

DISTRICT COURT, EL PASO COUNTY, COLORADO		DATE FILED: July 10, 2023 11:29 AM CASE NUMBER: 2020CV30862 △ COURT USE ONLY △ Case Number: 2020CV30862 Division: 14 Courtroom:
Court Address: 270 S. TEJON, COLORADO SPRINGS, CO, 80903		
Plaintiff(s) TIMOTHY J LEONARD et al.		
v. Defendant(s) INTERQUEST NORTH BUSINESS IMPROVEMENT D		
Order:Order Granting Plaintiffs' Motion for Order Compelling Compliance With Appellate Mandate and For Additional Tailored Discovery Regarding Public Construction Contracts		

The motion/proposed order attached hereto: GRANTED IN PART.

This matter comes before the Court on the Plaintiff's Motion for Order Compelling Compliance With Appellate Mandate and For Additional Tailored Discovery Regarding Public Construction Contracts. The Court reviewed and considered the responsive pleadings, the attachments/exhibits to the responsive pleadings, the appellate opinion, C.R.S. 24-72-201 et seq and the oral arguments of counsel.

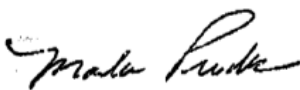
The Court GRANTS the Plaintiff's motion for order compelling the Interquest North Business Improvement District (the District) to comply with mandate from the Court of Appeals in Case No. 22COA0666 and orders the District to fully disclose all records pertaining to the construction of its public improvements, specifically construction contracts including any attached plans and any related payment records.

The second portion of the Plaintiff's motion requests additional "tailored discovery of public construction contracts." This portion of the motion is more problematic as it requests that this Court order that the Plaintiff may issue subpoenas to contractors who performed work related to the District's public improvements; depose no fewer than three of the contractors; depose no less than two representatives of Nor'wood and issue subpoenas to the District engineers. The tailored discovery portion of the motion also requests that the Court Order the District to provide a list of all of the contractors and sub-contractors that have performed work or provided services related to the development or construction of public improvements including a total contract value for each contractor. At oral arguments counsel for Nor'wood stated such a list has already been provided to the defense in the form of a spread sheet (See Exhibit B). So the Court finds the request for the list of contractors and total contract values is moot.

Defense argues that the Colorado Open Records Act (CORA) simply does not authorize this additional discovery and the Court does not have the authority to order it under CORA. Plaintiff argues that without this additional discovery they can not ascertain whether the District properly reimbursed Nor'wood for public improvements.

The Plaintiff did not cite any case law supporting their request for the additional tailored discovery. The appellate opinion issued in this case addresses the production of documents. CORA, itself, addresses inspection and access to existing public records. The Court does not find any language in the appellate opinion, CORA or case law interpreting CORA to support the additional discovery requested by Plaintiff in the context of a CORA case. Therefore, the additional tailored discovery is DENIED.

Issue Date: 7/10/2023



MARLA R PRUDEK
District Court Judge

DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon Street Colorado Springs, Colorado 80903 Phone: 719.452.5000	
Plaintiffs: TIMOTHY J. LEONARD, an individual; THE DEEPWATER POINT COMPANY, a Colorado corporation v. Defendant: INTERQUEST NORTH BUSINESS IMPROVEMENT DISTRICT, a quasi-municipal entity	▲COURT USE ONLY▲
<i>Attorneys for Plaintiffs:</i> Ian Speir, #45777 COVENANT LAW PLLC 13395 Voyager Pkwy. #130-732 Colorado Springs, CO 80921 (719) 464-7357 ian@covtlaw.com Edward A. Gleason, #9744 NUSSBAUM GLEASON PLLC 2 N. Cascade Ave., Suite 1430 Colorado Springs, CO 80903 (719) 428-4937 ed@nussbaumgleason.com	Case No.: 2020CV030862 Div.: 14
Order Granting Plaintiffs’ Motion for Order Compelling Compliance With Appellate Mandate and for Additional Tailored Discovery Regarding Public Construction Contracts	

This matter having come before the Court on Plaintiffs’ Motion for Order Compelling Compliance With Appellate Mandate and for Additional Tailored Discovery Regarding Public Construction Contracts dated February 21, 2023 (“Motion”), and the Court having considered the Motion and any responses and replies thereto, and being fully advised, hereby orders that the Motion is granted.

The Court orders Defendant Interquest North Business Improvement District (“District”) to comply with the mandate of the Court of Appeals in this case and fully disclose all records pertaining to the construction of its public improvements, particularly construction contracts (with attached plans) and related payment records.

Further, the Court orders that Plaintiffs are entitled to additional tailored discovery in order to ensure the District's compliance with the Court's order, as follows:

1. The District shall produce a list that identifies (i) all contractors and subcontractors that have performed work or provided services related to the development or construction of the District's public improvements (together "Public Contractors") and (ii) the total contract value for each such Public Contractor's work.
2. Plaintiffs are granted leave to:
 - a. Issue document subpoenas to not fewer than ten Public Contractors seeking contracts and related documents pertaining to their work on the District's public improvements;
 - b. Depose a representative of not fewer than three Public Contractors regarding their work on the District's public improvements, contracts and other documents related to the same, their relationship with Nor'wood Development Group ("Nor'wood"), and their document management practices pertaining to public construction for the District;
 - c. Issue a document subpoena to each District engineer that, according to the District, is in possession of contracts and other documents pertaining to the District's public improvements,
 - d. Depose each District engineer regarding its review of the District's public records and its work certifying the reasonableness of the District's payments to Nor'wood;
 - e. Issue a document subpoena to Nor'wood and/or its affiliates seeking contracts and related documents pertaining to their work on the District's public improvements;
 - f. Depose not more than two representatives of Nor'wood or a relevant affiliate regarding its work on the District's public improvements, contracts and other documents related to the same, its relationship with the Public Contractors, and its document management practices pertaining to public construction for the District.
3. The Court orders the District and Nor'wood, when producing documents in compliance herewith, to organize such production in a manner responsive to Plaintiffs' requests and provide documents to Plaintiffs as such documents are kept in the ordinary course of business.
4. Finally, the Court orders that Nor'wood shall be required to pay for attorney fees and costs incurred by Plaintiffs in connection with the additional discovery ordered herein.

District Court Judge

Attachment to Order - 2020CV30862