the Independent Engineer shall not remove any member of the Independent Engineer's Team without the prior approval of both of the Appointers (such approval not to be unreasonably withheld) and, if such approval is given, the Independent Engineer shall be responsible for promptly replacing such person with a qualified person who shall have been previously approved by the Appointers (acting reasonably). Either Appointer shall have the right to submit a written request for the removal of any person employed by the Independent Engineer in relation to the provision of the Services and the Additional Services and the Independent Engineer shall promptly remove the person so specified. The Independent Engineer shall be responsible for promptly replacing such person with a suitably qualified person who shall have been previously approved by both of the Appointers (acting reasonably). The Independent Engineer shall have no responsibility to undertake any action under this Section 10.3 until and unless both of the Appointers (acting reasonably) mutually agree on their instruction for such action.

10.4 If the Appointers believe that the Services require an Independent Engineer's Team of fewer members than at the date of this Independent Engineer's Agreement or as reduced pursuant to this Section 10.4, then the Appointers together may submit a written request to the Independent Engineer to change the number of members of the Independent Engineer's Team and the Fee, as applicable, shall be adjusted pro rata to reflect the reduction in the number of members on the Independent Engineer's Team. The Independent Engineer shall have no obligation to undertake any action under this Section 10.4 until and unless both of the Appointers (acting reasonably) mutually agree on their instruction for such action.

11. **ADDITIONAL SERVICES**

11.1 The Independent Engineer shall from time to time at the reasonable request of the Appointers perform services in addition to the Services (the *Additional Services*).

11.2 The Additional Services shall be performed promptly and impartially and in accordance with a timetable agreed with RTD and the Concessionaire or, absent such agreement, at the Independent Engineer's discretion.

11.3 Before performing the Additional Services, the Independent Engineer shall notify the Appointers, and if so required by either Appointer, provide both Appointers with a general description of the Additional Services to be provided, and the time and the manner in which the Additional Fee is to be paid (the *Additional Services Document*). The Appointers undertake to review the Additional Services Document promptly, and not to unreasonably withhold their consent thereto.
12. **THE FEE**

**Appointers' Joint Payment Obligation**

12.1 Each of RTD and the Concessionaire shall pay 50% of all fees, costs and expenses of the Independent Engineer set out in this Section 12 in accordance with this Section 12, provided that the Concessionaire shall pay 100% of all additional fees, costs and expenses of the Independent Engineer incurred (a) following the delivery of an Outstanding Requirements Notice or an Outstanding Completion Requirements Notice and in connection with any Services required as a result of the Concessionaire's rectification of the defects identified in such notices in accordance with Sections 28.5(d) or 28.5(g) of the Concession Agreement, as applicable, and (b) as a result of any Dispute regarding any amount in a Statement under Section 26.3(c) of the Agreement resolved by the Independent Engineer entirely in favor of RTD.

12.2 The respective obligations of the Appointers to pay the fees, costs and expenses of the Independent Engineer are several. The Appointers are independently responsible for their respective shares owed to the Independent Engineer, and in no event shall the failure of one Appointer to pay part or all of such share constitute a default or obligation of the other Appointer.

12.3 All references to payments by the Appointers under this Section 12 shall be to such payments as to be made in equal shares by the Appointers.

**Fee**

12.4 Subject to Section 10.4 and any termination of this Independent Engineer's Agreement prior to the date of issuance of the last Final Completion Certificate, in consideration for the actual performance of the Services and the involvement of the Independent Engineer's Team, the Appointers together shall pay to the Independent Engineer the Fee in accordance with Section 13.1.

12.5 The Independent Engineer shall charge for its provision of Services hereunder on the basis of the hourly rates set forth in Annex 2.

**Additional Services**

12.6 The Appointers shall pay the Additional Fee for any Additional Services as agreed in the Additional Services Document. The Additional Fee shall be paid on the basis of the same hourly rates as the Fee or otherwise as agreed between the parties in the Additional Services Document.

13. **INVOICING AND PAYMENT**

**Fee**

13.1 The Fee (the *Fee*) shall be paid by the Appointers on an hourly basis, which fee shall accrue at the rates set out in Part A of Annex 2, and shall include reimbursement for expenses as permitted under Part B of Annex 2, provided that (other than with respect to any additional fees, costs or expenses of the Independent Engineer paid for solely by the
Concessionaire in accordance with Section 12.1) the aggregate Fee (less expenses) shall not exceed U.S.$[•] (regardless of hours actually worked) and the aggregate amount of additional expense reimbursement shall not exceed U.S.$[•].

13.2 On any given invoice claiming Fees (less expenses) or additional expenses that, in the aggregate when taken together with all prior such Fees, would equal or exceed 75% of the total amount budgeted under Section 13.1 for such Fees, accompanying such invoice the Independent Engineer shall provide (a) a written notice to the Appointers of such event and (b) a revised estimate of the total cost required for the remaining performance of the Services under this Independent Engineer's Agreement relative to the remaining budgeted Fee allowance under Section 13.1. If additional funds are required, the notice shall document the reasons therefore and shall state the estimated amount of additional compensation required to continue performance for the remainder of this Independent Engineer's Agreement.

