

February 11, 1998

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First 2k 6.97/k
Next 98k 3.02/k
Over 100k 2.02/k

Surcharge 10¢/k

CPI Annual Adjustment

WATER CONTRACT

THIS AGREEMENT, made and entered into this 11 day of February, 1998,
by and between the PRESTONSBURG CITY'S UTILITIES COMMISSION ("Prestonsburg") and
AUXIER WATER COMPANY, INC. ("Auxier").

WITNESSETH:

That the parties hereto, for and in consideration of the covenants of this Agreement hereinafter set out, to be paid, kept and performed, hereby agree as follows:

1. Water Delivery Points. Prestonsburg agrees to furnish to Auxier during the term of this contract at the existing points of delivery, which are located at the site of the Highlands Regional Medical Center and at Little Paint ("Delivery Points"), and Auxier agrees to purchase potable treated water meeting applicable purity standards of the Kentucky Department of Health.

2. Maximum and Minimum Quantities of Water. Prestonsburg shall deliver and Auxier shall purchase quantities of water not to exceed 500,000 gallons per day of twenty four hours, and not to exceed 10,000,000 gallons per month. Prestonsburg shall have the right to install equipment to restrict the flow of water on an hourly basis or establish temporary shut-offs to restrict the flow so that the quantities can be limited to the contract maximums set forth herein. It shall be the sole responsibility of Auxier to control its customer load so that the water flow at the Delivery Points need not be restricted. A minimum contract quantity of 4,000,000 gallons per month shall be taken by Auxier.

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BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

3. Metering Equipment and Testing. Prestonsburg agrees to furnish, install, operate and maintain at its own expense at the Delivery Points, the necessary metering equipment, including a meter house or pit and required devices of standard type for properly measuring the quantity of water delivered to Auxier and to calibrate such metering equipment whenever requested by Auxier, 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 readings of any 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 any 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 in the corresponding period immediately prior to the failure. An appropriate official of Auxier, at all reasonable times, shall have access to the meter for the purpose of verifying its readings.

4. Statement of Water Supplied. Prestonsburg agrees to furnish Auxier, once each month, a statement of the quantity of water furnished Auxier during the applicable billing period.

5. Payment Policy. Payment shall be made in accordance with Prestonsburg's customer payment policy ("Payment Policy"), as it may be modified pursuant to public notice from time to time, which currently is as follows:

Customers' bills will be mailed on the last business day of each month. Payment is due when bills are mailed. Prestonsburg City's Utilities Commission is not responsible for mail delivery. If payment is not received in our office by the 15th day of the following month, a 10% penalty will be added to the accounts of customers who have not paid their bills in full. On the 16th day of the month, Prestonsburg City's Utilities Commission will mail a

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disconnect notice to those customers who have not paid their bills in full. The disconnect notice, mailed on the 16th, will be the only notice sent to delinquent customers before their utilities services will be subject to disconnection for non-payment. Customers receiving disconnect notices will have five business days to bring or mail their payments to our office located at 2103 South Lake Drive, Prestonsburg, Kentucky. Our office hours are Monday through Friday, 8:00 A.M. to 5:00 P.M. For the convenience of our customers, we have a night deposit box located at the front of our building. Meters will be scheduled for removal if payment is not received in our office within five business days of the date of the disconnect notice. If it is necessary to send a service representative to collect a bill, a \$20.00 collection fee will be charged. If it is necessary to remove the meter for non-payment, customers will be required to pay their bills in full, plus a \$25.00 reconnection fee before service is restored. If customers' bills and/or notices are mailed late by Prestonsburg City's Utilities Commission, the payment period will be extended the same amount of time the bill and/or notices were mailed late.

6. Rate Schedule. Auxier agrees to pay Prestonsburg, according to Prestonsburg's Payment Policy, for water delivered in accordance with this Agreement at the following rates for each metered delivery point:

(a) the rate for the first 2,000 gallons of water delivered monthly hereunder shall be \$6.97;

(b) the rate for the next 98,000 gallons of water delivered monthly hereunder shall be \$3.02 per 1,000 gallons;

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- (c) the rate for all gallons of water delivered monthly hereunder exceeding 100,000 gallons shall be \$2.02 per 1,000 gallons;
- (d) service which requires booster pump service for delivery of the water also shall include a surcharge of \$.10 per booster pump per 1,000 gallons.

7. Overrun Volumes. Prestonsburg has no obligation to deliver more than 500,000 gallons per day or 10,000,000 gallons per month in total to Auxier. Any quantities of water taken by Auxier above these contract maximums shall be considered overrun volumes. Overrun volumes shall be fully interruptible for any reason and at any time in the sole discretion of Prestonsburg. The rate for overrun volumes shall be \$3.00 per 1,000 gallons. In the event of a force majeure condition as defined in Section 14 hereof, the overrun rate shall not apply and Auxier shall pay the rate set forth in Section 6.

