RESOLUTION NO. 2141

A RESOLUTION OF THE NORTH PLAINS CITY COUNCIL AUTHORIZING THE EXECUTION OF AN AGREEMENT BETWEEN NORTHWEST EARTHMOVERS, INC. AND THE CITY FOR THE CONSTRUCTION OF AN EXTENSION OF THE COMMERCIAL AVENUE WATERMAIN AND RELATED RIGHT-OF-WAY RESTORATION

WHEREAS, the City of North Plains ("City") is seeking professional services to construct an extension of the Commercial Avenue watermain, and related right-of-way restoration; and

WHEREAS, the City has solicited proposals for such services from several qualified potential contractors in compliance with applicable City and State contracting requirements; and

WHEREAS, Northwest Earthmovers, Inc. ("Contractor") has prepared and submitted a proposal to the City offering to provide such professional construction services to the City; and

WHEREAS, Staff recommends the Contractor's proposal to the City Council.

NOW, THEREFORE, THE CITY OF NORTH PLAINS RESOLVES AS FOLLOWS:

Section 1. The City hereby approves the selection of Contractor to construct the Commercial Avenue watermain extension and related right-of-way restoration as described above.

Section 2. The City Manager is hereby authorized to execute an Agreement with Contractor on behalf of the City in a form substantially similar to the document attached hereto as "Exhibit A".

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Resolution No. 2141
Authorizing Agreement with Northwest Earthmovers for construction of Extension of Commercial Ave. watermain & related right-of-way restoration
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Section 3. This Resolution is and shall be effective from and after its enactment by the City Council.

INTRODUCED AND ADOPTED this 19th day of April 2021.

CITY OF NORTH PLAINS, OREGON

______________________
Teri Lenahan, Mayor

ATTEST:

______________________
Lori Lesmeister, City Recorder
CITY OF NORTH PLAINS, OREGON
PERSONAL SERVICES AGREEMENT

AN AGREEMENT between the City of North Plains, Oregon, and Northwest Earthmovers, Inc.

WHEREAS, the City of North Plains (“City”) is seeking the services of a qualified service provider for the construction of a watermain extension and right-of-way restoration on Commercial Ave.; and

WHEREAS, Provider has prepared and submitted to the City a proposal offering such services to provide the City; and

WHEREAS, pursuant to Resolution 1250, the City Manager is authorized to negotiate with a single source for personal services if the services are available from only one contractor, or if the prospective contractor has special skills uniquely required for the performance of the services; and

WHEREAS, the City Manager has made written declarations demonstrating why the proposed contractor is the only contractor who can perform the services desired;

NOW THEREFORE, based on the foregoing, City and Provider wish to enter into a written agreement for provision of said services, the terms of which are as follows:

WHEREAS, Northwest Earthmovers, Inc. (“Provider”) has prepared and submitted to the City a proposal offering to provide the services as described above (“Proposal”).

NOW THEREFORE, based on the foregoing, City and Provider wish to enter into a written agreement for provision of said services, the terms of which are as follows:

1. Term
   This Agreement shall run from April 20, 2021, through and including June 30, 2021, unless sooner terminated under the provisions of this Agreement, and may be extended for additional like periods.

2. Provider's Service
   The scope of Provider's services and time of performance under this Agreement are as described above and as set forth in the attached Exhibit “A”. All provisions and covenants contained in said exhibit are hereby incorporated by reference and shall become a part of this Agreement as if fully set forth. Any conflict between this Agreement and Exhibit “A” shall be resolved first in favor of this written Agreement. Provider will, in the rendering of its services to City, use its best efforts and due diligence and provide such personnel as are
necessary to successfully provide the services covered under this Agreement (including Exhibit “A”). All Provider personnel shall be properly trained and fully licensed to undertake any activities pursuant to this Agreement, and Provider shall have all requisite permits, licenses and other authorizations necessary to provide the services covered under this Agreement.

3. **Provider Identification**
   Provider shall furnish to City Provider's employer identification number, as designated by the Internal Revenue Service or, if the Internal Revenue Service has designated no employer identification number, Provider's Social Security number.

4. **Compensation**
   City agrees to pay Provider at the times and in the amount(s) set out in and in accordance with Exhibit “A”, in an amount not to exceed $\_\_\_\_\_\_\_, and subject to the written approval of the City Project Manager as identified below.

