

**CASE**

**NUMBER:**

99-087

*Spears Water Co., Inc.*

104 W. MAPLE ST.

NICHOLASVILLE, KY. 40356

PHONE 885-5958

November 30, 1999

RECEIVED

DEC 01 1999

PUBLIC SERVICE  
COMMISSION

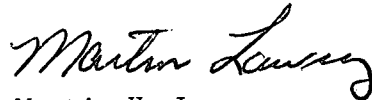
Helen C. Helton  
Executive Director  
Public Service Commission  
730 Schenkel Lane  
Post Office Box 615  
Frankfort, Kentucky 40602

RE: Case No. 99-087

Dear Ms. Helton:

Please find enclosed two copies of the Franchise Agreement between Spears Water Company, Inc. and Lexington Fayette County Urban Government . If any further information is required please contact Martin Lowry, Vice-President-Manager or William M. Arvin, President at Spears Water Company, Inc., 104 West Maple Street, Nicholasville, Kentucky 40356.

Yours truly,



Martin H. Lowry  
Vice-President-Manager  
Spears Water Company, Inc.

AGREEMENT

THIS AGREEMENT, effective the 1st day of May, 1999, is made and entered into by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 and **SPEARS WATER COMPANY, INC.**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 108 West Maple Street, Nicholasville, Kentucky 40356.

W I T N E S S E T H:

For and in consideration of the payment by Spears Water Company, Inc. to Lexington-Fayette Urban County Government of the sum of One Hundred Dollars (\$100.00), the receipt of which is hereby acknowledged, and in further consideration of the covenants, limitations and agreements as set forth in Ordinance No. 009-99 passed by the Urban County Council on January 29, 1999, a copy of which is attached hereto as Exhibit "A", and in further consideration of the covenants, limitations and agreements as set out in the bid of Spears Water Company, Inc. dated March 2, 1999, a copy of which is attached hereto as Exhibit "B", the Lexington-Fayette Urban County Government does hereby sell, grant and convey to Spears Water Company, Inc., its successors and assigns, a water

franchise and privilege to install, erect, operate and maintain a waterworks system and plant as advertised by the Lexington-Fayette Urban County Government in the Lexington Herald-Leader published February 3, 1999 in Lexington, Fayette County, Kentucky. The franchise and privilege sold, granted and conveyed shall continue in full force and effect for a period from and after the date of adoption of Resolution No. 257-99 (the effective date of this Agreement) until May 15, 2015. The franchise as adopted by Ordinance No. 009-99 on January 29, 1999, and the bid of Spears Water Company dated March 2, 1999 are made a part of this agreement as fully as if set out at length herein.

The franchise hereby sold, granted and conveyed to Spears Water Company, Inc. is not exclusive and shall not be construed as being in any way exclusive of preventing the Lexington-Fayette Urban County Government from providing for the sale of similar franchises to other persons, companies or corporations.

Spears Water Company, Inc., its successors and assigns, in consideration of the grant, sale and conveyance of the above franchise, does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as contained in Ordinance No. 009-99 and as contained in

its March 2, 1999 bid, and further to faithfully perform all acts required of it as the purchaser of said franchise.

IN WITNESS WHEREOF, the Lexington-Fayette Urban County Government by and through its Mayor and Spears Water Company, Inc. by and through William M. Arvin, its properly authorized President, have executed this Agreement on the dates hereinafter set forth but to be effective as of the date first above written in the opening paragraph of this Agreement.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY: *Pam Miller*  
PAM MILLER, MAYOR

SPEARS WATER COMPANY, INC.

BY: *William M. Arvin*  
WILLIAM M. ARVIN, PRESIDENT

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF FAYETTE )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Pam Miller, Mayor of Lexington-Fayette Urban County Government, for and on behalf of the Government, on this the 18<sup>th</sup> day of May, 1999.

My commission expires: 11-21-2000

Lizabeth T. Danwell  
NOTARY PUBLIC, STATE AT LARGE, KY

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF FAYETTE )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by William M. Arvin, President, Spears Water Company, Inc., for and on behalf of the Company, on this the 1<sup>st</sup> day of May, 1999.

My commission expires: March 26, 2003

April S. Williams  
NOTARY PUBLIC, STATE AT LARGE, KY

ORDINANCE NO. 9-99

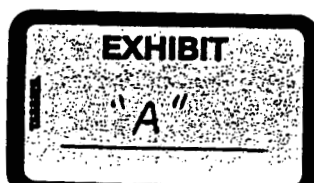
AN ORDINANCE CREATING AND ESTABLISHING A SEVENTEEN (17) YEAR WATER FRANCHISE.

