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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AECOM ENERGY &
CONSTRUCTION, INC., an Ohio
Corporation,

 Plaintiff,

 v.

JOHN RIPLEY, *et al.*,

 Defendants.

CASE NO. 2:17-CV-05398-
RSWL(SSX)

**JOINT STIPULATION RE
PROTECTIVE ORDER
[DISCOVERY DOCUMENT:
REFERRED TO MAGISTRATE
JUDGE SUZANNE H. SEGAL]**

Complaint Filed Date: July 21, 2017

Judge: Hon. Ronald S. W. Lew

1
2 **STIPULATED PROTECTIVE ORDER**

3 1. A. Purposes and Limitations

4 Plaintiff AECOM Energy & Construction, Inc. and Defendants MORRISON
5 KNUDSEN CORPORATION, MORRISON-KNUDSEN COMPANY, INC.,
6 MORRISON-KNUDSEN SERVICES, INC., MORRISON-KNUDSEN
7 INTERNATIONAL INC., and Gary Topolewski (collectively, the “Parties”), parties in
8 the above-captioned action (“Action”), have determined that discovery and briefing in
9 this Action may result in the disclosure of confidential, proprietary, business, financial,
10 or otherwise sensitive information. In the interest of protecting the legitimate business
11 concerns of the Parties, their customers, business partners, and other third-parties, as
12 well as the private information of individuals involved in this Action, the Parties hereby
13 have stipulated to the following Protective Order (hereinafter “Order”) pursuant to Fed.
14 R. Civ. P. 26(c). The parties further acknowledge, as set forth in Section 12.3, below,
15 that this Stipulated Protective Order does not entitle them to file confidential
16 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be
17 followed and the standards that will be applied when a party seeks permission from the
18 court to file material under seal.

18 B. Good Cause Statement

19 The parties in this Action are likely to seek discovery of trade secret, confidential
20 and/or proprietary information for which special protection from public disclosure and
21 from use for any purpose other than prosecution of this action is warranted. The parties
22 anticipate that such confidential and proprietary materials and information may consist
23 of, among other things, confidential business or financial information, information
24 regarding confidential business practices, or other confidential research, development,
25 or commercial information (including information implicating privacy rights of third
26 parties), information otherwise generally unavailable to the public, or which may be
27 privileged or otherwise protected from disclosure under state or federal statutes, court
28 rules, case decisions, or common law. Accordingly, to expedite the flow of information,
to facilitate the prompt resolution of disputes over confidentiality of discovery

1 materials, to adequately protect information the parties are entitled to keep confidential,
2 to ensure that the parties are permitted reasonable necessary uses of such material in
3 preparation for and in the conduct of trial, to address their handling at the end of the
4 litigation, and serve the ends of justice, a protective order for such information is
5 justified in this matter. It is the intent of the parties that information will not be
6 designated as confidential for tactical reasons and that nothing be so designated without
7 a good faith belief that it has been maintained in a confidential, non-public manner, and
8 there is good cause why it should not be part of the public record of this case.
9

10 **DEFINITIONS**

11 2.1 Action: means this pending federal lawsuit captioned *AECOM Energy &*
12 *Construction, Inc. v. Ripley, et al.*, Case No. 2:17-cv-05398-RSWL(SSx).

13 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
14 information or items under this Order.

15 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
16 is generated, stored or maintained) or tangible things that qualify for protection under
17 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
18 Statement.

19 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
20 support staff).

21 2.5 Designating Party: a Party or Non-Party that designates information or items
22 that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

23 2.6 Disclosure or Discovery Material: all items or information, regardless of the
24 medium or manner in which it is generated, stored, or maintained (including, among
25 other things, testimony, transcripts, and tangible things), that are produced or generated
26 in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a matter
28 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
expert witness or as a consultant in this Action.

1 2.8 House Counsel: attorneys who are employees of a Party to this Action.

2 2.9 Non-Party: any natural person, partnership, corporation, association, or other
3 legal entity not named as a Party to this action.

4 2.10 Outside Counsel of Record: attorneys who are not employees of a Party to
5 this Action but are retained to represent or advise a Party in connection with this Action
6 and have appeared in this Action on behalf of that party or are affiliated with a law firm
7 which has appeared on behalf of that party, and their support staff.

