

ANNEXATION APPLICATION

Updated: September, 2020



CONTACT INFORMATION

Applicant's Name	Burt Wellmann, P.E.	Property Owner	Blair Warren
Company	KFW Engineers	Company	Warren Realty Ltd.
Applicant's Mailing Address	162 W Mill Street New Braunfels, TX 78130	Owner's Mailing Address	1910 B Centerpoint Rd. San Marcos, TX 78666
Applicant's Phone #	(830) 220-6042	Owner's Phone #	(512) 353-0635
Applicant's Email	bwellmann@kfwengineers.com	Owner's Email	calebbwarren@gmail.com

PROPERTY INFORMATION

Is the property adjacent to city limits: ☒ YES ☐ NO

Is the property proposing to connect to City utilities: ☒ YES, WATER ☒ YES, WASTE WATER ☐ NO

Is the property subject to an approved development or other agreement : ☒ YES ☐ NO

Proposed Use: Industrial/Commercial Proposed Zoning: Heavy Industrial/Heavy Commercial

Reason for Annexation / Other Considerations: Agreement to Annex in order to take City water and wastewater

AUTHORIZATION

By submitting this digital application, I certify that the information on this application is complete and accurate. I understand the fees and the process for this application. I understand my responsibility, as the applicant, to be present at meetings regarding this request.

Filing Fee \$1,181

Technology Fee \$13

TOTAL COST \$1,194

Submittal of this digital Application shall constitute as acknowledgement and authorization to process this request.

APPLY ONLINE – WWW.MYGOVERNMENTONLINE.ORG/

PROPERTY OWNER AUTHORIZATION

I, Blair Warren (owner name) on behalf of
Warren Realty Ltd. (company, if applicable) acknowledge that I/we
am/are the rightful owner of the property located at
North of IH-35 & Posey Rd.; San Marcos, TX 78666 (address).

I hereby authorize Burt Wellmann (agent name) on behalf of
KFW Engineers (agent company) to file this application for
Annexation (application type), and, if necessary, to work with
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: Blair Warren Date: 2/10/2022
Printed Name, Title: Blair Warren, Owner

Signature of Agent: Burt Wellmann Date: 2/10/22
Printed Name, Title: Burt Wellmann, Vice President

Form Updated October, 2019

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

OWNER'S CONSENT TO ANNEXATION OF LAND

Date: February 10, 2022

City: City of San Marcos, Texas, a home rule municipal corporation

Owner: Warren Realty Ltd.; ATTN: Blair Warren, Owner

Property: North of IH-35 & Posey Rd.; San Marcos, TX 78666

Owner petitioned the City to initiate proceedings to annex the Property. Owner acknowledges and agrees that, in connection with annexation of the Property:

1. Owner does not wish to enter into a development agreement with the City under Section 212.172 and has declined the offer by the City of such a development agreement.

2. Unless specifically authorized by a written agreement with Owner approved by the City Council under applicable ordinances, the City has no obligation to extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property at the City's expense, and the City has made no offers, representations or promises that the City will, at the City's expense, extend water, wastewater, or electric utility services, roads, or other infrastructure to the Property. Such extensions to the Property shall be made available in the same manner and on the same basis as available to other areas of the City, whereby it shall be Owner's sole obligation, and at Owner's sole expense, to construct and install all infrastructure necessary to extend such services to the Property under applicable ordinances.

3. Owner waives any and all rights of Owner to assert any claim or demand, or to file suit against, and covenants not to sue, the City on the basis that the annexation of the Property by the City is invalid, void or voidable, in whole or in part.

4. This instrument is made, and shall be construed and interpreted under the laws of the State of Texas. Venue for any legal proceedings concerning this instrument shall lie in State courts having jurisdiction located in Hays County, Texas. Venue for any matters in federal court will be in the United States District Court for the Western District of Texas.

5. If any word, phrase, clause, sentence, or paragraph of this instrument is held to be unconstitutional or invalid by a court of competent jurisdiction, the other provisions of this instrument will continue in force if they can be given effect without the invalid portion.

6. This instrument may be recorded in the Official Public Records of the County or Counties in which the Property is located and is binding on Owner's successors, heirs and assigns, and any future owners of the Property.

[SIGNATURE(S) ON NEXT PAGE]

OWNER:

Blair Warren

ACKNOWLEDGMENT

STATE OF TX §

COUNTY OF Hays §

This instrument was acknowledged before me on Feb 10, 2022 by Blair Warren.



Elizabeth Ferguson
Notary Public, State of Texas

OWNER:

By: Blair Warren

Name: Blair Warren

Title: Owner

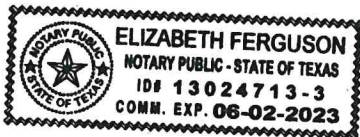
ACKNOWLEDGMENT

STATE OF Texas §

COUNTY OF Hays §

This instrument was acknowledged before me on Feb 10, 2022 by Blair Warren, _____ of Warren Realty, LTD in such capacity on behalf of said entity.

Elizabeth Ferguson
Notary Public, State of Texas



DECLINATION OF OFFER OF DEVELOPMENT AGREEMENT

The attached Development Agreement was offered by the City of San Marcos to the owner of the property subject to the following application/petition (check one):

☐ Out of City Utility Connection of Extension Application

☒ Petition for Annexation (without OCU Request)

By signing below, the owner of the subject property declines the offer to enter into such Development Agreement.

OWNER (individual):

Date: _____

[OR]

OWNER (Entity):

By: Blair Warren

Name: Blair Warren

Title: Owner

Date: 2/10/2022

Case No. _____ (to be inserted by City Staff)

PROPERTY OWNER AUTHORIZATION

I, Blair Warren (owner name) on behalf of
Warren Realty Ltd. (company, if applicable) acknowledge that I/we
am/are the rightful owner of the property located at
North of IH-35 & Posey Rd.; San Marcos, TX 78666 (address).

I hereby authorize Burt Wellmann (agent name) on behalf of
KFW Engineers (agent company) to file this application for
Annexation (application type), and, if necessary, to work with
the Responsible Official / Department on my behalf throughout the process.

