

ORDINANCE NO. 1552

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 expand its treatment plant capacity from 8 million gallons per day to 12 million gallons per day and, in connection therewith, has asked each of the Participating Cities to enter into an amendment to its existing contract;

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

Section 1. There is hereby authorized an Amendment to Contract between Carroll-Boone Water District and the City in substantially the form and content attached hereto.

Section 2. In order for the Water District to carry out its plan, which is necessary to enable the Water District to continue to supply the Participating Cities with adequate water, each of the Participating Cities must promptly execute and deliver an Amendment to 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 12th day of October, 1993.

APPROVED:

Allen Bess Jorman
Mayor

ATTEST:

Juanta S. Barnes
City Clerk

(SEAL)

AMENDMENT TO CONTRACT

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

Section 1. The Parties. The District was formed by agreement between Carroll County Water District and Boone 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. A copy of the Water Supply Contract is attached hereto as Exhibit A.

(b) The District and the Cities of Berryville, Green Forest, Eureka Springs and Harrison (collectively, the "Participating Cities") entered into a Contract dated March 9, 1978, entitled MEMORANDUM OF UNDERSTANDING AND CONTRACT PROVIDING FOR CONSTRUCTION, MAINTENANCE, OPERATING AND EXPANSION OF THE CARROLL-BOONE WATER DISTRICT WATER SUPPLY FACILITIES (the "Memorandum of Understanding"). A copy of the Memorandum of Understanding is attached hereto as Exhibit B.

(c) In March of 1989, the District and each Participating City entered into a Contract (a "Financial Contract"). A copy of this City's Financial Contract is attached hereto as Exhibit C. Each of the other Participating Cities entered into a similar Financial Contract, each of which obligates a Participating City to make fixed monthly payments to be used to pay debt service on obligations of the District and to fund future capital improvements for the District, to make annual payments sufficient to pay a specified percentage of the annual payments of the District under the Water Supply Contract, and to pay for water received from the District at rates established in the amounts necessary to pay costs of the District.

(d) As contemplated by the Financial Contracts and in order to realize debt service savings, the District issued its Water Revenue Refunding Bonds, Series 1989, in order to refinance all then existing bonds of the District. Subsequently, in order to realize further debt service savings, the District issued its Water Revenue Refunding Bonds, Series 1993 (the "Series 1993A Bonds") for the purpose of refinancing the debt evidenced by the Series 1989 Bonds.

Section 3. Series 1993 Project. In order to meet the present and future needs of the Participating Cities the District proposes to expand its treatment plant capacity from 8 million gallons per day to 12 million gallons per day in accordance with an Engineering Report prepared by McGoodwin, Williams & Yates, Inc., a copy of which is attached hereto as Exhibit D. The expansion (hereinafter referred to as the "1993 Project") can be partially financed from existing funds of the District and the balance of the financing can be provided from a bond issue of the District (the "Series 1993B Bonds") in the principal amount of not to exceed the amount (approximately \$460,000) that can be serviced without increasing the payments the Participating Cities are required to make under Section 3(a) of the Financial Contracts. The City of Eureka Springs approves the 1993 Project and its financing through use of moneys in the District's Capital Improvements Fund, up to \$500,000 of moneys in the District's Depreciation Fund, and a bond issue of the District in not to exceed the amount specified above.

Section 4. Amendment to Financial Contract. Section 3 of the Financial Contract between the City of Eureka Springs and the District is amended by striking everything before paragraph (b) thereof and inserting in lieu thereof the following:

"Section 3. Payment by the City. The City will make payments to the District, solely from the 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 Series 1993A Bonds, the Series 1993B Bonds, and 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 until the debt evidenced by the Series 1993A Bonds and the Series 1993B Bonds (including any refinancings of either) has been paid in full. However, the monthly payment 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 (i) to pay debt service on the debt evidenced by the Series 1993A Bonds, and the Series 1993B Bonds (ii) to pay debt service on the District's Soil & Water Conservation Commission Loans, and (iii) any excess shall be deposited into a separate "Capitol 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 date 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."

Section 5. Financial Contract Continues in Force. The Financial Contract between the District and the City of Eureka Springs, as herein amended and supplemented, shall continue in full force and effect.

IN WITNESS WHEREOF, the District and the City have executed this Contract on the ____ day of _____, 1993.

CARROLL-BOONE WATER DISTRICT

By _____
President

ATTEST:

Secretary

(SEAL)

CITY OF EUREKA SPRINGS, Arkansas

By Ann Besjorman
Mayor

ATTEST:

Janice S. Barner
City Clerk

(SEAL)

Ordinance 1552

FRIDAY, ELDREDGE & CLARK

A PARTNERSHIP OF INDIVIDUALS AND PROFESSIONAL ASSOCIATIONS

ATTORNEYS AT LAW

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WRITER'S DIRECT NO.

September 29, 1993

Mr. Jim Walden
Administrative Assistant
44 South Main
Eureka Springs, Arkansas 72632

Re: Expansion of Carroll-Boone Water District Treatment
Facilities

Dear Mr. Walden:

Mr. Jim Yates, President of the Carroll-Boone Water District, has asked me to forward the enclosed material for consideration of approval at your October 12 City Council meeting.

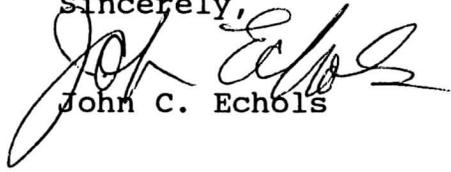
I am enclosing a proposed Ordinance approving an Amendment to Contract for your existing Contract with the District. A proposed form of Certificate to be completed by the City Clerk after adoption is attached to the front of the Ordinance. It should be amended as appropriate to reflect the action taken on the ordinance. The proposed Amendment to Contract and Exhibits A, B, C & D are attached to the back of the Ordinance. If the Ordinance is approved and/or the Amendment signed by an Acting Mayor or Mayor Pro Tem the proper title should be inserted.

By approving this Contract the City would be approving the physical expansion of the treatment facilities and the use of the City's fixed monthly payment under paragraph 3(a) of the Contract for the new bonds as well as existing indebtedness.

If the Ordinance is satisfactory and adopted by your City, please furnish us (1) a copy of the Ordinance, as adopted, with the attached Certificate completed and signed by the City Clerk, and (2) a proof of newspaper publication of the Ordinance. It would be satisfactory to me if the Ordinance is published with the Amendment to Contract, but without the Exhibits to the Amendment.

If there are questions or problems, please feel free to contact either Jerre Van Hoose or me.

Sincerely,



John C. Echols

JCE/svd
Enclosures

P.S. I find that I do not have a copy of the Water Supply Contract (Exhibit A to the Amendment to Contract). I called Jerre Van Hoose and he has promised to get a copy to you.

cc: Mr. James A. Yates, President, CBWD
Board of Directors, Carroll-Boone Water District
Mr. John Summers, CBWD
Mr. Lewis E. Epley, Jr., Epley & Epley, Ltd.
Mr. Paul Young, Jr., T.J. Raney & Sons
Mr. Jerre Van Hoose, McGoodwin, Williams and Yates, Inc.
Mr. Jay C. Miner, City Attorney