

STATE OF COLORADO ATTORNEY GENERAL'S OFFICE CONSUMER PROTECTION SECTION	
IN RE: M. A. MORTENSON COMPANY and MAJA ROSENQUIST, GENE HODGE, DAVID KUNTZ, AND SEAN WENNERSTROM, individuals in their capacity as M. A. Mortenson Company employees.  Respondents.	
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 <sup>th</sup> Floor Denver, CO 80203	
<b>ASSURANCE OF DISCONTINUANCE</b>	

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 (“Attorney General”), and Respondents M.A. Mortenson Co. (“Mortenson”) and the Employee Individuals in their capacity as Mortenson employees, including Maja Rosenquist, in her capacity as Senior Vice President, Gene Hodge, in his capacity as Vice President and General Manager, David Kuntz, in his capacity as Director of Operations, and Sean Wennerstrom, in his capacity as

Lead Estimator (collectively, “Respondents”). This Assurance is a settlement between the Attorney General and Respondents in lieu of the Attorney General filing a complaint against Respondents for the conduct described in the Allegations section below. This settlement is not an admission of liability or wrongdoing under the Colorado Consumer Protection Act or state or federal antitrust laws.

### **PARTIES**

1. Philip J. Weiser is the duly elected Attorney General for the State of Colorado.

2. M.A. Mortenson Company (“Mortenson”) is a corporation organized and existing under the laws of the State of Minnesota. Mortenson’s principal address is 700 Meadow Lane N., Minneapolis, MN 55422. Mortenson is authorized to conduct business in the State of Colorado. Its primary Colorado address is 1621 18<sup>th</sup> St., Ste. 400, Denver, CO 80202.

3. Maja Rosenquist is an officer of Mortenson and resident of Colorado.

4. Gene Hodge is an officer of Mortenson and resident of Colorado.

5. David Kuntz is an employee of Mortenson and resident of Colorado.

6. Sean Wennerstrom is an employee of Mortenson and resident of Colorado.

### **DEFINITIONS**

7. As used in this Assurance:

- A. "Convention Center Expansion" shall mean the expansion of the Colorado Convention Center by the City and County of Denver.
- B. "City" shall mean the City and County of Denver.
- C. "Document" shall mean all "writings," "photographs," and "recordings" as those terms are defined in Rule 1001(1) of the Colorado Rules of Evidence.
- D. "Effective Date" shall be April 10, 2020.
- E. "Employee Individuals" shall mean Maja Rosenquist, Gene Hodge, David Kuntz, and Sean Wennerstrom.
- F. "Mortenson" shall mean M. A. Mortenson Company and its successors, assigns, divisions, and groups.
- G. "M/WBE" shall mean Minority- and Women-Owned Business Enterprise.
- H. "State" shall mean the State of Colorado.
- I. "Covered Conduct" shall mean any and all acts or omissions (including all communications) prior to the Effective Date of any of the Respondents or any of Mortenson's officers or employees related to the allegations in this Assurance or the subject matter of the investigation by the Attorney General into the Convention Center Expansion prior to the Effective Date.

## ALLEGATIONS

8. In 2018, the City moved forward with plans to expand and upgrade the Colorado Convention Center and used TC Denver Development, Inc. (“Trammell Crow”) to serve as the City’s Program Manager for the Convention Center Expansion.

9. Acting on behalf of the City, Trammell Crow was responsible for the design-build procurement process for the Convention Center Expansion, including preparing proposing documents and communicating with the competing contractors seeking to become the design-builder of the Convention Center Expansion.

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

11. Furthermore, the Attorney General asserts that, in roughly the same time period Mortenson provided information and analyses to Trammell Crow’s representative. For example, Trammell Crow’s representative sought feedback on certain details of the preliminary design for the Convention Center Expansion and input on sample scenarios for proposer interviews. Mortenson employees responded to those requests with the requested information and analyses/calculations.

12. The Attorney General alleges Mortenson sought to benefit from the opportunity to interact with Trammell Crow's representative and share information with Trammell Crow. The Attorney General alleges communications between Trammell Crow and Mortenson benefited Mortenson in the procurement process to the detriment of the City and other proposers.

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

14. The Attorney General also alleges that by communicating with Mortenson—and then benefitting from Mortenson's work—Trammell Crow and its representatives failed to fairly and properly represent the interests of the City.

