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*Attorneys for Plaintiff Vanir Construction
Management, Inc*

**UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO**

VANIR CONSTRUCTION MANAGEMENT,
INC ,

Plaintiff,

-vs-

MONTE GRAY, an individual; ANDREW J.
GABEL, an individual; KELLEN F.
PATTERSON, an individual; and BILL
BACON, an individual,

Defendants.

Case No.

COMPLAINT

COMES NOW Plaintiff Vanir Construction Management, Inc. (“Vanir”) by and through its counsel, Dorsey & Whitney, LLP, as and for a complaint against Defendants Monte Gray, Andrew Gabel, Kellen Patterson, and Bill Bacon, and hereby complains and alleges as follows:

PARTIES

1. Plaintiff Vanir is a California Corporation with its headquarters located in Sacramento, California.

2. Defendant Monte Gray (“Gray”) is an individual who resides in Pocatello, Idaho, and who is employed as Assistant General Counsel by the Shoshone-Bannock Office of the Tribal Attorneys.

3. Upon information and belief Defendant Bill Bacon (“Bacon”) is an individual who resides in Pocatello, Idaho, and who is employed as Lead General Counsel by the Shoshone-Bannock Office of the Tribal Attorneys.

4. Defendant Andrew Gabel (“Gabel”) is an individual who resides in Seattle, Washington, and who is an attorney representing the Shoshone-Bannock Tribes in litigation against Vanir in the case titled *Shoshone-Bannock Tribes, et al. v. Vanir Construction Management, Inc.*, Case No. 2023-CV-CM-0051 (the “Tribal Court Case”), which case is pending in the Shoshone-Bannock Tribal Court Fort Hall Reservation Civil Division.

5. Defendant Kellen Patterson (“Patterson”) is an individual who resides in Edmonds, Washington, and who is an attorney representing the Shoshone-Bannock Tribes in the Tribal Court Case.

JURISDICTION AND VENUE

6. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1332(a)(1) as complete diversity exists between Plaintiff and Defendants and the case seeks non-monetary relief—specific performance of a contract. The monetary value of such relief exceeds \$75,000.

7. The Court has personal jurisdiction over Defendants Gray and Bacon as they reside in Idaho.

8. The Court has personal jurisdiction over Defendants Gabel and Paterson as they have sufficient minimum contacts with the state of Idaho, including engaging in business activities in the state of Idaho in relation to their representation of the Shoshone-Bannock Tribes.

9. Venue of this matter is appropriate in this Court because the relevant conduct took place within this district and Defendants Gray and Bacon reside in Idaho.

FACTUAL ALLEGATIONS

10. In 2023, the Shoshone-Bannock Tribes and its governing body, the Fort Hall Business Council (collectively the “SBT”), filed a Complaint and Demand for Jury Trial against Vanir in the Tribal Court Case.

11. At all relevant times SBT has been represented by Gray, Gabel, Patterson, and Bacon.

12. Since before the case was filed, Vanir and SBT have been involved in ongoing settlement discussions regarding the Tribal Court Case.

13. On or around December 27, 2024, Vanir and SBT agreed on a settlement amount, but disagreed on the timing of the payment.

14. Specifically, Vanir requested a payment plan rather than to pay the full settlement amount in a one-time lump sum.

15. SBT, through the Defendants, refused to agree to a payment plan unless Vanir could prove the necessity by, among other things, producing its most recent audited financial statements, including balance sheet, statement of income, cash flow statement, statement of retained earnings and statement of any significant outstanding actual or potential liabilities.

16. Vanir, concerned with the disclosure of its sensitive financial information, informed the SBT, through the Defendants, that it would not provide such sensitive financial information without a nondisclosure agreement.

17. On January 3, 2025, SBT, through the Defendants, stated SBT would agree to a reasonable nondisclosure agreement, and the Parties began to negotiate the terms of a nondisclosure agreement.

