ORDINANCE NO. 1791

AN ORDINANCE APPROVING A MEMORANDUM OF UNDERSTANDING AND CONTRACT PROVIDING FOR CONSTRUCTION, MAINTENANCE, OPERATION AND EXPANSION OF THE CARROLL-BOONE WATER DISTRICT WATER SUPPLY FACILITIES; AND AUTHORIZING THE EXECUTION AND DELIVERY THEREOF.

WHEREAS, there has been presented to the City Council of the City of Eureka Springs, Arkansas (the "City") a document entitled "Memorandum of Understanding and Contract Providing for Construction, Maintenance, Operation and Expansion of the Carroll-Boone Water District Water Supply Facilities" (the "Contract"), by and between the Cities of Eureka Springs, Berryville, Green Forest and Harrison, Arkansas and the Carroll-Boone Water District; and

WHEREAS, the Council has determined that the Contract should be executed and delivered on behalf of the City;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Eureka Springs, Arkansas:

Section 1. The Contract is hereby approved in substantially the form presented to this meeting, subject to such insubstantial changes, insertions or omissions as may be approved by the Mayor of the City, such approval to be conclusively evidenced by execution of the Contract by the Mayor.

Section 2. The Mayor is authorized to execute and deliver the Contract for and on behalf of the City. The City Clerk is authorized to attest the Contract and to affix thereto the official seal of the City.

ADOPTED this 25th day of August, 1998.

APPROVED:

Barbara O'Harris
Mayor

ATTEST:

Mary Ann Lee
City Clerk

(SEAL)

MEMORANDUM OF UNDERSTANDING

AND

CONTRACT PROVIDING FOR

CONSTRUCTION, MAINTENANCE, OPERATION AND EXPANSION

OF THE CARROLL-BOONE WATER DISTRICT WATER SUPPLY FACILITIES

THIS CONTRACT, entered into by and between the Cities of Eureka Springs, Berryville, Green Forest, and Harrison, Arkansas (hereinafter called the "Cities") and the Carroll-Boone Water District (hereinafter called the "District"):

WITNESSETH:

WHEREAS, the District was formed by agreement dated March 9, 1978, between the Boone County Water District and the Carroll County Water District (each of which is a public, nonprofit water distribution district organized and existing under the provisions of Ark. Acts 1957, No. 114, as amended), entered into under the authority of Ark. Acts 1975, No. 208; and

WHEREAS, the District is the single entity created by said agreement for the purpose of accomplishing a joint undertaking of the Boone County Water District and the Carroll County Water District to acquire, sell and distribute water stored in Beaver Lake Reservoir, and, in connection with such undertaking, to acquire, construct and operate improvements for the procurement, treatment, storage and distribution of said water; and

WHEREAS, the District has entered into a contract with the Corps of Engineers, United States Army (the "Corps of Engineers"), which gives the District the right to

withdraw water from Beaver Lake Reservoir in specified amounts and obligates the District for the payment of specified sums of money to the Corps of Engineers (COE); and

WHEREAS, the District is currently negotiating with the Corps of Engineers for additional water rights, and will continue to do so in the future as necessary to provide the water needs of the District; and

WHEREAS, each of the respective Cities owns and operates its separate and individual water storage facilities and distribution system; and

WHEREAS, the District has acquired lands and right-of-ways and constructed water supply and treatment facilities which can be expanded to meet all the foreseeable water supply needs of the Cities and other prospective users within the area served by the District; and

WHEREAS, the water from Beaver Reservoir is of high quality, suitable for all domestic and industrial uses; and

WHEREAS, since the initial start-up of the treatment system in December, 1982, the District has consistently provided to the Cities potable water of the highest quality meeting all of the requirements of state and federal regulations, including the Federal Safe Drinking Water Act; and

WHEREAS, the District has established a history over the past fifteen (15) years of expanding its treatment and transmission facilities as required to meet the increasing water needs of each of the Cities; and

WHEREAS, the initial and subsequent capital improvements were funded in part by revenue bonds issued by the District and guaranteed through contractual payments from the Cities of Eureka Springs, Berryville, Green Forest, and Harrison; and

WHEREAS, the District proposes that all further expansions be financed from the use of accumulated capital improvement funds, or from the proceeds of revenue bonds of the District; and

WHEREAS, the District plans to defease the existing bonds in order to implement this new agreement; and

WHEREAS, the District does now have an operating history which would allow it to sell bonds to finance improvements without guarantees by the Cities; and

WHEREAS, the construction and operation of said facilities by the District requires that provisions be made to efficiently operate the system, including sound financial and fiscal control, efficient operation and maintenance procedures, and plans for orderly expansion of facilities as required; and