Signature of Owner: Blair Warren Date: 2/10/2022
Printed Name, Title: Blair Warren, Owner

Signature of Agent: Burt Wellmann Date: 2/10/22
Printed Name, Title: Burt Wellmann, Vice President

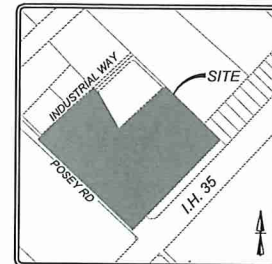
Form Updated October, 2019

NOTES

1. BEARINGS ARE BASED ON THE STATE PLANE COORDINATE SYSTEM ESTABLISHED FOR THE TEXAS SOUTH CENTRAL ZONE 4204, NORTH AMERICAN DATUM (NAD) OF 1983.
2. METES AND BOUNDS WERE PREPARED FOR THIS EXHIBIT.
3. "THIS DOCUMENT WAS PREPARED UNDER 22 SUB SECTION TAC663.21, DOES NOT REFLECT THE RESULTS OF AN ON THE GROUND SURVEY AND IS NOT TO BE USED TO CONVEY OR ESTABLISH INTEREST IN REAL PROPERTY EXCEPT THOSE RIGHTS AND INTEREST IMPLIED OR ESTABLISHED BY THE CREATION OR RECONFIGURATION OF THE BOUNDARY OF THE POLITICAL SUBDIVISION FOR WHICH IT WAS PREPARED."

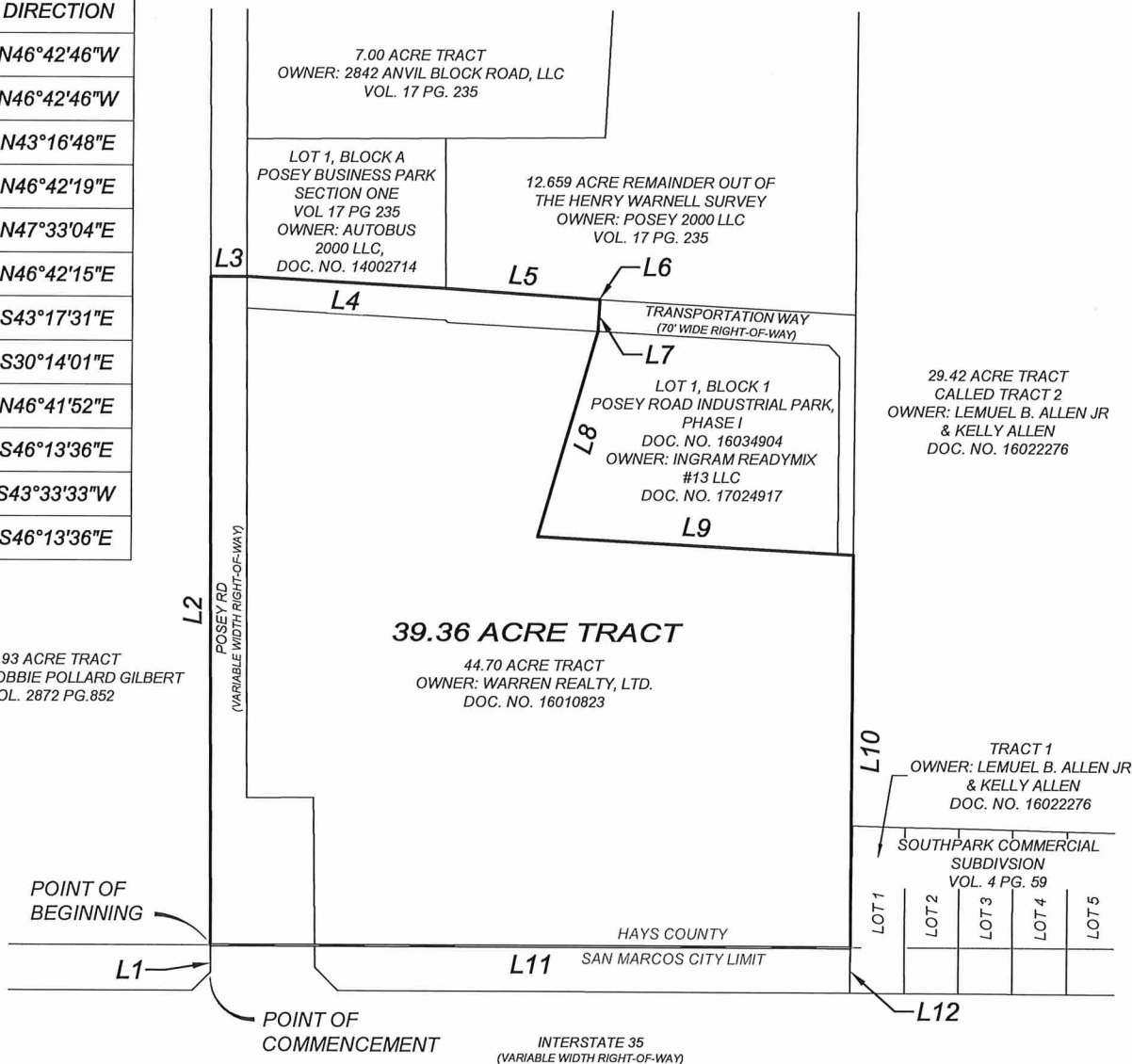


SCALE : 1"=400'



LOCATION MAP
NOT-TO-SCALE

Line Table		
LINE #	LENGTH	DIRECTION
L1	59.46'	N46°42'46"W
L2	1476.16'	N46°42'46"W
L3	79.99'	N43°16'48"E
L4	441.64'	N46°42'19"E
L5	338.14'	N47°33'04"E
L6	4.17'	N46°42'15"E
L7	70.00'	S43°17'31"E
L8	472.23'	S30°14'01"E
L9	700.69'	N46°41'52"E
L10	866.81'	S46°13'36"E
L11	1416.19'	S43°33'33"W
L12	100.00'	S46°13'36"E



