

ORDINANCE NO. 1021

AN ORDINANCE APPROVING A CONTRACT BY AND BETWEEN THE CITY OF EUREKA SPRINGS, ARKANSAS 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:

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 and the United States of America (hereinafter called "Government") have entered or will enter into a contract (hereinafter called "Water Supply Contract"), in substantially the form attached as Exhibit A to this Contract, 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 or ascertainable sums of money to the Government; 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 Government 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 make annual payments 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 the City of 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 supplemental supplies of 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

(the "Bond Resolution") which Bond Resolution 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 bonds will be issued, held and paid (the initial series will be the Series A Bonds referred to above, the proceeds of which will be used to finance the cost to the District of the Phase I Improvements, and the Bond Resolution will provide for issuance of subsequent series to be issued at a later date or dates to finance the cost to the District of 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 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 and as set out in the "Memorandum of Understanding" between the District and the Cities as it may be amended from time to time.

Section 2. (a) The City will make payments to the District, solely from revenues derived from the operation of the City's waterworks system (or, if the City now or hereafter operates a combined waterworks and sewer system, from net revenues (defined as gross revenues less necessary expenses of operation and maintenance) of the combined system), as follows:

(1) For the payment of debt service on the Series A Bonds, an initial annual payment of \$ 11,900.00 on or before eleven (11) months after the date of the Series A Bonds, a second annual payment of \$ 11,900.00 , on or before the first anniversary of the initial annual payment, and four hundred fifty six (456) monthly payments of \$ 1,293.58 each, on the first business day of each month commencing in the month immediately following the second annual payment. The payments provided for above may be modified only with the prior written approval of Farmers Home, after the presentation of evidence satisfactory to Farmers Home, in the sole discretion of Farmers Home, 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 and interest on 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.

(2) To enable the District to discharge its obligations under the Water Supply Contract, an annual payment equal to fourteen percent (14 %) of the aggregate annual payment the District is required to make to the Government under the Water Supply Contract on the next annual installment payment for "Project Investment Costs," "Major Capital Replacement Costs," and "Annual Operation and Maintenance Costs," as provided in the Water Supply Contract, particularly Article 5 thereof.

(b) In addition to the above fixed payments 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. The rates shall be fixed in the amounts necessary to provide revenues sufficient to pay actual operations and maintenance costs, fund a depreciation reserve as required by the Bond Resolution and establish a reasonable reserve for payment of operation and maintenance costs.

(c) The City hereby pledges a sufficient amount of its waterworks revenues (or, if the City now or hereafter operates a combined waterworks and sewer system, a sufficient amount of net revenues, as defined above, of the combined system) to satisfy promptly its obligations hereunder.

Section 3. It is understood that it will be necessary to complete the Phase II Improvements before the District can furnish water to the Cities of Berryville, Green Forest and Harrison, and it is agreed that the Phase II Improvements shall be undertaken and completed as soon as financially feasible in order to enable all of the Cities to realize full benefits from this joint undertaking. It is anticipated that a portion of the costs of the Phase II Improvements will be paid from federal and state grant funds made available to the District and the costs to the District financed, as in the case of the Phase I Improvements, from the proceeds of the bonds issued by the District. Nevertheless, if grant funds are not available, or are not available in expected amounts, the Phase II Improvements will, if financially feasible, be accomplished. The District and the Cities will proceed to negotiate in good faith and make a reasonable and fair determination as to the financial feasibility of

the Phase II Improvements. Each of the Cities will enter into a supplemental contract with the District prior to commencement of the Phase II Improvements, providing that each City will make payments for payment of debt service on the bonds issued for financing the costs to the District of the Phase II Improvements, which payments by each City will be in proportion to the payments each City is making for debt service on the Series A Bonds pursuant to Subsection 2(a)(1) of this Contract.

Section 4. It is understood that the City has now and may in the future have outstanding bonds and contracts to which waterworks and/or sewer 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 (or, if the City now or hereafter operates a combined waterworks and sewer system, such reasonable expenses for the combined system), 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 (or combined waterworks and sewer) 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 (or combined waterworks and sewer system) as a revenue producing undertaking and that it will not dispose of said waterworks (or combined waterworks and sewer system) 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 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 Series A Bonds are outstanding, this Contract cannot be cancelled, terminated, amended, supplemented or modified without the written consent of Farmers Home.

Section 8. The pledge of waterworks (or combined waterworks and sewer system) 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 (or combined waterworks and sewer system) revenues to all waterworks (or combined waterworks and sewer system) 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 (except refunding bonds issued under such conditions that there is no increase in the aggregate maximum annual debt service requirements on all bonds and obligations having priority over the City's contractual obligations under this Contract), 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 (except refunding bonds as provided above) having or claiming to have a priority of lien, pledge or claim upon the City's waterworks (or combined waterworks and sewer system 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; and (2) bonds or obligations issued or incurred by the City for extensions, betterments and improvements to the City's waterworks (or combined waterworks and sewer system) system if, at the date of issuance of such bonds or incurrence of such obligations, the waterworks (or combined waterworks and sewer system) revenues of the City for the preceding twelve (12) months, as increased by any additional revenues to be received from waterworks (or combined waterworks and sewer system) 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 on 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, maintenance and depreciation expenses after the completion of said 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 (or combined waterworks and sewer) revenues subordinate to the lien, pledge and claim thereon in favor of the contractual 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 28th day of May, 1977.

CITY OF EURKEA SPRINGS, ARKANSAS

ATTEST:

Jane I. Moncrie
City Clerk

(SEAL)

By _____
Mayor

CARROLL-BOONE WATER DISTRICT

ATTEST:

Secretary

(SEAL)

By _____
President

Section 2. That Ordinance No. 1021 is hereby repealed. All other ordinances and resolutions, or parts thereof, in conflict with this Ordinance are hereby repealed to the extent of the conflict.

Section 3. 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 28th day of May, 1977.

APPROVED:

ATTEST:

June I. Monerami
City Clerk

(SEAL)

Charles F. Robertson
Mayor

CERTIFICATE

The undersigned, City Clerk of the City of Eureka Springs, Arkansas, hereby certifies that the foregoing pages are a true and correct copy of Ordinance No. 1021, passed at a regular session of the City Council of Eureka Springs, Arkansas, held at the regular meeting place of the Council at 9:00 o'clock a.m., on the 28th day of May, 1977, and that the Ordinance is of record in Ordinance Record Book 3, at Page 627, now in my possession

GIVEN under my hand and seal this 28th day of May, 1977.

James I. Monseraie
City Clerk

(SEAL)