15. The Attorney General asserts the communications between Trammell Crow and Mortenson disrupted the procurement process and the City concluded the procurement process had to be cancelled and the Convention Center Expansion had to be delayed at significant cost to the City and detriment to the citizens of Colorado.

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

17. Respondents have engaged voluntarily and in good faith with the Attorney General and the State regarding this matter.

### **STATUTORY FRAMEWORK**

18. A person violates the Antitrust Act when they “contract, combine, or conspire with any person to rig any bid, or 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).

19. Respondents expressly deny that the Covered Conduct violates C.R.S. § 6-4-106 et. seq.

### **CONSIDERATION**

20. The Parties enter into this Assurance as a compromise and settlement of all potential claims related to the Covered Conduct, including any potential criminal charges against Respondents. This Assurance is entered into without adjudication of any issue of fact or law or finding of liability of any kind. Respondents contest the Attorney General’s “Allegations” set forth above and expressly deny any liability or wrongdoing under the CCPA, state or federal antitrust laws, or otherwise and are entering into this Assurance to avoid further inconvenience and costs of potential litigation. This provision survives the expiration of this Assurance.

21. The Attorney General agrees that this Assurance finally and fully resolves all of the civil and criminal disputes between the Attorney General and Respondents, including the subsidiaries, successors, assigns, affiliates, officers,

directors, managers, agents, and employees of Mortenson, including the Employee Individuals, arising out of the Covered Conduct, including but not limited to all claims and/or causes of action for equitable relief, including injunctive relief, restitution, and disgorgement; criminal investigations, criminal claims or charges, and prosecutions; fines and civil penalties; attorney fees; and/or costs. This provision survives the expiration of this Assurance.

22. Neither this Assurance, nor any negotiations, statements, nor Documents related thereto, shall be offered or received in any legal or administrative proceeding or action as an admission, evidence or proof of any fact, violation, liability, or wrongdoing in connection with any law, rule, or regulation, except in an action by the Attorney General to enforce the terms of this Assurance.

23. Nothing in this Assurance shall be construed as a judgment for violation of the Colorado Antitrust Act or the federal antitrust laws.

### **MONETARY RELIEF**

24. Mortenson agrees to pay \$650,000 to the Attorney General within fourteen (14) business days of the Effective Date of this Assurance.

25. Mortenson'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 or consumer protection enforcement actions, or to support consumer education and public welfare. 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 Mortenson. Mortenson 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.

### **INJUNCTIVE RELIEF AND COMPLIANCE**

26. Mortenson also assures the Attorney General that it will take reasonable steps, including the steps set forth herein, to ensure that its principals, officers, directors, and employees, whenever acting on Mortenson's behalf or in the scope of employment or agency for Mortenson, comply with the Colorado Antitrust Act, as now constituted or may hereafter be amended, and this Assurance. Unless expressly set forth otherwise herein, the breach of this Assurance by any one party does not constitute a breach by any other party.

27. For a period of two (2) years from the Effective Date, Mortenson shall disclose the existence of the Assurance to any Colorado governmental or public entity of any public project in Colorado on which Mortenson bids, proposes, or where the bid was submitted in the last two (2) years and was successful or is still pending.

28. During a public procurement, Mortenson shall (1) strictly comply with all the rules, regulations, and procedures prescribed by the public entity conducting the procurement as it relates to its communications with third parties and (2) not

engage in any communications—including but not limited to those in which information related to the procurement or bid of any public project is shared or received, directly or indirectly—with a public customer or agent thereof that would be unfair or prejudicial to other competing proposers or competition generally.

29. Without making any admission regarding any issue of fact or law, Mortenson shall not engage in Colorado in (1) unfair nor deceptive trade practices, (2) a violation of the federal or state antitrust laws, or (3) other conduct that constitutes a violation of §§ 6-4-104 through 6-4-107 of the Colorado Antitrust Act. Nothing in this Paragraph shall be interpreted as limiting in any way Mortenson's obligation to comply with the Colorado Antitrust Act or the Colorado Consumer Protection Act.

