

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is entered into on _____ (herein referred to as the "Effective Date") by and between:

Jack Burgher, Partner, BCS Capital LLC , 1940 Fountain View Drive, Suite 220, Houston, Texas 77057 (herein referred to as "Party"); and the

City of Montgomery, City Council, by affirmative vote for motion to accept this Memorandum of Understanding and authorize the Mayor, Sara Countryman, to sign same, 101 Old Plantersville Road, Montgomery, Texas 77316 (herein referred to as the "City").

Parties may be referenced individually as "Party" and collectively as "Parties."

PURPOSE

The purpose of this MOU is to establish a good-faith foundation between the Parties for future collaborative efforts that are mutually beneficial. The Parties agree to work together in a cooperative and coordinated manner to achieve each Party's individual goals and the collective goals of the partnership.

This MOU is designed to detail the specifics of meeting requirements for development between the Parties to the mutual benefit of the parties and the communities they serve.

DURATION OF MOU

This MOU becomes effective on the date it is signed by both parties. This MOU is non-binding and remains in force and effect unless explicitly terminated, in writing, by both parties.

DEFINITIONS

Subject Tract - Approximately 32.72 acres, within the John Corner Survey, Abstract 9, being out of a called 84.1 acre tract of land recorded in the name of Mara Moja Holdings in Montgomery County Clerk's File (MCCF) Number 2004110206 and being out of Restricted Reserve "B" of Mara Mojaville, a subdivision recorded in Cabinet "Z"; Sheet 1624, of the Montgomery County Map Records (MCMR).

ROLES AND RESPONSIBILITIES

To achieve Parties' mutual desires, each party agrees to the following roles and responsibilities:

1. Party understands and accepts that certain waterline improvements, as shown on Exhibit A, are required for development of the Subject Tract. Public gravity waterline improvements are to be designed and constructed by the City at the Party's expense.

2. Party understands and accepts that certain sanitary sewer line improvements, as shown on Exhibit B, are required for development of the Subject Tract. The City may wish to further extend the gravity sanitary sewer line along SH-105 all the way to C.B. Stewart Drive, if the City decides to proceed with this work, the City agrees to pay a pro-rata share of the cost of the gravity sanitary sewer line extension to complete the work which will allow the City to eliminate Lift Station No. 12. Public gravity sanitary sewer improvements are to be designed and constructed by the City at the Party's expense.
3. Party understands and accepts that certain improvements to Buffalo Springs Drive are required including removing and replacing existing asphalt roadway with a concrete roadway from the existing end of the concrete roadway near the northern boundary of the Home Depot site to the north side of the intersection between Buffalo Springs Drive and CB Stewart Drive, as shown on Exhibit C. Any additional roadway improvements to Buffalo Springs Drive will be based on the results of a Traffic Impact Analysis conducted by the Party and submitted to the City for review and approval. In addition, unless recommended by the Traffic Impact Analysis, it is not anticipated that improvements to CB Stewart will be warranted. Public roadway improvements are to be designed and constructed by the City at the Party's expense. The improvements to Buffalo Springs Drive will need to be completed prior to the development, issuance of a Certificate of Occupancy, of the multi-family site.
4. The City agrees to enter into a 380 agreement or other mechanism to reimburse the Party a total of \$4,000,000 for the above mentioned public infrastructure and as grant money to promote a public benefit including but not limited to local job growth, costs related to the opening of the flagship store, or any other means of economic benefit as agreed upon by both parties.
5. The City agrees to fund the reimbursement through some portion of City sales tax revenue, MEDC sales tax revenue, and additional ad valorem tax revenue, actual source of funds to be determined as part of the final agreement, with a term not to exceed 10 years.

6. The City understands the Subject Tract will be proposing private on-site detention in accordance with all current local criteria. Once approved and the Subject Tract is platted, the drainage report addressing the Subject Tract, will not expire for the Subject Tract.
7. The City understands that the development of the Subject Tract and fulfillment of the Party's obligations in this Memorandum are dependent and contingent on the approval of the Partys application to rezone approximately 13-14.5 acres of the north portion of the Subject Tract to multifamily (R-2) and obtaining approval from the Buffalo Spring Architectural Control Committee.

