

RESOLUTION #84

This Resolution, made this 19th day of December, 2000, by the City Council of the City of Tontitown:

WITNESSETH:

WHEREAS, the City of Tontitown is a member of the Osage Basin Wastewater District ("District"), established on January 7, 2000, with member municipalities being Elm Springs, Cave Springs, Highfill, and Tontitown, Arkansas ("Members"); and

WHEREAS, there is currently before the Members for consideration of adoption and execution, an Intermunicipal Service Agreement, a copy of which is attached hereto as Exhibit "A"; and

WHEREAS, the Intermunicipal Service Agreement sets forth the various rights and responsibilities of the Members with regard to the District, and further, that it is in the best interests of the Members to enter into this agreement to best carry out and realize the objectives of the District;

NOW, THEREFORE, BE IT RESOLVED that the City of Tontitown, as a Member of the Osage Basin Wastewater District, should enter into and joint in executing the Intermunicipal Service Agreement attached hereto; and

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute and deliver such documents and applications as may be required to carry out the terms of this Resolution, and to do all other acts necessary to effectuate the terms of this Resolution.

This Resolution passed this 19th day of December, 2000.

Daniel R. Watson
Mayor

Attest:

Frances France
City Clerk

INTERMUNICIPAL SERVICE AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2000 by and between Osage Basin Wastewater District (hereinafter called "District") and the City of Elm Springs, City of Cave Springs, City of Tontitown, and the City of Highfill (hereinafter sometimes called "Cities") upon the following terms and conditions:

1. District will construct a wastewater treatment plant in Washington County, Arkansas, hereinafter referred to as "Plant", and the said Plant is to be constructed in a manner making it capable of receiving all of the wastewater to be collected by wastewater collection systems, which will be constructed by Cities. The wastewater collection systems will be constructed by each city and located within the boundaries of each city and the pipes and pumping stations connecting the collection systems and the plant, sometimes collectively hereinafter referred to herein as "Collection System". The District agrees to furnish the services of the Plant to Cities, subject to the terms of this Agreement. The consideration for the Agreement is the mutual benefits and covenants set forth herein.

2. District shall obtain the necessary financing for the construction of the Plant and all related improvements necessary to treat the wastewater received from the collection systems of Cities, all in accordance with the specifications of the Environmental Protection Agency, the Arkansas Department of Environmental Quality and any other regulatory agency controlling the treatment of wastewater. Cities shall each be responsible for the construction of their Collection System and for the financing of the construction of the Collection System. The financing and division by this paragraph shall be subject to the following:

(a) District anticipates the receipt of a grant from the Arkansas Department of Environmental Quality, acting on behalf of the United States Environmental Protection Agency, or reimbursement of a portion of the cost to be incurred in the construction of the Collection Systems. As a condition of acceptance of the funds from said grant, Cities agree to utilize the said funds solely as a reimbursement for eligible costs incurred in the construction of the wastewater collection system. Cities further agree to comply with all such provisions and assistance regulations applicable to the Environmental Protection Agency in this project, and to comply with all the terms and conditions of the agreement between the Environmental Protection Agency and the District.

(b) Cities and District shall comply with all applicable regulations of the Farmers Home Administration.

3. District shall be solely responsible for the repayment of any obligations it may incur or issue evidencing in any indebtedness necessary for the financing of the construction of Plant. Cities shall be solely responsible for the repayment of any obligations they may incur or issue evidencing any indebtedness necessary for the financing of the construction of their Collection System. District shall not be responsible for or liable for the debt service of Cities. Cities shall not be responsible for or liable for the debt service of District, except to the extent a City withdraws from the District after the District incurs debt or obligations will cause debt to be

incurred in the future and such debt or obligation is not reduced by the withdrawal of such City and imposes a greater burden on the *District and/or the remaining Cities*.

4. District shall retain responsibility for supervising all initial construction of the treatment facility in accordance with the plans and specifications prepared for District by its engineer.

5. District and Cities shall share responsibility for construction of the Collection System during the one (1) year project performance period required by the Environmental Protection Agency; thereafter, Cities shall each be solely responsible for performance of their respective Collection System and each respective City shall own its collection system.

6. District shall be solely responsible for the performance of Plant during the project performance period.

7. Cities shall provide all easements and rights-of-way necessary for the construction and maintenance of their respective Collection System. District shall be responsible for the acquisition of land and easements necessary for the construction and maintenance of the treatment plant and any lines to each Collection System; provided, however, in the event it is necessary for a City to use its power of eminent domain for the benefit of District, all or any of the cities shall do so with the cost to be borne by District, except any condemnation solely for a City's Collection System within its corporate limits.