30. Mortenson shall work with the Attorney General to identify a project ("Project"), ideally related to COVID-19, as to which Mortenson will donate construction services for a value no less than \$650,000 (the "Specified Amount"). Preference shall be given to a project in the Denver Metropolitan Area. As part of this Project, Mortenson shall pay all its own costs of service and any other construction costs incurred, including but not limited to building materials and any subcontractors and design services Mortenson may contract or retain to complete the project. The State of Colorado, the Attorney General, or the City and County of Denver shall not be responsible for any payment related to the Project, including but not limited to any construction costs, services, or materials. After the scope of

Project is finalized, any change orders that increase the project cost up to 15% over the amount of the Specified Amount will be borne by Mortenson in full. Any change orders that increase cost beyond 15% of the Specified Amount will, at the Attorney General's election, be reduced to an acceptable alternative within the 15% cost structure, rejected, and/or paid for by other sources. Mortenson shall begin the construction services on the Project as soon as a feasible.

- A. The Attorney General and Mortenson will make their best efforts to identify a COVID-19 project as expeditiously as possible to address the COVID-19 crisis. If, however, the project that is most valuable to the State needs to occur at a later stage in COVID-19 response efforts, the parties will operate on such a timeframe. If a project cannot be identified that is agreed to by the Attorney General and Mortenson in the very near term, the parties will expand the relevant criteria (connection to the COVID-19 crisis and/or geographic location) to develop one that is mutually agreeable. Similarly, at the discretion of the Attorney General, the Attorney General and Mortenson may identify a Project that has a value significantly greater than the Specified Amount and for which Mortenson would donate services in the Specified Amount (as may be adjusted under Paragraph 30), or two or more smaller Projects that would collectively allow Mortenson to donate services with a value equal to or exceeding the Specified

Amount. Under such circumstances, the Attorney General and Mortenson will work together to agree upon any appropriate adjustment to the process identified above, which adjustments shall be at the sole discretion of the Attorney General.

- B. The Employee Individuals named in this AOD shall be actively involved in the management and work of the Project. At the conclusion of the Project, the Employee Individuals shall submit an individual report to the Attorney General describing their individual contributions to the Project. The Employee Individuals shall submit their individual reports within thirty (30) days of completion of the Project or Projects.
- C. Mortenson shall retain an independent expert in construction, to be approved by and for the benefit of the Attorney General, to investigate and analyze the Project to determine whether Mortenson fulfilled its agreed-upon obligations as provided herein with the Attorney General in performing and documenting its costs for the Project. The retained expert shall prepare and submit a report to the Attorney General detailing its analysis and findings within thirty (30) days of completion of the Project or Projects.
- D. If the Attorney General determines that Mortenson has not completed the Project as agreed—whether based on the expert report or

otherwise—the Attorney General shall notify Mortenson in writing.

Mortenson shall have thirty (30) days to cure the identified deficiencies or submit a plan for how it will cure as expeditiously as possible. If Mortenson does not cure the deficiencies identified by the Attorney General or submit a plan within thirty (30) days, Mortenson shall pay the Attorney General damages of an amount specified by the Attorney General but not to exceed \$650,000 to be paid pursuant to the payment terms in Paragraph 25 of this AOD and in addition to the monetary relief already paid upon execution of the AOD.

31. Mortenson shall maintain a Director of Compliance to administer Mortenson's efforts to comply with this Assurance. As of the Effective Date, Mortenson's Director of Compliance is Michael S. Hommer. Mr. Hommer's business address, telephone number, and email address are as follows: M. A. Mortenson Company, 700 Meadow Lane N., Minneapolis, MN 55422, 763-287-5874, mike.hommer@mortenson.com Within forty-five (45) days of a vacancy in the Director of Compliance position, Mortenson shall appoint a replacement, and shall identify to the Attorney General the Director of Compliance's name, business address, telephone number, and email address. Mortenson's initial or replacement appointment of a Director of Compliance is subject to the approval of the Attorney General, in his sole discretion. The Director of Compliance shall be responsible for

supervising Mortenson's antitrust compliance efforts and performance of the following in the State of Colorado until the expiration of this Assurance:

- A. Instituting an antitrust compliance program for Mortenson's employees and directors in Colorado with responsibility for bidding for any contract with the State or City, which shall include at least two hours of training annually for the next three years on the antitrust and consumer protection laws of the State of Colorado and the United States, and such training shall be delivered by an attorney with relevant experience in the field of United States and Colorado antitrust laws.
- B. Obtaining, within six months after entry of this Assurance, and on an annual basis thereafter, on or before each anniversary of the entry of this Assurance, from each person subject to Paragraph 31 of this Assurance, and thereafter maintaining, a certification that each such person has received the required two hours of annual antitrust training.
- C. Communicating semi-annually to all Colorado employees that they may (and are expected to) disclose to the Director of Compliance, without reprisal, information concerning any potential violation of Colorado, including any municipal or county, or United States antitrust laws.

