

CONTRACT FOR SERVICE AND SALE OF WATER

THIS CONTRACT FOR SERVICE AND SALE OF WATER (hereinafter referred to as "the Agreement") is made and entered into the 9th day of April, 2007, between **THE RICHMOND UTILITIES BOARD**, an agency of the City of Richmond established by Ordinance No. A-106, with principal offices located at 300 Hallie Irvine Street, Richmond, Kentucky (hereinafter referred to as "the City") and **MADISON COUNTY**, a body politic of the Commonwealth of Kentucky, with principal offices located at Madison County Courthouse, Richmond, Kentucky 40475 (hereinafter referred to as "the County," and **MADISON COUNTY UTILITY DISTRICT**, with principal offices located at P.O. Box 670, Keeneland Drive, Richmond, Kentucky 40475 (hereinafter referred to as "the Water District").

WITNESSETH:

WHEREAS, the Water District is organized and established under Chapter 74 of the Kentucky Revised Statutes, for the purpose of constructing and operating a water supply distribution system, and to accomplish this purpose, the Water District requires a supply of treated water; and

WHEREAS, the City owns and operates a water supply distribution system with a capacity currently capable of serving the present and planned customer base of the City system and supplying the volumes agreed upon in this contract to the Water District; and

WHEREAS, the Parties have determined that it is in the best interests of their respective customers to enter into a new Agreement regarding rates, territories, and usages; and

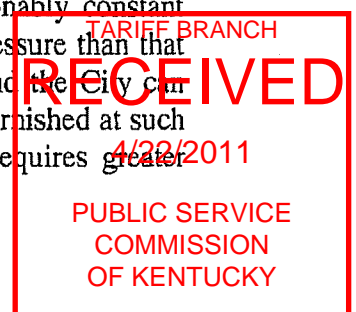
WHEREAS, the Parties agree that the terms herein will further the best interests of both the present and future customers of the Water District and the City.

NOW THEREFORE, the Parties agree as follows:

SECTION I. SALE OF WATER TO THE WATER DISTRICT.

1. **Quality of Water:** The City agrees to furnish the Water District at the point(s) of delivery specified on the attached Exhibit A, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Division of Water, Commonwealth of Kentucky, in the quantities specified in Section II of this Agreement. The Parties agree to coordinate the flushing of lines, and the City shall promptly notify the Water District of any line breaks which might affect the quality of water delivered to it by the City.

2. **Pressure of Water.** The City agrees to furnish water at a reasonably constant pressure equal to the normal operating pressure of the City system. If a greater pressure than that normally available at the point(s) of delivery is required by the Water District, and the City can provide that greater pressure without extra cost to the City, then the water will be furnished at such greater pressure at no extra cost to Water District. But if the Water District requires greater



pressure than normally available at the point(s) of delivery, and the City cannot provide that greater pressure without extra cost, then the cost of providing such greater pressure shall be borne by the Water District. Emergency failures of pressure or supply due to main supply line breaks, power failure, drought, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the City from this provision for such reasonable period of time as may be necessary to restore pressure and/or service. In such event, cut offs from service by the City shall be made on an equitable basis for customers of the City and the Water District, to the extent possible, given the lay out of the delivery system and the circumstances creating the shortage.

3. **Billing by the City.** The City agrees to furnish the Water District with an itemized statement of the amount of water furnished the Water District during each preceding month.

4. **Rates.** The Parties agree that the Water District shall pay to the City, not later than the 15th of each month for water delivered at the current rate of \$1.65 per 100 cubic feet. The Parties agree that the City shall pass an ordinance increasing the rate for wholesale customers to \$2.02 per 100 cubic feet to be effective 60 days after the second reading of the ordinance, but no later than July 1, 2007, and shall submit this rate change to the Kentucky Public Service Commission. The Water District and the County agree to not protest or challenge this rate change for wholesale customers of the City at the Kentucky Public Service Commission or in any forum. The Parties further agree that rates shall be adjusted annually on July 1 to begin on July 1, 2008 to reflect Richmond Utilities increase in costs for operation. The annual adjustment shall be equal to the lesser of three percent (3%) or the average percentage change in the Consumer Price Index for all Urban Consumers (U.S. City Average) published by the U. S. Department of Labor, Bureau of Labor Statistics, however the annual adjustment shall never be less than zero. Water District and the County agree to not protest or challenge this annual rate change at the Kentucky Public Service Commission or in any forum.

5. **Future Rate Changes.** The City agrees prior to any future rate change greater than the annual rate change described in numerical paragraph 4 to have a rate study performed to determine an accurate cost of water so provided to the Wholesale customers of the City, and the Water District and the County agree to abide by the determination of said rate study, or in the alternative, have a rate study performed on behalf of the Water District. Should the rate study performed on behalf of the City and the rate study performed on behalf of the Water District vary by three percent or less, the Parties agree to split the difference of the rates. Should the rate study performed on behalf of the City and the rate study performed on behalf of the Water District vary by more than three percent, the Parties agree to hire a third, independent qualified person to review the rate studies performed by the Parties and make a determination of the correct rate. The third independent qualified person shall be chosen by the persons who performed the initial rate studies on behalf of the Parties, and the cost of the third rate study shall be divided equally between the City and the Water District.

6. **Source of Water Purchases.** During the term of this Agreement, City shall be Water District's only source of water supply for the volumes listed on the attached Exhibit C, as if



may be amended from time to time. The Water District and County acknowledge that the City has expended sums for capital improvements to create the capacity needed to supply water to the Water District hereunder.