8. Rate Schedule Modifications. All rates set forth in this Agreement shall be adjusted annually on the anniversary date of this Agreement to correspond with the Consumer Price Index ("CPI"), but no such increase under this provision shall increase rates by more than 2 percent per year. In addition, Prestonsburg may make a rate filing with the Kentucky Public Service Commission at any time requesting a rate increase for service to Auxier; and this Agreement is subject to rate increase adjustments approved by the Kentucky Public Service Commission or its successor agency or entity.

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9. Termination. This contract shall commence on the date hereof and continue for a period of ten (10) years. This Agreement may be extended or renewed by the parties, if they mutually agree, upon such terms and conditions as agreed upon by the Parties.

10. Fire Protection and System Reliability. Prestonsburg shall not be responsible in any way for the failure of Auxier to furnish sufficient water for fire protection purposes, or sufficient water storage tanks for system reliability purposes, and Auxier shall indemnify Prestonsburg from any such claims related thereto.

11. Indemnification. Each party shall indemnify the other party, its employees, and agents from all claims, demands, and liabilities of any kind relating to or arising out of this Agreement, except to the extent such claims, demands, or liabilities result from or arise out of the negligence of party being indemnified.

12. Chlorination. Auxier shall be responsible for any chlorination of the water furnished by Prestonsburg if such chlorination is required by the Floyd County Department of Health or any other Federal or State governmental agency.

13. Interruptible Service. If Prestonsburg does not have a sufficient supply of water to supply its retail customers, then Prestonsburg, at its sole discretion, may reduce on a proportional basis the amount of water to be furnished to Auxier; provided that Prestonsburg shall be entitled at all times to retain sufficient water to provide adequate fire flow within the City of Prestonsburg.

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14. Force Majeure. All obligations of either party with respect to service hereunder shall be excused without liability during the pendency of any condition of force majeure. Force majeure shall include any act, event or condition beyond the reasonable control of the party claiming force majeure, and shall include, but not be limited to, any act of God, fire, storm, earthquake, freezing condition, wind, flood, drought, snow, water used to fight fires, line breaks, environmental release, breakage of or delay in receiving parts, equipment or supplies, or shortage thereof, strike or lockout, or any act, event or requirement of any governmental law, regulation or entity. Force majeure shall not include routine line leakage or financial inability to pay, and shall not excuse payment for services rendered by Prestonsburg, including the payment of Auxier's minimum bill obligation hereunder.

15. Notices. All notices and other communications provided hereunder shall be in writing and shall be delivered personally or transmitted by registered or certified mail, return receipt requested or by a recognized overnight courier service. Such notice shall be deemed to have been given at the time of personal delivery or upon receipt thereof, as reflected on the signed certificate or delivery statement of the courier service. Notice must be delivered or sent to the party at the following address or to such other address as a party may have designated by notice:

TO PRESTONSBURG: Prestonsburg City's Utilities Commission
2103 South Lake Drive
Prestonsburg, Kentucky 41653

TO AUXIER:

Auxier Water Company, Inc.
P.O. Box 99
Auxier, Kentucky 41602

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16. Amendment. This Agreement may be amended in writing only, duly signed by both parties, and will be governed by and construed in accordance with Kentucky law.

17. Binding Effect and Benefit. Upon execution, the Agreement will inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, subject to regulatory approval as set forth below; provided, however, neither this Agreement nor any rights and obligations hereunder may be assigned by Auxier without the written consent of Prestonsburg.

18. Severability. The terms and provisions of this Agreement shall not be severable, and in the event that any term or provisions hereof is held to be invalid or unenforceable, the remaining terms or provisions hereof shall be invalid and unenforceable, and Prestonsburg shall have no further obligation hereunder.

19. Regulatory Approval. This Agreement is contingent upon and subject to approval by the Kentucky Public Service Commission. Should the Commission fail to approve this Agreement in its entirety, Prestonsburg shall not be bound by the terms hereof, and this Agreement shall be considered null and void and of no force or effect. Auxier shall not resell at wholesale water supplied hereunder so as to make Prestonsburg, directly or indirectly, a wholesale supplier to any other water system.

20. Non-Waiver. Prestonsburg's failure to exercise any of its rights hereunder at any time will not operate as a waiver of its right to exercise same at any other time(s).

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21. Counterparts. This Agreement may be executed in several counterparts with the same effect as if the parties executing the several counterparts had all executed one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers or agents to execute this Agreement the day and year first above written.

