## ORDINANCE NO. 2021-08-\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS PROHIBITING THE USE OF DESIGNATED GROUNDWATER FROM BENEATH THE PROPERTY AS DESCRIBED IN EXHIBIT "A" AND CONTAINING APPROXIMATELY 31.12 ACRES OF LAND, LOCATED IN THE CITY OF MCKINNEY, COLLIN COUNTY, TEXAS, TO FACILITATE THE CERTIFICATION OF SAID PROPERTY WITH A MUNICIPAL SETTING DESIGNATION BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY PURSUANT TO THE TEXAS SOLID **REPEALING CONFLICTING** WASTE DISPOSAL ACT; ALL ORDINANCES: PROVIDING FOR CRIMINAL PENALTIES: PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE

- WHEREAS, the City of McKinney ("Applicant") as the representative of the "Property," defined below, desires to obtain a municipal setting designation ("MSD") from the Texas Commission on Environmental Quality ("TCEQ") for certain parcels of property identified in Exhibit "A" containing approximately 31.12 acres of land, located in the City of McKinney, Collin County, Texas, (the "Property" or "MSD Site") to address concerns regarding certain pollutants or contaminants that have been identified on the Property; and
- WHEREAS, Texas Local Government Code Section 551.005 authorizes the governing body of a municipality to regulate the pumping, extraction, or use of groundwater by persons other than retail public utilities, as defined by Section 13.002 of the Texas Water Code, to prevent the use of or contact with groundwater that presents an actual or potential threat to human health for the purpose of establishing and enforcing an MSD; and
- WHEREAS, the Texas legislature has provided legislation in the Texas Health & Safety Code, Chapter 361, Subchapter W of the Texas Solid Waste Disposal Act that authorizes the Executive Director of the TCEQ to certify a MSD for certain qualifying properties upon receipt and approval of a properly submitted application to limit the scope of or eliminate the need for investigation of or response actions addressing contaminant impacts to groundwater that has been restricted from use as potable water by ordinance or restrictive covenant (the "MSD legislation"); 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 an MSD advances a substantial and legitimate state interest; and
- WHEREAS, as a part of the application process for a MSD, the applicant is required to provide documentation that the property for which said designation is sought is subject to an ordinance that prohibits the use of designated groundwater from beneath the property as potable water and that appropriately restricts other uses of and contact with that groundwater; and
- WHEREAS, Section 361.8065(1)(A) of the Texas Health & Safety Code requires that in order to certify an MSD application, said application must be supported by a resolution adopted by the city council of the municipality as described by Section 361.805(a) of the Texas Health & Safety Code; and

- WHEREAS, the Applicant may have continuing obligations to satisfy applicable statutory and regulatory provisions concerning groundwater contamination investigation and response actions at the MSD Site; and
- WHEREAS, in order for the TCEQ to certify a MSD for the Property, the City of McKinney must prohibit the use of groundwater from beneath the MSD Site as potable water that is used for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes; and
- WHEREAS, a public drinking water supply system exists that supplies or is capable of supplying water to the MSD Site and to all surrounding properties within one-half mile of the MSD Site; and
- **WHEREAS**, the City Council of the City of McKinney is of the opinion that it is in the best interest of the public and the City to facilitate the applicant's efforts to secure an MSD from the TCEQ.

## NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:

- Section 1. All of the declarations and findings contained in the preamble of this ordinance are made a part hereof and incorporated herein by reference and shall be fully effective as a part of the ordained subject matter of this ordinance.
- Section 2. The City Council finds that it is in the best interest and welfare of the public to facilitate the Texas Commission on Environmental Quality's certification of a municipal setting designation for the Property, the legal description of which is set forth in Exhibit "A" attached hereto and incorporated herein by reference for all purposes allowed by law.
- Section 3. In addition to the requirements set forth herein, this Ordinance shall also be considered a "Resolution" under Texas Health & Safety Code § 361.8065(a)(1)(A) for the purpose of satisfying notice under Section 361.805(a) of the Texas Health & Safety Code.
- Section 4. The Applicant in further support of and compliance with the requirements of Tex. Health & Safety Code § 361.8065(2)(A) to facilitate TCEQ's certification of an MSD for the Property enacts this Ordinance which prohibits the drilling of wells and the use of groundwater beneath the Property for any purpose including but not necessarily limited to any potable purpose, save and except, (i) wells used as monitoring wells for the collection of groundwater samples for chemical or biological laboratory analysis; and (ii) wells used for the purpose of remediation of soil or groundwater contamination.
- Section 5. The failure of the Applicant to diligently pursue and obtain from TCEQ, within 180 days from the effective date of this ordinance: (1) a MSD certificate for the MSD Site; and (2) TCEQ closure documentation for the MSD Site, shall render this ordinance voidable by the City Council following 30 days' advance written notice to TCEQ and the Applicant.
- Section 6. The Applicant shall submit, upon receipt of the MSD certificate from TCEQ respecting the MSD Site, a true and correct copy of same to the Director of Engineering.

