RESOLUTION NO. 2080

A RESOLUTION OF THE NORTH PLAINS CITY COUNCIL APPROVING THE WATER SUPPLY AGREEMENT WITH THE JOINT WATER COMMISSION AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE CITY

WHEREAS, ORS Chapter 190 authorizes the City of North Plains ("City") to enter into written agreements with other government agencies; and

WHEREAS, the Joint Water Commission ("Commission") is an intergovernmental agency created pursuant ORS Chapter 190, with authority to enter into agreements with other government agencies; and

WHEREAS, the City and Commission wish to enter into an agreement with one another addressing the terms by which the Commission will supply municipal water to the City.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH PLAINS, OREGON:

Section 1. The City hereby approves the "Water Supply Agreement" attached hereto as "Exhibit A" ("Agreement").

Section 2. The City Manager is hereby authorized to execute the Agreement on behalf of the City.

Section 3. This resolution is and shall be effective from and after its enactment by the City Council.

INTRODUCED AND ADOPTED this 3rd day of February, 2020.

CITY OF NORTH PLAINS, OREGON

[Signature]
Teri Lenahan, Mayor

[Signature]
Lori Lesmeister, City Recorder

Resolution No. 2080
Water Supply Agreement with Joint Water Commission
Adopted February 3, 2020
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WATER SUPPLY AGREEMENT

THIS AGREEMENT is between the JOINT WATER COMMISSION (JWC), an Oregon intergovernmental entity, and the CITY OF NORTH PLAINS, OREGON (North Plains), an Oregon municipal corporation. JWC and North Plains are referred to individually as “party”, and collectively as “parties”.

RECITALS

The parties agree upon the following Recitals:

A. North Plains supplies its retail customers with water for their needs. North Plains retail customers are located in the area described in attached Exhibit A. “Municipal water supply” means water used for the municipal needs of the North Plains retail customers who are located in the area shown in Exhibit A, as well as any water supply for fire suppression in that area.

B. JWC agrees to supply North Plains with its municipal water requirements, as set forth in this Agreement.

C. JWC will supply municipal water to North Plains to the extent possible with the supplies and sources developed and available to JWC, and North Plains will purchase water from JWC to supply the municipal requirements of its retail customers.

D. JWC and North Plains wish to make definite the terms of their understandings, with regard to the supply of water, by a formal agreement.

E. Each party has authority to enter into this Agreement under ORS Chapter 190. This Agreement has been authorized by the JWC and the North Plains City Council.
AGREEMENT

In consideration of their mutual promises, covenants and undertakings, JWC and North Plains agree that JWC will furnish a municipal water supply to North Plains for the present and future retail customers of North Plains, who are located within its corporate limits. North Plains will purchase all of this municipal water supply from JWC under the following terms and conditions:

1) **Obligation to Purchase**: North Plains will purchase all of its municipal water supply from JWC, but will also continue to maintain its wells for back-up supplies.

2) **Obligations to Supply Water**: North Plains will maintain a Water Master Plan, consistent with state requirements, which includes projections on population growth, number and types of customer connections, and water demand. North Plains will deliver to JWC a copy of its current Water Master Plan prior to signing this Agreement, and upon adoption of any updates to the Master Plan. JWC will supply municipal water to North Plains consistent with the Water Master Plan projections. JWC’s delivery obligations will increase in accordance with North Plain needs outlined in their master plan, beginning with a maximum volume of 1.2 mgd and increasing to 2.5 mgd by 2035, which may be delivered at a maximum flow rate of 1,550 gallons per minute. Incremental increases will be as follows:

   - **2020**: Maximum Daily Demand – 1.2 mgd
   - **2025**: Maximum Daily Demand – 1.5 mgd
   - **2030**: Maximum Daily Demand – 2.0 mgd
   - **2035**: Maximum Daily Demand – 2.5 mgd

3) **Obligation to Monitor Consumption**: North Plains will receive all of its municipal water supply through a JWC master meter located near the North Plains connection point to the JWC system. The master meter will be owned and operated by the JWC, and will be available for inspection by JWC at all times. JWC will test the meter annually to ensure accurate readings. Results will be made available to North Plains upon request. JWC will pay all costs associated with the annual testing. Any repair or replacement of the master meter will be made by the JWC, and those costs will be billed to North Plains.
4) **Storage of Supply Water:** North Plains will provide, at its own expense, water storage tanks and/or other back-up supply such as the maintained wells described in the *September 2019 Water System Master Plan Update*. North Plains currently owns and operates one storage reservoir, with a total storage capacity of approximately 1.0 MG. North Plains is also currently constructing a second 2 MG storage reservoir and pumping station to meet increasing demands.

