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ORDINANCE NO. 1019

AN ORDINANCE APPROVING A CONTRACT BY AND BETWEEN THE CITY OF Eureka Springs AND CARROLL-BOONE WATER DISTRICT; PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, Carroll-Boone Water District, a regional water distribution district (the "District"), proposes to construct various facilities necessary for it to withdraw water from Beaver Dam Reservoir, treat the water and sell and distribute it to various water users, including particularly, the Cities of Eureka Springs, Berryville, Green Forest and Harrison, Arkansas, pursuant to Contracts between the District and each of the Cities;

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

Section 1. That there is hereby authorized a contract between the District and the City in substantially the following form and with substantially the following content:

Section 2. That the assurance that the City and its inhabitants will continue to have an adequate supply of treated water is essential to the health, safety and welfare of the inhabitants, which assurance can be obtained only by the immediate undertaking of the construction of the improvements referred to herein, the authorizations, covenants and agreements of the City set forth in the Contract approved by this Ordinance are necessary for the accomplishment of the improvements, and therefore, an emergency is declared to exist, and this Ordinance being necessary for the preservation of the public peace, health and safety, shall take effect and be in force from and after its passage.

ADOPTED this 26th day of April, 1977.

APPROVED:

ATTEST:

James I. Monerovic
City Clerk

Charles F. Robertson
Mayor

(SEAL)

CONTRACT

THIS CONTRACT entered into by and between the CITY OF *Eureka Springs* ARKANSAS (hereinafter called "City") and CARROLL-BOONE WATER DISTRICT (hereinafter called "District");

WITNESSETH:

WHEREAS, the District has been formed by agreement 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; and

WHEREAS, the utilization of the water stored in Beaver Lake Reservoir can be accomplished only after the acquisition of lands and construction of a number of improvements; and

WHEREAS, in order to insure its financial ability to discharge its obligations to the Corps of Engineers and to provide moneys to pay the cost of the improvements the District proposes to enter into substantially identical contracts with the Cities of Eureka Springs, Berryville, Green Forest and Harrison, of which this contract is one; and

WHEREAS, the improvements can be used by all of the aforementioned Cities and all of said Cities are willing to pay stipulated annual sums for the privilege of having the use of the water and the improvements so as to make adequate supplies of water available for the citizens of said Cities which is necessary for the health, safety and welfare thereof; and

WHEREAS, the District proposes to proceed immediately to construct adjacent to Beaver Lake Reservoir an intake structure and treatment plant which will be sufficient to furnish an adequate supplemental supply of treated water to all of said Cities, to construct transmission lines to distribute treated water to the City of Eureka Springs, (and to construct transmission lines to Berryville to the extent sufficient moneys are available), make related improvements and acquire necessary land and rights of way therefor (the "Phase I Improvements"), estimated to cost, with related expenses and expenses of financing, \$5,000,000 (with it being estimated that the cost to the District will be \$1,700,000 and that the balance will be received as grant funds from the United States of America and the State of Arkansas, or agencies thereof); and

WHEREAS, immediately upon completion of the Phase I Improvements the District proposes to proceed with the construction of transmission lines to furnish adequate treated water to the Cities of Berryville, Green Forest and Harrison, the making of related improvements, and the acquisition of necessary land and rights of way therefor (the "Phase II Improvements"); and

WHEREAS, the District has or will enter into a Loan Agreement with the United States of America, Farmers Home Administration ("Farmers Home") for the sale of its permanent bonds designated "Water Revenue Improvement Bonds, Series A" (the "Series A Bonds") in the principal amount of \$1,700,000, to be dated as of the date of delivery and to mature in serial installments on each of the third to fortieth anniversary dates of the Series A Bonds, which bonds will be authorized and secured by a Resolution of the Board of Directors of the District and which may be secured by a Trust Indenture (the "Indenture") to be executed by and between the District and a bank or trust company (the "Trustee"),

as Trustee for the holders of the bonds, which Indenture will be recorded in the offices of the Circuit Clerks and Ex Officio Recorders of Boone and Carroll Counties, Arkansas, and to which reference may be made for a detailed statement of the terms and conditions upon which the District's bonds will be issued, held and paid (the Indenture will secure all bonds issued by the District with the initial series being the Series A Bonds referred to above, the proceeds of which will be used to finance the Phase I Improvements, and with subsequent series to be issued at a later date or dates to finance the Phase II Improvements and any additional improvements undertaken by the District; and

