



Texas Department of Transportation

PO BOX 1717 • PHARR TEXAS 78577-1717 • (956) 702-6100

March 13, 2007

The Honorable J.D. Salinas
Hidalgo County Judge
PO Box 1356
Edinburg, TX 78540

Attention: Joe Pena, Hidalgo County ROW Administrator

REF: Return of Fully Executed Contractual Agreements for Right of Way
Procurement- Local Government & Notice of Right of Way Project Release

County: Hidalgo
Project: FM 493
Limits: from Mile 10 North to US 83
ROW CSJ: 0863-01-049

Dear Judge Salinas:

Enclosed find a fully executed original Contractual Agreement for Right of Way Procurement- Local Government for the FM 493 from Mile 10 North to US 83 project. The project has recently been released by the Right of Way Division in Austin. This letter serves as your official written notification of the acquisition project release. Your Right of Way Section staff may now commence with the acquisition of the needed parcels for this project.

Thank you for your continued support towards the improvement of the Highway System in the State of Texas. We certainly appreciate it.

Sincerely,

Luana M. Gonzalez
Right of Way Administrator

Cc: Behrooz Badiozzamani, Deputy District Engineer
Hector Gonzalez, Pharr Area Office
Sylvia Handy, Precinct 1 Commissioner



RS

**CONTRACTUAL AGREEMENT FOR RIGHT OF WAY PROCUREMENT -
 LOCAL GOVERNMENT**

County: Hidalgo
 District: Pharr

Federal Project No:
 Highway: FM 493

ROW CSJ No: 0863-01-049
 Const. CSJ 0863-01-044

This Agreement by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the State, and Hidalgo County, Texas, acting by and through its duly authorized official pursuant to an Ordinance or Order dated the 13th day of February, 2007, hereinafter called the Local Government, shall be effective on the date of approval and execution by and on behalf of the State.

WHEREAS, the State has deemed it necessary to make certain highway improvements on Highway No. FM 493 from Mile 10 North Road to US 83, and which section of highway improvements will necessitate the acquisition of certain right of way; and

WHEREAS, it is agreed such right of way purchase shall be a joint effort of the State and the Local Government;

WHEREAS, the Local Government requested and has been granted an Economically Disadvantaged County Adjustment from the Texas Department of Transportation Commission via a letter dated December 7, 2006, from Mario R. Jorge, P. E., Pharr District Engineer to Ramon Garcia, County Judge, by virtue of Minute Order No. ~~110395~~ ^{110395, 22}, approving a Twenty Eight percent (28%) adjustment to the required Ten percent (10%) Local Government cost participation for this Ninety percent (90%) State and Ten percent (10%) Local Government project, thereby resulting in a Local Government net contribution amount of Seven and Two Tenths percent (7.2%) participation and State participation of Ninety Two and Eight Tenths percent (92.8%);

NOW, THEREFORE be it agreed that acquisition of such right of way shall be in accordance with the terms of this agreement and in accordance with the Texas Department of Transportation Right of Way Manual and all applicable Federal and State laws governing the acquisition policies for acquiring real property. The State hereby authorizes and requests the Local Government to proceed with acquisition and the State agrees to reimburse the Local Government for its share of the cost of such right of way, providing such acquisition and reimbursement are accomplished according to the provisions outlined herein and agreed to by both parties hereto.

Location Surveys and Preparation of Right of Way Data: The State, without cost to the Local Government, will do the necessary preliminary engineering and title investigation in order to supply to the Local Government the data and instruments necessary to obtain acceptable title to the desired right of way.

Determination of Right of Way Values: The Local Government agrees to make a determination of property values for each right of way parcel by methods acceptable to the Local Government and to submit to the State's District Office a tabulation of the values so determined, signed by the appropriate Local Government representative. Such tabulations shall list the parcel numbers, ownership, acreage and recommended compensation. Compensation shall be shown in the component parts of land taken, itemization of improvements taken, damages (if any) and the amounts by which the total compensation will be reduced if the owner retains improvements. This tabulation shall be accompanied by an explanation to support the determined values, together with a copy of information or reports used in arriving at all determined values. Such work will be performed by the Local Government at its expense without cost participation by the State. The State will review the data submitted and may base its reimbursement on the values which are determined by this review. The State, however, reserves the right to perform at its own expense any additional investigation deemed necessary, including supplemental appraisal work by State employees or by employment of fee appraisers, all as may be necessary for determination of values to constitute the basis for State reimbursement. If at any stage of the project development it is determined by mutual agreement between the State and Local Government that there should be waived the requirement that the Local Government submit to the State property value determinations for any part of the required right of way, the Local Government will make appropriate written notice to

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the State of such waiver, such notice to be acknowledged in writing by the State. In instances of such waiver, the State by its due processes and at its own expense will make a determination of values to constitute the basis for State reimbursement.