AUXIER WATER COMPANY, INC.

BY: Phil Ward
PRESIDENT

PRESTONSBURG CITY'S UTILITIES COMMISSION

BY: Seldon Horne
SELDON HORNE, SUPERINTENDENT

ATTEST:

C. J. McNally
C. J. McNALLY, CHAIRMAN

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PURSUANT TO 807 KAR 5:011,
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BY: Stephan O. Bell
SECRETARY OF THE COMMISSION

**WATER LINE ACQUISITION
AND JOINT DEVELOPMENT AGREEMENT**

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THIS AGREEMENT, made and entered into as of the 11 day of February, 1998, by and between AUXIER WATER COMPANY, INC., a Kentucky corporation ("Auxier"), and the CITY OF PRESTONSBURG, KENTUCKY (the "City"), a Kentucky municipal corporation of the Fourth Class pursuant to KRS 81.010(4) and the PRESTONSBURG CITY'S UTILITIES COMMISSION (the "Utilities Commission" and collectively "Prestonsburg").

WITNESSETH:

WHEREAS, Auxier owns a ten inch water line which runs parallel to Route 3 commencing near the intersection of Route 3 and Highway 321 in Floyd County, Kentucky and ends near the Thunder Ridge racing facility;

WHEREAS, Auxier is in the business of operating a water distribution system (the "Business") in the community of Auxier, Floyd County, Kentucky and the surrounding environs, including portions of Johnson County, Kentucky;

WHEREAS, after the City acquires the Water Line as hereinafter defined, the Utilities Commission contemplates construction of a connecting line commencing at the terminus of its existing water line near Highlands Regional Hospital to connect to the Water Line acquired from Auxier (hereinafter "Connecting Facility");

WHEREAS, after the City acquires the Water Line as hereafter defined, the Utilities Commission contemplates the construction of a water line to extend the Water Line acquired from Auxier to the Honey Branch Industrial Park in Martin County, Kentucky (hereinafter "Extended Facility"); and

WHEREAS, the purpose of this Agreement is to permit Prestonsburg to fulfill the terms of the Prison Contract as hereinafter defined, and to permit the extension of water supply to currently unserved areas to improve the quality of life in such areas, and to enhance economic development.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, receipt of which is hereby acknowledged, it is agreed as follows:

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PURSUANT TO 807 KAR 5011,
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SECTION 1.
PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, Auxier hereby agrees to sell, assign and transfer to the City, and the City agrees to purchase from Auxier on the Closing Date (as hereinafter defined), a portion of the assets used in the Business, as follows (the "Assets"):

(a) Water Line. Approximately, six thousand (6,000) linear feet of pipe used as a ten (10) inch water line (the "Water Line") commencing near the intersection of Highway 321 and Route 3 in Floyd County, Kentucky and continuing in an easterly direction parallel to Route 3 as more accurately described on Exhibit 1.1(a) hereto;

(b) Equipment. All equipment, including, but not limited to meters, valves, shut-offs, taps, etc. ("Equipment"), whether necessary or convenient, used to operate and maintain the Water Line as listed on Exhibit 1.1(b) hereto;

(c) Licenses. All licenses and permits required or necessary to operate and maintain the Water Line as listed on Exhibit 1.1(c);

(d) Easements. All easements and other rights of ways in which the Water Line lies and for ingress and egress to the Water Line as listed on Exhibit 1.1(d);

(e) Real Estate. All real estate owned by Auxier upon which any of the Equipment or Water Line is located as listed on Exhibit 1.1(e).

1.2 Transfer of Title of Assets: and Transfer of Possession of Assets: Assumption of Liabilities.

(a) At the Closing, Auxier shall deliver to the City such deeds, bills of sale, assignments and other instruments of transfer satisfactory in form and substance to the City and its counsel, which shall be effective to transfer to the City all of Auxier's right, title and interest in and to the Assets. Simultaneously with the Closing, Auxier shall take all steps as may be required to put the City in immediate possession and control of the Assets. Subsequent to the Closing, Auxier shall promptly execute and deliver to the City all such additional instruments and take such additional actions as may be reasonably requested by the City to assure the vesting of title and the fulfillment of the purposes of this Agreement.

(b) The City does not assume any liabilities or obligations of Auxier, whether in connection with the Business or this transaction or otherwise.

1.3 Disconnection. The City shall have the right to disconnect Auxier's feeder line from the Water Line in order for the City to connect the Water Line to PUBLIC SERVICE COMMISSION

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needed, Auxier shall have the right to a tap near its existing connection in accordance with Section 1.4 herein, providing for taps.