Fee and Additional Fee Payment and Invoicing

13.3 Any Fee and any Additional Fee shall be payable monthly by the Appointers, in arrears. On the 25th day of each month (or the immediately preceding Business Day), the Independent Engineer shall submit an invoice to the Appointers reporting the details of the charges for Services, or if applicable, Additional Services, for which a Fee and any Additional Fee is payable provided during the immediately prior month.

Appointers' Rights and Deductions from Payments

13.4 Payment by the Appointers of any sum due to the Independent Engineer under the provisions of this Independent Engineer's Agreement shall be without prejudice to any claims or rights which the Appointers may have, separately or jointly, against the Independent Engineer and shall not constitute an admission by the Appointers as to the performance by the Independent Engineer of its obligations under this Independent Engineer's Agreement.

13.5 Without prejudice to any other right or remedy that either of the Appointers may have, the Appointers may withhold payment of any sums due to the Independent Engineer under the provisions of this Independent Engineer's Agreement, or make such deduction from any payment to be made to the Independent Engineer under the provisions of this Independent Engineer's Agreement as the Concessionaire or RTD may consider reasonable, in the event of unsatisfactory performance of the Services by the Independent Engineer or in respect of any dispute or claim whatsoever with or against the Independent Engineer.

14. INDEMNITY

14.1 Except as set out below, the Independent Engineer shall indemnify the Appointers and the Project Contractors, and each of their respective agents, servants, consultants, subcontractors and employees, against each and every liability which they may incur to any person whatsoever and against any claims, demands, proceedings, damages, costs, losses, liability and/or any of their expenses sustained, incurred or payable by the Appointers or by the Project Contractors to the extent that the same arise by reason of any wrongful act, omission, default or lack of diligence by the Independent Engineer, or any
of its agents, servants, consultants, subcontractors or employees, in the performance of
the Independent Engineer's obligations under this Independent Engineer's Agreement. This indemnity shall survive the termination of this Independent Engineer's Agreement.

14.2 Except as stated in Section 14.3, the maximum aggregate liability of the Independent Engineer:

(a) to the Concessionaire and/or the Project Contractors for any failure to perform the Services at the standards required by the provisions of this Independent Engineer's Agreement shall be the Concessionaire Indemnity Limit,

(b) to RTD for any failure to perform the Services at the standards required by the provisions of this Independent Engineer's Agreement shall be RTD Indemnity Limit, and

(c) to either Appointer for any failure to perform the Services at the standards required by the provisions of this Independent Engineer's Agreement shall be the Indemnity Limit provided that the other Appointer does not make such a claim for the same event or cause under Section 14.1 within 30 days following notice of the first Appointer's claim.

14.3 The limitations set out in Section 14.2 shall not apply with respect to loss, liability or damage suffered as a result of:

(a) fraud, fraudulent misrepresentation, willful default, willful misconduct, willful concealment, gross negligence or corrupt conduct of the Independent Engineer, its agents, servants, consultants, subcontractors or employees;

(b) death or personal injury resulting from negligence; or

(c) failure of the Independent Engineer to comply with its obligations under Section 16 (Insurance).

15. INDEPENDENT ENGINEER’S ASSIGNMENT

15.1 The Independent Engineer shall not, and shall not purport to, assign or transfer any right or obligation under this Independent Engineer's Agreement, including the performance of any of the Services or the Additional Services, without the prior written consent of both Appointers.

15.2 Subject to any restriction in the Concession Agreement, the Appointers may each assign or transfer any of their respective rights or obligations under this Independent Engineer's Agreement to any person without the prior consent of the Independent Engineer.

15.3 Neither subcontracting by the Independent Engineer nor the consent by the Appointers in relation thereto shall relieve the Independent Engineer from any liability or obligation under this Independent Engineer's Agreement.
16. **INSURANCE**

16.1 The Independent Engineer shall effect and maintain throughout the duration of this Independent Engineer's Agreement and for 12 months thereafter, a professional indemnity insurance policy:

(a) with a Qualifying Insurer;

(b) on terms and conditions which are market standard for an independent consulting Independent Engineer carrying on activities on the international market similar to those of the Independent Engineer; and

(c) to cover any damages, costs, expenses, responsibilities, acts, demands, claims or proceedings arising out of death or injury of any person or damage to property;

to satisfy any liability the Independent Engineer may have to the Concessionaire, RTD, the Project Contractors and the Lenders on the part of the Independent Engineer, resulting from breach of duty, negligent act, error or omission of the Independent Engineer, its employees, agents or subcontractors in respect of the performance of the Services and any Additional Services.

16.2 The professional indemnity insurance referred to in Section 16.1 shall be in an amount not less than the Indemnity Limit per event and in aggregate not less than the Indemnity Limit per year for loss as a result of any negligent breach of duty, act, error or omission (or single series of negligent acts errors or omissions) by the Independent Engineer in the discharge of the Services and shall in addition include provision sufficient to cover attorneys fees and costs for which the Independent Engineer is liable to a claimant or to its own legal advisers.

16.3 The Independent Engineer shall submit to each Appointer a certificate stating the details of the professional indemnity insurance policy within 30 calendar days from the date when either Appointer has requested the Independent Engineer to do so. If the Independent Engineer fails to provide either Appointer with such certificate, either Appointer shall be entitled to terminate this Independent Engineer's Agreement.

16.4 The Independent Engineer shall effect and maintain insurances to cover its liabilities as employer and/or for compensation to its personnel as required by any Applicable Requirement or Relevant Authority.