---

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - There is hereby created and established a water franchise and privilege granting to the purchaser thereof, whose bid may be accepted, the discretionary right to construct, erect, lay, relay, replace, operate and maintain a waterworks system and plant, embracing mains, pipelines, valves and valve boxes, hydrants, meters and meter boxes, service pipe and appurtenances, and any and all other facilities, appliances, apparatus and equipment necessary, used or useable, in the operation of a waterworks system for the purpose of supplying and to supply water to the inhabitants of Fayette County for domestic, commercial, industrial and other purposes within the right-of-ways through, upon, over, along and under bridges, viaducts, sidewalks, public places and on the main public roads and highways in Fayette County, and on all streets, avenues and roads, running off from or connected therewith either directly or indirectly, and the privilege of opening and excavating the same without the payment of license or other fee as the business of the purchaser thereof may from time to time require, in constructing, erecting, laying, relaying, replacing, operating, maintaining or removing its pipelines and other works and equipment and together also with the right to transport water through its mains and pipelines to any other mains or pipelines, laid or to be laid, which are or may be connected therewith.

Section 2 - The franchise and privilege granted and established by this Ordinance shall be exercised in accordance



with the conditions set out herein and shall continue in full force and effect for a period of approximately seventeen (17) years beginning on the date of acceptance by the Lexington-Fayette Urban County Government of a bid therefor and continuing until May 15, 2015. Nothing contained herein shall supersede the requirements of the Code of Ordinances of the Lexington-Fayette Urban County Government.

Section 3 - Prior to the opening of any right-of-way for the purpose of constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing any of said pipes and appurtenances, service facilities or other equipment in the exercise of the rights herein granted, the purchaser shall obtain a permit to do so from the Mayor of the Lexington-Fayette Urban County Government Division of Engineering or from any other person or official authorized to grant same and who may be designated by the Urban County Government for such purpose, except in case of an emergency, in which event the permit shall be subsequently obtained within a reasonable time. When the purchaser enters upon any right-of-way for the purposes herein specified, it shall prosecute the work, at its own cost and expense, except when the Urban County Government has requested relocation of facilities more than once within the same government project, all costs of such second relocation shall be paid by the Urban County Government. Purchaser shall prosecute all such work with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the right-of-ways in the same condition as when it entered the same for said purpose or purposes, all as required by the scope and nature of the project. All such repairs shall be maintained by the purchaser for



one year in as good condition as the remainder of said right-of-way; and upon completion thereof, the Lexington-Fayette Urban County Government, through its duly constituted representative, shall inspect said work and, if property replaced and restored, shall give to the purchase a certificate thereto or, if not, it shall give to the purchaser a detailed statement of the work necessary to be done in order to comply with all reasonable requirements or regulations of the Urban County Government in restoring the surface of said right-of-way. If the purchaser does not replace within a reasonable time the surface of any right-of-way which had been opened by the purchaser, the Urban County Government, after written notice of its intention, may replace such surface to the condition herein specified at the cost of the purchaser.

Section 4 - The purchaser in pursuance of the rights, privileges and franchise herein granted, shall not unreasonably or unnecessarily obstruct roads or other public places or right-of-ways and during the progress of any of its works shall exercise due care in the protection of the public from accident or injury and shall hold the Urban County Government harmless from any and all damages, suits and actions, by reason of negligence of the purchaser or its employees while constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing its works or equipment.

Section 5 - The quality of water to be furnished by the purchaser and the operating conditions affecting its quality shall be in accordance with the requirements and regulations of the Environmental Protection Agency or any legally constituted federal body designated as its successor in jurisdiction, the Kentucky

Natural Resources and Environmental Protection Cabinet, Division of Water or any legally constituted state body designated as its successor in jurisdiction, and the Public Service Commission or any legally constituted state body designated its successor in jurisdiction.

Section 6 - The conditions and requirements of service to the inhabitants of the Fayette County and the rates to be charged by the purchaser for such service shall be in accordance with the lawful rules, regulations and orders of the Public Service Commission of Kentucky or any legally constituted state body designated as its successor in jurisdiction.

Section 7 - It shall be the duty of the Mayor, as soon as practicable after the effective date of this Ordinance, to offer for sale at public auction said franchise and privilege and it shall be sold to the highest and best bidder, at a time and place to be fixed by her, after she shall have given due notice thereof by advertising this order in full one time, not less than seven (7) days nor more than twenty-one (21) days before the time to be fixed by her, in the Lexington Herald-Leader, a newspaper of general circulation in Fayette County, Kentucky, which newspaper is published in Fayette County, Kentucky.

