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 CITY OF SAN JOSE

8 UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 9 SAN JOSE FACILITY

11 TIMOTHY L. GALL,  
 12 Plaintiff,  
 13 v.  
 14 CITY OF SAN JOSE,  
 15 Defendant.

NO.: C08-00120 JW (PVT)  
**STIPULATED PROTECTIVE ORDER**  
 AS MODIFIED BY THE COURT (see Section 7.3(a))

17 **1. PURPOSES AND LIMITATIONS**

18 Disclosure and discovery activity in this action are likely to involve production of  
 19 confidential, proprietary, or private information for which special protection from public  
 20 disclosure and from use for any purpose other than prosecuting this litigation would be  
 21 warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the  
 22 following Stipulated Protective Order. The parties acknowledge that this Order does not  
 23 confer blanket protections on all disclosures or responses to discovery and that the protection  
 24 it affords extends only to the limited information or items that are entitled under the applicable  
 25 legal principles to treatment as confidential. The parties further acknowledge, as set forth in  
 26 Section 10, below, that this Stipulated Protective Order creates no entitlement to file  
 27 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must  
 28

1 be followed and reflects the standards that will be applied when a party seeks permission  
2 from the court to file material under seal.

3 **2. DEFINITIONS**

4 **2.1 Party:** any party to this action, including all of its officers, directors, employees,  
5 consultants, retained experts, and outside counsel (and their support staff).

6 **2.2 Disclosure or Discovery Material:** all items or information, regardless of the  
7 medium or manner generated, stored, or maintained (including, among other things,  
8 testimony, transcripts, or tangible things) that are produced or generated in disclosures or  
9 responses to discovery in this matter.

10 **2.3 "Confidential" Information or Items:** information (regardless of how  
11 generated, stored or maintained) or tangible things that qualify for protection under standards  
12 developed under F.R.Civ.P. 26(c).

13 **2.4 "Highly Confidential – Attorneys' Eyes Only" Information or Items:**  
14 extremely sensitive "Confidential Information or Items" whose disclosure to another Party or  
15 nonparty would create a substantial risk of serious injury that could not be avoided by less  
16 restrictive means.

17 **2.5 Receiving Party:** a Party that receives Disclosure or Discovery Material from a  
18 Producing Party.

19 **2.6 Producing Party:** a Party or non-party that produces Disclosure or Discovery  
20 Material in this action.

21 **2.7. 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" or "Highly  
23 Confidential — Attorneys' Eyes Only."

24 **2.8 Protected Material:** any Disclosure or Discovery Material that is designated as  
25 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

26 **2.9. Outside Counsel:** attorneys who are not employees of a Party but who are  
27 retained to represent or advise a Party in this action.

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1           **2.10 House Counsel:** attorneys who are employees of a Party.

2           **2.11 Counsel (without qualifier):** Outside Counsel and House Counsel (as well as  
3 their support staffs).

4           **2.12 Expert:** a person with specialized knowledge or experience in a matter  
5 pertinent to the litigation who has been retained by a Party or its counsel to serve as an  
6 expert witness or as a consultant in this action and who is not a past or a current employee of  
7 a Party or of a competitor of a Party's and who, at the time of retention, is not anticipated to  
8 become an employee of a Party or a competitor of a Party's. This definition includes a  
9 professional jury or trial consultant retained in connection with this litigation.

10           **2.13 Professional Vendors:** persons or entities that provide litigation support  
11 services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations;  
12 organizing, storing, retrieving data in any form or medium; etc.) and their employees and  
13 subcontractors.

14 **3. SCOPE**

15           The protections conferred by this Stipulation and Order cover not only Protected  
16 Material (as defined above), but also any information copied or extracted therefrom, as well  
17 as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or  
18 presentations by parties or counsel to or in court or in other settings that might reveal  
19 Protected Material.

20 **4. DURATION**

21           Even after the termination of this litigation, the confidentiality obligations imposed by  
22 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a  
23 court order otherwise directs.

24 **5. DESIGNATING PROTECTED MATERIAL**

25           **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

26           Each Party or non-party that designates information or items for protection under this Order  
27 must take care to limit any such designation to specific material that qualifies under the  
28 appropriate standards. A Designating Party must take care to designate for protection only

1 those parts of material, documents, items, or oral or written communications that qualify – so  
2 that other portions of the material, documents, items, or communications for which protection  
3 is not warranted are not swept unjustifiably within the ambit of this Order.

