

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
IN RE: TC DENVER DEVELOPMENT, INC, A DELAWARE CORPORATION Respondent.	
PHILIP J. WEISER Attorney General STEVEN KAUFMANN Deputy Attorney General DIANE R. HAZEL Acting First Assistant Attorney General DEVIN LAIHO Senior Assistant Attorney General Colorado Attorney General's Office Ralph L. Carr Colorado Judicial Center 1300 Broadway, 7 th Floor Denver, CO 80203	
ASSURANCE OF DISCONTINUANCE	

This Assurance of Discontinuance (“Assurance”) is entered into by and between the State of Colorado, *ex rel.* Philip J. Weiser, Attorney General for the State of Colorado, and Respondent This Assurance is a settlement between the Attorney General and Respondent in lieu of the Attorney General filing a complaint against Respondent for the alleged conduct described in the Allegations section below, and without any admission by Respondent or any of its parent or affiliate entities of any violation of any law, and without adjudication of any issue of fact or law.

PARTIES

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado (“Attorney General”).
2. TC Denver Development, Inc. (“Respondent” or “Trammell Crow”) is a Delaware Corporation, with its headquarters in Denver, Colorado.

DEFINITIONS

3. As used in this Assurance:
 - A. “Attorney General Proceeding” means any investigation, litigation, or proceeding against parties other than Trammell Crow or its parent or affiliate entities with regard to the Allegations and matters contained in this Assurance.
 - B. “Convention Center Expansion” means the expansion of the Colorado Convention Center by the City and County of Denver.
 - C. “City” means the City and County of Denver.
 - D. “Compliance Records” mean all non-privileged books, ledgers, accounts, records, data, and Documents made or created after the Effective Date and in the possession, custody, or control of Trammell Crow, relating to any matters contained in this Assurance.
 - E. “Covered Conduct” means any and all alleged acts or omissions (including all communications) by any of Trammell Crow’s parents,

affiliated entities, officers, directors, representatives, or employees relating to the Convention Center Expansion prior to the Effective Date of this Assurance.

F. “Documents” means all “writings,” “photographs,” and “recordings” as those terms are defined in Rule 1001(1) of the Colorado Rules of Evidence.

G. “Effective Date” means the date on which the last and final party signs this Assurance.

H. “Mortenson” means Mortenson Construction, a proposer-contractor bidding for the construction contract for the Convention Center Expansion.

I. “Public Project” means any project initiated by and paid for by any governmental entity that relates to publicly financed infrastructure projects involving public-procurement processes.

J. “State” means the State of Colorado.

K. “M/WBE” means Minority- and Women-Owned Business Enterprise.

L. “State” means the State of Colorado.

ALLEGATIONS BY THE ATTORNEY GENERAL

4. The Attorney General alleges that in 2018, the City moved forward with plans to expand and upgrade the Colorado Convention Center and used

Trammell Crow as the City's Program Manager for the Convention Center Expansion.

5. The Attorney General alleges that acting on behalf of the City, Trammell Crow participated in the procurement process for the Convention Center Expansion, including preparing proposing documents and communicating with the contractors competing to become the contractor of the Convention Center Expansion.

6. The Attorney General alleges that one of Trammell Crow's representatives provided Mortenson and some of its employees, with certain non-public information concerning the Convention Center Expansion that Trammell Crow's representative did not share with other prospective proposers. This information concerned confidential aspects of the Convention Center Expansion bidding process and was not meant to be disseminated to proposers.

7. The Attorney General alleges that in return, Mortenson employees provided information and analyses to Trammell Crow's representative. For example, the Attorney General alleges that Trammell Crow's representative sought feedback on certain details of the preliminary design for the Convention Center Expansion and sought input on sample scenarios for proposer interviews. The Attorney General further alleges that Mortenson employees responded to Trammell Crow's representative with the requested information and analyses/calculations.

8. The Attorney General alleges that Mortenson employees sought to benefit from the opportunity to influence the bidding process and encouraged their colleagues to respond and share information with Trammell Crow's representative. The Attorney General alleges that Mortenson's communications with Trammell Crow's representative gave Mortenson a competitive advantage in the bidding process to the detriment of the City and other proposers.