Negotiations: The State will notify the Local Government as soon as possible as to the State's determination of value. Negotiation and settlement with the property owner will be the responsibility of the Local Government without participation by the State; however, the Local Government will immediately prior to closing the transaction secure a title investigation to determine if there has been any change in title. The Local Government will deliver properly executed instruments of conveyance which, together with any curative instruments found to be necessary as a result of the State's title investigation, will properly vest good and indefeasible title in the State for each right of way parcel involved. *The Local Government will also deliver to the State an owner's policy of title insurance for each parcel, except as otherwise specifically approved by the State.* Upon payment to the property owner of the agreed purchase price, the Local Government is authorized and directed to secure for the State possession of each parcel in accordance with all applicable Federal and State laws governing relocation assistance, notices to vacate and forcible detainer. The costs incidental to negotiation and securing possession of the parcels will be the responsibility of the Local Government. The cost of title-investigation will be the responsibility of the State.

Administrative Settlements: After the offer has been delivered to the property owner, and prior to the Commissioners' Hearing, the property owner may deliver one written counteroffer ("Administrative Settlement Proposal") to the Local Government. The Local Government will evaluate the Administrative Settlement Proposal and make a recommendation of approval or disapproval to the State through the State's appropriate District Office. The District Office will then submit the Administrative Settlement Proposal, together with the Local Government and District recommendations, to the State Right of Way Division office for final approval in accordance with current State procedures. The State's approval of the Administrative Settlement Proposal is only for purposes of closing the purchase of the property prior to the Special Commissioners' Hearing. In the event a closing of the purchase does not occur prior to the hearing, the State's approval is automatically, without further action, withdrawn, and the State will participate only in the original approved value. In the event the State does not approve the Administrative Settlement Proposal, and the Local Government elects to purchase the property at a value greater than the original approved value, the State's participation in the purchase price will apply only to the original approved value, and the Local Government will pay one hundred percent (100%) of the costs which exceed the original approved value, even if the applicable county qualifies as an economically disadvantaged county.

Condemnation: Condemnation proceedings will be initiated at a time selected by the Local Government and will be the Local Government's responsibility at its own expense except as hereinafter indicated. The Local Government will obtain from the State without cost current title information and engineering data at the time condemnation is to be initiated. Except as hereinafter set forth the Local Government will concurrently file condemnation proceedings and a notice of lis pendens for each case in the name of the State, and in each case so filed the judgment of the court will decree title and possession to the property condemned to the State. The Local Government may, as set forth herein under "Excess Takings" and where it is determined to be necessary, enter condemnation proceedings in its own name. Property acquired in the Local Government's name for the State must comply with requirements set forth in the engineering data and title investigation previously furnished to the Local Government by the State at such time as the Local Government conveys said property to the State.

Court Costs, Costs of Special Commissioners' Hearings and Appraisal Expense: Court costs and costs of Special Commissioners' hearings assessed against the State or Local Government in condemnation proceedings conducted on behalf of the State and fees incident thereto will be paid by the Local Government. Such costs and fees, including recording fees, will be eligible for One Hundred percent (100%), State reimbursement under the established reimbursement procedure provided such costs and fees are eligible for payment by the State under existing law. Where the Local Government uses the State's appraisers employed on a fee basis in Special Commissioners' Hearings or subsequent appeals, the cost of the appraiser for updating the report, for preparing new reports, preparing for court testimony and appearing in court to testify in support of the appraisal will be paid direct by the Local Government, but will be eligible for One Hundred percent (100%), State reimbursement under established procedure provided prior approval for such appraiser has been obtained from the State. The fee paid the appraiser by the Local Government shall be in accordance with the fee schedule set forth in the appraiser's contract for appraisal services with the State.

