City of Houston, Texas, Ordinance No. 2012-1095

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH A TRACT OF LAND CONTAINING 4.504 ACRES COMMONLY KNOWN AS 1216 HOUSTON AVENUE AND 1300 DART STREET, HOUSTON, HARRIS COUNTY, TEXAS; AND SUPPORTING ISSUANCE OF A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, Subchapter W, "Municipal Setting Designations," of Chapter 361, "Solid Waste Disposal Act," of the Texas Health and Safety Code authorizes the Texas Commission on Environmental Quality ("TCEQ") to create municipal setting designations; and

WHEREAS, on August 22, 2007, by Ordinance No. 2007-959, the City Council adopted Article XIII, of chapter 47, Code of Ordinances, Houston, Texas, to provide a process for establishing municipal setting designation ordinances and amended that process on July 14, 2010, by Ordinance No. 2010-556; and

WHEREAS, Sections 47-765(f) and 47-767(a) of the Code of Ordinances, Houston, Texas, authorize municipal setting designation ordinances that prohibit the use of designated groundwater as potable water and thereby enable the TCEQ to certify a municipal setting designation for designated property; and

WHEREAS, on August 3, 2012, **1216 HOUSTON AVE., LTD.**, a Texas limited partnership and the **CITY OF HOUSTON, TEXAS**, a municipal corporation situated in Harris, Fort Bend and Montgomery Counties, Texas ("Applicants") have applied to the Director of the Public Works and Engineering Department, requesting that the City Council

support a municipal setting designation ordinance for its property that is located generally at 1216 Houston Avenue and 1300 Dart Street, Houston, Texas 77007; and

WHEREAS, on October 11, 2012, the Director of the Public Works and Engineering Department conducted a public meeting at the Houston Permit Center, 1002 Washington Avenue, Houston, Texas 77002 as required by section 47-764 of the Code of Ordinances, and notified the community when the City Council public hearing would occur; and

WHEREAS, a City Council committee, designated by the Mayor, conducted a public hearing on November 13, 2012; and

WHEREAS, the City Council finds that:

(1) the application meets the eligibility criteria of Section 361.803 of the Texas Health and Safety Code;

(2) the municipal setting designation will not have an adverse effect on the current or future water resource needs or obligations of the City of Houston;

(3) there is a public drinking water supply system that satisfies the requirements of Chapter 341 of the Texas Health and Safety Code and that supplies or is capable of supplying drinking water to the designated property and property within one-half mile of designated property; and

(4) this Municipal Setting Designation Ordinance is necessary because the concentration of contaminants of concern exceeds human ingestion protective concentration levels, and the establishment of a municipal setting designation will allow the property to be brought back into productive use; and

WHEREAS, City Council finds that the Director of the Public Works and Engineering Department on behalf of City Council, in accordance with the Charter of the City of Houston, state law, and the ordinances of the City of Houston, has given the required notices, the Technology, Transportation and Infrastructure Committee of City Council has held the required public hearing regarding this Municipal Setting Designation Ordinance and all procedural requirements have been satisfied; **NOW, THEREFORE,**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That for purposes of this Municipal Setting Designation Ordinance, the "designated property" means the tract described in Exhibit A, attached to this Ordinance and incorporated by reference herein.

Section 2. That for purposes of this Municipal Setting Designation Ordinance, "designated groundwater" means groundwater beneath the designated property to a depth not to exceed 200 feet that is prohibited from use as potable water by this Ordinance.

Section 3. That use of the designated groundwater from beneath the designated property as potable water, as that term is defined in section 47-761 of the Code of Ordinances, Houston, Texas, is prohibited.

Section 4. That the designated property must receive a certificate of completion or other analogous documentation issued by the TCEQ or the United States Environmental Protection Agency ("EPA") showing that any site investigations and response actions required pursuant to Section 361.808 of the Texas Health and Safety

Code have been completed to the satisfaction of the TCEQ or EPA within the time period required by them.

