

ORDINANCE NO. 1168

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;

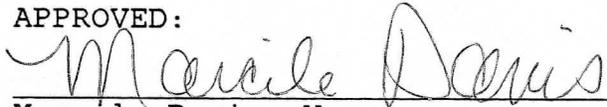
NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Eureka Springs, Arkansas (the "City");

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.

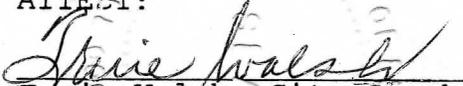
ADOPTED this 15th day of December, 1982.

APPROVED:



Marcile Davis, Mayor

ATTEST:


Truie Walsh, City Clerk

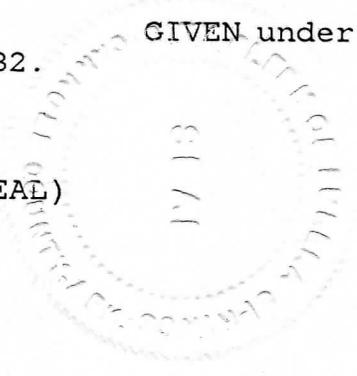
(SEAL)

CERTIFICATE

The undersigned, City Clerk of the City of Eureka Springs, Arkansas, hereby certifies that the foregoing pages are a true and perfect copy of Ordinance No. 1168, adopted at a special session of the City Council of the City, held at the regular meeting place in the City at 10 o'clock A.m., on the 15th day of December, 1982, and that the Ordinance is of record in Ordinance Record Book ____ at page ____, now in my possession.

GIVEN under my hand and seal on this 15th day of December 1982.

(SEAL)



Truie Walsh
Truie Walsh, City Clerk

SECOND SUPPLEMENTAL CONTRACT

In consideration of their mutual undertakings hereunder, CARROLL - BOONE WATER DISTRICT (the "District") and the CITY OF EUREKA SPRINGS, ARKANSAS (the "City") agree as follows:

Section 1. The Parties. The District was formed by agreement between Boone County Water District and Carroll County Water District (each of which is a public, nonprofit water distribution district organized and existing pursuant to Arkansas Act 1957, No. 114, as amended), entered into under the authority of Arkansas Acts 1975, No. 208. The City is a municipal corporation under the laws of the State of Arkansas.

Section 2. Background. (a) The District and the United States of America (the "Government") have entered into a contract (more particularly described in the Original Contract and hereafter referred to as the "Water Supply Contract") giving the District the right to withdraw water from Beaver Lake Reservoir in specified amounts and obligating the District for the payment of specified or ascertainable sums of money. In order to provide a supplemental supply of treated water to the Cities of Eureka Springs, Berryville, Green Forest and Harrison (collectively the "Participating Cities") it is necessary that the District acquire and construct an intake structure, treatment plant and transmission lines (the "Improvements"). The Improvements are being undertaken in phases.

(b) The District has (i) constructed, adjacent to Beaver Lake Reservoir, an intake structure and treatment plant sufficient to furnish an adequate supplemental supply of treated water to all Participating Cities, (ii) constructed transmission lines to distribute treated water to the City of Eureka Springs, (iii) acquired necessary land and rights of way therefor, and (iv) made related improvements (items (i) through (iv) which will be hereafter referred to as the "Phase I Improvements"). The cost to the District of the Phase I Improvements was \$2,060,000 (the balance of the costs were paid from grants from agencies of the Government and the State of Arkansas).

(c) That portion of the Improvements exclusive of the Phase I Improvements necessary to distribute treated water to the Cities of Berryville, Green Forest and Harrison are referred to herein as the "Phase II Improvements."

(d) The District has constructed water transmission lines to distribute treated water to the City of Berryville, made related improvements, and acquired necessary land and rights of

way therefor (the "Phase II-A Improvements"). At the time the Phase II-A Improvements were undertaken it was estimated that the total costs thereof would be \$6,000,000 of which \$1,940,000 would have to be paid by the District (with the balance to be obtained from grant or subordinated loan funds obtained from agencies of the Government and the State of Arkansas).