Section 8 - The Urban County Government or its legal successor in interest, reserves the right at any time during the effective period of the franchise to be awarded hereby, to impose upon the successful bidder a franchise fee in an amount not to exceed three percent (3%) per annum of the "Gross Revenues" as defined herein. If any franchise fee shall be due pursuant to the authority contained herein, the purchaser shall remit to the Urban County Government or its legal successor in interest, within

forty-five (45) days of the end of each and every calendar quarter beginning with January 1, April 1, July 1 and October 1 next following the enactment of any such franchise fee, the amount of said franchise fee for said quarter or applicable portion thereof, until said franchise fee shall be discontinued or until the franchise expires.

Section 9 - "Gross Revenues" for purposes of this Ordinance, shall include all revenues from the sale of water, service charges based upon the size of facilities, municipal fire connections and hydrants, private fire connections and hydrants, reconnection charges, returned check charges, service line inspection fees, and bulk sales to customers in Fayette County, All other sources of revenue are excluded from "Gross Revenues."

Section 10 - The franchise or privilege hereby granted shall be vested in the purchaser thereof, upon acceptance by the Urban County Council of the bid therefor, but the purchaser shall enter into a formal contract with the Urban County Government consenting to the terms, conditions, stipulations and provisions herein contained, which contract shall be in a form acceptable to the Lexington-Fayette Urban County Government.

Section 11 - The purchaser shall pay to the Urban County Government within thirty (30) days of receipt of a request for payment the amount equal to the reasonable costs which the Urban County Government may incur in connection with the granting to the purchaser of a franchise, but in no event to exceed Two Thousand Dollars (\$2,000.00).

Section 12 -

(a) The Urban County Government shall have the right to inspect the purchaser's income and water consumption records

pertaining to Gross Revenues, in order to audit and to re-compute any amounts to be paid under this Ordinance.

(b) Should an underpayment be discovered at any time by the Urban County Government or the purchaser, notice of the underpayment shall be sent to the non-discovering party within ten (10) days, not including Saturdays or Sundays, of discovery along with a copy of any audit or other supporting documentation. Any additional amount due to the Urban County Government shall be paid no later than ten (10) business days following receipt of the written notice. In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). Overpayments discovered by the Urban County Government or the purchaser shall be an adjustment on the next quarterly payment without interest.

Section 13 -

(a) Copies of all documents relating to (1) the quality of potable water, (2) the capability of the purchaser to meet service requirements, and (3) environmental releases submitted by the purchaser to any federal, state or local governmental entity having jurisdiction over the quality of potable water or purchaser's services and further required because of a deterioration in the quality of potable water or services below defined standards, shall be submitted simultaneously to the Commissioner of Public Works.

(b) Within six (6) months of the close of each fiscal year, the purchaser shall submit an annual financial report to the Commissioner of Finance prepared by a qualified financial officer in accordance with the provisions of the codification of

statements on auditing standards promulgated by the American Institute of certified Public Accountants. Within fifteen (15) days of the end of each and every month purchaser shall submit a schedule showing its revenues (exclusive of sales and city taxes) for the previous month by category described in Section 9 hereof, by revenue class, and all adjustments thereto.

(c) The purchaser and Urban County Government shall designate in writing representatives who are responsible for responding to requests for information related to water service in Fayette County made by each.

Section 14 -

(a) In the construction, reconstruction, maintenance or removal of any of said equipment and apparatus, the purchaser shall have due regard for the rights of the Urban County Government and others, and shall not interfere with, or in any way injure the property of the Urban County Government or others, under, on or above the ground. Said purchasers shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the Urban County Government as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such ordinances and laws. Work by the purchaser hereunder shall be done in a workmanlike manner and within a reasonable time as required by the scope and nature of the project and so as not to unnecessarily interfere with public use of any of said streets.

(b) Whenever the Urban County Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any street or shall construct, reconstruct, repair, maintain or alter any

other public project (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the purchaser, when so ordered by the Urban County Government, to change, remove, relay and relocate its equipment and apparatus in the street at its own expense so as to conform to the established grade or line of such street and so as not to interfere with such public project so constructed, reconstructed or altered, except when the Urban County Government has requested relocation of facilities more than one within the same government project, all costs of such second relocation shall be paid by the Urban County Government.

Section 15 - All tests and measurements required to be taken by the purchaser by state and federal authorities shall be recorded and maintained for as long as required by the authority and shall be made available upon request to the Urban County Government.

Section 16 - The purchaser shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the purchaser's performance or to seek purchaser's compliance with any one or more of such terms or conditions.

