

DEVELOPMENT AGREEMENT BETWEEN
THE CITY OF MONTGOMERY, TEXAS AND
BCS CAPITAL, LLC
DEVELOPMENT NO. 2415

This DEVELOPMENT AGREEMENT (the "Agreement") is entered into between BCS CAPITAL, LLC, a Texas limited liability company, 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 38 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 multi-family and commercial purposes and the City will provide water and sanitary sewer service to the Tract.

The City is a Type A general-law municipality with all powers granted by the Constitution and laws of the State of Texas with respect to such municipalities.

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 BCS Capital, LLC, a Texas limited liability company, its successors or assigns.

Development or Tract means the approximately 38 acres of land to be developed by Developer, as described in **Exhibit A**.

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.

Commercial Development means the portion of the Tract as shown on **Exhibit H**.

Parties means the City and the Developer, collectively.

Tract means the approximately 38 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	Form of Utility Agreement
Exhibit C	Public Waterline Extension
Exhibit D	Public Sanitary Sewer Extension
Exhibit E	Roadway Improvements
Exhibit F	Linear Cost Estimate
Exhibit G	Master General Land Plan
Exhibit I	380 Agreement

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 (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. Once the internal water and sanitary sewer lines have

been assigned to and accepted by the City, the City will provide retail water and sanitary sewer service to customers within the Tract, all in accordance with a Utility Agreement, the form of which is attached hereto as **Exhibit B**. Following acceptance by the City, the water and sanitary sewer infrastructure will be owned, operated, and maintained by the City per normal practice and as described in the Utility Agreement. The Developer agrees to provide the City with its ultimate requirements for wastewater treatment and water capacity in accordance with the Utility Agreement and as further described herein.

- b. **Water Supply Facilities**. The parties acknowledge that the Tract will be developed in phases with ultimate water requirements of 88,725 gpd to serve approximately 296 ESFC connections. The City agrees that it will have the capacity in its water treatment system to serve the Tract; however, the Developer is required to fund the construction of certain improvements to the City's water supply system in order to provide sufficient service to the Tract.
 - i. **Water Lines**. The City will design and construct the public 12" waterlines required to serve the development, at the cost of the Developer. The Developer will be responsible for the extension of the public waterlines as shown in **Exhibit C (the "Buffalo Springs Waterline" and "SH 105 Waterline")**. The waterlines deemed to be Public 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 easements required for the construction of the Buffalo Springs Waterline and SH 105 Waterline.
 - ii. **Funding**. The City will provide the Developer a cost estimate of the engineering and construction costs of Buffalo Springs and SH 105 Waterlines, and upon presentation of such estimate, the Developer agrees to deposit their pro-rata share of the costs with the City the funds due for design (including preliminary design, design, expenses and fees, and bid phase services) of the Buffalo Springs and SH 105 Waterlines. The Cost Estimate is attached hereto as **Exhibit C**. The City will be responsible for bidding the Buffalo Springs and SH 105 Waterlines in accordance with competitive bidding laws. Upon receipt and review of bids, the Developer will deposit the amount of the accepted bid plus 10% contingencies, the estimated cost for construction administration and inspection, construction staking, construction materials testing, with the City. Within forty-five (45) days of City acceptance of the Buffalo Springs and SH 105 Waterlines 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 warranty inspection to be conducted by the City Engineer. In the event the City has expended more than

the deposit amount, the Developer will reimburse the City for any excess cost.

- i. **Ownership.** The City will accept such Buffalo Springs and SH 105 Waterlines 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.
- b. *Wastewater Treatment Facilities.* The parties acknowledge that the Tract will be developed with ultimate wastewater requirements of 73,950 gpd to serve approximately 370 ESFC connections. The City agrees that it will have permitted capacity in its wastewater treatment system to serve the Tract; however, the Developer is required to fund the construction of certain improvements to the City's wastewater supply system in order to serve the Tract.
 - i. **Sanitary Sewer Line.**
 1. Multi Family: The Developer agrees to design and construct, at their cost, the connection required to serve the Multi-family Development as shown on **Exhibit D (the "Buffalo Springs Sanitary Sewer Line")** by extending a sanitary sewer line north along Buffalo Springs Dr. 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 required for the construction of the Buffalo Springs Sanitary Sewer Line.
 2. Commercial: The City will design and construct the public sanitary sewer line required to serve the commercial portion of the development, at the cost of the Developer. The commercial pads will be served by extending an 8" sanitary sewer line along SH 105 and tie into existing Lift Station No. 12 as shown in **Exhibit D (the "SH 105 Sanitary Sewer Line")**. The sanitary sewer line deemed to be Public 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 easements required for the construction of the SH 105 Sanitary Sewer Line.

ii. **Funding.**

1. Multi-Family: The City will provide the Developer a cost estimate of inspection costs related to the Buffalo Springs Sanitary Sewer Line, and upon presentation of such estimate, the Developer agrees to deposit their pro-rata share of the costs with the City the funds due for the inspection services of the Buffalo Springs Sanitary Sewer Line. The City will keep accurate records of Developer deposits and Buffalo Springs Sanitary Sewer Line costs and make such records available for Developer inspection upon request. Within forty-five (45) days of City acceptance of the Buffalo Springs 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 warranty inspection to be conducted by the City Engineer.
2. Commercial: The City will provide the Developer a cost estimate of the engineering and construction costs of the SH 105 Sanitary Sewer Line, and upon presentation of such estimate, the Developer agrees to deposit with the City the funds due for design (including preliminary design, design, expenses and fees, and bid phase services) of the SH 105 Sanitary Sewer Line. The Cost Estimate is attached hereto as **Exhibit "D"** The City will be responsible for bidding the SH 105 Sanitary Sewer Line in accordance with competitive bidding laws. Upon receipt and review of bids, the Developer will deposit the amount of the accepted bid plus 10% contingencies, the estimated cost for construction administration and inspection, construction staking, construction materials testing, with the City. Within forty-five (45) days of City acceptance of the SH 105 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 warranty inspection to be conducted by the City Engineer. In the event the City has expended more than the deposit amount, the Developer will reimburse the City for any excess cost.

iii. **Ownership.**

1. Multifamily: The City will accept such Buffalo Springs 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 Buffalo Springs Sanitary Sewer Line has been constructed, inspected and all punchlist items have been addressed as confirmed by the City Engineer. Upon acceptance of the Buffalo Springs Sanitary Sewer Line, the Developer shall provide the City with as-built drawings in both digital and pdf format.

2. Commercial: The City will accept such SH 105 Sanitary Sewer Line 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.
- c. Drainage Facilities. The Developer will submit and receive approval for a drainage study from the City showing the Tract has no impact on the drainage downstream of the Tract or to the adjacent properties prior to the commencement of construction. 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 the City's floodplain regulations and any applicable Montgomery County Drainage Criteria Manual Standards. All onsite storm sewer systems will be designated as private facilities and will not be accepted by the City upon completion. Any detention ponds will not be accepted by the City but owned and maintained by the Developer. The Developer is responsible for providing engineering plans and specifications for the drainage and detention system interior to the Tract to the City Engineer for review and approval prior to commencing construction, and to obtain all required Planning and Zoning Commission, City Council, and development approvals and permits.
 - 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 final platting, a true-up of Impact Fees will be completed within 45 days of the time of the tap request and before the tap is completed.

Section 2.2. Road Improvements. The Developer, at its own cost, will make certain improvements to Buffalo Springs Drive, including sidewalks, 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. Any additional Road Improvements to Buffalo Springs Drive (turn lanes, etc.) will be based on the results of a traffic impact analysis ("TIA") conducted by Developer and submitted to the City for review and approval.

The Developer, at its own cost, will make certain improvements to CB Stewart Drive. The final scope of improvements to CB Stewart will be dependent on the results of the TIA, to be

completed by Developer, and geotechnical report, to be completed by the City at Developer's expense. The Developer will be required to make an initial deposit for the preliminary design and geotechnical analysis of the roadway improvements. Upon completion of the TIA, geotechnical analysis, and preliminary engineering design, the City Engineer will provide an updated scope and estimated project cost. The proposed Roadway Improvements are presented as shown on **Exhibit E**.

i. **Funding.**

1. Roadway Improvements: The City will provide the Developer a cost estimate of the engineering and construction costs of the proposed roadway improvements and upon presentation of such estimate, the Developer agrees to deposit with the City the funds due for design (including preliminary design, design, expenses and fees, bid phase services, and geotechnical report) of the roadway improvements project. The cost is subject to change based on the results of the TIA and geotechnical analysis. Should the results of the TIA and geotechnical analysis show that the scope of the roadway improvements need to be revised, an additional cost estimate will be provided to the Developer, and an additional escrow deposit will be requested. The City will be responsible for bidding the roadway improvements project in accordance with competitive bidding laws. Upon receipt and review of bids, the Developer will deposit the amount of the accepted bid plus 10% contingencies, the estimated cost for construction administration and inspection, construction staking, construction materials testing, with the City. Within forty-five (45) days of City acceptance of the roadway improvements, 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 warranty inspection to be conducted by the City Engineer. In the event the City has expended more than the deposit amount, the Developer will reimburse the City for any excess cost.