- Section 7. No person or entity shall drill wells upon the Property or use the groundwater from beneath the MSD Site as potable water for irrigating crops intended for human consumption, drinking, showering, bathing, or cooking purposes.
- Section 8. All provisions of the ordinances of the City of McKinney in conflict with the provisions of this ordinance be, and the same are hereby, repealed, and all other provisions of the ordinances of the City of McKinney not in conflict with the provisions of this ordinance shall remain in full force and effect.
- Section 9. Should any sentence, paragraph, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this ordinance as a whole, or any part or provision thereof other than the part so decided to be invalid, illegal or unconstitutional, and shall not affect the validity of the Code of Ordinances of the City of McKinney, Texas.
- Section 10. Any person violating the terms and provisions of this ordinance shall, upon conviction, be punished by a fine of not more than Two Thousand Dollars (\$2000.00) and each and every day this ordinance is violated shall constitute a separate offense. This section shall be in addition to and cumulative of the applicable provisions of Chapter 54 of the Texas Local Government Code, which chapter provides for the enforcement of municipal ordinances. Allegation and evidence of a culpable mental state is not required for the proof of an offense defined by this ordinance.
- Section 11. This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS ON THE 17th DAY OF AUGUST 2021.

CITY OF MCKINNEY, TEXAS

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	GEORGE FULLER Mayor
CORRECTLY ENROLLED:	
EMPRESS DRANE City Secretary	
DATE:	
APPROVED AS TO FORM:	
MARK S. HOUSER City Attorney	

## **EXHIBIT A**

LEGAL DESCRIPTION OF SUBJECT PROPERTY

BEING 31.12 acres of land located in the M. DAVIS SURVEY, Abstract No. 248, and the MARY STANDIFER SURVEY, Abstract No. 81, City of McKinney, Collin County, Texas, and containing all of the tracts of land conveyed to the City of McKinney, by the deeds recorded in County Clerk's File No. 20210129000190690, and County Clerk's File No. 2020110200192112, 20190801000922550, and the tracts of land conveyed to McKinney Community Development Corporation, by the deeds recorded in County Clerk's File No. 201908010000922550, 20110727000782500, and 20201102001921220, of the Deed Records of Collin County, Texas, and the tracts of land conveyed to InterMcKinney, LLC, by the deeds recorded in 20190415000399260. 20190415000399270. 20191122001495580. 20200212000199030. County Clerk's File No. 20200326000436520 and County Clerk's File No. 20190415000399280, of the Deed Records of Collin County, Texas, and the tract of land conveyed to McKinney Independent School District, by the deed recorded in County Clerk's File No. 20100112000036460, of the Deed Records of Collin County, Texas, and the tracts of land conveyed to Tori Rose Land, Inc., by the deeds recorded in Volume 5696, Page 1415, Volume 5696, Page 1419, and County Clerk's File No. 99-0144099, of the Deed Records of Collin County, Texas, the tract of land conveved to Christopher Dwayne Cole, by the deed recorded in County Clerk's File No. 20161213001691990, of the Deed Records of Collin County, Texas, the tract of land conveyed to Martin Vega, by the deed recorded in Volume 5426, Page 005301, of the Deed Records of Collin County, Texas, the tract of and conveyed to MMVG Properties, LP, by the deed recorded in County Clerk's File No. 20150909001140650, of the Deed Records of Collin County, Texas, the tract of land conveyed to Throckmorton Street Church of Christ, by the deed recorded in County Clerk's File No. 2003-0034734, of the Deed Records of Collin County, Texas, and the tracts of land conveyed to Angel Flores, by the deed recorded in County Clerk's File No. 20161221001729320, of the Deed Records of Collin County, Texas, the tract of land conveyed to Brian Bidwell, by the deed recorded in County Clerk's File No. 96-0048107, of the Deed Records of Collin County, Texas, the tract of land conveyed to Robert William Lyford and Kaci Ann Lyford, by the deed recorded in County Clerk's File No. 20190201000107930, of the Deed Records of Collin County, Texas, and the tract remaining to Tom Wilson (former Lamar Street), the tract of land conveyed to Kidwell Bradley S Family LP, by the deed recorded in Volume 5879, Page 2721, of the Deed Records of Collin County, Texas, and the tract of land conveyed to Haddington Fund LP, by the deed recorded in County Clerk's File No. 20160609000718750, of the Deed Records of Collin County, Texas, and the tract of land conveyed to Southern Pacific Transportation, by the deed recorded in Volume 294. Page 547, of the Deed Records of Collin County. Texas, and the tract of land conveyed to Lamar Railroad Church (no deed found). Said 31.12 acres of land also including all of Block 11 and 12, of the Re-plat of Railroad Addition, to the City of McKinney, Collin County, Texas, according to the plat recorded in Volume B, Page 357, of the Deed Records of Collin County, Texas, and Lots 1R, 2R & 3R, Block A, McKinney Floormill Addition, to the City of McKinney, Collin County, Texas, according to the plat recorded in County Clerk's File No. 2015010701000070, of the Deed Records of Gollin County, Texas, and all of Blocks 1 & 2, Andrews Addition, to the Gity of McKinney, Collin County, Texas, according to the plat recorded in Volume 116, Page 218, of the Deed Records of Collin County, Texas, and all of Block 2, Block 3, Block 6 and Block 7, of Railroad Addition (sometimes known as H. & T.C.R.R. Addition, to the City of McKinney, Collin County, Texas, according to the plat recorded in Volume 46, Page 2, of the Deed Records of Collin County, Texas) to the City of McKinney, Collin County, Texas, according to the plat recorded in Volume W, Page 64, of the Plat Records of Collin County, Texas, and portions of the following rights-of-way lying between the aforesaid Lots, Blocks and