8. Notwithstanding any provisions herein contained to the contrary, District shall retain an ownership and maintenance responsibility for all portable equipment purchased with any funds in the form of a grant from the Environmental Protection Agency or the Arkansas Department of Environmental Quality.

9. The District shall set the rates to be charged to each City. District shall review the rate structure and make necessary adjustments for the treatment rates at least annually.

10. Each city shall enact and enforce a pretreatment ordinance and a sewer use and user charge ordinance, approved by the District and the Arkansas Department of Environmental Quality and the Farmers Home Administration, at whatever rates they shall deem appropriate, with such approval. District shall apply a surcharge to Cities if they fail to enact and enforce such an ordinance. The surcharge shall be proportionate to the additional administrative and operational maintenance costs that District incurs due to the failure of the city or any other participating entity to enact and enforce such ordinances.

11. Should Cities allow the deterioration of Collection System to a degree that excessive infiltration inflow of ground and surface water into the Collection System is causing chronic operational difficulties at Plant, District shall notify the offending city that rehabilitation of the Collection System is necessary. Such notice shall be in writing directed to the mayor of the offending city. The city, after being so notified, shall immediately undertake the repairs and rehabilitation of the Collection System to prevent excessive infiltration and inflow. Failure to make timely repairs and rehabilitation necessary shall permit the District to apply a surcharge to the offending city based on the lost reserve capacity of Plant due to excessive infiltration and inflow and any increased administrative, maintenance and operational cost to District due to excessive infiltration and inflow. Cities shall comply with any and all orders, regulations, mandates or directives issued by Arkansas Department of Environmental Quality, Environmental

Protection Agency, or other controlling agencies ("Administrative Directives"), whether such Administrative Directives are directed at the District or the City(s) or a combination of both. To the extent a City fails or refuses to comply with such Administrative Directives, District shall be entitled to seek injunctive relief against such City to require its action or, in its sole discretion, to seek damages which District may suffer as a result.

12. The reserve capacity of District and Plant shall be allocated on a "first come, first serve" basis until such time as the average daily flow at Plant reaches _____ gallons per day. District shall then allocate the remaining reserve capacity proportionate to the average daily flow of each entity which delivers wastewater to Plant for treatment.

13. This Agreement shall be binding upon District and Cities and may be amended only through a written amendment signed by both parties with the same formalities and subject to the same resolutions authorizing its enactment as are applicable to this Agreement. In the event one party wishes to propose an amendment to this Agreement, the written proposed amendment shall be delivered to the chairman of District and to Plant and to the respective mayors of each city. Each party shall have a period of thirty (30) days after receipt of the proposed amendment within which to consider the said amendment, acting through their board and council, and to notify the proposing party of acceptance or rejection of the proposed amendment. In the event all of the financing necessary to construct Plant and the wastewater Collection Systems in the cities is not *obtained after District has made reasonable efforts to obtain such financing*, then in such event this Agreement shall be null and void.

14. This Agreement shall be in full force and effect until terminated by the mutual written agreement of all parties hereto. Upon partial or complete termination, any property of the District, which is no longer required for operation of District because of such termination, shall be sold in the time, manner and method required by statute for the sale of property by a wastewater district and if there is no such statute, then in the time, manner and method required by statute for the sale of property by a municipality and if there be no such statute then at public auction after advertisement at least three (3) times in a newspaper with general circulation within the District under the terms and conditions *determined by the District*. *Any property of a participating City related to its respective Collection System shall remain the property of that City.*

15. This Agreement shall be binding upon the parties hereto, their successors and assigns. This Agreement shall be effective on its execution by the officers of District and Cities following a resolution of the board and council authorizing the execution thereof by the said offices; provided, however, as a condition precedent to its effectiveness this Agreement or any amendment thereto, shall be submitted to the Arkansas Attorney General pursuant to ACA 25-20-104 for his approval and shall not be effective until and unless such approval is received and attached hereto and filed of record in accordance with Arkansas law. To the extent this Agreement does not comply with the Interlocal Cooperation Act at ACA 25-20-100, et seq., any provision contrary to such Act shall be void and all other provisions not in conflict shall be in full force and effect.

WITNESS OUR HANDS on the date first hereinabove written.

OSAGE BASIN WASTEWATER DISTRICT

BY: _____

CITY OF ELM SPRINGS

Mayor

CITY OF TONTITOWN

Daniel R. Watson
Mayor

CITY OF CAVE SPRINGS

Mayor

CITY OF HIGHFILL

Mayor