18. On January 4, 2025, Vanir emailed Defendants the first draft of the nondisclosure agreement.

19. On January 6, 2025, after the Defendants significantly revised Vanir's proposed nondisclosure agreement, Gabel emailed Vanir's counsel stating: "For the NDA, can we just limit it to the lawyers and let me sign? If SBT/FHBC [Fort Hall Business Council] is going to be subject to this NDA, we will have to get formal authorization, which will require a vote. We do not believe this will happen quickly and it might not even be approved. The only people that are going to review this are lawyers from Ballard Spahr and Monte [Gray] and Bill [Bacon]. I'm just trying to streamline this." (emphasis added).

20. Vanir agreed to allow counsel for SBT to sign.

21. On or around January 13, 2025, Vanir's CEO, Dorene Dominguez, who resides in California and was displaced by the widespread wildfires in January 2025, instructed Elijah Watkins, counsel for Vanir, to sign that certain Mutual Non-Disclosure Agreement ("NDA") on her behalf and on behalf of Vanir.

22. On January 14, 2025, Gabel executed the NDA on behalf of SBT. A true and correct copy of this NDA is attached hereto as **Exhibit A**.

23. The "Purpose" of the NDA was to "assure the protection and preservation of certain confidential and/or proprietary information" which was being disclosed "in connection with the Parties' discussions of a potential transaction involving the potential financing of a settlement agreement." (Ex. A at 1.)

24. Section 13 of the NDA expressly states that the individuals, including Gabel, "executing this Agreement respectively represent and warrant that they are on the Effective Date duly authorized to execute this Agreement on behalf of their respective entities."

25. The NDA defined confidential information as:

all information disclosed to a Party or its affiliates (“**Recipient**”) or any of their respective Representatives (as defined below) by or on behalf of the other Party or its affiliates (“**Discloser**”) or any of their respective Representatives, in any form or media, including in written, oral, visual or by electronic format, on or after the Effective Date of this Agreement. Confidential Information includes, but is not limited to: information relating to Discloser’s, and/or any of its affiliates’ audited and unaudited financial statements, including balance sheets statements of income, cash flow statement, statement of retained earnings and statement of any significant outstanding actual or potential liabilities. Confidential Information also means all notes, memoranda, files, records, writings and other documents (written, electronic or in any other media) which the Parties have, on or after the Effective Date, prepared, used or come into contact with during their discussions, which contain any of the Discloser’s Confidential Information (“**Notes**”).

(Ex. A at 1, § 1.A.)

26. The NDA defines Representatives as “any director, officer, employee, agent or advisor (**including**, without limitation, **attorneys**, accountants, consultants, bankers, financial advisors and members of advisory boards) of a Party or any of its affiliates.” (Ex. A at 1, § 1.B (emphasis added).)

27. SBT agreed, among other things, that SBT and Defendants would “keep all of the Confidential Information of the Discloser confidential and will not disclose, permit access to **or use the Confidential Information except as required to carry out the Purpose.**” (Ex. A at 2, § 3.)

28. SBT and its counsel agreed that the NDA was necessary to protect “the business and goodwill” of Vanir, and they agreed that if they were to disclose Vanir’s confidential information, Vanir would be “irreparably injured” and that “in addition to any other remedies available at law,” Vanir would be entitled to seek “equitable relief, including injunctive relief,” without the “posting of a bond or the showing of monetary damages.” (Ex. A at 3, § 11.)

29. On January 14, 2025, after the NDA was fully executed, Vanir produced its sensitive financial information to SBT's attorneys in accordance with the terms of the NDA, which included Vanir's audited financial statements prepared by Vanir's outside, independent accounting firm.