1.4 Customers, Connections and Taps.

(a) Retail Customers. Auxier shall have the right to serve existing retail customers connected to the Water Line and shall have the right to serve new retail customers in the future through new taps to the Water Line, the Connecting Facility, and the Extended Facility, which are approved by the Utilities Commission; provided that such approval by the Utilities Commission will not unreasonably be withheld. This right to connect new retail customers is a nonexclusive right.

(b) Wholesale Customers. Auxier shall not connect any wholesale customer to the Water Line or any other portion of Auxier's system without the consent of the Utilities Commission. A wholesale customer is a utility subject to the jurisdiction of the Public Service Commission.

(c) Taps. Auxier shall supply all labor, equipment, materials and supplies, necessary or appropriate, to tap the Water Line to establish a connection for new retail customers. Taps, equipment, etc. shall be of the type, brand, etc. as specified by the City, acting by and through its Utilities Commission. Title to the taps, valves, and pipes necessary to make a retail customer connection shall pass to the City immediately upon installation. Title to meters used to serve a single customer shall remain vested in Auxier. Title to meters used to serve more than one customer ("master meters") shall pass immediately to the City upon installation. Master meters up to and including one inch will be paid for and installed by Auxier. Master meters two inches in size or larger will be paid for and installed by the Utilities Commission. Auxier shall not remove the above items (except for meters owned by Auxier) without the express written consent of the Utilities Commission. In addition, this subsection (c) shall apply to the Connecting Facility extending from the Highlands Regional Hospital to connect with the Water Line, and shall also apply to the Extended Facility connecting with the Water Line and extending through Johnson County; provided that, the construction of said facilities by the City and Utilities Commission shall be at Prestonsburg's sole discretion.

(d) Installation of Taps. No tap shall be installed unless a representative of the Utilities Commission is present to supervise and inspect all materials, parts, equipment and workmanship, necessary or appropriate, to complete the installation of the tap. All taps shall be installed in accordance with the specifications of the Utilities Commission as currently in effect and as may be modified, from time to time, in the future. Auxier shall give the Utilities Commission a seven day advance notice of its intent to install a tap. This notice shall be in writing and shall specify the exact location of the proposed tap as well as the names and addresses of the new customers. Auxier shall not commence the installation until the Utilities Commission's designated representative is present to supervise and inspect the installation as described above. Auxier shall make all modifications as required by the inspector

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SECTION 2.
PURCHASE PRICE OF ASSETS AND OTHER ALLOCATIONS

2.1 Purchase Price. The Purchase Price for the Assets shall be One Hundred Thousand (\$100,000.00) Dollars. The Purchase Price shall become payable after fulfillment of all contingencies and conditions precedent hereto. After satisfaction of all contingencies provided for herein, the delivery of the Purchase Price may be deferred, at the option of the City, until the earlier of :

- (i) six (6) months from the date of Closing;
 - (ii) ten (10) days after the date the City, acting by and through its Utilities Commission, completes construction of the Connecting Facility.
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SECTION 3.
REPRESENTATIONS AND WARRANTIES OF AUXIER

PURSUANT TO 807 KAR 5:011.
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SECRETARY OF THE COMMISSION

3.1 Organization and Shareholders.

(a) Auxier is duly organized and validly existing under the laws of the Commonwealth of Kentucky, and is duly authorized to carry on its Business in the places where its Assets and properties are now owned, leased or operated.

(b) All of the outstanding shares of capital stock of Auxier are owned by Forest Music and Phillip Ward and it has no other shareholders.

3.2 Authority for Agreement.

(a) The Board of Directors and all Shareholders of Auxier have approved this Agreement and the transactions contemplated herein and have authorized the execution and delivery hereof.

(b) The consummation of the transactions contemplated by this Agreement and compliance with the provisions hereof will not conflict with or result in a breach of the terms, conditions or provisions of or constitute a breach or default under, any provision of law, any order of any court or other agency of government, the charter, code of regulations or bylaws of Auxier or any note, debenture, mortgage, loan or security Agreement or other Agreement or instrument to which Auxier is a party, or by which it is bound, or results in the creation or imposition of any lien, charge or encumbrance of any kind whatsoever on any property or assets to be transferred to the City pursuant to this Agreement. No consent, approval, order authorization, report, registration or declaration of or filing with any governmental agency or any other person is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby, except as expressly provided herein.

3.3 Title to Assets. Auxier will at Closing transfer good and marketable title to all of the Assets to be transferred and assigned to the City pursuant to this Agreement subject to no debt, mortgage, conditional sales Agreement, charges, liens or encumbrances, or other form or type of liability. The Assets purchased hereunder are in the possession of Auxier with no claims affecting said possession and Auxier has the absolute right to transfer or assign the Assets in their present location.