16.5 If the Independent Engineer fails to comply with this Section 16, either Appointer may take out such insurance as it deems necessary as a result of the breach by the Independent Engineer. The Independent Engineer shall fully indemnify such Appointer in respect of premiums payable by such Appointer.

17. **CONFIDENTIALITY**

17.1 Subject to the Parties' rights and obligations under Section 32 *(Audit and Records)* of the Concession Agreement, the Independent Engineer shall keep secret and confidential, and shall not at any time (other than solely for the purpose of complying with any of its obligations under the provisions of this Independent Engineer's Agreement) for any
reason disclose or publish, or permit to be disclosed or published to any person, or otherwise use or permit use to be made of:

(a) any data, information or material of whatsoever nature that is given to the Independent Engineer, whether by or on behalf of the Concessionaire, RTD, or otherwise, to enable the Independent Engineer to discharge its duties and obligations under the provisions of this Independent Engineer's Agreement or to perform the Services or for any other purpose arising from or connected with this Independent Engineer's Agreement or the Eagle Project;

(b) any data, information or material of whatsoever nature that otherwise comes into the possession of the Independent Engineer by reason of or in connection with its entering into this Independent Engineer's Agreement or performing the Services;

(c) any data, information or material of whatsoever nature relating to the performance of this Independent Engineer's Agreement of the Services or Additional Services by the Independent Engineer or to any activity or business of the Concessionaire or RTD; and

(d) any data, information and material of whatsoever nature that is derived or generated from the data information and material referred to under the above preceding paragraphs (hereinafter the Information).

17.2 Without prejudice to the generality of Section 17.1, the Independent Engineer shall:

(a) keep the Information secure and safeguarded and in its possession (except in so far as it is required to give or disclose the Information to the Concessionaire, RTD, or any other person in the due performance of the Services) at all times; and

(b) not exploit or manipulate the Information in any manner whatsoever.

17.3 The Independent Engineer shall not make any reference in any advertising or other promotional or publicity material issued by it or on its behalf or on its instruction to this Independent Engineer's Agreement or the performance of the Services by it without the prior written consent of both of the Appointers.

17.4 The Independent Engineer shall ensure and procure that all of its agents, servants, consultants, subcontractors, employees, and any third party to whom it assigns, subcontracts or otherwise transfers the responsibility for or the obligation to perform any of its duties, functions, liabilities, obligations or responsibilities (or any part thereof) under the provisions of this Independent Engineer's Agreement in accordance with this Independent Engineer's Agreement comply with the commitments arising from this Section 17.

17.5 The provisions of this Section 17 shall survive termination of this Independent Engineer's Agreement.
18. **INTELLECTUAL PROPERTY**

18.1 The Independent Engineer hereby irrevocably and without charge assigns to RTD ownership of all Intellectual Property (including Work Products and any other documents, designs, drawings, Manuals, other information, and other work and the designs contained in them created and submitted to the Appointers, and all schedules, records, and reports maintained by the Independent Engineer) that has been made by the Independent Engineer in anticipation or will be made by the Independent Engineer in the course of performing the Services and the Additional Services, together with all copyright and other industrial or intellectual property rights therein. The Independent Engineer shall incorporate a similar term into any agreement it enters into with its subcontractors and shall require such subcontractors to incorporate a similar term into any agreement they may enter into which relates to the Services or any Additional Services, in each case including an irrevocable assignment without charge to RTD of ownership of all Intellectual Property related to the Services or Additional Services.

18.2 The provisions of this Section 18 shall survive termination of this Independent Engineer's Agreement.

19. **RECORDS AND RIGHTS OF AUDIT**

19.1 The Independent Engineer shall, and shall procure that its subcontractors (to the extent such subcontractors have been approved under the provisions of this Independent Engineer's Agreement), maintain a true and correct set of records including personnel records pertaining to all activities relating to their performance of this Independent Engineer's Agreement and all transactions related thereto. The Independent Engineer agrees, and shall procure that its permitted subcontractors agree, to retain all such records for a period of not less than ten years after the expiry or termination of this Independent Engineer's Agreement. The Appointers shall each have the right to audit and take copies of any and all such records at any time during the term of this Independent Engineer's Agreement and for a period of three years thereafter.

20. **INDEPENDENT ENGINEER'S PROPERTY**

All property of the Independent Engineer, and the Independent Engineer's employees, agents, representatives and any subcontractors, while at the Sites or the premises of either Appointer, shall be at the risk of the Independent Engineer and neither Appointer accepts any liability for any loss or damage howsoever occurring or caused thereto except to the extent that such loss or damage occurred or was caused by reason of the negligence of either Appointer or any of such Party's respective employees, agents or representatives acting in the course of their employment. The Independent Engineer shall draw the provisions of this Section 20 and its effect to the attention of such employees, agents, representatives and any subcontractors who may visit any Site or the Concessionaire's or RTD premises.

21. **TERMINATION**

**Termination by the Appointers**

21.1 Without prejudice to either Appointer's right to terminate this Independent Engineer's Agreement pursuant to Section 21.5, and in accordance with Section 22.8 **(Independent
(Engineer) of the Concession Agreement, each Appointer shall independently be entitled to terminate this Independent Engineer's Agreement, provided that:

(a) the Appointer wishing to terminate the appointment of the Independent Engineer shall serve written notice on the Parties specifying its grounds for such termination;

(b) the Appointers shall consult on whether such termination is necessary in the circumstances; and

(c) following such consultation, the Appointer wishing to terminate the appointment of the Independent Engineer may do so by giving at least 28 days' written notice to the Independent Engineer and the other Parties, specifying the grounds for termination.

