

ORDINANCE NO. 1345

AN ORDINANCE APPROVING A CONTRACT WITH CARROLL-BOONE WATER DISTRICT; AND DECLARING AN EMERGENCY.

WHEREAS, Carroll-Boone Water District, a regional water distribution district providing treated water to the Cities of Eureka Springs, Berryville, Green Forest and Harrison, Arkansas, pursuant to existing contracts between the District and each of the Cities, proposes to refund its outstanding bonded indebtedness and, in connection therewith, has asked each of the Participating Cities to enter into a new Contract;

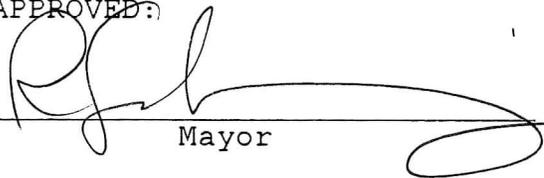
NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Eureka Springs, Arkansas:

Section 1. There is hereby authorized a Contract between Carroll-Boone Water District and the City in substantially the following form and in substantially the following content:

Section 2. In order for the Water District to carry out its refunding plan, which will result in substantial debt service savings to the District and thereby to the Participating Cities, each of the Participating Cities must promptly execute and deliver the new Contract in the form herein approved. 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.

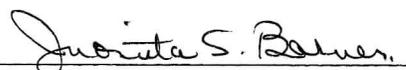
ADOPTED this 14th day of March, 1989.

APPROVED:



Mayor

ATTEST:



City Clerk

(SEAL)

CERTIFICATE

The undersigned City Clerk of the City of Eureka Springs, Arkansas, hereby certifies that the foregoing pages are a true copy of Ordinance No. 1345, adopted at a regular session of the Council of the City of Eureka Springs, Arkansas, held at the regular meeting place of the Council in the City at 9:00 a.m., on March 14, 1989, and that said Ordinance is of record in Ordinance Record Book No. 5, page , now in my possession.

GIVEN under my hand and seal this 14th day of March, 1989.

Jeanita S. Barner
City Clerk

(SEAL)

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 Title 14, Chapter 116 of the Arkansas Code of 1987 Annotated), entered into under the authority of A.C.A. §14-116-106 (1987). 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 have entered into a contract (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.

(b) 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"), the District acquired and constructed an intake structure, treatment plant and transmission lines (the "Improvements").

(c) The Improvements were undertaken and completed in phases. The cost of each phase was paid for through a combination of governmental grants, bonds issued by the District and subordinated loans made to the District by the Arkansas Soil & Water Conservation Commission. The Bonds which have been issued by the District and remain outstanding are described as follows: Water Revenue Improvement Bonds, Series A; Water Revenue Bonds, Series B; Water Revenue Bonds, Series C; and Water Revenue Improvement Bonds, Series 1985. Each of the Participating Cities has entered into a contract requiring payment of specified amounts to be applied to the payment of debt service on each series of Bonds. The contract of the City of Eureka Springs requires it to make monthly payments as follows: \$1,293.58 for the Series A Bonds; \$274 for the Series B Bonds; \$1,477 for the Series C Bonds; and \$5,138 for the Series 1985 Bonds.

(d) The United States Department of Agriculture, Farmers Home Administration ("FmHA"), is the owner of the outstanding Bonds of Series A, B and C. FmHA has announced a program enabling issuers to redeem such Bonds at substantial

discounts from face amount. The outstanding Bonds of Series 1985 bear interest at rates substantially above rates that can be obtained in the current market. In order to realize substantial savings on overall debt service, the District proposes to issue its Refunding Bonds to finance the early redemption of all its outstanding Bonds (Series A, B and C, owned by FmHA, and the Series 1985 Bonds). The debt service savings will be passed on to the Participating Cities.

(e) In addition to payments under the contracts with the District, each Participating City has been required to pay a water use charge in excess of the operation and maintenance costs of the District (by being denied a rebate of a portion of the excess of the water use charge over such operation and maintenance cost) to provide funds for payment of debt service on the Soil & Water Conservation Commission loans. Under the proposed refunding plan, each Participating City can make monthly payments equal to the monthly payments now being made for debt service on the outstanding bonds and the amount of such payments will be sufficient to also discharge the debt service requirements on the District's Soil & Water Conservation Commission loans.

Section 3. Payments by the City. 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:

(a) For the payment of debt service on the Bonds of the District issued to refund the outstanding bonds and for the payment of debt service on the Arkansas Soil & Water Conservation Commission loans of the District, monthly payments of \$8,182.58 each. Such payments shall be made on the first business day of each month, commencing in the month immediately following the issuance of the District's Refunding Bonds and continuing until the debt evidenced by the Refunding Bonds (including any refinancing thereof) has been paid in full. However, the monthly payments shall not continue beyond the month of March, 2009. Monthly payments by the City of Eureka Springs and other Participating Cities will be used by the District (1) to pay debt service on the debt evidenced by the District's Refunding Bonds, (2) to pay debt service on the District's Soil & Water Conservation Commission loans and (3) any excess shall be deposited into a separate "capital improvements fund" and used for future capital improvements for the District. Payments by the City of Eureka Springs shall be made without regard to whether the other Participating Cities

have fulfilled their obligations to make payments pursuant to similar contracts described in Section 8. Payments called for under 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 not withstanding any circumstances or occurrences that may now exist or that may hereafter arise or take place.