ARTICLE III.

Section 3.1. Reimbursement. The City shall enter into a 380 agreement, as shown on **Exhibit I** to reimburse the Developer for construction of the public infrastructure required to serve the development up to \$4,000,000 or \$4,800,000 in the event improvements to CB Stewart Dr are required based on the results of the required Traffic Impact Analysis. Reimbursement will be paid out over a term not to exceed 10 years from the execution of this agreement. The Reimbursement amount shall be paid back from the annual sales revenue received from the Development by 95% of the annual sales revenue received by the City and 50% of the annual revenue received by the Montgomery Economic Development Corporation.

ARTICLE IV

DEFAULT AND TERMINATION

Section 4.1. 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 4.2. 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.

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.

Section 4.3. 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 4.4. 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 V.

MISCELLANEOUS

Section 5.1. 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 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 Agreement is not intended to be, and shall not be, binding on the ultimate purchasers of parcels out of the Tract. 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 5.2. 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 5.3. Law Governing. This Agreement shall be governed by the laws of the State of Texas, and no lawsuit shall be prosecuted on this Agreement except in a federal or state court of competent jurisdiction.

Section 5.4. 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 5.5. 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 depositing the same in the United States mail postpaid and registered or certified and addressed to the party to be notified. Notice deposited in the 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:

BCS Capital, LLC
Attn: Jack Burgher, Partner
1940 Fountainview Drive, Suite 220
Houston, Texas 77057

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 5.6. 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 5.7. 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 5.8. 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 5.9. 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 5.10. 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 5.11. 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.

BCS Capital, LLC a Texas limited liability company

By: _____
Name: Jack Burgher
Title: Manager
Date: _____

STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me this _____ day of _____, 2025, by Jack Burgher, Manager of BCS Capital, LLC, a Texas limited liability company, on behalf of said entity.

Notary Public, State of Texas

(NOTARY SEAL)

CITY OF MONTGOMERY, TEXAS

Sara Countryman, Mayor

ATTEST:

Name: Ruby Beaven
Title: City Secretary

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)

EXHIBIT "A"
METES AND BOUNDS

EXHIBIT "B"
FORM OF UTILITY AGREEMENT

FORM OF UTILITY AGREEMENT

THE STATE OF TEXAS §
 §
 COUNTY OF MONTGOMERY §

THIS AGREEMENT is made and entered into as of the date herein last specified, by and between the CITY OF MONTGOMERY, TEXAS (the "City"), a Type A general-law municipality located in Montgomery County, Texas, and BCS CAPITAL, LLC, a Texas limited liability company (the "Developer"). The City and Developer are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the City is a Type-A general law city that provides a full range of governmental services to its citizens. The City owns and operates water production and distribution facilities, wastewater collection and treatment facilities, a police department and provides other municipal services; and

WHEREAS, the Developer owns approximately 32.72 acres of land within the corporate boundaries of the City and described more particularly in **Exhibit A** attached hereto and incorporated herein for all purposes (the "Tract"); and

WHEREAS, the Developer plans to construct and design, water lines, sanitary sewer lines, and road improvements to serve the Tract; and

WHEREAS, the Parties now desire to enter into an agreement under the terms of which, among other things: (i) the Developer will construct or acquire for the benefit of, and for ultimate conveyance to the City, all or certain of the Facilities (as defined herein) needed to serve land to be developed within the boundaries of the Tract; (ii) the City will maintain the Facilities once they are conveyed to the City by the Developer; (iii) the City will provide sufficient water supply and wastewater treatment plant capacity to serve the Tract at full development, on a time schedule that meets the Developer's needs, and will impose impact fees for such capacity as set forth herein; and (iv) the City will provide water supply and wastewater treatment services to the customers within the Tract; and

WHEREAS, the Parties have determined that they are authorized by the Constitution and laws of the State of Texas to enter into this Agreement and have further determined that the terms, provisions and conditions hereof are mutually fair and advantageous to each; NOW, THEREFORE;

AGREEMENT

For and in consideration of these premises and of the mutual promises, obligations, covenants and benefits herein contained, the Parties contract and agree as follows:

ARTICLE I DEFINITIONS

The capitalized terms and phrases used in this Agreement shall have the meanings as follows:

"City Code" shall mean the Code of Ordinances adopted by the City, as amended from time to time.

"City Administrator" shall mean the City Administrator of the City.

"Development" or "Tract" means the approximately 32.72 acres of land to be developed by Developer, as described in **Exhibit A** attached hereto and incorporated herein for all purposes.

"Development Agreement" shall mean that certain Development Agreement, between the City and BCS Capital, LLC, a Texas limited liability, as may be amended from time to time.

"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 off-site waterlines and sanitary sewer lines to serve the Development, constructed and designed by the City as shown on **Exhibit C and Exhibit D**.

"Parties" shall mean the City and the Developer, collectively.

ARTICLE II DESCRIPTION, DESIGN, FINANCING AND CONSTRUCTION OF THE FACILITIES

2.01. Facilities. The Facilities shall be designed and constructed by Developer in compliance with all applicable requirements and criteria of City regulations and ordinances. All plans and specifications for the Facilities shall be submitted to the City for approval prior to construction and advertising for bids. The plans and specifications shall be prepared in accordance with the applicable provision of the City Code, as they may be amended from time to time.

2.02. Water Lines. The City will design and construct the public 12" waterlines required to serve the development, at the cost of the Developer. The Developer will be responsible for the extension of the public waterlines as shown in Exhibit C (the "Buffalo Springs Waterline" and "SH 105 Waterline"). The waterlines deemed to be Public 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 easements required for the construction of the Buffalo Springs Waterline and SH 105 Waterline.

2.03. Sanitary Sewer Line.

1. Multi Family: The Developer agrees to design and construct, at their cost, the connection required to serve the Multi-family Development as shown on **Exhibit D (the "Buffalo Springs Sanitary Sewer Line")** by extending a sanitary sewer line north along Buffalo Springs Dr. 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 required for the construction of the Buffalo Springs Sanitary Sewer Line.
2. Commercial: The City will design and construct the public sanitary sewer line required to serve the commercial portion of the development, at the cost of the Developer. The commercial pads will be served by extending an 8" sanitary sewer line along SH 105 as shown in **Exhibit D (the "SH 105 Sanitary Sewer Line")**. The sanitary sewer line deemed to be Public 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 easements required for the construction of the SH 105 Sanitary Sewer Line.

2.04. **Impact Fees.** In accordance with the Development Agreement, the Developer agrees to pay impact fees for water supply facilities and wastewater treatment facilities 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 final platting. Impact Fees must be paid before the Final Plat is approved by City Council. If the proposed tap size changes after the time of final platting, a true-up of Impact Fees will be completed within 45 days of the time of the tap request and before the tap is completed.

2.05. **Road Improvements.** The Developer, at its own cost, will make certain improvements to Buffalo Springs Drive, including removing and replacing existing asphalt roadway with a concrete roadway from the existing end of the concrete roadway near the norther boundary of the Home Depot site to the north side of the intersection between Buffalo Springs Drive and CB Stewart Drive. Any additional Road Improvements to Buffalo Springs Drive will be based on the results of a traffic impact analysis conducted by Developer and submitted to the City for review and approval. If the traffic impact analysis recommends improvements to CB Stewart Drive, the Developer shall make such improvements at its own cost. The Developer is responsible for providing engineered plans and specifications for the road improvements to the Tract to the City Engineer for review and approval prior to commencing construction, and to obtain all required Planning and Zoning Commission, City Council, and development approvals and permits. The Developer is responsible for receiving additional agency approval for required roadway improvements. The proposed Roadway Improvements are presented as shown on **Exhibit E.**

ARTICLE III
OWNERSHIP, OPERATION AND MAINTENANCE OF FACILITIES

3.01. Ownership by the City. As the Facilities are completed and become operational, the Developer shall convey the same to the City, free and clear of all encumbrances.

