



June 5, 2025

City Council  
City of Montgomery  
101 Old Plantersville Rd.  
Montgomery, Texas 77316

Re: Development Update  
HEB (Dev. No. 2402)  
City of Montgomery

Dear Mayor and Council:

As you are aware, WGA and staff have been working on the terms of the Development Agreement with HEB. WGA provided HEB with the draft Development Agreement on March 28, 2025. HEB provided a revised agreement on May 12, 2025. WGA subsequently met with HEB on May 21, 2025 to discuss some of the revisions and general development timeline. The draft agreement has been reviewed by WGA and the City Attorney. The major components of the requested changes for the agreement by HEB are as follows:

- HEB is not requesting any reimbursement for the required utility extensions.
- HEB is requiring approval of our inspection fees related to the public utility extensions.
- A required timeline for acceptance of the public infrastructure.
- There is no dedicatory language for a Historical Landmark on the site.
- The City does not have the ability to pursue any remedies related to a failure to comply to the provisions of the agreement.
- The City does not have governmental immunity for potential suit or liability.

It is important to note that there are additional variances being requested by the Developer that have not been presented to Council. The intention is to present these to Council once a formal recommendation is received from the Planning & Zoning Commission, and they are as follows:

- Section 78-92(a): Required 16' minimum utility easement: The Developer is requesting to remove the utility easement entirely along SH-105 and place all proposed public utilities within TxDOT right-of-way.
- Section 78-162 (a) Minimum Landscape Setback: Requesting a 20' setback in lieu of the 25' requirement to be maintained on all commercial properties abutting single-family properties.
- Section 78-185 Article VIII: Per the enclosed letter, the Developer is requesting to limit tree planting to 150' from the front door on all commercial pads. This request is not an explicit variance of any City Code.

In order to continue with the development, the Developer is requesting feedback from Council on the draft Development Agreement as provided.

If you have any questions or comments, please contact me.



Sincerely,

A handwritten signature in blue ink that reads "Chris Roznovsky".

Chris Roznovsky, PE  
Engineer for the City

CVR/kv;zlgt

Z:\00574 (City of Montgomery)\\_900 General Consultation\Correspondence\Letters\2025\2025.06.05 MEMO To Council HEB Development.docx.

Enclosures: Draft Development Agreement  
Variance Application

Cc (via email): The Honorable Mayor and City Council – The City of Montgomery  
Ms. Corinne Tilley– City of Montgomery, Code Enforcement Officer & Director of Planning & Development  
Chief Anthony Solomon – City of Montgomery, Interim City Administrator & Chief of Police  
Ms. Ruby Beaven – City of Montgomery, Interim City Secretary  
Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney

DEVELOPMENT AGREEMENT BETWEEN  
THE CITY OF MONTGOMERY, TEXAS AND  
~~HEB GROCERY COMPANY~~ H-E-B, LP

This DEVELOPMENT AGREEMENT (the "Agreement") is entered into between-  
~~HEB~~ ~~GROCERY~~ ~~COMPANY~~  
H-E-B, LP, a Texas limited partnership, its successors or assigns ("Developer"), and THE  
CITY OF MONTGOMERY, TEXAS ("City") to be effective on the date on \_\_\_\_\_,  
2025 (the "Effective Date").

## RECITALS

The Developer owns approximately 16.75 acres of land, as described on the attached **Exhibit A** (defined herein as the "Tract") in Montgomery County, Texas, within the corporate limits of the City. The Developer intends to develop the Tract for commercial purposes ~~including~~ which may include a grocery store, gas station, and car wash. The City will provide water and sanitary sewer service to the Tract.

The City is a Type A general-law municipality with all powers except those specifically limited by the Constitution and laws of the State of Texas.

The City wishes to provide for the orderly, safe and healthful development of the Tract, and the City and the Developer agree that the development of the Tract can best proceed pursuant to a development agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits contained herein as well as other good and valuable consideration, the sufficiency of which is acknowledged by the parties, the City and Developer agree as follows:

### ARTICLE I. DEFINITIONS AND EXHIBITS

1.1 Definitions. Unless the context indicates others, the following words as used in this Agreement shall have the following meanings:

City means the City of Montgomery, Texas.