3.4 Compliance with Laws. Auxier has complied and is in compliance with any and all federal, state, local and regional laws, statutes, ordinances, orders, judgments, rulings, and regulations affecting the Business and the Water Line, including but not limited to, environmental regulation or control. Auxier has received no notice of any actual or claimed or asserted failure to comply with any such laws, statutes, ordinances, orders, judgments, rulings or regulations, and is not subject to any order, injunction, judgment, or decree of any federal or state court or agency except as disclosed on Exhibit 3.4 and is not the subject of any pending or threatened investigation, proceeding, arbitration or litigation by any person.

3.5 Taxes.

(a) Except as to any tax which is not currently due and payable, Auxier has duly filed all tax returns and reports, of any nature or description (including returns and reports with respect to taxes withheld from or imposed in respect of employee wages) with, and has timely paid all taxes of any nature or description (including taxes imposed upon employees and collected in accordance with applicable law) due to, all required franchise, profits, sales, transfer, use, property, occupancy and excise tax returns, and has paid in full all additions to taxes, penalties, fines, interest and related charges and fees to the extent such filings and payments are required for all periods prior to and including the date hereof, and all information provided in such returns is true, complete and accurate;

(b) Auxier has no deficiency with respect to any tax period or any liability with respect to taxes, penalties, interest or related charges and fees, whether or not assessed;

(c) Auxier has not been a party to any agreements or waivers of statutes of limitations or deadlines for assessments;

(d) Auxier has no claim, action or proceeding pending or threatened against it for any alleged deficiencies in taxes and Auxier is not under any audit or investigation with respect to any liability for taxes;

(e) Auxier's tax returns have not been nor are they currently being audited by governmental authorities and Auxier has not received any notices of any future audits.

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3.6 Customers.

Exhibit 3.6 lists all of the customers, including the name, address and telephone number, whom Auxier has connected to the Water Line. Auxier has no knowledge that any customer intends to cease dealing with Auxier, nor has any information been brought to the attention of Auxier which might reasonably lead it to believe any customer intends to materially alter the amount of sales or extent of dealings with Auxier or has any claim against Auxier.

3.7 Legal Action. There are no legal, quasi-judicial or administrative actions, suits or proceedings of any kind or nature now pending or threatened before any court or administrative body in any manner involving Auxier or the Assets, or shares of Auxier's capital stock, or which may adversely affect the power or authority of Auxier to carry out the transactions to be performed hereunder, except for the actions currently pending before the Public Service Commission and Franklin Circuit Court between Auxier, and the City and its Utilities Commission.

3.8 Assets. The Assets are in good working order, fully operable, and mechanically fit to carry out their respective functions.

3.9 Insurance. Auxier will maintain in force its current insurance coverage in respect of the Assets. All insurance is in full force and effect, and all premiums due thereon have been paid.

3.10 Governmental Authorizations. All permits, concessions, grants, franchises, licenses and other governmental authorizations and approvals necessary for the conduct of the business with the Assets have been duly obtained and are in full force and effect, and there are no proceedings pending or threatened which could have an adverse effect on: (I) this transaction or (ii) the City's ability to operate or maintain the Water Line.

3.11 Veracity of Representations and Warranties. No representation or warranty by Auxier in this Agreement, nor any statement, certificate or exhibit furnished or to be furnished to the City on behalf of Auxier pursuant to this Agreement, nor any document or certificate delivered to the City pursuant to this Agreement or in connection with the actions contemplated herein, contains or shall contain any untrue statement of a material fact or omits to state a material fact.

3.12 Effective Dates of Representations and Warranties. The representations and warranties contained herein shall be true and correct as of the date of this Water Line Acquisition and Joint Development Agreement and as of the Closing Date and shall survive the Closing.

3.13 Water Loss. Auxier hereby warrants that the cumulative water loss percentage for the Water Line shall not exceed five percent (5%) for the 12-month period immediately following the date the Utilities Commission connects the Water Line to its existing water system. If the cumulative water loss percentage exceeds five percent (5%), Auxier shall reimburse the City,

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acting by and through its Utilities Commission, for all expenses incurred in making said repairs. A detailed statement of expenses shall be prepared and sent to Auxier. Within thirty (30) days of the mailing of such statement, Auxier shall pay the amount due on the statement.

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SECTION 4.
REPRESENTATIONS AND WARRANTIES OF THE CITY

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The City represents and warrants to Auxier as follows:

PURSUANT TO 807 KAR 5011.
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BY: Stephan D. Bell
SECRETARY OF THE COMMISSION

4.1 Organization.

(a) The City is duly organized and exists under the laws of the Commonwealth of Kentucky, pursuant to KRS 81.010(4).