Termination by the Independent Engineer

21.2 The Independent Engineer shall be entitled to terminate this Independent Engineer's Agreement with immediate effect following 60 days' written notice to the other Parties (subject to any grace periods set out below) in the event:

(a) either Appointer fails to pay any amount due to the Independent Engineer under this Independent Engineer's Agreement and that amount remains outstanding for more than 15 days following the Independent Engineer's written demand for payment, provided that such non-payment is not the subject matter of a dispute then under determination in accordance with Section 24 (Law and Disputes) or the Dispute Resolution Procedure;

(b) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of either Appointer or its respective debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Independent Engineer for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for a period of 60 or more days or an order or decree approving or ordering any of the foregoing shall be entered; or

(c) either Appointer shall:

(i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect;

(ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in Section 21.2(b);
(iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for itself or for a substantial part of its assets;

(iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding;

(v) make a general assignment for the benefit of creditors; or

(vi) take any action for the purpose of effecting any of the foregoing.

**Suspension of Services by the Appointers and Independent Engineer's Right to Terminate**

21.3 In circumstances including the occurrence of Relief Events and Force Majeure Events, the Appointers may, by mutual agreement and by notice to the Independent Engineer, require the Independent Engineer to suspend performance of the Services or any part thereof. In such case, the Independent Engineer shall immediately make arrangements to suspend the Services or any relevant part thereof and minimize expenditure.

21.4 If the Services are suspended for more than two months the Independent Engineer shall be entitled to request, by notice in writing to the Appointers, that the Independent Engineer resumes the Services. If the Appointers by mutual agreement have not instructed the Independent Engineer to resume the Services within 30 days from the date of the Independent Engineer's notice, the Independent Engineer shall be entitled by written notice to the Appointers to immediately terminate its engagement under this Independent Engineer's Agreement.

**No Fault Termination**

21.5 Any Party shall be entitled to terminate this Independent Engineer's Agreement with immediate effect following written notice to the other Parties if:

(a) the Concession Agreement is terminated for any reasons set out therein (including an Extensive Force Majeure Event in accordance with Section 39.8 (Extensive Force Majeure Event) of the Concession Agreement), in which case the termination of this Independent Engineer's Agreement shall be in accordance with any applicable provisions of the Concession Agreement;

(b) if the Effective Date under the Concession Agreement is not achieved[; or]

(c) [the Independent Engineer shall have delivered the notice referred to in Section 22.4]¹.

**Payments on Termination**

21.6 Upon termination of this Independent Engineer's Agreement for any reason whatsoever RTD and the Concessionaire shall each pay to the Independent Engineer any Fee and any

¹ NOTE: Include if the Independent Engineer is also acting as the Lenders' technical advisor.
Additional Fee attributable to the Services and the Additional Services, respectively, performed by the Independent Engineer in compliance with this Independent Engineer's Agreement as at the date of termination which have not been previously paid for by the Appointers.

21.7 On any termination for Independent Engineer's default under Section 21.1 (Termination by the Appointers), RTD and the Concessionaire shall each be entitled to recover from the Independent Engineer, by way of set-off or otherwise, 50% of the costs for remedying any defect or deficiency in the Services performed by the Independent Engineer prior to the date of notice of termination and/or any costs incurred as a consequence of such termination, including, but not limited to, preparation and execution of an agreement with a replacement Independent Engineer.

Payments on Suspension

21.8 If this Independent Engineer's Agreement is suspended in accordance with Section 21.3, the Independent Engineer shall be entitled to receive payment of the Fee on a pro-rata basis for the period between the immediately preceding payment date in accordance with Section 12.1 (Appointers' Joint Payment Obligation) and the date of the suspension. No further payment will be made during the period of the suspension and the remaining payment dates in accordance with Section 12.1 shall be postponed by a period equal to the duration of the suspension. At the payment date (as postponed) following the suspension, the Independent Engineer shall be entitled to receive the balance of the Fee being the amount that the Independent Engineer would have received were it not for the suspension less the pro-rata amount paid as described above.

Other Consequences of Termination

21.9 Upon termination of the Independent Engineer's engagement, the Independent Engineer shall cease to perform any further Services and shall cause to be delivered to the Appointers, and any successor Independent Engineer designated in writing by mutual agreement of the Appointers, all material prepared by it relating to the Services or any Additional Services (whether in the course of preparation or completed). The Independent Engineer agrees that upon such termination it will comply with all reasonable requests of the Appointers to assist any successor Independent Engineer in its appointment to such position. The Independent Engineer shall be permitted to maintain a copy of the material for professional indemnity reasons.

21.10 Termination of the Independent Engineer's engagement shall be without prejudice to the rights and remedies of any Party in relation to any negligence, omission or default of any other party prior to such termination. In any event, the liability of the Appointers is limited to willful misconduct.