7. **Metering Equipment.** The Water District agrees to furnish, install, and maintain at its own expense at point(s) of delivery, 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 the Water District. All such equipment shall be owned by the Water District. The meters used by the Water District shall meet AWWA standards and shall be approved prior to installation by the City. The City shall have the right to monitor any and all automatic reading devices installed on the master meters. The Water District agrees to calibrate such meters and metering equipment whenever requested by the City, but at least once every twelve (12) months. The calibration shall be done by a Public Service Commission certified testing service. 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 determined by the average use during said time period for the three previous years, unless the City and the Water District shall agree upon a different amount. The metering equipment shall be read by the City on regularly scheduled dates.

8. **Sewer Charge Collection Enforcement.** The Water District agrees to furnish to the City on or before the 20th day of each month, the volumes of water used in the prior month by each of the Water District's customers who are users of the City of Richmond's sewer facilities. The volumes shall be furnished on a per customer basis, to enable billing by the municipal sewer for use of the sewer facilities. Further, the Water District agrees to discontinue water service to any person who is delinquent in paying city sewer charges within five (5) days after receipt of written notice of the delinquency from the City.

SECTION II: VOLUME LIMIT

1. **Volume Limit.** The Water District and the County have projected the County's growth and its needs for water from the date of this Agreement until 2027 (said projections are attached hereto as Exhibit B), and the City has reviewed those projections and believes it can meet the County's water needs as projected (knowing that the Water Treatment Plant will need to be upgraded from 12 million gallons per day to 18 million gallons per day by 2016 according to the Water District's projections). The Parties agree that the volume limits shall be increased as indicated on Exhibit C each year, or as volume limits may be amended from time to time as hereinafter provided. During the term of this Agreement, if the Water District or the City determine that there has been a change in the Water District's needs for water, whether greater or less than the projections on Exhibit B, the Party making said determination shall advise the other Party as soon as practicable. A change in the Water District's needs for water shall be any amounts greater than the set volume limits over a twelve month period or 10% less than projected needs over any twelve



month period. When the City and the Water District have been apprised of a change in the Water District's needs and have a reasonable amount of time to review volume limits and production levels, but no greater than 30 days, the Parties shall set a meeting and negotiate in good faith a revision of the volume limits. This Agreement shall be amended to reflect said revision of volume limits. Factors to be taken into consideration in such negotiations include, but are not limited to, the following: The amount of the City's reserve capacity; the growth in water use by the Water District's customers; the growth in water use by the City's retail customers and the customers of other wholesalers; and need for capital improvements to the water plant, production facilities, and the distribution systems.

2. **Water Shortage.** Should the City determine that a water production shortage exists for any reason, the Water District agrees to notify its customers of water restrictions and enforce said water restrictions against its customers. Water restrictions shall be set by the City and shall apply equally to City customers and Water District customers. Should the Commonwealth of Kentucky or the Kentucky River Authority for any reason decrease the amount that the City may pump from the Kentucky River, the Water District and the County agree that the volume limits for the Water District shall decrease by the same percentage.

SECTION III: TERRITORIES

1. **Territories.** The Parties recognize that growth in the systems of the City and the Water District have made it necessary to establish guidelines regarding the boundaries of each Party's respective territories in order to avoid future disputes. The Water District and the County understand that the City desires to provide water to properties within the boundaries of the City and its current customer base outside of the boundaries of the City. Likewise, the City understands that the Water District desires to maintain its current customer base and continue to grow as the County grows. The Parties also recognize that new developments contiguous to the boundaries of the City may wish to be annexed into the City and be provided with City services and placed within the City's water service territory. The Parties recognize that service by the City to the water customers who are in the City will assist the provision of adequate flows for fire protection. Further, the Parties recognize that water service by the Water District makes billing for City sewer service difficult.

2. **Purchase of Territories:** The Parties have negotiated for the City to purchase certain territories from the Water District as follows

a. **Woodlawn Development.** The City agrees to pay to the Water District the amount of Ten Thousand Dollars (\$10,000.00) in exchange for the right to serve Home Depot within the Woodlawn Development at the intersection of the EKV Bypass and Big-Hill Avenue. The purchase price shall be paid upon execution of this Contract. Woodlawn Development is more particularly described in Deed Book 576 at page 65 in the Madison County Clerk's office. The Water District and the County agree that the City shall serve other commercial properties within the Woodlawn Development, and that the purchase price for the service of each initial business in the



development shall be determined as follows: If the City pays the purchase price at the time water service is activated for the new business, purchase price shall be based upon six years of the District's profits; if the City pays over a five year period, the purchase price shall be based upon ten years of the District's profits. The Water District and County agree that all of the property within the Woodlawn Development shall be deleted from its territory under the procedure described in subparagraph (e), and that payments for service of the initial businesses (other than Home Depot) shall be made following the approval of a development plan by the City's Planning Commission.