3.02. Operation by the City. As the Facilities are completed, representatives of the City shall inspect the same and, if the City finds that the same has been completed in accordance with the approved plans and specifications, the City will accept the same, whereupon such portion of the Facilities shall be operated and maintained by the City at its sole expense as provided herein. In the event that the Facilities have not been completed in accordance with the approved plans and specifications the City will immediately advise the Developer in what manner the infrastructure does not comply, and the Developer shall immediately correct the same; whereupon the City shall again inspect the Facilities and accept the same if the defects have been corrected. During the term of this Agreement, the City will operate the Facilities and provide retail water and sanitary sewer service to all users within the Tract without discrimination. The City shall at all times maintain the Facilities or cause the same to be maintained, in good condition and working order and will operate the same, or cause the same to be operated, in an efficient and economical manner at a reasonable cost and in accordance with sound business principles in operating and maintaining the Facilities, and the City will comply with all contractual provisions and agreements entered into by it and with all valid rules, regulations, directions or orders by any governmental administrative or judicial body promulgating the same.

3.03. Rates and Meters. The City shall bill and collect fees from customers located within the boundaries of the Tract and shall from time to time fix such rates and charges for such customers of the City's system; provided, however, that the rates and charges for services afforded by the system will be equal and uniform to those charged for other similar classifications of users in the City. All water and wastewater revenues from the Tract customers shall belong exclusively to the City. The City shall be responsible for providing and installing any necessary meters for the individual customers.

3.04. Tap Fees / Connection Charges. Notwithstanding anything in the City Code to the contrary, the City will impose a charge for tap fees or connections to the water and wastewater system at a rate to be determined from time to time by the City, provided the charge is equal to the sums charged other City users for comparable connections, and the connection charges shall belong exclusively to the City.

ARTICLE IV
REMEDIES IN EVENT OF DEFAULT

The Parties hereto expressly recognize and acknowledge that a breach of this Agreement by either party may cause damage to the non-breaching party for which there will not be an adequate remedy at law. Accordingly, in addition to all the rights and remedies provided by the laws of the State of Texas, in the event of a breach hereof by either party, the other party shall be entitled but not limited to the equitable remedy of specific performance or a writ of mandamus to

compel any necessary action by the breaching party. In the event that a party seeks a remedy as provided in this Article or any monetary damages as otherwise provided in this Agreement, the breaching party shall be required to pay for the non-breaching party's attorneys' fees and court costs.

ARTICLE V MISCELLANEOUS PROVISIONS

5.01. Force Majeure. In the event either party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such party, to the extent affected by such 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. As soon as reasonably possible after the occurrence of the force majeure relied upon, the party whose contractual obligations are affected thereby shall give notice and the full particulars of such force majeure to the other party. Such cause, as far as possible, shall be remedied with all reasonable diligence.

5.02. Approvals and Consents. Approvals or consents required or permitted to be given under this Agreement shall be evidenced by an ordinance, resolution or order adopted by the governing body of the appropriate party or by a certificate executed by a person, firm or entity previously authorized to give such approval or consent on behalf of the party. Approvals and consents shall be effective without regard to whether given before or after the time required for giving such approvals or consents.

5.03. Address and Notice. Unless otherwise provided in this Agreement, any notice to be given under this Agreement shall be given in writing and may be given either by depositing the notice in the United States mail postpaid, registered or certified mail, with return receipt requested; delivering the notice to an officer of such party; or sending the notice by prepaid telegram, when appropriate. Notice deposited by mail in the foregoing manner shall be effective the day after the day on which it is deposited. Notice given in any other manner shall be effective only when received by the party to be notified. For the purposes of notice, the addresses of the Parties shall be as follows:

If to the City, to:

City of Montgomery, Texas
101 Old Plantersville Road
Montgomery, TX 77316
Attention: City Administrator

With a copy to City attorney:

Johnson Petrov LLP
2929 Allen Parkway, Suite 3150
Houston, TX 77019

Attn: Alan P. Petrov

If to the Developer, to:

BCS Capital, LLC
Attn: Jack Burgher, Partner
1940 Fountainview Drive, Suite 220
Houston, Texas 77057

The Parties shall have the right from time to time to change their respective addresses by giving at least fifteen (15) days' written notice of such change to the other Party.

5.04. Assignability. This Agreement may not be assigned by either except upon written consent of the other Party

5.05. No Additional Waiver Implied. The failure of a Party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by any other Party.

5.06. Reservation of Rights. All rights, powers, privileges and authority of the Parties hereto not restricted or affected by the express terms and provisions hereof are reserved by the Parties and, from time to time, may be exercised and enforced by the Parties.

5.07. Parties in Interest. This Agreement shall be for the sole and exclusive benefit of the Parties hereto and shall not be construed to confer any rights upon any third parties.

5.08. Merger. This Agreement embodies the entire understanding between the Parties and there are no representations, warranties or agreements between the Parties covering the subject matter of this Agreement.

5.09. Captions. The captions of each section of this Agreement are inserted solely for convenience and shall never be given effect in construing the duties, obligations or liabilities of the Parties hereto or any provisions hereof, or in ascertaining the intent of either party, with respect to the provisions hereof.

5.10. Interpretations. This Agreement and the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of this Agreement.

5.11. Severability. If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

5.12. Term and Effect. This Agreement shall remain in effect until the expiration of thirty (30) years from the date hereof.

[EXECUTION PAGES FOLLOW.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of equal dignity, on this ____ day of ____ 2025.

**THE CITY OF MONTGOMERY,
TEXAS**

Sara Countryman, Mayor

ATTEST/SEAL:

Ruby Beaven, City Secretary

BCS CAPITAL, LLC, a Texas limited liability company

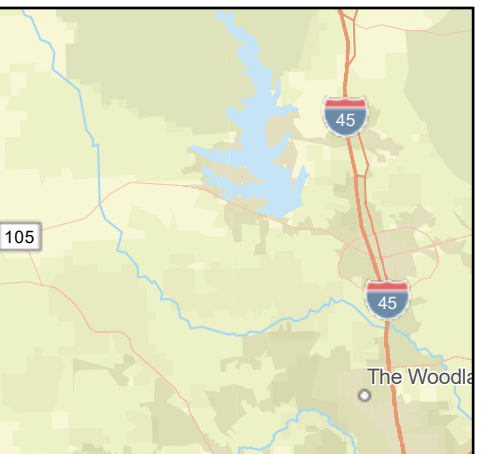
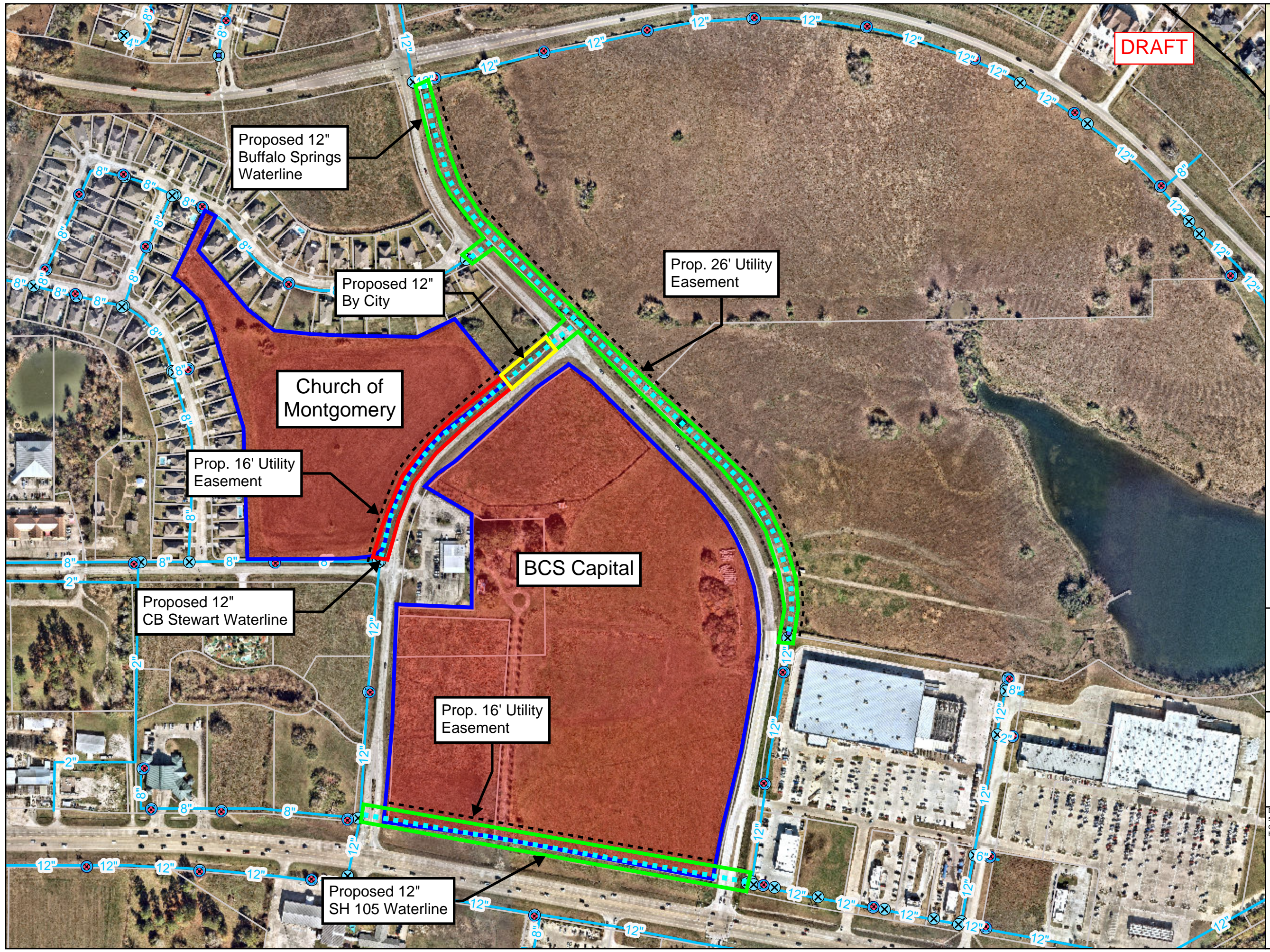
By: _____
Name: Jack Burgher
Title: Manager