4.2 Authority for Agreement.

(a) The City has full power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the City and constitutes the legal, valid and binding obligation of the City enforceable against it in accordance with its terms.

(b) The consummation of the transactions contemplated by this Agreement in compliance with the provisions hereof will not conflict with or result in a breach of the terms, conditions or provision of, or constitute a breach or default under, any provisions of law, any order of any court or any other agency of the government, the charter, code of regulations, or by-laws of the City, or any note, debenture, mortgage, loan or security Agreement or other Agreement or instrument to which the City is a party or by which it is bound. No consent, approval, or authorization, report, registration or declaration of or filing with any governmental agency or any other person is required in connection with the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby, except as expressly provided herein.

4.3 Legal Action. There are no legal, quasi-judicial or administrative actions, suits or proceedings of any kind or nature now pending or threatened before any court or administrative body in any manner involving the City which may adversely affect the City's power or authority to carry out the transactions to be performed hereunder, except for the actions currently pending before the Public Service Commission and Franklin Circuit Court between Auxier, the City and the Utilities Commission.

4.4 Governmental Authorizations. All permits, concessions, grants, franchises, licenses and other governmental authorizations and approvals necessary for the City to effect this transaction have been duly obtained are in full force and effect, and there are no proceedings

pending or threatened which could have an adverse effect on: (I) this transaction or (ii) the City's ability to conduct business.

4.5 Veracity of Representations and Warranties. No representation or warranty by the City in this Agreement, nor any statement, certificate or exhibit furnished or to be furnished to Auxier on behalf of the City pursuant to this Agreement, nor any document or certificate delivered to Auxier pursuant to this Agreement or in connection with the actions contemplated herein, contains or shall contain any untrue statement of a material fact or omits to state a material fact.

4.6 Effective Dates of Representations and Warranties. The representations and warranties contained herein shall be true and correct as of the date of this Water Line Acquisition and Joint Development Agreement and as of the Closing Date and shall survive the Closing.

SECTION 5. COVENANTS OF AUXIER

Auxier covenants and agrees that:

5.1 Encumbrances. Auxier will not mortgage, pledge or subject to lien or other encumbrance any of the Assets.

5.2 Acquisition or Disposition of Assets. Auxier will not acquire or dispose of any of the Assets subject to the terms of this Agreement or in any way obligate itself to do so except as may be expressly provided by the terms of this Agreement.

5.3 Condition of Assets. Auxier shall maintain and keep all of the Assets in operable condition, good repair, and good working order, in accordance with its present practice prior to Closing.

SECTION 6. CONDITIONS PRECEDENT TO AUXIER'S OBLIGATION

All of the following shall be conditions precedent to Auxier's obligation to consummate the transactions contemplated by this Agreement.

6.1 Accuracy of Representations and Warranties. The covenants, representations and warranties made by the City in this Agreement and in any written document delivered to Auxier pursuant thereto shall be accurate, complete and correct in all material respects on and as of the Closing Date as if made on and as of that date, except for changes contemplated hereby.

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PURSUANT TO 807 KAR 8011,
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SECTION 7.
CONDITIONS PRECEDENT TO THE CITY'S OBLIGATION

All of the following shall be conditions precedent to the City's obligation to consummate the transactions contemplated by the Agreement:

7.1 Accuracy of Representations and Warranties. The covenants, representations and warranties made by Auxier in this Agreement and in the Exhibits referred to herein and in any written document delivered to the City pursuant hereto shall be accurate, complete and correct in all material respects on and as of the Closing Date with the same effect as if made on and of that date.

7.2 Receipt by Auxier of Required Approvals. Except as provided in Exhibit 7.2 attached hereto, Auxier shall have received any and all required regulatory approvals necessary to consummate the transaction set forth in this Agreement.

SECTION 8.
INDEMNIFICATION

8.1 Indemnification by Auxier.

(a) Auxier shall indemnify, defend and hold harmless the City, the Utilities Commission, and their officers, directors, employees, and agents from, against and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost, expense (including without limitation, reasonable attorneys' fees and costs) arising out of or in any manner incident, relating or attributable to:

(i) Any misrepresentations, or breach of warranty, covenant or Agreement made or to be performed by Auxier pursuant to this Agreement or in any certificate, instrument of transfer, Exhibit or other document or Agreement executed by Auxier in connection with this Agreement, or

(ii) Any claim, action proceeding or determination arising out of Auxier's obligations or ownership of the Assets or the Business not specifically assumed by the City under this Agreement.

