

<b>DENVER COUNTY DISTRICT COURT, COLORADO</b> 1437 Bannock Street Denver, Colorado 80202 (720) 865-8301	DATE FILED: August 24, 2020 11:42 AM CASE NUMBER: 2018CV33495
<b>PLAINTIFF:</b> DENVER TRANSIT PARTNERS, LLC, a Delaware limited liability company,  v.  <b>DEFENDANT:</b> REGIONAL TRANSPORTATION DISTRICT, a political subdivision of the State of Colorado.	<b>▲ COURT USE ONLY ▲</b>
	Case No.: 18CV33495  Div.: 466
<b>TRIAL MANAGEMENT ORDER</b>	

This matter came before the Court today for a pretrial conference. Counsel for the parties appeared in person. At the pretrial conference the Court approved the proposed trial management order (TMO) as submitted by the parties. The Court also entered orders on the record on various issues set forth in the proposed TMO. Any substantive changes made to the TMO by the Court as a result of the orders entered on the record at the pretrial conference are set forth in redline format.

Plaintiff Denver Transit Partners, LLC (“DTP”) and Defendant Regional Transportation District (“RTD”), through their respective undersigned counsel, submit this Proposed Trial

Management Order for the 4-week trial in this action, which is set to commence on **Monday, September 21, 2020** at 9:00 a.m., and state as follows:

## **I. STATEMENT OF CLAIMS AND DEFENSES**

**A. DTP:** This matter involves the RTD FasTracks Project, known as the Eagle P3 commuter rail project (the “EAGLE Project” or “Project”). The Project was awarded by RTD to DTP and memorialized by a Concession and Lease Agreement dated July 9, 2010 (“CA”).

The Project is the first public-private partnership (“P3”) project for commuter rail in the US. It includes the financing, design, construction, and long-term operation and maintenance of three new commuter rail lines from Denver Union Station to: Denver International Airport (the “A-Line”), south Westminster (the “B-Line”), and Arvada and Wheat Ridge (the “G-Line”). The Project also includes a new Commuter Rail Maintenance Facility and Operations Control Center and a Rolling Stock fleet of 66 Commuter Rail Vehicles. It includes 16 new commuter rail stations, some with park and ride facilities, along with other transit amenities. DTP agreed to provide hundreds of millions of dollars in financing for design and construction of the Project in exchange for a share of the profits during the 30-year period DTP will also operate and maintain the Project. The Project was also financed through grants from agencies such as the Federal Transit Administration.

DTP built the Project to the existing regulations. Any change in regulations or the interpretation and enforcement of regulations is defined as a Change in Law under the CA. Because DTP can only design the Project to existing, known regulations, if there is a Change in Law with respect to how the Project is regulated—RTD bears that burden, including any resulting additional cost or time extensions under the CA. It is the changes in regulation, interpretation and

enforcement of regulations (especially the enforcement of non-existent regulations) and RTD's refusal to compensate DTP with costs and time extensions under the CA that serve as the basis for this lawsuit.

For three years, DTP bore the enormous cost of providing two attendants at every at-grade crossing on the Project for 24 hours a day, 7 days a week. The attendants were required by staff with the Colorado Public Utilities Commission ("CPUC") and Federal Railroad Administration ("FRA"). The regulators required the attendants based on the CPUC staffs' assertion that the Project's crossings were unsafe on account of "long" and "excessive" warning times, regulating the Project as if a regulation for "maximum" warning times existed. CPUC initially imposed the requirement for crossing attendants after CPUC staff insisted that the Project add an exit gate delay to the Commission-approved crossing designs to give bicycles more time to clear the crossings. RTD filed motions with CPUC to amend the previously approved designs to add an exit gate delay. As a result, DTP filed a Change in Law Notice regarding the bicycle exit gate delay. In its new orders, CPUC provided that RTD must certify when the crossings were complete with exit gate delays and for CPUC staff to then verify in the field that the crossings were operating in accordance with the new design. These new requirements were not included in the original CPUC orders generated in 2013, under which the Project was constructed. DTP certified the crossings as complete in June of 2016. RTD, however, wrongfully refused to submit these certifications to the CPUC after CPUC staff expressed an opinion that the crossings were not operating in accordance with the design on account of "long" and "variable" warning times. In close coordination with CPUC staff, FRA staff thereafter issued inspection reports recommending that the FRA impose civil penalties on the Project for "long" and "excessive" warning times.

