

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 28th day of MARCH, 2008, 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 **KIRKSVILLE WATER ASSOCIATION**, a Kentucky non-profit corporation, with principal offices located at 297 Michelle Drive, Richmond, KY 40475 (hereinafter referred to as "KWA")

WITNESSETH:

WHEREAS, the KWA is organized and established under Chapter 273 of the Kentucky Revised Statutes, for the purpose of constructing and operating a water supply distribution system, and to accomplish this purpose, KWA 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 KWA; 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 KWA and the City.

NOW THEREFORE, the Parties agree as follows:

SECTION I. SALE OF WATER TO KWA.

1. **Quality of Water:** The City agrees to furnish KWA 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 KWA 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 KWA, 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 KWA. But if KWA 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 KWA. 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 KWA, 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 KWA with an itemized statement of the amount of water furnished KWA during each preceding month.

4. **Rates.** The Parties agree that KWA 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. KWA understands and agrees that effective July 1, 2007, the rate shall change to \$2.02. KWA agrees to not protest or challenge this rate this 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. KWA agrees 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 KWA agrees to abide by the determination of said rate study, or in the alternative, have a rate study performed on behalf of KWA. Should the rate study performed on behalf of the City and the rate study performed on behalf of KWA 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 KWA 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 KWA.

6. **Source of Water Purchases.** During the term of this Agreement, City shall be KWA's only source of water supply for the volumes listed on the attached Exhibit C, as it may be amended from time to time. KWA acknowledge that the City has expended sums for capital improvements to create the capacity needed to supply water to KWA hereunder.

7. **Metering Equipment.** KWA 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 KWA. All such equipment shall be owned by KWA. The meters used by KWA 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. KWA 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 previous years unless the City and KWA shall agree upon a different amount. The metering equipment shall be read by the City on regularly scheduled dates.

8. **Sewer Charge Collection Enforcement.** KWA 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 KWA'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, KWA 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.

9. **Master Meter.** Richmond Utilities agrees to allow the placement of a 6 inch master meter no later than two years from the date of the execution of this agreement, or sooner should Kirksville Water Association so require. Because of the uncertainty of the development plan of the Duncannon area, the location of the master meter shall be determined by mutual agreement between the parties at the time it is placed in service.

SECTION II: VOLUME LIMIT

1. **Volume Limit.** KWA has projected its 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 KWA'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 KWA'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 KWA or the City determine that there has been a change in KWA'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 KWA'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 KWA have been apprised of a change in KWA'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 KWA'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, KWA 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 KWA 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, KWA agrees that the volume limits for KWA shall decrease by the same percentage.

SECTION III: TERRITORIES

1. **Territories.** The Parties recognize that growth in the systems of the City and KWA have made it necessary to establish guidelines regarding the boundaries of each Party's respective territories in order to avoid future disputes. KWA understands 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 KWA desires to maintain its current customer base and continue to grow as the Kirksville's population 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 KWA makes billing for City sewer service difficult.

2. **Territory Acquisition by the City.** The Parties agree to the following guidelines with regard to customers that are within the boundaries of the City of Richmond as of the date this Agreement is executed:

a. The Parties shall continue to serve all customers that the Parties are currently serving with water except when there is a change in the use of a property within the boundaries of the City of Richmond. A change in the use would include but not be limited to a subdivision for the development of residential, commercial, or industrial property or a change from a residential or farm use to a commercial use or industrial use.

b. When a property within the boundaries of the City of Richmond at the time this Agreement is executed is subdivided for the development of residential property and it is property within KWA territory, then the City shall acquire this territory from KWA with consideration being as follows: Net annual profit per mean average residential household for KWA multiplied by the number of lots for the proposed development multiplied by six years. Annual net profit per average residential lot for KWA is defined as the annual gross proceeds of the mean



average residential household minus the annual cost of purchase of water from the City and minus KWA's annual mean average expenses per residential household.