b. **Madison County Board of Education.** The City agrees to pay to the Water District the amount of Nine Thousand Dollars (\$9,000.00) in exchange for the right to serve the property within the territories owned by the Madison County Board of Education located on the Robert R. Martin Bypass, also known as the Glenn Marshall Elementary. The purchase price shall be paid upon execution of this Contract. The Madison County Board of Education property is more particularly described in Deed Book 537 at page 505 which references "Tract A" in Plat Book 18 at page 397 in the Madison County Clerk's Office. The Water District and the County agree that the City shall serve the unnamed middle school within the Madison County Board of Education property, and that the purchase price for the service of this school shall be determined as follows: If the City pays the purchase price at the time water service is activated for the middle school, purchase price shall be based upon six years of the District's profits; if the City pays over a five year period, the purchase price shall be based upon ten years of the District's profits. The Water District and County agree that all of the property owned by the Madison County Board of Education (encompassing Glenn Marshall Elementary and the unnamed Middle School) shall be deleted from its territory under the procedure described in subparagraph (e), and that payments for service of the unnamed middle school shall be made when the Madison County Board of Education requests water service from the City.

c. **Arnett Farm.** The City agrees to pay to the Water District the amount of Six Thousand Dollars (\$6,000.00) in exchange for the right to serve the property within the development located on the east side of US 25 across from Kroger, also known as the Arnett farm. The purchase price shall be paid upon execution of this Contract. Said property is more particularly described in Deed Book 477 at page 592 which references "Tract A" in Plat Book 15 at page 1 in the Madison County Clerk's Office.

d. **Specific Residential Properties.** The City agrees to pay to the Water District the amount of Three Hundred and Sixty-Seven Dollars and 92/100 (\$367.92) per lot in exchange for the right to serve the property within Union Crossing (332 lots), Southpoint Development (51 lots), Derby Chase Development (97 lots), and Page Estates (later to be Orchard Hills) (342 lots) for a purchase price total of Three Hundred Two Thousand Four Hundred and Thirty Dollars and 24/100 (\$302,430.24). The purchase price shall be paid as follows: A payment of One Hundred and Seventy-Five Thousand Dollars (\$175,000.00) due on July 1, 2007; then a final payment of One Hundred and Twenty-Seven Thousand Dollars Four Hundred Thirty Dollars and 24/100 (\$127,430.24) to be paid on January 1, 2008. Said properties are described as follows: Union Crossing is located near the Robert R. Martin Bypass, and is more particularly described in



Deed Book 541 at page 562 in the Madison County Clerk's office; Southpoint Development is more particularly described in Deed Book 602 at page 296 in the Madison County Clerk's office. Derby Chase is more particularly described in Deed Book 607 at page 74 in the Madison County Clerk's office; Page Estates is more particularly described as Tract 1 on the plat of the Minor Consolidation Plat for Raymond Anderson recorded in Plat Cabinet 23 at page 162 in the Madison County Clerk's office.

e. **Procedure.** Within sixty days of the execution of this contract, the Water District and the County shall follow the procedure set out in KRS 74.110 in order to effectuate the deletion of the territory described above in this section from the Water District's geographic territory.

3. **Territories Acquired Under Previous Agreements.** The Water District and the County release all claims and rights to serve territories acquired by the City under previous agreements and specifically the *Settlement Agreement and Contract for Service and Sale of Water* entered into on the 26th day of September 1997 between the City and the Water District, the *Conditions of Sewer Service for Residential County Customers* entered into on May 26, 1999 between the City and the Madison County Fiscal Court, the *Agreement* entered into in the year 2003, and the *Agreement* entered into in the year 2005. The Water District and County agree to follow the procedure set out in KRS 74.110 in order to effectuate the deletion of the territory so acquired from the Water District from the Water District's geographic territory.

4. **Other territories.** The parties agree to negotiate in good faith with regard to all other territories.

SECTION IV: MISCELLANEOUS

1. **Term of Contract.** That this contract shall extend for a term beginning with the date of the execution of this contract by both Parties and ending on the same date twenty years from hence in the year 2027.

2. **Effective Date.** This Agreement shall become effective upon approval of the Kentucky Public Service Commission and the Farmers Home Administration. If such approvals are not obtained within thirty (30) days from the date of this Agreement, then the City and the Water District are relieved from any obligations hereunder.

3. **Successor to the Water District.** In the event of any occurrence rendering the Water District incapable of performing under this contract, any successor of the Water District, whether the result of legal process, assignment, merger or otherwise, shall succeed to the rights and obligations of the Water District hereunder.

4. **Prior Contracts.** This Agreement supersedes all water purchase contracts entered into by and between the City and the Water District. Such prior contracts shall be of no force and



effect when this contract becomes effective in accordance with the provisions of paragraph 2 of Section IV.

5. **Waiver.** No failure on the part of the City in exercising any power or right hereunder including, but not limited to the right to sell no more than the volume limits established on the attached Exhibit C, as the limits may be amended from time to time, shall operate as a waiver or modification of the right or power. No custom or practice of the Parties at variance with the terms hereof shall constitute a waiver of the City's right to demand compliance with the terms hereof.

6. **Governing Law.** This contract and the rights and obligations of the Parties hereto shall be governed by the laws of the Commonwealth of Kentucky.

7. **Customer Notice.** Customer notice shall be given in compliance with 807 KAR 5:0001 sec. 10(3) and (4).

8. **Entire Agreement.** The full and entire agreement between the Parties hereto is contained in this writing.

IN WITNESS WHEREOF, the parties have hereunto set their hands in duplicate hereof the day and year first written above.

