ORDINANCE NO. 401

AN ORDINANCE AMENDING ORDINANCE 379 AND ESTABLISHING RATES FOR SERVICES RENDERED BY THE WATER AND SEWER SYSTEM OF THE CITY OF BARLING, ARKANSAS; AND PRESCRIBING OTHER MATTERS RELATING THERETO.

WHEREAS, the City of Barling, Arkansas (the "City") owns and operates a water and sewer system (the "System"); and

WHEREAS, Ordinance 379, passed September 13, 2011, established rates for services rendered by the water and sewer systems to customers of the City of Barling, Arkansas; and

WHEREAS, the Central Water Users Association has approached the City of Barling regarding the sale of water so that it can adequately supply the Association's customers; and

WHEREAS, Section 1 of Ordinance 379 does not provide for water rates to customers outside the city limits of Barling and it is necessary for Section 1 of Ordinance 379 to be amended to provide for water usage rates for such entities;

NOW, THEREFORE, BE IT ORDAINED by the Board of Directors of the City of Barling, Arkansas:

Section 1. That Section 1 of Ordinance 379 is amended as follows:

Section 1. That the following monthly rates, which the Board of Directors hereby find and declare are fair, reasonable and minimum rates, are hereby confirmed as rates to be charged for water services rendered by the System.

The water usage of each customer shall be determined each month by meter measurement and the amount to be paid by each customer shall by computed on the basis of the following schedule of rates:

CUSTOMERS WITHIN THE CITY LIMITS OF BARLING:

For the first 3,000 gallons of water consumption per month, or portion thereof	**$19.91 (minimum)**
For all monthly water consumption in excess of 3,000 gallons per month	**5.36 per 1,000 gallons**

CENTRAL WATER USERS ASSOCIATION (CWUA):

$2.31 per hundred cubic feet (ccf)

Section 2. It being necessary to preserve the City's public health, safety, and welfare, an emergency is hereby declared to exist and this Ordinance shall take effect and be in full force from and after its passage and approval.

PASSED: this 27th of August, 2013.

Mayor Jerry Barling

ATTEST:

City Clerk Kim Bentley

(SEAL)

CITY CLERK
Seal
BARLING, ARKANSAS

BARLING/CENTRAL WATER USERS ASSOCIATION

This Agreement made and entered into as of the 27th day of August, 2013, by and between the City of Barling, Arkansas, hereinafter referred to as the "Barling", and the Central Water Users Association, a non-retail customer of Barling, hereinafter referred to as the "CWUA".

WITNESSETH:

WHEREAS, the parties desire to initiate the sale and purchase of such water under the terms and expressed in this Agreement;

NOW, THEREFORE,

In consideration of the mutual agreements and covenants hereinafter set forth, the parties agree as follows:

1. Subject to restrictions on maximum use and connections and all other restrictions contained herein, Barling agrees to supply to CWUA treated water for the users of CWUA's water system.

2. For water sold and delivered to CWUA on or after the date of this Agreement, CWUA agrees to pay Barling as set forth in the water rate ordinance in effect on the date of execution of this Agreement by Barling (presently, Ordinance No. 379). Barling will submit a billing each calendar month for water delivered during the preceding calendar month and such billing shall be due and payable by CWUA within twenty (20) day from the date of mailing. Any billing which is not paid by the due date shall be subject to a ten percent (10%) penalty. The total amount of the billing, plus penalty, shall be subject to interest at the rate of ten percent (10%) per annum from forty (40) days from the billing date until paid. It is agreed by the parties that, in the event Barling adopts by ordinance a water rate for substantially all of Barling's non-

retail customers the rate of payment for delivered water as set forth in this paragraph shall be subject to modification as contained in said ordinance. Upon thirty (30) days written notice to CWUA by Barling of its adoption, or intention to adopt, such an ordinance, the rate established by the ordinance shall become effective. Barling's rate ordinance may provide for increased rates for usage in excess of the total usage provisions of paragraph 3 or the demand provisions of paragraph 3.

3. (a) It is understood by the parties that CWUA will be consuming surplus water currently available. The parties further agree that the volumes and delivery rates stated below are those expected to be required by CWUA during the initial ten (10) year period of this Agreement. CWUA may request increases to volume and/or delivery rate provisions for the second ten (10) year period of this Agreement to meet CWUA's needs required by system growth if increases to volume and/or delivery rate are supported by the annual reporting submitted by CWUA in accordance with Section 12 of this Agreement. CWUA agrees and covenants that it will limit its level of consumption of water from Barling so that it shall not exceed, at any time, the consumption level(s) during time periods as may be approved by Barling. It is further agreed that CWUA's maximum level of consumption of water from Barling shall not exceed ten (10) million gallons annually for the first year of this Agreement and shall not exceed twelve (12) million gallons annually at year ten of this Agreement. Furthermore, the maximum monthly usage shall not exceed 1.35 times the previous twelve (12) month, monthly average; and the maximum day usage (during any 24 hour period) shall not exceed 1.55 times the previous twelve (12) month, average day demand.

