STATE OF NORTH CAROLINA
COUNTY OF CALDWELL

AGREEMENT TO PURCHASE WATER

THIS CONTRACT is made and entered into this 1st day of July, 2024 by and between the City of Lenoir, a North Carolina Municipal Corporation hereinafter referred to as "Lenoir" and the County of Caldwell, hereinafter referred to as "Caldwell County".

WITNESSETH

WHEREAS, Lenoir and Caldwell County, 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 Lenoir City Council and the Caldwell County Commission; and

WHEREAS, Lenoir currently owns and operates a water treatment and distribution system, and is engaged in the enterprise of managing, operating, and maintaining said system and selling potable water to the public within its service area; and

WHEREAS, Caldwell County owns and operates a water distribution system, and is also engaged in the enterprise of managing, operating, and maintaining the system and selling potable water to the public within its service area; and

WHEREAS, Lenoir and Caldwell County mutually desire to enter into an agreement to sell and purchase water in accordance with the terms and provisions contained herein; and

WHEREAS, Lenoir has determined that it has the capability to sell water to Caldwell County throughout the term of this agreement without impairing services to the users connected to its water system; and

WHEREAS, Lenoir and Caldwell County each has or holds and will continue to have or hold throughout the term of this agreement, all appropriate permits necessary to effectuate their respective responsibilities under this agreement or will use their best efforts to obtain such permits;

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. This agreement shall commence on the 1st day of July, 2024, and unless earlier terminated in accordance with the terms herein, shall expire on the 30th day of June, 2034 (Hereinafter referred to as the "Water Service Period".)

2. Lenoir agrees to provide and sell to Caldwell County up to 1,500,000 GALLONS (ONE MILLION FIVE HUNDRED THOUSAND) of potable water maximum daily flow, measured through metered connections which are located, prescribed and maintained by Lenoir, at or above minimum State of North Carolina and Federal Standards for Public Water. Such maximum daily flow shall be based on a thirty (30) day average daily flow.

   Both Lenoir and Caldwell County shall annually conduct a mutual review and joint analysis for planning purposes of past and projected future water usages and needs. The Parties shall share appropriate information and data with each other to facilitate such review and planning.

3. Caldwell County agrees to use best efforts not to exceed the above maximum daily flow provided for in Section 2 of this agreement, unless Lenoir expressly agrees that said maximum daily purchase(s) may exceed 1,500,000 gallons for a specified period of time.

4. The water purchased by Caldwell County from Lenoir shall be transmitted on a continuous basis unless there is an unforeseen break, outage or interruption of Lenoir's water supply or water distribution system. In which case, Lenoir shall notify Caldwell County of the circumstances and provide timely updates so as to keep Caldwell County informed of the status of repairs or remedy(ies) for any such interruption.

5. Caldwell County agrees to timely pay Lenoir for water purchased on a monthly basis, in accordance with invoices, which shall be based upon meter readings conducted by Lenoir at all metered connections between the Lenoir and Caldwell County water systems. Lenoir agrees to read said water meters monthly and deliver to Caldwell County a written report summarizing said meter readings within fifteen (15) working days of each monthly meter reading. Lenoir will submit to Caldwell County a written invoice based on such meter readings by the 20th day of the following month. Caldwell County agrees to pay Lenoir the amounts of each such monthly invoice within 30 calendar days of the date of each invoice.

6. The initial Base Water Rate charged to Caldwell County for water purchases shall be $2.56 per one thousand gallons of water provided by Lenoir to Caldwell County. In the event the average daily flow during any monthly billing period exceeds the maximum daily flow of 1,500,000 gallons, the following surcharges (The "Surcharge Rate") will apply to the overage:

   (1,500,001) to (1,550,000) gallons - $2.82/1000 gallons
   (1,550,001) to (1,600,000) gallons - $3.10/1000 gallons
   (1,600,001) gallons or more $3.42/1000 gallons

   Over the term of this agreement or any extension thereof, Lenoir may, at its sole discretion, increase the Base Water Rate and /or the Surcharge Rate as it deems necessary. Lenoir shall not increase said rates to Caldwell County more

than one time during any fiscal year of twelve (12) months ending on June 30 of each year. Lenoir agrees to notify Caldwell County in writing of planned increases with an explanation of the factors used to determine set increase in rates at least ninety (90) days prior to June 30 of any fiscal year, with rate increases that are to become effective on July 1 of that same year. Provided, however, that the percentage of any increase in the rate charged to Caldwell County shall not exceed the percentage of increase in the rate charged to any other City of Lenoir water customer.

7. Lenoir agrees to maintain /repair /replace existing Lenoir water meters at the connection point(s) between the Lenoir and the Caldwell County water system as may be necessary to accurately measure the flow of water through the meter(s) to Caldwell County under this agreement.

   Lenoir shall calibrate such metering equipment at least every five (5) years, or whenever requested in writing by Caldwell County, but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous reading of the meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If the meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered to the corresponding period immediately prior to the failure. A designated official of Caldwell County shall at all reasonable times have access to the meters for the purpose of verifying their readings.

8. Caldwell County shall provide a minimum of 180 days advance written notice to Lenoir prior to the expiration of this initial 10-year term, stating either 1) the desire to renew said agreement, or 2) the intent to terminate said agreement. Caldwell County may elect to extend the agreement for an additional 5-year period under the same terms and conditions.

9. In the event that Caldwell County elects not to extend this agreement, Lenoir shall continue to provide and sell water to Caldwell County, under the same terms of the agreement, until Caldwell County has had sufficient opportunity to secure an alternate source(s) of potable water; however, Lenoir shall not be bound to continue to provide and sell water to Caldwell County beyond a period of twenty-four (24) months past the date of its written notification to Caldwell County of its intention not to extend this agreement.

