

**STATE OF NORTH CAROLINA
COUNTY OF McDOWELL**

AGREEMENT FOR PURCHASING WATER FOR THE NEBO WATER SYSTEM

THIS CONTACT, is made and entered into this 21st day of July, 2009 by and between the County of McDowell, a North Carolina Municipal Corporation, hereinafter referred to as “the County”, and the City of Marion, a North Carolina Municipal Corporation, hereinafter referred to as “the City”.

WITNESSETH

WHEREAS, McDowell County and the City of Marion are political subdivisions of the State of North Carolina, both having the power and authority to enter into this agreement and the signatories hereto have been authorized to execute this document on behalf of the McDowell County Commission and Marion City Council; and

WHEREAS, certain areas of the County including the Nebo area East of Marion, have demonstrated needs for water services due to inadequate water supplies and/or well contamination; and

WHEREAS, the County constructed water lines in the Nebo community generally, East of the location of a Master Meter located at the Intersection of Highway 70 East and NC 126, (hereafter referred to as the County System); and

WHEREAS, the “Agreement for Operating Nebo Water Improvements” was entered into on the 6th day of April, 2005; and

WHEREAS, the City presently has water supply and treatment capacity available to provide water to the Nebo area; and

WHEREAS, the County and the City have agreed to amend the April 6th, 2005 Agreement to provide for the County operation of the system and the City to sell water to the County to operate the system.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the parties hereto, intending to be legally bound hereby, agree as follows:

1. The County and the City mutually agree that this Contract shall become effective on August 17, 2009 and it shall continue in effect for ten years or until terminated by the consent of both parties. The term of the contract may also be extended with the consent of both parties.
2. McDowell County agrees to assume all operational responsibility for the Nebo System operating under the County Water System Identification Number NC

1056032 and to assume all responsibility for complying with state laws and regulations that apply to the ownership of the water system including all fines resulting from any failure to comply with said laws and regulations, except for violations that are the result of the City's negligence or violations that occur within the City's water system.

3. The County may construct any and all water extensions to the County System as it deems appropriate within the context of current State law and regulations. The County may resell water to other private or public water providers within the water usage limits established in this Agreement. The County assumes all responsibility for developing plans and specifications, contracting with an engineer, securing the necessary permits, easements, inspection services, contract and grant administration for the County System.
4. The County assumes all responsibility for the setting of rates and charges for the County System.
5. The City agrees to give the County all existing water meters and radio transponders in the ground as of the effective date of this agreement.
6. The City agrees to transfer to the County water deposits held by the City for customers that will be transferred to the County, upon each account being finalized and paid in full.
7. In the event the City of Marion must impose water restrictions on customers due to drought, system failure, or any other reason, McDowell County will impose the same restrictions on its customers.

The County shall compensate the City for water as follows:

1. The City will sell water to the County for the Nebo Water System at the City's inside rate (\$2.01 per 1,000 gallons plus a small service charge per month at the time of adoption). The rate and service fee charged will be adjusted as the City raises or lowers its inside water rate.
2. The City will bill the County for all water passing through the master meter located at the intersection of Highway 70 and NC Highway 126. The only exception to this charge would be for a documented use of water for firefighting purposes. This use will not include fire training purposes, washing of fire vehicles or filling swimming pools out of fire trucks. Documentation would need to be provided of such fires and the City will coordinate efforts with the County to estimate the amount of water that was used to extinguish a particular fire.
3. The City agrees to transfer to the County current City water customers located to the east of the master meter such as the Nebo Elementary School and the Nebo Post Office.

4. The City will bill the County monthly as it would any other water customer and the County will be subject to the same rules and policies as any other City water customer.
5. The City and the County agree that the amount of water available to the County under this contract will not exceed 200,000 gallons per day plus the excess water capacity provided to the County for the Industrial Park as part of the Agreement between the City and County dated March 8, 1995 and amended April 16, 2005.
6. If the average daily usage by County customers subject to this agreement exceeds 200,000 gallons plus the excess capacity from the Industrial Park Agreement, for any month period, no further connections shall be allowed, without the approval of the City, taking into account the City's water demand and available supply and treatment capacity for its entire system.
7. The City shall maintain water pressures and water quality, at the point(s) of delivery of water into the McDowell County water system, that are consistent with acceptable engineering standards and consistent with the regulations of the State of North Carolina.
8. The City and County agree that the area to be covered by this agreement does not include any properties served, by or with access to City water service, as of the effective date of this agreement cover any areas currently within the corporate limits of the City of Marion, or within the area of any Resolution of Consideration for annexation as approved by the Marion City Council, except as noted in Item 3 above.
9. The County and the City both represent that no litigation is pending or threatened against either party which would impair their ability to perform their respective duties and obligations under the terms, covenants and provisions of this agreement.
10. The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to design, construction or monetary compensation said disputes shall be resolved, ~~is~~ if at all possible, through good faith negotiations between the parties. It is the intent of both parties that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or arbitrators, shall be a preferred means of resolving disputes hereunder. It is further agreed that in the event such disputes cannot be resolved within sixty (60) days from the date they first arise, either party may seek such other remedies as may be available to them
11. Default and Termination. This agreement may be terminated for cause prior to its stated expiration date by either party in accordance with the terms and conditions set forth herein. The rights of the parties to terminate this agreement shall be strictly construed in accordance with the provisions contained herein. Upon the happening of

any of the following events of default by either party, the aggrieved party shall have the right to terminate this agreement.