[Signature]
TERESA A. SEIDEL
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 5672
EMAIL: TSEIDEL@KFWENGINEERS.COM
DATE OF SURVEY: 01/27/2022
PROJECT NO.: 19-115

ANY COMPLAINTS REGARDING THE SERVICES YOU HAVE RECEIVED
CAN BE DIRECTED TO:
THE TEXAS BOARD OF PROFESSIONAL ENGINEERS AND LAND
SURVEYORS (TPELS)
1917 S INTERSTATE 35, AUSTIN, TEXAS, 78741
PHONE: 512-440-7723; FAX: 512-442-1414 - EMAIL: INFO@PELS.TEXAS.GOV



ANNEXATION EXHIBIT OF
A 39.36 ACRE TRACT OF LAND OUT OF A
44.70 ACRE TRACT, HAYS COUNTY, TEXAS

REVISIONS:	ISSUE DATE:
JOB NO. 19-115	
DATE: 01/27/2022	DESIGNER: TAS
DRAWN: JSO	CHECKED: TAS



SHEET: 1 OF 1



**ANNEXATION NOTES
FOR
A 39.36 ACRE TRACT**

A **39.36 acre** tract of land out of a portion of a 44.70 acre tract as conveyed to Warren Realty, LTD., of record in Document No. 16010823 of the Official Public Records Hays County, Texas (O.P.R.) and being more particularly described by metes and bounds as follows:

COMMENCING at a point at the north end of a cutback line at the intersection of the southwest right-of-way line of Posey Road, a variable width right-of-way, with the northwest right-of-way line of Interstate Highway No. 35, a variable width right-of-way, for the most easterly corner of the a 52.93 acre tract as conveyed to Bobbie Pollard Gilbert of record in Volume 2872 Page 852 (O.P.R.);

THENCE: N 46°42'46" W, along and with the common line of Posey Road and the 52.93 acre tract, a distance of 59.46 feet to a point in the approximate City of San Marcos City Limits Line, for the **POINT OF BEGINNING** and the most southerly corner of the tract described herein;

THENCE: N 46°42'46" W, continuing along and with the common line of Posey Road and the 52.93 acre tract, a distance of **1,476.16 feet** to a point, for the west corner the tract described herein;

THENCE: N 43°16'48" E, into and across Posey Road, a distance of **79.99 feet** to a point at the intersection of the northeast right-of-way line of Posey Road and the northwest right-of-way line of Transportation Way, a 70 foot wide right-of-way, for the south corner of Lot 1, Block A, Posey Business Park, Section One, a plat of record in Volume 17 Page 235 (P.R.) as conveyed to Autobus 2000 LLC of record in Document No. 14002714 (O.P.R.);

THENCE: along and with the common line of Lot 1, Block A, a 12.659 acre remainder out of the Henry Warnell Survey as conveyed to Posey 2000 LLC of record in Volume 17 Page 235 (P.R.) and the northwest right-of-way line of Transportation Way the following three (3) courses:

1. N 46°42'19" E, a distance of **441.64 feet** to a point, for the common corner of Lot 1, Block A and the 12.659 acre tract, and an angle point of the tract described herein,
2. N 47°33'04" E, a distance of **338.14 feet** to a point, for an angle point of the 12.659 acre tract and the tract described herein, and
3. N 46°42'15" E, a distance of **4.17 feet** to a point, for the westerly northwest corner of the tract described herein;

THENCE: S 43°17'31" E, into and across Transportation Way, a distance of **70.00 feet** to a point in the southeast right-of-way line of Transportation Way, for the common corner of the 44.70 acre tract and Lot 1, Block 1, Posey Road Industrial Park, Phase I, a plat of record in Document No. 16034904 (P.R.) as conveyed to Ingram ReadyMix #13 LLC of record in Document No. 17024917 (O.P.R.);

THENCE: along and with the common line of Lot 1, Block 1 and the 44.70 acre tract the following two (2) courses:

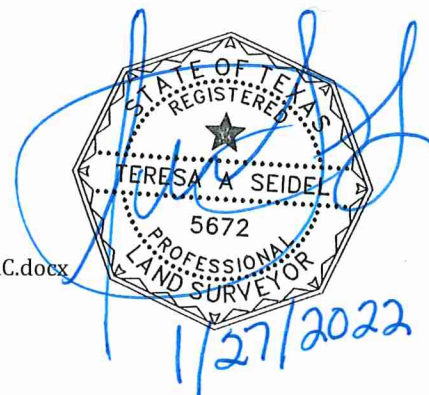
1. **S 30°14'01" E**, a distance of **472.23** to a point, for an interior corner of the 44.70 acre tract, Lot 1, Block 1 and the tract described herein, and
2. **N 46°41'52" E**, a distance of **700.69 feet** to a point in the southwest line of a 29.42 acre tract, called tract 2, as conveyed to Lemel B. Allen Jr. and Kelly Allen of record in Document No. 16022276 (O.P.R.), for the northerly northwest corner of the 44.70 acre tract and the tract described herein;