Section 17 - The purchaser agrees not to oppose intervention by the Urban County Government in any suit or proceeding to which the purchaser is a party and which involves this franchise agreement.

Section 18 - The purchaser shall abide by all provisions of the franchise and will not at any future time make any claim that the provisions of the franchise were, as of the time written, unreasonable, arbitrary or void.

Section 19 - Time shall be deemed to be of the essence in the performance of the terms and conditions of the franchise.

Section 20 - In any controversy or dispute under this Ordinance, the laws of the Commonwealth of Kentucky shall apply.

Section 21 - If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the remaining parts of the Ordinance.

Section 22 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: January 28, 1999

/s/ Pam Miller  
MAYOR

ATTEST:

/s/ Liz Damrell  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: February 3, 1999-1t

ALW/ord118

*Spears Water Co., Inc.*

104 W. MAPLE ST.

NICHOLASVILLE, KY. 40356

PHONE 885-5958

March 2, 1999

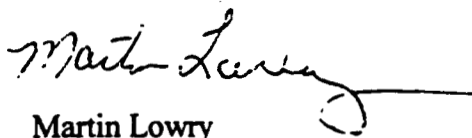
The Honorable Pam Miller  
Office of the Mayor  
200 East Main Street  
Lexington, Kentucky 40507

Dear Mayor Miller:

In response to the Lexington-Fayette Urban County Government's offer of a water franchise, Spears Water Company, Inc., hereby submits a bid, check enclosed (\$100), for the advertised franchise. We understand that said franchise will be for a 17 year period as authorized by Ordinance 9-99 passed by the Lexington-Fayette Urban County Council.

We appreciate the opportunity to bid and will be willing to discuss any related issues.

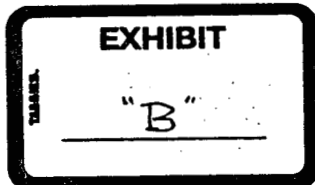
Sincerely,



Martin Lowry

ML:sb

Enclosure







COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KENTUCKY 40602  
www.psc.state.ky.us  
(502) 564-3940  
Fax (502) 564-1582

**Ronald B. McCloud, Secretary**  
**Public Protection and**  
**Regulation Cabinet**

**Helen Helton**  
**Executive Director**  
**Public Service Commission**

**Paul E. Patton**  
**Governor**

November 24, 1999

Mr. Martin H. Lowry  
Vice President-Manager  
Spears Water Company, Inc.  
104 West Maple Street  
Nicholasville, KY 40356

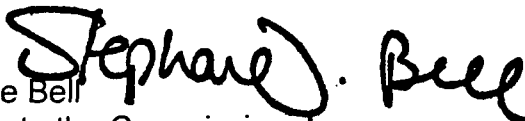
Re: Case No. 99-087  
Spears Water Company, Inc.  
First Reminder Letter

Dear Mr. Lowry:

The Commission entered its Final Order in this case on April 21, 1998. Among other things, the Commission ordered that Spears Water Company, if it becomes the successful bidder, to file two copies of the franchise agreement. This must be filed to fully comply with the Commission's order. Please make this filing, referencing the case number 99-087.

If you have questions concerning this letter, or if Spears Water company is not part of the franchise agreement, please contact Howell Brady, Principal Assistant to the Executive Director at 502-564-3940, extension 265. Otherwise, please mail the required filing to Helen C. Helton, Executive Director, Public Service Commission, 730 Schenkel Lane, Post Office Box 615, Frankfort, Kentucky 40602.

Sincerely,

  
Stephanie Bell  
Secretary to the Commission

SB/lc

C: The Honorable William M. Arvin



AN EQUAL OPPORTUNITY EMPLOYER M/F/D

INDEX FOR CASE: 99-087  
SPEARS WATER COMPANY, INC.  
Franchises

IN LEXINGTON-FAYETTE URBAN COUNTY

IN THE MATTER OF THE APPLICATION OF SPEARS WATER COMPANY,  
INC., FOR A CERTIFICATE OF CONVENIENCE AND NECESSITY  
AUTHORIZING THE APPLICANT TO OBTAIN A FRANCHISE IN  
LEXINGTON-FAYETTE URBAN COUNTY

SEQ NBR	ENTRY DATE	REMARKS
0001	03/11/99	Application.
0002	03/16/99	Acknowledgement letter.
0003	04/21/99	Final Order granting a Certificate that gives authorization to bid on franchise



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 99-087  
SPEARS WATER COMPANY, INC.

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on April 21, 1999.