STATE OF TEXAS §
 §
COUNTY OF MONTGOMERY §

This instrument was acknowledged before me this _____ day of _____, 2025, by Jack Burgher, Manager of BCS Capital, LLC, a Texas limited liability, on behalf of said company.

Notary Public, State of Texas

(NOTARY SEAL)



Legend

- Tax Parcel
- City ETJ
- City Limits
- Subject Property

Water

- Hydrant
- Water Main Valve
- Water Main
- Proposed Water Main

0 360 720
ft

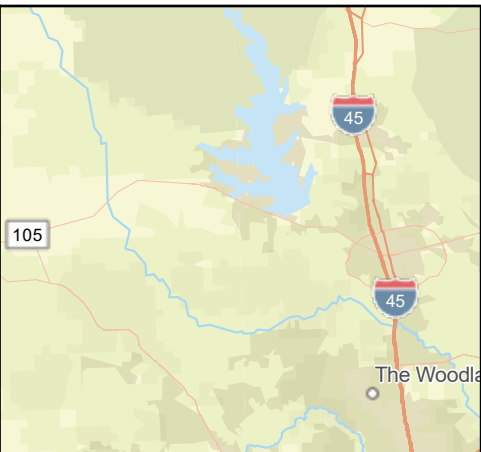
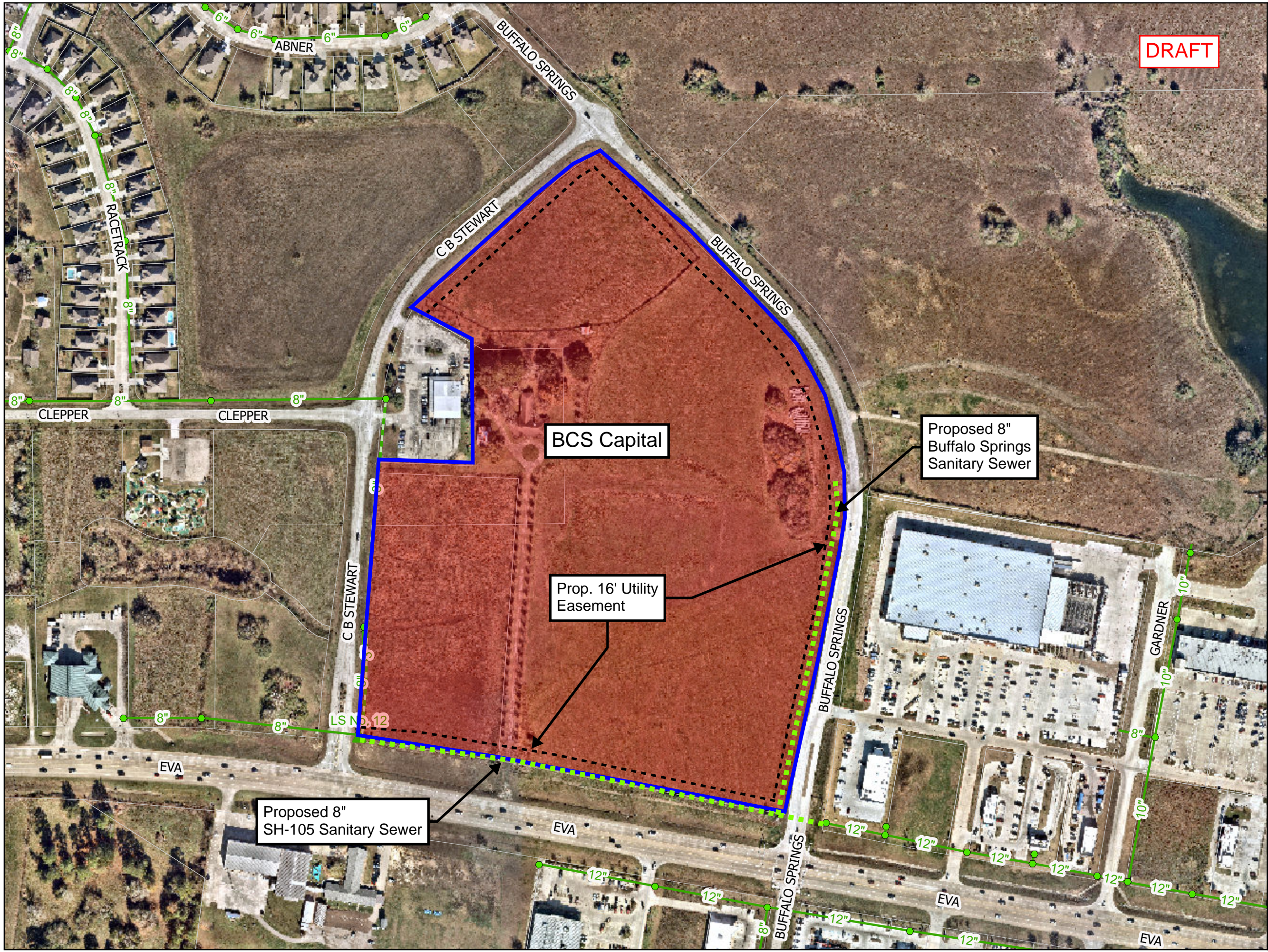
EXHIBIT C: Public Waterline Improvements



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.



EXHIBIT "D"
PUBLIC SANITARY SEWER EXTENSION



Legend

- Tax Parcel
- City ETJ
- City Limits
- Subject Property

Sanitary Sewer

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

0 0.05 0.1
mi

EXHIBIT D:
Public Sanitary Sewer
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.



EXHIBIT "E"
ROADWAY IMPROVEMENTS



Legend

- BCS Capital Additional Tract (6 AC)
- BCS Capital Tract (32 AC)
- Road Improvement Area (CB Stewart)
- Road Improvement Area (Buffalo Springs)
- Mountable Curb
- Center Median
- Proposed Divided Median
- Tax Parcel

0 325 650
ft

EXHIBIT B:
Boundary & Road
Improvements

CITY OF
MONTGOMERY
TEXAS EST 1837
BIRTHPLACE OF THE TEXAS FLAG

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.

WGA

EXHIBIT “F”
COST ESTIMATE



Preliminary Cost Estimate
Buffalo Springs and CB Stewart Public Infrastructure Improvements
City of Montgomery
7/2/2025

