

A MUNICIPAL SETTING DESIGNATION ORDINANCE PROHIBITING THE USE OF DESIGNATED GROUNDWATER BENEATH PROPERTY CONTAINING 14.585 ACRES COMMONLY KNOWN AS 411 JACKSON HILL, 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 February 16, 2011, Thermo Electron Metallurgical Services ("Applicant") applied to the Director of the Public Works and Engineering Department, requesting that the City Council support a municipal setting designation ordinance for 411 Jackson Hill, located in Houston, Texas 77007; and

WHEREAS, on August 18, 2011, the Director of the Public Works and Engineering Department conducted a public meeting as required by section 47-764 of the Code of Ordinances, Houston, Texas, at United Way, 50 Waugh Drive, Houston, Texas 77007, and notified the community when the public hearing would occur; and

WHEREAS, a City Council committee, designated by the Mayor, conducted a public hearing on September 15, 2011; 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 the 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

(5) the public rights of way immediately adjacent to the designated property be included, at no additional cost to the city, in the TCEQ application; and

(6) certain reasonable and necessary conditions are imposed on the Applicant; 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 Development and Regulatory Affairs 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 property 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 use of the designated groundwater from beneath public rights-of-way immediately adjacent to 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 5. That Applicant collect groundwater samples on an annual basis and collect sediment samples every other year and submit the analytical results to the

Director of the Department of Public Works and Engineering. Such samples shall be collected under existing protocols established by TCEQ and shall be collected (and results sent to the City) until such time as Applicant receives a certificate of completion issued by the TCEQ.

Section 6. 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 7. 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 8. 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 9. 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 10. That within 30 days after adoption of this Municipal Setting Designation Ordinance, the Applicant shall provide the Director of the 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 11. 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 Applicant, TCEQ and EPA.

Section 12. That the Applicant 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 13. 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 14. 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 applicability 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 15. 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 such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 8th day of February, 2012.

Annise D. Parker
Mayor of the City of Houston

Prepared by the Legal Department

Cecil Price
Cecil Price, Senior Assistant City Attorney

2 February, 2012

Requested by Daniel Krueger, P.E., Director, Public Works and Engineering Department

L.D. File No. 0631200018001

AYE	NO	
✓		MAYOR PARKER
••••	••••	COUNCIL MEMBERS
✓		BROWN
✓		DAVIS
✓		COHEN
✓		ADAMS
✓		SULLIVAN
✓		HOANG
✓		PENNINGTON
✓		GONZALEZ
✓		RODRIGUEZ
✓		LASTER
✓		GREEN
✓		COSTELLO
✓		BURKS
✓		NORIEGA
✓		BRADFORD
✓		CHRISTIE
CAPTION	ADOPTED	

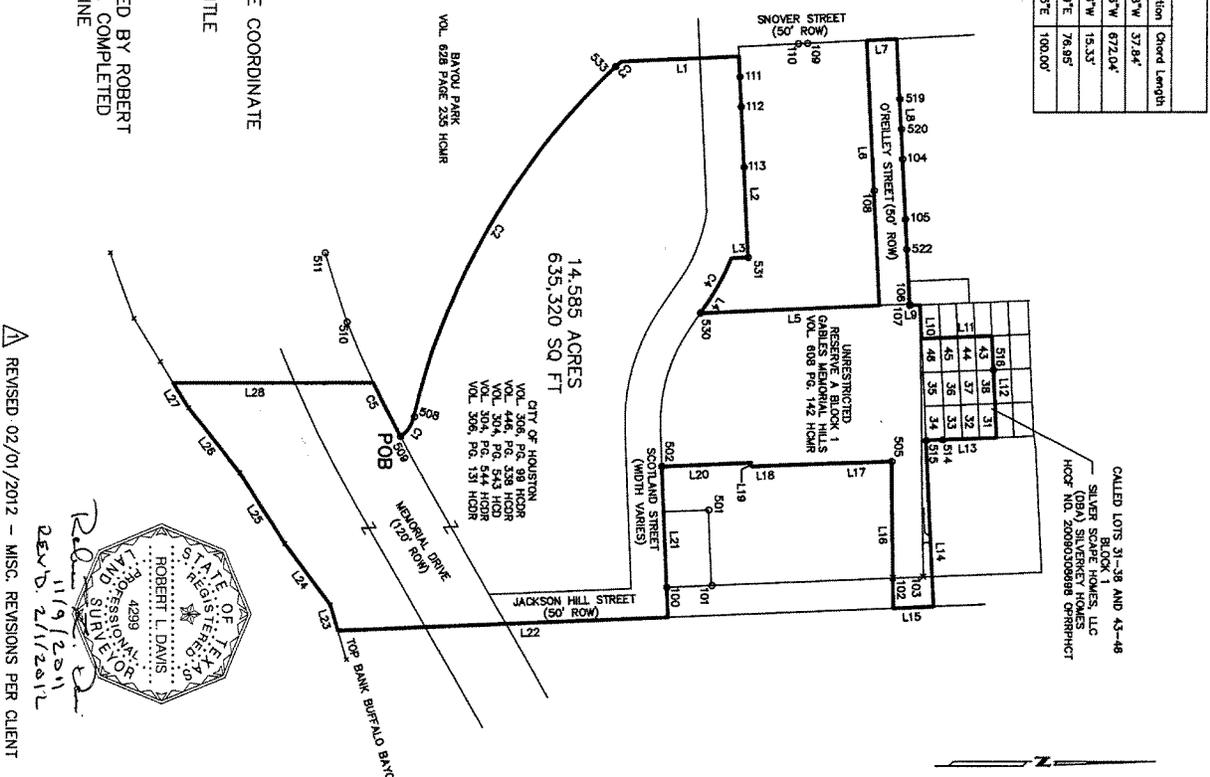
Exhibit "A"