THE RICHMOND UTILITIES BOARD

MADISON COUNTY

BY: *Gary C. Abney*
GARY ABNEY, Chairman

BY: *Kent Clark*
KENT CLARK, Judge Executive

ATTEST: *Henry Combs*
HENRY COMBS, Secretary

ATTEST: *Jeresa C. Long*

MADISON COUNTY UTILITY DISTRICT

BY: *James Carr - Chairman*
JAMES CARR, Chairman

ATTEST: *Jeresa C. Long*

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4/22/2011
PUBLIC SERVICE
COMMISSION
OF KENTUCKY

STATE OF KENTUCKY)
) SS
COUNTY OF MADISON)

SUBSCRIBED AND SWORN TO before me this 9th day of April, 2007,
by Gary Abney, Chairman, on behalf of the Richmond Utilities Board.

My commission expires: 05 / 15 / 10

[Signature]
NOTARY PUBLIC

STATE OF KENTUCKY)
) SCT.
COUNTY OF MADISON)

SUBSCRIBED AND SWORN TO before me on this 4th day of
April, 2007 by Kent Clark, Judge Executive on behalf of the
MADISON COUNTY.

My commission expires: 10 / 31 / 10

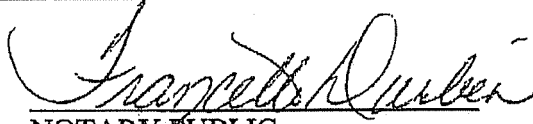
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KENTUCKY STATE AT LARGE

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PUBLIC SERVICE
COMMISSION
OF KENTUCKY

STATE OF KENTUCKY)
) SCT.
COUNTY OF MADISON)

SUBSCRIBED AND SWORN TO before me on this 4 day of April, 2007 by James Carr on behalf of the MADISON COUNTY UTILITY DISTRICT.

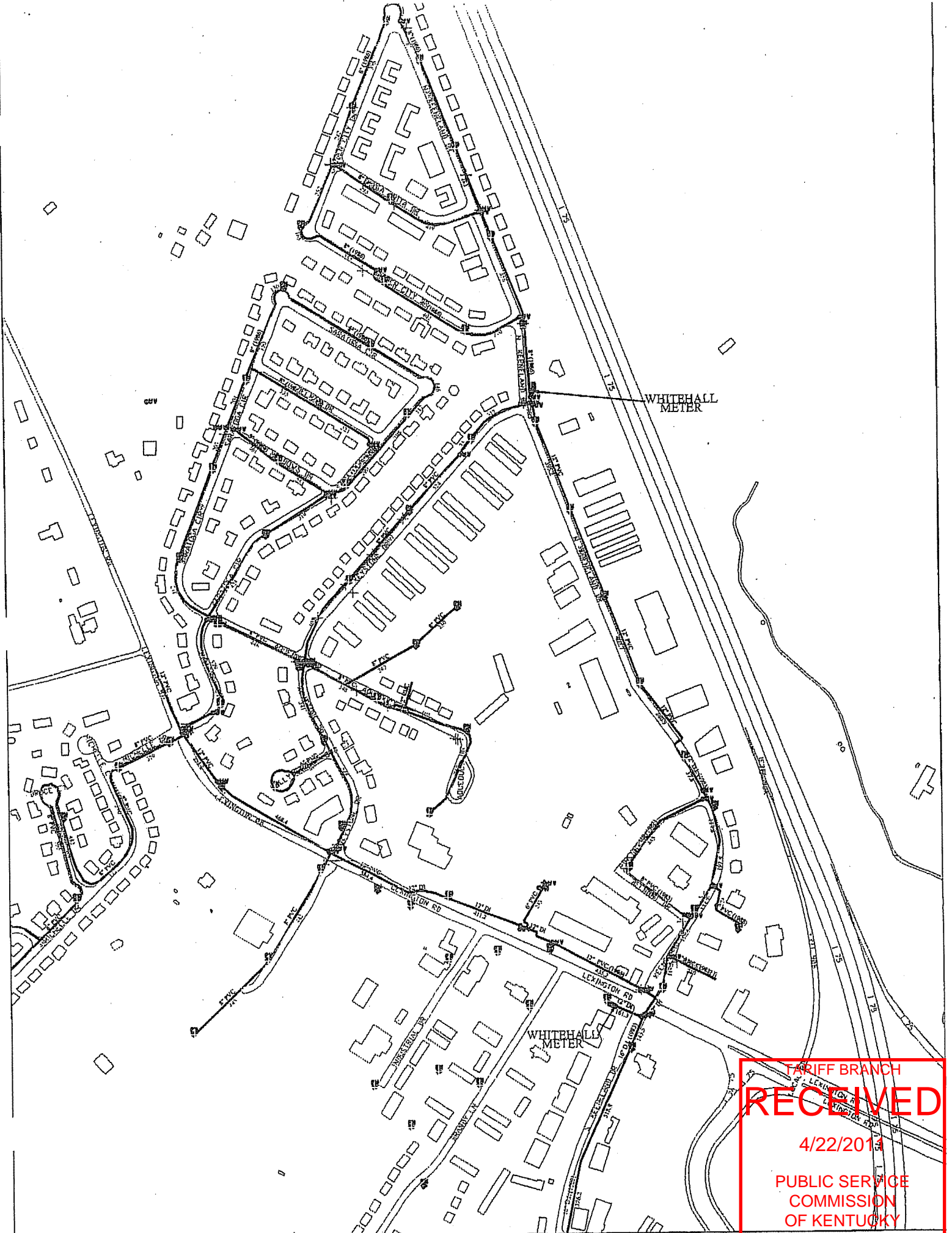
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EXHIBIT A