9. The Attorney General alleges that Trammell Crow's representative used the information provided by Mortenson for his work on behalf of the City, and Trammell Crow's representative presented the Mortenson analyses and calculations as his own. The Attorney General alleges that Trammell Crow's representative benefitted from Mortenson's work product, jeopardizing the fairness of the bidding process.

10. The Attorney General alleges that by giving Mortenson preferential treatment—and then benefitting from Mortenson's work—Trammell Crow's representative failed to fairly and to properly represent the interests of the City.

11. The Attorney General alleges that Trammell Crow's representative's communications with Mortenson disrupted the bidding process such that the bid had to be cancelled and the Convention Center Expansion had to be delayed, all at an alleged significant cost to the City and detriment to the citizens of Colorado.

12. The Attorney General alleges that these communications were improper and interfered with the bidding process in violation of C.R.S. § 6-4-106 *et seq.*

STATUTORY FRAMEWORK

13. A person violates the Antitrust Act when they “contract, combine, or conspire with any person to rig ... any aspect of the bidding process, in any way related to the provision of any commodity or service.” C.R.S. § 6-4-106(1).

CONSIDERATION

14. The Parties enter into this Assurance as a compromise and settlement of all pending and any and all possible or potential claims related to the Covered Conduct. This Assurance is entered into without adjudication of any issue of fact or law and without any admission or finding of liability of any kind. Trammell Crow expressly denies any liability or wrongdoing under state or federal antitrust laws, and under any other legal or equitable theory, and is entering into this Assurance to avoid further inconvenience and the costs of potential litigation. This provision survives the expiration of this Assurance.

15. This Assurance shall finally and fully resolve any and all current, and any and all potential future civil and criminal disputes between the Attorney General and Trammell Crow and its subsidiaries, successors, assigns, parents, and affiliates, and their respective officers, directors, managers, agents, representatives, and employees arising out of, or that could arise out of (a) the Covered Conduct, (b)

any other alleged conduct described in this Assurance, or (c) any conduct otherwise investigated by the Attorney General that allegedly occurred prior to the Effective Date (as defined above), all including but not limited to any and all claims and/or causes of action for equitable relief, including injunctive relief, restitution, and disgorgement; criminal investigations and enforcements, criminal claims or charges, and prosecutions; fines and civil penalties; attorney fees; and/or costs. This Assurance does not resolve or release any claims the Attorney General may bring against Michael Sullivan.

16. Neither this Assurance, nor any negotiations, statements, or Documents related hereto, shall be offered or received in any legal or administrative proceeding or other legal or equitable action involving any party, including any federal, state, or local government or government agency, or any private party, as an admission, or as evidence or proof of any violation or liability under, or wrongdoing in connection with, any law, rule, or regulation, except in an action by the Attorney General or Trammell Crow to enforce the terms of this Assurance.

17. Nothing in this Agreement shall be construed as a finding, holding, or judgment by a court or any administrative body of or for violation of the Colorado Antitrust Act or the federal antitrust laws relating to this matter, including but not limited to the Covered Conduct, any other alleged conduct described in this Assurance, and any alleged conduct otherwise investigated by the Attorney General.

MONETARY RELIEF

18. Trammell Crow agrees to pay \$250,000 to the Attorney General within fourteen (14) business days of the Effective Date of this Assurance. This amount takes into account Trammell Crow's early cooperation in the Attorney General's investigation.

19. Trammell Crow's payment shall be held, along with any interest thereon, in trust by the Attorney General to be used at the discretion of the Attorney General for reimbursement of actual costs and attorneys' fees, for future antitrust and consumer protection enforcement actions, or to support consumer education and public welfare.

20. The payment shall be made by wire transfer of funds or cashier's check, pursuant to instructions to be provided by the Attorney General to counsel for Trammell Crow. Trammell Crow shall provide written notice to the Attorney General at or around the time that it initiates the funds transfer. In the event of a default in payment, interest at the rate of eighteen (18) percent per annum shall accrue thereon, and compound annually, from the date of default to the date of payment.