Parties of Record:

Martin H. Lowry  
Vice President-Manager  
Spears Water Company, Inc.  
104 West Maple Street  
Nicholasville, KY. 40356

Honorable William M. Arvin  
Attorney at Law  
108 West Maple Street  
Nicholasville, KY. 40356

*Stephanie Bell*  
Secretary of the Commission

SB/hv  
Enclosure

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SPEARS WATER )  
COMPANY, INC. FOR A CERTIFICATE OF )  
CONVENIENCE AND NECESSITY ) CASE NO.  
AUTHORIZING THE APPLICANT TO ) 99-087  
OBTAIN A FRANCHISE IN LEXINGTON- )  
FAYETTE URBAN COUNTY )

O R D E R

On March 11, 1999, Spears Water Company, Inc. ("Spears") filed with the Commission its application seeking a Certificate of Convenience and Necessity to qualify it to bid on a water franchise being offered by the Lexington-Fayette Urban County Government ("LFUCG") in Fayette County, Kentucky. Under the provisions of KRS 278.020(3), no utility may apply for a franchise from any governmental agency until it has obtained a Certificate of Convenience and Necessity from this Commission based on our finding that there is a need and demand for the service sought to be rendered.

The Commission determines that there is evidence of a need and demand for water service in Fayette County. Since the Commission's authority in such matters is limited by statute to finding only whether there is a need and demand for the service sought to be rendered, no finding or determination is made as to the qualifications of the bidder, the validity of any of the provisions of the franchises offered by said city, or the manner in which any franchise fee is to be treated for rate purposes.

IT IS THEREFORE ORDERED that:

1. Spears is granted a Certificate of Convenience and Necessity that authorizes it to bid on a water franchise offered by the LFUCG.

2. Spears, if it becomes the successful bidder, shall file with this Commission two copies of the franchise agreement.

3. This Order shall not be construed as granting a Certificate of Convenience and Necessity to construct utility facilities.

Done at Frankfort, Kentucky, this 21st day of April, 1999.

By the Commission

ATTEST:

  
Executive Director



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**

730 SCHENKEL LANE  
POST OFFICE BOX 615  
FRANKFORT, KY. 40602  
(502) 564-3940

March 16, 1999

Martin H. Lowry  
Vice President-Manager  
Spears Water Company, Inc.  
104 West Maple Street  
Nicholasville, KY. 40356

Honorable William M. Arvin  
Attorney at Law  
108 West Maple Street  
Nicholasville, KY. 40356

RE: Case No. 99-087  
SPEARS WATER COMPANY, INC.  
(Franchises) IN LEXINGTON-FAYETTE URBAN COUNTY

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received March 11, 1999 and has been assigned Case No. 99-087. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,  
*Stephanie Bell*

Stephanie Bell  
Secretary of the Commission

SB/jc

RECEIVED

MAR 11 1999

PUBLIC SERVICE  
COMMISSION

WILLIAM MILES ARVIN  
ATTORNEY AT LAW  
108 WEST MAPLE STREET  
NICHOLASVILLE, KENTUCKY 40356

ELLEN L. MILLER  
WILLIAM MILES ARVIN, JR.

TELEPHONE (606) 885-4106  
FACSIMILE (606) 885-7168

Commonwealth of Kentucky  
Public Service Commission  
730 Schenkel Lane  
P. O. Box 615  
Frankfort, KY 40602

Case No. 99-087

TRANSMITTAL COVER LETTER

TO: Public Service Commission  
FROM: William Miles Arvin  
DATE: March 10, 1999  
RE: Application to obtain franchise in Lexington-Fayette Urban County  
ENCLS: Original application and 10 copies of Application to Obtain Franchise  
in Lexington-Fayette Urban County

- Please file in the court record accordingly.
- Please find enclosed a check in the amount of \$ \_\_\_\_\_ which represents the filing fee for the enclosed pleading.
- Please find enclosed a check in the amount of \$ \_\_\_\_\_ which represents the filing fee for the enclosed pleadings as well as a check in the amount of \$ \_\_\_\_\_ payable to the sheriff which I would appreciate you forwarding to the sheriff.
- Please find enclosed a copy of the front page of the Petition which I would appreciate you filling in the case number and returning to me in the enclosed envelope.
- Please find enclosed a check in the amount of \$ \_\_\_\_\_ for serving the enclosed summons(es)/subpoena(s).
- Please find enclosed a check in the amount of \$ \_\_\_\_\_ which represents filing fee for the enclosed \_\_\_\_\_.
- Other: \_\_\_\_\_

RECEIVED

MAR 11 1999

PUBLIC SERVICE  
COMMISSION

BEFORE THE PUBLIC SERVICE COMMISSION OF KENTUCKY

IN THE MATTER OF THE APPLICATION )  
OF SPEARS WATER COMPANY, INC., )  
FOR A CERTIFICATE OF CONVENIENCE )  
AND NECESSITY AUTHORIZING THE )  
APPLICANT TO OBTAIN A FRANCHISE )  
IN LEXINGTON-FAYETTE URBAN COUNTY )

CASE NO.

