

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DENTON AUTHORIZING THE ACCEPTANCE OF DEED RESTRICTIONS PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH THE PROPERTY, GENERAL DESCRIBED AS THE 34.06 ACRE AREA GENERALLY LOCATED EAST OF STATE LOOP 288, NORTH OF MCKINNEY STREET, AND SOUTH OF MARKET STREET INCLUDING ALL OF A 21.76 ACRE TRACT OF LAND SITUATED IN THE M.E.P. & P.R.R. CO. SURVEY, ABSTRACT NO. 927, DESCRIBED IN DEED TO 100 NORTH LOOP 288, L.C.C., AS RECORDED IN COUNTY CLERK FILE NUMBER 2012-147859, REAL PROPERTY RECORDS, DENTON COUNTY, AND ALL OF LOTS A1 AND A2, BLOCK I OF THE G.D.I. SUBDIVISION AN ADDITION TO THE CITY OF DENTON ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET 1, PG. 247, AND THE FULL WIDTH OF THE ADJACENT RIGHT OF WAYS OF NORTH STATE LOOP 288, MARKET STREET, AND E. MCKINNEY STREET (FM 426) ADJACENT TO THIS AREA, CITY OF DENTON, TEXAS, TO FACILITATE CERTIFICATION OF A MUNICIPAL SETTING DESIGNATION ('MSD') OF SAID PROPERTY BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ('TCEQ'), PURSUANT TO THE TEXAS SOLID WASTE DISPOSAL ACT; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Chapter 361, Subchapter W of the Texas Solid Waste Disposal Act (the 'MSD legislation') authorizes the Texas Commission on Environmental Quality ('TCEQ') to certify Municipal Setting Designations for properties upon receipt and approval of a proper application to the TCEQ; and

WHEREAS, the Texas legislature, in enacting the MSD legislation, found that an action by a municipality to restrict access to or the use of groundwater in support of or to facilitate a Municipal Setting Designation ('MSD') advances a substantial and legitimate State interest; and

WHEREAS, as a part of the application process for a Municipal Setting Designation, an applicant is required to provide a resolution or ordinance of support from the municipality in which the MSD is being sought, and is required to demonstrate to the TCEQ that a resolution of ordinance prohibiting the use of and contact with designated groundwater from beneath the property has been enacted; and

WHEREAS, due to limited quantity and low quality, there are areas of shallow groundwater within the City and its extraterritorial jurisdiction that are not valuable as potable water sources and therefore are not utilized for potable water; and

WHEREAS, some commercial and industrial properties within Denton and its extraterritorial jurisdiction are underlain with unusable groundwater that has become contaminated by historical on-site or off-site sources; and

WHEREAS, the potable use of groundwater in designated areas should be prohibited to protect public health and welfare when the quality of the groundwater presents an actual or potential threat to public health; and

Exhibit 2  
Ordinance

WHEREAS, the use of a MSD allows for a State-evaluate corrective action process for groundwater that is directed towards the protection of human health and the environment; and

WHEREAS, Virgil Strange (hereinafter“Applicant”) intends to submit an application to the TCEQ for certification of a MSD for the property generally located east of Loop 288, north of McKinney Street, and south of Market Street, the legal description which is set forth as Exhibit “A” attached hereto and made part hereof (the“MSD Property”), said MSD Property being located within the city limits of the City of Denton; and

WHEREAS, the Applicant has certified to the City of Denton that:

1. the purpose of the application is to assist the Applicant in obtaining from the TCEQ the documents demonstrating the TCEQ’s determination, after completion of any remediation requirements and appropriate review by the TCEQ, that no further environmental cleanup or restoration is required by the TCEQ with respect to the MSD Property (“TCEQ Closure Documentation”); and
2. as part of the application the Applicant has or will submit to the TCEQ a statement regarding the type of known contamination in the groundwater beneath the MSD Property and has identified that shallow groundwater (less than 50 feet below ground surface) contains chemicals of concern above Tier 1 groundwater ingestion protective concentration levels, as set forth in 30 Texas Administrative Code, Chapter 350 (the“Texas Risk Reduction Program”); and