COMMUNICATION BETWEEN PARTIES

The stated purpose and roles and responsibilities of the MOU will likely drive the level of communication necessary for a successful understanding between Parties. Once lines of communication are established, it will be critical for each Party to be diligent in their efforts to communicate with the other Party or parties.

AMENDMENTS

The terms of this MOU may be amended upon written approval by both original Parties and their designated representatives.

ASSIGNS

Party may assign the MOU at their discretion. In the event the Party does not close on the Subject Tract, MOU shall automatically assign Party's interest to the current Subject Tract owner.

The undersigned Parties acknowledge and agree to this MOU:

SIGNATURES

FOR City of Montgomery

Sara Countryman, Mayor

FOR BCS Capital LLC

Jack Burgher, Partner

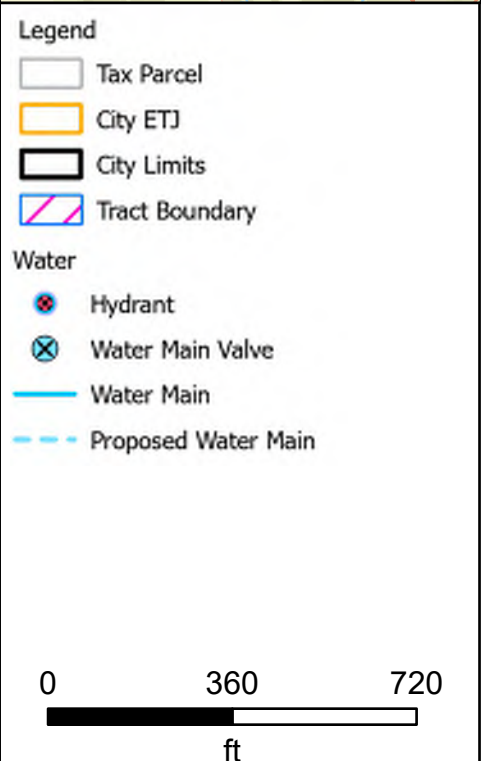
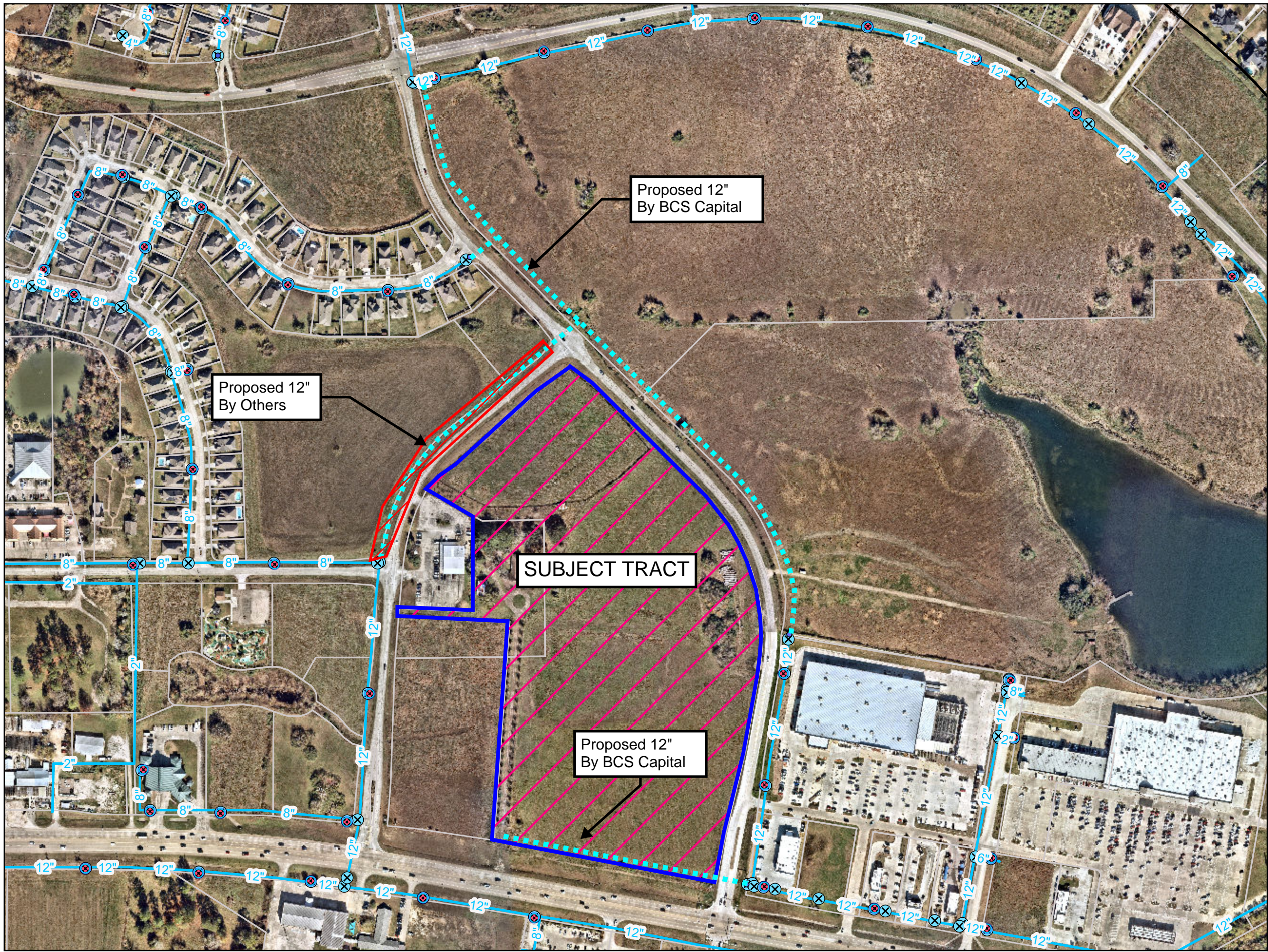