WHEREAS, the total cost of constructing, maintaining, operating and expanding the facilities must be borne equitably by the users of water produced through the system, that adequate use and production records be kept, and that sound fiscal and bookkeeping procedures be followed; and

WHEREAS, it is desirable for water supplies to be made available where feasible to potential users throughout Carroll and Boone Counties other than the Cities; and

WHEREAS, the District recognizes that in order to provide for orderly growth of the Cities, the provision of municipal type services, including provision of water supply,

must be planned and developed in those areas immediately surrounding the Cities by the respective Cities; and

WHEREAS, even in those areas not included in the immediate growth area of the respective Cities, the furnishing of water from the District's facilities may best be provided through the respective distribution systems of the Cities;

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the parties and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Cities and the District agree as follows:

1. The District will operate, maintain and expand the system as required to meet the present and future water needs of the Cities. Each City hereby agrees to purchase from the District all water required to meet its water system demands above any amount which may be provided by its own treatment facility existing on the date of this Contract.
2. The District will make a continuing study of the water needs and expected future requirements of the Cities (and other users, if any) and provide raw water supply storage, treatment plant, and transmission system expansion as required to meet those needs.
3. The District will furnish water to the Cities through the pumping and transmission facilities of the District to the distribution systems of the Cities. The District will provide and maintain high quality metering equipment and meter all water delivered. The meters shall be checked and calibrated on a regular schedule.

4. The distribution systems of the Cities are and shall remain the property and responsibility of the respective Cities. The Cities expressly agree to provide the necessary distribution system storage within their own system so that their respective daily amount of water required can be delivered over a 24-hour period.

5. Each of the Cities will pay for all water purchased from the District at such rates as required to provide revenues sufficient, together with revenues from demand charges imposed pursuant to paragraph 8, to enable the District to pay all debt service, purchase water storage rights from the U. S. Army Corps of Engineers, pay actual operation and maintenance costs, maintain all covenants and reserves required by bonds issued by the District, and maintain other reserves as may be established by the District for equipment depreciation, emergencies and capital expansion (collectively, "Total System Costs"). Total System Costs, revenues from demand charges, and the volume of water sales will be estimated from time to time and the rates for water purchased by the Cities and any other users shall be based upon such estimates. At the end of each fiscal year, the revenues of the District from all water sales, the Total System Costs, and the total water sales shall be confirmed by a certified public accountant's audit. If the Total System Costs exceed the annual revenues of the District from all water sales, then all users of the District shall be charged with the difference between the annual revenues from all water sales and Total System Costs in proportion to actual amounts paid for

water purchased. If revenues from the total water sales exceed the Total System Costs, then the Cities shall be credited with the difference in the form of a rebate in proportion to actual amounts paid for water purchased by each of the Cities.

6. Until such time as the District sells new revenue bonds for the presently planned capital expansion, each City agrees to pay an additional $0.25 per thousand gallons purchased from the District for the Capital Expansion Fund for the planned expansion of the treatment, transmission, and storage facilities. This additional charge shall be assessed each City beginning on January 1, 1999. All funds collected during this period under this provision shall be used for the planned project, and as such will be used to reduce the size of the new bond issue.

7. The District will keep all necessary fiscal records and will furnish to the Cities not less than once each year a full and complete report of activities and system costs, including a complete audit by a certified public accountant.

8. The District has agreed to meet the total water needs of all the Cities, and must therefore maintain adequate treatment and transmission facilities to meet those needs. Any City that chooses to utilize its own water treatment facilities to provide any portion of its customers' water needs hereby agrees to pay a "demand charge" to the District. The demand charge will be applied to all water produced and delivered by the City to its customers in lieu of water produced and furnished to the City by the

District. The demand charge will consist of the following costs based upon fiscal year 1997 costs and usages:

Debt Service	$0.333/1000 gallons
COE Water Purchase Cost	$0.017/1000 gallons
Total Demand Charge	$0.35/1000 gallons

The debt service portion of the demand charge will be adjusted based upon the new debt service cost after the sale of the bonds for the presently planned expansion. The demand charge will be paid monthly as part of the City's total water bill based upon the volume of water produced and delivered from the **City's treatment plant** as measured through the finished water flow meter at the **City's** plant. The unit cost for the debt service and COE water purchase cost will be established annually by the District utilizing results from the annual audit. All funds collected from this demand charge shall be placed into the capital expansion reserve fund and/or used for debt retirement.

9. The Cities shall meter all water produced through their existing facilities with the same degree of accuracy as required of the District. Monthly reports of the quantities of water so produced shall be furnished to the District.