Item No.	Description	Quantity	Unit	Unit Price	Cost
<u>General</u>					
1	Mobilization, Bonds, and Insurance	1	LS	\$ 35,000	\$ 35,000
2	Construction Staking	1	LS	7,500	7,500
3	Trench Safety System	6,070	LF	2	12,100
4	SWPPP	1	LS	10,000	10,000
5	Traffic Control Plan	1	LS	15,000	15,000
6	Site Restoration	1	LS	10,000	10,000
Total General Costs					\$ 89,600
<u>Waterline - Church of Montgomery</u>					
7	12-Inch C900 PVC Waterline (Open Cut Construction) ⁽⁵⁾	800	LF	100	80,000
8	12-Inch Gate Valve	2	EA	2,500	5,000
9	12-Inch Wet Connect & Removal of Plug and Clamp	1	EA	2,000	2,000
10	Hydrants	2	EA	8,000	16,000
Total Church of Montgomery Costs					\$ 103,000
<u>Waterline - BCS Capital</u>					
11	12-Inch C900 PVC Waterline (Open Cut Construction)	3,550	LF	100	355,000
12	Additional Cost for 16-Inch Steel Casing via Jack & Bore	470	LF	225	105,800
13	12-Inch Gate Valve	9	EA	2,500	22,200
14	12-Inch Wet Connect & Removal of Plug and Clamp	5	EA	2,000	10,000
15	Hydrants	9	EA	8,000	72,000
Total BCS Capital Costs					\$ 565,000
<u>Sanitary Sewer - BCS Capital</u>					
15	8" PVC Sanitary Sewer (Open Cut Construction)	2,230	LF	100	223,000
16	Additional Cost for 16-Inch Steel Casing (Trenchless Construction)	240	LF	225	54,000
17	4' Sanitary Sewer Manhole	6	EA	10,000	55,800
18	Demolition of Lift Station No. 12	1	LS	12,000	12,000
19	Core into Existing Manhole	1	EA	2,000	2,000
Total BCS Capital Costs					\$ 346,800
<u>Waterline - City</u>					
16	12-Inch C900 PVC Waterline (Open Cut Construction)	200	LF	100	20,000
17	12-Inch Gate Valve	1	EA	2,500	1,300
18	12-Inch Wet Connect & Removal of Plug and Clamp	1	EA	2,000	2,000
19	Hydrants	1	EA	8,000	4,000
Total City Costs					\$ 27,300
Construction Subtotal					\$ 1,132,000
Contingencies (15%)					\$ 170,000
Engineering - Preliminary, Design, and Bidding					\$ 80,000
Construction Administration and Inspection					\$ 45,000
Fees and Expenses					\$ 5,000
Construction Materials Testing					\$ 15,000
Total					\$ 1,447,000
Church of Montgomery Pro Rata Share					\$ 170,700
BCS Capital Pro Rata Share					\$ 1,233,600
City Pro Rata Share					\$ 42,700

Notes:

(1) All values rounded up to the nearest hundred.

(2) This estimate is based on my best judgement as a design professional familiar with the construction industry. We cannot and do not guarantee that bids will not vary from this cost estimate.

(3) This includes reproduction, advertising expenses, and other miscellaneous reimbursable costs.

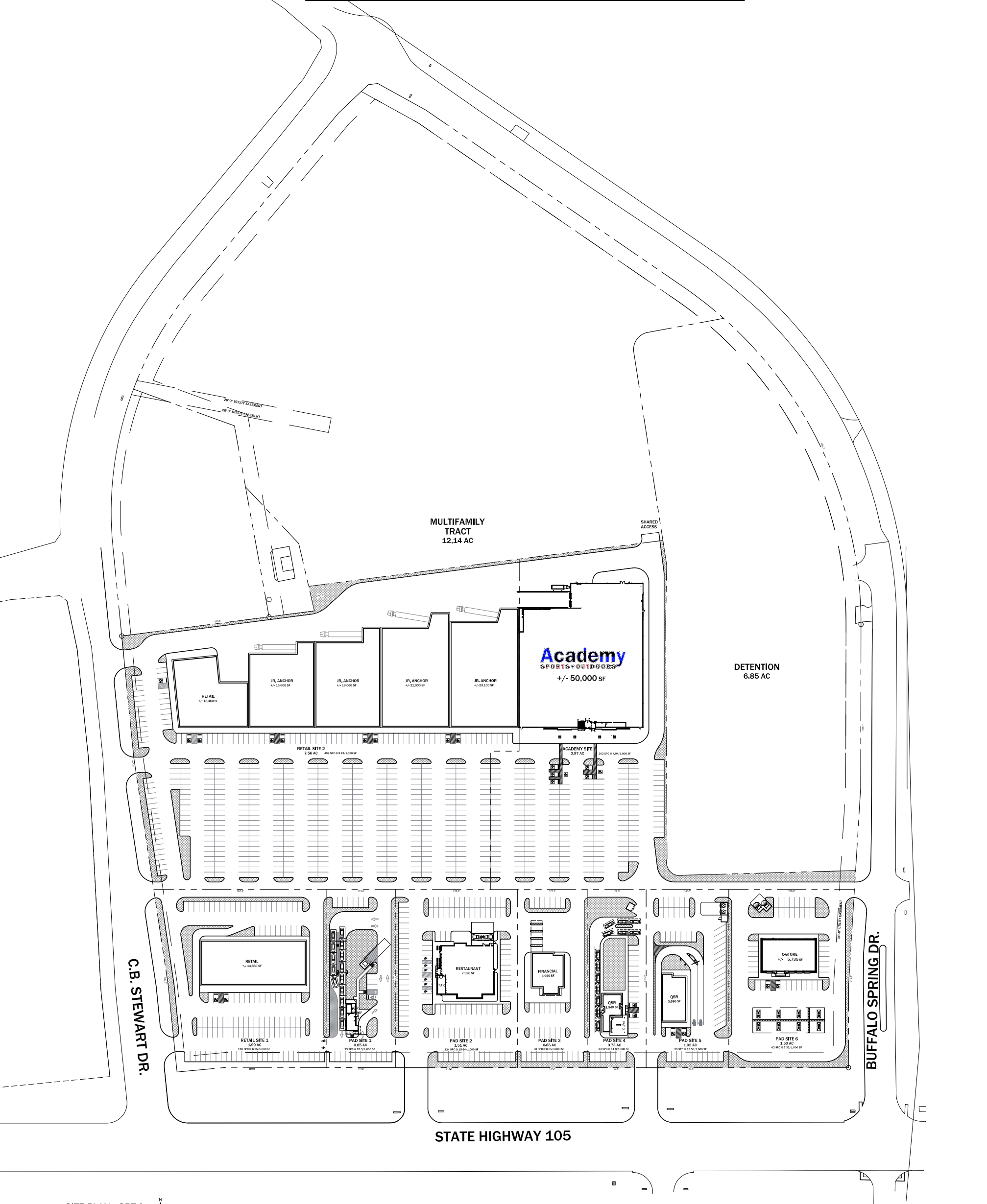
(4) Amounts to be funded by each party will be based on pro-rata share of the total linear footage of the proposed utility extensions.

(5) Due to the proposed demand of the Church of Montgomery an 8" waterline will be required. The City is requesting to upsize this line to 12" to assist with projected future demand in the area.

EXHIBIT "G"
MASTER GENERAL PLAN

THIS DRAWING IS FOR PRESENTATION PURPOSES ONLY. ANY AND ALL FEATURES, MATTERS AND OTHER INFORMATION DEPICTED HEREON OR CONTAINED HEREIN ARE FOR ILLUSTRATIVE MARKETING PURPOSES ONLY. ARE SUBJECT TO MODIFICATION WITHOUT NOTICE. ARE NOT INTENDED TO BE RELIED UPON BY ANY PARTY AND ARE NOT INTENDED TO CONSTITUTE REPRESENTATIONS AND WARRANTIES AS TO THE SIZE AND NATURE OF IMPROVEMENTS TO BE CONSTRUCTED (OR THAT ANY IMPROVEMENTS WILL BE CONSTRUCTED) OR AS TO THE IDENTITY OR NATURE OF ANY OCCUPANTS THEREOF.

EXHIBIT A: Preliminary Lane Use Plan



01 SITE PLAN - OPT 2
SCALE: 1" = 50'-0"

EXHIBIT "H"
380 AGREEMENT

CHAPTER 380 ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT
BCS CAPITAL, LLC

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (the “**Agreement**”) is executed by and between the City of Montgomery, Texas (the “**City**”), the Montgomery Economic Development Corporation (the “**MEDC**”), and BCS Capital, LLC, a Texas limited liability company (“**BCS**”). The City, MEDC, and BCS may individually be referred to as a “**Party**” and collectively as the “**Parties.**”

WITNESSETH:

WHEREAS, BCS is in the process of developing approximately 32.72 acres of land, as generally described and depicted in attached Exhibit A, incorporated by reference (“the Property”), owned by BCS and to be used for a new commercial development; and

WHEREAS, BCS has requested certain economic development incentives for the retail store on the Property to defray a portion of the costs of the improvements and infrastructure associated with the Property; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and

WHEREAS, the City has concluded and hereby finds that this Agreement clearly promotes economic development in the City and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code, as amended, and further, is in the best interests of the City, BCS and MEDC; and

WHEREAS, the Texas Development Corporation Act, contained in Chapters 501-505 of the Texas Local Government Code, as amended (the “**Act**”), authorizes the MEDC to provide economic development grants for infrastructure necessary to promote or develop new or expanded business enterprises and as such, constitutes a “project,” as that term is defined in the Act; and

WHEREAS, the City and the MEDC have determined that making economic development grants to BCS in accordance with this Agreement will further the objectives of the City and the MEDC, will benefit the City and the City’s inhabitants, will promote local economic development, will stimulate commercial and business activity, and will generate additional sales tax and will enhance the property tax base and economic vitality of the City; and