COMPLIANCE MEASURES

21. Trammell Crow assures the Attorney General that it shall take reasonable steps, including the steps set forth herein, to ensure that its principals, officers, directors, and employees, whenever acting on Trammell Crow's behalf or in

the scope of employment or agency for Trammell Crow, comply with the Colorado Antitrust Act, as now constituted or may hereafter be amended, and the terms of this Assurance.

22. For a period of two (2) years from the Effective Date, Trammell Crow shall disclose the existence of the Assurance to any Colorado governmental or public entity that asks for or requests information relating to whether Trammell Crow has ever been investigated in any context by or entered a settlement with a Colorado government entity.

23. During a public-procurement process for any Public Project, Trammell Crow shall not share or receive, directly or indirectly, with any unauthorized third-party confidential information related to the procurement or bid of any Public Project in violation of its contractual or legal obligations. To avoid any confusion, Trammell Crow, for example, may provide (1) information that has been previously or is simultaneously released to the trade generally, (2) information that is disclosed as part of a formal request for proposal or request for quotation, (3) information that a public entity has granted official permission to Trammell Crow to receive or to share with third parties, and (4) information that the bid process requires Trammell Crow to share with a third party.

24. Trammell Crow shall not engage in (1) unfair nor deceptive trade practices, (2) a violation of the federal or state antitrust laws, (3) conduct that rigs or interferes with any aspect of the bidding process, or (4) other conduct that

constitutes a violation of §§ 6-4-104 through 6-4-107 of the Colorado Antitrust Act. Trammell Crow shall abide by all provisions of the Colorado Antitrust Act.

25. Within thirty (30) days after entry of this Assurance, Trammell Crow shall identify its Compliance Officer, who will be responsible for managing and enforcing Trammell Crow's antitrust obligations, and shall provide to the Attorney General his or her name, business address, telephone number, and email address. Within forty-five (45) days of any vacancy in the Compliance Officer position, Trammell Crow shall appoint a replacement, and shall identify to the Attorney General the Compliance Officer's name, business address, telephone number, and email address. The Compliance Officer will be responsible, until the expiration of this Assurance, for supervising Trammell Crow's antitrust-compliance efforts, along with Trammell Crow's performance of the following in the State of Colorado:

- A. Instituting an antitrust compliance program for Trammell Crow's Colorado employees and directors who have responsibility for or involvement in bidding for any contract with a value higher than \$1,000 with the State or City; the program will include training on the antitrust and consumer-protection laws of the State of Colorado and the United States, for at least two hours annually for the next three years; such training will be delivered by an attorney with relevant experience in the application and enforcement of United States and Colorado antitrust laws.

- B. Within six months after entry of this Assurance, and on an annual basis thereafter for the duration of this Assurance, on or before each anniversary of the entry of this Assurance, obtaining, and thereafter maintaining, from all of Trammell Crow's Colorado employees who have responsibility for or involvement in bidding for any contract with a value higher than \$1,000 with the State or City, a certification that each such person has received the required two hours of annual antitrust training described in Paragraph 25(A).
- C. Communicating semi-annually to all Colorado Trammell Crow employees that they may (and are expected to) disclose to the Compliance Officer, without reprisal, information concerning any potential violation of any antitrust laws, including any United States, Colorado, municipal, or county antitrust laws.
- D. For the duration of this Assurance, within seven (7) business days of discovering or receiving information concerning an actual or potential violation of this Assurance by Trammell Crow in Colorado, (i) evaluating the credibility of the information, (ii) complying with Trammell Crow's internal policies and procedures concerning such information and the terms of this Assurance; and (iii) for information deemed credible or when otherwise required by Trammell Crow's internal policies and

procedures, taking reasonable action to terminate or modify Trammell Crow's conduct in Colorado to assure compliance with this Assurance. Within fourteen (14) days of determining that any such information is credible and/or will be addressed through Trammell Crow's internal policies and procedures, the Compliance Officer will provide to the Attorney General a written description of an actual or potential violation of this Assurance by Trammell Crow in Colorado and the related corrective actions taken and/or being taken. The Compliance Officer may rely on the reasonable advice of outside counsel to determine whether an actual or potential violation has occurred. If the Compliance Officer determines reported information is credible but is not contemplated or addressed through Trammell Crow's internal policies and procedures, the Compliance Officer will provide to the Attorney General a written description of the actual or potential violation of this Assurance by Trammell Crow in Colorado and the related corrective actions taken and/or being taken.