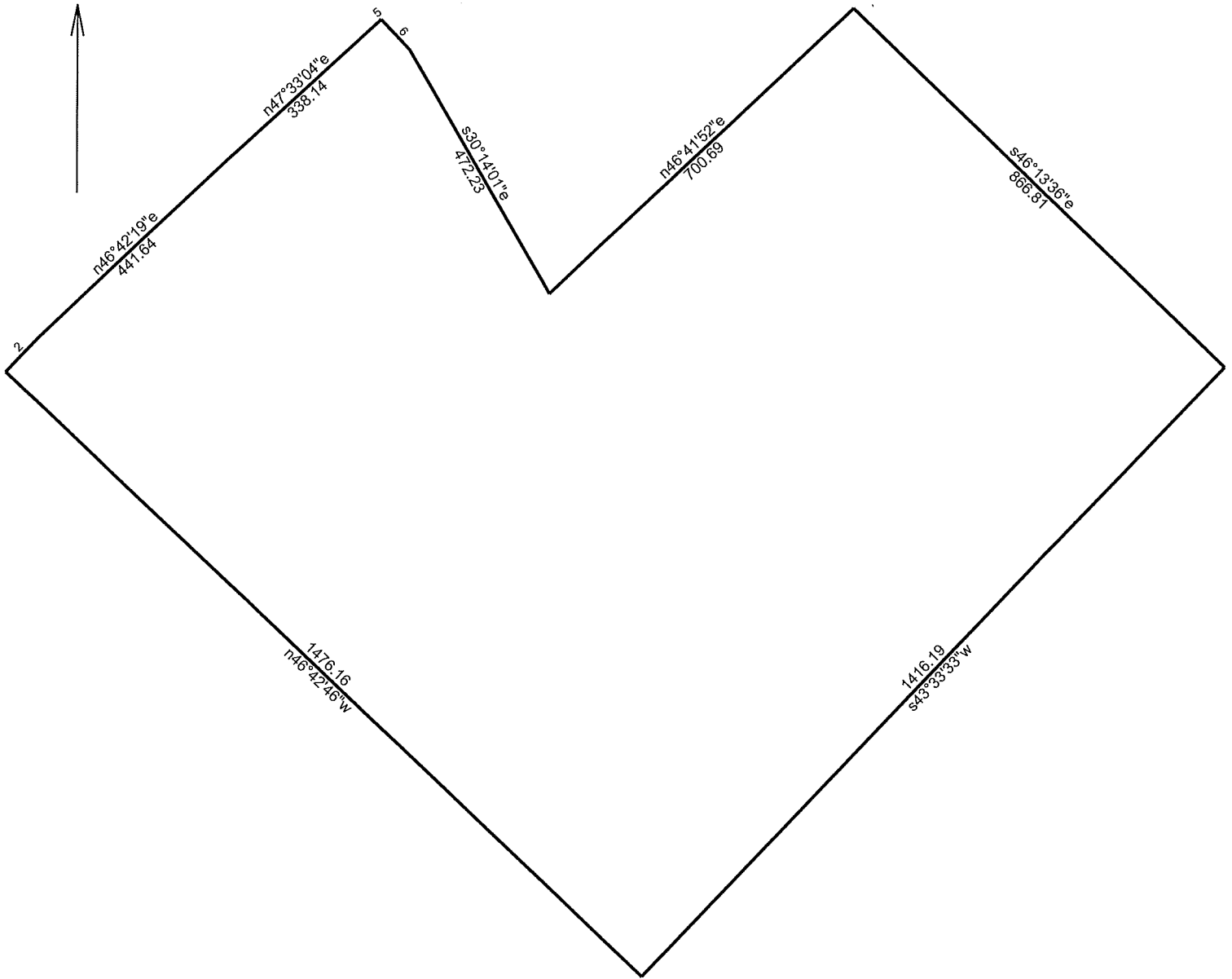
THENCE: **S 46°13'36" E**, along and with the common line of the 29.42 acre tract, the 44.70 acre tract, and Lot 1 of the Southpark Commercial Subdivision, a plat of record in Volume 4 Page 59 (P.R.), called Tract 1, as conveyed to Lemuel B. Allen Jr. and Kelly Allen of record in Document No. 16022276 (O.P.R.) a distance of **866.81 feet** to a point in the approximate City of San Marcos City Limits Line, for the northeast corner of the tract described herein, from which a point in the northwest right-of-way line of Interstate Highway No. 35, a variable width right-of-way, for the common corner of the 44.70 acre tract and Lot 1 of the Southpark Commercial Subdivision bears, **S 46°13'36" E**, a distance of 100.00 feet;

THENCE: **S 43°33'33" W**, into and across the 44.70 acre tract and Posey Rd, along and with the approximate City of San Marcos City Limits Line, a distance of **1,416.19 feet** to the **POINT OF BEGINNING** and containing 39.36 acres, in Hays County, Texas. Said tract being described in accordance with an exhibit prepared by KFW Surveying. Bearings are based on NAD83 Texas State Plane South Central Zone.

"This document was prepared under 22TAC663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared."

Job No.: 19-115
Prepared by: KFW Surveying
Date: January 27, 2022
File: S:\Draw 2019\19-115 Posey Road Detention Project\DOCS\FN 18.33AC.docx





1/25/2022

Scale: 1 inch= 263 feet

File: 39.36 ac.ndp

Tract 1: 39.3589 Acres, Closure: n00.0000e 0.00 ft. (1/999999), Perimeter=5866 ft.

01 n46.4246w 1476.16
 02 n43.1648e 79.99
 03 n46.4219e 441.64
 04 n47.3304e 338.14
 05 n46.4215e 4.17
 06 s43.1731e 70.00
 07 s30.1401e 472.23

08 n46.4152e 700.69
 09 s46.1336e 866.81
 10 s43.3333w 1416.19

**** Electronically Filed Document ****

Hays County Texas
Liz Q. Gonzalez
County Clerk

Document Number: 2016-16010823
Recorded As : ELECTRONIC RECORDING

Recorded On: April 07, 2016
Recorded At: 03:29:01 pm
Number of Pages: 7

Recording Fee: \$46.00

Parties:

Direct- TSY INVESTMENT ASSOCIATES LLC
Indirect- WARREN REALTY LTD

Receipt Number: 425664
Processed By: Barbara Rodriguez

***** THIS PAGE IS PART OF THE INSTRUMENT *****

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
because of color or race is invalid and unenforceable under federal law.