c. When a property within the boundaries of the City changes the use from a residential or farm use to a commercial use or industrial use and it is property within KWA territory, then the City shall acquire this territory from KWA with consideration being as follows: Annual net profit of a similar commercial or industrial property agreed upon by the Parties multiplied by six years. Annual net profit of a similar commercial or industrial property is defined as the annual gross proceeds from the similar commercial or industrial property minus the cost of purchase of water from the city and minus KWA's annual mean average expenses for this similar commercial or industrial property. Should the parties not agree upon a similar commercial or industrial property, the parties agree that the dispute shall be settled through mediation.

d. KWA agrees that it shall follow all procedures under Kentucky and federal law necessary to remove purchased territory from its territory, including acquiring necessary approvals from its lenders, board, and users.

e. Consideration shall be paid at the time the Richmond Planning & Zoning Commission approves a subdivision or a development plan for said property.

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 December 31, 2038.

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 KWA are relieved from any obligations hereunder.

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

4. **Prior Contracts.** This Agreement supersedes all water purchase contracts entered into by and between the City and KWA. 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

KIRKSVILLE WATER ASSOCIATION

BY: *Gary Abney*
GARY ABNEY, Chairman

BY: *Billy May*
BILLY MAY, President

ATTEST: *Henry Combs*
HENRY COMBS, Secretary

ATTEST: *Armon Sanders*
ARMON SANDERS, Secretary



STATE OF KENTUCKY)
) SS
COUNTY OF MADISON)

SUBSCRIBED AND SWORN TO before me this 26 day of March, 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 28th day of
MARCH 2008 by Billy May, President, on behalf of the KIRKSVILLE WATER
ASSOCIATION.

