

ORDINANCE NO. #1223

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:

FOURTH 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. 144, 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 was necessary that the District acquire and construct an intake structure, treatment plant and transmission lines (the "Improvements"). The Improvements were 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 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 be paid by bonds of 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) The District has constructed water transmission lines to distribute treated water to the City of Green Forest, constructed storage facilities, made related improvements, and acquired necessary land and rights of way therefor (the "Phase II-B Improvements"). At the time the Phase II-B Improvements were undertaken, it was estimated that the total costs thereof would be \$5,550,000 of which \$1,800,000 would have to be paid from bonds of 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).

(f) The District has entered into contracts to construct water transmission lines to distribute treated water to the City of Harrison, make related improvements and acquire necessary land and rights of way therefor (the "Phase II-C Improvements"). At the time the Phase II-C Improvements were undertaken the estimated total costs thereof together with related expenses were \$5,125,000, of which \$1,990,00 would be financed by bonds of 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).

(g) In order to finance the costs to 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 a portion of the estimated costs 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").

(h) In order to finance a portion of the estimated costs of the Phase II-B Improvements, the District entered into an agreement with the United States of America, Farmers Home Administration ("Farmers Home") to issue and sell to Farmers Home the District's Water Revenue Bonds, Series D, in the principal amount of \$1,400,000 (the "Proposed Series D Bonds"). The terms of the agreement provided that the Proposed Series D Bonds would not be issued until the Phase II-B Improvements were substantially complete and that the District would be required to provide interim financing for the Phase II-B Improvements. The District has done so by issuing its \$1,400,000 Temporary Water Revenue Bonds, Series D (the "Temporary Series D Bonds").

The Phase II-B Improvements have been completed with financing being obtained from the proceeds of the Temporary Series D Bonds, from \$400,000 of surplus proceeds of the Series C Bonds (available due to a cost underrun on the Phase II-A Improvements), and from Government and State of Arkansas funds as provided above.

(i) In order to finance a portion of the estimated costs of the Phase II-C Improvements, the District entered into an agreement with Farmers Home to issue and sell to Farmers Home the District's Water Revenue Bonds, Series E, in the principal amount of \$1,990,000 (the "Proposed Series E Bonds"). The terms of the agreement provided that the Proposed Series E Bonds would not be issued until the Phase II-C Improvements were substantially complete and that the District would be required to provide interim financing for the Phase II-C Improvements. The District has undertaken to do so from the proceeds of Temporary Water Revenue Bonds, Series E (the "Temporary Series E Bonds") in the principal amount of not to exceed \$1,990,000. The Phase II-C Improvements are under construction and the District has issued approximately \$1,400,000 of the Temporary Series E Bonds. It is anticipated that the remaining \$590,000 will be needed on a temporary basis, but that some or all will be refinanced from Government grant funds, leaving excess moneys.

(j) The District has received an offer from Harrow Smith Company to purchase \$3,950,000 in principal amount of permanent bonds of the District (the "Series D/E Bonds") issued to provide permanent financing of a portion of the costs of the Phase II-B and Phase II-C Improvements including specifically the redemption of the Temporary Series D Bonds (immediately upon issuance of the Series D/E Bonds) and the Temporary Series E Bonds (upon completion of the Phase II-C Improvements), and to finance Additional Improvements as provided below. The District has determined that the Harrow Smith Company offer should be accepted and the Series D/E Bonds issued, since the cost to the District of retiring the Series D/E Bonds will be less than the cost of retiring the Proposed Series D Bonds and the Proposed Series E Bonds. Farmers Home has agreed to release the District from its obligation to issue and sell to Farmers Home the Proposed Series D Bonds and the Proposed Series E Bonds.

(k) 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

hereinafter 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.

(l) In order to insure its financial ability to discharge its financial obligations under the Proposed Series D Bonds, the District entered into a supplemental contract with the City dated December 15, 1982 (the "Second Supplemental Contract"), and substantially identical second supplemental contracts with the other Participating Cities.

(m) In order to insure its financial ability to discharge its financial obligations under the Proposed Series E Bonds, the District entered into a supplemental contract with the City dated December 13, 1983 (the "Third Supplemental Contract"), and substantially identical third supplemental contracts with the other Participating Cities.

(n) This Fourth Supplemental Contract is necessary to release the City from its obligations in regard to the Proposed Series D Bonds (as set out in the Second Supplemental Contract) and the Proposed Series E Bonds (as set out in the Third Supplemental Contract), since the Proposed Series D Bonds and the Proposed Series E Bonds will not be issued. This and substantially identical fourth supplemental contracts with other Participating Cities are also necessary in order to insure the District's financial ability to discharge its financial obligations under the Series D/E Bonds.

Section 3. Original Contract Further Amended and Supplemented. Section 2(a) of the Original Contract, as supplemented by the First Supplemental Contract, Second Supplemental Contract and Third Supplemental Contract, is further amended and supplemented:

- (a) by deleting paragraph (5);
- (b) by deleting paragraph (6); and
- (c) by adding a new paragraph (5) to read as follows:

(5) For the payment of debt service on the Series D/E Bonds, an initial payment of \$22,785 on October 1, 1985; and two hundred eighty-eight (288) monthly payments of \$5,138 each, on the first business day of each month commencing in the month immediately

following the initial payment. The payments provided for above may be modified only with the prior written approval of the Trustee for the owners of the Series D/E Bonds, after the presentation of evidence satisfactory to the Trustee, in the sole discretion of the Trustee, 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 debt service reserves 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 paragraph 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. All such payments shall be used to pay principal of and interest on the Series D/E Bonds at maturity or upon redemption prior to maturity. The District may invest such payments until needed for payment of debt service. Investment earnings shall be used for operation, maintenance and repair of the District's water system.

Section 4. Use of Surplus Funds For Additional Improvements. All funds received by the District for the purpose of financing the Phase I Improvements and the Phase II Improvements which are in excess of the amount necessary to pay the cost of such improvements shall be used, in the discretion of the Board of Directors of the District, to enlarge the capacity of and/or to make improvements to the water system of the District (the "Additional Improvements").

Section 5. Contracts With Other Participating Cities. It shall be a condition precedent to the enforcement of the City's obligations hereunder that each of the other Participating Cities shall have entered into a fourth supplemental contract substantially identical to this contract. If the condition is not satisfied the City shall remain obligated to perform its obligations under the Original Contract as supplemented by the First Supplemental Contract, Second Supplemental Contract and Third Supplemental Contract.

Section 6. Original Contract Continues in Effect.
The Original Contract, as heretofore and herein amended and supplemented, shall continue in full force and effect. The payments provided for in Section 3(c) 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 Fourth Supplemental Contract on this 9 day of April, 1985.

ATTEST:

CARROLL-BOONE WATER DISTRICT

By Charles B. Freeman, President

Herbert B. West, Secretary

(SEAL)

ATTEST:

CITY OF EUREKA SPRINGS ARKANSAS

By Donald L. Hummer
Mayor

Quanita S. Barner
Dep. City Clerk

(SEAL)

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 9th day of April, 1985.

ATTESTED:

Joanita S. Barber
Dep. City Clerk

(SEAL)

APPROVED:

Donald L. Humm
Mayor

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. 1223, adopted at a regular 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 9th day of April, 1985, and that the Ordinance is of record in Ordinance Record Book #4 at page 344, now in my possession.

GIVEN under my hand and seal on this 9th day of May, 1985.

Janita S. Barner
Dep. City Clerk

(SEAL)