30. At 12:36 p.m. on Friday, January 31, 2025, Vanir made another settlement offer to SBT.

31. One hour later, at 1:27 p.m. on Friday, January 31, 2025, less than a week before the start of trial in the Tribal Court Case, Gray, with Bacon and Gabel copied, emailed Vanir's outside independent accounting firm the following message:

I am an attorney representing a party adverse to the party for whom you conducted an audit by the name of Vanir Construction Management Inc. I did not see any disclosure of our lawsuit in your audit according to GAAP standards. I therefore am writing to inform you that in 2023 we filed a breach of contract action in Shoshone-Bannock Tribal Court against Vanir Construction Management, Inc. as Case No. 2023-CV-CM-0051. The Tribes are requesting recovery in the amount of \$3,200,000.00. Thank you for your time. If you require more information or documentation, I am happy to provide that to you.

32. On information and belief, Gabel, Paterson, and Bacon conspired with Gray in Gray's use of Vanir's confidential information.

33. Later that evening, the outside independent accounting firm contacted Vanir about the Lawyer's email, notifying Vanir of the unauthorized use of Vanir's confidential information.

34. Vanir filed a motion for sanctions in the Tribal Court Case.

35. During the February 3, 2025 hearing on the sanctions motion, Gray conceded that he would not have known who Vanir's outside independent accounting firm was, or the details of the audit prepared by that firm, but for his access to Vanir's confidential information.

36. In its February 5, 2025 order on the sanctions motion, the Tribal Court stated that it is "unclear to this Court why a lawyer subject to the NDA would raise these questions directly with the auditors rather than Vanir and its lawyers who were also subject to the NDA."

37. Despite these misgivings, the Tribal Court concluded that “The NDA was negotiated and entered into by the parties separate and apart from the litigation and process which was and is being administered by this Court.” Because the NDA was not incorporated into a Tribal Court order, the Tribal Court determined that it lacked the jurisdiction to decide the issue.

38. The Tribal Court decided that the NDA matter “must be enforced in a separate action,” and concluded that

Vanir is not without a remedy. The NDA is a contract. Vanir’s remedy is to file a breach of contract case where an evidentiary due process hearing can be conducted to fully develop the record.

39. The Tribal Court went on to explain that it was unclear that it would have jurisdiction over such a yet-to-be-filed breach of contract case, as the contract was signed “outside the exterior boundaries of the Fort Hall Reservation.”

40. On February 25, 2025, a jury returned a verdict in favor of Vanir in the Tribal Court Case.

41. On March 31, 2025, the Tribal Court denied SBT’s motion for a new trial.

42. SBT filed, but then stayed its notice of appeal, the matter has yet to be assigned to an appeals court judge and, upon information and belief, SBT is currently without an acting appeals court judge.

43. There is a substantial risk that Defendants will continue their unauthorized use of Vanir’s confidential financial information to improperly seek money from Vanir through settlement of their appeal, to challenge Vanir’s efforts at being reimbursed for its costs and fees, or to punish Vanir for SBT’s loss in the Tribal Court Case.

**FIRST CAUSE OF ACTION
BREACH OF CONTRACT**

44. Plaintiff realleges all paragraphs set forth above as if fully stated herein.

45. The NDA is a valid and legally binding contract between Vanir and Defendants.

46. Vanir fully performed its obligations under the NDA and all conditions precedent.

47. Defendants, individually and/or in conspiracy with Gray, breached the NDA by using Vanir's confidential information for reasons not "required to carry out the Purpose" when Defendants contacted Vanir's independent outside accounting firm regarding Vanir's audited financials without Vanir's prior authorization.

48. Defendants, individually and/or in conspiracy with Gray, violated the covenant of good faith and fair dealing by contacting Vanir's independent outside accounting firm regarding Vanir's audited financials without Vanir's prior authorization in order to gain leverage over Vanir in settlement negotiations and/or as punishment for settlement offers Defendants did not like.