Developer means ~~HEB Grocery Company~~ H-E-B, LP, a Texas limited partnership, its successors or assigns.

ESFC means that amount of water or wastewater, as applicable, set by the City that constitutes an Equivalent Single Family connection, which amount may be changed from time to time. At the time of this Agreement, an ESFC of water means 300 gallons per day and an ESFC of wastewater means 200 gallons per day.

Facilities means the water distribution, sanitary sewer collection, transportation and treatment, and stormwater collection, detention and drainage systems, roads and

improvements in aid thereof, constructed or acquired or to be constructed to serve the Tract, and all improvements, appurtenances, additions, extensions, enlargements or betterments thereto, together with all contract rights, permits, licenses, properties, rights-of-way, easements, sites and other interests related thereto.

Parties means the City and the Developer, collectively.

Tract means the approximately 16.75 acres of land to be developed by Developer, as described in **Exhibit A**.

1.2. Exhibits. The following Exhibits attached to this Agreement are a part of the Agreement as though fully incorporated herein:

Exhibit A	Metes and Bounds Description of the Tract
Exhibit B	Water Line, Sanitary Sewer Line and Sanitary Sewer Tap
Exhibit C	Private Driveways
<u>Exhibit D</u>	<u>Assignment of Water and Sanitary Sewer Capacity</u>

## ARTICLE II

### DEVELOPER OBLIGATIONS

#### Section 2.1. Utilities.

- a. Water, Sanitary Sewer and Drainage Facilities. Developer agrees that all water, sanitary sewer and drainage facilities to serve the Tract, whether on the Tract or off-site, will be constructed in accordance with the applicable City regulations and ordinances, including the City of Montgomery Code of Ordinances, ~~as amended~~ of the date hereof, unless otherwise agreed to by Developer (the “City Code”). The Developer is responsible for the design and construction of all internal water and sanitary sewer lines and associated facilities and drainage facilities to serve the Tract. The City will provide retail water and sanitary sewer service to customers within the Tract. Following acceptance by the City with days after construction thereof, the water and sanitary sewer infrastructure will be owned, operated, and maintained by the City per normal practice. The City ~~agrees~~ has agreed to provide the Developer with its ~~ultimate~~ requirements for wastewater treatment and water capacity as ~~further described~~ set forth herein.
  
- b. Water Supply Facilities. The parties acknowledge that the Tract will be developed with ultimate water requirements of 23,000 gpd to serve approximately 77 ESFCs. The City agrees that it has the capacity in its water treatment system to serve the ~~Tract~~ 77 ESFCs and hereby grants the same to Developer in accordance with terms, conditions and provisions set forth in that certain Assignment of Water and Sanitary Sewer Capacity attached hereto as Exhibit D and executed as of the date hereof (the “Capacity Assignment”);

however, the Developer is required to fund the construction of certain improvements, noted specifically in this Agreement, to the City's water supply system in order to provide sufficient ~~pressure~~supply for the Tract.

- i. **Water Line.** The Developer agrees to design and construct the extension of the City's existing 12-inch waterline to the eastern portion of the Tract's northern property line ("Water Line"), as shown on **Exhibit B**. The Water Line will be constructed in a public right of way or easement and to the extent necessary, the Developer will be responsible for acquiring any necessary public right of way or easement required for the construction of the Water Line. ~~with the City's cooperation.~~
  - ii. **Funding.** The City will provide the Developer a cost estimate of inspection costs related to the Water Line for review and approval, and upon presentation of such estimate, ~~the~~ and Developer's written approval of the same, Developer agrees to deposit with the City the funds due for inspection services of the Water Line. The City will keep accurate records of Developer deposits and Water Line inspection costs and make such records available for Developer or District inspection upon request. Within forty-five (45) days of City acceptance of the Water Line, the City shall perform a reconciliation and final accounting and reimburse the Developer any unpaid funds under the escrow account, less the amount required for the one-year maintenance inspection to be conducted by the City Engineer.
  - iii. **Ownership.** The City will accept such Water Lines for ownership and operation subject to a one-year maintenance bond to be enforceable by the City from the contractor once the public waterline has been constructed, inspected and all punchlist items have been addressed as confirmed by the City Engineer. Upon acceptance of the public waterline, the Developer shall provide the City with as-built drawings in both digital and pdf format.
- c. *Wastewater Treatment Facilities.* The parties acknowledge that the Tract will be developed with ultimate wastewater requirements of 18,400 gpd to serve approximately 92 ESFCs. The City agrees that it has permitted capacity in its wastewater treatment system to serve the 92 ESFCs and hereby grants the same to Developer in accordance with the terms, conditions and provisions set forth in the Capacity Assignment executed as of the date hereof; however, the Developer is required to fund the construction of certain improvements, noted specifically in this Agreement, to the City's wastewater supply system in order to serve the Tract.
- i. **Sanitary Sewer Line and Sanitary Sewer Tap.** The Developer agrees to design and construct the extension of an existing 8" gravity sanitary sewer line to the eastern portion of the Tract's northern property line (the "Sanitary Sewer Line"), as shown on **Exhibit B**. The Developer also agrees to coordinate with the