21.11 Upon termination, the provisions of this Independent Engineer's Agreement shall continue to bind each Party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.
22. **GENERAL**

22.1 The respective rights of the Parties under this Independent Engineer's Agreement are cumulative and may be exercised as often as considered appropriate and are in addition to the Parties' respective rights under law. All waivers, additions, amendments and variations to this Independent Engineer's Agreement including this Section shall be binding only if in writing and signed by authorized representatives of the Independent Engineer, the Concessionaire, and RTD.

22.2 This Independent Engineer's Agreement supersedes any previous agreements or arrangements between the Parties in respect of the Services (whether oral or written) and represents the entire understanding between the Parties.

22.3 All approvals, comments, instructions, consents or advice from the Appointers under this Independent Engineer's Agreement or in connection with the Services and any Additional Services and the Eagle Project shall be in writing and none of the same shall in any way relieve the Independent Engineer from its obligations under this Independent Engineer's Agreement.

22.4 [The Appointers hereby acknowledge and consent to the appointment of [●] as technical advisor to the Agent Bank and the Lenders (the LTA) pursuant to [insert description of agreement appointing the Lenders' technical advisor] in connection with the Designated Credit Agreements. The Independent Engineer hereby confirms that it shall discharge its obligations under this Independent Engineer's Agreement and as LTA without affecting in any way the duty of undivided loyalty and professional care it owes to the Appointers under this Independent Engineer's Agreement, and will account for the cost of services separately between this Independent Engineer's Agreement and [insert description of agreement appointing the Lenders' technical advisor]. The Independent Engineer agrees that if, at any time, it reasonably believes that its ability to discharge its duty of undivided loyalty and professional care is prejudiced or compromised in any way, the Independent Engineer shall provide prompt written notice to each of the Appointers describing such prejudice or compromise, whereupon either Appointer may terminate this Independent Engineer's Agreement in accordance with Section 21.5 (No Fault Termination).]²

23. **NOTICES**

Any notice, approval, election, demand, direction, consent, designation, request, agreement, instrument, certificate, report or other communication required or permitted to be given or made under this Independent Engineer's Agreement (each, a **notice**) to a Party must be given in writing (including by fax or electronic mail). All notices will be validly given if on a Business Day to each Party at the following address:

² NOTE: Include if the Independent Engineer is also acting as the Lenders' technical advisor.
To RTD: Richard F. Clarke  
Assistant General Manager, Capital Programs  
1560 Broadway, FAS-71  
Denver, Colorado 80202  
Email: Richard.Clarke@rtd-fastracks.com  
Fax: (303) 299-2452  

With a copy to: John Dawson  
RTD Purchasing Agent  
1600 Blake Street, BLK-22  
Denver, Colorado 80202  
Email: john.dawson@rtd-denver.com  
Fax: (303) 299-1010  

To the Concessionaire: Denver Transit Partners, LLC  
c/o Gregory J. Amparano  
General Manager  
Denver Transit Holdings, LLC  
999 18th Street, Suite 1201 North  
Denver, Colorado 80202  
Fax: (303) 297-7553  

With a copy to: Nicholas Hann  
Executive Director  
Macquarie Capital Advisors  
Suite 2400, Bentall 5  
550 Burrard Street  
Vancouver, BC V6C 2B5  
Canada  
Fax: (604) 605-1634  
Email: Nick.Hann@macquarie.com  

and  

Spencer C. Weiss  
General Counsel  
Fluor Corporation  
100 Fluor Daniel Dr.  
Greenville, SC 29607  
Fax: (864) 281-6868  
Email: Spencer.Weiss@Fluor.com  

To the Independent Engineer:  

23.1 A notice shall be deemed to have been given:  

(i) upon receipt, if delivered in person;
(ii) upon receipt (confirmed by automatic answer back or equivalent evidence of receipt), if validly transmitted electronically before 3:00 p.m. (local time at the place of receipt) on a Business Day;

(iii) one Business Day after delivery to the courier properly addressed, if delivered by overnight courier; or

(iv) four Business Days after deposit with postage prepaid and properly addressed, if delivered by United States certified or registered mail.

23.2 The Parties will notify each other in writing of any change of address, such notification to become effective 15 days after notification.

24. **LAW AND DISPUTES**

24.1 This Independent Engineer's Agreement shall be construed in accordance with, and this Independent Engineer's Agreement and all matters arising out of or relating in any way whatsoever to this Independent Engineer's Agreement (whether in contract, tort or otherwise) shall be governed by, the law of the State of Colorado.

24.2 All disputes arising from, or in connection with, this Independent Engineer's Agreement shall be settled amicably among the Parties. If disputes cannot be settled amicably, all disputes arising out of, or in connection with this Independent Engineer's Agreement shall be subject to the jurisdiction of the District Court of Colorado for the City and County of Denver.

24.3 Each Party hereby irrevocably submits to the jurisdiction of such court with regard to any such dispute, and irrevocably waives, to the fullest extent permitted by applicable Law:

(a) any objection it may have at any time to the laying of venue of any such action or proceeding in such court;

(b) any claim that any such action or proceeding brought in any such court has been brought in an inconvenient forum; and

(c) the right to object, with respect to any such action or proceeding that such court does not have any jurisdiction over such Party.

25. **ILLEGAL ALIENS**

25.1 The Independent Engineer shall comply, and shall ensure that its subcontractors comply, in all material respects, with all applicable requirements of Section 8-17.5-101 et seq., Colorado Revised Statutes.