5. **Project Managers**
   City's Project Manager is Andy Varner. Provider's Project Manager is _________________. Each party shall give the other written notification of any change in their respective Project Manager.

6. **Project Information**
   Provider agrees to share all project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the project. No information, news, or press releases related to the project shall be made to representatives of newspapers, magazines, television and radio stations, or any other news medium without the prior written authorization of City's Project Manager.

7. **Duty to Inform**
   Provider shall give prompt written notice to City's Project Manager if, at any time during the performance of this Agreement, Provider becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Provider shall constitute neither agreement with nor acquiescence in Provider's statement or claim and shall not constitute a waiver of any of City's rights.

8. **Provider is Independent Contractor**
   Provider is an independent contractor for all purposes and shall be entitled to absolutely no compensation other than the compensation expressly provided by this Agreement. Provider hereby expressly acknowledges and agrees that as an independent contractor, Provider is not entitled to indemnification by City or the provision of a defense by City under the terms of ORS 30.285. This acknowledgment by Provider shall not affect his/her independent ability (or the ability of his/her insurer) to assert the monetary limitations found at ORS 30.269 to
ORS 30.273, the immunities listed at ORS 30.265, or other limitations affecting the assertion of any claim under the terms of the Oregon Tort Claims Act (ORS 30.260 to ORS 30.300).

9. Overtime
Any person employed on work under this Agreement, other than a person subject to being excluded from the payment of overtime pursuant to either ORS 653.010 to 653.261 or 29 USC §§ 201 to 209, shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week.

10. Indemnity and Insurance
i. Indemnity: Provider acknowledges responsibility for any and all liability arising out of the performance of this Agreement and shall hold City harmless, indemnify and defend City from and against any and all liability, settlements, loss, costs, and expenses in connection with any action, suit, or claim resulting or allegedly resulting from Provider's acts, omissions, activities or services in the course of performing this contract, notwithstanding any limitations or restrictions to the contrary included in Exhibit “A”.

ii. Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than One Million Dollars ($1,000,000.00) combined single limit per occurrence. Annual aggregate limit shall not be less than $2,000,000.00. Such insurance shall name City as an additional insured.

iii. Workers' Compensation Coverage: Provider certifies that Provider has qualified for State of Oregon Workers' Compensation coverage for all Provider's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier-insured employer as provided by ORS 656.407, or as a self-insured employer. Provider shall provide to City, within ten (10) days after execution of this Agreement by the parties, a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Provider is self-insured.

iv. Certificates: Provider shall furnish City certificates evidencing the date, amount, and type of insurance required by this Agreement. All policies will provide for not less than thirty (30) days' advance written notice to City before they may be canceled.

v. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary, and any other insurance carried by City shall be excess.

11. Work is Property of City
All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this Agreement shall be the property of City.
12. **Law of Oregon**

This Agreement shall be governed by the laws of the State of Oregon. Venue shall be Washington County, Oregon.
13. **Errors**

Provider shall perform such additional work as may be necessary to correct errors in any work required under this without undue delays and without additional cost to City.

14. **Extra or Changes in Work**

Only the City Project Manager may authorize extra (and/or change) work. Failure of Provider to secure written authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price or Agreement time due to such unauthorized extra work, and Provider thereafter shall be entitled to no compensation whatsoever for the performance of such unauthorized extra work.

15. **Successors and Assignments**

i. Both City and Provider bind themselves and any partner, successor, executor, administrator, or assign to this Agreement.

ii. Neither City nor Provider shall assign or transfer their interest or obligation hereunder in this Agreement without the prior written consent of the other party. Provider must seek and obtain City’s written consent before subcontracting any part of the work required of Provider under this Agreement. Any assignment, transfer or subcontract attempted in violation of this subparagraph shall be void.

16. **Records**

i. Provider shall retain all books, documents, papers, and records that are directly pertinent to this Agreement for at least three (3) years after City makes final payment on this Agreement and all other pending matters are closed.

ii. Provider shall allow City (or any of its authorized representatives) to audit, examine, copy, take excerpts from or transcribe any books, documents, papers, or records that are subject to the foregoing retention requirement.