99-087

APPLICATION

The Petition of the Applicant, SPEARS WATER COMPANY, INC. ("Spears"),  
respectfully shows:

1. That the Applicant is engaged in the business of transmitting and selling retail water in Jessamine County and Lexington-Fayette Urban County, Kentucky.

2. That the post office address of the Applicant is 106 West Maple Street, Nicholasville, Kentucky;

3. (a) A copy of the Articles of Incorporation of Spears is filed with the Public Service Commission.

(b) The Applicant is now and has been for a number of years rendering water service in Lexington-Fayette Urban County, Kentucky. Public convenience and necessity require that this service be continued, and it is the desire of the Applicant to obtain a franchise in said Urban County.

(c) Attached is a copy of the form of franchise which the Applicant desires to obtain.



WHEREFORE, Applicant asks that the Public Service Commission of the Commonwealth of Kentucky make its order authorizing the Applicant to obtain a franchise in the Lexington-Fayette Urban County.

The Law Offices of  
William Miles Arvin  
108 West Maple Street  
Nicholasville, Kentucky 40356  
(606) 885-4106

By: *William Miles Arvin*  
Attorney for Petitioner

ORDINANCE NO. 9-99

AN ORDINANCE CREATING AND ESTABLISHING A SEVENTEEN (17) YEAR WATER FRANCHISE.

---

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - There is hereby created and established a water franchise and privilege granting to the purchaser thereof, whose bid may be accepted, the discretionary right to construct, erect, lay, relay, replace, operate and maintain a waterworks system and plant, embracing mains, pipelines, valves and valve boxes, hydrants, meters and meter boxes, service pipe and appurtenances, and any and all other facilities, appliances, apparatus and equipment necessary, used or useable, in the operation of a waterworks system for the purpose of supplying and to supply water to the inhabitants of Fayette County for domestic, commercial, industrial and other purposes within the right-of-ways through, upon, over, along and under bridges, viaducts, sidewalks, public places and on the main public roads and highways in Fayette County, and on all streets, avenues and roads, running off from or connected therewith either directly or indirectly, and the privilege of opening and excavating the same without the payment of license or other fee as the business of the purchaser thereof may from time to time require, in constructing, erecting, laying, relaying, replacing, operating, maintaining or removing its pipelines and other works and equipment and together also with the right to transport water through its mains and pipelines to any other mains or pipelines, laid or to be laid, which are or may be connected therewith.

Section 2 - The franchise and privilege granted and established by this Ordinance shall be exercised in accordance

with the conditions set out herein and shall continue in full force and effect for a period of approximately seventeen (17) years beginning on the date of acceptance by the Lexington-Fayette Urban County Government of a bid therefor and continuing until May 15, 2015. Nothing contained herein shall supersede the requirements of the Code of Ordinances of the Lexington-Fayette Urban County Government.

Section 3 - Prior to the opening of any right-of-way for the purpose of constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing any of said pipes and appurtenances, service facilities or other equipment in the exercise of the rights herein granted, the purchaser shall obtain a permit to do so from the Mayor of the Lexington-Fayette Urban County Government Division of Engineering or from any other person or official authorized to grant same and who may be designated by the Urban County Government for such purpose, except in case of an emergency, in which event the permit shall be subsequently obtained within a reasonable time. When the purchaser enters upon any right-of-way for the purposes herein specified, it shall prosecute the work, at its own cost and expense, except when the Urban County Government has requested relocation of facilities more than once within the same government project, all costs of such second relocation shall be paid by the Urban County Government. Purchaser shall prosecute all such work with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the right-of-ways in the same condition as when it entered the same for said purpose or purposes, all as required by the scope and nature of the project. All such repairs shall be maintained by the purchaser for

one year in as good condition as the remainder of said right-of-way; and upon completion thereof, the Lexington-Fayette Urban County Government, through its duly constituted representative, shall inspect said work and, if property replaced and restored, shall give to the purchase a certificate thereto or, if not, it shall give to the purchaser a detailed statement of the work necessary to be done in order to comply with all reasonable requirements or regulations of the Urban County Government in restoring the surface of said right-of-way. If the purchaser does not replace within a reasonable time the surface of any right-of-way which had been opened by the purchaser, the Urban County Government, after written notice of its intention, may replace such surface to the condition herein specified at the cost of the purchaser.