8.2 Indemnification by the City. The City and the Utilities Commission shall indemnify, defend and hold harmless Auxier and its officers, directors, employees, and agents from, against and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost, expense (including without limitation, reasonable attorneys' fees and costs) incurred or suffered by Auxier arising out of or in any manner incident, relating or attributable to any misrepresentation, or breach of warranty, covenant or Agreement made by the City or the Utilities Commission pursuant to this Agreement or in any certificate, instrument of transfer, Exhibit or other document executed by the City or the Utilities Commission in connection with this Agreement, or

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BY: Stephan O. Bell
SECRETARY OF THE COMMISSION

document or Agreement executed by the City or the Utilities Commission in connection with this Agreement.

8.3 Indemnification Claims.

(a) The City, the Utilities Commission, or Auxier, if claiming indemnity hereunder (the "Indemnified Party"), agree to give prompt notice to the party or parties from which indemnity may be sought (the "Indemnifying Party") of the assertion of any claim or the commencement of any suit, action or proceeding in respect of which indemnity may be sought hereunder.

(b) At the request of the Indemnified Party, the Indemnifying Party shall assume the defense of any such suit, action or proceeding, including its compromise or settlement, in which the outcome would give rise to a claim for indemnification, and shall be fully responsible for the outcome thereof. The Indemnifying Party may not compromise or settle any such suit, action or proceeding without the Indemnified Party's consent which shall not be unreasonably withheld.

(c) The representations, warranties and covenants herein contained in the Closing, and, notwithstanding any investigation by a party hereto, shall continue in full force and/or effect after the consummation of this transaction.

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SECTION 9.
CLOSING

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9.1 Closing. The consummation of this transaction (the "Closing") shall take place in the offices of the Utilities Commission within sixty (60) days after all contingencies hereunder are satisfied, or at such other place, time and date as the parties hereto may mutually agree in writing.

BY: Stacy Wallace
SECRETARY OF THE COMMISSION

SECTION 10.
CONTINGENCIES

10.1 Prison Contract. This Agreement is contingent upon and subject to the receipt, execution and delivery of a binding, enforceable contract for the sale, directly or indirectly through the Water Line, by the Utilities Commission, which contract is satisfactory to said Commission, of potable water to the Federal Bureau of Prisons for a new prison facility to be constructed in Martin County, Kentucky, and to the receipt by the Utilities Commission of all required permits and approvals. The Utilities Commission shall give Auxier written notice when this contingency is satisfied.

10.2 Regulatory Approval. This Agreement is contingent upon and subject to the approval without change of the Kentucky Public Service Commission ("Commission") of the separate Water Contract. Auxier shall give written notice to the Utilities Commission of the

Commission's Order approving the separate Water Contract, including a copy of the Commission's Order.

10.3 Litigation Matters. This Agreement is contingent upon, pursuant to a separate Settlement Agreement, and is subject to the voluntary dismissal, with prejudice, of all pending litigation between Auxier and Prestonsburg, including, but not limited to, Case No. 96-362 before the Public Service Commission of the Commonwealth of Kentucky and Franklin Circuit Court, Civil Action No. 97-CI-824, Division No. I. This contingency shall be satisfied when an Agreed Order(s) Dismissing Settled, or its equivalent, for both matters, has been entered by the court or regulatory agency with appropriate jurisdiction, said Order(s) is final and appealable, and no further appeal of or conduct of such proceeding is possible.

SECTION 11.
RIGHTS OF FIRST REFUSAL

11.1 Right of First Refusal. Prestonsburg shall have a right of first refusal to acquire all or a portion of Auxier's entire water distribution system and related facilities or the stock of Auxier, if offered by Auxier to any third party, on the same terms and conditions as the offer to such third party.

11.2 Notice. Auxier shall give written notice to Prestonsburg of the third party offer, including, but not limited to, all terms and conditions of such offer, all information provided to the third party and complete access to the facilities and records of Auxier.

11.3 Acceptance. Prestonsburg shall have 150 days from the date of the written notice to consider and evaluate the offer. Prestonsburg must accept in writing the offer during the 150 day period. If Prestonsburg fails to exercise its right of first refusal, then Auxier may proceed to sell the assets or stock on the terms and conditions as communicated to Prestonsburg in the written notice.

11.4 Modification. If any terms or conditions of sale are modified by Auxier and the third party, then a new written notice shall be given to Prestonsburg and a new 150 day period shall begin for Prestonsburg to consider the new offer.

11.5 Closing. If Prestonsburg exercises its right of first refusal, the closing shall occur within ninety (90) days of Prestonsburg's acceptance.

11.6 Shareholders. Forest Music and Phillip Ward, individually, enter this Agreement to agree to the right of first refusal for their shares of stock in Auxier and to ensure the performance of this Agreement.