49. It is reasonable to expect that Defendants will repeat this wrongful conduct because SBT lost at trial in the Tribal Court Case, which loss Defendants are assisting SBT in challenging, and Defendants are likely to reoffend in further attempts to extort a settlement out of Vanir, to oppose Vanir's efforts to be reimbursed its costs and fees, and/or to punish Vanir for SBT's loss in the Tribal Court Case.

50. Defendants' actions have irreparably harmed Vanir by undermining the trust and relationship between Vanir and its independent outside accounting firm, and by opening Vanir up to the risk of additional, unnecessary audits of its financial records.

51. Defendants must be enjoined from causing further irreparable injury to Vanir through further unauthorized and inappropriate use of Vanir's confidential information.

52. Vanir is entitled to specific performance under the NDA.

FEES AND COSTS

53. Vanir has engaged counsel to represent it in this matter and is entitled to recover the attorney fees and costs incurred pursuant to Idaho Code § 12-120, F.R.C.P. 54, and other applicable law. In the event of a default judgment, Vanir should be awarded the attorney fees and costs it has incurred to date.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief against Defendants as follows:

1. That the Court enter Judgment in Plaintiff's favor and against Defendants.
2. That the Court enter a permanent injunction preventing the Defendants or any of their agents, employees, or representatives from the unauthorized use of Vanir's confidential information, and from speaking with Vanir's independent outside accounting firm and any other third party about any of the materials disclosed pursuant to the NDA.
3. That the Court order specific performance of Defendants' obligations under the NDA.
4. For an award of attorney fees and costs in pursuing this action.
5. For such other and further relief in favor of the Plaintiffs, in law or equity, that the Court may deem just and proper.

DATED: April 11, 2025

DORSEY & WHITNEY, LLP

By: /s/ Elijah M. Watkins
Elijah M. Watkins
Aaron R. Bell
Email: watkins.elijah@dorsey.com
Email: bell.aaron@dorsey.com

Exhibit A

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the “**Agreement**”), is entered on January 13, 2025 (the “**Effective Date**”), by and between Vanir Construction Management, Inc. (“**Vanir**”), located at 4540 Duckhorn Drive, Suite 300, Sacramento, California 95834 and counsel for the Shoshone-Bannock Tribes, by and through the Fort Hall Business Council, the governing body of the federally recognized tribes of the Shoshone-Bannock Tribes of the Fort Hall Reservation (“**SBT**”) and the Fort Hall Business Council (“**FHBC**”) (collectively the “**SBT Entities**”) located at 306 Pima Drive, Fort Hall, Idaho 83203. The parties to this Agreement are each referred to as a “**Party**,” and collectively as the “**Parties**.”

PRELIMINARY STATEMENT

The Parties desire to enter into this Agreement to assure the protection and preservation of certain confidential and/or proprietary information disclosed or made available by a Party to the other Party and/or its respective affiliates in connection with the Parties’ discussions of a potential transaction involving the potential financing of a settlement agreement (the “**Purpose**”).

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions.** When used in this Agreement, the following terms have the following meanings:

A. “**Confidential Information**” means all information disclosed to a Party or its affiliates (“**Recipient**”) or any of their respective Representatives (as defined below) by or on behalf of the other Party or its affiliates (“**Discloser**”) or any of their respective Representatives, in any form or media, including in written, oral, visual or by electronic format, on or after the Effective Date of this Agreement. Confidential Information includes, but is not limited to: information relating to Discloser’s, and/or any of its affiliates’ audited and unaudited financial statements, including balance sheets statements of income, cash flow statement, statement of retained earnings and statement of any significant outstanding actual or potential liabilities. Confidential Information also means all notes, memoranda, files, records, writings and other documents (written, electronic or in any other media) which the Parties have, on or after the Effective Date, prepared, used or come into contact with during their discussions, which contain any of the Discloser’s Confidential Information (“**Notes**”). Notwithstanding any provision contained in this Agreement, Confidential Information does not include information that Recipient can prove: (i) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any violation of this Agreement by the Recipient or any of its Representatives; (ii) was in the Recipient’s possession at the time of disclosure by Discloser and was not acquired, directly or indirectly, from Discloser or its Representatives on a confidential basis; (iii) resulted from Recipient’s own research and development, without the use of the Discloser’s Confidential Information; or (iv) Recipient received from a third party, provided such information was not obtained by the third party from Discloser or its Representatives on a confidential basis.