(b) CWUA further agrees that the rate of demand of its system on Barling's transmission or distribution systems shall not exceed two hundred (200) gallons per minute or

1.75 times the previous twelve (12) month average day demand, expressed in gallons per minute, whichever is smaller. CWUA shall operate its system so as not to place any maximum hour demand on Barling's transmission or distribution systems. CWUA shall provide storage within its own system to meets its maximum hour demands. In the event CWUA places a maximum hour demand on Barling's system, CWUA's water rate may be amended to include maximum hour costs.

(c) In the event CWUA exceeds any one of the maximum limits set forth in this Agreement, Barling shall have the right, at its option, in addition to imposing additional charges pursuant to paragraph 2, to take any of the following actions:

(1) Immediately reduce the flow of water to CWUA by any reasonable means, including the physical adjustment of the valves at points of connection or the installation of flow control devices at CWUA's sole expense; or,

(2) On ten (10) days written notice by registered mail to CWUA, cut off the water supply to CWUA, subject to CWUA's right to supply information regarding the alleged excess use to the City Administrator of Barling. This notice requirement shall not limit Barling's right to immediately cut off water supply to CWUA in the event of an emergency or other exigent circumstances.

(d) It is understood by the parties that CWUA has no obligation to purchase any minimum amounts from Barling. However, CWUA agrees that in the event CWUA purchases no water from Barling for a period of twelve (12) or more consecutive months, Barling may, at its sole election, terminate this Agreement.

4. CWUA agrees to initially provide, at its expense and in accordance with Barling's specifications and AWWA standards, appropriate vaults, regulation valves, approved backflow prevention assemblies and meters for properly registering the flow of water, in hundred cubic feet, delivered at sites approved in writing by Barling. It is further agreed by CWUA that such necessary equipment may also include a rate-of-flow control device if so required by Barling. Barling will receive from CWUA in ownership vaults and meters used at connections to Barling's system to maintain and, as necessary, replace. CWUA will maintain and, as necessary replace, regulation valves and backflow prevention assemblies.

5. It is agreed that CWUA will make no connections to Barling's system other than at approved sites. It is agreed by CWUA that Barling, or any of its agents, employees, or servants, shall have an unlimited right of access to such points of connection and physical facilities for maintenance or replacement of vaults and meters, for meter readings and for any other purpose of this Agreement.

6. It is understood by the parties that the treated water being delivered to CWUA is considered to be that not presently needed by the retail and firm supply wholesale customers of the water system of Barling. If, at any time, in the opinion of the governing body of the City of Barling, Barling does not have a sufficient supply of water to meet the needs of the retail and firm supply wholesale customers of the water system of Barling, Barling (in addition to the other provisions of this Agreement) shall have the right to terminate this Agreement and discontinue the sale of water to CWUA upon thirty (30) days written notice to CWUA. Otherwise, and unless the Agreement is terminated pursuant to other provisions of this Agreement or pursuant to breach by of one of the parties, this Agreement shall have a term of ten (10) years commencing with the date first set forth above. The Agreement may be renewed by Barling after receiving written

notice from CWUA, delivered by registered mail, requesting an extension of the Agreement at least ninety (90) days in advance of the expiration date of the current Agreement.

7. It is understood by the parties that rates charged will be in accordance with AWWA cost of service standards. It is further agreed by CWUA that rates charged to CWUA will be calculated on Barling's cost of supplying water to CWUA plus a reasonable rate of return. It is further agreed by CWUA that the rate charged shall also reflect CWUA's status as a surplus water user and the absence of an obligation by CWUA to purchase minimum quantities from Barling. CWUA agrees that such costs shall include maximum day and maximum hour costs if CWUA utilizes those levels of service and a demand and/or volume charge. It is further understood by the parties that water conservation surcharges shall apply pursuant to Barling Ordinance No. 329, as may be amended by Barling.

8. On failure by CWUA to pay any billing for water delivered by the due date thereof, Barling shall have the right, after giving ten (10) days written notice by registered mail to CWUA, to cut off or reduce the water supply volume to CWUA by means of the valves installed at any point of connection or by any other means. Within the ten (10) day period, CWUA may request a hearing before the City Administrator of Barling for the purpose of presenting information regarding the alleged failure to pay the billing.