City's Public Works Department with respect to the installation of a sanitary sewer tap (the "Sanitary Sewer Tap"), as shown on **Exhibit B**. The Sanitary Sewer Line will be constructed in public right of way or easement and to the extent necessary, the Developer will be responsible for acquiring any necessary public right of way or easement required for the construction of the Sanitary Sewer Line with the City's cooperation.

- ii. **Funding.** The City will provide the Developer a cost estimate of inspection costs related to the Sanitary Sewer Line for review and approval, and upon presentation of such estimate and Developer's written approval of the same, the Developer agrees to deposit with the City the funds due for the inspection services of the Sanitary Sewer Line. The City will keep accurate records of Developer deposits and Sanitary Sewer Line inspection costs and make such records available for Developer inspection upon request. Within forty-five (45) days of City acceptance of the Sanitary Sewer Line, the City shall perform a reconciliation and final accounting and reimburse the Developer any unpaid funds under the escrow account, less the amount required for the one-year maintenance inspection to be conducted by the City Engineer..
- iii. **Ownership.** The City will accept such Sanitary Sewer Line or ownership and operation subject to a one-year maintenance bond to be enforceable by the City from the contractor once the public sanitary sewer line has been constructed, inspected and all punchlist items have been addressed as confirmed by the City Engineer. Upon acceptance of the public sanitary sewer line, the Developer shall provide the City with as-built drawings in both digital and pdf format.
- d. Impact Fees. The Developer agrees to pay impact fees for water supply facilities and wastewater treatment facilities ("Impact Fees") in the amount as stated in the City's current adopted Impact Fees, or as may be amended from time to time. The Developer will be assessed and pay Impact Fees at the time of final platting and prior to receiving water and sanitary sewer taps.
- e. Drainage Facilities. The Developer agrees to submit and receive approval for a drainage study from the City and TxDOT. Any revisions to the drainage study must be submitted to the City for review and approval. All drainage and detention facilities must be designed and constructed in accordance with the City Code and any applicable Montgomery County and TxDOT standards. All onsite storm sewer systems and detention will remain private. **[Outstanding issue: will a drainage study be required?]**
- ~~f. Historical Landmark. The Developer agrees to dedicate a site on the Tract for the City to construct a historical landmark. The City shall have sole discretion to determine the location of the site.~~

Section 2.2. Private Driveways. Private driveways shall be constructed in accordance with the City Code. Developer agrees to install one (1) connection to State Highway 105 and three (3) connections to FM 2854 to provide access to the two (2) adjacent property owners as shown on Exhibit C.

Section 2.3. Governmental Approvals. All of Developer's obligations hereunder are subject to Developer obtaining all governmental permits and approvals therefor.

### ARTICLE III.

#### DEFAULT AND TERMINATION

Section 3.1. Material Breach of Agreement. ~~It is the intention of the parties to this Agreement that the Tract be developed in accordance with the terms of this Agreement.~~

The parties acknowledge and agree that any substantial deviation by the Developer from the material terms of this Agreement would frustrate the intent of this Agreement, and, therefore, would be a material breach of this Agreement. A material breach of this Agreement by the Developer shall be deemed to have occurred in the event of failure of the Developer to comply with a provision of this Agreement or the City Code provisions applicable to the Tract.