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

8 If it comes to a Party's or a non-party's attention that information or items that it  
9 designated for protection do not qualify for protection at all, or do not qualify for the level of  
10 protection initially asserted, that Party or non-party must promptly notify all other parties that it  
11 is withdrawing the mistaken designation.

12 **5.2 Manner and Timing of Designations.** Except as otherwise provided in this  
13 Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or  
14 ordered, material that qualifies for protection under this Order must be clearly so designated  
15 before the material is disclosed or produced.

16 Designation in conformity with this Order requires:

17 (a) for information in documentary form (apart from transcripts of depositions  
18 or other pretrial or trial proceedings), that the Producing Party affix the legend  
19 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" at the top of  
20 each page that contains protected material. If only a portion or portions of the material on a  
21 page qualifies for protection, the Producing Party also must clearly identify the protected  
22 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
23 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY  
24 CONFIDENTIAL – ATTORNEYS' EYES ONLY").

25 A Party or non-party that makes original documents or materials available for  
26 inspection need not designate them for protection until after the inspecting Party has  
27 indicated which material it would like copied and produced. During the inspection and before  
28 the designation, all of the material made available for inspection shall be deemed "HIGHLY

1 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the  
2 documents it wants copied and produced, the Producing Party must determine which  
3 documents, or portions thereof, qualify for protection under this Order, then, before producing  
4 the specified documents, the Producing Party must affix the appropriate legend  
5 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”) at the top of  
6 each page that contains Protected Material. If only a portion or portions of the material on a  
7 page qualifies for protection, the Producing Party also must clearly identify the protected  
8 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
9 portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY  
10 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

11 (b) for testimony given in deposition or in other pretrial or trial proceedings,  
12 that the Party or non-party offering or sponsoring the testimony identify on the record, before  
13 the close of the deposition, hearing, or other proceeding, all protected testimony, and further  
14 specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL –  
15 ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of  
16 testimony that is entitled to protection, and when it appears that substantial portions of the  
17 testimony may qualify for protection, the Party or non-party that sponsors, offers, or gives the  
18 testimony may invoke on the record (before the deposition or proceeding is concluded) a right  
19 to have up to 20 days to identify the specific portions of the testimony as to which protection  
20 is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”).

22 Only those portions of the testimony that are appropriately designated for  
23 protection within the 20 days shall be covered by the provisions of this Stipulated Protective  
24 Order.

25 Transcript pages containing Protected Material must be separately bound by  
26 the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”  
27 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” as instructed by the Party or  
28 nonparty offering or sponsoring the witness or presenting the testimony.

1 (c) for information produced in some form other than documentary, and for  
2 any other tangible items, that the Producing Party affix in a prominent place on the exterior of  
3 the container or containers in which the information or item is stored the legend  
4 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only  
5 portions of the information or item warrant protection, the Producing Party, to the extent  
6 practicable, shall identify the protected portions, specifying whether they qualify as  
7 "Confidential" or as "Highly Confidential – Attorneys' Eyes Only."

8 **5.3 Inadvertent Failures to Designate.** If timely corrected, an inadvertent failure  
9 to designate qualified information or items as "Confidential" or "Highly Confidential –  
10 Attorneys' Eyes Only" does not, standing alone, waive the Designating Party's right to secure  
11 protection under this Order for such material. If material is appropriately designated as  
12 "Confidential" or "Highly Confidential – Attorneys' Eyes Only" after the material was initially  
13 produced, the Receiving Party, on timely notification of the designation, must make  
14 reasonable efforts to assure that the material is treated in accordance with the provisions of  
15 this Order.

## 16 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

17 **6.1 Timing of Challenges.** Unless a prompt challenge to a Designating Party's  
18 confidentiality designation is necessary to avoid foreseeable substantial unfairness,  
19 unnecessary economic burdens, or a later significant disruption or delay of the litigation, a  
20 Party does not waive its right to challenge a confidentiality designation by electing not to  
21 mount a challenge promptly after the original designation is disclosed.