I hereby certify that this instrument was filed for record in my office on the date and
time stamped hereon and was recorded on the volume and page of the named records
of Hays County, Texas

Liz Q. Gonzalez

Liz Q. Gonzalez, County Clerk

AUSTIN TITLE COMPANY
STONEBRIDGE PLAZA II
9600 N. MOPAC EXPRESSWAY
SUITE 125

AUSTIN, TX 78759-6507 *ACT 1500685 7-6506*

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GENERAL WARRANTY DEED

Date: April 5, 2016

Grantor: TSY INVESTMENT ASSOCIATES, LLC, a Texas limited liability company

Grantor's Mailing Address:

TSY Investment Associates, LLC
c/o Chean-Kung Cheng
11506 Chancellroy Dr.
Austin, TX 78759

Grantee: WARREN REALTY, LTD., a Texas limited partnership

Grantee's Mailing Address:

Warren Realty, Ltd.
c/o Blair Warren
1405 United Dr., Suite 115
San Marcos, TX 78666
Hays County

Consideration:

Cash and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

Property (including any improvements):

BEING a called 44.70 acre tract of land situated in the Henry Warnell Survey No. 21, City of San Marcos, Hays County, Texas, same being that certain tract of land conveyed to TSY Investment Associates, LLC., by deed recorded in Volume 5170, Page 93 of the Official Public Records of Hays County, Texas, and being more particularly described by metes and bounds in **Exhibit "A"** attached hereto and incorporated herein for all purposes.

Reservations from Conveyance: None.

Exceptions to Conveyance and Warranty:

This conveyance is expressly made subject to the following matters (the "Exceptions"), but only to the extent the same are valid and enforceable and affect the Property:

1. Standby fees, taxes and assessments by any taxing authority for the year 2016, and subsequent years, which are assumed by Grantee; and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership, which are assumed by Grantee, but not those taxes or assessments for prior years because of an exemption granted to a previous owner of the property under Section 11.13, Texas Tax Code, or because of improvements not assessed for a previous tax year.
2. Rights of Ingress and egress in connection with easement(s) described in instrument recorded February 19, 1929, in Volume 97 at Page 540, Deed Records of Hays County, Texas.
3. Rights related to easement(s) described in instrument recorded February 2, 2007, in Volume 3102 at Page 157, Official Public Records of Hays County, Texas.
4. Rights related to easement(s) as awarded by Judgment, a certified copy of which is filed of record in instrument recorded in Volume 5285 at Page 106, Official Records of Hays County, Texas.
5. Matters contained in that certain document recorded January 4, 2016, as document number 201616000109, Official Public Records of Hays County, Texas

Grant, Habendum, and Warranty:


Grantor, for the Consideration and subject to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty, grants, sells, and conveys to Grantee the Property, together with all and singular the rights and appurtenances thereto in any way belonging, to have and to hold it to Grantee and Grantee's heirs, successors, and assigns forever. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the Property to Grantee and Grantee's heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the Reservations from Conveyance and the Exceptions to Conveyance and Warranty.


When the context requires, singular nouns and pronouns include the plural.

This instrument was administratively prepared by Granstaff, Gaedke & Edgmon, P.C. from information provided by the Grantor. Granstaff, Gaedke & Edgmon, P.C. has not examined the title to the subject property or otherwise investigated the accuracy of the information provided, and therefore makes no opinion of title.


GRANTOR:

TSY INVESTMENT ASSOCIATES, LLC, a Texas limited liability company

By:  4/5/16
Chean-Kung Cheng, Manager

THE STATE OF TEXAS §
 §
COUNTY OF  §

This instrument was acknowledged before me on April 5, 2016, by Chean-Kung Cheng in the capacity stated.


Notary Public for the State of Texas

AFTER RECORDING RETURN TO:

Ann Harris, Escrow Officer
Austin Title Company
9600 N. Mopac Expressway, #125
Austin, TX 78759
(512) 794-8585
(512) 342-1764

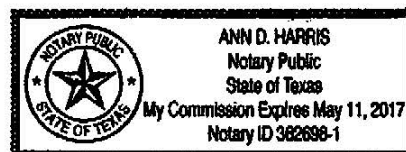


EXHIBIT "A"

Legal description of a called 44.70 acre tract of land situated in the Henry Warnell Survey No. 21, City of San Marcos, Hays County, Texas, same being that certain tract of land conveyed to TSY Investment Associates, LLC., by deed recorded in Volume 5170, Page 93 of the Official Public Records of Hays County, Texas.

{Metes & Bounds legal description follows on next 2 pages.}

Being a called 44.70 Acre tract of land situated in the Henry Warnell Survey No. 21, City of San Marcos, Hays County, Texas, same being that certain tract of land conveyed to TSY Investment Associates, LLC., by deed recorded in Volume 5170, Page 93 of the Official Public Records of Hays County, Texas, and being more particularly described by Metes and Bounds as follows:

Beginning at a 3/8-inch iron rod found at the East corner of said called 44.700 Acre tract, for the East corner of the tract of land herein described, same being at the common South corner of that certain called 0.275 Acre tract recorded in Volume 3039, Page 273 of the Official Public Records of Hays County, Texas, same being the common South corner of Lot 1 of South Park Commercial Subdivision, an addition to Hays County according to the map thereof recorded in Volume 4, Page 59 of the Plat Records of Hays County, Texas, and being in the Northwest line of Interstate Highway No. 35, a 300 foot wide public right-of-way;

THENCE along the Northwest line of said Interstate Highway No. 35, the following courses and distances numbered (1) through (4):

- 1) South 43 degrees 33 minutes 33 seconds West (South 44 degrees 08 minutes 00 seconds West Record), a distance of 1133.24 feet (1133.68 feet Record) to a 1/2-inch iron rod set with cap marked "ASH5687" for Easterly South corner of the tract of land herein described;
- 2) South 88 degrees 15 minutes 00 seconds West (South 88 degrees 49 minutes 27 seconds West Record), a distance of 72.32 feet (72.55 feet Record) to a TXDOT Type I concrete monument found for corner;
- 3) North 47 degrees 06 minutes 19 seconds West (North 46 degrees 26 minutes 14 seconds West Record), a distance of 374.97 feet (376.11 feet Record) to a TXDOT Type I concrete monument found for an interior corner of the tract of land herein described;
- 4) South 43 degrees 27 minutes 56 seconds West (South 43 degrees 39 minutes 46 seconds West Record), a distance of 148.02 feet (148.17 feet Record) to a TXDOT Type II brass disk found for the most Southerly corner of the tract of land herein described, same being at the East corner of that certain called 1.5142 Acre tract conveyed to Hays County by instrument recorded in Volume 1410, Page 548 of the Official Public Records of Hays County, Texas, and being at the intersection of said IH35, with the Northeast line of Posey Road - County Road No. 235, a variable width public right-of-way;