The parties agree it is a best management practice to maintain a three day average demand in storage. North Plains shall maintain and operate capacity within its system to hold three average winter days demand (from JWC) and/or the ability to utilize a secondary water source, such as North Plains’ groundwater supply.

5) **Required Equipment:** North Plains will maintain, at its own expense, all pipes, pumps, and storage tanks necessary to maintain sufficient capacity to serve North Plains’ needs during periods of low pressure in the JWC transmission main.

North Plains shall operate and maintain a cross connection program according to the Oregon Administrative Rules (OARs). If OARs are not followed, North Plains will provide, install and test annually at its expense, a double check valve in its transmission line to prevent water backflow into JWC’S transmission line. The backflow device will be located immediately downstream of the master meter.

North Plains will install and maintain, at its sole expense, any pressure devices that may be required, in accordance with standard practice in the industry, to reduce main pressures from JWC transmission lines. North Plains will not install construction or materials on JWC property without the prior written approval of JWC.

North Plains will install and maintain its own Supervisory Control and Data Acquisition (SCADA) system, and will work with the JWC to provide remote access to daily total demand and flow data.

6) **Curtailment Measures:** North Plains and its retail customers are subject to the same water use regulations, water conservation practices and curtailment measures as are imposed upon JWC members under the most recently approved *JWC Water*
Management and Conservation Plan, and JWC Curtailment Plan. In the event of extreme water shortage in the JWC system, JWC will notify North Plains of this condition and North Plains agrees to adopt immediately the same or similar conservation or curtailment measures as are imposed on JWC members. JWC will notify North Plains when curtailment measures are necessary and when those measures can be rescinded. North Plains will develop its own curtailment plan designed to ensure compliance with any water conservation or curtailment measures imposed by JWC members on their customers, and provide a copy to the JWC. If North Plains fails to take immediate action to adopt and enforce curtailment measures, after direction to do so by JWC, JWC may reduce the volume of water provided to North Plains to a level consistent with the JWC curtailment direction.

7) North Plains will establish a conservation program as recommended by its consultant in their September 2019 Water System Master Plan Update. JWC partners are willing to share copies of their water use regulations, water conservation practices and curtailment measures with North Plains.

8) Water Supply Rates: JWC agrees that it will sell and North Plains agrees that it will buy water at a rate to be fixed annually by the JWC. The rate is subject to annual review and adjustment between the parties, upon either party providing written notice of its intention to review rates, or perform a rate study, at or before July 31 of any calendar year. Any re-adjusted rate, based on a rate study or review, is effective no sooner than 60 days after the Board passes a new rate resolution. On years when no rate review or study is performed, rate adjustments will be made in accordance with the most current Wholesale Rate Resolution in effect.

The rates will be based on the estimated costs of maintaining and operating the JWC water supply system, including without limitation the costs of any extensions and improvements, depreciation of the facilities utilized for service to North Plains, the payment of debt and payment of a reasonable rate of return on investment.

A copy of the most current rate study in effect will be provided to North Plains for their reference, and North Plains will be invited to provide feedback over the course of any rate study. The parties agree that the methodology used to calculate water charges for water sold to the City of North Plains is intended to be based on industry-

Notwithstanding the annual rate review and adjustment process, if JWC must purchase water from other sources because its sources are inadequate to supply the demands of JWC members and wholesale customers, and the cost of the purchased water is greater than the rate then in effect for North Plains purchases from JWC, then the monthly bill to North Plains for each such month will include the increased cost of the water purchased from other sources and supplied to North Plains, along with any additional costs incurred (such as wheeling charges) to provide water from an emergency source.

9) **Compliance with Laws:** North Plains will comply with all local, regional, state and federal agency regulations pertaining to water systems of its size and kind, including, but not limited to, requisite sampling to assure compliance with any applicable Federal requirements for testing and water quality.

10) **Operation and Maintenance of System:** North Plains will improve, operate and maintain its water distribution system in such a manner as to minimize losses, leakage and overuse of water, and promptly repair any ruptures, breaks, or significant leaks in the pipes, pump stations, storage tanks, or other parts of the system which cause loss of water. North Plains will also adopt and comply with the requirements of the JWC Operations Manual. A copy of the updated Operations Manual will be provided to North Plains once adopted by the JWC Board.