25.2 The Independent Engineer shall not (a) knowingly employ or contract with an illegal alien to perform any work under this Independent Engineer's Agreement or (b) enter into a contract with any subcontractor that fails to certify to the Independent Engineer that the subcontractor shall not knowingly employ or contract with an illegal alien to perform any work under such contract or this Independent Engineer's Agreement.
25.3 The Independent Engineer shall confirm, and shall ensure that all its subcontractors confirm, the employment eligibility of all employees who are hired in connection with the Independent Engineer’s performance of its obligations under this Independent Engineer’s Agreement through participation in either the E-Verify Program or the Department Program.

25.4 The Independent Engineer shall not use the E-Verify Program or the Department Program procedures for the purpose of pre-employment screening of job applicants while this Independent Engineer's Agreement is being performed.

25.5 If the Independent Engineer participates in the Department Program, the Independent Engineer shall:

(a) notify RTD of participation in the Department Program and shall comply with Section 8-17.5-102(c), Colorado Revised Statutes and any other requirements of the Department Program;

(b) no later than 20 days after hiring an employee who is hired in connection with the Independent Engineer's performance of its obligations under this Independent Engineer's Agreement, confirm to RTD, in a notarized certificate in form and substance satisfactory to RTD, that the Independent Engineer has examined the legal work status of such employee, retained copies of the documents required by 8 U.S.C. §1324a, and not altered or falsified the identification documents for such employees; and

(c) consent (and does hereby consent) to United States Department of Labor and Employment audits conducted in accordance with Colorado Revised Statutes §8-17.5-102(5)(C)(III).

25.6 If the Independent Engineer obtains actual knowledge that a subcontractor responsible for the performance of any part of the Independent Engineer's obligations under this Independent Engineer's Agreement employs or contracts with an illegal alien, the Independent Engineer must notify such subcontractor and RTD within three Business Days of the Independent Engineer having such actual knowledge. If, within three Business Days of receiving such notice, the subcontractor does not stop employing or contracting with the illegal alien, the Independent Engineer shall terminate the agreement with the subcontractor; provided that the Independent Engineer shall not be required to terminate such agreement with such subcontractor if, during such three Business Days after receiving the notice required in this Section 25, the subcontractor provides information to RTD to establish that the subcontractor did not knowingly employ or contract with an illegal alien.

25.7 The Independent Engineer shall cooperate and comply with any reasonable request the United States Department of Labor and Employment makes in the course of any investigation it undertakes.

26. NO FEDERAL GOVERNMENT OBLIGATION

The Independent Engineer acknowledges and agrees that, notwithstanding any concurrence by the United States federal government in, or approval of, the solicitation or award of this Independent
Engineer's Agreement, the United States federal government is not a party to this Independent Engineer's Agreement and shall not be subject to any obligations or liabilities to RTD, the Concessionaire, the Independent Engineer, or any other party (whether or not a party to this Independent Engineer's Agreement) pertaining to any matter resulting from this Independent Engineer's Agreement.

27. **APPROPRIATIONS**

Any and all payment obligations of RTD under and pursuant to this Independent Engineer's Agreement are subject to the board of directors of RTD expressly making prior annual appropriations of monies for the purposes of this Independent Engineer's Agreement. No such payment obligations which requires funding in any fiscal year is legally enforceable against RTD without an appropriation by the board of directors of RTD for the relevant amount of funding in such fiscal year.

**Related Disputes**

27.1 If there is a dispute being, or to be, determined under this Independent Engineer's Agreement which relates to a dispute under the Concession Agreement or one of the Project Agreements, then the Parties shall meet with the parties to such other contract to determine whether, at the sole discretion of each party, the actions should be joined and heard:

   (a) if the dispute under such other contract is a dispute before a Dispute Resolution Panel under the Concession Agreement, in a single dispute resolution proceeding, before the same Dispute Resolution Panel, in accordance with the rules applicable under Section 50.3 (**Dispute Resolution Panel**) of the Concession Agreement; and

   (b) in other cases, in a single proceeding, before the same court, under the rules applicable under this Independent Engineer's Agreement, provided that proceedings concerning the Concession Agreement shall be before the same court and under the same rules as applicable under the Concession Agreement.

28. **SPECIFIED REQUIREMENTS**

The Independent Engineer shall perform its obligations and (where relevant) shall require each subcontractor to perform their respective obligations under this Independent Engineer's Agreement in accordance with the following requirements.

**Protection of Security Sensitive Information and Critical Infrastructure Information**

FTA Terms

28.2 All contractual provisions required by the U.S. Department of Transportation (USDOT), as set forth in FTA Circular 4220.1F.

FTA Regulations and Policies

28.3 All applicable FTA regulations, policies, procedures and directives, including those listed directly in or referred to in the current FTA Master Agreement, from time to time during the term of this Independent Engineer's Agreement.