8 2.11 Party: any party to this Action, including all of its officers, directors,
9 employees, consultants, and retained experts.

10 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
11 Material in this Action.

12 2.13 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
15 their employees and subcontractors.

16 2.14 Protected Material: any Disclosure or Discovery Material that is designated
17 as “CONFIDENTIAL.”

18 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from
19 a Producing Party.

20 3. SCOPE

21 The protections conferred by this Stipulation and Order cover not only Protected
22 Material (as defined above), but also (1) any information copied or extracted from
23 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
24 Material; and (3) any testimony, conversations, or presentations by Parties or their
25 Counsel that might reveal Protected Material.

26 Any use of Protected Material at trial shall be governed by the orders of the trial
27 judge. This Order does not govern the use of Protected Material at trial.

28 4. DURATION

1 Even after final disposition of this litigation, the confidentiality obligations
2 imposed by this Order shall remain in effect until a Designating Party agrees otherwise
3 in writing or a court order otherwise directs. Final disposition shall be deemed to be
4 the later of (1) dismissal of all claims and defenses in this Action, with or without
5 prejudice; and (2) final judgment herein after the completion and exhaustion of all
6 appeals, rehearings, remands, trials, or reviews of this Action, including the time limits
7 for filing any motions or applications for extension of time pursuant to applicable law.
8

9 5. DESIGNATING PROTECTED MATERIAL

10 5.1 Exercise of Restraint and Care in Designating Material for Protection.

11 Each Party or Non-Party that designates information or items for protection under
12 this Order must take care to limit any such designation to specific material that qualifies
13 under the appropriate standards. The Designating Party must designate for protection
14 only those parts of material, documents, items, or oral or written communications that
15 qualify so that other portions of the material, documents items, or communications for
16 which protection is not warranted are not swept unjustifiably within the ambit of this
17 Order.

18 Mass, indiscriminate, or routinized designations are prohibited. Designations that
19 are shown to be clearly unjustified or that have been made for an improper purpose
20 (e.g., to unnecessarily encumber the case development process or to impose
21 unnecessary expenses and burdens on other parties) may expose the Designating Party
22 to sanctions.

23 If it comes to a Designating Party's attention that information or items that it
24 designated for protection do not qualify for protection, that Designating Party must
25 promptly notify all other Parties that it is withdrawing the inapplicable designation.

26 5.2 Manner and Timing of Designations. Except as otherwise provided in this
27 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated
28 or ordered, Disclosure or Discovery Material that qualifies for protection under this
Order must be clearly so designated before the material is disclosed or produced.

1 Designation in conformity with this Order requires:

2 (a) for information in documentary form (e.g., paper or electronic documents, but
3 excluding transcripts of depositions or other pretrial or trial proceedings), that the
4 Producing Party affix at a minimum, the legend “CONFIDENTIAL” (hereinafter
5 “CONFIDENTIAL legend”), to each page that contains protected material. If only a
6 portion or portions of the material on a page qualifies for protection, the Producing Party
7 also must clearly identify the protected portion(s) (e.g., by making appropriate markings
8 in the margins).

9 A Party or Non-Party that makes original documents available for inspection need
10 not designate them for protection until after the inspecting Party has indicated which
11 documents it would like copied and produced. During the inspection and before the
12 designation, all of the material made available for inspection shall be deemed
13 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
14 copied and produced, the Producing Party must determine which documents, or portions
15 thereof, qualify for protection under this Order. Then, before producing the specified
16 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
17 that contains Protected Material. If only a portion or portions of the material on a page
18 qualifies for protection, the Producing Party also must clearly identify the protected
19 portion(s) (e.g., by making appropriate markings in the margins).

20 (b) for testimony given in depositions that the Designating Party identify the
21 Disclosure or Discovery Material on the record, before the close of the deposition all
22 protected testimony, or serve written notice of the page and line of the confidential
23 deposition portions, within fourteen (14) days of receiving the final transcript. Until
24 the fourteen-day period to designate the deposition has passed, the entire transcript shall
25 be treated as “CONFIDENTIAL,” unless the Parties otherwise agree.