To minimize fluctuations in demands placed on the JWC treatment and transmission facilities, North Plains will install and operate a SCADA system in conjunction with constructing their 2 MG water reservoir and pump station, slated for completion in 2021, as recommended in their master plan. The SCADA system will be used for flow control, and to fill reservoirs later in the day/early evening in order to avoid filling during peak periods for the JWC.
11) **Payment of Charges:** North Plains will be billed by JWC monthly for the water provided under this Agreement. The bill will show the billing period, volume of water used, total costs and any surcharges. North Plains agrees to pay the charges to JWC within 30 days after the billing is received. If payment is not made within this 30 day period, JWC will provide North Plains with written notice of non-payment and may begin charging interest at the State Investment Pool Rate in effect at that time. In addition, JWC may shut off the water supply to North Plains if, after 10 days from written notice of non-payment, the charges remain unpaid and JWC has given North Plains a 30-day notice of contract termination. If North Plains files a written notice of dispute with JWC over the amount of the charges, within 10 days after a written notice of non-payment is given to North Plains, JWC will not cut off or interrupt water service to North Plains, or charge interest for non-payment of disputed amount while such dispute is under consideration, mediation or litigation under Section 11 of this Agreement. If, after consideration, mediation, or litigation, some amount is determined to be owed by North Plains, then JWC may charge interest on that amount retroactively to thirty 30 days after it was originally due.

12) **Dispute Resolution and Remedies:** Unless there is an extension of time by mutual consent in writing, the failure or unreasonable delay by either party to substantially perform any term or provision of this Agreement constitutes a default. In the event of an alleged default of this Agreement (other than non-payment of charges), the party alleging such default will give the other party not less than 30 days’ notice in writing specifying the nature of the alleged default and the manner in which the default may be cured satisfactorily. During this 30 day period, the party charged will not be in default for purposes of termination or instituting legal proceedings.

After notice and expiration of the 30 day period, or after the second written notice within a consecutive 12-month period for non-payment of charges, the party alleging breach may, at its option, give 30 days written notice to the defaulting party that the Agreement will be terminated.

In addition to any other rights or remedies, either party may institute legal action to cure, correct or remedy any default, to enforce any term of this Agreement or enjoin any threatened or attempted default. All legal actions must be initiated in
Washington County Circuit Court, State of Oregon, or Federal District Court for the District of Oregon.

13) **System Development Charges:** For new connections to North Plains’ system, North Plains will be charged a system development charge by JWC. These system development charges are payable to JWC each calendar quarter by the payment date set out in Section 13 of this Agreement. Each quarterly payment must be accompanied by a report giving a list of the location, size, type and date of each water connection sold during that calendar quarter. Interest, commencing on the due date, will be charged at the State Investment Pool Rate on unpaid system development charges. System development charges are set by the Board per Resolution. JWC will notify North Plains of any changes to these charges.

14) **Reporting Requirements:** Prior to signing this Agreement, North Plains will deliver to JWC an updated written report listing all of its existing customers, including meter size and address. Each calendar quarter, North Plains will submit a written report to JWC of all new water meters connected to the North Plains system during that calendar quarter, and the number of unconnected pre-sold service connections, if any. The report will certify the number, size and location by address of each new meter, which is physically connected to its distribution system during that calendar quarter. Such reports will cover the following periods and be submitted by the following dates:

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<tr>
<th>Time Period:</th>
<th>Statement/Payment Due By:</th>
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<tr>
<td>July 1 through September 30</td>
<td>October 31</td>
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<td>October 1 through December 31</td>
<td>January 31</td>
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<td>January 1 through March 30</td>
<td>April 30</td>
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<tr>
<td>April 1 through June 30</td>
<td>July 31</td>
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15) **New Connections:** North Plains will obtain JWC’s prior written approval of any new connections to North Plains’ system that exceed two inches (2”) in diameter. Such approval may be given or withheld in JWC’s sole discretion. A request for any such connection will include a description of the nature of the use for which the
connection is needed, the approximate flow rate and annual demand anticipated. Each such connection request must be accompanied by a statement from North Plains’ engineer that the proposed connection is consistent with the current North Plains Water Master plan and that adequate pressure and volume are available at the proposed point of connection to meet applicable service standards. North Plains agrees that no connections will be made outside of its corporate limits without prior JWC approval and required land use approvals. New connections sold by North Plains will be put into use within one year, or the purchase of connection will be voided and the system development charges that have been paid to JWC for the voided connections will be refunded to North Plains. North Plains will notify JWC of voided connections as part of the applicable quarterly report.

16) Limitation on Liabilities: Notwithstanding any other provision of this Agreement, the parties agree that JWC will not be liable for breach of this Agreement, or damages, or both, including damages resulting from fire, if JWC is unable to provide water to North Plains due to inadequate water supply availability despite availability projections made by JWC in the reasonable exercise of its professional judgment, or if JWC is unable to provide water to North Plains, by reason of interruptions in JWC’s water system due to breakdowns, emergency shut-off, or due to any reason other than interruptions caused by the intentional misconduct or gross negligence of JWC, its agents and employees. North Plains will indemnify and hold JWC, its elected and appointed officials, employees, agents and volunteers harmless from any losses or damages (including but not limited to consequential damages) arising out of or resulting from JWC’s inability to provide water to North Plains.