- D. Taking reasonable action, within five (5) business days of discovering or receiving credible information concerning an actual or potential violation of this Assurance in Colorado, to terminate or modify Mortenson's conduct in Colorado to assure compliance with this Assurance; and, within ten (10) days of discovering or receiving such information, providing to the Attorney General a description of the actual or likely violation of this Assurance in Colorado and the corrective actions taken. The Director of Compliance may rely on the reasonable advice of outside counsel to determine whether an actual, potential, or likely violation has occurred.
- E. Submitting a written report to the Attorney General within six months after entry of this Assurance, and on an annual basis thereafter, on or before each anniversary of the entry of this Assurance, setting forth how Mortenson has complied and is complying with Paragraph 31(D) of this Assurance.
- F. For a period of three (3) years following the Effective Date, furnishing to the Attorney General on a quarterly basis electronic copies of records in Mortenson's possession, custody, or control of any non-privileged communications with any person containing allegations of Mortenson's noncompliance with any provisions of

this Assurance or violations in Colorado, including any municipal or county, or United States antitrust law.

32. Mortenson shall make a presentation on ethics and antitrust compliance issues related to public projects to the Construction Industry Ethics and Compliance Initiative (“CIECI”) Best Practices Forum on October 4-5, 2020 in Denver, or the following year, at whatever location the CIECI Best Practices Forum is held so long as CIECI authorizes or allows Mortenson to present. The Employee Individuals must participate in the presentation at CIECI. If Mortenson does not present at the 2020 Best Practices Forum, or the CIECI does not authorize or allow Mortenson to present, Mortenson must identify, within thirty (30) days of Mortenson or CIECI’s decision, to the Attorney General an alternative conference or forum at which it proposes to present.

33. For a period of three (3) years following the Effective Date, Mortenson shall make an annual presentation on ethics and lessons learned from the subject matter of this Assurance at a four-year college or university in Colorado as part of an ethics, corporate social responsibility, or business management program or class. For example, the Institute for Enterprise Ethics at the University of Denver Daniels College of Business offers various programming and courses on business ethics. Similarly, the University of Colorado Leeds School of Business offers a Certificate in Social Responsibility and Ethics. Mortenson’s obligations in this Paragraph are contingent upon the existence of relevant programs or classes and Mortenson

obtaining permission to present. The Attorney General shall provide reasonable assistance, upon request, to ensure that Mortenson can present at one of the programs or classes. Mortenson shall (1) at least sixty (60) days before each presentation, inform the Attorney General where it will be presenting and when and (2) ten (10) business days prior to presenting submit an outline of its presentation or lecture to the Attorney General. Each Employee Individual must be present and participate in the presentation or lecture at least twice over the three years if they are still a Mortenson employee at the time of the lecture. If any Employee Individual separates from Mortenson during this three-year period, he or she must notify the Attorney General of their separation and present an alternative proposal for fulfilling their obligations under this Paragraph.

34. Subject to availability, acceptance, and the continued existence of the program, each Employee Individual shall enroll and complete the Certificate in Corporate Social Responsibility (“CCSR”) offered by the University of Colorado Leeds School of Business within two (2) years of the Effective Date. If an Employee Individual wishes to complete the online version of the CCSR program, he must first obtain approval from the Attorney General. When an Employee Individual completes the CCSR program, he or she shall notify the Attorney General.

35. Mortenson shall host an informational open house or forum for M/WBEs to learn about maximizing opportunities to participate in public projects.

Each Employee Individual shall participate in the open house or forum, so long as the Employee Individual remains a Mortenson employee.

36. Mortenson shall adopt policies in Colorado to encourage M/WBEs to work with Mortenson on public projects in Colorado. Mortenson shall implement trainings in Colorado to make its Colorado employees aware of these policies and other ways to encourage M/WBE participation in Colorado. Each Employee Individual shall participate in at least one of these trainings, so long as the Employee Individual remains a Mortenson employee.