26 (c) for information produced in some form other than documentary and for any
27 other tangible items, that the Producing Party affix in a prominent place on the exterior
28 of the container or containers in which the information is stored the legend

1 “CONFIDENTIAL.” If only a portion or portions of the information warrants
2 protection, the Producing Party, to the extent practicable, shall identify the protected
3 portion(s).
4

5 5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified
6 information or items does not, standing alone, waive the Designating Party’s right to
7 secure protection under this Order for such material. Upon correction of a designation,
8 the Receiving Party must make reasonable efforts to assure that the material is treated
9 in accordance with the provisions of this Order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation
12 of confidentiality at any time that is consistent with the Court’s Scheduling Order.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
14 process under Civil Local Rule 37-1 et seq.

15 6.3 Burden of Persuasion. The burden of persuasion in any such challenge
16 proceeding shall be on the Designating Party. Frivolous challenges, and those made for
17 an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
18 other parties) may expose the Challenging Party to sanctions. Unless the Designating
19 Party has waived or withdrawn the confidentiality designation, all parties shall continue
20 to afford the material in question the level of protection to which it is entitled under the
21 Producing Party’s designation until the Court rules on the challenge.

22 7. ACCESS TO AND USE OF PROTECTED MATERIAL

23 7.1 Basic Principles. A Receiving Party may use Protected Material that is
24 disclosed or produced by another Party or by a Non-Party in connection with this Action
25 only for prosecuting, defending, or attempting to settle this Action. Such Protected
26 Material may be disclosed only to the categories of persons and under the conditions
27 described in this Order. When the Action has been terminated, a Receiving Party must
28 comply with the provisions of Section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a

1 location and in a secure manner that ensures that access is limited to the persons
2 authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
4 ordered by the Court or permitted in writing by the Designating Party, a Receiving Party
5 may disclose any information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this Action;

7 (b) the officers, directors, and employees (including House Counsel) of the
8 Receiving Party to whom disclosure is reasonably necessary for this Action;

9 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure
10 is reasonably necessary for this Action and who have signed the “Acknowledgment and
11 Agreement to Be Bound” (Exhibit A);

12 (d) the court and its personnel;

13 (e) court reporters and their staff;

14 (f) professional jury or trial consultants, mock jurors, and Professional Vendors to
15 whom disclosure is reasonably necessary for this Action and who have signed the
16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (g) the author or recipient of a document containing the information or a custodian
18 or other person who otherwise possessed or knew the information;

19 and

20 (h) any mediator or settlement officer, and their supporting personnel, mutually
21 agreed upon by any of the parties engaged in settlement discussions.

22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
23 OTHER LITIGATION

24 If a Party is served with a subpoena or a court order issued in other litigation that
25 compels disclosure of any information or items designated in this Action as
26 “CONFIDENTIAL,” that Party must:

27 (a) promptly notify in writing the Designating Party. Such notification shall
28 include a copy of the subpoena or court order;

1 (b) promptly notify in writing the party who caused the subpoena or order to issue
2 in the other litigation that some or all of the material covered by the subpoena or order
3 is subject to this Protective Order. Such notification shall include a copy of this
4 Stipulated Protective Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued by
6 the Designating Party whose Protected Material may be affected.

7
8 If the Designating Party timely seeks a protective order, the Party served with the
9 subpoena or court order shall not produce any information designated in this action as
10 “CONFIDENTIAL” before a determination by the court from which the subpoena or
11 order issued, unless the Party has obtained the Designating Party’s permission. The
12 Designating Party shall bear the burden and expense of seeking protection in that court
13 of its confidential material and nothing in these provisions should be construed as
14 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
15 from another court.

16 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
17 PRODUCED IN THIS LITIGATION

18 (a) The terms of this Order are applicable to information produced by a Non-Party
19 in this Action and designated as “CONFIDENTIAL.” Such information produced by
20 Non-Parties in connection with this litigation is protected by the remedies and relief
21 provided by this Order. Nothing in these provisions should be construed as prohibiting
22 a Non-Party from seeking additional protections.

23 (b) In the event that a Party is required, by a valid discovery request, to produce a
24 Non-Party’s confidential information in its possession, and the Party is subject to an
25 agreement with the Non-Party not to produce the Non-Party’s confidential information,
26 then the Party shall:

27 (1) promptly notify in writing the Requesting Party and the Non-Party that some
28 or all of the information requested is subject to a confidentiality agreement with a Non-
Party;

1 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
2 in this Action, the relevant discovery request(s), and a reasonably specific description
3 of the information requested; and
4

5 (3) make the information requested available for inspection by the Non-Party, if
6 requested.

