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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES FOR THE USE AND
BENEFIT OF EXPRESS CONSTRUCTION
COMPANY, INC., a Washington
Corporation,

Plaintiff,

v.

JACOBS FIELD SERVICES NORTH
AMERICA, INC., a Texas Corporation;
JACOBS PROJECT MANAGEMENT CO., a
Virginia Corporation, and FIDELITY AND
DEPOSIT COMPANY OF MARYLAND, a
Maryland Corporation, Payment Bond Nos.
8973253 and 8973257,

Defendants.

No. 2:11-cv-02016TSZ

Judge Thomas S. Zilly

STIPULATED PROTECTIVE
ORDER

I. STIPULATION AND PROTECTIVE ORDER

In order to expedite and facilitate the discovery process in this matter, Plaintiff United States for the Use and Benefit of Express Construction Company, Inc. (“Express”) and Defendants Jacobs Field Services North America, Inc. and Jacobs Project Management Co. (“collectively the “Jacobs” entities) (hereinafter Express and Jacobs referred to as the “Parties”), through their respective counsel of record,

1 hereby stipulate and request that the Court enter a stipulated Protective Order to
2 limit disclosure of certain material and information submitted in the above-captioned
3 matter, so that no party obtaining access to protected material under this Order will
4 gain a competitive advantage as a result of the disclosure.
5

6 The terms and conditions of this Protective Order are as follows:

7 1. Scope. This Protective Order shall govern all discovery in this matter
8 including, but not limited to, information provided, produced, or obtained through any
9 request for production, interrogatory, subpoena, or deposition testimony, exhibits
10 thereto, or transcripts thereof. As used herein, the term "document" shall include all
11 forms of information delineated in FRCP 34.
12

13 2. Protected Material. A party may designate any response, answer,
14 document, thing, or testimony produced or obtained through discovery as
15 CONFIDENTIAL, Protected Material provided such response, answer, document,
16 thing, or testimony contains or discloses information or bases justifying in good faith
17 a CONFIDENTIAL designation.

18 3. Protected Material that may be designated CONFIDENTIAL includes
19 the following:

20 (a) Accounting matters, audits, taxes, financial matters or statements,
21 income records, revenue or income projections, financial data regarding assets,
22 liabilities or net worth, profit and loss statements, balance sheets, income
23 statements, payroll and time records, tax returns and schedules, W-2's, bank
24 account registers, statements and ledgers, and copies of checks;
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1 (b) Employment and job personnel information, files, and records,
2 including employee evaluations, compensation and social security numbers;

3 (c) Proprietary information or data;

4 (d) Information or documents that are kept confidential or are required to
5 be kept confidential by an agreement between any party and any third persons or
6 entities;

7 (e) Information or documents that are confidential by law;

8 (f) Customer or client information as to which a reasonable expectation of
9 privacy exists;

10 (g) Passwords or user IDs; or

11 (h) Any other type of document or information by agreement of the Parties.

12 4. The Parties agree to act in good faith when designating documents or
13 information as CONFIDENTIAL and will only designate materials or information as
14 CONFIDENTIAL when the disclosure of that document or information:
15 CONFIDENTIAL when the disclosure of that document or information:

16 (a) could reasonably give the receiving party a competitive advantage;

17 (b) could reasonably give the producing party a competitive disadvantage;

18 or
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20 (c) that document or information is the type that is traditionally considered
21 confidential, proprietary, or personnel.
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23 5. Procedure for Designating Protected Material. Any party desiring to
24 protect information contained or disclosed in any document or thing through this
25 Protective Order must designate such document, thing, or testimony as
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1 CONFIDENTIAL in the manner provided herein, unless the Parties agree to an
2 alternative procedure. Any document or thing delivered to or served on any party
3 may be designated as Protected Material by affixing the legend "CONFIDENTIAL" to
4 every page of the document.

5
6 6. Disclosure to Third Parties. The Parties shall not duplicate, or provide
7 for review, any Protected Material marked "CONFIDENTIAL" to third parties without
8 prior, written consent from the producing party.

9 7. Inadvertent Failure to Designate. If a party, through inadvertence,
10 produces any Protected Material without marking or otherwise designating it as
11 "CONFIDENTIAL" in accordance with the provisions of this Protective Order, the
12 designating party may give written notice to the receiving party that the document or
13 thing produced is deemed Protected Material and should be treated as such in
14 accordance with the provisions of this Protective Order. The receiving party must
15 treat such document or thing as Protected Material from the date such notice is
16 received.
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18 This paragraph shall not apply to information already filed in the court records
19 in this matter except as required by Court Rule or law.