(b) To enable the District to discharge its obligations under the Water Supply Contract, an annual payment equal to 14% of the aggregate annual payment the District is required to make to the United States of America 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 V thereof.

(c) 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 operation and maintenance costs, fund a depreciation reserve and establish a reasonable reserve for payment of operation and maintenance costs.

(d) The City 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 payment obligations hereunder.

Section 4. City Bonds. It is understood that the City has outstanding Bonds to which Waterworks and/or Sewer revenues are pledged and may issue outstanding bonds payable from such sources in the future. The City covenants and agrees that it will impose and collect rates for water and/or sewer services that will produce revenues at least equal to the lesser of (a) the amount necessary to make the payments called for in this Contract when due and, together with any other utility revenues from municipally owned utilities that may lawfully be used and are actually available, to pay the reasonable expenses of operation, maintenance, repair and depreciation from the City's Waterworks (or combined Waterworks and Sewer) System, and to make all principal and interest payments and to make all fund deposits, required in connection with all bonds and other obligations of the City to which Waterworks (or combined Waterworks and Sewer) System revenues are pledged, outstanding at any time during the life of this Contract, or (b) the amount necessary to pay annual operation and maintenance expenses

(exclusive of depreciation and debt service expenses) and leave a balance equal to 1.20 times the maximum annual requirements on all then outstanding bonds and other obligations payable from System revenues. The City will raise the rates from time to time when and to the extent necessary to fully provide for the above set forth purposes.

Section 5. Revenue-Producing Undertaking. 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 the Waterworks (or combined Waterworks and Sewer) System as long as its obligation to make payments under this Contract continues.

Section 6. Third-Party Beneficiaries. The City and the District agree that the holders of the District's Refunding Bonds, or any obligations used for refinancing thereof, shall be third-party beneficiaries of this Contract, and shall have the right to enforce the terms of this Contract.

Section 7. Priority. The pledge of Waterworks (or combined Waterworks and Sewer) System revenues to its obligations hereunder shall, to the extent permitted by the terms of outstanding Bonds, be on a parity with pledges of Waterworks (or combined Waterworks and Sewer) System revenues to the presently outstanding Bonds of the City (or the junior lien issue thereof to which such revenues are pledged). The City covenants and agrees that it will not issue any additional bonds or obligations having a priority of lien, pledge or claim upon the revenues pledged under this Contract, and will not issue any additional bonds or obligations ranking on a parity of lien, pledge and claim with its obligations under this Contract unless the Waterworks (or combined Waterworks and Sewer) revenues of the City for the fiscal year immediately preceding the issuance of such additional obligations, as increased by any additional revenues to be received from extensions, betterments and improvements being constructed out of the proceeds of the additional obligations then being issued, as certified by an independent registered professional engineer, shall have been at least equal to the lesser of (a) the amount necessary to provide for the maximum annual requirements on all then outstanding bonds and contracts that will become due in any one year, including, without limitation, this Contract and the bonds or obligations then proposed to be issued, 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 then current fiscal year, 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 the obligations then being issued, or (b) the amount necessary to pay the annual operation and maintenance expenses (exclusive of depreciation and debt service expenses) after completion of the extensions, betterments and improvements to be financed from the additional obligations and leave a balance equal to 1.20 times the maximum annual requirements on the obligations then being issued and all then outstanding bonds and other obligations payable from System revenues.

Nothing herein shall be construed as prohibiting the City from issuing bonds or incurring obligations having a lien, pledge and claim on the revenues pledged hereunder which is subordinate to the lien, pledge and claim of the District under this Contract.

Section 8. 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 Contract substantially identical to this Contract and providing for monthly payments to such other Participating City under Section 3(a) equal to the aggregate payments such other Participating City is presently required to make under its Original Contract with the District, as supplemented by the First, Second, Third and Fourth Supplemental Contracts.

Section 9. Existing Contract Superseded. The City's Original Contract with the District, dated May 28, 1977, as amended and supplemented by the First Supplemental Contract dated December 5, 1980, the Second Supplemental Contract dated December 15, 1982, the Third Supplemental Contract dated December 13, 1983, and the Fourth Supplemental Contract dated April 9, 1985, is superseded and terminated by this Contract, effective as of the date of issuance of the District's Refunding Bonds.

IN WITNESS WHEREOF, the District and the City have executed this Contract on the _____ day of _____, 1989.

CARROLL-BOONE WATER DISTRICT

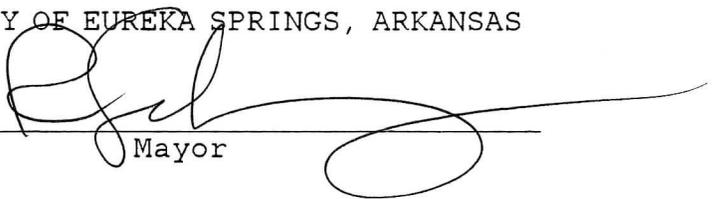
By _____
President

ATTEST:

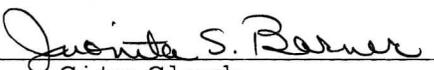
Secretary

(SEAL)

CITY OF EUREKA SPRINGS, ARKANSAS

By 
Mayor

ATTEST:



City Clerk

(SEAL)