Section 5. That the city council supports the application to the TCEQ for a municipal setting designation on the designated property, with the following comment:

(1) The TCEQ and the EPA, as agencies charged to protect human health and the environment, are requested to thoroughly review the conditions on the designated property and issue a certificate of completion only when all contaminants of concern, through the applicable routes of exposure, have been addressed.

Section 6. That any person owning, operating, or controlling the designated property remains responsible for complying with all applicable federal and state laws and regulations and all ordinances, rules, and regulations of the City of Houston. The City Council's approval of a municipal setting designation ordinance in itself does not change any environmental assessment or cleanup requirements applicable to the designated property.

Section 7. That approval of this Municipal Setting Designation Ordinance shall not be construed to subject the City of Houston to any responsibility or liability for any injury to persons or damages to property caused by any contaminant of concern.

Section 8. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Applicants shall provide the director of Public Works and Engineering Department with an electronic file showing the location of the designated property and the designated groundwater in a format compatible with the City's geographic information system and its integrated land management system, and shall provide an electronic file showing the location of the designated property and the

designated groundwater to the Harris County Appraisal District in a format compatible with its system.

Section 9. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Director of the Public Works and Engineering Department shall send a certified copy of this ordinance to the Applicants, TCEQ and EPA.

Section 10. That the Applicants shall provide the Director of the Public Works and Engineering Department with a copy of the municipal setting designation certificate issued by the TCEQ pursuant to section 361.807 of the Texas Health and Safety Code within 30 days after issuance of the certificate.

Section 11. That within 30 days after receipt of the municipal setting designation certificate from the TCEQ, the Director of the Public Works and Engineering Department shall file a certified copy of this Municipal Setting Designation Ordinance in the deed records of Harris County.

Section 12. That if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 13. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on that date and shall take effect immediately upon its passage and approval by the mayor; however, in the event that the Mayor fails to sign this Ordinance within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 12th **day of** December**, 2012.**

APPROVED this _____ day of _____, 2012.

_____
Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Ordinance is DEC 18 2012.

_____
City Secretary

Prepared by Legal Depart. _____ DFA
CP/lks 11/27/2012 Senior Assistant City Attorney
Requested by Daniel W. Krueger, P.E., Director,
Public Works and Engineering Department

L.D. File No. 063-1200_____-001
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AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
	✓	BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
	ABSENT-ON PERSONAL BUSINESS	COSTELLO
✓		BURKS
	ABSENT-OUT OF CITY ON PERSONAL BUSINESS	NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

CAPTION PUBLISHED IN DAILY COURT REVIEW
DATE: DEC 18 2012

METES AND BOUNDS DESCRIPTION
EXHIBIT "A"

County: Harris County
Project: 1216 Houston Avenue M.S.D. Survey

FIELD NOTES FOR 4.504 ACRES

Being a tract of land containing 4.504 acres, located in the John Austin Survey, Abstract Number I, all in Harris County, Texas; said 4.504 acres tract being all of Block "O" and Lots I-4, 11,12,14,16,17 and 18, Block "P" of J. & M. Evans Subdivision, Unrecorded, all of Hickory Street (30 feet width) and Goliad Street (40 feet width), as shown in said J.& M. Evans Subdivision; said 4.504 acres tract being more particularly described by metes and bounds as follows (all bearings being based on the Texas Coordinate System, South Central Zone, NAD 83, and all geographic coordinates based on said NAD 83):

COMMENCING (29° 46' 11.89" N.- 95° 22' 18.76" W.) at the northwest corner of Lot 9, Block I, of Hickory Skyline Patio Homes Subdivision recorded in Film Code Number 491006 of the Harris County Map Records (H.C.M.R.), being the northeast of Lot 7, Block "P", of said J. & M. Evans Subdivision (unrecorded), being in the southerly Right- of-Way (R.O.W.) line of Dart Street (65 feet width);

THENCE North 87° 32' 58" East, continuing along said southerly Right-of-Way (R.O.W.) line of Dart Street (65 feet width), being the north line of Lot 9 and Lot 1, Block 1, of said Hickory Skyline Patio Homes Subdivision, a distance of 1 00.00 feet to the **POINT OF BEGINNING** (29° 46' 11.90" N.- 95° 22' 17.62" W.) of the herein described tract of land;