THENCE along the Northeast line of said Posey Road and the common North line of said Hays County called 1.5142 Acre tract, the following courses and distances numbered (1) and (2):

- 1) North 46 degrees 47 minutes 46 seconds West (North 46 degrees 07 minutes 47 seconds West Record), a distance of 901.55 feet (902.32 feet Record) to a 1/2-inch iron rod set with cap marked "ASH5687" set for a corner of the tract of land herein described;
- 2) North 46 degrees 48 minutes 18 seconds West (North 46 degrees 08 minutes 18 seconds West Record), a distance of 209.08 feet (209.26 feet Record) to a 1/2-inch iron rod found for the West corner of the tract of land herein described, same being at the common South corner of that certain called 23.249 Acre tract described in the deed to TSY Investment Associates, LLC., recorded in Volume 5170, Page 93 of the Official Public Records of Hays County, Texas, and being at the South corner of Transportation Way, a dedicated 40 foot public right-of-way, as shown by map of Posey Business Park Section One, an addition to Hays County according to the map thereof recorded in Volume 17, Page 235 of the Plat Records of Hays County, Texas;

THENCE North 46 degrees 42 minutes 06 seconds East (North 47 degrees 19 minutes 43 seconds East

Record), along the common Southeast line of said 23.249 Acre tract, at a distance of 440.85 feet (Record) passing the East corner of said Transportation Way and continuing on for a total distance of 1351.47 feet (1349.75 feet Record) to a 1/2-inch iron rod set with cap marked "ASH5687" for the East corner of said 23.249 Acre tract and the common North corner of the tract of land herein described, same being in the Southeast line of that certain called 29.427 Acre tract recorded in Volume 3039, Page 273 of the Official Public Records of Hays County, Texas;

THENCE South 46 degrees 13 minutes 52 seconds East (South 49 degrees 39 minutes 25 seconds East Record), along the Southeast line of said 29.427 Acre tract, at a distance of 1092 feet, more or less, passing the West corner of the aforesaid Lot 1, South Park Commercial Subdivision, and continuing on for a total distance of 1462.24 feet (Record) to the point of beginning and containing 44.70 Acres of land.

RESOLUTION NO. 2020-03R

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS APPROVING A DEVELOPER PARTICIPATION AGREEMENT PROVIDING FOR THE CITY TO PARTICIPATE IN THE COST OF EXTENDING WASTEWATER INFRASTRUCTURE FROM THE TRACE SUBDIVISION TO THE POSEY BUSINESS PARK AREA IN THE AMOUNT OF \$850,248.00; AUTHORIZING THE CITY MANAGER, OR HIS DESIGNEE, TO EXECUTE SAID AGREEMENT; AND DECLARING AN EFFECTIVE DATE.


BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

PART 1. The attached Developer Participation Agreement (the "Agreement"), is hereby approved.

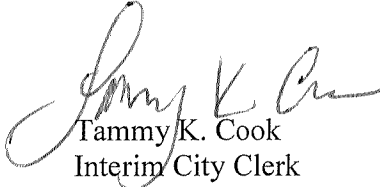
PART 2. The City Manager, or his designee, is authorized to execute the Agreement on behalf of the City.

PART 3. This resolution shall be in full force and effect immediately from and after its passage.

ADOPTED on January 5, 2021.


Jane Hughson
Mayor

Attest:


Tammy K. Cook
Interim City Clerk

DEVELOPER PARTICIPATION AGREEMENT

This Developer Participation Agreement ("Agreement") is entered into effective January 5, 2021 ("Effective Date") by and between the **City of San Marcos**, a Texas municipal corporation (the "City"), and **Lemuel Allen Jr.** (the "Developer").

I. RECITALS

1.1 Section 212.071 of the Texas Local Government Code authorizes the City to participate with a developer of a subdivision or land in the cost to construct public improvements.

1.2 The Developer is developing a tract of land known as ***Posey Road Wastewater Extension*** in San Marcos, Hays County, Texas ("Development"). The Developer is obligated under applicable ordinances to construct and dedicate certain public improvements necessary to support the Development.

1.3 The City has determined that it is consistent with the public infrastructure plans of the City and that there is a public need to participate in this construction in order to provide wastewater services to a currently unserved area of the City and ETJ and, therefore, wishes to contract with the Developer to provide for the construction and allocation of costs for such improvements. The improvements needed for the Development and the additional improvements requested by the City are, collectively, the "Improvements."

II. AGREEMENT

In consideration of the mutual benefits to and obligations of the parties under this Agreement, the parties agree to the following terms and conditions:

2.1 Design and Construction of Improvements

2.1.1 Construction. The Improvements will be and constructed by the Developer according to the final plans and specifications acceptable to and approved by the City in accordance with the City's applicable ordinances, standards and processes.

2.1.2 Project Manager. The Developer will act as project manager in the construction of the Improvements. If the plans for the Improvements are required to be sealed by a professional engineer, the Developer will ensure that the construction is carried out under the direct supervision of a professional engineer registered in the State of Texas.

2.1.3 Independent Contractor. The Developer shall be solely responsible for selecting, supervising and paying the construction contractor(s) or subcontractors and for complying with all applicable laws, including but not limited to all requirements concerning workers compensation and construction retainage. The parties agree and understand that all contractors, employees, volunteers and personnel furnished or used by the Developer in the installation of the Improvements shall be the responsibility of the Developer and shall not be deemed employees or agents of City for any purpose.

2.1.4 *Performance Bond.* Developer will execute a performance bond to ensure completion of the Improvements. The bond must be executed by a corporate surety in accordance with the Chapter 2253 of the Texas Government Code.

2.1.5 *Warranty.* The contract with the contractor will provide for at least a one-year warranty against defects in materials and workmanship. This warranty obligation shall be covered by any performance or payment bonds required of the contractor under the terms of the construction contract and this Agreement.