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11.7 Memorandum of Record. Auxier, Forest Music and Phillip Ward agree to cooperate with Prestonsburg to record in the County Clerk's Office a Memorandum of Record reflecting these rights of first refusal, if requested by Prestonsburg.

SECTION 12.
REGULATION

12.1. Regulation. This Agreement does not include and is not intended to cover the terms and conditions of rates and service of water sales either at wholesale or at retail. This Agreement shall be submitted to the Public Service Commission for approval. In the event the Public Service Commission does not approve this Agreement in its entirety it shall become void and of no force or effect at the option of Prestonsburg.

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SECTION 13.
MISCELLANEOUS

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13.1 Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the law of the Commonwealth of Kentucky.

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13.2 Entire Agreement/Amendments.

(a) This Agreement and the Exhibits, certificates and other agreements and documents referred to herein shall constitute the entire Agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the subject matter hereof.

(b) No amendment, supplement, modification, waiver or termination of this Agreement shall be implied or be binding unless executed in writing by a party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly therein provided.

13.3 Assignment. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors, heirs and assigns, subject to regulatory approval as set forth herein. The rights and obligations provided by this Agreement may not be assigned or transferred by a party without the written consent of the other party.

13.4 Headings. Headings used in this Agreement are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular articles or sections to which they refer.

13.5 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

13.6 Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be considered to have been duly given when delivered by hand, or sent by first class certified or registered mail, postage prepaid, return receipt requested, in each case to the appropriate addresses (or to such other addresses as a party may from time to time designate as to itself by notice similarly given to the other party in accordance with this Section 13):

(a) If to the City to: Jerry S. Fannin, Mayor
City of Prestonsburg
90 North Lake Drive
Prestonsburg, Kentucky 41653

with a copy to: Seldon Horne, Superintendent
Prestonsburg City's Utilities Commission
2103 South Lake Drive
Prestonsburg, Kentucky 41653

and: C. Kent Hatfield, Esq.
Middleton & Reutlinger
2500 Brown & Williamson Tower
Louisville, Kentucky 40202

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(b) If to Auxier to: Phillip Ward, Vice-President
Auxier Water Company, Inc.
P. O. Box 99
Auxier, Kentucky 41602

BY: Stephan O. Bell
SECRETARY OF THE COMMISSION

13.7 Specific Performances. The parties hereto agree that money damages and any other remedy available at law may be inadequate to redress or remedy any loss or damage suffered by a party hereto upon any breach of this Agreement, and the parties therefore agree that, in addition to recovery on any claim for money damages or obtaining any other remedy available at law, a party hereto also may enforce the terms of this Agreement by injunction and/or specific performance and/or may obtain any other appropriate remedy.

13.8 Termination. In the event of termination, the parties will remain in the same status as if this Agreement had not been executed, without liability of any party to any other party; and each party shall absorb and pay any expense which it has incurred up to that time.

This Agreement is made as of the year and day first above written, and shall be effective as of that date without regard to the fact that execution hereof by the parties shall have been effected at the same time or at other times.

AUXIER WATER COMPANY, INC.

(SEAL)

BY: Phil Ward
~~FOREST MUSIC, PRESIDENT~~
PHIL WARD

ATTEST:

Deborah Ward
SECRETARY

Forest Music
Forest Music, Shareholder

Phil Ward
Phillip Ward, Shareholder

CITY OF PRESTONSBURG, KENTUCKY

(SEAL)

BY: Jerry S. Fannin
JERRY S. FANNIN, MAYOR

ATTEST:

Sue W. Webb
CITY CLERK

PRESTONSBURG CITY'S UTILITIES COMMISSION

BY: Seldon Horne
Seldon Horne, Superintendent

ATTEST:

C.J. McNally
C.J. McNally, Chairman
of the Prestonsburg City's
Utilities Commission

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EXHIBIT 1.1(a)
Water Line

[Auxier to provide survey and description]

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EXHIBIT 1.1(b)
Equipment

[Auxier to provide list which describes equipment and manufacturer's warranties, if any.]

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EXHIBIT 1.1(c)
Licenses

[Auxier to provide copies of all licenses and permits.]

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EXHIBIT 1.1(d)
Easement

[Auxier to provide copies of all easements and rights of ways]

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EXHIBIT 1.1(e)
Real Estate

[Auxier to provide copies of deeds to all real estate]

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EXHIBIT 3.4
Compliance With Laws

[Auxier to list all notices of any claims of failure to comply with laws as required by Section 3.4]

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EXHIBIT 3.6
Customers

[Auxier shall list the name, address and telephone number of existing customers connected to the Water Line]

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EXHIBIT 7.2
Required Approvals

[Auxier shall list any required approvals not received as of the date of Closing]

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