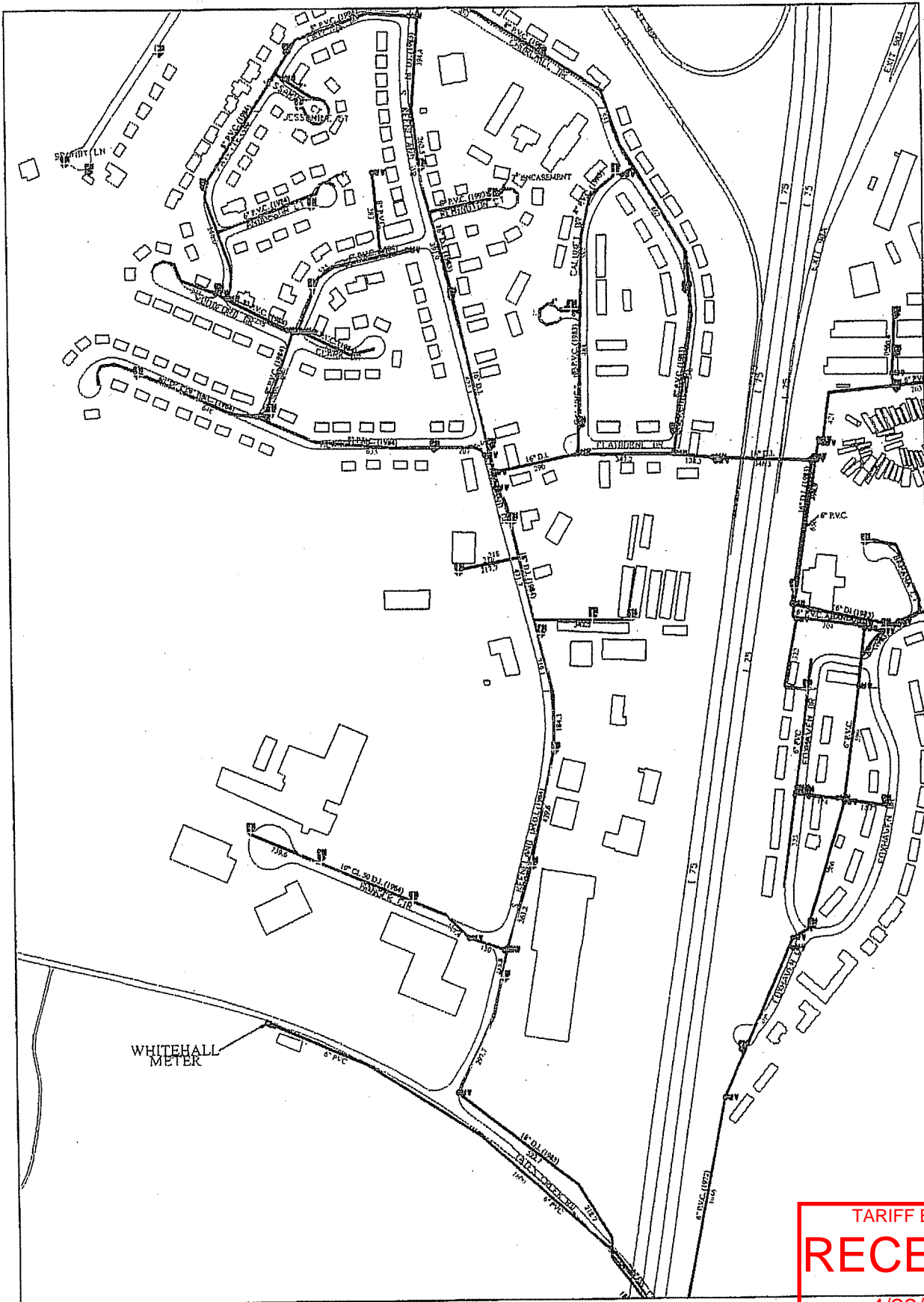
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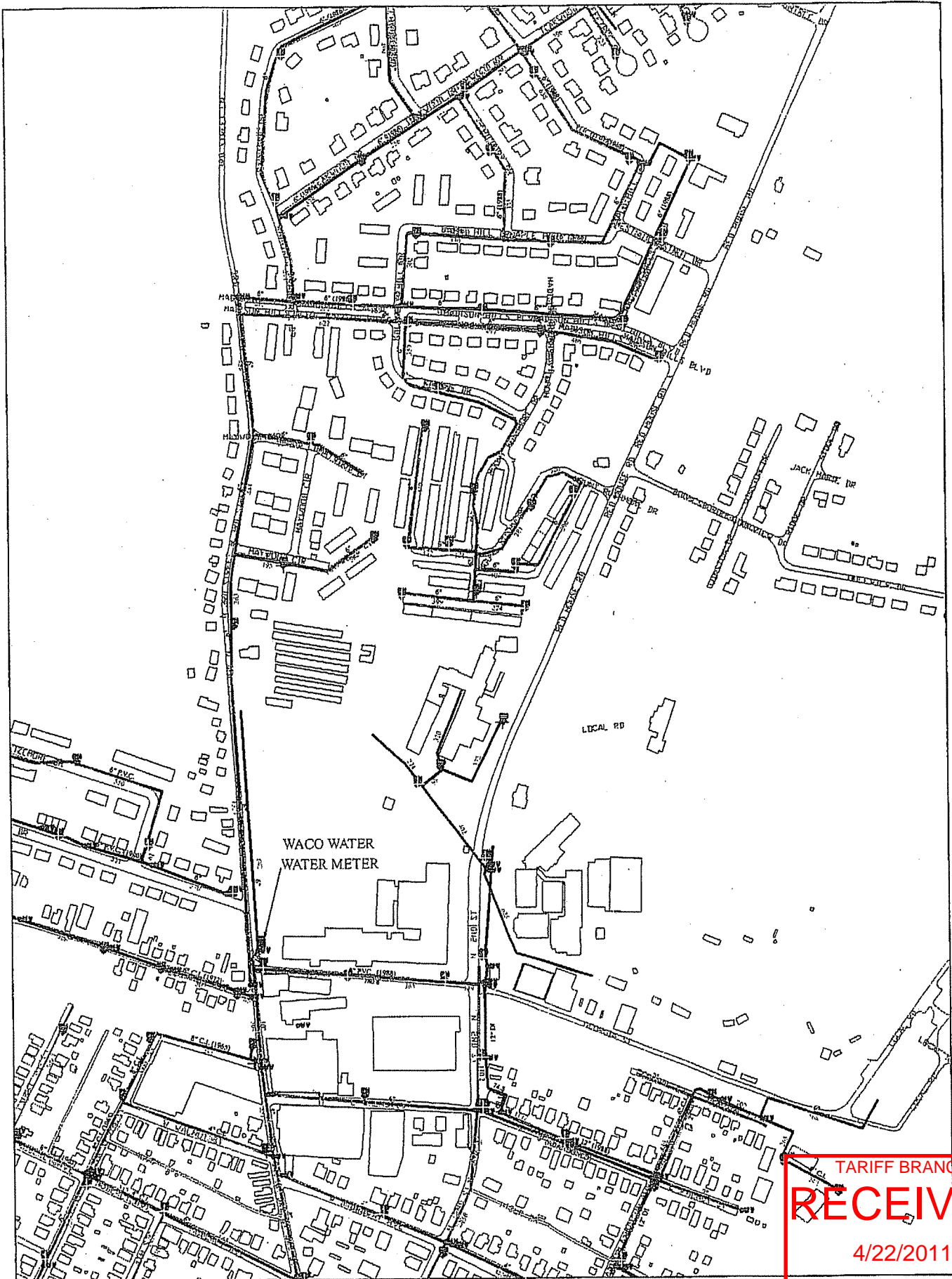
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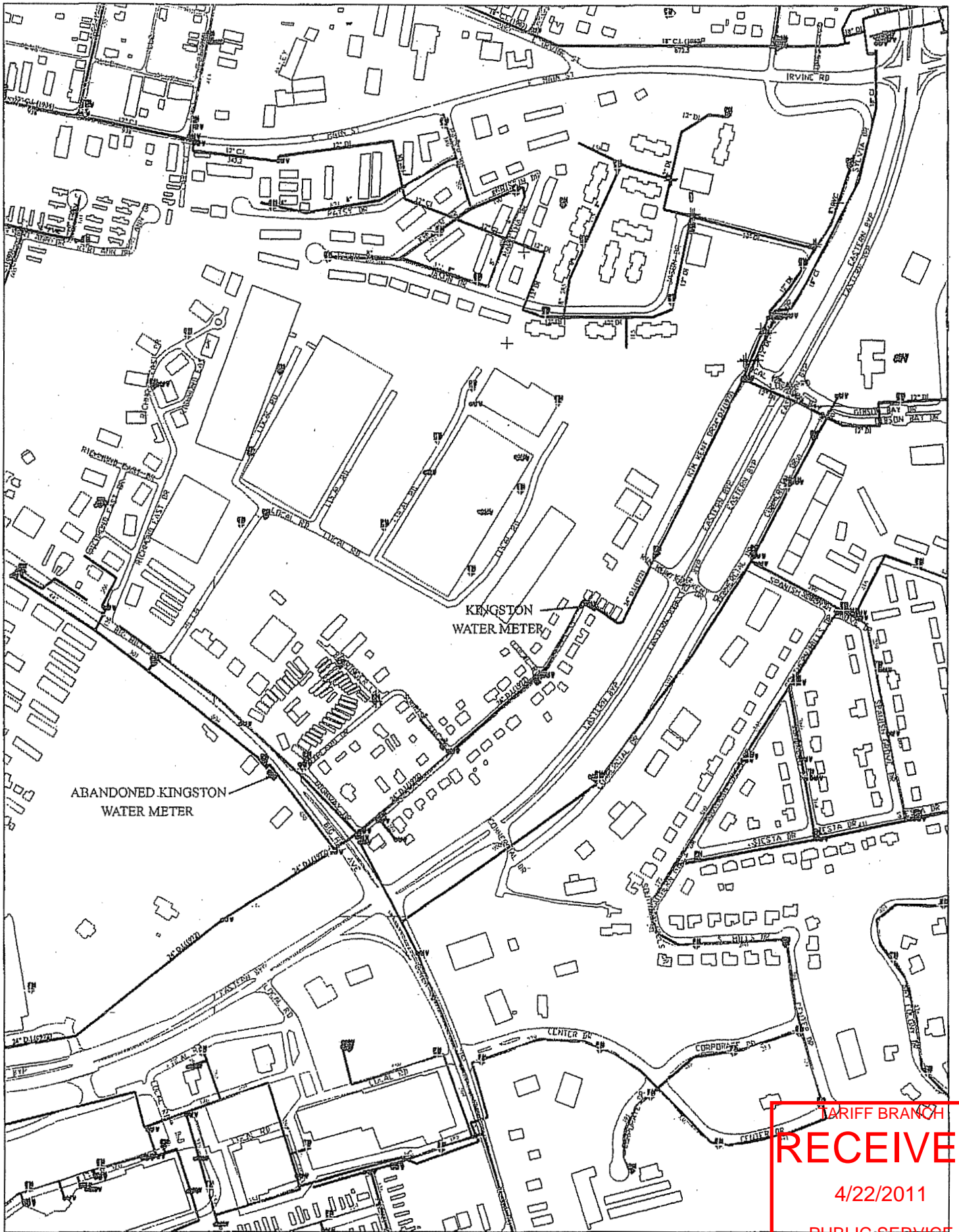
