

**AGREEMENT BETWEEN THE CITY OF YAKIMA & GN NORTHERN, INC.
(MLK Jr. Park Eastside Pool Project 2745)**

THIS AGREEMENT is entered into between the City of Yakima ("City") whose address is 129 North 2nd Street, Yakima, Washington, 98901; and GNN Northern, Inc., a Washington corporation ("GNN") whose address is 722 N. 16th Ave., Ste 31, Yakima, WA 98902, for purposes of certain geotechnical and special inspection services as described herein on the MLK Jr. Park Eastside Pool Project 2745 project ("Aquatic Center") located at the MLK Jr. Community Park.

WHEREAS, the City is the owner of real property commonly known as MLK Jr. Community Park located generally at South 8th St. and Beech, Yakima, Washington ("Property");

WHEREAS, the City intends to construct the Aquatic Center on the Property and has contracted with NAC Architecture for certain professional services necessary for the project;

WHEREAS, the City is committed to ensuring that improvements to Property and the Aquatic Center serve the best interests of the community and serve to enhance the Property;

WHEREAS, the construction of the Aquatic Center on the Property, will require certain geotechnical and special inspection services by a professional company qualified to perform such services;

WHEREAS, GNN is a company that specializes in such geotechnical and special inspection services and is qualified to perform such services as part of the construction of the Aquatic Center on the Property;

WHEREAS, GNN, is interested in assisting bettering the Property and recognizes the benefit to the community through the construction of the Aquatic Center on the Property;

WHEREAS, GNN will provide, through donation, its professional expertise and services as described herein and in the attached. GNN recognizes and accepts that it will receive significant and valuable goodwill and recognition in the community from donating it's the professional services and work under this Agreement and that such goodwill and recognition is adequate consideration;

WHEREAS, the City is willing to accept the expertise, geotechnical, special inspections, and other resources offered by GNN and described herein and in the attached; and

NOW, THEREFORE, in consideration of the covenants and agreements contained herein and performed by the parties hereto, it is hereby agreed as follows:

1. Purpose. The purpose of this Agreement is to define the responsibilities of GNN in the improvement of the Property and the construction of the Aquatic Center.

2. Obligations of GNN.

GNN shall perform the following obligations and services:

- A. Materials testing: GNN shall perform all soils and earthwork testing necessary for the construction of the Aquatic Center as described in **Exhibit 1** attached hereto. The materials testing shall include, without limitation, generating proctors for materials, density testing for soils, backfill material, and HMA, and all other testing services necessary to complete the work described on **Exhibit 1**.
- B. Special Inspections: GNN shall perform all special inspections necessary for the construction of the Aquatic Center as described in **Exhibit 1** attached hereto. The special inspections shall include, without limitation, concrete, rebar, structural masonry, structural steel-welding/high-strength bolting, and all other services necessary to complete the work described on **Exhibit 1**.

All obligations and services of GNN as provided herein shall be donated to the City and GNN shall receive no monetary compensation for its work. GNN agrees and accepts that the goodwill and recognition its business will receive from its donation(s) under this Agreement is valuable and adequate consideration for this Agreement.

GNN agrees to perform all obligations and services described herein in a timely fashion and as needed from the start to the finish of the construction of the Aquatic Center. GNN shall work with and cooperate with NAC Architecture, the City, and the contractor(s) on the Property during the construction of the Aquatic Center to access the Property and to promptly perform its obligations and services under this Agreement.

GNN shall ensure that it performs all obligations and services described herein consistent with the general standards the industry.

GNN shall inform the City and NAC Architecture of the progress of its work and promptly consult with the same regarding the results of the testing and inspections.

GNN is solely responsible for the services and obligations under this Agreement. If GNN contracts with and/or uses subcontractors in completing the services and obligations, GNN shall be solely responsible for the timely and full payment of such subcontractor(s). GNN shall ensure that no materialman, contractor, or similar lien(s) or encumbrances, are placed on the Aquatic Center or any property of the City as a result of any work performed by any subcontractor engaged by GNN.

GNN shall consult with the City and NAC Architecture as necessary, for purposes of monitoring the work, services, and obligations performed under this Agreement. GNN shall provide all requested information, as requested by the City and/or NAC Architecture, concerning the work, services, and obligations under this Agreement and shall not unreasonably withhold consent to meeting and exchanging information necessary to implement this Agreement.

3. Term. The term of this Agreement shall commence upon execution hereof and shall remain in effect unless the Agreement is terminated earlier by the City under Section 18 of this Agreement. GNN shall proceed with its obligations in a timely manner but shall not have any responsibility for delays caused by others beyond their control or that were not reasonably foreseeable.