CPUC and FRA have since recognized their error. In April 2018, the CPUC Commissioners acknowledged in a written order that neither state nor federal law impose a fixed maximum warning time. A CPUC Commissioner also admitted that there was “no support” for its prior delay of approvals based upon “‘constant warning time’ and ‘maximum warning time’ interpretations.” Similarly, in November 2019, the FRA dismissed as unfounded all violations that its staff had issued for so-called “long” and “excessive” warning times. Notwithstanding these admissions, RTD continues to assert that the Project had “long” and “excessive” warning times in violation of regulatory requirements, in this action.

As the foundation for a 30-year public-private partnership, the CA is unique from other, arms-length contractual arrangements in its specific provision for partnering throughout the parties’ relationship, including but not limited to a commitment to cooperate in the resolution of disputes. The CA also requires that RTD cooperate with –and certainly not interfere with - DTP in obtaining regulatory approvals. However, at nearly every juncture, RTD has acted in its own interest to protect its commercial position and avoid providing just relief to DTP. While privately admitting that the Project’s at-grade crossing warning system was functioning well and as intended, RTD would concur with and at times even prompt regulators’ scrutiny and concerns about “long” and “excessive” warning times. In fact, as the “railroad of record,” RTD exclusively controlled all Project communications with the FRA and CPUC. DTP was not allowed to communicate separately with either regulator. DTP was also not privy to RTD’s communications with these regulators until those communications were revealed in this action. Indeed, in the April 2018 Order, one CPUC Commissioner noted that “RTD did little to promote the merits of the relief it sought. Instead, RTD provided no new facts or information, instead focusing a portion of its

efforts on redirecting public dissatisfaction with the current A-Line and G-Line operations toward the Commission.”

The CA provides for the appointment of a third-party Independent Engineer to assess contract compliance and issue certain certificates, including certifications that the Project was ready to transition from the Design-Build phase to the Operations phase, i.e., the Revenue Service Commencement Certificates. RTD and DTP entered into Stipulation and Limited Waiver “Side” Agreements, waiving a single requirement contained in CA section 28(a)(iv) and stipulating that the A and B lines could commence with revenue service operations prior to the issuance of the Revenue Service Commencement Certificates by the Independent Engineer. Under these Stipulation and Limited Waiver “Side” Agreements RTD was further permitted to withhold a portion of the service payments it owed DTP until the Independent Engineer issued the Revenue Service Commencement Certificates, because certification was imminent. It preserved all other rights under the CA in full force and effect including DTP’s right to claim relief for subsequent Change in Law and Force Majeure Events.

RTD exploited this arrangement by actively lobbying the Independent Engineer to withhold the Revenue Service Commencement Certificates so that RTD could in turn withhold millions of dollars in service payments (i.e., \$350,000 per month) to DTP while it enjoyed enormous revenues due to excellent ridership on the A and B lines. RTD specifically deployed its inside and outside litigation counsel to meet privately with the Independent Engineers to pressure the Independent Engineers not to issue the Revenue Service Commencement Certificates. Delaying issuance of the Revenue Service Commencement Certificates also preserved RTD’s ability to claim that a “Concessionaire Termination Event” had occurred, which would deprive

DTP of its contractual right to share in the profits of the operations period of Project despite having fully delivered its promise to finance, design, and construct the Project.

Indeed, RTD also failed to act in accordance with the covenant of good faith and fair dealing in evaluating and responding to DTP's claims for relief through the CA's dispute resolution process.

RTD has repeatedly denied DTP its requests for relief by citing DTP's obligation under the CA to "obtain regulatory approvals," disregarding all together the bargained-for Change in Law and Force Majeure provisions. After RTD refused to provide relief to DTP under the CA, DTP followed the contractual Dispute Resolution provisions and presented its case to a Dispute Resolution Panel. DTP had 6 hours to present its case. The Dispute Resolution Panel found *three* Changes in Law for which DTP was owed compensation and time extensions under the CA. The Changes in Law found by the Dispute Resolution Panel were: 1) Bicycle Exit Gate Delay, 2) Warning Times, and 3) FAST ACT. After the Dispute Resolution Panel decision finding three Change in Law Events, RTD was required by Section 37.2 of the CA to negotiate the relief owed to DTP under the CA. RTD did not agree to compensate or award time extensions to DTP for the three Change in Law Events, prompting the filing of the instant suit. Shortly after DTP filed the present lawsuit, RTD's general manager (who has since resigned) emailed the Board with a recommendation that RTD serve a Concessionaire Termination Event notice for the express purpose of protecting its commercial position in this litigation. RTD also counterclaimed for relief related to a bridge design defect that RTD discovered 5 years prior and that DTP had fully remediated at significant expense 3 years prior. Even assuming arguendo that RTD's counterclaim is not barred by the applicable statute of limitations, RTD knows that it has contractual right to

inspect the bridges when it becomes responsible for their maintenance in 2045 and a mechanism for requesting compensation at that time. Instead, RTD seeks a windfall for speculative costs merely to offset damages it knows it owes to DTP.