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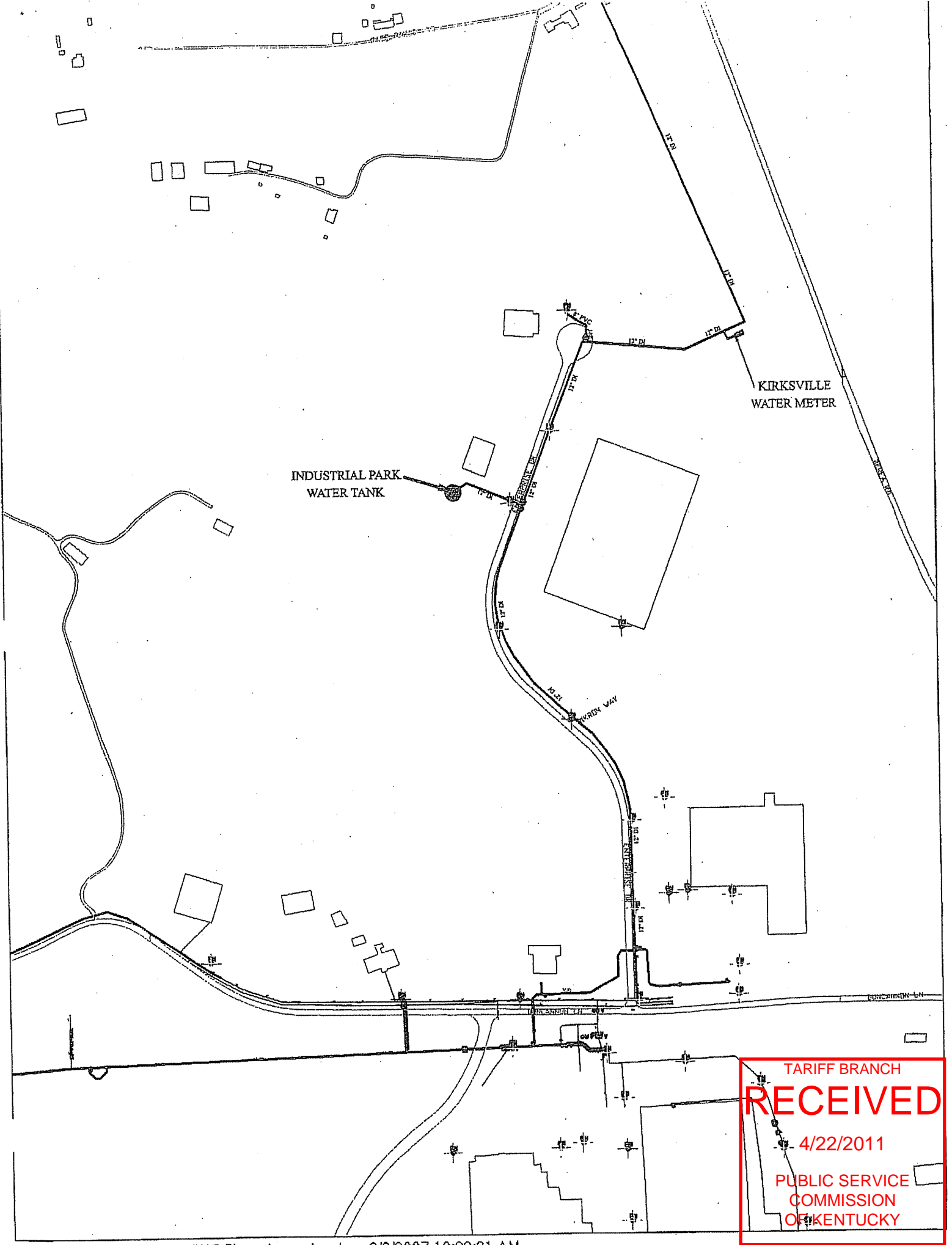
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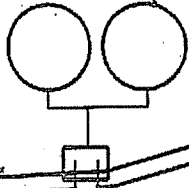