Lobbying


Program Fraud and False or Fraudulent Statements and Related Acts


Civil Rights

28.6 (a) 49 U.S.C. § 5332 (Nondiscrimination in Federal Public Transportation Programs);

(b) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., and with USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act", 49 CFR Part 21;

(c) All applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 et seq., and any Federal regulations that prohibit discrimination on the basis of sex that may be applicable;


(f) All equal employment opportunity provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and Federal implementing regulations and any subsequent amendments thereto, except to the extent FTA determines otherwise in writing, and any applicable Federal equal employment opportunity directives that may be issued from time to time; and

Fly America Requirements


Access Requirements For Persons With Disabilities

28.8 (a) 49 U.S.C. § 5301(d);

(b) All applicable provisions of Section 504 of the Rehabilitation Act of 1973, as amended by 29 U.S.C. § 794;

(c) The Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 et seq.; and


Energy Conservation Requirements

28.9 (a) All applicable mandatory energy efficiency standards and policies within applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, 42 U.S.C. §§ 6321 et seq.;

(b) The Requirements of FTA regulations, "Requirements for Energy Assessments", 49 CFR Part 622, Subpart C.

Clean Water Requirements

28.10 All applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.

The Independent Engineer shall report all violations thereof to RTD, the Concessionaire, to FTA and to the appropriate Environmental Protection Agency Regional Office.

Clean Air Requirements

28.11 All applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq.

The Independent Engineer shall report all violations to RTD, the Concessionaire, to FTA and to the appropriate Environmental Protection Agency Regional Office.
Seismic Safety Requirements


29. **CONSENT TO SERVICE OF PROCESS**

Each Party irrevocably consents to service of process by personal delivery, certified mail, postage prepaid or overnight courier. Nothing in this Independent Engineer's Agreement will affect the right of any Party to serve process in any other manner permitted by law.

30. **WAIVER OF CONSEQUENTIAL DAMAGES**

In no event, whether based on contracts, indemnity, warranty, tort (including, as the case may be, a Party's own negligence) or otherwise, shall any Party be liable to the other Parties for or with respect to any claims for consequential, indirect, punitive, exemplary, special or incidental damages, lost profits, lost revenues or otherwise; provided, however, that this Section 30 shall not limit a Party's right to any termination payments payable under Section 21 or damages (i) which are fines, penalties or other charges assessed by a Relevant Authority, (ii) arise out of occurrences actually covered by any valid and collectible insurance maintained by any Party or (iii) which are expressly provided for in this Independent Engineer's Agreement.

31. **WAIVER OF JURY TRIAL**

**EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDING.** Each of the Parties hereby (i) certifies that no representative, agent or attorney of any other has represented, expressly or otherwise, that such other would not, in the event of any suit, action or proceedings relating to this Independent Engineer's Agreement, seek to enforce the foregoing waiver and (ii) acknowledges that it has been induced to enter into this Independent Engineer's Agreement by, among other things, the mutual waivers and certifications in this paragraph.

32. **BINDING EFFECT**

This Independent Engineer's Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

33. **SEVERABILITY**

Any provision of this Independent Engineer's Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

34. **AMENDMENTS AND WAIVERS**

34.1 No amendment of this Independent Engineer's Agreement shall be valid unless it is in writing and signed by or on behalf of the Parties.
34.2 Unless expressly agreed, no amendment shall constitute a general waiver of any provisions of this Independent Engineer's Agreement, nor shall it affect any rights, obligations or liabilities under or pursuant to this Independent Engineer's Agreement which have already accrued up to the date of variation, and the rights and obligations of the Parties under or pursuant to this Independent Engineer's Agreement shall remain in full force and effect, except and only to the extent that they are so varied.

34.3 No failure or delay by any Party in exercising any right or remedy provided by Law or pursuant to this Independent Engineer's Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any other or further exercise of it or the exercise of any other right or remedy.

34.4 Any amendments, variations, modifications or waivers of this Independent Engineer's Agreement are subject to any requirements of the Concession Agreement.

35. COUNTERPARTS

This Independent Engineer's Agreement may be executed in any number of counterparts, each of which shall be identical and all of which, taken together, shall constitute one and the same instrument, and the Parties may execute this Independent Engineer's Agreement by signing any such counterpart. Transmission by facsimile of an executed counterpart of this Independent Engineer's Agreement shall be deemed to constitute due and sufficient delivery of such counterpart, to be followed thereafter by an original of such counterpart.
IN WITNESS WHEREOF, the parties hereto have caused this Independent Engineer’s Agreement to be executed and delivered as of the date first above written.

REGIONAL TRANSPORTATION DISTRICT

By: ____________________________
Name: ____________________________
Title: ____________________________

DENVER TRANSIT PARTNERS, LLC

By: ____________________________
Name: ____________________________
Title: ____________________________

[INDEPENDENT ENGINEER]

By: ____________________________
Name: ____________________________
Title: ____________________________
ANNEX 1

SERVICES

Part A: Services

1. GENERAL SERVICES

1.1 To the extent necessary to perform its duties under this Independent Engineer's Agreement, the Independent Engineer shall:

(a) attend and participate in all meetings at which the Independent Engineer's attendance is either required under the Design/Build Contract or the Concession Agreement, or has been requested in writing by either Appointer in each case with respect to the performance of the Services;

(b) participate in each System Performance Demonstration as described in Section 4 (System Performance Demonstration) of Part D (Verification and Demonstration) of Attachment 7 (Design, Construction and Rolling Stock Requirements) in accordance with Section 28.5 (Issuance of Revenue Service Commencement Certificates and Final Completion Certificates) of the Concession Agreement;

(c) keep full records of all meetings conducted or attended by the Independent Engineer and of the making of all decisions, views, opinions or consents offered by the Independent Engineer;

(d) timely request such documents, information and materials as are reasonably necessary for the exercise of its responsibilities;

(e) prior to issuing any certificate with its determination or opinion, permit the Appointers and the Lenders a reasonable opportunity to express their views with respect to the subject matter of the certificate in accordance with Section 22.8(h) of the Concession Agreement; and

(f) in all cases, perform its duties in conformity with Good Industry Practice.