WHEREAS, the City has adopted programs for promoting economic development, and this Agreement and the economic development incentives set forth herein are given and provided by the City pursuant to and in accordance with those programs.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City, the MEDC, and BCS covenant and agree as follows:

1. Definitions. For purposes of this Agreement, each of the following terms shall have the meaning set forth below unless the context clearly indicates otherwise:

“Annual Sales Tax Grants” shall mean economic development grants, each in the amount equal to that portion of the Sales Tax Receipts received by the City and the MEDC for the applicable Sales Tax Reporting Period, to be paid annually to BCS as set forth herein. The amount of each Annual Sales Tax Grant shall be computed by multiplying the Sales Tax Receipts received by the City by ninety-five percent (95%) and for the MEDC by fifty percent (50%) for the given Sales Tax Reporting Period times, less the administrative fee charged to the City and MEDC by the State of Texas. For purposes of clarification, and as defined in “Sales and Use Tax,” below, the sales tax referenced herein subject to the aforementioned ninety-five percent (95%) and fifty percent (50%) limitation is (i) the City’s one percent (1.0%) general municipal sales and use tax imposed pursuant to Chapter 321, Texas Tax Code, on the sale of Taxable Items consummated on the Property; and (ii) with respect to the MEDC, one-quarter of one percent (0.25%) sales and use tax imposed pursuant to the Texas Development Corporation Act, Chapter 501, Texas Local Government Code.

“Bankruptcy or Insolvency” shall mean the dissolution or termination of a Party’s existence as a going business, insolvency, appointment of receiver for any part of such Party’s property and such appointment is not terminated within one hundred twenty (120) days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against such Party and such proceeding is not dismissed within one hundred twenty (120) days after the filing thereof.

“Commencement Date” shall mean the date a certificate of occupancy is issued by the City for occupancy of the Improvements by BCS.

“Completion of Construction” shall mean that (i) substantial completion of the Improvements has occurred; and (ii) the City has issued a certificate of occupancy for occupancy of the Improvements by BCS.

“Consummated” is defined in Section 321.203, Texas Tax Code, or its successor.

“Effective Date” shall mean the last date of execution hereof.

“Expiration Date” shall mean the earlier of: (i) ten (10) years from the Effective Date of this agreement; or (ii) the date of payment of the Maximum Sales Tax Grant amount.

“Force Majeure” shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto governmental action or inaction (unless caused by the intentionally wrongful acts or omissions of the Party), fires, explosions or floods, strikes, slowdowns or work stoppages.

“Impositions” shall mean all taxes, assessments, use and occupancy taxes, charges, excises, license and permit fees and other charges, whether general or special, ordinary or extraordinary, foreseen or unforeseen, which are or may be assessed, charged, levied, or imposed by any public or governmental authority or the City on BCS, and/or a BCS affiliate, and applicable to the development of the Property or any property or any business owned by BCS.

“Improvements” shall mean a water line, sanitary sewer line and road improvements to be constructed on the Property, more fully described in the submittals filed by BCS with the City, from time to time, in order to obtain a building permit(s).

“Maximum Sales Tax Grant” shall mean the cumulative payment of Sales Tax Grants (inclusive of the City and the MEDC) to BCS in the amount of four million dollars (\$4,000,000.00) for the required public infrastructure needed to serve the development including waterline, sanitary sewer and paving to be dedicated to the City. Should the required Traffic Impact Analysis (TIA) on the property determine that improvements to CB Stewart are required then the maximum sales tax grant shall increase to four million, eight hundred thousand dollars (\$4,800,000.00).

“Party” shall mean any party to this Agreement.

“Payment Request” shall mean a written request from BCS to the City and the MEDC for payment of an Annual Sales Tax Grant for the applicable Sales Tax Reporting Period.

“Property” shall mean the real property described in Exhibit A.

“Sales and Use Tax” shall mean (i) with respect to the City, the City’s one percent (1.0%) general municipal sales and use tax imposed pursuant to Chapter 321, Texas Tax Code, on the sale of Taxable Items consummated on the Property; and (ii) with respect to the MEDC, one-quarter of one percent (0.25%) sales and use tax imposed pursuant to the Texas Development Corporation Act, Chapter 501, Texas Local Government Code, on behalf of MEDC, on the sale of Taxable Items consummated on the Property, and MEDC sales and use tax proceeds shall be utilized only for those purposes authorized pursuant to the Texas Development Corporation Act.

“Sales Tax Area Reports” shall mean reports provided by the Comptroller to the City pursuant to Texas Tax Code, Section 321.3022, or other provision of the Texas Tax Code, with respect to Sales and Use Tax allocations to the City attributable to the sale of Taxable Items by BCS consummated on the Property or if such reports are not available from the Comptroller, such other documentation in a form reasonably acceptable to the City setting forth the collection of Sales and Use Tax by BCS received by the City from the Comptroller for the sale of Taxable Items by BCS consummated on the Property.

“Sales Tax Certificate” shall mean one or more Sales Tax Area Reports or a report provided by the Comptroller to the City in accordance with Section 321.3022, Texas Tax Code (or other applicable provision of the Texas Tax Code), which lists the amount of Sales and Use Tax collected (including any refunds, credits or adjustments) for the Sales Tax Reporting Period paid by a business located on the property and received by the City (and the MEDC) from the Comptroller from the sale of Taxable Items consummated on the Property and, in turn, paid by the Comptroller to the City (and to the City on behalf of the MEDC) for use by the City in accordance

with this Agreement; or, if such a report is not available, then a certificate or statement in a form reasonably approved by the City, setting forth the collection of Sales and Use Tax (including any refunds, credits or adjustments) received by the City from the Comptroller, from the sale of Taxable Items consummated on the Property, including supporting documentation, to be provided by BCS that provides the same or similar information, as such other information as the City may reasonably require from time to time.

“Sales Tax Receipts” shall mean (i) with respect to the City, the City’s receipt of the City’s Sales and Use Tax from the Comptroller from collection of Sales and Use Tax (it being expressly understood that the City’s use of the sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for economic development purposes) as a result of the sale of Taxable Items for the Sales Tax Reporting Period consummated on the Property; and (ii) with respect to the MEDC, the MEDC’s receipt of the MEDC’s Sales and Use Tax from the Comptroller from collection of Sales and Use Tax (it being expressly understood that the MEDC use of the sales and use tax receipts are being used only as a measurement for its use of general funds to make a grant for authorized economic development purposes) as a result of the sale of Taxable Items by BCS for the Sales Tax Reporting Period consummated on the Property.

“Sales Tax Reporting Period” shall mean a calendar year (with the calendar year ending December 31) except that the first Sales Tax Reporting Period shall begin on the Commencement Date and continue through and include the last day of the first full calendar year or fiscal year, as applicable, following the Commencement Date.

“State of Texas” shall mean the Office of the Texas Comptroller, or its successor.

“Taxable Items” shall mean both “taxable items” and “taxable services” as those terms are defined by Chapter 151, Texas Tax Code, as amended.

2. Sales Tax Grants.

(a) Annual Sales Tax Grants. Subject to the continued satisfaction of all the terms and conditions of this Agreement by BCS, the City and the MEDC (collectively referred to as “Grantors”) agree to provide BCS with an Annual Sales Tax Grant until the Expiration Date of this Agreement, not to exceed the Maximum Sales Tax Grant in the aggregate. The Annual Sales Tax Grants shall be paid within ninety (90) days after receipt of a Payment Request. Each Payment Request shall be submitted to the City not later than April 1 of the calendar year immediately following the end of the applicable Sales Tax Reporting Period (or 90 days immediately following the end of the applicable Sales Tax Reporting Period if such period is not on a calendar year basis), beginning with the first Sales Tax Reporting Period. Failure to timely submit a Payment Request for a given Sales Tax Grant Reporting Period shall require the City to notify BCS of such failure to submit and give BCS thirty (30) days to cure after its receipt of such notice.

(b) Adjustment Notification. BCS shall promptly notify the City in writing of any adjustments found, determined or made by BCS, the State of Texas, or by an audit which results, or will result, in either a refund or reallocation of Sales Tax Receipts or the payment of Sales and

Use Tax or involving amounts reported to the State of Texas as subject to this Agreement. Such notification shall also include the amount of any such adjustment in Sales and Use Tax or Sales Tax Receipts. BCS shall notify the City in writing within ninety (90) days after receipt of notice of the intent of the State of Texas to audit BCS. Such notification shall also include the period of such audit or investigation.