The CA requires that “Decisions of a Dispute Resolution Panel that are referred to the District Court of Colorado for the City and County of Denver...shall be reviewed and judged by the District Court of Colorado for the City and County of Denver, *de novo*.” DTP filed suit against RTD for breach of contract, violation of the covenant of good faith and fair dealing and declaratory relief against RTD for RTD’s wrongful refusal to accept Change in Law and Force Majeure claims made by DTP under the CA during the Project. DTP seeks declaratory relief, monetary damages, and extensions of time to which it is entitled under the CA (but which RTD has refused to give) arising out of the occurrence of the Change in Law and Force Majeure Events. DTP seeks the relief that should have been granted by RTD in accordance with the applicable CA provisions and the CA’s express obligations of good faith and Colorado’s implied covenant of good faith and fair dealing, including damages over \$111M.

**B. RTD’s Claims and Defenses:**

The Parties’ dispute concerns one basic controversy: DTP’s failure to satisfy contractual and regulatory requirements on the Eagle P3 commuter rail project (the “Project”) and its unsuccessful attempts to excuse those failures. DTP, the Project’s design-build-finance-operate-maintain Concessionaire, filed claims for breach of contract, breach of the covenant of good faith and fair dealing, and declaratory judgment. The claims arise out of DTP’s admitted failures to timely complete work to the approval of the FRA, CPUC, and the Independent Engineer. DTP contends that these failures were not its fault—but rather attributable to the alleged Changes in

Law (CIL) or Force Majeure (FM) that should have granted various relief and extensions to DTP under the CA. RTD denies any CIL or FM occurred and affirmatively has plead that DTP's assertions are untimely, DTP waived its claims through Side Agreements, and that, among other things, DTP's damages are due to DTP's own failure to satisfy regulatory requirements and its promises under the CA. Moreover, RTD did not breach the covenant of good faith and fair dealing with respect to any term that conferred RTD discretionary authority. Based on the above, the declaratory judgment sought by DTP is also improper. Moreover, DTP cannot prove the damages sought on its claims.

RTD has brought counterclaims for breach of contract and declaratory judgment, explaining (1) DTP has not established that its failure to satisfy Project Requirements and deadlines is excusable; (2) in fact, DTP's failures to satisfy its regulatory approval obligations, meet Project deadlines, and satisfy Project Requirements were simply due to DTP's ongoing failures to provide what was required by the CA; and (3) DTP is liable to RTD for the resulting impacts. This includes, in addition to damages stemming from DTP's unexcused Project delays, DTP's failure to provide rail bridges that were compliant with the CA. RTD asserts the Dispute Resolution Panel correctly found that: DTP did not prove damages in excess of \$100,000; there was no Change in Law by FRA; DTP's crossing activation system was not functioning as designed in 2016 and significant periods thereafter and required significant redesign; and DTP's other alleged Changes in Law did not cause any critical path delay and had no significant monetary impact on the Project. RTD's counterclaims seek damages exceeding \$27 million.

In compliance with the Rule's requirement for a brief description, RTD reserves argument for the trial brief and trial.

## **II. STIPULATED FACTS**

### **The Project**

1. This matter involves the Project, which is part of the RTD FasTracks Program, known as the Eagle P3 commuter rail project (the “EAGLE Project” or “Project”).

2. The Project is the first public-private partnership (“P3”) project for commuter rail in the US. It includes the financing, design, construction, and long-term operation and maintenance of three new commuter rail lines from Denver Union Station to: Denver International Airport (the “A-Line”), south Westminster (the “B-Line”), and Arvada and Wheat Ridge (the “G-Line”).

3. The Project also includes a new Commuter Rail Maintenance Facility and Operations Control Center, and the CA anticipated purchase of Rolling Stock fleet of 66 Commuter Rail Vehicles.

4. The Project includes 16 new commuter rail stations, some with park and ride facilities, along with other transit amenities.