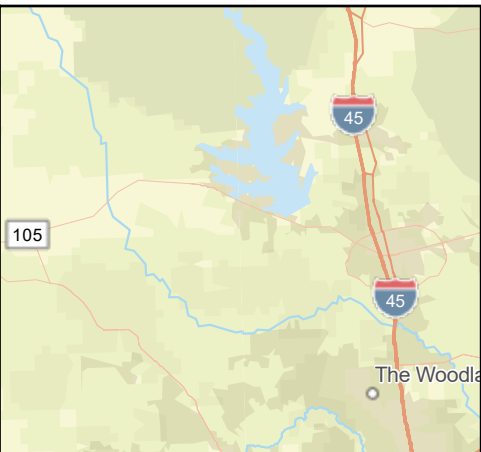


EXHIBIT A: Public Waterline Improvements



Disclaimer: This product is offered for graphical purposes only and may not be suitable for legal, engineering, or surveying purposes. The information shown on this exhibit represents the approximate location of property, municipal boundaries or facilities.





Legend

- Tax Parcel
- City ETJ
- City Limits
- Tract Boundary

Sanitary Sewer

- Sanitary Sewer Gravity Main
- Proposed Gravity Main
- Sanitary Sewer Manhole
- Lift Station

0 360 720
ft

EXHIBIT B:
Public Sanitary Sewer
Improvements



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Legend

- Proposed Pavement
- Mountable Curb
- Center Median
- Proposed Divided Median
- Tax Parcels

0 140 280
ft

EXHIBIT C: Public Roadway Improvements

CITY OF
MONTGOMERY
TEXAS EST 1837
BIRTHPLACE OF THE TEXAS FLAG

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