Section 4 - The purchaser in pursuance of the rights, privileges and franchise herein granted, shall not unreasonably or unnecessarily obstruct roads or other public places or right-of-ways and during the progress of any of its works shall exercise due care in the protection of the public from accident or injury and shall hold the Urban County Government harmless from any and all damages, suits and actions, by reason of negligence of the purchaser or its employees while constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing its works or equipment.

Section 5 - The quality of water to be furnished by the purchaser and the operating conditions affecting its quality shall be in accordance with the requirements and regulations of the Environmental Protection Agency or any legally constituted federal body designated as its successor in jurisdiction, the Kentucky

Natural Resources and Environmental Protection Cabinet, Division of Water or any legally constituted state body designated as its successor in jurisdiction, and the Public Service Commission or any legally constituted state body designated its successor in jurisdiction.

Section 6 - The conditions and requirements of service to the inhabitants of the Fayette County and the rates to be charged by the purchaser for such service shall be in accordance with the lawful rules, regulations and orders of the Public Service Commission of Kentucky or any legally constituted state body designated as its successor in jurisdiction.

Section 7 - It shall be the duty of the Mayor, as soon as practicable after the effective date of this Ordinance, to offer for sale at public auction said franchise and privilege and it shall be sold to the highest and best bidder, at a time and place to be fixed by her, after she shall have given due notice thereof by advertising this order in full one time, not less than seven (7) days nor more than twenty-one (21) days before the time to be fixed by her, in the Lexington Herald-Leader, a newspaper of general circulation in Fayette County, Kentucky, which newspaper is published in Fayette County, Kentucky.

Section 8 - The Urban County Government or its legal successor in interest, reserves the right at any time during the effective period of the franchise to be awarded hereby, to impose upon the successful bidder a franchise fee in an amount not to exceed three percent (3%) per annum of the "Gross Revenues" as defined herein. If any franchise fee shall be due pursuant to the authority contained herein, the purchaser shall remit to the Urban County Government or its legal successor in interest, within

forty-five (45) days of the end of each and every calendar quarter beginning with January 1, April 1, July 1 and October 1 next following the enactment of any such franchise fee, the amount of said franchise fee for said quarter or applicable portion thereof, until said franchise fee shall be discontinued or until the franchise expires.

Section 9 - "Gross Revenues" for purposes of this Ordinance, shall include all revenues from the sale of water, service charges based upon the size of facilities, municipal fire connections and hydrants, private fire connections and hydrants, reconnection charges, returned check charges, service line inspection fees, and bulk sales to customers in Fayette County. All other sources of revenue are excluded from "Gross Revenues."

Section 10 - The franchise or privilege hereby granted shall be vested in the purchaser thereof, upon acceptance by the Urban County Council of the bid therefor, but the purchaser shall enter into a formal contract with the Urban County Government consenting to the terms, conditions, stipulations and provisions herein contained, which contract shall be in a form acceptable to the Lexington-Fayette Urban County Government.

Section 11 - The purchaser shall pay to the Urban County Government within thirty (30) days of receipt of a request for payment the amount equal to the reasonable costs which the Urban County Government may incur in connection with the granting to the purchaser of a franchise, but in no event to exceed Two Thousand Dollars (\$2,000.00).

Section 12 -

(a) The Urban County Government shall have the right to inspect the purchaser's income and water consumption records

pertaining to Gross Revenues, in order to audit and to re-compute any amounts to be paid under this Ordinance.

(b) Should an underpayment be discovered at any time by the Urban County Government or the purchaser, notice of the underpayment shall be sent to the non-discovering party within ten (10) days, not including Saturdays or Sundays, of discovery along with a copy of any audit or other supporting documentation. Any additional amount due to the Urban County Government shall be paid no later than ten (10) business days following receipt of the written notice. In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of eight percent (8%). Overpayments discovered by the Urban County Government or the purchaser shall be an adjustment on the next quarterly payment without interest.

Section 13 -

(a) Copies of all documents relating to (1) the quality of potable water, (2) the capability of the purchaser to meet service requirements, and (3) environmental releases submitted by the purchaser to any federal, state or local governmental entity having jurisdiction over the quality of potable water or purchaser's services and further required because of a deterioration in the quality of potable water or services below defined standards, shall be submitted simultaneously to the Commissioner of Public Works.