- a. The failure of either party to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
 - b. The determination that any presentation, warranty or covenant made by either party is false and/or misleading in any material respect.
 - c. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against either party, which materially and adversely affects its ability to perform its duties or obligations under this agreement.
 - d. The failure of the County to make any payment required to be made by it pursuant to the terms of this agreement.
 - e. Any action by the City to divest itself of its water and/or sewer systems.
 - f. Any action by the County to construct a water treatment plant and to serve the area under this agreement with water from the County water treatment plant.
12. Upon the happening of any event described in the preceding section, the aggrieved party shall provide written notice to the party committing the alleged violation setting forth in detail the alleged failure and/or deficiency. Thereafter, within ten (10) days of receipt of notice of the alleged default, the parties to this agreement shall meet to discuss the circumstances and attempt to reach a resolution. If either party fails to fully perform or comply with all of the conditions, provisions and covenants of this agreement, and if the nonperformance or failure shall continue for more than thirty (30) days after written notice thereof by other party, or if the nonperformance or failure cannot be reasonably remedied within the same (30) day period and the party which is in violation of the agreement has not proceeded with or commenced the remedy in good faith, within fifteen (15) days of the receipt of such, notification, that party will be considered to be in default of this agreement. If the alleged default continues or the parties disagree as to whether the matter has been resolved, the aggrieved party may send written notice to the party committing the alleged default declaring an impasse and proceed to enforce all rights and remedies available to it either in equity or at law.
13. Each of the parties to this agreement shall be entitled to pursue a claim against the other for any non-monetary remedies available and any additional actual damages suffered as a result of any default by the other party, in addition to attorney's fees. Notwithstanding anything in the agreement to the contrary, neither party shall be responsible to the other for any indirect, third-party or consequential damages arising from a breach of this agreement.
14. To the extent allowed by law, each party shall indemnify, defend and hold harmless the other party, its elected and appointed officers, and its duly authorized agents, servants, and employees from any and all costs, expenses or liabilities (including costs, expenses or liabilities to third parties and attorney's fees) which are caused by or arise from its breach of this agreement or the negligent or willful acts of omission of the party in breach of the agreement or its agents, servants,

employees or subcontractors provided such cost, expenses or liabilities do not arise as a result of the negligent or willful acts or omissions of the other party.

15. NOTICES: For the purposes of this agreement, all notices required shall be deemed to have been properly served and shall be only served when posted by Certified United States Mail, Postage Prepaid, Return Receipt Requested, addressed to the Party to whom directed at the address herein set forth or at such other address as may from time to time be designated in writing by either party:

To McDowell County

To City of Marion

County of McDowell
60 E. Court Street
Marion, NC 28752
Fax Number: 828-659-3484
Attention: County Manager

City of Marion
Post Office Drawer 700
Marion, NC 28752
Fax Number: 828-652-1983
Attention: City Manager

16. This agreement embodies the entire agreement between the parties in connection with this transaction, and there are no oral or parole agreements, representations or inducements existing between the parties relating to this transaction, which are not expressly set forth herein. This agreement may not be modified except by a written agreement by all parties to this agreement. Neither party shall be entitled to sell, convey or otherwise alienate the rights and obligations created herein without the prior written permission of the other party to this agreement.
17. Nothing contained herein shall be construed to place the parties in the relationship of partners or joint venturers, and neither party shall have the power to obligate or bind the other party in any manner whatsoever.
18. No written waiver by any party to this agreement at any time of any breach of any other provision of this agreement shall be deemed a waiver of a breach of any provision herein or consent to any subsequent breach of the same or any other provision.
19. The captions and article numbers appearing in this agreement are inserted only as a matter of convenience and do not define, limit, construe or describe the scope of such paragraphs or articles of this agreement or in any way affect this agreement.
20. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.
21. Time shall be of the essence in this agreement and each and every term and condition thereof.
22. Words of any gender used in this agreement shall be held to include any other gender, and words in the singular number shall be held to include the plural, when the sense requires.

23. If any provision under this agreement or its application to any person or circumstance is held invalid by any court of competent jurisdiction such invalidity does not affect any other provision of this agreement or its application that can be given effect without the invalid provision or application.
24. In the event of litigation between the County and the City as to the terms, performance or any other aspect of this agreement, this agreement shall remain in force and effect during such litigation.
25. This agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this agreement to produce or account for more than one such fully executed counterpart.
26. Except as provided herein, the rights and remedies provided for in this agreement are cumulative and are not exclusive of any rights or remedies that any party may otherwise have at law or in equity.

IN WITNESS WHEREOF, the parties have executed this agreement on the day and year first above written.