9. Barling agrees to provide CWUA with customary water quality data annually. It is understood by the parties that CWUA may request water quality data up to three (3) additional times per year. Barling will endeavor to provide reasonable notice to CWUA of any sudden change in water quality.

10. (a) In event that the governing body of the City of Barling determines that there is a shortage of water to be supplied to the users of Barling's water system and declares the

excluding gardens that are intended for private domestic use and not for the resale to other individuals or commercials activities. Use of water delivered by any ordinary one-half (1/2") inch through three-quarter (3/4") inch hose, commonly known as a "garden hose", shall not be considered commercial or agricultural crop irrigation.

(d) CWUA agrees and covenants that it shall not deliver water to any user of its water system who, after the first date set forth above: (1) commences any use or development of any parcel of real property within the area served by the water system of CWUA and which is within a five (5) mile radius of the then existing Barling city limits and which is also not located within the corporate limits of any incorporated municipality without complying with all planning requirements of Barling Planning Commission as if said land had been located within the corporate limits of Barling or (2) who has commenced such use or development of any parcel of real property within the area served by CWUA and which is also within a two (2) mile radius of the then existing Barling city limits and which is also not located within the corporate limits of any incorporated municipality without complying with all the requirements of the Land Development Regulations of Barling. The provisions of this subparagraph shall not be construed as a limitation upon any legally enforceable right or duty of Barling to administer its planning jurisdiction and Land Development Regulations apart from this Agreement within or outside the area mentioned in this paragraph. The provisions of this subparagraph shall not apply to CWUA unless CWUA is now, or in the future becomes, subject to the planning jurisdiction provisions of Barling as provided by A.C.A. § 14-56-413 (1991 Supp.).

(e) In the event that any area served by CWUA's water system is annexed into the corporate limits of a neighboring municipality or CWUA either transfers or acquires a portion of a water system that is not at the date of this Agreement a part of CWUA's present

water system, CWUA shall immediately provide written notice by registered mail to Barling of such annexation, transfer or acquisition. CWUA's notice shall, at a minimum, state CWUA's opinion of the impact that the annexation, transfer or acquisition shall have on CWUA's storage and delivery systems and water purchases from Barling.

12. CWUA agrees and covenants to provide annual reporting to Barling which shall contain the following information:

(a) Number of residential customers, number of commercial customers, amounts of water billed by CWUA to its system customers and to any other water retailer, volumes of water acquired from any other supplier or produced by CWUA.

(b) CWUA shall provide a copy of its long range planning documents now required by the Arkansas Department of Health's rules and regulations within one (1) year after the initial date of this Agreement. If CWUA does not now have a long range plan as required by the Arkansas Department of Health, CWUA shall initiate the development of a long range plan and provide a copy of the same upon its completion or three (3) years from the date first set above, whichever is the earlier date. CWUA shall submit a report to Barling as to what actions CWUA has taken to improve its delivery and storage systems to meet the requirements of its long range plan. This report shall be submitted before the last day of January each year during the term of this Agreement with the first report due after the submission of CWUA's long range plan to Barling.

(c) In addition to the long range planning document referenced in paragraph (b) above, CWUA shall also use a qualified registered professional engineer to evaluate its current water delivery and storage systems to determine what actions and recommendations should be undertaken together with an implementation schedule to eliminate or reduce CWUA's peak

hourly demand from Barling's deliver system. This evaluation report shall be submitted to Barling within one (1) year after the initial date of this Agreement. CWUA's actions to implement the recommendations of this evaluation shall be reported to Barling before the last day of January each year during the term of this Agreement with the first report due after the submission of CWUA's initial reporting.

(d) CWUA shall maintain records and documentation sufficient for it to accurately determine and report the unaccounted water system losses during the previous calendar year period. The report shall state, at a minimum, what the unaccounted water system losses have been for the previous calendar year and what actions CWUA has taken to reduce and control these losses. This Report shall be submitted before the last day of March each year during the term of this Agreement.

(e) CWUA shall provide to Barling a copy of its current water conservation measures and will further provide Barling with revisions thereto within thirty (30) calendar days after their adoption. CWUA shall maintain records and documentation sufficient for it to accurately determine and report the effectiveness of its water conservation measures for the previous calendar year. The report shall state, at a minimum, the total number of customers served by CWUA, the total amount of water sold to its customers, the per capita usage and any enforcements measures taken to assure compliance with its water conservation measures. This report shall be submitted before the last day of March each year during the term of this Agreement.