B. “**Representative**” means any director, officer, employee, agent or advisor (including, without limitation, attorneys, accountants, consultants, bankers, financial advisors and members of advisory boards) of a Party or any of its affiliates.

2. **Term.** This Agreement is effective as of the Effective Date and shall continue in full force and effect until the eighteen (18) month anniversary thereof.

3. **General Confidentiality Obligations.** Recipient shall, and will cause its Representatives to, keep all of the Confidential Information of the Discloser confidential and will not disclose, permit access to or use the Confidential Information except as required to carry out the Purpose. Recipient shall protect and safeguard the confidentiality of the Discloser's Confidential Information with at least the same degree of care as the Recipient uses to protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care. Notwithstanding the foregoing, (i) Recipient may disclose Confidential Information with the Discloser's prior written consent, and (ii) any of the Confidential Information may be disclosed by the Recipient to its Representatives who need to know such information in connection with the Purpose, and who are informed of the confidential nature of such information and of the terms of this Agreement and are bound by a legal or fiduciary duty to keep the Confidential Information confidential. The Recipient shall be responsible for any breach of this Agreement by any of its Representatives, and agrees, at its sole expense, to take all reasonable measures to restrain its Representatives from the prohibited or unauthorized disclosure or use of the Discloser's Confidential Information.

4. **Notice of Unauthorized Use.** Recipient will notify Discloser promptly upon discovery of any unauthorized use or disclosure of Discloser's Confidential Information or any other breach of this Agreement by Recipient or any of its Representatives and will cooperate with Discloser to regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

5. **Legally Compelled Disclosure.** If a Recipient or its Representatives are requested or required by legal, administrative or regulatory process to disclose any of the Confidential Information of Discloser, to the extent legally permissible, the Recipient shall notify Discloser promptly in writing so that Discloser may seek any appropriate protective order and/or take any other action (in respect of which Recipient will cooperate in good faith at Discloser's expense) to limit such disclosure. If a protective order is not obtained, or it is not lawful to notify Discloser, the Recipient or its Representatives, as the case may be, may disclose to the applicable tribunal or other person only that portion of the Confidential Information which Recipient is advised by independent legal counsel is legally required to be disclosed and shall use reasonable best efforts to obtain assurance that confidential treatment will be accorded to such Confidential Information. Notwithstanding anything to the contrary contained in this Agreement, the notice, waiver and related provisions in this paragraph shall not apply in connection with disclosures to regulatory authorities pursuant to routine audit, compliance, or similar requests not targeted at the Discloser, the Purpose or the Confidential Information.

6. **Limitation on Obligation.** Neither this Agreement, nor the disclosure of Confidential Information under this Agreement, nor the ongoing discussions and correspondence by the Parties concerning the Purpose or any other matter, shall constitute or imply any promise, intention or commitment by any Party or its affiliates with respect to any present or future transaction. If, in the future, the Parties elect to enter into binding commitments relating to a transaction, such commitments will be explicitly stated in a separate written agreement executed by all applicable Parties.

7. **No Representations; No Liability of Discloser.** Discloser makes no representation or warranty (express or implied) as to the accuracy or completeness of any Confidential Information, and Discloser is not responsible or liable for any business decisions made

or inferences drawn, or expenses incurred, by Recipient in reliance on Confidential Information disclosed hereunder.