5. The Parties executed a Concession and Lease Agreement, dated July 9, 2010 (“CA”).

### **The A-Line**

6. There are 12 public at-grade crossings on the A-Line.

7. The first RTD Application to Alter the At-Grade Crossing at Chambers Road in the City of Aurora (Aurora), Adams County, Colorado (Proceeding No. 12A-900R), was filed with the PUC on August 8, 2012. Subsequent applications were filed from December 11, 2012 through July 12, 2013 for crossings at Steele Street (12A-1258R), Clayton Street (12A-1259R), Havana Street (13A-0053R), York and Josephine Streets (13A-0054R), Sable Boulevard (13A-0081R),

Northbound and Southbound Quebec Street (13A-0568R), Dahlia Street (13A-0570R), Holly Street (13A-0571R), Monaco Parkway (13A-0572R), and Ulster Street (13A-0813R).

8. Hearings were held for Proceeding No. 12A-900R (Chambers Road) and Proceeding No. 13A-0053R (Havana Street). Those applications were granted by subsequent Recommended Decisions. Hearings were not held for the remainder of the crossings; however, all those applications were approved, with some modifications, by Commission Decisions.

9. On March 11, 2016, motions to amend applications were filed in all A-Line proceedings except for Northbound and Southbound Quebec Streets (13A-0568R).

10. On April 1, 2016, the PUC issued decisions in each proceeding, including Decision No. C16-0277 in Proceeding No. 12A-900R, granting the motions to amend in part, with conditions.

11. The A-Line entered revenue service operations on April 22, 2016.

12. The IE's Revenue Service Commencement Certificate for the A-Line issued on September 6, 2018.

### **The B-Line**

13. There are no public at-grade crossings on the B-Line and only one private at-grade crossing.

14. The B-Line entered revenue service operations on July 25, 2016.

15. The Revenue Service Commencement Certificate for the B-Line issued on October 20, 2017.

### The G-Line

16. There are 15 public at-grade crossings on the G-Line and one private at-grade crossing.

17. The first applications were filed with the PUC on July 12, 2013, In the Matter of the Application of RTD and BNSF for Authority to Alter an At-Grade Crossing at Balsam Street in the City of Arvada (Arvada), Jefferson County, State of Colorado (13A-0810R); and, In the Matter of the Application of RTD and BNSF for Authority to Alter an At-Grade Crossing at Allison Street in Arvada (13A-0812R). Subsequent applications were filed from July 26, 2013, through February 10, 2014, for crossings at: Carr Street in Arvada (13A-0852R); Garrison Street in Arvada (13A-0853R); Parfet Street in Wheat Ridge (13A-0854R); Tabor Street in Wheat Ridge (13A-0855R); Independence Street in Arvada (13A-0857R); Vance Street in Arvada (13A-0870R); Olde Wadsworth Boulevard in Arvada (13A-0875R); Lamar Street in Arvada (13A-0886R); W. 60th Avenue in Adams County (13A-0887R); Saulsbury Street at Crossing # 094493Y in Arvada (13A-0950R); Miller Street in Arvada and Wheat Ridge (13A-0969R); Tennyson Street in Adams County (13A-01257R); and Lowell Boulevard in Adams County (14A-0124R).

18. Hearings were not held for the individual applications for the G-Line crossings. All applications were approved, some with modifications related to signage at the crossing. No additional requirements or modifications were made to any aspect of the wireless technology.

19. On May 5, 18, 25, 26, and 27, 2016, motions to amend the G-Line applications were filed in all but one G-Line proceeding.

20. On June 6, 9, 16, 17, and 20, 2016, the PUC issued decisions, including Decision No. C16-0530 in Proceeding No. 13A-0810R, granting the G-Line motions to amend with conditions.

21. The Revenue Service Commencement Certificate for the G-Line issued on March 31, 2019.

22. The G-Line entered revenue service operations on April 26, 2019.

### III. PRETRIAL MOTIONS

The following motions have been filed:

1. DTP's Motion to Exclude Expert Testimony of Dennis McCann and Christopher Beirise, filed on July 20, 2020. In accordance with the findings of fact, conclusions of law and orders entered on the record at the pretrial conference held today, this motion is DENIED.

2. DTP's Motion to Limit Expert Testimony of George Gavalla, filed on July 20, 2020. In accordance with the findings of fact, conclusions of law and orders entered on the record at the pretrial conference held today, this motion is DENIED.

3. DTP's Motion to Exclude Portions of Expert Testimony of Christopher Beirise, filed on July 20, 2020. In accordance with the findings of fact, conclusions of law and orders entered on the record at the pretrial conference held today, this motion is DENIED.

The Court will resolve the following motions in limine at trial as the evidence at issue in these motions is proposed to be presented.