- E. For a period of three (3) years following the Effective Date, submitting a written report to the Attorney General on an annual basis, on or before each anniversary of the entry of this Assurance,

setting forth how Trammell Crow has complied and is complying with this Assurance.

26. For a period of three (3) years following the Effective Date, a representative of Trammell Crow shall make an annual presentation (for a total of three presentations in three years) on lessons learned from the subject matter of this Assurance at one of the following venues per year: (a) the University of Colorado Leeds School of Business; (b) the Colorado State University School of Construction Management; or (c) a conference or program sponsored by the Colorado Association of General Contractors (“AGC”), or its equivalent. Trammell Crow commits that it will make at least one presentation to the AGC, or its equivalent, during the three-year period that the Assurance is in effect. Trammell Crow shall, at least thirty (30) days before any such related presentation or participation in any forum on this subject, inform the Attorney General where the presentation or its equivalent will take place. Upon written request from the Attorney General, Trammell Crow shall submit an outline of its presentation, lecture, or speaking points to the Attorney General.

27. Trammell Crow shall continue to support M/WBE programs as part of its ongoing commitment to ensure that minority-owned and women-owned businesses are treated fairly and have every opportunity to bid for Public Projects.

28. Trammell Crow verifies that it has provided all non-privileged Documents and information in its custody and control relating to any Attorney

General Proceeding arising out of the Allegations in this Assurance. Trammell Crow shall continue to cooperate fully with the Attorney General regarding all matters about which Trammell Crow has non-privileged knowledge or information relating to any ongoing Attorney General Proceeding arising out of the subject matter discussed in this Assurance. Trammell Crow (and its officers, directors, and employees) shall not be required or compelled to waive any privilege, immunity, or rights as a result of their obligation to cooperate with Attorney General Proceedings. Trammell Crow shall not be required or compelled by the Attorney General to provide any Documents or information that it has previously disclosed or provided to the Attorney General. Trammell Crow's cooperation shall include, but not be limited to, the following:

- A. Upon written request, within a reasonable time period, and to the extent not previously disclosed or provided, using its reasonable best efforts to truthfully disclose and produce, to the offices of the Attorney General, and at no expense to the Attorney General, copies of all non-privileged information, Documents, materials, electronic information and records in its possession, regardless of their geographic location, about which the Attorney General may inquire in connection with any Attorney General Proceeding, including but not limited to all non-privileged information, Documents, materials, electronic information and records about

activities of Trammell Crow and present and former officers, directors, employees, and agents of Trammell Crow in connection with any Attorney General Proceeding;

- B. Upon written request, within a reasonable time period, and to the extent not previously disclosed or provided, making available, using its reasonable best efforts and upon reasonable notice, Trammell Crow's present officers, directors, employees, and agents to provide non-privileged information and/or testimony, including affidavits, as requested by the Attorney General in connection with any Attorney General Proceeding, including the provision of non-privileged testimony in Attorney General Proceedings, as well as interviews with law-enforcement authorities, consistent with the rights and privileges of those individuals. Trammell Crow will not seek from the Attorney General reimbursement for its expenses related to this sub-paragraph. The information and/or testimony provided pursuant to this Assurance cannot and will not be used in any way against Trammell Crow;
- C. Using its reasonable best efforts to facilitate contact with its former officers, directors, employees, and agents so that they may provide non-privileged information and/or testimony, including affidavits, as requested by the Attorney General in connection with any Attorney

General Proceeding. Trammell Crow will use its reasonable best efforts to facilitate contact with its former officers, directors, employees, and agents so that they may provide non-privileged testimony at Attorney General Proceedings, as well as interviews with law enforcement authorities, consistent with the rights and privileges of those individuals. The non-privileged information and/or testimony provided by those individuals pursuant to this Assurance cannot and will not be used in any way against Trammell Crow. Trammell Crow will not seek from the Attorney General reimbursement for its expenses related to this sub-paragraph, and Trammell Crow agrees to cover the reasonable costs and expenses of such former officers, directors, employees, or agents to facilitate their ability to appear and testify. Paragraph 28(C) does not apply to Michael Sullivan;