37. Mortenson shall use best efforts to cooperate fully with the Attorney General regarding any non-privileged matter about which Mortenson has non-privileged knowledge or information relating to any ongoing civil or criminal investigation, litigation, or other proceeding against parties other than Mortenson or the Employee Individuals arising out of the subject matter discussed in the Assurance (hereinafter, any such investigation, litigation, or proceeding against parties other than Mortenson or the Employee Individuals shall be referred to as an “Attorney General Proceeding”). Mortenson (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. Mortenson’s cooperation shall include, but not be limited to, the following:

A. Upon request, to the best of its ability and upon reasonable notice, truthfully disclosing and producing, 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 in its possession about activities of Mortenson and present and former officers, directors, employees, and agents of Mortenson in connection with any Attorney General Proceeding. The Attorney General agrees to try, when possible, to make targeted requests and work with Mortenson to develop search strategies or terms designed to identify relevant Documents without imposing undue or irrelevant burdens on Mortenson. The information and/or testimony provided pursuant to this Assurance cannot and will not be used in any way against Mortenson or the Employee Individuals;

B. Making available, to the best of its ability and upon reasonable notice, at no expense to the Attorney General, Mortenson's then currently employed 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. The information and/or testimony provided pursuant to this Assurance cannot and will not be used in any way against Mortenson or the Employee Individuals. The refusal of any officer, director, or employee to provide information or testimony shall not constitute a breach of this Assurance by Mortenson, so long as Mortenson has made all reasonable and best efforts to secure non-privileged information or testimony for the Attorney General from the then currently employed officer, director, or employee for any Attorney General Proceeding. The refusal of an Employee Individual to provide non-privileged information or testimony where provision of the information requested is not contrary to the rights and privileges of the Employee Individuals constitutes a breach of this Assurance by the refusing Employee Individual;

- C. Using its best efforts to make available, at no expense to the Attorney General, its former 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 using best efforts to 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. If a former officer, director, employee, or agent has non-privileged information and/or testimony related to the Covered Conduct, Mortenson will use its best efforts to facilitate obtaining that information as requested by the Attorney General in connection with any Attorney General Proceeding. The non-privileged information and/or testimony provided pursuant to this Assurance cannot and will not be used in any way against Mortenson or the Employee Individuals. Mortenson agrees to cover the reasonable costs and expenses of such former officers, directors, employees, or agents to facilitate their ability to appear and testify. The refusal of any officer, director, employee, or agent to provide information or testimony shall not constitute a breach of this Assurance by Mortenson, so long as Mortenson has made all reasonable and best efforts to secure non-privileged information or testimony for the Attorney General from the officer, director,

employee, or agent for any Attorney General Proceeding. The refusal of an Employee Individual to provide non-privileged information or testimony where provision of the information requested is not contrary to the rights and privileges of the Employee Individuals constitutes a breach of this Assurance by the refusing Employee Individual;

- D. Providing to the best of its knowledge and ability, 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 Mortenson in any Attorney General Proceeding as requested by the Attorney General. Providing non-privileged testimony or information pursuant to the subject matter of this Assurance cannot and will not be used in any way against Mortenson and the Employee Individuals;
- E. Accepting a subpoena from the Attorney General for any Attorney General Proceeding without the need for formal service of process; and
- F. Completely and truthfully responding, to the best of its knowledge and ability, to all other reasonable inquiries of the Attorney

General for non-privileged information in connection with any Attorney General Proceeding. The truthful responses to all inquiries of the Attorney General for non-privileged information in connection with any Attorney General Proceeding provided pursuant to the subject matter of this Assurance cannot and will not be used in any way against Mortenson and the Employee Individuals.

38. Mortenson shall abide by the terms of its settlement agreement, dated July 22, 2019, with the City and County of Denver. Nothing in this Assurance limits any investigatory or litigation actions the City and County of Denver may pursue against Respondents or the City and County of Denver's potential recovery for any action. Similarly, nothing in this Assurance limits Mortenson or the Employee Individuals' rights, objections, and defenses to any investigatory or litigation actions that the City and County of Denver may pursue against Mortenson or the City and County of Denver's potential recovery for any action.