4. Administration. This Agreement shall be administered by the City's Parks Division.

5. Independent Contractors. GNN understands and expressly agrees that it is an independent contractor in the performance of each and every part of this Agreement. As an independent contractor, it assumes the entire responsibility for carrying out and accomplishing the work and/or services required under this Agreement. It shall have the sole judgment of the means, mode or manner of the actual performance of the work and/or services required under this Agreement. Additionally, and as an independent contractor, it, and its employees and volunteers, shall make no claim of City employment nor shall it claim against the City any related employment benefits, social security and/or retirement. Nothing contained herein shall be interpreted as creating a relationship of servant, employee, partnership, or agency between GNN, any officer, employee, volunteer or agent thereof, and the City.

6. No Third Party Rights. This Agreement is entered into for the sole benefit of the parties. It shall confer no benefits or rights, direct or indirect, on any third parties. No person or entity other than the City and GNN may rely upon or enforce any provision of this Agreement.

7. Indemnification and Hold Harmless.

A. GNN agrees to release, defend, indemnify, and hold harmless the City, its elected and appointed officials, agents, officers, employees, attorneys, representatives, insurers, and volunteers (hereinafter "parties protected") from all liabilities, losses, damages, and expenses related to all claims, suits, arbitration actions, investigations, and regulatory or other governmental proceedings arising from or in connection with this Agreement or the acts, failures to act, errors or omissions of GNN, or any GNN's agents or subcontractors, in performance of this Agreement, including, without limitation, (1) claims, demands, liens, lawsuits, administrative and other proceedings, (including reasonable costs and attorneys' fees) and (2) judgments, awards, losses, liabilities, damages, penalties, fines, costs and expenses of any kind claimed by third parties arising out of, or related to any death, injury, damage or destruction to any person or any property to the extent caused by any negligent act, action, default, error or omission or willful misconduct arising out of GNN's performance under this Agreement. In the event that any lien is placed upon the City's property or any of the City's officers, employees or agents as a result of any action or inaction of GNN, including, without limitation, the negligence or willful misconduct of GNN, GNN shall at once cause the same to be dissolved and discharged by giving bond or otherwise.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of GNN and the City, the GNN's liability, including the duty and cost to defend, shall be only to the extent of the GNN's negligence.

C. **Industrial Insurance Act Waiver.** It is specifically and expressly understood that GNN waives any immunity that may be granted to it under the Washington State industrial insurance act, Title 51 RCW et. seq., solely for the purposes of this indemnification. GNN's indemnification shall not be limited in any way by any limitation on the amount of damages, compensation or benefits payable to or by any third party under workers' compensation acts, disability benefit acts or any other benefits acts or programs. GNN shall require that its subcontractors, and anyone directly or indirectly employed or hired by GNN, and anyone for whose acts GNN may be liable in connection with its performance of this Agreement, comply with the terms of this paragraph, waive any immunity granted under Title 51 RCW, and assume all potential liability for actions brought by their respective employees. The Parties acknowledge that they have mutually negotiated this waiver.

D. Nothing contained in this Section or this Agreement shall be construed to create a liability or a right of indemnification in any third party.

C. The provisions of this Section shall survive the termination or expiration of this Agreement.

8. Nondiscrimination. During the performance of this Agreement, the Parties shall not discriminate in violation of any applicable federal, state and/or local law or regulation on the basis of age, sex, race, creed, religion, color, national origin, marital status, disability, honorably discharged veteran or military status, pregnancy, sexual orientation, or any other classification protected under federal, state or local law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion, transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, selection for training, and the provision of services under this Agreement.

9. Records, Inspection & Production. GNN shall maintain (in accordance with generally accepted accounting practices) books, accounts, records, documents and other materials ("Records") related directly or indirectly to the costs, expenses, and expenditures incurred and/or made pursuant to this Agreement.

The Records shall, at all times, be subject to inspection by and with the approval of the City. The making of (or failure or delay in making) such inspection or approval by the City shall not relieve GNN of responsibility for performance in accordance with this Agreement, notwithstanding the City's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. GNN shall provide the City sufficient, safe, and proper facilities, and/or send copies of the requested documents to the City. GNN's records relating to this Agreement will be provided to the City upon the City's request.

GNN shall promptly furnish the City with such information and records which are related to this Agreement as may be requested by the City. All records relating to GNN's obligations under this Agreement must be made available to the City, and the records relating to GNN's obligations under this Agreement are City of Yakima records. Such records must be produced to third parties, if required pursuant to the Washington State Public Records Act, Chapter 42.56 RCW, or by law.

All records relating to GNN's obligations and services under this Agreement must be retained by GNN for the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule. If any litigation, claim or audit is started before the expiration of the of the minimum period of time required pursuant to the Washington Secretary of State's records retention schedule, the records shall be retained until all litigation, claims, or audit findings involving the records have been fully resolved.

The terms of this section shall survive any expiration or termination of this Agreement.

10. Compliance with Law. The Parties to this Agreement shall comply with all applicable federal, state and local laws, rules and regulations in carrying out the terms and conditions of this Agreement.

11. No insurance by City Covering GNN. It is understood the City does not maintain liability insurance for GNN, or its employees, officers, volunteers or subcontractors.