22 **6.2 Meet and Confer.** A Party that elects to initiate a challenge to a Designating  
23 Party's confidentiality designation must do so in good faith and must begin the process by  
24 conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)  
25 with counsel for the Designating Party. In conferring, the challenging Party must explain the  
26 basis for its belief that the confidentiality designation was not proper and must give the  
27 Designating Party an opportunity to review the designated material, to reconsider the  
28 circumstances, and, if no change in designation is offered, to explain the basis for the chosen

1 designation. A challenging Party may proceed to the next stage of the challenge process only  
2 if it has engaged in this meet and confer process first.

3 **6.3 Judicial Intervention.** A Party that elects to press a challenge to a  
4 confidentiality designation after considering the justification offered by the Designating Party  
5 may file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule  
6 79-5, if applicable) that identifies the challenged material and sets forth in detail the basis for  
7 the challenge. Each such motion must be accompanied by a competent declaration that  
8 affirms that the movant has complied with the meet and confer requirements imposed in the  
9 preceding paragraph and that sets forth with specificity the justification for the confidentiality  
10 designation that was given by the Designating Party in the meet and confer dialogue.

11 The burden of persuasion in any such challenge proceeding shall be on the  
12 Designating Party. Until the court rules on the challenge, all parties shall continue to afford  
13 the material in question the level of protection to which it is entitled under the Producing  
14 Party's designation.

## 15 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

16 **7.1 Basic Principles.** A Receiving Party may use Protected Material that is  
17 disclosed or produced by another Party or by a non-party in connection with this case only for  
18 prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be  
19 disclosed only to the categories of persons and under the conditions described in this Order.  
20 When the litigation has been terminated, a Receiving Party must comply with the provisions  
21 of section 11, below (FINAL DISPOSITION).

22 Protected Material must be stored and maintained by a Receiving Party at a location  
23 and in a secure manner that ensures that access is limited to the persons authorized under  
24 this Order.

25 **7.2 Disclosure of "CONFIDENTIAL" Information or Items.** Unless otherwise  
26 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
27 disclose any information or item designated CONFIDENTIAL only to:  
28

1 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
2 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
3 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
4 attached hereto as Exhibit A;

5 (b) the officers, directors, employees (including House Counsel), and wife of  
6 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who  
7 have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

8 (c) experts (as defined in this Order) of the Receiving Party to whom  
9 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to  
10 Be Bound by Protective Order" (Exhibit A);

11 (d) the Court and its personnel;

12 (e) court reporters, their staffs, and professional vendors to whom disclosure  
13 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound  
14 by Protective Order" (Exhibit A);

15 (f) during their depositions, witnesses in the action to whom disclosure is  
16 reasonably necessary and who have signed the "Agreement to Be Bound by Protective  
17 Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that  
18 reveal Protected Material must be separately bound by the court reporter and may not be  
19 disclosed to anyone except as permitted under this Stipulated Protective Order.

20 (g) the author of the document or the original source of the information.

21 **7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"**

22 **Information or Items.** Unless otherwise ordered by the court or permitted in writing by the  
23 Designating Party, a Receiving Party may disclose any information or item designated  
24 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

25 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
26 employees of said Counsel to whom it is reasonably necessary to disclose the information for  
27 this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is  
28 attached hereto as Exhibit A; and to the Plaintiff himself when he is the receiving party (but  
only while he is representing himself in pro per);

1 (c) Experts (as defined in this Order) (1) to whom disclosure is reasonably  
2 necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective  
3 Order" (Exhibit A), [Optional: and (3) as to whom the procedures set forth in paragraph 7.4,  
4 below, have been followed];

5 (d) the Court and its personnel;

6 (e) court reporters, their staffs, and professional vendors to whom disclosure  
7 is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound  
8 by Protective Order" (Exhibit A); and

9 (f) the author of the document or the original source of the information.

10 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
11 **LITIGATION.**

12 If a Receiving Party is served with a subpoena or an order issued in other litigation that  
13 would compel disclosure of any information or items designated in this action as  
14 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," the Receiving  
15 Party must so notify the Designating Party, in writing (by fax, if possible) immediately and in  
16 no event more than three court days after receiving the subpoena or order. Such notification  
17 must include a copy of the subpoena or court order.

18 The Receiving Party also must immediately inform in writing the Party who caused the  
19 subpoena or order to issue in the other litigation that some or all the material covered by the  
20 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party  
21 must deliver a copy of this Stipulated Protective Order promptly to the Party in the other  
22 action that caused the subpoena or order to issue.