8. **Reproduction and Return of Confidential Information.** Recipient will not reproduce the Confidential Information except as reasonably necessary for the Purpose. Recipient will not remove or obscure, in the original or in any reproduction, any confidential or proprietary notices or legends, if any, that appear in or on the Confidential Information. At the written request of Discloser, Recipient will return to Discloser or destroy all Confidential Information and the Recipient shall destroy all Notes. All such destruction will be certified in writing to Discloser by the authorized representative of Recipient supervising the destruction. Recipient's obligations with respect to any Confidential Information will survive the return or destruction of Confidential Information. However, this Section 8 will not prevent Recipient from retaining Confidential Information held on any computer caching, back-up or disaster recovery system that Recipient keeps in the ordinary course of business and that is not accessible to end-users, provided that the obligations with respect to such Confidential Information shall continue and survive the termination of this Agreement for so long as it is retained.

9. **Ownership of Confidential Information; No Implied License.** All right, title and interest in and to the Confidential Information shall be and remain vested in Discloser. Nothing in this Agreement shall grant Recipient any license or right of any kind with respect to the Confidential Information, or the use thereof, other than the privilege to utilize such information solely for the review and discussion of the Purpose above. Each Party agrees not to use any trade name, service mark, or trademark of the other Party or refer to the other Party in any promotional activity or material without first obtaining the prior written consent of the other Party.

10. **Notices.** All notices, requests, consents, demands and other communications provided for under this Agreement will be in writing and shall be deemed sufficient if delivered in person or by express courier with receipt confirmed or by certified mail, postage prepaid with return receipt requested to the Party to be notified. Any notice to a Party will be delivered to the address first specified above, or to such other address as the Parties will advise the other in writing from time to time. Notice shall be deemed given when so delivered personally or by courier, or if mailed, three (3) days after the date of mailing.

11. **Injunctive Relief.** The provisions of this Agreement are necessary for the protection of the business and goodwill of the Parties and are considered by the Parties to be reasonable for such purpose. The Parties agree that Discloser would be irreparably injured by a breach of this Agreement by Recipient or its Representatives and that Discloser, in addition to any other remedies available at law, shall be entitled to seek equitable relief, including injunctive relief, for any breach or threatened breach of this Agreement. The Parties waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim, and each Party agrees that it will not assert in any action or proceeding in which the other Party is seeking any such remedy that an adequate remedy at law exists or that damages are an adequate remedy.

12. **Miscellaneous.** No failure to exercise, or delay in exercising, any right or remedy arising under this Agreement shall operate or be construed as a waiver; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy. This Agreement may not be changed, modified or amended except by a writing signed by the Parties. This Agreement is and shall be binding upon

and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Party may assign this Agreement without the prior written consent of the other Party. Any purported assignment in violation of this Section 12 shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is the entire agreement and understanding between the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any kind or nature between them. Any provision found to be invalid or unenforceable shall not affect the remaining terms and provisions. This Agreement shall be governed by and construed in accordance with the laws of the State of Idaho, without giving effect to any conflicts or choice of laws principles which otherwise might be applicable.

13. **Authorization and Execution of Signatories.** The individuals executing this Agreement respectively represent and warrant that they are on the Effective Date duly authorized to execute this Agreement on behalf of their respective entities. For the convenience of the Parties, this Agreement may be executed by facsimile or other electronic means and in counterparts, each of which shall be deemed to be an original, and both of which, taken together, shall constitute one agreement binding on both Parties.

IN WITNESS WHEREOF, the Parties have caused this Mutual Non-Disclosure Agreement to be executed as of the date first written above.

Vanir:

VANIR CONSTRUCTION MANAGEMENT, INC.

By:  ON BEHALF OF
Dorene Dominguez
Chief Executive Officer

Date: 1/13/25

COUNSEL FOR THE SHOSHONE-BANNOCK TRIBES, by and through the FORT HALL BUSINESS COUNCIL, the governing body of the Shoshone-Bannock Tribes

By:  _____
Andrew J. Gabel

Its: Counsel

Date: 1/14/2025