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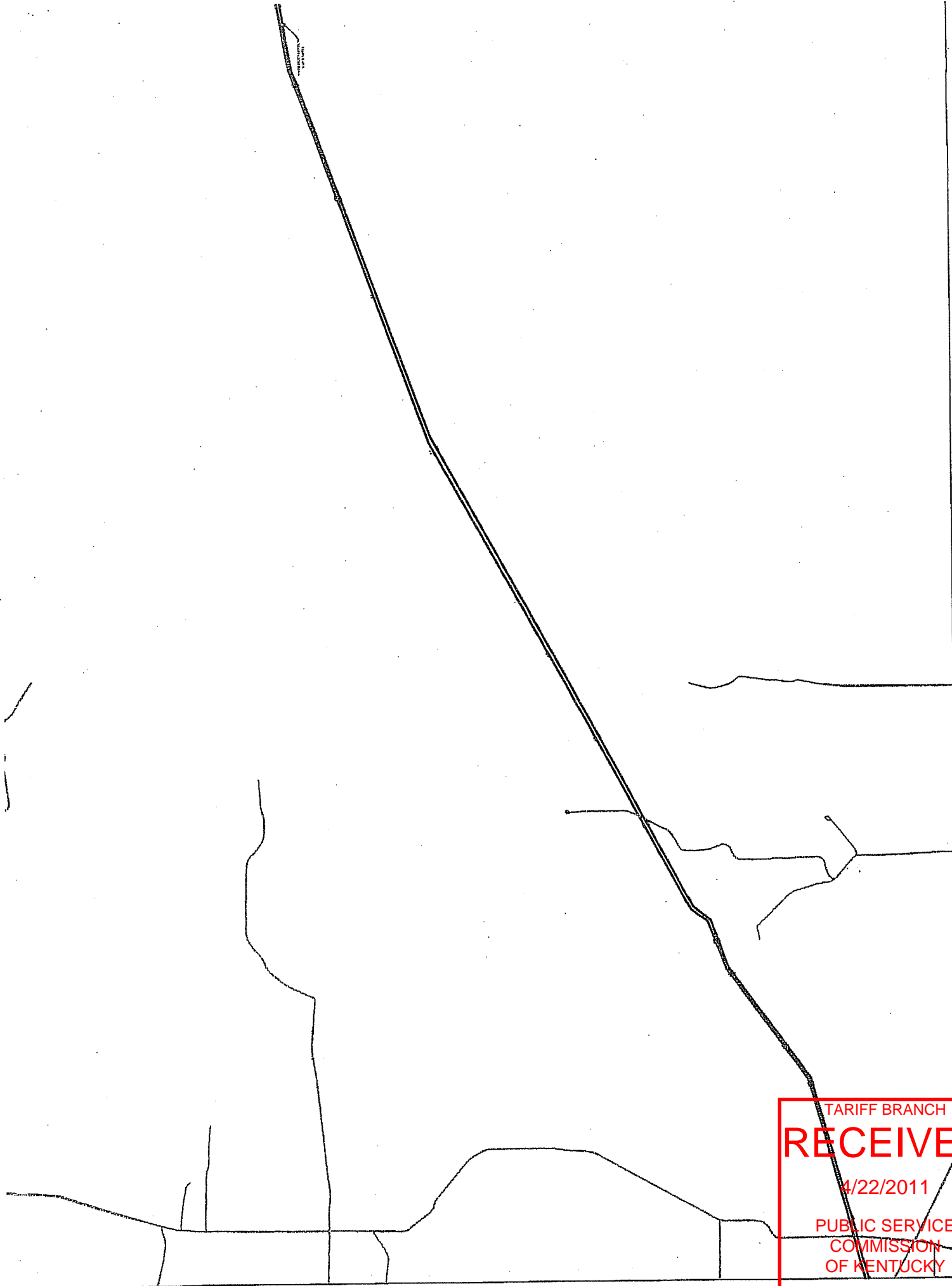
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SIDE STORAGE GROUND TANKS
AND PUMPING STATION