2.1.6 *Completion and Acceptance.* The date of completion shall be the date on which the City accepts the Improvements in accordance with the City's applicable ordinances, standards and processes and provides notice of such acceptance in writing to the Developer. Prior to the City's acceptance of the Improvements, Developer shall, among other applicable requirements, provide to the City a one-year warranty from the contractor against defects in materials and workmanship in the Improvements and a notarized affidavit stating that all bills for labor, materials, and incidentals incurred have been paid in full, that any claims from manufacturers, materialmen and subcontractors have been released, and that there are no claims pending of which Developer has been notified.

2.2 Cost Participation

2.2.1 *Cost Participation Amount.* The City is cost participating in the Improvements in an amount not to exceed \$850,247.85 for those portions of the work additionally requested by the City as itemized in Exhibit "A." The Developer will be responsible for paying the remainder of the costs for the Improvements.

2.2.2 *Limits of Participation.* Except as to the costs attributable to the oversizing of the Improvements requested by the City, the City's cost participation shall not exceed 65 percent of the Developer's total contract price for the Improvements.

2.2.3 *Application for Payment.* The Developer shall submit a written application for City participation payment after the City's acceptance of the Improvements. The application for payment to the City shall be for the lesser of the amount of the actual costs associated with the City's portion of the Improvements or the City's participation amount as stated in paragraph 2.2.1. The application for payment shall be in a form acceptable to City and must include a breakdown of actual costs of the Improvements with supporting documentation, including all payment receipts and any other documentation reasonably requested by the City to support the City's expenditure of public funds.

2.2.4 *City Payment.* Subject to all applicable ordinances, standards and processes, the City will pay its participation funds in one payment within 30 days after receipt of a complete (as determined by the City) written application for participation payment from Developer.

2.2.5 *Payments to Subcontractors and Suppliers.* The Developer shall be solely and exclusively responsible for compensating any of its contractors, employees, subcontractors, materialmen and/or suppliers of any type or nature whatsoever and insuring

that no claims or liens of any type will be filed against any property owned by the City arising out of or incidental to the performance of any service performed pursuant to this Agreement. In the event a statutory lien notice is sent to the City, the Developer shall, where no payment bond covers the work, upon written notice from the City, immediately obtain a bond at its expense and hold City harmless from any losses that may result from the filing or enforcement of any said lien notice.

2.3 GOVERNMENTAL IMMUNITY, INDEMNITY AND RELEASE

2.3.1 *No Waiver of Immunity.* The City's execution of and performance under this Agreement will not act as a waiver of any immunity of the City to suit or liability under applicable law. The parties acknowledge that the City, in executing and performing this Agreement, is a governmental entity acting in a governmental capacity.

2.3.2 *Indemnity and Release.* Developer agrees to and shall indemnify, hold harmless, and defend City and its officers, agents, and employees from and against any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation, court costs, expert fees and attorney's fees, for injury to or death of any person, or for damage to any property, or for breach of contract, arising out of or in connection with the work done by Developer, its officers, employees, agents and contractors, under this Agreement, except to the extent such injuries, death, damages or breach are caused by the City.

2.3.3 *Indemnity and Hold Harmless as to Subcontractors.* The Developer shall indemnify and hold the City harmless from any claims of suppliers or subcontractors of Developer for improvements constructed or caused to be constructed by the Developer.

2.3.4 *Indemnity and Hold Harmless as to Others.* The Developer shall indemnify and hold the City harmless from any and all injuries to or claims of adjacent property owners or occupants resulting from or relating to the Developer's performance under this Agreement.

2.3.5 *Release.* The Developer assumes full responsibility for the work to be performed hereunder, and releases, relinquishes and discharges the City, its officers, agents and employees, from all claims, demands, and causes of action of every kind and character, including the cost of defense therefore, for any injury to or death of any persons and any loss of or damage to any property that is caused by, alleged to be caused by, arising out of, or in connection with, the Developer's work to be performed hereunder. This release shall apply whether or not said claims, demands, and causes of action are covered in whole or in part by insurance, but not to the extent said claims, demands, and causes of action were caused in whole or in part by the negligence of the City.

2.4 Miscellaneous

2.4.1 *Entire Agreement; Amendment; Assignment.* This Agreement constitutes the entire agreement between the parties hereto and may be amended only by a written document signed by the parties. This Agreement shall be binding upon the successors and assigns of the parties. The assignment of all or part of this Agreement by a party is not valid without the written consent of the other party.

2.4.2 *Subject to Ordinances and Laws.* This Agreement and the obligations of the parties hereunder are subject to all valid and applicable ordinances, fees (including City impact fees and/or pro rata fees), rules, regulations, and laws of all governmental agencies having lawful jurisdiction over them.

2.4.3 *Applicable Law and Venue.* This Agreement shall be governed and construed under and in accordance with the laws of the State of Texas. Jurisdiction and venue for any matter arising out of this Agreement shall be in Hays County, Texas. Jurisdiction and venue in federal court for matters arising out of this Agreement shall be in the United States District Court for the Western District of Texas, Austin Division.

2.4.4 *Severability.* If any the provision of this Agreement is held to be invalid or unenforceable by a court of proper jurisdiction, the holding will not affect any other provisions of this Agreement if the Agreement can be given effect without the invalid provision. The Parties will construe the Agreement as if the invalid or unenforceable provision had not been contained in this Agreement.

2.4.5 *Books and Records.* All of the Developer's books and other records related to the design, bidding and construction of the Improvements shall be available for inspection by the City.

EXECUTED to be effective as of the Effective Date first written above.

CITY:


City of San Marcos,
a Texas municipal corporation

By: 

Bert Lumbreras, City Manager

DEVELOPER:

Lemuel Allen Jr.


Lem B Allen Jr. (Jun 24, 2021 13:01 EDT)

Lemuel Allen Jr.