Excess Takings: In the event the Local Government desires to acquire land in excess of that requested by the State for right of way purposes, the State's cost participation will be limited to the property needed for its purposes. If the Local

Government elects to acquire the entire property, including the excess taking, by a single instrument of conveyance or in one eminent domain proceeding, the property involved will be acquired in the name of the Local Government and that portion requested by the State for right of way will be separately conveyed to the State by the Local Government. When acquired by negotiation, the State's participation will be based on the State's approved value of that part of the property requested for right of way purposes, provided that such approved value does not exceed actual payment made by the Local Government.

When acquired by condemnation, the State's participation will be in the proportionate part of the final judgment amount computed on the basis of the relationship of the State's approved value to the State's predetermined value for the whole property.

Improvements: Property owners will be afforded an opportunity in the negotiations to retain any or all of their improvements in the right of way taking. In anticipation of the owner desiring to retain improvements, the State's approved value will include the amounts by which the upper limit of State participation will be reduced for the retention. It is further agreed that the upper limit for the State's participation in the Local Government's cost for an improved parcel will be reduced as shown in the State's approved value where the owner retains an improvement which is to be moved by either the Local Government or the owner. In the event improvements which are, in whole or part, a part of the right of way taking are not retained by the owner, title is to be secured in the name of the State.

The State will participate in the acquisition of a structure severed by the right of way line if the part of the house, building or similar structure which lies outside the right of way cannot be reconstructed adequately or there is nothing but salvage left, provided that the State's value is established on this basis and provided that title to the entire structure is taken in the name of the State. The State shall dispose of all improvements acquired. The net revenue derived by the State from the disposition of any improvements sold through the General Services Commission will be credited to the cost of the right of way procured and shared with the Local Government.

Relocation of Utilities: If the required right of way encroaches upon an existing utility located on its own right of way and the proposed highway construction requires the adjustment, removal or relocation of the utility facility, the State will establish the necessity for the utility work. State participation in the cost of making the necessary change, less any resulting increase in the value to the utility and less any salvage value obtainable, may be obtained by either the "actual cost" or "lump sum" procedures. Reimbursement under "actual cost" will be made subsequent to the Local Government's certification that the work has been completed and will be made in an amount equal to Ninety Two and Eight Tenths percent (92.8%) of the eligible items of cost as paid to the utility owner. The "lump sum" procedure requires that the State establish the eligibility of the utility work and enter into a three-party agreement with the owners of the utility facilities and the Local Government, which sets forth the exact lump sum amount of reimbursement as approved in such agreement. The utility will be reimbursed by the Local Government after proper certification by the utility that the work has been done, said reimbursement to be based on the prior lump sum agreement. The State will reimburse the Local Government in an amount equal to Ninety Two and Eight Tenths percent (92.8%) of the firm commitment as paid to the utility owner. The foregoing is subject to the provision that the individual lump sum approved value shall not exceed \$20,000, except as specifically approved by the State. In those cases where a single operation is estimated to exceed \$20,000, the transaction will be brought to the attention of the State for determination of proper handling based upon the circumstances involved. Such utility firm commitment will be an appropriate item of right of way. The adjustment, removal or relocation of any utility line on publicly owned right of way by sufferance or permit will not be eligible for State reimbursement. The term "utility" under this agreement shall include publicly, privately and cooperatively owned utilities.

Fencing Requirements: The Local Government may either pay the property owner for existing right of way fences based on the value such fences contribute to the part taken and damages for an unfenced condition resulting from the right of way taking, in which case the estimated value of such right of way fences and such damages will be included in the recommended value and the approved value, or the Local Government may do the fencing on the property owner's remaining property.

Where the Local Government performs right of way fencing as a part of the total right of way consideration, neither the value of existing right of way fences nor damages for an unfenced condition will be included in the recommended value or the approved value. State participation in the Local Government's cost of constructing right of way fencing on the property owner's remainder may be based on either the actual cost of the fencing or on a predetermined lump sum amount. The State will be given credit for any salvaged fencing material and will not participate in any overhead costs of the Local Government.

If State participation is to be requested on the lump sum basis, the State and the Local Government will reach an agreement prior to the actual accomplishment of the work as to the necessity, eligibility and a firm commitment as to the cost of the entire fencing work to be performed. The foregoing is subject to the provision that the lump sum approved cost shall not exceed \$20,000, except as specifically approved by the State. In the event the cost of the fencing is estimated to exceed \$20,000, the transaction will be brought to the attention of the State for determination of proper handling based upon the circumstances involved.