20
21 8. Procedure for Designating Deposition Testimony. If any party believes
22 that Protected Material belonging to it has been or may be disclosed in the course of
23 any deposition (whether through any question, answer, colloquy and/or exhibit),
24 such party may designate the deposition, portion thereof, or exhibit as protected by
25 (a) stating on the record of the deposition that such deposition, portion thereof, or
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1 exhibit is protected, or by (b) stating in a writing served on counsel for the other
2 party, up to ten (10) court days after such deposition, that such deposition, or portion
3 thereof, or exhibit is Protected Material.
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5 9. Restrictions on Use and Disclosure of Protected Material. All
6 Protected Material shall be used by the party who receives such information solely
7 for the litigation and/or trial of this matter (including motions, appeals, and
8 enforcement of judgment proceedings). The Parties specifically agree that they may
9 not use any Protected Material in connection with any efforts to compete with one
10 another, solicit business, solicit others to work for or with them, interfere with existing
11 contractual or business relationships, disparage or defame one another, and/or to
12 create any sort of competitive advantage.
13

14 10. Permitted Disclosure of Protected Information. Any information which
15 has been designated as Protected Material and marked "CONFIDENTIAL" in
16 accordance with this Protective Order by one party may be disclosed by the other
17 parties to:

18 (a) Partners and associate attorneys working on this lawsuit with that
19 party;
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21 (b) Any person(s) who is retained by a party's attorneys of record in this
22 litigation solely for the purposes of assisting in the preparation of this litigation for
23 trial, such as independent accountants, statisticians, economists, and technical
24 experts, provided that each such individual agrees in writing to be bound by the
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1 terms of this Protective Order and to be subject to the jurisdiction of the Court for
2 purposes of enforcing its terms;

3 (c) Law clerks, paralegals, and administrative employees of the persons
4 identified in paragraphs 10(a) and (b) above whose job duties require them to have
5 access to the Protected Material;
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7 (d) The Court before which this case is pending, including personnel who
8 are authorized by the Court;

9 (e) Any stenographer or court reporter present in his or her official
10 capacity at any hearing, deposition, or other proceeding in this case, agency matter,
11 administrative law proceeding, and/or other legal proceeding; and
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13 (f) A witness in the action whose deposition is to be taken or who is to
14 testify at trial, at any agency or administrative law hearing and/or other legal
15 proceeding, but only to the extent necessary for that testimony.

16 11. Acknowledgment of Stipulation. Except when used in a deposition or
17 court, before obtaining access to any copies of Protected Material covered by this
18 Protective Order, each person (other than legal counsel and their staff) who is
19 permitted to have access to the Protected Material must provide written confirmation
20 (in the form provided as Appendix A to this Protective Order) that they have read
21 and understood this Protective Order and agree to be bound by its terms. Counsel
22 for the party that receives the Protected Material must maintain such
23 acknowledgements for at least one (1) year following final resolution of this matter.
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1 12. Disclosure at Trial. Unless otherwise ordered by the Court, Protected
2 Material may be disclosed in testimony at the trial of this matter or offered in
3 evidence at the trial of this matter, any agency or administrative law hearing, and/or
4 other legal proceeding involving the Parties, subject to all other applicable statutes,
5 laws, rules, and orders.
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7 ~~13. Confidential Documents Filed with the Court. Any briefs, transcripts,~~
8 ~~exhibits, depositions, or other documents that are filed or lodged with the Court and~~
9 ~~that contain, comprise, summarize, or quote from Protected Material shall be filed~~
10 ~~under seal in compliance with the procedures set forth by local and state rules of the~~
11 ~~Court for filing confidential documents and/or documents filed under seal.~~
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13 13. **If a party wishes to use CONFIDENTIAL documents or information**
14 **to support or oppose a motion, the following procedures shall apply:**

15 **Counsel shall meet and confer before filing documents under seal. To**
16 **the extent possible, counsel shall submit, along with any document filed under**
17 **seal, a stipulation and proposed order reciting the reasons for sealing the**
18 **document. See Local Rule CR 5(g)(2); Kamakana v. City & County of**
19 **Honolulu, 447 F.3d 1172 (9th Cir. 2006); Foltz v. State Farm Mut. Auto. Inc. Co.,**
20 **331 F.3d 1122 (9th Cir. 2003). If counsel cannot reach agreement, then a**
21 **properly noted motion to seal must be filed contemporaneously with the**
22 **sealed document. If the party wishing to submit the material is not the party**
23 **designating the material as CONFIDENTIAL, the party wishing to submit the**
24 **material shall provide at least seven (7) judicial days notice to the other**
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1 party(ies), so that a motion to seal, if necessary, may be prepared and filed at
2 the same time as the material is submitted under seal to the Court.