17. **Breach of Contract**

i. Provider shall remedy any breach of this Agreement within the shortest reasonable time after Provider first has actual notice of the breach or City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with this paragraph, City may terminate that part of the Agreement affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

ii. If the breach is material and Provider fails to remedy the breach in accordance with this paragraph, City may declare Provider in default and pursue any remedy available for a default.

iii. Pending a decision to terminate all or part of this Agreement, City unilaterally may order
Provider to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this paragraph, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

iv. To recover amounts due under this paragraph, City may withhold from any amounts owed by City to Provider, including but not limited to, amounts owed under this or any other Agreement between Provider and City.

18. **Mediation/Trial Without a Jury**

    Should any dispute arise between the parties to this Agreement concerning their respective obligations of either or the terms hereof, it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury.

    Each party agrees to be responsible for payment of its own professional fees, including attorneys’ fees in both mediation and litigation.

    The parties shall exercise good faith efforts to select a mediator, who shall be compensated equally by both parties. Mediation will be conducted in Portland, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If either party requests mediation, and the other party fails to respond within ten (10) days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Washington County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this Section.

19. **Termination for Convenience**

    City may terminate all or part of this Agreement at any time for its own convenience by written notice to Provider. Upon termination under this paragraph, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of City's written notice of termination, whichever is earlier, plus Provider's reasonable costs actually incurred in closing out the contract.

20. **Intellectual Property**

    The interest in any intellectual property, including but not limited to copyrights and patents...
of any type, arising from the performance of this Agreement shall vest in City. Provider shall execute any assignment or other documents necessary to effect this paragraph. Provider may retain a nonexclusive right to use any intellectual property that is subject to this paragraph. Provider shall transfer to City any data or other tangible property generated by Provider under this Agreement and necessary for the beneficial use of intellectual property covered by this paragraph.

21. **Payment for Labor or Material**
   Provider shall make payment promptly, as due, to all persons supplying to Provider labor or material for the prosecution of the work provided for in this Agreement. (ORS 279B.220)

22. **Contributions to the Industrial Accident Fund**
   Provider shall pay all contributions or amounts due the Industrial Accident Fund from Provider incurred in the performance of this Agreement, and shall ensure that all subcontractors pay those amounts due from the subcontractors. (ORS 279B.220)

23. **No Liens or Claims**
   Provider shall not permit any lien or claim to be filed or prosecuted against the State or Oregon or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. (ORS 279B.220)

24. **Income Tax Withholding**
   Provider shall pay to the Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. (ORS279B.220)

25. **Payment of Claims by City**
   If Provider fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to Provider or a subcontractor by any person in connection with this Agreement as the claim becomes due, the City may pay the claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due to Provider pursuant to this contract. The City's payment of a claim under this Paragraph shall not relieve Provider or Provider's surety, if any, from responsibility for those claims.

26. **Hours of Labor**
   Provider shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 et. seq.)

27. **Workers’ Compensation**
   Provider is a subject employer that will comply with ORS 656.017. Provider warrants that all persons engaged in contract work and subject to the Oregon Workers’ Compensation law
are covered by a workers’ compensation plan or insurance policy that fully complies with Oregon law. Provider shall indemnify City for any liability incurred by City as a result of Provider's breach of the warranty under this Paragraph. (ORS 279B.230)

28. **Medical Care for Employees**
Provider shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and/or hospital care services or other needed care and attention incident to the sickness or injury of Provider's employee(s), of all sums which Provider agrees to pay for such services and all monies and sums which Provider collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for such services. (ORS 279B.230)

29. **Modification**
To be valid, any modification of the provisions of this Agreement must be reduced to writing and signed by authorized agents of both City and Provider.

30. **No Waiver of Legal Rights**
A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

31. **Integration**
This Agreement, including its attachments, contains the entire agreement between the parties and supersedes all prior written or oral discussions or agreements regarding the same subject.
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<thead>
<tr>
<th>NORTHWEST EARTHMOVERS, INC.</th>
<th>CITY OF NORTH PLAINS, OREGON</th>
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<tbody>
<tr>
<td>Jeffrey Hargens, President</td>
<td>Andy Varner, City Manager</td>
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<tr>
<td>Project Manager</td>
<td>Project Manager</td>
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<tr>
<td>Telephone No: 503-777-4228</td>
<td>Telephone: 503-647-5555</td>
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<tr>
<td>Email:</td>
<td>Email: <a href="mailto:andy.varner@northplains.org">andy.varner@northplains.org</a></td>
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