My commission expires: 11/10/08

[Signature]
NOTARY PUBLIC
KENTUCKY STATE AT LARGE

TARIFF BRANCH
RECEIVED
4/22/2011
PUBLIC SERVICE
COMMISSION
OF KENTUCKY

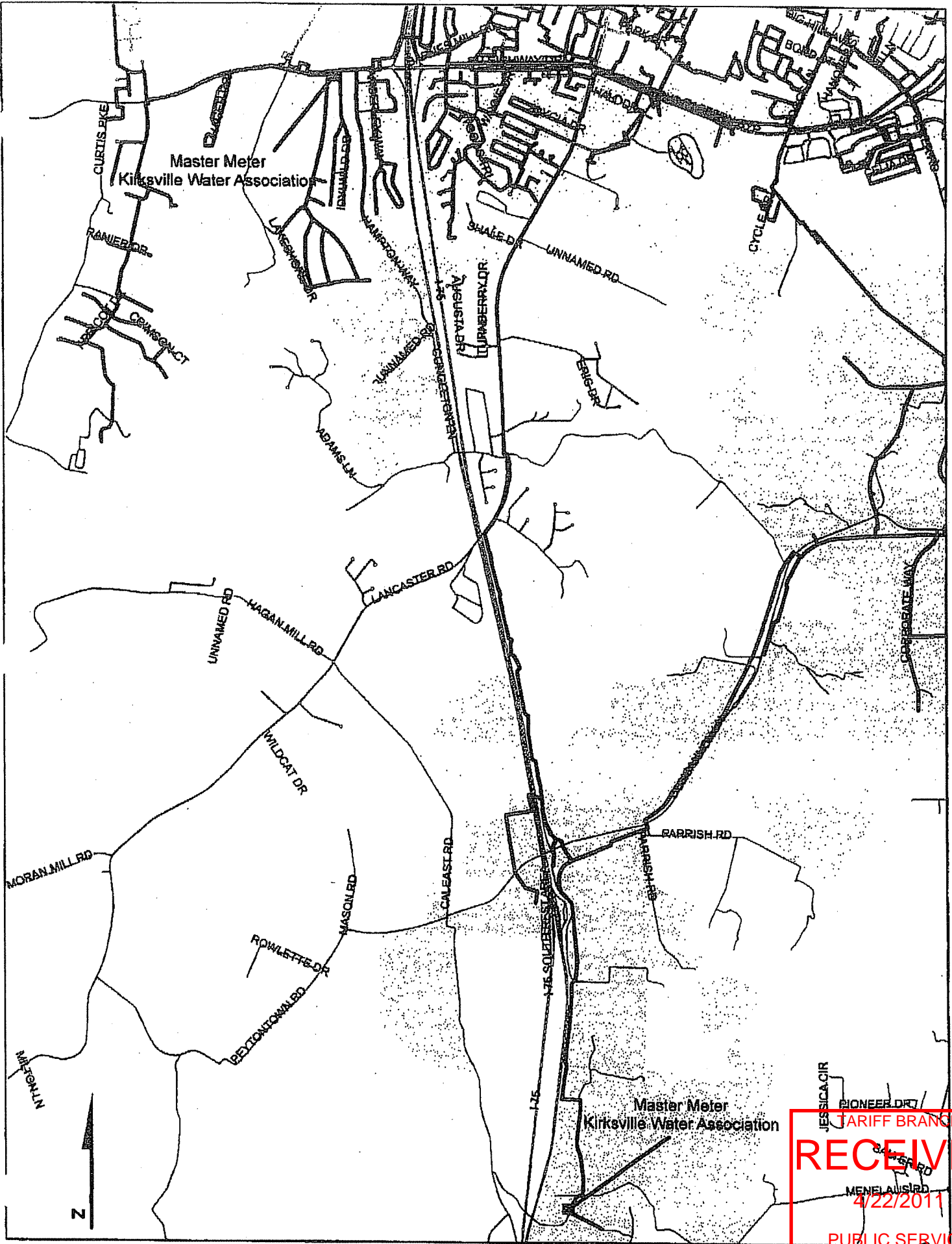


EXHIBIT A

JESSICACIR
 PIONEER DR /
 TARIFF BRANCH
RECEIVED
 MENELAUS RD
 4/22/2011
 PUBLIC SERVICE
 COMMISSION
 OF KENTUCKY

EXHIBIT B

**Estimated Increase in Water Usage
Kirksville Water Association
(Revised) June, 2007**

Predicted Population Increases
(from Madison County Planning and Development)

	<u>Population</u>	<u>Total</u>	<u>Change</u> <u>Percent</u>
2000	70,872		
2010	83,859	12,987	18.3
2020	95,965	12,106	14.4
2030	104,419	8,545	8.8

1586 meters to 1647 meters – 1st quarter 2003 to 1st quarter 2005

$59/1586 = 3.85\%$ or 1.92% per year growth

Average population increase in Madison County

2000 to 2010 = 18.3% or 1.83 per year

Growth Factor - $\frac{\text{Water Growth}}{\text{Population Growth}} = \frac{1.92\%}{1.83\%} = 1.05$

2004 Average Monthly Usage = 8.446 mg/min.

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

Average daily usage in fiscal year 2006 was .302 mg/year or 9.060 mg/month.

<u>Time Period</u>	<u>% Population Increase</u>	<u>% Water Increase</u>	<u>Water Usage</u>
2006 to 2010	7.30%	7.7%	9.758 mg/month
2010 to 2020	14.4%	15.1%	11.232 mg/month
2020 to 2030	8.8%	9.2%	12.265 mg/month



EXHIBIT C

Volume Limits for Kirksville Water Association

Year	MG/day	MG/mo	MG/yr
2006	0.298	9.060	108.720
2007	0.304	9.230	110.760
2008	0.309	9.402	112.824
2009	0.315	9.578	114.936
2010	0.321	9.758	117.096
2011	0.325	9.896	118.752
2012	0.330	10.036	120.432
2013	0.335	10.178	122.136
2014	0.339	10.323	123.876
2015	0.344	10.469	125.628
2016	0.349	10.617	127.404
2017	0.354	10.768	129.216
2018	0.359	10.920	131.040
2019	0.364	11.075	132.900
2020	0.369	11.232	134.784
2021	0.373	11.331	135.972
2022	0.376	11.431	137.172
2023	0.379	11.532	138.384
2024	0.383	11.634	139.608
2025	0.386	11.737	140.844
2026	0.389	11.841	142.092
2027	0.393	11.946	143.352

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