10. Caldwell County agrees that Caldwell County and its water customers shall, during the period of this agreement, abide by and adhere to all water use policies, restrictions, and ordinances adopted now or subsequently adopted by Lenoir, of which they are subsequently notified, which impose water use restrictions, water conservation requirements, moratoriums, and other such limitations on the use of water during times of emergency or drought

conditions or during other situations which for public health or financial reasons justify said policies, restrictions, and ordinances.

11. Lenoir shall promptly notify Caldwell County upon becoming aware of any activity, problem or circumstance within the Lenoir system that might present a danger to the health, safety and welfare of Caldwell County water users. Further, Lenoir shall take appropriate action to remedy such activity, problem or circumstance within the Lenoir system and to avoid or minimize disruptions in service.

12. In the event of damage or destruction of Lenoir's key water facilities or any emergency which, in the reasonable judgment of Lenoir, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety, Lenoir may suspend operation of its water system, after thirty (30) days written notice to Caldwell County of such actions unless in the event of an emergency. Lenoir's response to emergencies and other such unusual circumstances shall be in accordance with applicable policies, regulations, laws and requirements and with such personnel and equipment as necessary to maintain or restore the operations of its water system in a timely manner with the least possible disruption or inconvenience to the users connected to both the Lenoir and Caldwell County water systems.

13. Upon notification by Caldwell County to Lenoir, Caldwell County may resell, give away, transfer or otherwise dispose of water purchased from Lenoir to third-party water systems. This notification should include information on the expected water usage and duration of transaction.

14. Caldwell County agrees to permit Lenoir to pass water through Caldwell County's water distribution system to destinations and/or to other third-party water systems beyond the Caldwell County system, provided that Lenoir:
    a) Submits a written notice to Caldwell County outlining the agreed-upon purposes, quantities and conditions of said pass through of water.
    b) That said request does not significantly diminish Caldwell County's capacity to provide services to its water customers.
    c) Lenoir subsequently pays to Caldwell County a Pass Through charge of $0.03 cents per 1000 gallons of pass through water. Caldwell County may request a modification of such charge with ninety (90) days advance written notice during the period of this agreement, at which time a new price will be negotiated between Lenoir and Caldwell County.
    d) Lenoir agrees to install metering equipment to measure and determine the quantities or such Pass Through water passing through Caldwell County's water system and report monthly to Caldwell County such amounts and

meter readings.

15. Lenoir and Caldwell County 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.

16. Resolution of Disputes
The Parties agree that should any disputes arise under this agreement, including but not limited to disputes pertaining to services, rates, or invoices, said disputes shall be resolved, if at all possible, through good faith negotiations between the parties. It is the intent of Lenoir and Caldwell County that pursuit of legal action shall be a remedy of last resort and that a negotiated resolution, including the use of outside experts or mediators, shall be the preferred means of resolving disputes hereunder.

17. Default and Termination
This agreement may be terminated prior to its stated expiration date by Lenoir or Caldwell County in accordance with the terms and conditions set forth below.

A. Termination for cause by Lenoir. Upon the happening of any of the following events of default by Caldwell County, Lenoir shall have the right to terminate this agreement:

a) The failure of Caldwell County to perform or observe and initiate a cure after thirty (30) days advance written notice any of its material covenants, agreements, obligations and/or duties created by this agreement.
b) The failure of Caldwell County to make any payment required pursuant to the terms of this agreement within sixty (60) days of its receipt of notice from Lenoir that any such payment is overdue, except in the event of a good faith dispute over the amount of any invoice provided; however, that the County shall timely pay the undisputed portion if any of such disputed invoice.

B. Termination for cause by Caldwell County. Upon the happening of any of the following events of default by Lenoir, Caldwell County shall have the right to terminate this agreement:

a) The failure of Lenoir to perform or observe any of its material covenants, agreements, obligations and/or duties created by this agreement.
b) The failure of Lenoir to provide Caldwell County with the amounts of water in accordance with the terms of this agreement or to provide adequate water quality for Caldwell County within standards established by the North Carolina Department of Environmental Quality or any other governmental agency with designated jurisdiction

over said water quality parameters as provided in this agreement.

18. Upon the happening of any event which may constitute good cause for termination of this agreement as stated above, 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 thirty (30) 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.

19. **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 Lenoir:	**To Caldwell County:**
City of Lenoir	County of Caldwell
Scott E. Hildebran, City Manager	Donald Duncan, County Manager
PO Box 958	905 West Avenue NW
Lenoir, North Carolina 28645	Lenoir, North Carolina 28645

20. 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 signed 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. This agreement is non-assignable.

21. 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. No joint agency is established by this Agreement pursuant to Article 20, Part 1 of Chapter 160A of the North Carolina General Statutes, by other similar statutory authority authorizing interlocal cooperation between units of local government, or otherwise.

22. 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.

23. 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.

24. This agreement shall be governed by and interpreted in accordance with the laws of the State of North Carolina.

25. 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.

26. 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.

27. 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.

28. Except as provided herein, the rights and remedies provider 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.

CITY OF LENOIR, NORTH CAROLINA

By: _____
Joseph L. Gibbons, Mayor

(SEAL)
Attest:

By: _____
Shirley M. Cannon, City Clerk

COUNTY OF CALDWELL, NORTH CAROLINA

By: _____
Randy Church, Board Chair

(SEAL)
Attest:

By: _____
Abby Rich, Clerk to the Board

This agreement has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

By: _____
Donna Bean, Finance Officer
City of Lenoir

By: _____
Anthony Helton, Finance Director
County of Caldwell