In the event that a party to this Agreement believes that another party has, by act or omission, committed a material breach of this Agreement, the provisions of this Article III shall provide the remedies for such default.

#### Section 3.2. Notice of Developer's Default.

a. The City shall notify Developer in writing of an alleged failure by the Developer to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. Developer shall, within thirty (30) days after receipt of the notice or a longer period of time as the City may specify in the notice, either cure the alleged failure or, in a written response to the City, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure, provided that such time schedule may be extended as necessary under the circumstances.

b. The City shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by Developer. ~~The alleged defaulting party shall make available to the City, if requested, any records, documents or other information necessary to make the determination, except to the extent that such information is protected by attorney/client privilege.~~

c. If the City determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably



satisfactory to the City, or that the failure is excusable, the determination shall conclude the investigation.

d. If the City determines that a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by Developer in a manner and in accordance with a schedule reasonably satisfactory to the City, then the ~~City may pursue any and all remedies it has at law or equity~~ City's sole remedy shall be to revoke the utility capacity granted to Developer hereunder.

### Section 3.3. Notice of City's Default.

a. Developer shall notify the City in writing specifying any alleged failure by the City to comply with a provision of this Agreement, describing the alleged failure with reasonable particularity. The City shall, within thirty (30) days after receipt of the notice or the longer period of time as Developer may specify in the notice, either cure the alleged failure or, in a written response to Developer, either present facts and arguments in refutation or excuse of the alleged failure or state that the alleged failure will be cured and set forth the method and time schedule for accomplishing the cure.

b. Developer shall determine: (i) whether a failure to comply with a provision has occurred; (ii) whether the failure is excusable; and (iii) whether the failure has been cured or will be cured by the City. The City shall make available to the Developer, if requested, any records, documents or other information necessary to make the determination that are subject to the Public Information Act, Chapter 551, Texas Government Code.

c. If Developer determines that the failure has not occurred, or that the failure either has been or will be cured in a manner and in accordance with a schedule reasonably satisfactory to Developer, or that the failure is excusable, the determination shall conclude the investigation.

d. If Developer determines a failure to comply with a provision has occurred and that the failure is not excusable and has not been or will not be cured by the City in a manner and in accordance with a schedule reasonably satisfactory to Developer, then Developer may pursue any and all remedies it has at law or equity.

~~Section 3.4. Remedies. In addition to all the rights and remedies provided under the laws of the State of Texas, because of the peculiar damage each party hereto might suffer by virtue of a default by another party, each party shall be entitled to the equitable remedy of specific performance or mandamus, as well as all other legal and equitable remedies available.~~

## ARTICLE IV.

### MISCELLANEOUS

Section 4.1. Sale of Tract; Assignability. Any agreement by Developer to sell the entirety or any portion of the Tract to a person intending to develop the ~~tract~~ Tract or such portion thereof (a "Successor Developer," whether one or more) and any instrument of conveyance for the entirety or any portion of the Tract to such Successor Developer shall recite and incorporate this Agreement and provide that this Agreement be binding on such



Successor Developer. ~~This~~ However, this Agreement ~~is not intended to be, and~~ shall not be, binding ~~on the ultimate purchasers of parcels out of~~ upon any purchaser of a tract or lot within the Tract who does not intend to resell, subdivide or develop the tract or lot in the ordinary course of business. This Agreement is assignable upon written notice to the City; such notice of assignment shall be given within 30 days of an assignment and such notice shall include evidence that the assignee has assumed the obligations under this Agreement.

Section 4.2. Force Majeure. In the event a party is rendered unable, wholly or in part, by force majeure, to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other parties as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused to the extent provided, but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.

The term "force majeure" as used herein shall include, but not be limited to, acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy or of terrorism, war, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, tornadoes, hurricanes, arrests and restraints of governments and people, suspension of issuance of permits by environmental agencies outside the control of any party, explosions, breakage or damage to machinery or pipelines and any other incapacities of any party, whether similar to those enumerated or otherwise, and not within the control of the party claiming such inability, which by the exercise of due diligence and care such party could not have avoided.