(c) Adjustments. In the event BCS files an amended Sales and Use Tax return, or report with the State of Texas, or if additional Sales and Use Tax is due and owing by BCS to the State of Texas, as determined, or approved by the State of Texas affecting Sales Tax Receipts for a previous Sales Tax Reporting Period, then the Annual Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas approved amendment shall be adjusted accordingly (*i.e.*, up or down, depending on the facts), provided the City has received Sales Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, BCS shall provide the City with a copy of any such amended sales and use tax report or return, and the approval thereof by the State of Texas. Copies of any amended sales and use tax return or report or notification from the State of Texas that additional Sales and Use Tax is due and owing by BCS to the State of Texas, as determined by the State of Texas, affecting Sales Tax Receipts for a previous Sales Tax Reporting Period shall be provided to the City with the Payment Request for the next Sales Tax Reporting Period.

(d) Refunds and Underpayments of Annual Sales Tax Grants. In the event the State of Texas issues a final determination that the City erroneously received (or failed to receive), for the benefit of the City and the MEDC, Sales Tax Receipts, or that the amount of Sales and Use Tax paid exceeds (or is less than) the correct amount of Sales and Use Tax for a previous Sales Tax Reporting Period, for which BCS has received an Annual Sales Tax Grant, BCS shall, within sixty (60) days after receipt of notification thereof from the City specifying the amounts by which such Annual Sales Tax Grant exceeded (or was less than) the amount to which BCS was entitled, adjust (up or down, depending on the facts) the amount claimed due for the Annual Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such determination. If BCS does not adjust the amount claimed due for the Annual Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination the City may, at its option, adjust the Annual Sales Tax Grant payment for the Sales Tax Reporting Period immediately following such State of Texas determination. If the adjustment results in funds to be paid back to the City for the benefit of the City and the MEDC, BCS shall repay its respective amounts to the City within ninety (90) days after receipt of such State of Texas determination; provided as a condition precedent to payment of such refund, the City shall provide BCS with a copy of such determination issued by the State of Texas. If the adjustment results in additional funds to be paid to BCS, the City shall pay such amount to BCS as part of the next Annual Sales Tax Grant payment. The provisions of this Section shall survive termination of this Agreement.

(e) Grant Payment Termination: Suspension. The payment of the Annual Sales Tax Grants shall terminate on the effective date of determination by the State of Texas or other appropriate agency or court of competent jurisdiction that the property is not a place of business resulting in Sales and Use Taxes being due the City (and/or the MEDC) from the sale of Taxable Items on the Property. In the event the State of Texas seeks to invalidate the property as a place of business where Sales and Use Tax was properly remitted to the State of Texas (the "Comptroller Challenge") the payment of Annual Sales Tax Grants by the City (including the MEDC) hereunder

shall be suspended until such Comptroller Challenge is resolved in whole favorably to the City (including the MEDC). In such event, BCS shall not be required to return or refund Annual Sales Tax Grants previously received from the City provided BCS is actively defending against and/or contesting the Comptroller Challenge and BCS promptly informs the City in writing of such BCS actions and with copies of all documents and information related thereto. In the event the Comptroller Challenge is resolved favorably to the City, the City shall remit to BCS all unpaid Annual Sales Tax Grants that it would have otherwise been entitled to during the suspension due to the Comptroller Challenge. In the event the Comptroller Challenge is not resolved favorably to the City and/or in the event the State of Texas determines that BCS does not have a place of business on the Property or that BCS is not a place of business where the Sales and Use Tax was properly remitted to the State of Texas, and Sales and Use Tax Receipts previously paid or remitted to the City relating to the Improvements are reversed and required to be repaid to the State of Texas, then the obligation to pay the Annual Sales Tax Grants shall terminate and BCS shall refund all respective amounts of Annual Sales Tax Grants received by BCS from the City that relate to the Comptroller Challenge, which refund shall be paid to the City within ninety 90 days after the date that the Comptroller Challenge required the City to repay Sales and Use Tax Receipts.

(f) Sales Tax Reports. The City and BCS designate this Agreement as a “revenue sharing agreement,” thereby entitling the City to request annual sales and use tax information from the Comptroller, pursuant to Section 321.3022 of the Texas Tax Code, as amended. The City shall request in writing that the Comptroller issue sales tax reports pursuant to Section 321.3022 for total sales of Taxable Items consummated on the Property by BCS and the payment of Sales and Use Tax (the “Sales Tax Reports”) for each calendar year during the term hereof. To the extent that the release of any such reports or information regarding the Sales and Use Tax collected for the sale of Taxable items consummated on the Property shall require the consent of BCS, BCS shall provide such consent to the City. BCS shall provide the sales tax identification numbers for all businesses located on the Property so that payments can be verified by the City.

(g) Confidentiality. Unless otherwise determined by the Texas Attorney General in writing, the sales and use tax documentation referenced in this Agreement shall be considered confidential financial information contained in a public document (or other reproduction media) not subject to release to the public. The City shall seek a written opinion from the Texas Attorney General raising any applicable exception to release, prior to any release to a third-party under the Texas Public Information Act. The Parties agree, however, that this Agreement shall not be considered confidential.

3. Administration. The City, by and through its City Administrator, or designee, shall have the authority to administer this Agreement on behalf of the MEDC, including the receipt of Payment Requests and the payment of Annual Sales Tax Grants on behalf of the MEDC.

4. Obligations. The obligation of the City and the MEDC to provide the Annual Sales Tax Grants hereunder shall be conditioned upon the compliance and satisfaction of each of the terms and conditions of this Agreement by BCS and each of the terms and conditions set forth below:

(a) Payment Request. BCS shall provide the City with the applicable Payment Request.

- (b) Good Standing. BCS shall not have an uncured breach of this Agreement.
- (c) Completion of Construction of the Improvements. BCS shall, subject to events of Force Majeure, cause Completion of Construction to occur on or before _____.
- (d) Required Use. During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, the Improvements shall not be used for any purpose other than as a commercial development, and the operation and occupancy of the Improvements in conformance with such use shall not cease for more than thirty (30) consecutive days except in connection with and to the extent of an event of Force Majeure.
- (e) Continuous Ownership. During the term of this Agreement following the Commencement Date and continuing thereafter until the Expiration Date, BCS or an affiliate of BCS shall continuously own the Property.
- (f) Sales Tax Certificate. As a condition to the payment of each Annual Sales Tax Grant hereunder, the City shall have received a Sales Tax Certificate for the applicable Sales Tax Reporting Period for which payment of an Annual Sales Tax Grant is requested. The City shall use its best efforts to obtain such Sales Tax Certificate from the Comptroller and shall provide a copy of each such Sales Tax Certificate to BCS upon its request. The City shall have no duty to calculate the Sales Tax Receipts or determine the entitlement of BCS to any Annual Sales Tax Grant, or pay any Annual Sales Tax Grant during the term of this Agreement until such time as BCS has provided items (1) through (4) set forth below and a Payment Request for the applicable Sales Tax Reporting Period. The City may, but is not required to, provide BCS with forms for items (1) through (4) set forth below and required herein. At the request of the City, BCS shall provide such additional documentation as may be reasonably requested by the City to evidence, support and establish the Sales Tax Receipts (including Sales and Use Tax paid directly to the State of Texas pursuant to a direct payment permit) received by City from the State of Texas. Each Payment Request shall at a minimum be accompanied by the following:
- (1) Schedules, which show the amount of total sale of Taxable Items consummated on the Property for the applicable Sales Tax Reporting Period, and the amount of Sales and Use Tax collected and paid to the State of Texas as a result of the sale of Taxable Items consummated at the Improvements for the applicable Sales Tax Period;
 - (2) A copy of all Sales and Use Tax returns and reports, Sales and Use Tax prepayment returns, direct payment permits and reports, including amended sales and use tax returns or reports, for the applicable Sales Tax Reporting Period showing the Sales and Use Tax collected (including Sales and Use Tax paid directly to the State of Texas pursuant to a direct payment certificate) for the sale of Taxable Items consummated at the Improvements;
 - (3) A copy of all direct payment and self-assessment returns, if any, including amended returns, for the applicable Sales Tax Reporting Period showing the Sales and Use Tax paid for the sale of Taxable Items consummated at the Improvements; and

- (4) Information concerning any refund or credit received during the applicable Sales Tax Reporting Period of the Sales and Use Taxes paid or collected on the Property which has previously been reported as Sales and Use Tax paid or collected.

Within thirty (30) business days after a request by the City, BCS shall provide a release or releases to the City as necessary to allow the State of Texas to disclose the Sales and Use Tax information pertaining to the sale of Taxable Items on the Property during the term of this Agreement in a form as may be required by the State of Texas.