4. RTD's Motion *In Limine* to Exclude Evidence Concerning Oral Statements Regulators Allegedly Made to Witnesses Pursuant to C.R.E. 801, 802, and 403, filed on August 17, 2020.

5. RTD’s Motion *In Limine* to Exclude Evidence Regarding DTP’s Unpled Allegations and Breach of Contract Contentions Against Non-Party Jacobs Engineering and RTD, filed on August 17, 2020.

6. RTD’s Motion *In Limine* to Exclude Irrelevant Evidence Regarding DTP’s Unpled Allegations and Breach of Contract Contentions Concerning Non-Party HNTB and RTD, filed on August 17, 2020.

#### IV. TRIAL BRIEFS

The Parties intend to file trial briefs by **September 7, 2020**, in accordance with the Amended Case Management Order, dated March 24, 2020. The parties are jointly requesting that the Court increase the page limit from 5 pages to 10 pages based on the complexity of the litigation.

The Court granted this request at the pretrial conference held today.

#### V. ITEMIZATION OF DAMAGES OR OTHER RELIEF SOUGHT

A. **DTP:** DTP is seeking damages in excess of \$111 million, including bond costs, letter of credit (“LOC”) fees, markups and prejudgment interest, as summarized in the table below and more fully set forth in Secretariat’s amended expert report:

*Summary of Economic Losses and Damages by Claim Category*

Row	Claim Category	Incurred Costs / Losses	Bond Costs	LOC Fees	Markups	Prejudgment Interest	Total Claim
1	Crossing Guard Operations	\$ 58,137,122.85	\$ 695,901.00	\$ 222,389.00	\$ 6,039,765.00	\$ 12,579,884.30	\$ 77,675,062.15
2	Consultant Costs	2,766,805.74	-	9,989.00	263,364.00	613,488.58	3,653,647.31
3	Letter of Credit Fees	1,020,047.62	-	-	-	193,679.27	1,213,726.89
4	Incremental Indirect Costs	7,950,856.18	77,455.00	33,001.00	1,483,914.00	1,604,869.88	11,150,096.06
5	Lost Profits	6,782,388.49	-	-	-	1,182,898.82	7,965,287.31
6	Side Agreement Deductions	7,862,466.00	-	-	-	1,837,242.97	9,699,708.97
7	Run-time Performance Deductions	157,431.23	-	-	-	33,843.47	191,274.70
<i>Totals</i>		<b>\$ 84,677,118.11</b>	<b>\$ 773,356.00</b>	<b>\$ 265,379.00</b>	<b>\$ 7,787,043.00</b>	<b>\$ 18,045,907.29</b>	<b>\$ 111,548,803.40</b>

DTP also seeks a declaratory judgment to declare, adjudge, and order that Change in Law/Force Majeure Events have occurred at the Project, which were not caused by the actions of

DTP and to the extent the Court so finds, that DTP is entitled to an extension of the Revenue Service Deadline Dates for each Line and reimbursement of its incurred costs and/or monetary damages are due and owing from RTD now and in the future, that RTD has breached the covenant of good faith and fair dealing in issuing a CTE Notice and failing to accept DTP’s plans, interfering with the IE and DTP/FRA violation negotiations, and in failing to establish Quiet Zones.

Finally, DTP seeks pre-judgment and post-judgment interest, costs, fees and attorney’s fees, and for such other and further relief as the Court deems just and proper.

**B. RTD’s Damages:**

RTD seeks damages in excess of \$27 million for damages incurred as a result of DTP’s existing and ongoing breaches of the CA, including but not limited to extended overhead and Project delay costs, damages attributable to DTP’s supply of bridges that did not satisfy all Project Requirements, Project insurance extension costs, and regulatory fines and expenses. These damages are summarized in the table below and more fully set forth in Mr. Christopher Beirise’s rebuttal expert report produced on March 3, 2020:

**Table 2**  
**Revised Summary Of RTD Damages**

<u>Description</u>	<u>Amount</u>
Extended Overhead Costs	\$ 9,915,384
Extended RTD Insurance Costs	1,668,903
Incremental Travel Costs	40,907
Bridge Maintenance Costs	15,534,122
Legal Costs For CPUC Interactions	337,865
<b>Total</b>	<b>\$ 27,497,180</b>

RTD also seeks a Judgment declaring that: (a) DTP’s failure to perform under the CA is not excused by the Change in Law and Force Majeure provisions; (b) DTP’s failure to timely complete the Project pursuant to the Project Requirements is not caused by the actions of RTD, the FRA or the CPUC, but rather is attributable to DTP’s actions, inactions, and omissions; (c) DTP is not entitled to any relief; (d) RTD is entitled to all damages and relief under the CA resulting from DTP’s failure to perform when and as promised; and (e) DTP is in default under the CA, and one or more Concessionaire Termination Events have occurred.