D. Upon written request, within a reasonable time period, and to the extent not previously disclosed or provided, providing to the best of its knowledge and using its reasonable best efforts, upon reasonable notice, non-privileged testimony or information for any Attorney General Proceeding, including affidavits, necessary to identify or establish the original location, authenticity, or other basis for admission into evidence of non-privileged Documents or physical

evidence produced by Trammell Crow in any Attorney General Proceeding as requested by the Attorney General;

- E. Upon written request, within a reasonable time period, and to the extent not previously disclosed or provided, accepting a subpoena from the Attorney General for any Attorney General Proceeding without the need for formal service of process; and
- F. Upon written request, within a reasonable time period, and to the extent not previously disclosed or provided, completely and truthfully responding, upon reasonable notice, to all other reasonable inquiries of the Attorney General for non-privileged information in connection with any Attorney General Proceeding.

29. Nothing in this Assurance limits any investigatory or litigation actions the City and County of Denver may pursue against Trammell Crow or the City and County of Denver's potential recovery for any action. Similarly, nothing in this Assurance limits Trammell Crow's rights, objections, and defenses to an investigatory or litigation action that the City and County of Denver may pursue against Trammell Crow or the City and County of Denver's potential recovery for any action.

30. Trammell Crow shall, for a period of three (3) years from the Effective Date of this Assurance, submit, for each Public Project that Trammell Crow shall contract for with the City or State, or any department or agency thereof, a

certification of compliance in the form required by the purchasing department or agency of the governmental entity, or, if no such certification is otherwise required, in substantially the form set forth in the Appendix hereto.

COMPLIANCE INSPECTION

31. For the purposes of determining or securing compliance with this Assurance, and subject to any legally recognized privileges, immunities, or rights, authorized representatives of the Attorney General will, on reasonable notice to Trammell Crow, be permitted:

- A. To inspect and copy, or at the Attorney General's option, to require Trammell Crow to provide hard-copy or electronic copies (if reasonably technically available, in a searchable and, if available, sortable format) of any Compliance Records;
- B. To interview, either informally or on the record, Trammell Crow's officers, employees, or agents about any non-privileged matters contained in this Assurance that occur after the Effective Date; and
- C. Notwithstanding any other provision stated herein, to use the Compliance Records against Trammell Crow in any investigation, action, or proceeding to enforce the terms of this Assurance.

32. Upon the written request of an authorized representative of the Attorney General sent to the address provided in Paragraph 33, Trammell Crow shall submit written reports or responses to written interrogatories, under oath if

requested, relating to any non-privileged matters contained in this Assurance that are discovered after the Effective Date, and as may be reasonably requested with reasonable notice and time to respond.

NOTICE

33. Whenever notice or a certification of compliance must be provided to the Attorney General pursuant to the terms of this Assurance, such notice shall be made both by first-class mail, return receipt requested, and by email addressed to the following:

First Assistant Attorney General
Antitrust Unit
Consumer Protection Section
Colorado Department of Law
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, Colorado 80203
Attention: Diane R. Hazel
diane.hazel@coag.gov

34. Whenever notice must be provided, or written requests are submitted to Trammell Crow pursuant to the terms of this Assurance, such notice and requests shall be made both by first-class mail, return receipt requested, and by email addressed to the following:

TC Denver Development, Inc.
1275 17th Street
Suite 3175
Denver, CO 80202
Attention: William E. Mosher, President
bmosher@trammellcrow.com
303-628-7439

or to such other person whom Trammell Crow may designate from time to time.

GENERAL PROVISIONS

35. Scope of Assurance. Unless otherwise provided, this Assurance shall apply to Trammell Crow and its officers, directors, agents, servants, employees, affiliates, subsidiaries, successors, and assigns.

36. Severable Breaches. Unless expressly set forth otherwise herein, the breach of this Assurance by any one party does not constitute a breach by any other party.