Section 4.3. Law Governing and Immunity. This Agreement shall be governed by the laws of the State of Texas; without considering its choice of law provisions and no lawsuit shall be prosecuted on this Agreement except in a federal or state court of competent jurisdiction. The City hereby unconditionally and irrevocably waives all claims of sovereign and governmental immunity which it may have (including, but not limited to, immunity from suit and immunity to liability) to the extent permitted by applicable laws of the State of Texas.

Section 4.4. No Additional Waiver Implied. No waiver or waivers of any breach or default (or any breaches or defaults) by any party hereto of any term, covenant, condition, or liability hereunder, or the performance by any party of any duty or obligation hereunder, shall be deemed or construed to be a waiver of subsequent breaches or defaults of any kind, under any circumstances.

Section 4.5. Addresses and Notice. Unless otherwise provided in this Agreement, any notice, communication, request, reply, or advise (herein severally and collectively, for convenience, called "Notice") herein provided or permitted to be given, made, or accepted by any party to another (except bills), must be in writing and may be given or be served by (i) depositing the same in the United States mail-postpaid and registered or, certified-and, with return receipt requested, addressed to the party to be notified at the address set forth below, or at the last address for notice that the sending party has for the receiving party at the time of mailing, and with all charges prepaid; (ii) by depositing it with Federal Express or another service guaranteeing "next day delivery," addressed to the party to be notified

and with all charges prepaid; (iii) by personally delivering it to the party, or any agent of the party listed in this Agreement; or (iv) by electronic mail (i.e., e-mail), with confirming copy sent by one of the other described methods for notice set forth in this sentence. Notice deposited in the United States mail in the manner hereinabove described shall be conclusively deemed to be effective, unless otherwise stated in this Agreement, from and after the expiration of three (3) days after it is deposited. Notice given in any such other manner shall be effective when received by the party to be notified. For the purpose of notice, addresses of the parties shall, until changed as hereinafter provided, be as follows:

If to the City, to:

City of Montgomery, Texas  
101 Old Plantersville Road  
Montgomery, TX 77535  
Attention: City Administrator

With a copy to City attorney:

Johnson Petrov LLP  
2929 Allen Parkway, Suite 3150  
Houston, TX 77019  
Attention: Alan P. Petrov

If to the Developer, to:

~~HEB Grocery Company~~ H-E-B, LP  
425 Sawdust Road, Suite B  
Spring, Texas 77380  
Attention: Shaun Smith  
~~Attn:—~~

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With a copy to:

Golden Steves & Gordon LLP  
200 E. Basse Road, Suite 200  
San Antonio, Texas 78209

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Ami E. Gordon

The parties shall have the right from time to time and at any time to change their respective addresses and each shall have the right to specify any other address by at least fifteen (15) days' written notice to the other parties.

Section 4.6. Merger and Modification. This Agreement, including the exhibits that are attached hereto and incorporated herein for all purposes, embodies the entire agreement

between the parties relative to the subject hereof. This Agreement shall be subject to change or modification only with the mutual written consent of all the parties.

Section 4.7. Severability. The provisions of this Agreement are severable, and if any part of this Agreement or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of part of this Agreement to other persons or circumstances shall not be affected thereby.

Section 4.8. Benefits of Agreement. This Agreement is for the benefit of the City and Developer, and shall not be construed to confer any benefit on any other person except as expressly provided for herein.

Section 4.9. Recordation. The City shall record this Agreement and any amendments thereof in the deed records of Montgomery County. In addition, any assignments of this Agreement shall be recorded in the deed records of Montgomery County. This Agreement, when recorded, shall be a covenant running with the land and binding upon the Tract, the parties and their assignees during the term of this Agreement. However, this Agreement shall not be binding upon and shall not constitute any encumbrance to title as to any purchaser of a tract or lot within the Tract who does not intend to resell, subdivide or develop the tract or lot in the ordinary course of business.

Section 4.10. Term. This Agreement shall be in force and effect from the Effective Date and continue for a term of thirty (30) years unless otherwise previously terminated pursuant to some term or condition of this Agreement or by express written agreement by the City and Developer. Upon expiration of thirty (30) years from the Effective Date of this Agreement, this Agreement may be extended upon mutual consent of the Developer and the City.