Further, RTD seeks an award of pre- and post-judgment interests, costs and attorneys’ fees as permitted by law, statute, or contract, and such other relief the Court deems just and appropriate.

**VI. IDENTIFICATION OF WITNESSES AND EXHIBITS**

**A. Witnesses.**

1. DTP will/may call the following witnesses:

<b>Name, Address, Telephone Number (if known)</b>	<b>Will/May Call</b>	<b>Anticipated Length of Testimony on Direct</b>	<b>Anticipated Length of Testimony on Cross</b>
Peter Strange c/o Kutak Rock LLP (303) 297-2400	Will	8 (without re-direct)	
Clifford Eby c/o Kutak Rock LLP (303) 297-2400	Will	4 (without re-direct)	
Michael Steffen c/o Kutak Rock LLP (303) 297-2400	Will	4 (without re-direct)	
Aaron Marx c/o Kutak Rock LLP (303) 297-2400	Will	2 (without re-direct)	
Ron Hamburger c/o Kutak Rock LLP (303) 297-2400	Will	1 (without re-direct)	
Michael Harris	Will	3 (without re-direct)	

<b>Name, Address, Telephone Number (if known)</b>	<b>Will/May Call</b>	<b>Anticipated Length of Testimony on Direct</b>	<b>Anticipated Length of Testimony on Cross</b>
c/o Kutak Rock LLP (303) 297-2400			
Rob Hutchins c/o Kutak Rock LLP (303) 297-2400	Will	3 (without re-direct)	
Anne Herzenberg c/o Kutak Rock LLP (303) 297-2400	May	2 (without re-direct)	
John Thompson c/o Kutak Rock LLP (303) 297-2400	May	2 (without re-direct)	
Jacob Seward c/o Kutak Rock LLP (303) 297-2400	May	2 (without re-direct)	
Andrea Warfield c/o Kutak Rock LLP (303) 297-2400	May	3 (without re-direct)	
George Pelletier c/o Kutak Rock LLP (303) 297-2400	May	2 (without re-direct)	
Chip Balthrop c/o Kutak Rock LLP (303) 297-2400	May	2 (without re-direct)	
Ian Choudri 6495 South Sedalia Street Aurora, CO 80016	May	4 (without re-direct)	
Nima Tehrani 6172 Massive Peak Circle Castle Rock, CO 80108	May	4 (without re-direct)	
Robert Lauby 7208 Deerfield Ct. Falls Church, VA 22043	May	2 (without re-direct)	
Karl Alexy 1200 New Jersey Avenue SE Washington, DC 20590	May	2 (without re-direct)	
Jeff Whiteman Office Leader - LTK, 1625 Broadway, Suite 1050, Denver, CO 80202	May	4 (without re-direct)	
Scott Reed	May	2 (without re-direct)	

<b>Name, Address, Telephone Number (if known)</b>	<b>Will/May Call</b>	<b>Anticipated Length of Testimony on Direct</b>	<b>Anticipated Length of Testimony on Cross</b>
Media Relations – GBSM, 555 17th Street, Denver, Colorado, 80202			
Donald Ulrich 114 West Oak Hills Drive Castle Rock, CO 80108	May	3 (without re-direct)	
Thomas Ragland 7776 S Forest Street, Centennial, CO 80122	May	2 (without re-direct)	
Michael Loehr 10094 Cedar Knoll Lane Henrico, VA	May	4 (without re-direct)	
Greg Straight 777 South Marengo Avenue, Unit #4 Pasadena, CA 91106	May	4 (without re-direct)	
Brian Middleton 810 East MacArthur Street Sonoma, CA 95476	May	2(without re-direct)	
Dave Genova 733 South York Street Denver, CO 80209	May	4 (without re-direct)	
Jenifer Ross-Amato 1600 Blake Street Denver, CO 80202	May	2 (without re-direct)	
Henry Stopplecamp 1560 Broadway Denver, CO 80202	May		8
Joe Christie 6445 South Crocker Street Littleton, CO 80120	May		8
Allen Miller 13805 Elizabeth Street Thornton, CO 80602	May		4
Roger Kane 1660 Blake Street Denver, CO 80202	May		4
Pranaya Shrestha 1461 Magpie Court Golden, CO 80403	May		3

<b>Name, Address, Telephone Number (if known)</b>	<b>Will/May Call</b>	<b>Anticipated Length of Testimony on Direct</b>	<b>Anticipated Length of Testimony on Cross</b>
Kirk Strand 1660 Blake Street Denver, CO 80202	May		3
Any witness needed for rebuttal			
Any witness endorsed by RTD			

DTP's anticipated length of testimony on direct does not include any redirect, which will be entirely dependent on the length and scope of cross-examination. All anticipated lengths of testimony are good faith estimates and subject to change.