10. The District will bond its employees to their limit of access to District funds through adequate corporate sureties. It will retain all accumulated funds in Government Obligations (defined as direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by,

the United States of America) and/or deposits in banks or savings institution which are members of the Federal Deposit Insurance Corporation. All surpluses shall from time to time be invested in Government Obligations with a maturity that is prudent and consistent with the planned use of the surplus funds, or deposited in banks or savings institutions which are members of the Federal Deposit Insurance Corporation. All deposits in excess of the amount insured by the Federal Deposit Insurance Corporation shall be fully collateralized by Government Obligations.

11. Each of the Cities will from time to time furnish to the District such information as is required to assist in evaluation of prospective future water requirements.

12. Nothing in this agreement alters the right of any city to supply water to users within the limits of its jurisdiction.

13. The District may furnish water through its facilities to rural water districts or other possible users when the Cities cannot or will not supply such areas through their distribution systems. Charges for water used by such other users furnished directly by the District shall be based upon at least the current rate per thousand gallons charged the Cities. In addition, the District may charge a connection fee, and/or a facilities surcharge in the form of higher rates, to such other users furnished water directly by the District. The purpose of the facilities surcharge is to help offset the cost of replacing the system capacity utilized by such additional users. Such

right to furnish water to other users shall not extend to areas proposed to be served immediately adjacent to the city limits of the Cities without prior approval of the respective Cities. Further, all water systems of such users shall be constructed and maintained to standards at least equal to those of the Cities, with such additional controls and conditions as follows:

a. The limits of the areas to be served shall be clearly defined.

b. Component and legal operating agencies shall operate the system.

c. The transmission or distribution system shall be designed and constructed in accordance with Arkansas Department of Health standards.

d. All customers of such water systems shall be metered and charged for water used.

e. The water system shall make assurances as required by the District that the system shall be for maintained and operated in compliance with the Arkansas Department of Health requirements and in compliance with the Arkansas State Plumbing Code.

f. The cost for constructing transmission and/or distribution pipelines to connect such users to the District's facilities shall be borne completely by the user, and shall not be included in any water rates or other charges to the Cities.

The provisions of this section shall in no manner limit any of the Cities in serving through their systems, other smaller cities or other approved legally constituted water distribution agencies.

14. The service area of the respective Cities shall be as shown on the attached plat entitled "Exhibit A," which is hereby made a part hereof. Such service areas as shown are hereby designated as the service area of the respective Cities. The District shall not provide water service within this area without the respective Cities having the first right of refusal for providing water service to the area.

15. The Cities shall in no way be either individually or collectively responsible or liable for any acts of negligence of the District in the District's operation of the water facilities, and to this end the District agrees to hold the Cities harmless therefrom. However, nothing herein shall be construed as a waiver by the Cities or the District of their immunity from tort suit under the laws of the State of Arkansas.

16. The treated water furnished to the Cities and other users by the District shall comply with the Federal Safe Drinking Water Act as amended and the rules and regulations set forth by the Arkansas Department of Health for potable water. The District shall maintain and operate a bacteriological and chemical laboratory for the purpose of maintaining the necessary quality control checks to comply with the above standards and ensure efficient operation of the treatment process. The District shall maintain and keep on file bacteriological and chemical records, reports,

and analyses of sufficient detail and depth to permit an accurate evaluation of the daily, weekly, monthly and yearly operation of the water treatment plant. These records shall be available at any time for review by the user Cities, and the District shall furnish copies of these records to the user Cities upon written request. The District shall produce a treated water which will neither corrode nor scale the transmission line or distribution systems of the user Cities under the normal range of domestic operating conditions.

17. This agreement, which supersedes and replaces all previous agreements between the District and the Cities, is made in good faith for the well-being and betterment of the parties hereto and all of Carroll and Boone Counties, Arkansas. This agreement may be amended by mutual agreement of the parties hereto.

18. This agreement shall become effective on the date of the defeasance of the existing bonds. The new water rate as established by the District under the provisions of Section 5 shall take effect on the first day of the month following the effective date of the agreement.

IN WITNESS WHEREOF, the Cities have caused this contract to be signed in their names and on their behalf by their Mayors and their corporate seals to be herewith affixed and attested by their City Clerks, and the District has caused this Contract to be signed in its name and on its behalf by its President, and its seal to be

hereunto affixed and attested by its Secretary, all as of the _____ day of _____, 1998.