12. Contractor's Liability Insurance. At all times during performance of the obligations under this Agreement, GNN shall secure and maintain in effect insurance to protect the City and GNN from and against any and all claims, damages, losses, and expenses arising out of or resulting from the performance of this Agreement.

GNN shall provide and maintain in force insurance in limits no less than that stated below, as applicable. The City reserves the right to require higher limits should it deem it necessary in the best interest of the public. GNN will provide a Certificate of Insurance to the City as evidence of coverage for each of the policies and outlined herein. A copy of the additional insured endorsement attached to the policy will be included with the certificate. This Certificate of insurance shall be provided to the City, prior to commencement of work.

Failure of City to demand such verification of coverage with these insurance requirements or failure of City to identify a deficiency from the insurance documentation provided shall not be construed as a waiver of the GNN's obligation to maintain such insurance.

GNN's insurance coverage shall be primary insurance with respect to those who are named as additional insureds under this Agreement. Any insurance, self-insurance or insurance pool coverage maintained by the City shall be in excess of the GNN's insurance and neither the City nor its insurance providers shall contribute to any settlements, defense costs, or other payments made by GNN's insurance. All additional insured endorsements required by this Section shall include an explicit waiver of subrogation.

If at any time during the life of the Agreement, or any extension, GNN fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately. Any failure to maintain the required insurance is sufficient cause for the City to terminate the Agreement.

The following insurance is required:

a. **Commercial Liability Insurance.** Before this Agreement is fully executed by the parties, GNN shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit bodily injury and property damage, and Two Million Dollars (\$2,000,000.00) general aggregate. If GNN carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Contract. The certificate of insurance and additional insured endorsement shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by GNN is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by GNN under this Agreement.

b. **Automobile Liability Insurance.** Before this Agreement is fully executed by the parties, GNN shall provide the City with a certificate of insurance as proof of automobile liability insurance with a minimum liability limit of Two Million Dollars (\$2,000,000.00) per occurrence. If GNN carries higher coverage limits, such limits shall be shown on the Certificate of Insurance and Endorsements and the City, its elected and appointed officials, employees, agents, attorneys and volunteers shall be named as additional insureds for such higher limits. The certificate shall clearly state who the provider is, the coverage amount, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this Agreement. The certificate of insurance and additional insured endorsements shall name the City of Yakima, its elected and appointed officials, employees, agents, attorneys and volunteers as additional insureds, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the City prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. The requirements contained herein, as well as City of Yakima's review or acceptance of insurance maintained by GNN is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by GNN under this Agreement. The business auto liability shall include Hired and Non-Owned coverage if necessary.

c. **Employer's Liability (Stop Gap).** GNN and any and all subcontractor(s) shall at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable, and shall maintain Employer's Liability insurance with a limit of no less than \$1,000,000.00. The City shall not be held responsible in any way for claims filed by GNN or its employees for services performed under the terms of this Agreement. GNN agrees to assume full liability for all claims arising from this Agreement including claims resulting from negligent acts of all subcontractor(s). GNN is responsible to ensure subcontractor(s) have insurance as needed. Failure of subcontractors(s) to comply with insurance requirements does not limit GNN's liability or responsibility.

13. Waiver of Breach. A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant, or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

14. Dispute Resolution. The City and GNN shall meet to discuss any outstanding issues related to the services and work performed by GNN under this Agreement in order to resolve any disputes through cooperation and negotiation.

15. Integration. This Agreement contains all of the terms and conditions agreed on by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement, are deemed to exist or to bind either of the parties.

16. Modifications or Amendments. The parties may modify this Agreement but no proposed changes or modifications shall have validity or become binding on either party unless such changes or modifications are in writing and executed by both parties.

17. Severability. If a court of competent jurisdiction holds any part, term or provision of this Agreement illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held invalid. Further, if any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision in this Agreement which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

18. Termination. The City may terminate this Agreement, with or without cause, by written notice to GNN thirty (30) days in advance of the termination.

19. Assignment. GNN may not assign its interest in this Agreement without the prior written consent of the City, which consent may be withheld in the sole discretion of the City. The City may assign its interest in this Agreement at its discretion and without the consent of GNN.

20. Survival. Any provision of this Agreement which imposes an obligation after expiration or termination of this Agreement shall survive the expiration or termination and shall bind the parties.

21. Notices. Unless otherwise stated herein, all notices and demands are required in written form and sent to the parties at their addresses as follows:

TO: CITY OF YAKIMA
Dave Zabell, Interim City Manager
129 North Second Street
Yakima, WA 98901

COPY TO: CITY OF YAKIMA
C/O _____

TO: GN NORTHERN, INC.
C/O _____
722 N. 16TH Ave., STE 31
Yakima, WA 98902

22. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any claim or dispute shall be in Yakima County, Washington.

DATED this _____ day of _____, 2024.

CITY OF YAKIMA

GN NORTHERN, INC.

Dave Zabell, Interim City Manager

Print Name:

Title: _____

ATTEST:

Rosalinda Ibarra, City Clerk