THENCE North 87° 32' 58" East, through and across said Hickory Street (30 feet width), with the southerly Right-of-Way (R.O.W.) line of said Dart Street (65 feet width), being the northerly line of Lots 5, 6, 7 and 8, Block "O", of said J. & M. Evans Subdivision, through and across said Goliad Street (40 feet width) to the east Right-of- Way (R.O.W.) line of said Goliad Street, being the west line of Lot 3A, Block "N", of said J. & M. Evans subdivision (unrecorded), a distance of 328.99 feet (29° 46' 11.94" N. - 95° 22' 13.89" W.);

THENCE South 02° 32' 12" East, continuing along the east Right-of-Way (R.O.W.) line of said Goliad Street (40 feet width), being the west line of Lot 3A and 3B, Block "N", of said J. & M. Evans subdivision, a distance of 476.73 feet to a point (29° 46' 07.22" N. -95° 22' 13.82" W.) in the north line of Southern Pacific Railroad Right-of- Way;

THENCE North 82° 17' 02" West, through and across said Goliad Street (40 feet width), continuing along the north line of said Southern Pacific Railroad Right-of-Way (R.O.W.), being the south line of Lots 1, 2 & 3, Block "O", of said J. & M. Evans subdivision, a distance of 304.49 feet to a point (29° 46' 07.72" N.- 95° 22' 17.23" W.) in the east Right-of-Way (R.O.W.) line of said Hickory Street (30 feet width);

THENCE North 68° 46' 12" West, continuing along the north line of said Southern Pacific Railroad Right-of-Way (R.O.W.), through and across said Hickory Street (30 feet width), a distance of 32.76 feet to a point of curvature (29° 46' 07.85" N. - 95° 22' 17.57" W.) of a curve to the left in the west Right-of-Way line of said Hickory Street (30 feet width), being the east line of Lot 16, Block "P", of said J. & M. Evans subdivision;

THENCE, continuing along said north line of Southern Pacific Railroad Right-of-Way (R.O.W.), being the south line of Lots 16, 17 & 2, Block "P", of said J. & M. Evans subdivision, along the arc of a curve to the left having a central angle of 02 degrees 30 minutes 51 seconds, a radius of 4,634.00 feet, a chord that bears North 83° 56' 44" West-203.32 feet, and an arc length of 203.34 feet, to a point (29° 46' 08.12" N. - 95° 22' 19.85" W.) in the east Right-of-Way (R.O.W.) line of Houston Avenue (100 feet width), being the west line of Lot 2, Block "P", of said J. & M. Evans subdivision;

THENCE North 02° 25' 54" West, continuing along the east Right-of-Way line of said Houston Avenue (100 feet width), being the west line of Lots 2,14, 3 & 4, Block "P", of said J. & M. Evans subdivision, a distance of 229.76 feet to a point (29° 46' 10.40" N.-95° 22' 19.88" W.) in the common line of Lots 4 & 5, Block "P", of said J. & M. Evans subdivision;

THENCE North 87° 32' 58" East, continuing along the common line of Lots 4 & 5, Block "P", of said J. & M. Evans subdivision, and common line Lot 11, Block "P", of said J. & M. Evans subdivision and Lots 5 & 6, Block 1, of said Hickory Skyline Patio Homes subdivision, a distance of 201.01 feet to a point (29° 46' 10.42" N.- 95° 22' 17.60" W.) in the west Right-of-Way line of said Hickory Street (30 feet width), being the east line of Lot 5, Block 1, of said Hickory Skyline Patio Homes subdivision;

THENCE North 02° 27' 02" West, continuing along the west Right-of-Way line of said Hickory Street (30 feet width), being the east line of Lots 1-5, Block 1, of said Hickory Skyline Patio Homes subdivision, a distance of 150.00 feet to the **POINT OF BEGINNING** and containing approximately 4.504 acres of land.