CARROLL-BOONE WATER DISTRICT

Attest:

By_____
James A. Yates, President

_____
Harold C. Collins, Secretary

(SEAL)

CITY OF BERRYVILLE, ARKANSAS

Attest:

By_____
Tim McKinney, Mayor

_____
Leonda Davis, City Clerk

(SEAL)

CITY OF EUREKA SPRINGS, ARKANSAS

Attest:

By_____
Barbara O'Harris, Mayor

_____
Mary Ann Zee, City Clerk

(SEAL)

CITY OF GREEN FOREST, ARKANSAS

Attest:

By_____
Roy D. Larimer, Mayor

_____
Janell Compton, City Recorder

(SEAL)

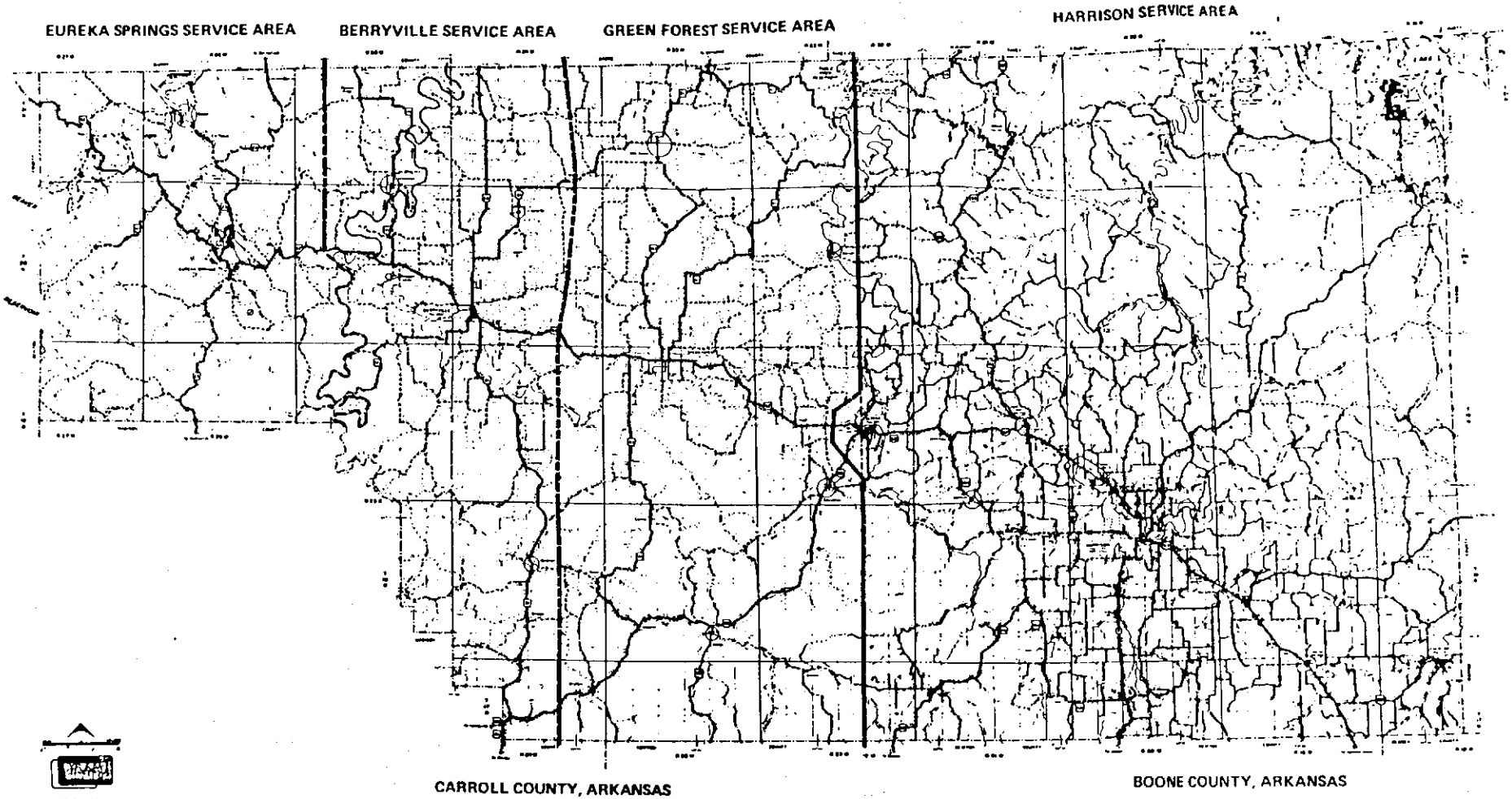
CITY OF HARRISON, ARKANSAS

Attest:

By_____
Danny Harness, Mayor

_____
Joel Williams, City Clerk

(SEAL)



CARROLL-BOONE WATER DISTRICT

EXHIBIT A