7 (c) If the Non-Party fails to seek a protective order from this Court within 14 days
8 of receiving the notice and accompanying information, the Receiving Party may
9 produce the Non-Party's confidential information responsive to the discovery request.
10 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
11 any information in its possession or control that is subject to the confidentiality
12 agreement with the Non-Party before a determination by the court. Absent a court order
13 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
14 in this court of its Protected Material. Nothing herein shall bar a Receiving Party from
15 seeking a protective order against disclosure of information subject to a confidentiality
16 agreement.

17 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
19 Protected Material to any person or in any circumstance not authorized under this
20 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
21 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
22 all unauthorized copies of the Protected Material, (c) inform the person or persons to
23 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
24 such person or persons to execute the "Acknowledgment and Agreement to Be Bound"
25 that is attached hereto as Exhibit A.

26 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
27 **PROTECTED MATERIAL**

28 When a Producing Party gives notice to Receiving Parties that certain
inadvertently produced material is subject to a claim of privilege or other protection,

1 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
2 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
3 may be established in an e-discovery order that provides for production without prior
4 privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the
5 parties reach an agreement on the effect of disclosure of a communication or
6 information covered by the attorney-client privilege or work product protection, the
7 parties may incorporate their agreement in the stipulated protective order submitted to
8 the Court.

9
10 **12. MISCELLANEOUS**

11 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person
12 to seek its modification by the Court in the future.

13 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective
14 Order, no Party waives any right it otherwise would have to object to disclosing or
15 producing any information or item on any ground not addressed in this Stipulated
16 Protective Order. Similarly, no Party waives any right to object on any ground to use in
17 evidence of any of the material covered by this Protective Order.

18 **12.3 Filing Protected Material.** A Party that seeks to file under seal any Protected
19 Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
20 under seal pursuant to a court order authorizing the sealing of the specific Protected
21 Material at issue. If a Party's request to file Protected Material under seal is denied by
22 the Court, then the Receiving Party may file the information in the public record unless
23 otherwise instructed by the Court.

24 **13. FINAL DISPOSITION**

25 After the final disposition of this Action, as defined in Section 4, within 60 days
26 of a written request by the Designating Party, each Receiving Party must return all
27 Protected Material to the Producing Party or destroy such material. As used in this
28 subdivision, "all Protected Material" includes all copies, abstracts, compilations,
summaries, and any other format reproducing or capturing any of the Protected

1 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
2 must submit a written certification to the Producing Party (and, if not the same person
3 or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
4 category, where appropriate) all the Protected Material that was returned or destroyed
5 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
6 compilations, summaries or any other format reproducing or capturing any of the
7 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
8 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
9 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
10 work product, internal email communications, and consultant and expert work product,
11 even if such materials contain Protected Material. Any such archival copies that contain
12 or constitute Protected Material remain subject to this Protective Order as set forth in
13 Section 4 (DURATION).
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1
2 **EXHIBIT A**

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name],
5 of _____ [print or type full address],
6 declare under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for the
8 Central District of California on _____ [date] in the case of *AECOM Energy &*
Construction, Inc. v. Ripley, et al., Case No. 2:17-cv-05398-RSWL(SSx) (C.D. Cal.).

9 I agree to comply with and to be bound by all the terms of this Stipulated
10 Protective Order and I understand and acknowledge that failure to so comply could
11 expose me to sanctions and punishment in the nature of contempt. I solemnly promise
12 that I will not disclose in any manner any information or item that is subject to this
13 Stipulated Protective Order to any person or entity except in strict compliance with the
14 provisions of this Order.

15 I further agree to submit to the jurisdiction of the United States District Court for
16 the Central District of California for the purpose of enforcing the terms of this Stipulated
17 Protective Order, even if such enforcement proceedings occur after termination of this
18 action. I hereby appoint _____ [print or type full name]
19 of _____ [print or type full address and
20 telephone number] as my California agent for service of process in connection with this
21 action or any proceedings related to enforcement of this Stipulated Protective Order.

22 Date: _____

23 City and State where sworn and signed: _____

24 Printed name: _____

25 Signature: _____