EXHIBIT A

Description of and Itemized Cost Estimate for all Improvements

Posey Road Wastewater Cost Breakdown Exhibit

Segment	8" Gravity Flow	12" Gravity Flow	48" Manholes	18" Boring	24" Boring	Extra Depth LF
A1			400	1		
A2			2100	6	300	425
A3			460	1	300	100
A4		1770		5		250
A5		0		0		
A6						
B1	1290			3		750
B2	750			2		
Total	3760	2960	18	0	600	1525

Owner	Tract	GPM	% of total	% of A1	% of A2	% of A3	% of A4	% of A5	% of A6	% of B1	% of B2
Warren	1A	61	12%	12%	13%	15%	25%				
Warren	1B	50	10%	10%	11%	13%				33%	
D2000	2	75	15%	15%	16%	19%	30%	41%			
Allen	3	50	10%	10%	11%	13%				33%	50%
Gunnerson	4A	50	10%	10%							
Gilbert	4B	60	12%	12%	13%						
Kinloch	4C	45	9%	9%	10%	11%	18%	24%	41%		
CKDM	4D	30	6%	6%	7%	8%	13%	16%	27%		
Herry	4E	35	7%	7%	8%	9%	14%	19%	31%		
Herry	4F	50	10%	10%	11%	13%				33%	50%
Total		506	100%	100%	100%	100%	100%	100%	100%	100%	100%

Segment	8" Gravity Flow	12" Gravity Flow	48" Manholes	18" Boring	24" Boring	Extra Depth	Item	Cost
A1	\$ -	\$ 36,000.00	\$ 5,800.00	\$ -	\$ -	\$ -	8" Gravity Flow	\$ 80.00
A2	\$ -	\$ 189,000.00	\$ 34,800.00	\$ -	\$ 150,000.00	\$ 4,250.00	12" Gravity Flow	\$ 90.00
A3	\$ -	\$ 41,400.00	\$ 5,800.00	\$ -	\$ 150,000.00	\$ 1,000.00	48" Manholes	\$ 5,800.00
A4	\$ 137,600.00	\$ -	\$ 19,000.00	\$ -	\$ -	\$ 2,500.00	18" Boring	\$ 425.00
A5	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	24" Boring	\$ 500.00
A6	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	Extra Depth	\$ 10.00
B1	\$ 103,200.00	\$ -	\$ 17,400.00	\$ -	\$ -	\$ 7,500.00		
B2	\$ 60,000.00	\$ -	\$ 11,600.00	\$ -	\$ -	\$ -		
Total	\$ 300,800.00	\$ 266,400.00	\$ 104,400.00	\$ -	\$ 300,000.00	\$ 15,250.00		\$ 986,850.00

Hard Costs	\$ 986,850
Engineering	\$ 175,000
Contingency	\$ 98,685
GC Fees	\$ 98,685
Project Total	\$ 1,359,220

Owner	Tract	Soft Costs	Hard Costs A1	Hard Costs A2	Hard Costs A3	Hard Costs A4	Hard Costs A5	Hard Costs A6	Hard Costs B1	Hard Costs B2	Total
Warren	1A	\$ 44,890.45	\$ 5,039.13	\$ 50,572.48	\$ 30,530.81	\$ 41,931.30	\$ -	\$ -	\$ -	\$ -	\$ 172,964.17
Warren	1B	\$ 36,795.45	\$ 4,130.43	\$ 41,452.85	\$ 25,023.25	\$ -	\$ -	\$ -	\$ 42,700.00	\$ -	\$ 150,103.99
D2000	2	\$ 55,193.18	\$ 6,195.65	\$ 62,179.28	\$ 37,537.88	\$ 51,554.88	\$ -	\$ -	\$ -	\$ -	\$ 212,660.87
Allen	3	\$ 36,795.45	\$ 4,130.43	\$ 41,452.85	\$ 25,023.25	\$ -	\$ -	\$ -	\$ 42,700.00	\$ 35,800.00	\$ 185,903.99
Gunnerson	4A	\$ 36,795.45	\$ 4,130.43	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 40,925.89
Gilbert	4B	\$ 44,154.55	\$ 4,956.52	\$ 49,743.42	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 98,654.49
Kinloch	4C	\$ 33,115.91	\$ 3,717.39	\$ 37,307.57	\$ 22,522.73	\$ 30,932.93	\$ -	\$ -	\$ -	\$ -	\$ 127,596.51
CKDM	4D	\$ 22,077.27	\$ 2,478.26	\$ 24,871.71	\$ 15,015.15	\$ 20,621.95	\$ -	\$ -	\$ -	\$ -	\$ 85,064.35
Herry	4E	\$ 25,756.82	\$ 2,891.30	\$ 29,017.00	\$ 17,517.68	\$ 24,058.94	\$ -	\$ -	\$ -	\$ -	\$ 99,241.74
Herry	4F	\$ 36,795.45	\$ 4,130.43	\$ 41,452.85	\$ 25,023.25	\$ -	\$ -	\$ -	\$ 42,700.00	\$ 35,800.00	\$ 185,903.99
Total		\$ 372,370.00	\$ 41,800.00	\$ 378,050.00	\$ 198,200.00	\$ 169,100.00	\$ -	\$ -	\$ 128,100.00	\$ 71,600.00	\$ 1,359,220.00

Owner	Cost	Percentage
Warren	\$ 323,068.16	24%
Allen	\$ 185,903.99	14%
CKDM	\$ 850,247.84	63%



ACREAGES &
 OWNERSHIP BASED
 ON HAYS CO.
 PARCEL DATA



- LEGEND**
- PROPOSED
SEWER LINE
 - SEWER SHED
 - CONTOUR LINES
 - BEGIN/END OF
SEWER SEGMENTS

POSEY RD WASTEWATER EXTENSION
 SAN MARCOS, TX
 OPTION 2 - OVERALL ALIGNMENT

1



Posey Road Wastewater Cost Breakdown Exhibit

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A1			400	1		
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A4	1720			5		250
A5	0			0		
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Total		506	100%	100%	100%	100%	100%	100%	100%	100%	100%

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Total	\$ 300,800.00	\$ 266,400.00	\$ 104,400.00	\$ -	\$ 300,000.00	\$ 15,250.00		\$ 986,850.00

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Warren	1B	\$ 36,795.45	\$ 4,130.43	\$ 41,452.85	\$ 25,025.25	\$ -	\$ -	\$ -	\$ 42,700.00	\$ -	\$ 150,103.99
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