39. Mortenson shall, for a period of three (3) years from the Effective Date of this Assurance, submit, with each bid submitted to the City or State, or any department or agency thereof, a certification of noncollusion in the form required by the purchasing department or agency, or, if no such certification is otherwise required, in substantially the form set forth in the Appendix hereto.

## COMPLIANCE INSPECTION

40. Solely for the purposes of determining or securing the prospective compliance with this Assurance, and subject to any legally recognized privileges, immunities, or rights applicable to Respondents and Mortenson's officers, directors, and employees, including the Employee Individuals, authorized representatives of the Attorney General shall, on reasonable notice to Mortenson, be permitted:

- A. To inspect and copy, or at the Attorney General's option, to require Mortenson to provide hard-copy or electronic copies (if reasonably technically available, in a searchable and, if available, sortable format) of all non-privileged books, ledgers, accounts, records, data, and Documents made or created after the Effective Date in the possession, custody, or control of Mortenson, relating to any matters contained in this Assurance (the "Compliance Records");
- B. To interview, either informally or on the record, Mortenson's officers, employees, or agents about any non-privileged matters contained in this Assurance that occur after the Effective Date. The refusal of any officer, director, or employee to provide information or testimony shall not constitute a breach of this Assurance by Mortenson, so long as Mortenson has made all reasonable and best efforts to secure information or testimony for the Attorney General from the officer, director, or employee regarding any non-privileged

matters contained in this Assurance that occur after the Effective Date (the “Compliance Information”). The refusal of an Employee Individual to provide non-privileged information or testimony where provision of the information requested is not contrary to the rights and privileges of the Employee Individuals constitutes a breach of this Assurance by the refusing Employee Individual; and

C. Notwithstanding any other provision stated herein, the Attorney General may use the Compliance Records and Compliance Information against Mortenson or the Employee Individuals in any investigation, action, or proceeding solely to enforce the terms of this Assurance.

41. Upon the written request of an authorized representative of the Attorney General sent to the address provided in Paragraph 42, Mortenson shall, to the best of Mortenson’s knowledge and ability, 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 for the prospective compliance with this Assurance as may be reasonably requested with reasonable notice and time to respond.

#### **NOTICE**

42. 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 by first-class mail, return receipt requested, and 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](mailto:diane.hazel@coag.gov)

43. Whenever notice must be provided, or written requests submitted to Mortenson or the Employee Individuals pursuant to the terms of this Assurance, such notice shall be made by first-class mail, return receipt requested, and email addressed to the following:

Notices to Mortenson shall be sent to:

Director of Compliance  
M.A. Mortenson Company  
700 Meadow Lane N.  
Minneapolis, MN 55422  
Email: [mike.hommer@mortenson.com](mailto:mike.hommer@mortenson.com)  
Email cc to: [dwight.larson@mortenson.com](mailto:dwight.larson@mortenson.com)

With a copy to:

Laurence (“Trip”) DeMuth, III  
1470 Walnut Street, Suite 300  
Boulder, CO 80302  
Email: [trip.demuth@faegredrinker.com](mailto:trip.demuth@faegredrinker.com)

For Employee Individual Maja Rosenquist:

M.A. Mortenson Company  
c/o Maja Rosenquist  
1621 18th Street, Suite 400  
Denver, CO 80202  
Email: [Maja.Rosenquist@mortenson.com](mailto:Maja.Rosenquist@mortenson.com)

For Employee Individual Gene Hodge:

M.A. Mortenson Company  
c/o Gene Hodge  
1621 18th Street, Suite 400  
Denver, CO 80202  
Email: [gene.hodge@mortenson.com](mailto:gene.hodge@mortenson.com)

For Employee Individual David Kuntz:

M.A. Mortenson Company  
c/o David Kuntz  
1621 18th Street, Suite 400  
Denver, CO 80202  
Email: [dave.kuntz@mortenson.com](mailto:dave.kuntz@mortenson.com)

For Employee Individual Sean Wennerstrom:

M.A. Mortenson Company  
c/o Sean Wennerstrom  
1621 18th Street, Suite 400  
Denver, CO 80202  
Email: [sean.wennerstrom@mortenson.com](mailto:sean.wennerstrom@mortenson.com)

or to such other person whom Mortenson or the Employee Individuals may designate from time to time.