WACO WATER DISTRICT
WATER METER

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EXHIBIT B

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**Estimated Increase in Water Usage
Madison County Utilities District
June, 2005**

Predicted Population Increases
(from Madison County Planning and Development)

<u>Population</u>	<u>Total</u>	<u>Change</u>	<u>Percent</u>
2000	12,987		18.35
2010	12,106		14.4
2020	8,545		8.8

2004 Average Monthly Usage = 56.184 mg/month

Estimated Population Increase 2000 to 2004 by Bureau of Census is 7.5%

Increase in customers from 2000 to 2004 is 13.7% (8121 to 9231)

13.7% customer increase = 1.83

7.5% Population Increase

Water Increase = Population Increase x 1.83

<u>Time Period</u>	<u>Population Increase</u>	<u>Water Increase</u>	<u>Water Usage</u>
2004 to 2010	11.0%	20.1%	67.477
2010 to 2020	14.4%	26.4%	85.291 ^{17.81}
2020 to 2030	8.8%	16.1%	99.023



EXHIBIT C

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Volume Limits for Madison County Utilities

Year	MG/day	MG/mo	MG/yr
2006	1.94787945	59.25	710.976
2007	2.0105589	61.15	733.854
2008	2.07323836	63.06	756.732
2009	2.13591781	64.97	779.61
2010	2.19859726	66.87	802.488
2011	2.26127671	68.78	825.366
2012	2.32395616	70.69	848.244
2013	2.38663562	72.59	871.122
2014	2.44931507	74.50	894
2015	2.5084274	76.30	915.576
2016	2.56753973	78.10	937.152
2017	2.62665205	79.89	958.728
2018	2.68576438	81.69	980.304
2019	2.74487671	83.49	1001.88
2020	2.80398904	85.29	1023.456
2021	2.84912877	86.66	1039.932
2022	2.89426849	88.03	1056.408
2023	2.93940822	89.41	1072.884
2024	2.98454795	90.78	1089.36
2025	3.02968767	92.15	1105.836
2026	3.0748274	93.53	1122.312
2027	3.11996712	94.90	1138.788

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