(b) Within six (6) months of the close of each fiscal year, the purchaser shall submit an annual financial report to the Commissioner of Finance prepared by a qualified financial officer in accordance with the provisions of the codification of

statements on auditing standards promulgated by the American Institute of certified Public Accountants. Within fifteen (15) days of the end of each and every month purchaser shall submit a schedule showing its revenues (exclusive of sales and city taxes) for the previous month by category described in Section 9 hereof, by revenue class, and all adjustments thereto.

(c) The purchaser and Urban County Government shall designate in writing representatives who are responsible for responding to requests for information related to water service in Fayette County made by each.

Section 14 -

(a) In the construction, reconstruction, maintenance or removal of any of said equipment and apparatus, the purchaser shall have due regard for the rights of the Urban County Government and others, and shall not interfere with, or in any way injure the property of the Urban County Government or others, under, on or above the ground. Said purchasers shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the Urban County Government as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such ordinances and laws. Work by the purchaser hereunder shall be done in a workmanlike manner and within a reasonable time as required by the scope and nature of the project and so as not to unnecessarily interfere with public use of any of said streets.

(b) Whenever the Urban County Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any street or shall construct, reconstruct, repair, maintain or alter any



other public project (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the purchaser, when so ordered by the Urban County Government, to change, remove, relay and relocate its equipment and apparatus in the street at its own expense so as to conform to the established grade or line of such street and so as not to interfere with such public project so constructed, reconstructed or altered, except when the Urban County Government has requested relocation of facilities more than one within the same government project, all costs of such second relocation shall be paid by the Urban County Government.

Section 15 - All tests and measurements required to be taken by the purchaser by state and federal authorities shall be recorded and maintained for as long as required by the authority and shall be made available upon request to the Urban County Government.

Section 16 - The purchaser shall not be excused from complying with any of the terms and conditions of this Ordinance by any failure of the Government, upon any one or more occasions, to insist upon the purchaser's performance or to seek purchaser's compliance with any one or more of such terms or conditions.

Section 17 - The purchaser agrees not to oppose intervention by the Urban County Government in any suit or proceeding to which the purchaser is a party and which involves this franchise agreement.

Section 18 - The purchaser shall abide by all provisions of the franchise and will not at any future time make any claim that the provisions of the franchise were, as of the time written, unreasonable, arbitrary or void.


Section 19 - Time shall be deemed to be of the essence in the performance of the terms and conditions of the franchise.

Section 20 - In any controversy or dispute under this Ordinance, the laws of the Commonwealth of Kentucky shall apply.

Section 21 - If any section, sentence, clause or phrase of this Ordinance is held unconstitutional or otherwise invalid, such infirmity shall not affect the remaining parts of the Ordinance.

Section 22 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: January 28, 1999

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: February 3, 1999-1t

ALW/ord118

WILLIAM MILES ARVIN  
ATTORNEY AT LAW  
108 WEST MAPLE STREET  
NICHOLASVILLE, KENTUCKY 40356

RECEIVED

MAR - 5 1999

ELLEN L. MILLER  
WILLIAM MILES ARVIN, JR.

TELEPHONE (606) 865-4166  
FACSIMILE (606) 865-7188  
PUBLIC SERVICE  
COMMISSION

Public Service Commission  
Postoffice Box 615  
Frankfort, KY 40602

Case No. 99-087

TRANSMITTAL COVER LETTER

DATE: March 4, 1999

RE: Spears Water Company, Inc.

ENCLS: Petition for a Certificate of Public Convenience and Necessity  
(original & 11 copies), stamped addressed envelope

- Enclosed per your request.
- Please sign where indicated and return to me.
- For your information and file.
- Please review and call me.
- Please call me immediately upon receipt.
- Please sign and forward to: \_\_\_\_\_
- Other: Please file the enclosed Petition accordingly after a case number  
has been assigned. I have enclosed a stamped addressed envelope which I would  
appreciate you returning a stamped entered copy of the Petition to me.

Your assistance in this matter is appreciated.

by: WMA

RECEIVED

MAR - 5 1999

KENTUCKY PUBLIC SERVICE COMMISSION

PUBLIC SERVICE  
COMMISSION

IN RE: SPEARS WATER COMPANY, INC.

CASE NO. 99-087

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**PETITION FOR A CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

Comes SPEARS WATER COMPANY, INC., by counsel, and requests the Commission to grant it authorization to submit a bid with the Lexington-Fayette Urban County Government for a water franchise for use of the public roads and streets in Fayette County, Kentucky. Spears Water Company, Inc., has numerous customers in southeast Fayette County and needs the franchise in order to maintain its present service.

The Law Offices of  
William Miles Arvin  
108 West Maple Street  
Nicholasville, Kentucky 40356  
(606) 885-4106

By: William Miles Arvin  
Attorney for Petitioner