DRAWING FILENAME = H:\2002\02035\0203514\DATA\DWG\14.585 AC EXHIBIT.DWG

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	38.81'	50.00'	44° 28' 09"	N64° 27' 08"W	37.84'
C2	681.75'	1163.69'	33° 34' 00"	N69° 54' 08"W	672.04'
C3	13.33'	323.33'	2° 42' 00"	N41° 46' 08"W	15.33'
C4	77.13'	328.00'	13° 25' 54"	S82° 09' 39"E	76.95'
C5	100.00'	1860.08'	3° 05' 40"	N63° 00' 55"E	100.00'

Point #	Point Table
100	FULL DESCRIPTION FND 5/8" IR W/CAP STAMPED "CIVIL SURVEY"
101	FND 5/8" IR
102	FND CHISELED PLUS (SERRI)
103	FND CHISELED PLUS (SERRI)
104	FND 1/2" IRON PIPE
105	FND 1/2" IRON PIPE
106	FND 5/8" IR W/CAP STAMPED "CIVIL SURVEY"
107	FND 5/8" IR W/CAP "NO NAME"
108	FND 1/2" IR W/CAP STAMPED "PRECISION SURVEY"
109	FND 5/8" IR W/CAP STAMPED "RPLS 3874"
110	FND 5/8" IR
111	FND 1/2" IR
112	FND 5/8" IR
113	FND 5/8" IR
501	FND 5/8" IR W/CAP STAMPED "CIVIL SURVEY"
502	FND 5/8" IR
605	FND 5/8" IR W/CAP STAMPED "WILLER SURVEY"
508	FND 5/8" IR BRG. N 47° 00' W, 1.98'
509	FND 5/8" IR
510	FND 5/8" IR
511	FND 5/8" IR
514	FND 5/8" IR
515	FND 5/8" IR BRG. N 74° 07' E, 0.44'
516	FND 5/8" IR W/CAP STAMPED "WINDROSE LAND"
519	FND 5/8" IR W/CAP STAMPED "TSI"
520	FND 5/8" IR
522	FND 1/2" IRON PIPE
530	FND 1/2" IR
531	FND 1 1/4" IR
533	FND 5/8" IR BRG. N 42° 45' W, 2.70'

- NOTES:
- 1) BEARINGS SHOWN HEREON ARE BASED UPON THE TEXAS STATE PLANE COORDINATE SYSTEM, SOUTH CENTRAL ZONE, (NAD 83).
 - 2) THIS EXHIBIT WAS PREPARED WITHOUT THE BENEFIT OF A CURRENT TITLE COMMITMENT.
 - 3) ABSTRACTING SERVICES WERE PERFORMED BY POSTLE PROPERTIES.
 - 4) MSD=MUNICIPAL SETTINGS DESIGNATION.
 - 5) A METES AND BOUNDS DESCRIPTION BASED ON THIS EXHIBIT PREPARED BY ROBERT L. DAVIS, REGISTERED PROFESSIONAL LAND SURVEYOR, LICENSE NO. 4299, COMPLETED IN THE FIELD ON OCTOBER 14, 2011, IS ON FILE IN THE OFFICE OF BASELINE CORPORATION, HOUSTON, TEXAS, UNDER JOB NO. 02.035.14.



Line #	Direction	Length
L1	N2° 20' 51"W	187.77'
L2	N67° 20' 04"E	334.21'
L3	S2° 36' 56"E	27.81'
L4	S85° 23' 24"E	28.07'
L5	N2° 21' 54"W	299.40'
L6	S87° 11' 08"W	440.26'
L7	N2° 39' 58"W	50.00'
L8	N87° 11' 08"E	442.42'
L9	N2° 08' 54"W	17.11'
L10	N87° 23' 03"E	58.28'
L11	N2° 08' 54"W	118.12'
L12	N87° 23' 03"E	168.75'
L13	S2° 08' 54"E	118.12'
L14	N87° 23' 03"E	274.88'
L15	S2° 18' 21"E	67.28'
L16	S88° 28' 16"W	242.44'
L17	S1° 43' 03"E	168.12'
L18	S2° 15' 30"E	67.40'
L19	S87° 44' 30"W	8.02'
L20	S2° 15' 30"E	150.00'
L21	N87° 44' 30"E	280.23'
L22	S2° 18' 21"E	554.31'
L23	S17° 36' 05"W	44.86'
L24	S83° 08' 32"W	127.73'
L25	S97° 10' 36"W	138.94'
L26	S81° 17' 12"W	137.82'
L27	S57° 55' 09"W	49.48'
L28	N0° 00' 00"E	335.64'

SURVEY EXHIBIT
FOR A
MSD BOUNDARY
IN THE
JOHN AUSTIN SURVEY, A-1
HARRIS COUNTY, TEXAS

14.585 ACRES (635,320 SQ. FT.)

PROFESSIONAL SURVEYORS
1702 SEAMIST DRIVE, SUITE #320 HOUSTON, TEXAS 77008
PHONE (713) 869-0155 FAX (713) 869-1541

Scale: 1" = 200'
Date: 11/09/2011
Job No.: 02.035.14
FB No.: X-532
Drawn by: CKT
Approved by: RLD

ROBERT L. DAVIS
STATE OF TEXAS
REGISTERED LAND SURVEYOR
4299
NOV 11 11 19 2011
REVISED 02/01/2012 - MISC. REVISIONS PER CLIENT