3 Counsel shall use the Case Management and Electronic Document
4 Filing (“CM/ECF”) system to present materials under seal; counsel shall not
5 provide original sealed materials to chambers and shall not provide working
6 copies to chambers unless the materials are voluminous and working copies
7 would otherwise be required under Local Rule CR 10(e)(8). In association with
8 any stipulation or motion to seal, the parties shall bring to the Court's
9 attention the requested disposition of the CONFIDENTIAL document in the
10 event the stipulation or motion to seal is denied. For example, a party may
11 request that, in the event the stipulation or motion is denied, the documents
12 containing CONFIDENTIAL information be deleted from the docket rather than
13 merely unsealed, together with leave to file a new motion or other paper that
14 does not rely on the CONFIDENTIAL document or information. Nothing in this
15 Order or the above example shall be construed as an endorsement of any
16 particular relief, nor shall it otherwise constrain the Court's authority with
17 respect to the handling of Confidential documents or information.
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21 If, through inadvertence or otherwise, CONFIDENTIAL information is
22 filed with the Court without the appropriate notice, the party responsible for
23 the disclosure shall immediately bring all pertinent facts relating to such
24 disclosure to the attention of counsel for all parties and to the Court, without
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1 **prejudice to other rights and remedies of any party, and shall make every**
2 **effort to prevent further disclosure.**

3 14. Relief Available. In the event of a dispute with respect to the
4 designation of any discovery material as Protected Material, counsel for the Parties
5 shall endeavor in good faith to resolve their dispute on an informal basis. If the
6 Parties cannot reach an agreement to resolve the dispute, any party hereto may, on
7 a motion to the Court, seek relief from, or modification of, this Protective Order,
8 request that certain documents be filed under seal, and/or may challenge the
9 designation of any document, thing, or testimony as Protected Material.
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11 15. Privilege. Nothing contained in this Protective Order shall be
12 construed to require production of Protected Material which is privileged or otherwise
13 protected from discovery.
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15 16. Right to Assert Other Objections. Nothing contained in this Protective
16 Order shall be construed as a waiver of either party to assert any objections to the
17 discovery requests underlying the production of the Protected Material, including
18 objections of relevance.
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20 17. Copies. Counsel is authorized to make, or cause to be made at their
21 direction, reproductions of discovery materials that have been designated
22 CONFIDENTIAL as they deem necessary for the purposes of this matter, but all
23 such reproductions shall be subject to the terms of this Order.

24 18. Return/Retention of Documents. After the entry and full satisfaction of
25 any judgment in this case, order of dismissal and/or other voluntarily or non-
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1 voluntary disposition, the Parties shall work together in good faith to address the
2 return and/or confidential disposal (shredding or other similar destruction) of the
3 various copies of the documents and/or other discovery materials designated
4 CONFIDENTIAL. Counsel for the Parties shall only be allowed to retain one copy of
5 the documents and/or materials (preferably an electronic copy) for appeal, use in
6 any other pending legal proceeding involving the parties, including actions to enforce
7 any judgment, and/or for file retention purposes. Under no circumstances shall any
8 party (as opposed to counsel for the party) keep a copy of any document and/or
9 material that another party designated as CONFIDENTIAL.
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11 19. Survival of Order. This Order shall remain in force and effect until
12 further order of this Court. Insofar as the provisions of this Order restrict the use of
13 Protected Material, this Order shall continue to be binding after the conclusion of this
14 litigation to the extent that the Protected Material is not or does not become known
15 to the public.
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17 This Stipulation is effective immediately, it is so agreed.

18 DATED this 9th day of April, 2012.
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By s/ Jonathan A. DeMella
s/ Bryan A. Kelley
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Attorneys for Plaintiff United States for the
Use and Benefit of Express Construction
Company, Inc.

DATED this 9th day of April, 2012.

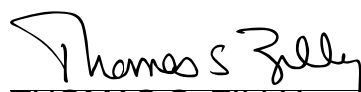
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II. ORDER

Based on the above Stipulation of the Parties for a Protective Order, and the records and files herein, it is hereby ORDERED, ADJUDGED, and DECREED that the terms of this STIPULATED PROTECTIVE ORDER are hereby entered by this Court.

DATED this 13th of April, 2012.


THOMAS S. ZILLY
United States District Judge

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APPENDIX A – CERTIFICATE REGARDING PROTECTIVE ORDER

I, _____, hereby certify that I have been given a copy of and have read and understand the attached Protective Order (“Order”), and that I fully understand the terms of the Order. I recognize that I am bound by the terms of the Order and agree to comply with those terms.

I understand that I may not use or disclose to others CONFIDENTIAL documents or things, or any copies thereof, or any notes or other records that may be made regarding such CONFIDENTIAL documents or things, except in conformance with the Order.

Name: _____
Affiliation: _____
Business Address: _____

Dated: _____
Signed: _____

4836-5478-0687, v. 1