North Plains will indemnify and hold JWC, its elected and appointed officials, employees, agents and volunteers harmless from any losses or damages (including but not limited to consequential damages) arising out of or resulting from any connection made by North Plains, which is beyond the supply then available, or which creates less than adequate pressures. North Plains will indemnify and hold JWC, its elected and appointed officials, employees, agents and volunteers harmless from any losses or damages (including but not limited to consequential damages) arising out of or resulting from any complaint or demand for service to any connection permitted by North Plains, for which the then-available water supply or
pressure was inadequate, or which JWC has not approved in advance, if such approval is required under Section 14.

17) **No Third-Party Beneficiaries:** JWC and North Plains are the only parties to this Agreement and are the only parties entitled to enforce its terms. Nothing in this Agreement gives any benefit or right, whether directly or indirectly, to third persons, including North Plains’ retail customers.

18) **Duration of Agreement:** This Agreement will remain in effect until January 1, 2025. This Agreement will automatically be renewed for three successive five-year renewal periods, unless either party gives the other party written notice of intent to negotiate or terminate this contract at least 90 days prior to expiration of the initial or any renewal period. If North Plains secures an independent water source prior to contract expiration, JWC will consider a re-negotiation of the existing contract that could include termination.

19) **Notice to Parties:** Written notices and correspondence under this Agreement may be sent by e-mail and/or postage prepaid first-class mail addressed as below set forth, and if so sent, are deemed received three days after deposited in the United States Mail. Written notices and correspondence transmitted in any other manner are deemed given when actually delivered to the other party. Either party to this Agreement may change its address by notice to the other party in the manner provided above.

Notice to North Plains will be addressed as follows:

North Plains City Manager  
City of North Plains  
31360 NW Commercial St.  
North Plains, OR 97133-7101

Notice to JWC will be addressed as follows:

JWC General Manager  
c/o City of Hillsboro  
150 E Main Street  
Hillsboro, OR 97123-4028
20) **Enforced Delay; Extension of Time of Performance:** Performance by either party will not be in default where delay is due to insurrection, strikes, walkouts, riots, floods, drought, earthquakes, fires, casualties, acts of God, contamination of water supply, governmental restrictions imposed or mandated by governmental entities other than JWC, enactment of conflicting state or federal laws or regulations, new or supplementary environmental regulation, litigation or similar bases for excused performance that are not within reasonable control of a party.

21) **Applicable Law and Attorney Fees:** The laws of the State of Oregon apply to this Agreement should either party bring any legal action under this Agreement or to enforce any provision. Any action that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the circuit court of Washington County for the State of Oregon. If the action must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. By executing this Agreement, the parties hereby consent to the jurisdiction of said courts.

The prevailing party is entitled to reasonable attorney fees and court costs fixed by the court. Attorney fees include attorney fees on any appeal and in any bankruptcy proceeding. A party entitled to attorney fees is entitled to all other reasonable costs for investigating the action, taking depositions and discovery, and all other necessary costs incurred in the litigation. All of these accrue on commencement of such action and are enforceable whether or not the action is pursued to a final judgment.

22) **Recordkeeping:** The parties will maintain all fiscal records relating to this Agreement, in accordance with generally accepted accounting principles consistently applied. In addition, the parties will maintain any other records pertinent to this Agreement to clearly document the party's performance. All such fiscal records, books, documents, papers, plans, and writings will be retained by the parties and kept accessible for a minimum of four years, except as required longer by law, following final payment and termination of this Agreement, or until the conclusion of any audit or litigation related to this Agreement.

23) **Access to Records:** North Plains agrees that JWC and its authorized representatives will have access at reasonable times to all books, documents, papers and records of
North Plains, which are directly related to the Agreement, for the purpose of making any audit, examination, copies, excerpts and transcripts.

24) **Severability:** The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

25) **Assignment:** This Agreement may not be assigned by either party, without the prior written approval of the other party.

26) **Other Necessary Acts:** Each party will execute and deliver to the other all documents reasonably necessary to carry out this Agreement. The parties will separately contract on compensation for any services provided by one party to the other as a result of this Agreement.

27) **Nonwaiver:** Failure by either party, at any time, to require performance by the other party of any provision does not affect the first party’s rights to enforce the same provision. A waiver by either party of default will not be a waiver of any succeeding default.

**IT IS SO AGREED THIS 3rd day of February, 2020.**

City of North Plains:

By [Signature]
City Manager

Joint Water Commission:

By [Signature]
General Manager

ATTEST:

By [Signature]
City Recorder

ATTEST:

By [Signature]
JWC Recorder