Section 4.11. Authority for Execution. The City hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the City Code. The Developer hereby certifies, represents and warrants that the execution of this Agreement is duly authorized and adopted in conformity with the articles of incorporation and bylaws or partnership agreement of such entity.

(Signature Pages to Follow)

Executed by the Developer and the City to be effective on the Effective Date.

~~HEB GROCERY COMPANY~~ H-E-B.

LP,

a Texas limited partnership

By: \_\_\_\_\_

Name:

\_\_\_\_\_  
Benjamin R. Scott

Title: Group Vice President  
of Real Estate and Shopping  
Center Development

STATE OF TEXAS

§

§

COUNTY OF MONTGOMERY

§

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_, ~~of HEB Grocery Company~~ Benjamin R. Scott, Group Vice President of Real Estate and Shopping Center Development of H-E-B, LP, a Texas limited partnership, on behalf of said ~~entity~~ limited partnership.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)

CITY OF MONTGOMERY, TEXAS

\_\_\_\_\_  
Sara Countryman, Mayor

ATTEST:

\_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF TEXAS                   §  
  §  
COUNTY OF MONTGOMERY   §

This instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2025, by Sara Countryman, Mayor, City of Montgomery, Texas, on behalf of said City.

\_\_\_\_\_  
Notary Public, State of Texas

(NOTARY SEAL)

*All Exhibits are subject to Developer's review and approval*

EXHIBIT "A"

METES AND BOUNDS

DRAFT

EXHIBIT "B"

Sanitary Sewer Line and Sanitary Sewer Tap

DRAFT



EXHIBIT "C"

Private Driveways

DRAFT

EXHIBIT "D"

Assignment of Water and Sanitary Sewer Capacity

[to be attached]

DRAFT

<b>Summary report:</b> <b>Litera Compare for Word 11.9.0.82 Document comparison done on</b> <b>5/9/2025 6:00:23 PM</b>	
<b>Style name:</b> Default Style	
<b>Intelligent Table Comparison:</b> Active	
<b>Original DMS:</b> nd://4901-9920-7215/1/Development Agreement between HEB and City of Montgomery.docx	
<b>Modified DMS:</b> nd://4901-9920-7215/5/Development Agreement between HEB and City of Montgomery.docx	
<b>Changes:</b>	
<u>Add</u>	73
<del>Delete</del>	43
<del>Move From</del>	0
<u>Move To</u>	0
<u>Table Insert</u>	0
<del>Table Delete</del>	0
<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	116



May 30, 2025

The Planning and Zoning Commission  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, Texas 77316

Re: Variance Request  
HEB Grocery LP(Dev. No. 2402)  
City of Montgomery

Dear Commissioners:

HEB (the “Developer”) plans to proceed with the development of the approximately 17-acre commercial development located at the southeast corner of SH105 and FM 2854. The development consists 2 commercial pads, one being a proposed gas station/carwash and the HEB Grocery store. The Developer is requesting the following variances from the City’s Code of Ordinances:

- Section 78-92(a): Required 16’ minimum utility easement: The Developer is requesting to remove the utility easement entirely along SH-105 and place all proposed public utilities within TxDOT right-of-way. The variance is being requested by the Developer stating that there is sufficient space for the proposed utility extensions to be placed in TxDOT right of way, and if the proposed public utilities were placed in a utility easement they would be in conflict with the proposed private retaining walls located in that same area. It should be noted that if TxDOT were to ever expand SH-105 to the extent of where public utilities are located, all utilities not within an existing easement would be required to be relocated at the expense of the utility owner (The City).
- Section 78-162 (a) Minimum Landscape Setback: Requesting a 20’ setback in lieu of the 25’ requirement to be maintained on all commercial properties abutting single-family properties. The variance is being requested due to the proposed retaining walls located at the back of the property. It is important to note that the residential property abutting the development are not located within the City limits.
- Section 78-185 Article VIII: Per the enclosed letter, the Developer is requesting to limit tree planting to 150’ from the front door on all commercial pads. This request is not an explicit variance of any City Code. Section 78-166(d)(9) requires that “in the case of new parking lots, or additions to existing parking that expand the footprint of the parking lot by more than 30 percent, 60 square feet of tree canopy must be preserved or planted for each additional parking space. Parking lot trees must be located in the interior of the parking lot or in an area immediately adjacent to the parking lot. For parking lots of 250 spaces or more, at least 50 percent of the tree canopy must be located within the interior of the parking lot. Only trees of the preferred species listed in Table 2 of section 78-168 may be used to satisfy the planting requirements of this section; and all such trees must be at least two and a half-inch caliper and a minimum of ten feet in height. Additionally, no parking space shall be further than 125 feet away from the trunk of a tree.” Since this is not a direct variance to any City Code there is no action required for the variance related to Section 78-185 Article VIII at this time.