2. RTD will/may call the following witnesses:

	<b>Witness</b>	<b>Contact Information</b>	<b>May Call or Will Call</b>	<b>Anticipated Hours of Direct if Called</b>
1.	Christopher Beirise	c/o Dorsey & Whitney LLP	Will	6
2.	Joseph Christie	c/o Dorsey & Whitney LLP	Will	7
3.	George Gavalla	c/o Dorsey & Whitney LLP	Will	5
4.	Dennis McCann	c/o Dorsey & Whitney LLP	Will	4
5.	Henry Stoppolecamp	c/o Dorsey & Whitney LLP	Will	7
6.	Ian Choudri	6495 South Sedalia Street Aurora, CO 80016	May	2
7.	David Genova	c/o Dorsey & Whitney LLP	May	4
8.	Roger Kane	c/o Dorsey & Whitney LLP	May	2
9.	Dean Lee	481 Stage Run Trail Elizabeth, CO 80107	May	1

	<b>Witness</b>	<b>Contact Information</b>	<b>May Call or Will Call</b>	<b>Anticipated Hours of Direct if Called</b>
10.	Michael Loehr	10094 Cedar Knoll Lane Henrico, VA 23233	May	1
11.	Brian Middleton	810 East MacArthur Street Sonoma, CA 95476	May	3
12.	Allen Miller	c/o Dorsey & Whitney LLP	May	2
13.	Thomas Ragland	7776 South Forest Street Centennial, CO 80122	May	1
14.	Scott Reed	c/o Dorsey & Whitney LLP	May	1
15.	Pranaya Shrestha	c/o Dorsey & Whitney LLP	May	2
16.	Gregory Straight	777 South Marengo Ave Unit 4 Pasadena, CA 91106	May	4
17.	Kirk Strand	c/o Dorsey & Whitney LLP	May	2
18.	Nima Tehrani	6172 Massive Peak Circle Castle Rock, CO 80108	May	3
19.	Donald Ulrich	114 West Oak Hills Drive Castle Rock, CO 80108	May	1
20.	Jeffrey Whiteman	9974 Hawthorne Street Highlands Ranch, CO 80126	May	3
21.	Cliff Eby		May	3
22.	Aaron Epstein		May	1
23.	Anne Herzenberg		May	2
24.	Michael Hoitink		May	1
25.	Michael Lipinski		May	2
26.	Aaron Marx		May	2

	<b>Witness</b>	<b>Contact Information</b>	<b>May Call or Will Call</b>	<b>Anticipated Hours of Direct if Called</b>
27.	Thomas Marzolf		May	2
28.	Jacob Seward		May	2
29.	Peter Strange		May	4
30.	Zachary Taylor		May	2
31.	John Thompson		May	3
32.	Andrea Warfield		May	2
	Any witnesses necessary for impeachment, rebuttal, or to lay foundation			
	Any witnesses listed on DTP's Witness List			

The indicated anticipated length of testimony is RTD's current best estimate regarding its direct examination length of each will call and may call witness, should each be called to testify and is subject to revision and does not include re-direct time. For any "May Call" witnesses who are also DTP's "Will Call" witnesses, it is RTD's understanding that anticipated hours are likely to significantly overlap with cross examination.

With respect to any individuals that DTP has also designated as a retained or non-retained expert, RTD intends to challenge their qualifications and opinions at trial, as necessary.

**B. Exhibits.**

The Parties intend to introduce the exhibits identified in the lists attached hereto. The Parties' joint exhibits list includes those exhibits that appeared on both parties' preliminary lists

and are marked in numerical sequence starting with Exhibit No. 1; DTP's additional exhibits are marked in numerical sequence starting with Exhibit No. 1000; and, RTD's additional exhibits are marked in numerical sequence starting with Exhibit No. 2000. Pursuant to the Pre-Trial Order, the exhibits will be provided to the Court in electronic format on a single flash drive on the first day of trial.