WHEREAS, in anticipation of the issuance of the Series A Bonds and in order to proceed promptly with the Phase I Improvements the District expects to issue temporary bonds which will be retired from the proceeds of the Series A Bonds and the temporary bonds (to the extent not paid from Series A Bond proceeds) and the Series A Bonds and other permanent bonds of the District will be payable from revenues of the District, including particularly payments from the Cities under this and similar contracts; and

WHEREAS, the City has made studies which reflect that an additional water supply must be obtained in order to satisfy the immediate and future needs of the customers of its waterworks system, and that a water supply in an amount sufficient to satisfy the needs of the City for the foreseeable future can be economically and feasibly obtained only from Beaver Lake Reservoir;

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 City and the District agree as follows:

Section 1. The City shall have the right to use the water made available by the construction of the Phase I Improvements and Phase II Improvements in accordance with reasonable rules and regulations to be established from time to time by the District.

Section 2. The City will pay to the District, solely from revenues derived from the operation of the City's waterworks system:

(a) The sum of \$_____ per annum for a period of forty (40) years. The said annual payments are to be paid on or before _____ of each year, commencing with the year 19____. The payments provided for above may be modified only with the prior written approval of the Trustee after the presentation of evidence satisfactory to the Trustee, in the Trustee's sole discretion, that the District will have revenues after such modification that are at least sufficient to operate, maintain and repair the District's facilities, insure the prompt payment of the principal of, interest on and Paying Agent's fees in connection with all of the District's outstanding bonds as the same become due and payable, establish and maintain the debt service reserve and make adequate provision for depreciation. Such payments shall be made without regard to whether the other Cities specified above have fulfilled their obligation to make payments pursuant to similar contracts. Such payments called for by this Contract shall be certainly payable on the dates specified without notice or demand, and without abatement or set off, and regardless of any contingencies whatsoever, and notwithstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place.

(b) In addition to the above fixed payment the City will pay for all water actually received from the District at such reasonable rates as shall be established from time to time by the District.

(c) The City hereby pledges a sufficient amount of its waterworks revenues to satisfy promptly its obligations hereunder.

Section 3. It is contemplated that the District will construct the additional Phase II Improvements and may construct additional improvements from time to time for the purpose of better accomplishing the utilization of the water stored in Beaver Lake Reservoir. It is contemplated that bonds will be issued to finance all said construction, and it is understood and agreed that the District and all of the Cities will enter into contracts prior to the issuance of bonds to finance the Phase II Improvements, and that the District and all or part of

the Cities will, prior to issuance of additional bonds for subsequent improvements, enter into contracts in order to provide in the case of each series of additional bonds, increased revenues sufficient, together with other available revenues, to pay said additional bonds, with interest, as they mature.

Section 4. It is understood that the City has now and may in the future have outstanding bonds and contracts to which waterworks revenues are pledged and will be used. The City covenants and agrees that it will impose and collect rates for water that will produce sufficient revenues to make the payments called for in this Contract when due and, together with any other utility revenues from municipally owned utilities that may be lawfully used and are actually available, to pay the reasonable expenses of operation, maintenance, repair and depreciation of the City's waterworks, and to make all principal and interest payments and make all fund deposits required in connection with all bonds and contract obligations of the City to which City waterworks revenues are pledged outstanding at any time during the life of this Contract, and that the City will raise said rates from time to time when and to the extent necessary to fully provide for all said above set forth purposes.

Section 5. The City covenants and agrees that it will always operate its waterworks as a revenue producing undertaking and that it will not dispose of said waterworks as long as its obligation to make payments under this Contract exists.

Section 6. The City and the District agree that the holders of the bonds issued to finance the improvements shall be third party beneficiaries of this Contract, and that the Trustee for the holders of said bonds shall have the right to enforce the terms of this Contract.

Section 7. It is covenanted and agreed that so long as any bonds of the District issued to finance the improvements shall be outstanding, this Contract cannot be cancelled, terminated, amended, supplemented or modified without the written consent of the Trustee.