Enclosed you will find the request for variance as submitted by the engineer for the development. It is important to note that the Developer has not received plan approval for the site and the final layout of their site is contingent on the variances being requested at this time.

Approval of the requested variances does not constitute plan approval and only allows the Developer to further refine the proposed plat and site plans, which will require the full review and approval of the City.

If you have any questions or comments, please do not hesitate to contact me.

Sincerely,



Chris Roznovsky, PE  
City Engineer

CVR/zlgt

Z:\00574 (City of Montgomery)\\_900 General Consultation\Correspondence\Letters\2025\2025.05.30 MEMO to P&Z  
HEB Variance Request.docx

Enclosures: Variance Request

Cc (via email): Ms. Corinne Tilley – City of Montgomery, Planning & Development Administrator & Code Enforcement  
Officer

Mr. Anthony Solomon – City of Montgomery, Interim City Administrator and Police Chief

Ms. Ruby Beaven – City of Montgomery, City Secretary

Mr. Alan Petrov – Johnson Petrov, LLP, City Attorney

May 21, 2025  
WPS: 0040418.04

Development Services  
City of Montgomery  
101 Old Plantersville Road  
Montgomery, TX 77316

Re: Variance Request  
HEB Montgomery  
*Montgomery, TX*

To Whom It May Concern:

Please accept this letter as an official request for variance on the following items:

- Landscape setback along the southern property line shall be a minimum of 20 feet. A retaining wall and utilities may be installed within the proposed setback. This is in reference to city code section 78-162.
  - o The proposed alternate is to install a 20-foot landscape setback. Within the setback, a retaining wall and visual barrier will be provided. Visual barrier will be provided via landscape screening where possible, where landscape screening is not possible, a 6-foot fence will be installed for screening.
  - o The reason behind this request is due to the site conditions, i.e., the depth of the property and the significant grade difference from the front to the back of the site. The significant grade differences require the installation of retaining walls on the north, south and most of the west sides of the property. This limits the usable remaining space to properly develop the HEB Grocery Store, Fuel Station, and Car Wash to serve the needs of the community. Reducing the southern landscape setback by five feet creates the extra space needed for the development.
- No utility easement will be required along the northern property line along Highway 105 Right-of-Way. This is in reference to city code section 78-92.
  - o The existing utilities are within the TxDOT ROW. The Highway 105 ROW exceeds 100 feet in width, and there is sufficient space within the ROW for both water and sanitary sewer extensions to be installed.
  - o The reason behind this request is due to the site conditions, i.e., the depth of the property and the significant grade difference from the front to the back of the site. The significant grade differences require the installation of retaining walls on the north, south and most of the west sides of the property. This limits the usable remaining space to properly develop the HEB Grocery Store, Fuel Station, and Car Wash to serve the needs of the community.
- No trees will be installed within 150 feet of the front doors of the grocery store. This is in reference to city code section 78-185.

- The required number of trees by code will be installed within the limits of the development, except within 150 feet of the front doors.
- This is a public sanitation and safety concern. As this is a grocery store that regularly prepares and stocks fresh foods, having trees within 150 feet of the front doors introduces the opportunity for birds to fly into the store and contaminate food and products.

Sincerely,



Hector Leon, P.E.