The Joint List is attached hereto as **Attachment 1**. DTP's Exhibit List is attached hereto as **Attachment 2**. RTD's Exhibit List is attached hereto as **Attachment 3**. The Parties intend to raise the issue of stipulations and objections with the Court at the Pre-Trial Conference.

### **C. Deposition and Other Preserved Testimony.**

To the extent that the Parties intend to present the testimonies of any witnesses by deposition, the Parties will follow the deadlines set forth in Rule 16(f) with respect to deposition designations.

## **VII. TRIAL EFFICIENCIES AND OTHER MATTERS**

This matter is set for a four-week trial to the Court, commencing on Monday, September 21, 2020. Trial will continue through Monday, October 19, 2020. Trial will not be held on Monday, October 5, 2020 but will be held on Monday, October 12, 2020.

The Pre-Trial Conference is set for Monday, August 24, 2020 at 9:00 a.m. All trial counsel will appear in-person as required. The Parties have deferred in-depth conferral on matters such as remote testimony until after hearing from the Court during the Pre-Trial Conference about any rule or procedures that the Court will set on account of the COVID-19 pandemic.

The Parties have considered the ways in which the use of technology can simplify the case and make it more understandable. The Parties intend to have the trial transcribed by a private court

reporter. The Parties intend to electronically present evidence with the use audio-visual technology and will work with the Clerk to schedule a time to set up the equipment prior to the start of trial.

This Trial Management Order shall control the course of the trial. Modification to or divergence from the Trial Management Order, whether prior to or during the trial, shall be permitted only upon a demonstration that the modification or divergence could not with reasonable diligence have been anticipated. In the event of any ambiguity in this Trial Management Order, the Court shall interpret the Order in the manner which best advances the interests of justice.

Other orders entered by the Court at the pretrial conference:

1. A sequestration orders shall be in effect for all fact witnesses, with the following exceptions:
  - Non-retained experts are not subject to the sequestration order, including: Messers. Eby, Steffen and Marx; and
  - Each party may have two representatives present during trial, including Ms. Ross-Amato.
2. Counsel for the parties shall advise all other fact witnesses that they may not attend trial, until they testify, or listen in to trial testimony in the event the trial is broadcast through WebEx.
3. Each party shall have 49 hours of trial time, not including opening statements or closing arguments. Cross-examination of opposing witnesses shall count towards a party's allocation of trial time. This time may be extended for good cause shown.
4. Each party shall have one hour for opening statements. The Court shall determine the time allocated for closing arguments at the end of the trial.

5. By September 15, 2020 the parties shall file the following with the Court:

- An order of proof that lists in order all of the witnesses a party will call and may call.

The list shall include a good faith estimate of the time for direct, cross, redirect and recross (in the event recross is necessary for a witness that will only be called once).

- Demonstrative exhibits that a party may use at trial shall be disclosed to the other party. If a demonstrative exhibit changes during the course of a trial, disclosure shall be made the evening before by 8:00 p.m. The demonstrative exhibits need not be filed with the Court.

6. Mr. Thompson's testimony may be presented by WebEx, in the event he is called as a witness.

7. Counsel, the parties, all witnesses and spectators must follow the COVID-19 protocols issued by the Second Judicial District, including:

- June 3, 2020 Administrative Order 2020-05, joint order requiring face coverings in court facilities, found at:

[https://www.courts.state.co.us/userfiles/file/Court\\_Probation/02nd\\_Judicial\\_District/Denver\\_District\\_Court/JO%20%232020%20-%2005.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/02nd_Judicial_District/Denver_District_Court/JO%20%232020%20-%2005.pdf); and

- August 2, 2020 Administrative Order 2020-08, chief judge order regarding Second Judicial District jury call an trial procedures in response to the COVID-19 pandemic found at:

[https://www.courts.state.co.us/userfiles/file/Court\\_Probation/02nd\\_Judicial\\_District/Denver\\_District\\_Court/Second%20Judicial%20District%20Jury%20Call%20and%20Trial%20Procedures%20Plan%20and%20CJO%2020-08.pdf](https://www.courts.state.co.us/userfiles/file/Court_Probation/02nd_Judicial_District/Denver_District_Court/Second%20Judicial%20District%20Jury%20Call%20and%20Trial%20Procedures%20Plan%20and%20CJO%2020-08.pdf).

**SO ORDERED AND DATED** this 24<sup>th</sup> day of August, 2020.

BY THE COURT



---

Andrew P. McCallin  
District Court Judge