Ownerships: Greenville Road (a 50 foot wide public right-of-way), Louisiana Street (a variable width public right-of-way), Virginia Street (a 60 foot then 80 foot wide public right-of-way), Murray Street (an 80 foot wide public right-of-way), Throckmorton Street (an 80 foot wide public right-of-way), Lamar Street (an 80 foot wide public right-of-way), Hunt Street (an 80 foot wide public right-of-way), Anthony Street (a 40 foot wide public right-of-way), Green Street (a 40 foot wide public right-of-way), and Main Street (a 90 foot wide public right- of-way). Said 31.12 acres of land being more particularly described by metes and bounds as follows:

BEGINNING at the intersection of the East right-of-way line of Dallas Area Rapid Transit Railroad and the South right-of-way line of the aforesaid Anthony Street;

THENCE along the East right-of-way line of said Dallas Area Rapid Transit Railroad, as follows:

- 1. N 00° 09' 31" W 96.90 feet, to a point;
- 2. N 00° 54′ 06" E 141.25 feet, to a point;
- 3. N 89° 56' 59" E 20.00 feet, to a point;
- 4. N 00° 54' 15" E 1,199.60 feet, along a line 50.0 feet East of and parallel to the centerline of said Dallas Area Rapid Transit Railroad, to a point at the Northwest corner a tract of land conveyed to Mckinney Community Development Corporation, by the deed recorded in County Clerk's file No. 2011072700082500, of the Deed Records of Collin County, Texas;
- 5. N 00° 54' 15" E 60.07 feet, to a point of intersection at the North right-of-way line of Virginia Street lying in the South boundary line of the aforesaid tract of land designated as Tract 1 in the deed to Philip Po-Wen Huang, recorded in County Clerk's File No. 20181218001535540, of the Deed Records of Collin County, Texas;
- 6. S 88° 22' 52" W 9.28 feet, along the South boundary line of said Tract 1, to a point;
- 7. N 00° 52' 59" E 484.51 feet, along the West boundary line of said Tract 1 and along a line 40.0 foot East of and parallel to the centerline of said Dallas Area Rapid Transit Railroad, to a point;
- 8. N 88° 30' 17" E 20.24 feet, to a point at the Southwest boundary line of the aforesaid tract of land designated as Tract 1 in the deed to InterMcKinney LLC, recorded in County Clerk's File No. 20190415000399260, of the Deed Records of Collin County, Texas;
- 9. N 00° 52' 07" E 467.70 feet, along a line 60.0 feet East of and parallel to the centerline of said Dsllos Area Rap'd Transit Railroad, ond olong the West boundary line of aforesaid Tract 1 to InterMcKinney LLC, and the West boundary line of the aforesaid tract of land conveyed to Tori Rose Land, Inc., by the deed recorded in Volume 5696, Page 1415, of the Deed Records of Collin County, Texas, to a point;
- 10. THENCE S 89° 05' 46" E 209.52 feet, to a point at the Southeast corner of Lot 1, Block 4, H. & T.C. Railroad Addition, lying in the West right-of-way line of aforesaid Main Street:

- 11. THENCE S 89° 40' 39" E 90.00 feet, crossing said Main Street, to a point at the Southwest corner of Block 5, of said H. & T.C.R.R. Addition, lying in the North right-of-way line of Lamar Street;
- 12. THENCE S 89° 40'39" E 252.23 feet, along the South boundary line of said Block 5, to a point in the North right-of-way line of said Lamar Street and the Southeast corner of said Block 5;
- 13. THENCE S 89° 40′ 39" E 80.00 feet, crossing Throckmorton Street, to a point in the East right-of-way line of said Throckmorton Street;
- 14. THENCE S 00° 53' 48" W 533.67 feet, along the East right-of-way line of said Throckmorton Street, to a point;
- 15. THENCE S 00° 53' 48" W 380.00 feet, along the East right-of-way line of said Throckmorton Street, to a point at the intersection of the North right-of-way line of Virginia Street, lying at the Southwest corner of Block 13, of aforesaid Railroad Addition;
- 16. THENCE N 88° 49'13" E 199.92 feet, along the South boundary line of said Block 13 and the North right-of-way line of said Virginia Street, to a point at the Southeast corner of said Block 13, lying in the West right-of-way line of aforesaid Murray Street;
- 17. THENCE N 88° 49' 13" E 79.92 feet, crossing said Murray Street right-of-way, to a point at the Southwest corner of Lot 1, Block 18, of aforesaid Railroad Addition;
- 18. THENCE S 02° 58' 15" W 80.00 feet, crossing said Murray Street, to a point at the Northwest corner of Lot 4, Block 19, Railroad Addition;
- 19. THENCE S 00° 14'01" E 187.62 feet, along the East right-of-way line of said Murray Street, to a point in the North right-of-way line of aforesaid Louisiana Street, lying at the Southwest corner of Lot 1R, Block A, Old Settlers Addition, according to the plat recorded in County Clerk's File No. 200606290100002840, of the Deed Records of Collin County, Texas;
- 20.THENCE S 00° 57' 48" W 90.88 feet, to a point in the East right-of-way line of aforesaid Murray Street;
- 21. THENCE S 88° 48' 47" W 80.36 feet, crossing said Murray Street, to a point at the Northeast corner of aforesaid Block 11, of the Re-plat of Railroad Addition, recorded in Volume B, Page 357, of the Plat Records of Collin County, Texas, and lying in the West right-of-way line of said Murray Street at its intersection with the South right-of-way line of aforesaid Louisiana Street;
- 22. TfdENGE S 88° 48' 4Y" W 200.16 feet, along the SoutIn right-of-way line of said Louisiana Street and the North boundary line of said Re-plat of Block 11, to a point at the Northwest corner of said Block 11, lying in the East right-of-way line of aforesaid Throckmorton Street;
- 23. THENCE S 00° 53' 48" W 201.41 feet, along the West boundary line of said Block 11, to a point in the North right-of-way line of aforesaid Greenville Road;

24.THENCE S 00° 53'48" W 58.84 feet, crossing Greenville Road, to a point in the South right-of-way line of said Greenville Road;

THENCE along the South right-of-way line of said Greenville Road, as

follows: 25. N 65° 32' 34" W 196.34 feet, to a point;

- 26. S 56° 48' 40" W 11.17 feet, to a point in the East right-of-way line of aforesaid Andrews Street;
- 27. THENCE S 01° 21' 25" W 504.60 feet, along the East right-of-way line of said Andrews Street, to a point in the North right-of-way line of said Green Street;
- 28. THENCE S 01° 21' 25" W 40.00 feet, crossing Green Street, to a point in the South right-of-way line of said Green Street;
- 29. THENCE N 88° 55′ 19″ W 294.86 feet, along the South right-of-way line of said Green Street, to a point at the Northwest corner of the tract of land conveyed to Aragonez Eduardo, by the deed recorded in County Clerk's File No. 94-0092744, of the Deed Records of Collin County, Texas;
- 30 THENCE S 00° 52' 58" W 210.33 feet, along the West boundary line of said Eduardo Tract, to a point at the Southwest corner of said Eduardo Tract, lying in the North boundary line of a tract of land conveyed to Jimenez Juan & Marcella Garcia, by the deed recorded in Volume 5579, Page 3537, of the Deed Records of Collin County, Texas;
- 31. THENCE N 89° 51' 05" W 22.86 feet, along the North boundary line of said Garcia Tract, to a point at the Northwest corner of said Garcia Tract;
- 32. THENCE S 00° 43' 08" W 200.07 feet, along the West boundary line of said Garcia Tract, to a point in the North right-of-way line of aforesaid Anthony Street;
- 33. THENCE S 00° 43' 08" W 40.00 feet, crossing Anthony Street, to a point in the South right-of-way line of said Anthony Street;
- 34. THENCE N 89° 16' 52" W 150.21 feet, along the South right-of-way line of said Anthony Street, to the POINT OF BEGINNING containing 31.12 acres of land.

This document was prepared under 22 TAC **663.21**, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those **rights** and interest **implied** or established by the creation or reconfiguration of the boundary of the **political subdivision for which it** was prepared.