972-265-4862

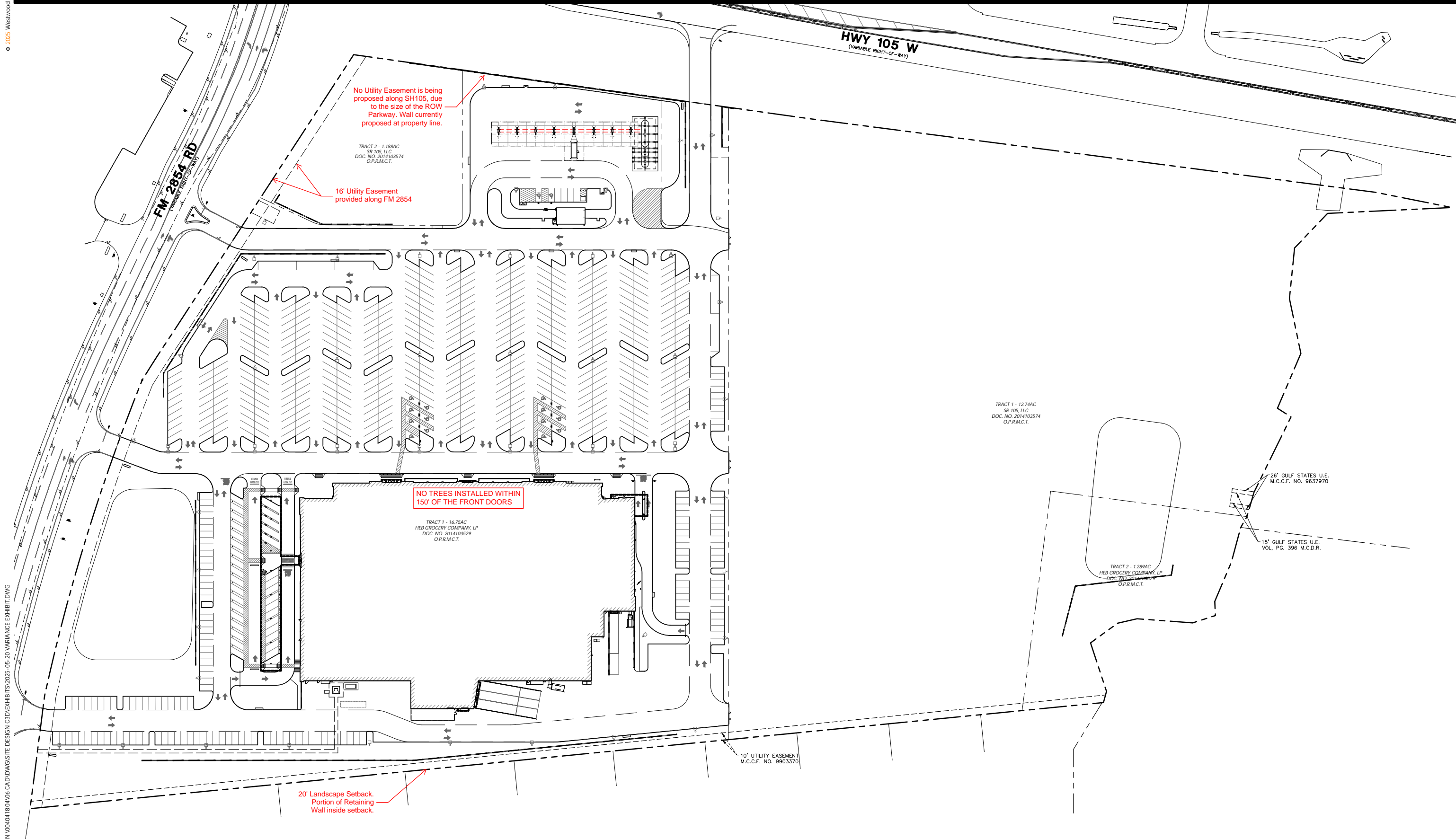
hector.leon@westwoodps.com



# HEB MONTGOMERY VARIANCE EXHIBIT

## CITY OF MONTGOMERY, TEXAS

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**Westwood**

Phone (214) 473-4640 2901 Dallas Parkway, Suite 400  
Toll Free (888) 937-5150 Plano, TX 75093  
Firm No. F-11756 westwoodps.com

Westwood Professional Services, Inc.

VARIANCE EXHIBIT

60' \_\_\_\_\_  
120' \_\_\_\_\_  
180' \_\_\_\_\_

MAY 16, 2025  
#0040418.04