WHEREAS, the Application has continuing obligations to satisfy Section 361.808 of the MSD legislation and applicable TCEQ regulations concerning groundwater contamination investigations and response actions; and

WHEREAS, the applicant desires to secure a MSD for the MSD Property, as well as TCEQ closure documentation, and has requested the City of Denton to facilitate said objectives through passage of this Ordinance pertaining to deed restrictions prohibiting the use of designated groundwater from beneath the MSD Property; and

WHEREAS, the City Council of the City of Denton is of the opinion that is it in the best interest of the public and the City to facilitate the Applicant’s efforts to secure a MSD and TCEQ closure documents from the TCEQ by passage of this Ordinance as set forth in Chapter 26, Section X of the Denton Code of Ordinances, entitled “Municipal Setting Designation”; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON HEREBY ORDAINS:

SECTION 1. The City Council find that the finding, statements, and policy determinations set forth in the preamble of this Ordinance are true and correct and are incorporated herein.



Exhibit 2  
Ordinance

SECTION 2. The City Council finds that it is in the best interest of public health, safety and welfare to facilitate and support the TCEQ's certification of a MSD for the MSD Property, as well as the TCEQ closure documentation.

SECTION 3. To facilitate the TCEQ's certification of a MSD for the MSD Property and the issuance of TCEQ closure documentation, the Applicant shall execute, deliver and file, no later than 30 days from the date of the TCEQ's certification, in the official real property records of Denton County, Texas, a deed restriction approved as to form by the City Attorney prohibiting the drilling of wells and the use of designated groundwater for any purpose, including but not limited to any potable purpose, and excepting only; (i) wells used as monitoring stations for the collections groundwater sampled for chemical or biological laboratory analyses; (ii) wells used for the purposes of remediation of soil or groundwater contamination.

SECTION 4. A file-stamped recorded copy of said deed restriction shall be delivered to the City Attorney's office and the Director of Planning's office of the City of Denton within three business days after the date of filing in the Denton County real property records. The deed restriction shall be enforceable by the City of Denton and may be amended or terminated only with the prior written consent of the City of Denton after at least 30 days prior written notice to the TCEQ of any pending amendment or termination.

SECTION 5. Failure to execute, record, and deliver the deed restriction in accordance with this Ordinance within the time limits set forth herein shall render this Ordinance null and void, and of no further force or effect unless the City authorizes an extension in writing.

SECTION 6. The applicant shall submit, upon receipt of the MSD certification from the TCEQ for the MSD Property, a true and correct copy of the deed restriction to the Director of the Environmental Services Department. The Applicant shall also submit, upon receipt of TCEQ closure documentation from TCEQ for the MSD Property, a true and correct copy of such documentation to the Director of the Environmental Services Department and the City Secretary's office.

SECTION 7. Failure of the Applicant to diligently pursue and obtain from TCEQ: (i) a MSD certificate for the MSD Property; and (ii) TCEQ closure documentation for the MSD Property, shall render this Ordinance voidable by the City Council following 30 day's written notice to the TCEQ and the Applicant.

SECTION 8. This Ordinance shall take effect immediately from and after its passage.

PASSED AND APPROVED this the \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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CHRIS WATTS, MAYOR

ATTEST:  
JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
ANITA BURGESS, CITY ATTORNEY

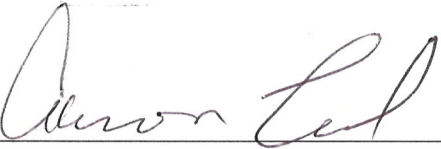
BY:  \_\_\_\_\_

Exhibit 2  
Ordinance

EXHIBIT A  
LEGAL DESCRIPTION