Section 8. The pledge of waterworks revenues made by the City to its obligations hereunder is understood, and shall be construed to be, subordinate and inferior to the pledges of waterworks revenues to all Waterworks Bonds of the City heretofore issued and outstanding as of the date hereof, but the City covenants and agrees that it will not authorize or issue, or attempt to authorize or issue, any bonds or obligations on a parity with any of the City's said outstanding bonds, even though parity obligations may have been expressly authorized at the time of issuance of said outstanding bonds; that it will not authorize or issue or incur, or attempt to authorize or issue or incur, any bonds or obligations of any nature having or claimed to have a priority of lien, pledge or claim upon the City's waterworks revenues over the lien, pledge and claim in favor of the City's contractual obligations under this Contract and will not authorize or issue or incur, or attempt to authorize, issue or incur, any bonds or obligations ranking on a parity of lien, pledge and claim with the contractual obligations under this Contract except only that the following may rank on a parity: (1) Any contractual obligations under additional, amendatory or supplemental contracts between the City and the District executed in connection with the issuance by the District of bonds to finance Phase II Improvements or any additional improvements, referred to in Section 3 of this Contract; and (2) bonds or obligations issued or incurred by the City for extensions, betterments and improvements to the City's waterworks system if, at the date of issuance of such bonds or incurrence of such obligations, the waterworks revenues of the City for the preceding twelve (12) months, as increased by any additional revenues to be received from waterworks extensions, betterments and improvements being constructed out of the proceeds of the bonds then being issued, or obligations then being incurred as then certified by an independent registered professional engineer, shall have been sufficient in amount to provide for the maximum future principal and interest requirements and all contractual obligations and on then outstanding

bonds and contracts that will become due in any one year, including, without limitation, this Contract, and the maximum principal and interest requirements and contractual obligations that will become due in any one year on the bonds then proposed to be issued or obligations then proposed to be incurred and leave a balance which, together with the amount of any other utility revenues from municipally owned utilities that may be lawfully used and are actually available for the next succeeding twelve (12) month period as then determined, will be sufficient to provide for the annual operation and maintenance and depreciation expenses after the completion of said waterworks extensions, betterments and improvements to be constructed out of the proceeds of said bonds or obligations.

Nothing herein shall be construed as prohibiting the City from issuing bonds or incurring obligations having a lien, pledge and claim on waterworks revenues subordinate to the lien, pledge and claim thereon in favor of the constructual obligations under this Contract.

IN WITNESS WHEREOF, the City has caused this Contract to be signed in its name and on its behalf by its Mayor and its corporate seal to be herewith affixed and attested by its City Clerk 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 26th day of April, 1977.

ATTEST:

June L. Moneranie
City Clerk

(SEAL)

CITY OF Eureka Springs ARKANSAS

By Charles F. Robertson
Mayor

ATTEST:

Secretary

(SEAL)

CARROLL-BOONE WATER DISTRICT

By _____
President

D R A F T

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 has been formed by agreement 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; and

WHEREAS, the utilization of the water stored in Beaver Lake Reservoir can be accomplished only after the acquisition of lands and construction of a number of improvements; and

WHEREAS, the District does not have an operating history which would allow them to sell bonds to finance improvements without guarantees by the Cities; and

WHEREAS, the Cities have agreed to underwrite the initial construction and the purchase of water storage rights in Beaver Reservoir; 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 immediately proceed to construct Phase I of the project, which includes the following facilities: (1) An intake structure having a capacity of 24 MGD to take water from Beaver Reservoir, (2) raw water pumps and a water treatment plant having a design capacity of 6.0 MGD, and (3) a 30-inch line to a point just south of Eureka Springs.

2. The District will commence construction of Phase II of the project as soon as financing can be arranged. This phase of the work includes the construction of a 30-inch transmission line from just south of Eureka Springs to Berryville, the construction of a 24-inch line from Berryville to a storage tank west of Harrison, a 20-inch line from the storage tank to the Harrison distribution system, and the storage tank and other necessary appurtenances as required for a complete system.

3. The District will operate, maintain and expand the system as required to meet the present and future needs of the Cities. It is hereby understood and agreed that the water treatment facilities proposed for immediate construction will not provide water in sufficient amounts to meet the peak demands of all four Cities. The Cities hereby agree to maintain existing supply and treatment facilities in good operating condition so that they can be utilized to provide peaking water as required and agreed to from time to time.

4. 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.

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

6. 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.

Payment for water used by such other users furnished directly by the District shall be based upon current charges to the Cities, plus such user's pro rata share of the water storage cost and the amortization cost of initial construction, both underwritten from the beginning by the Cities.

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.

7. The service areas 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 exclusive service area of the respective Cities and neither the District nor the other Cities shall provide water service within this area without express written approval of the affected city.