5. Termination Provisions.

- (a) Termination. This Agreement terminates on the Expiration Date, and may, prior to the Expiration Date, be terminated upon any one or more of the following:
 - (1) by mutual written agreement of the Parties;
 - (2) by a Party, if another Party defaults or breaches any of the terms or conditions of this Agreement, and such default or breach is not cured within ninety (90) days after written notice thereof;
 - (3) by the City and/or the MEDC, if any Impositions owed to the City, the MEDC or the State of Texas by BCS with respect to the Property shall have become delinquent (provided, however, BCS retains the right to timely and properly protest and contest any such taxes or Impositions);
 - (4) by the City and/or the MEDC, if BCS suffers an Event of Bankruptcy or Insolvency;
 - (5) by any Party if any subsequent federal or state legislation or any final and non-appealable decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable; or
 - (6) by payment to BCS of the maximum Sales Tax Grant;
 - (7) by a timelapse of 10 years from the date of execution of the agreement.
- (b) Offsets. The City (and on behalf of the MEDC) may at its option, offset any amounts due and payable under this Agreement against any debt (including taxes) lawfully due to the City and/or the MEDC from BCS, regardless of whether the amount due arises pursuant to the terms of this Agreement or otherwise and regardless of whether or not the debt due the City and/or the MEDC has been reduced to judgment by a court.

6. Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of the Parties.

7. **Limitation on Liability.** It is understood and agreed between the Parties that BCS in satisfying the conditions of this Agreement has acted independently, and the City and the MEDC assume no responsibilities or liabilities to third parties in connection with BCS actions. Further, BCS agrees to indemnify and hold harmless the City and the MEDC from all claims, suits, demands, and causes of actions by a third party arising solely out of its own, but not the other's, actions and performance under this Agreement, as hereinafter referenced.

8. **No Joint Venture.** It is acknowledged and agreed by the Parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the Parties.

9. **Authorization.** Each Party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

10. **Right of Access.** BCS further agrees that, upon twenty-four (24) hours' written notice, the City, its agents and employees, shall have a reasonable right to access the Property during the store's normal operating hours and any improvements thereon to inspect same in order to ensure that the construction of the improvements is in accordance with this Agreement and/or all applicable federal, state and local laws, ordinances and regulations. After completion of the improvements, upon twenty-four (24) hours' written notice, the City and its agents and employees shall have the continuing right of inspection during the store's normal operating hours to ensure that such are thereafter maintained and operated in accordance with this Agreement and/or all applicable federal, state and local laws.

11. **Construction of Agreement; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Montgomery County, Texas. Venue for any action arising under this Agreement shall lie in Montgomery County, Texas.

12. **Notices.** Any notices required or permitted to be given hereunder shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

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 MEDC, to:

Montgomery Economic Development Corporation
101 Old Plantersville Road
Montgomery, TX 77535
Attention: _____

If to BCS, to:

BCS Capital, LLC
Attn: Jack Burgher, Partner
1940 Fountainview Drive, Suite 220
Houston, Texas 77057

13. Attorney's Fees to Prevailing Party. In the event any Party initiates or defends any legal action or proceeding against another Party to enforce or interpret any of the terms of this Agreement, the prevailing Party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

14. Entire Agreement; Binding Effect of Agreement. This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

15. Indemnification.

(a) BCS AGREES TO DEFEND, INDEMNIFY AND HOLD THE CITY, THE MEDC, AND THEIR RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES (COLLECTIVELY FOR THE PURPOSE OF THIS SECTION, THE "CITY") HARMLESS FROM AND AGAINST ANY AND ALL REASONABLE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS BY THE STATE OF TEXAS INsofar AS SUCH LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS ARISE OUT OF A CLAIM BY THE STATE OF TEXAS THAT THE CITY HAS BEEN PAID ERRONEOUSLY, HAS BEEN OVER-PAID OR HAS BEEN INCORRECTLY ALLOCATED SALES AND USE TAX ATTRIBUTED SOLELY TO THE SALE OF TAXABLE ITEMS BY BCS AND/OR BCS AFFILIATES CONSUMMATED ON THE PROPERTY DURING THE TERM OF THIS AGREEMENT, IT BEING THE INTENTION OF THE PARTIES THAT BCS SHALL BE RESPONSIBLE FOR THE REPAYMENT OF ANY ANNUAL SALES TAX GRANTS PAID TO BCS HEREIN BY THE CITY (AND THE MEDC) THAT RELATE TO SALES AND USE TAX RECEIPTS THAT THE STATE OF TEXAS HAS DETERMINED WERE ERRONEOUSLY PAID, DISTRIBUTED, OR ALLOCATED TO OR COLLECTED BY THE CITY. THE INDEMNIFICATION SHALL NOT APPLY TO ANY LIABILITY RESULTING SOLELY FROM ERRORS OR OMISSIONS OF THE CITY OR THE MEDC. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION OF THIS AGREEMENT. THE PROVISIONS OF THIS SECTION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND DO NOT CREATE ANY OBLIGATIONS

FROM OR GRANT ANY CONTRACTUAL OR OTHER RIGHTS TO ANY OTHER PERSON OR ENTITY, OTHER THAN OBLIGATIONS, IF ANY, THAT ARISE FROM BCS TO THE CITY TO PERFORM OBLIGATIONS CREATED BY THIS SECTION.

(b) NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS SECTION 15, IT IS UNDERSTOOD AND AGREED THAT IN THE EVENT AND TO THE EXTENT THAT ANY INDEMNIFIED PARTY IS ENTITLED TO INDEMNIFICATION FROM BCS UNDER THE TERMS OF PARAGRAPH (A) ABOVE IN RESPECT OF ANY OF THE LIABILITIES, DAMAGES, CLAIMS, LAWSUITS, JUDGMENTS, ATTORNEY FEES, COSTS, EXPENSES, AND DEMANDS REFERRED TO THEREIN, BCS SHALL NOT BE JOINTLY AND SEVERALLY LIABLE FOR SUCH AMOUNT, BUT INSTEAD SHALL EACH BE RESPONSIBLE INDIVIDUALLY ONLY FOR AN AMOUNT EQUAL TO FIFTY PERCENT (50%) OF THE AMOUNT PAYABLE TO ANY SUCH INDEMNIFIED PARTY AND SUCH AMOUNT PAYABLE BY EACH OF BCS SHALL LIMITED TO AND SHALL NOT EXCEED THE TOTAL AMOUNT OF ANNUAL SALES TAX GRANTS PREVIOUSLY RECEIVED BY EACH OF THEM PURSUANT TO THIS AGREEMENT.

16. **Invalidation.** Invalidation of any one of the provisions of this Agreement by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect.

17. **Facsimile.** A telecopied or electronic facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

18. **Severability.** In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, this Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

19. **Authority to Execute Agreement.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that (1) it has all requisite power and authority under the Constitution and laws of the State of Texas to enter into and perform its obligations under this Agreement, and (2) the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. The MEDC warrants and represents (1) it has all requisite power and authority under the Constitution and laws of the State of Texas to enter into and perform its obligations under this Agreement, and (2) the individual executing this Agreement on behalf of the MEDC has full authority to execute this Agreement and bind the MEDC to the same.

BCS warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind BCS to same.

20. **Non-Binding Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to non-binding mediation.

21. Compliance with Chapter 2264, Texas Government Code. BCS certifies that it does not and will not knowingly employ an undocumented worker in accordance with Chapter 2264 of the Texas Government Code, as amended. If during the term of this Agreement, BCS, or its successors, heirs, assigns, grantees, trustees, representatives, and all others holding any interest in the Property now or in the future, is convicted of a violation under 8 U.S.C. § 1324a(f), BCS shall repay the amount of the public subsidy provided under this Agreement plus interest, at the rate of eight percent (8%), not later than the 120th day after the date the City notifies BCS of the violation.

22. Amendment. This Agreement may only be amended by a written agreement executed by the Parties.

23. Recitals. The recitals in this Agreement are true and correct, represent representations and warranties of the Parties, and are incorporated as part of this Agreement for all purposes.

24. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

25. Exhibits. All exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

26. Survival of Covenants. Any covenants of the Parties that are to be performed after termination of this Agreement shall survive termination of this Agreement.

27. Assignment. This Agreement may not be assigned by BCS, in whole or in part, without the prior written consent of the City and the MEDC. Any attempted assignment by BCS in violation of the terms and provisions of this section shall be void.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

CITY OF MONTGOMERY, TEXAS

Sara Countryman, Mayor

Date: _____

**MONTGOMERY ECONOMIC
DEVELOPMENT CORPORATION**

By: _____

Name: _____

Title: _____

Date: _____

BCS Capital, LLC, a Texas limited liability company

By: _____
Name: Jack Burgher
Title: Manager
Date: _____

EXHIBIT “A”
The Property