1.2 The Services shall consist of those services under this Part A of Annex 1 other than Additional Services performed in accordance with this Independent Engineer's Agreement.

2. PAYMENTS

2.1 If the Appointers are unable to resolve a disagreement regarding a disputed Construction Payment amount pursuant to Section 26.3 (Statement Audit) of the Concession Agreement, the Independent Engineer shall, on receipt of a Statement submitted by the Appointers in accordance with Section 26.3(c) of the Concession Agreement, audit such Statement and determine the amount of the Statement for which payment must be made by RTD.
2.2 The Independent Engineer shall issue a certificate specifying such determination within 10 days after receiving the Statement.

2.3 If the Agreement is terminated pursuant to Section 41.2(a) of the Concession Agreement, the Independent Engineer shall verify all Project Implementation Costs incurred by the Concessionaire in accordance with Sections 2.1(a)(i) and 2.3(a)(i) of Attachment 13 (Compensation Following Termination).

3. **REVENUE SERVICE COMMENCEMENT CERTIFICATION**

3.1 Following receipt of a notice from the Concessionaire in accordance with Section 28.5(b) of the Concession Agreement, the Independent Engineer shall participate in the relevant System Performance Demonstration and shall issue the Revenue Service Commencement Certificate to the Parties in respect of a Commuter Rail Project and the associated Commuter Rail Service if the Concessionaire has demonstrated to the satisfaction of the Independent Engineer in the relevant System Performance Demonstration that the Revenue Service Commencement Requirements have been satisfied.

3.2 If, following any System Performance Demonstration, the Independent Engineer has not determined that all of the Revenue Service Commencement Requirements for that Commuter Rail Project and Commuter Rail Service have been achieved, the Independent Engineer shall promptly and in any event no later than five Business Days following such demonstration issue a notice (the *Outstanding Requirements Notice*) to the Concessionaire, specifying those Revenue Service Commencement Requirements that are still outstanding or require rectification by the Concessionaire.

3.3 The Independent Engineer shall set out in an attachment to each Revenue Service Commencement Certificate the Punch List Items which have not been completed in full and shall specify a reasonable time period in which they are to be so completed (such period to be agreed between the Concessionaire, RTD and the Independent Engineer).

4. **FINAL COMPLETION CERTIFICATION**

4.1 Following receipt of a request of the Concessionaire in accordance with Section 28.5(e) of the Concession Agreement, for each Commuter Rail Project and associated Commuter Rail Service, once the Concessionaire has demonstrated that the Final Completion Requirements for a Commuter Rail Project and Commuter Rail Service have been achieved, the Independent Engineer shall issue the Final Completion Certificate to the Parties in respect of such Commuter Rail Project and Commuter Rail Service no later than 30 days following the Concessionaire's request to the Independent Engineer to issue the Final Completion Certificate.

4.2 Where the Independent Engineer has not determined that all of the Final Completion Requirements have been achieved in respect of a Commuter Rail Project and associated Commuter Rail Service, the Independent Engineer shall promptly, and in any event no later than 10 days following such determination, issue a notice (an *Outstanding Completion Requirements Notice*) in respect of such Commuter Rail Project and such Commuter Rail Service to the Concessionaire, specifying those Final Completion Requirements for such Commuter Rail Project and such Commuter Rail Service that are still outstanding or require rectification by the Concessionaire before the Independent Engineer shall issue the Final Completion Certificate for such Commuter Rail Project and such Commuter Rail Service.
Part B: Further Reporting Requirements

The Independent Engineer shall provide both of the Appointers such specific reports in relation to the progress of the Work in achieving the Revenue Service Commencement Requirements and the Final Completion Requirement as reasonably requested by either the Concessionaire or RTD from time to time.
ANNEX 2

INDEPENDENT ENGINEER’S TEAM

Part A: Independent Engineer's Team and Hourly Rates

The Independent Engineer's Team shall include the following persons or classes of persons at the specified hourly rates (such rates subject to Part B below):

<table>
<thead>
<tr>
<th>Role</th>
<th>Number of Personnel</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>IE Manager</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Estimator</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Quality Assurance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Engineers, other</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Administrative Assistant</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Part B: Fee Agreement and Cost Reimbursement Limitations

(a) All hourly rates are in U.S.$ and

   (i) inclusive of [•]; but

   (ii) exclusive of [•], and

in each case in accordance with Part 31 of the Federal Acquisition Regulation, 48 CFR 31.

(b) Hourly rates are [not] subject to indexation [in accordance with [•]].

(c) Hourly rates for additional team members are subject to approval of the Appointers.

(d) Expenses shall be reimbursed against invoices subject to the following conditions:

   (i) [•]; and

   (ii) [•].
EXHIBIT A

CONCESSION AGREEMENT

[To be attached]
[DATE]

REGIONAL TRANSPORTATION DISTRICT

DENVER TRANSIT PARTNERS, LLC

and

[INDEPENDENT ENGINEER]

_________________________________________

INDEPENDENT ENGINEER'S AGREEMENT

_________________________________________
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