23 The purpose of imposing these duties is to alert the interested parties to the existence  
24 of this Protective Order and to afford the Designating Party in this case an opportunity to try  
25 to protect its confidentiality interests in the court from which the subpoena or order issued.  
26 The Designating Party shall bear the burdens and the expenses of seeking protection in that  
27 court of its confidential material – and nothing in these provisions should be construed as  
28

1 authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from  
2 another court.

3 **9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

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

11 **10. FILING PROTECTED MATERIAL.**

12 Without written permission from the Designating Party or a court order secured after  
13 appropriate notice to all interested persons, a Party may not file in the public record in this  
14 action any Protected Material. A Party that seeks to file under seal any Protected Material  
15 must comply with Civil Local Rule 79-5.

16 **11. FINAL DISPOSITION.**

17 Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
18 after the final termination of this action, each Receiving Party must return all Protected  
19 Material to the Producing Party. As used in this subdivision, "all Protected Material" includes  
20 all copies, abstracts, compilations, summaries or any other form of reproducing or capturing  
21 any of the Protected Material. With permission in writing from the Designating Party, the  
22 Receiving Party may destroy some or all of the Protected Material instead of returning it.  
23 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a  
24 written certification to the Producing Party (and, if not the same person or entity, to the  
25 Designating Party) by the sixty day deadline that identifies (by category, where appropriate)  
26 all the Protected Material that was returned or destroyed and that affirms that the Receiving  
27 Party has not retained any copies, abstracts, compilations, summaries or other forms of  
28 reproducing or capturing any of the Protected Material.

1 Notwithstanding this provision, Counsel are entitled to retain an archival copy of all  
2 pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work  
3 product, even if such materials contain Protected Material. Any such archival copies that  
4 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
5 Section 4 (DURATION), above.

6 **12. MISCELLANEOUS**

7 **12.1 Right to Further Relief.** Nothing in this Order abridges the right of any person  
8 to seek its modification by the Court in the future.

9 **12.2 Right to Assert Other Objections.** By stipulating to the entry of this Protective  
10 Order no Party waives any right it otherwise would have to object to disclosing or producing  
11 any information or item on any ground not addressed in this Stipulated Protective Order.  
12 Similarly, no Party waives any right to object on any ground to use in evidence of any of the  
13 material covered by this Protective Order.

14 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

15  
16 DATED: MARCH 5, 2009

  
\_\_\_\_\_  
TIMOTHY GALL  
Plaintiff in Pro Per

17  
18  
19 DATED: MARCH 5, 2009

RICHARD DOYLE, City Attorney

20  
21 By   
\_\_\_\_\_  
CLIFFORD S. GREENBERG  
Senior Deputy City Attorney

22  
23 Attorneys for Defendant  
CITY OF SAN JOSÉ, et al.

24  
25 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

26 DATED: MARCH 6, 2009

  
\_\_\_\_\_  
MAGISTRATE JUDGE PATRICIA V. TRUMBULL  
UNITED STATES DISTRICT COURT

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3  
4 I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
5 [print or type full address], declare under penalty of perjury that I have read in its entirety and  
6 understand the Stipulated Protective Order that was issued by the United States District  
7 Court for the Northern District of California on [date] in the case of \_\_\_\_\_ [insert  
8 formal name of the case and the number and initials assigned to it by the court]. I agree to  
9 comply with and to be bound by all the terms of this Stipulated Protective Order and I  
10 understand and acknowledge that failure to so comply could expose me to sanctions and  
11 punishment in the nature of contempt. I solemnly promise that I will not disclose in any  
12 manner any information or item that is subject to this Stipulated Protective Order to any  
13 person or entity except in strict compliance with the provisions of this Order.

14 I further agree to submit to the jurisdiction of the United States District Court for the  
15 Northern District of California for the purpose of enforcing the terms of this Stipulated  
16 Protective Order, even if such enforcement proceedings occur after termination of this action.

17 I hereby appoint \_\_\_\_\_ [print or type full name] of  
18 \_\_\_\_\_ [print or type full address and telephone  
19 number] as my California agent for service of process in connection with this action or any  
20 proceedings related to enforcement of this Stipulated Protective Order.

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

22 City and State where sworn and signed: \_\_\_\_\_

23 Printed name: \_\_\_\_\_

24 [printed name]

25 Signature: \_\_\_\_\_

26  
27 [signature]

28