## GENERAL PROVISIONS

44. Scope of Assurance. This Assurance shall apply to Respondents, their successors, and assigns; and, if specifically provided herein, their officers, directors, agents, servants, employees, affiliates, and subsidiaries.

45. 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.

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

47. Preservation of Law Enforcement Action. 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 Respondents other than the Covered Conduct or any acts or practices in which Respondents engage after the Effective Date of this Assurance. The Respondents agree to waive personal service of any demand, pleading, notice, or complaint from the Attorney General and agree 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 Mortenson or Employee Individual, if the Attorney General is the prevailing party, the Attorney General will 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.

48. Compliance With and Application of State Law. Nothing herein relieves Respondents of their duty to comply with applicable laws of the State of Colorado nor constitutes authorization by the State or the Attorney General for Respondents to engage in acts and practices prohibited by such laws. This Assurance shall be governed by the laws of the State of Colorado.

49. 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 except as otherwise provided herein. 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.

50. 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 affected by the waiver, modification, or amendment, and then only to the extent specifically set forth in such written waiver, modification, or amendment.

51. 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.

52. 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.

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

54. Public Record. This Assurance shall be a matter of public record.

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

56. 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, taken together shall constitute the entire agreement. If one or more Respondents fail to execute this Assurance, the Attorney General and the State shall not be bound by any provisions herein.

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

58. Preservation of Private Claims. Subject to the terms of Paragraph 49, nothing in this Assurance shall limit, constrain, abridge, abrogate, waive, release, or otherwise prejudice any private rights, private causes of action, or remedies of any private person against Respondents with respect to the acts and practices covered by this Assurance.

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

60. Entire Agreement. Respondents agree and represent that they have read and understand this Assurance, accept the legal consequences involved in signing this Assurance, and that there are no other representations, agreements, or understandings between Respondents and the Attorney General that are not stated in writing herein.

Jointly approved and submitted for entry on behalf of:

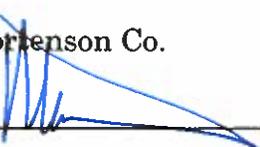
Plaintiff, the State of Colorado ex. rel. Philip J. Weiser, Colorado Attorney General

By: /s/ 

Date: 4/10/2020

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

M.A. Mortenson Co.

By: /s/ 

Date: April 10, 2020

Its: President & Chief Executive Officer

Maja Rosenquist

By: /s/

Date: \_\_\_\_\_

Gene Hodge

By: /s/

Date: \_\_\_\_\_

David Kuntz

By: /s/

Date: \_\_\_\_\_

Sean Wennerstrom

By: /s/

Date: \_\_\_\_\_

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: 4/10/2020 \_\_\_\_\_

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

M.A. Mortenson Co.

By: /s/ \_\_\_\_\_

Date: \_\_\_\_\_

Its: \_\_\_\_\_

Maja Rosenquist

By:  /s/ \_\_\_\_\_

Date: 4/10/2020 \_\_\_\_\_

Gene Hodge

By: /s/ \_\_\_\_\_

Date: \_\_\_\_\_

David Kuntz

By: /s/ \_\_\_\_\_

Date: \_\_\_\_\_

Sean Wennerstrom

By: /s/ \_\_\_\_\_

Date: \_\_\_\_\_

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: 4/10/2020

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

M.A. Mortenson Co.

By: /s/

Date: \_\_\_\_\_

Its: \_\_\_\_\_

Maja Rosenquist

By: /s/

Date: \_\_\_\_\_

Gene Hodge

By: /s/ 

Date: 4/10/2020

David Kuntz

By: /s/

Date: \_\_\_\_\_

Sean Wennerstrom

By: /s/

Date: \_\_\_\_\_

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: 4/10/2020

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

M.A. Mortenson Co.

By: /s/

Date: \_\_\_\_\_

Its: \_\_\_\_\_

Maja Rosenquist

By: /s/

Date: \_\_\_\_\_

Gene Hodge

By: /s/

Date: \_\_\_\_\_

David Kuntz

By: /s/ 

Date: 4/10/2020

Sean Wennerstrom

By: /s/

Date: \_\_\_\_\_



## APPENDIX

The undersigned hereby certifies that, to their best knowledge and belief, the accompanying bid has been prepared in full compliance with the procurement rules of the owner and the law.

By: /s/ \_\_\_\_\_

Date: \_\_\_\_\_