(f) CWUA shall proved to Barling a copy of a map which depicts the area in which CWUA maintains facilities which provides retail water service. CWUA shall also provide to Barling a copy of a map depicting the similar area of any customer of CWUA which further

resells water to additional customers water initially sold by Barling to CWUA. CWUA shall provide Barling with a copy of the described maps before the last day of January each year during the term of this Agreement.

13. CWUA shall install a backflow prevention assembly at each point of connection to Barling's water system. The backflow prevention assembly shall be of a manufacturer accepted by Barling, and its installation, maintenance, testing and certification shall be in strict accordance with Barling's cross-connection program requirements. The installation, maintenance, testing and certification of each backflow prevention assembly shall be at CWUA's sole expense. CWUA shall also provide notice to Barling of any deficiency or notification to, or from, the Arkansas Department of Health relating to an unsafe condition within its water system, which notices shall be provided to Barling immediately upon discovery of, or notification regarding, such condition.

14. CWUA further agrees that Barling's commitment to provide water is contingent on the ability of Barling to produce water. It is expressly agreed that Barling shall not be responsible to CWUA, or to the inhabitants or owners of property or to customers of CWUA's water system, for any property damage or personal injury resulting from the supply of impure water, or a failure to furnish water under this Agreement, or a failure to provide any notice described in this Agreement. It is expressly recognized that the water supply may be temporarily discontinued in conjunction with required maintenance activities or with reference to the construction of improvements or additions to Barling's water production, transmission and/or distribution systems. It is agreed that CWUA will defend and hold Barling harmless against, and indemnify Barling from, any claim, action or judgment which might be brought or obtained against Barling by reason of any negligent act on the part of CWUA in the operation,

construction or maintenance of CWUA's water system or by reason of the failure of Barling to furnish water resulting in property damage or personal injury to any user of CWUA's system.

15. This Agreement shall be binding upon the successors of the parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party hereto. It is agreed that in the event of any occurrence rendering CWUA incapable of performing under this contract, any successor of CWUA, whether the result of legal process assignment, or other, shall succeed to the rights, responsibilities and obligations of CWUA hereunder.

16. Other than those entities listed in Exhibit One attached hereto, CWUA agrees that during the term of this contract it will not deliver water unto and will not enter into any written or oral, expressed or implied, contract with any corporation, CWUA, municipality, or water district whose purpose is or would be to resell the same water to other customers without Barling's prior, written concurrence.

17. CWUA agrees that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, color and national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by CWUA and that CWUA will immediately take any measures to effectuate this portion of the Agreement.

18. Except with reference to shut off curtailment notices and CWUA's right for hearing before the Barling City Administrator within ten (10) days of said shut off notice as described in paragraph 8, the following provisions shall apply to all other disputes arising under the terms of this Agreement. If either party to the Agreement contends that the other has violated

the terms of this Agreement the party may issue a dispute letter addressed to the representative of the other party at the address indicated in paragraph 19 of this Agreement. The letter shall describe the alleged violation of the Agreement. Within ten (10) business days of receipt of such letter, the other party shall reply to the dispute in writing. If the matter is not resolved by the exchange of correspondence, a meeting shall be held between the chief administrative official of the CWUA and the Barling City Administrator, or his designated agent, within thirty (30) calendar days of the reply letter of the other party. At such meeting, the parties shall, in good faith, attempt to resolve the dispute. Only after completion of the foregoing procedures shall the parties have the right to resort to judicial remedies which, as indicated in paragraph 21, must be brought within the Greenwood District of Sebastian County.

19. Any notice required to be given by the provisions of this Agreement shall be effective as delivered to the following persons at the indicated addresses:

City Administrator City of Barling P.O. Box 23039 Barling, AR 72923	Chairperson Central Water Users Association 1012 Butler Street Central City, AR 72941

20. It is expressly agreed that the failure of either party to exercise a remedy or particular remedy allowed by this Agreement at the time of breach or thereafter shall not be construed as waiver of such breach or as a waiver of such term or provision of the Agreement.

21. Enforcement or interpretation of any portion of this Agreement shall be governed by the laws of the State of Arkansas. Any litigation relating to this Agreement brought by either party shall be filed and prosecuted in the Sebastian County Circuit Court, Greenwood District.

IN WITNESS WHEREOF, the parties, pursuant to resolutions of their respective governing bodies, have caused this Agreement to be executed effective as of the first date set forth above by the Mayor and City Clerk of Barling and the authorized officers of the CWUA.

CITY OF BARLING, ARKANSAS

Mayor

ATTEST: .

City Clerk

CENTRAL WATER USER ASSOCIATION

Chairperson

ATTEST:

EXHIBIT ONE

Existing corporations, associations, municipalities or water districts now served by Central Water Users Association:

- NOT APPLICABLE AT THIS TIME