(e) In order to finance the costs of the District of the Phase I Improvements, the District issued its "Water Revenue Improvement Bonds, Series A," in the principal amount of \$1,700,000 (the "Series A Bonds"), and its "Water Revenue Bonds, Series B" in the principal amount of \$360,000 (the "Series B Bonds"). In order to finance the estimated costs to the District of the Phase II-A Improvements the District issued its "Water Revenue Bonds, Series C" in the principal amount of \$1,940,000 (the "Series C Bonds"). In order to insure its financial ability to discharge its financial obligations under the Water Supply Contract and under the Series A Bonds the District entered into substantially identical contracts with each of the Participating Cities. Such contracts obligate the Participating Cities to make certain payments to the District. The contract between the District and the City was entered into May 28, 1977 and is hereafter referred to as the "Original Contract." In order to insure its ability to discharge its financial obligations under the Series B Bonds and the Series C Bonds the District entered into a supplemental contract with the City dated December 5, 1980 (the "First Supplemental Contract"), and substantially identical first supplemental contracts with the other Participating Cities.

Section 3. Financing Subsequent Phase II Improvements; Additional Bonds. (a) The District will promptly proceed with a subsequent portion of the Phase II Improvements. The portion of the Phase II Improvements now being undertaken is the construction of water transmission lines to distribute treated water to the City of Green Forest, construct storage facilities and make related improvements, and acquire necessary land and rights of way therefor (the "Phase II-B Improvements"). The estimated total costs of the Phase II-B Improvements, together with related expenses, are \$5,500,000, of which \$1,800,000 will be paid by the District (with the balance to be obtained from grant and subordinated loan funds obtained from agencies of the Government and the State of Arkansas). The District already has loan funds available in the amount of \$400,000 due to underruns in the costs of the Phase II-A Improvements. Therefore the District will finance its remaining Phase II-B costs by issuing its "Water Revenue Bonds, Series D" in the principal amount of \$1,400,000 (the "Series D Bonds").

(b) It is understood that after completion of the Phase II-B Improvements the District will still be able to furnish water

only to the Cities of Eureka Springs, Berryville and Green Forest, and that the remainder of the Phase II Improvements (the "Subsequent Phase II Improvements") must be completed before water can be furnished to the City of Harrison. It is agreed that the Subsequent Phase II Improvements shall be undertaken and completed as soon as financially feasible in order to enable all of the Participating Cities to realize full benefits from this joint undertaking. It is anticipated that a portion of the cost of the Subsequent Phase II Improvements will be obtained from grant or subordinated loan funds obtained from agencies of the Government and the State of Arkansas and that, as in the case of the Phase I Improvements and the Phase II-A and II-B Improvements, the balance financed from the proceeds of bonds issued by the District. Nevertheless, if grant and subordinated loan funds are not available, or are not available in expected amounts, the Subsequent Phase II Improvements will, if financially feasible, be accomplished. The District and the Participating Cities will proceed to negotiate in good faith and make a reasonable and fair determination as to the financial feasibility of the Subsequent Phase II Improvements. Each of the Cities will enter into a supplemental contract or contracts with the District prior to commencement of the Subsequent Phase II Improvements, providing that each City will make payments for payment of debt service on the bonds issued for financing the cost to the District of the Subsequent 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)(i) of the Original Contract between each City and the District.

Section 4. Additional Payments by the City; Original Contract Further Supplemented. The City agrees to make additional payments to the District for use in payment of debt service on the Series D Bonds, and for this purpose the Original Contract is supplemented by adding to Section 2(a) thereof new paragraph (5) to read as follows:

(5) For the payment of debt service on the Series D Bonds, an initial annual payment of \$ 22,785 on or before eleven (11) months after the date of the Series D Bonds, a second annual payment of \$ 22,785, on or before the first anniversary of the initial annual payment, and four hundred fifty-six (456) monthly payments of \$ 2,122 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 Participating 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.

Section 5. Original Contract Continues in Effect. The Original Contract, as heretofore and herein supplemented, shall continue in full force and effect. The payments provided for in Section 4 hereof shall be made in addition to the payments required under the Original Contract and the First Supplemental Contract.

IN WITNESS WHEREOF, the District and the City have executed this Second Supplemental Contract on this 15th day of December, 1982.

CARROLL - BOONE WATER DISTRICT

By Charles B. Freeman
Charles B. Freeman, President

ATTEST:

Herbert B. West
Herbert B. West, Secretary

(SEAL)

CITY OF EUREKA SPRINGS, ARKANSAS

By Marcile Davis
Marcile Davis, Mayor

ATTEST:

Truie Walsh
Truie Walsh, City Clerk

(SEAL)