37. Expiration. Except as specifically set forth otherwise herein, this Assurance and the obligations hereunder expire three (3) years from its Effective Date.

38. Preservation of Action to Enforce Assurance. Nothing herein precludes the Attorney General from enforcing the provisions of this Assurance or from pursuing any non-released claims, including instituting any law enforcement action with respect to any acts or practices of Trammell Crow not covered by this Assurance or any acts or practices in which Trammell Crow engages after entry of this Assurance. Trammell Crow agrees to waive personal service of any demand, pleading, notice, or complaint from the Attorney General and agrees that notice as provided in the manner set forth herein satisfies any notice or service requirements. In connection with any effort by the Attorney General to enforce this Assurance

against Trammell Crow, if the Attorney General is the prevailing party, the Attorney General shall be awarded its fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

39. Compliance With and Application of State Law. Nothing herein relieves Trammell Crow of its duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the State for Trammell Crow to engage in acts and practices prohibited by such laws.

40. Colorado Law Applies. This Assurance shall be governed by the laws of the State of Colorado.

41. No Third-Party Beneficiaries Intended. This Assurance is for the benefit of the parties only and does not create or confer rights or remedies upon any other person, including rights as a third-party beneficiary. This Assurance does not create a private right of action on the part of any person or entity, whether to enforce this Assurance or otherwise, other than the parties hereto.

42. Waiver and Amendment. No waiver, modification, or amendment of the terms of this Assurance shall be valid or binding unless made in writing, and agreed upon by the parties, and then only to the extent specifically set forth in such written waiver, modification, or amendment.

43. Severability. If any clause, provision, or section of this Assurance is held to be invalid, illegal, unenforceable, or in conflict with the law of any

jurisdiction, the validity, legality, and enforceability of the remaining provisions, clauses, or sections shall not in any way be affected or impaired, and this Assurance shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

44. Complete Agreement. This Assurance represents the entire agreement between the parties hereto and a complete merger of prior negotiations and agreements. No other written or oral terms or agreements exist except for those contained in this Assurance.

45. Attorneys' Fees and Costs. Except as otherwise provided herein, each party shall bear its own attorneys' fees and costs in connection with this matter.

46. Not a Public Record. This Assurance shall be a matter of public record.

47. Jointly Drafted. For purposes of construing this Assurance, this Assurance shall be deemed to have been drafted jointly by both parties; in the event of any dispute arising out of this Assurance, the Assurance will not be construed against or in favor of any party.

48. Signatures. Facsimiles of signatures and signatures provided by portable documents format (.pdf) or other electronic-image format shall constitute acceptable, binding signatures for all purposes of this Assurance. This Assurance may be executed in one or more counterparts that taken together shall constitute the entire agreement.

49. Non-Approval of Conduct. Nothing herein constitutes approval by the Attorney General of any of Trammell Crow's past, present, or future business practices, and Trammell Crow shall not make any representation to the contrary.

50. Voluntary Agreement. Trammell Crow acknowledges that it has had an adequate opportunity to review this Assurance and consult with legal counsel in connection with the negotiation, drafting, and execution of this Agreement. Each party and signatory to this Agreement represents that he, she, or it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

51. Entire Agreement. Trammell Crow agrees and represents that it has read and understands this Assurance, and accepts the legal consequences arising from signing and entering into this Assurance; Trammell Crow agrees and represents that there are no other representations, agreements, or understandings between Trammell Crow and the Attorney General that are not stated in writing herein.

Jointly approved and submitted for entry on behalf of:

Plaintiff, the State of Colorado ex. rel. Philip J. Weiser, Colorado Attorney General

By: /s/  _____

Date: 4/25/2020

Diane R. Hazel
Acting First Assistant Attorney General
Colorado Department of Law, Antitrust Unit

Respondent, TC Denver Development, Inc., a Delaware Corporation

By: /s/ William Mosher Date: April 24, 2020

William E. Mosher
President
TC Denver Development, Inc.

APPENDIX

The undersigned hereby certifies that, to their best knowledge and belief, the annexed bid has been prepared in compliance with the Colorado Antitrust Act, federal antitrust law, and any applicable local procurement rules, regulations, and ordinances.