Reimbursement: The State will reimburse the Local Government for right of way acquired after the date of this agreement in amount not to exceed Ninety Two and Eight Tenths percent (92.8%) of the cost of the right of way acquired in accordance with the terms and provisions of this agreement. The State's reimbursement will be in the amount of Ninety Two and Eight Tenths percent (92.8%) of the State's predetermined value of each parcel, or the net cost thereof, whichever is the lesser amount. All requests by the Local Government for reimbursement shall comply with the then current reimbursement submission requirements set forth in the Texas Department of Transportation Right of Way Manual.

If condemnation is necessary and title is taken as set forth herein under the section entitled "Condemnation", the participation by the State shall be based on the final judgment, conditioned upon the State having been notified in writing prior to the filing of such suit and upon prompt notice being given as to all action taken therein. The State shall have the right to become a party to the suit at any time for all purposes, including the right of appeal at any stage of the proceedings. All other items of cost shall be borne by the State and the Local Government as provided in other sections of this agreement.

If a lump sum fencing or utility adjustment agreement has been executed, the State will reimburse the Local Government in the amount of Ninety Two and Eight Tenths percent (92.8%) of the predetermined lump sum cost of the right of way fencing or utility adjustment.

If the Local Government prefers not to execute a lump sum agreement for either fencing or utility adjustments, the State will reimburse on the actual cost of such fencing or adjustments. The Local Government's request for reimbursement will be supported by a breakdown of the labor, materials and equipment used.

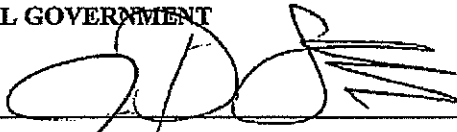
Except as otherwise agreed to in writing by the State, all other administrative expenses not mentioned within this agreement are the responsibility of the Local Government and are not reimbursable. (See Exhibit "A")

Inspection of Books and Records: The Local Government shall maintain all books, papers, accounting records and other documentation relating to costs incurred under this agreement and shall make such materials available to the State and, if federally funded, the Federal Highway Administration (FHWA) or their duly authorized representatives for review and inspection at its office during the contract period and for four (4) years from the date of completion of work defined under this agreement or until any impending litigation, or claims are resolved. Additionally, the State and FHWA and their duly authorized representatives shall have access to all the governmental records that are directly applicable to this agreement for the purpose of making audits, examinations, excerpts, and transcriptions. The State auditor may conduct an audit or investigation of any entity receiving funds from the State directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the State auditor, under the direction of the Legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

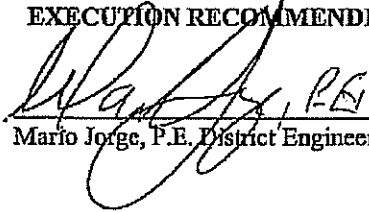
General: It is understood that the terms of this agreement shall apply to new right of way authorized and requested by the State which is needed and not yet dedicated, in use or previously acquired in the name of the State or Local Government for highway, street or road purposes. This agreement shall also apply, with regard to any existing right of way, to outstanding property interests not previously acquired and to eligible utility adjustments not previously made, as authorized and requested by the State.

It is further understood that if unusual circumstances develop in the right of way acquisition which are not clearly covered by the terms of this agreement, such unusual circumstances or problems will be resolved by mutual agreement between the State and the Local Government.

LOCAL GOVERNMENT

By: 
Title: County Judge
Date: 2/13/07

EXECUTION RECOMMENDED:


Mario Jorge, P.E. District Engineer, Pharr District

**APPROVED BY
COMMISSIONERS' COURT**
ON: FEB 13 2007

THE STATE OF TEXAS
Executed and approved for the Texas Transportation
Commission for the purpose and effect of activating
and/or carrying out the orders, established policies or
work programs heretofore approved and authorized
by the Texas Transportation Commission.

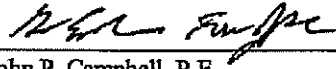
By: 
John P. Campbell, P.E.
Director, Right of Way Division
Date: 3/6/07

EXHIBIT "A"
ROW-RM-37

WORKTASK	<u>LPA</u> RESPONSIBILITY FOR PERFORMANCE	REIMBURSABLE BY TxDOT	TxDOT RESPONSIBILITY FOR PERFORMANCE
Preparation of ROW Map			X
Title Investigation			X
Title Policy	X	Yes	
Appraisal Report	X	No	
Appraisal Review	X	No	
ROW A-10 Tabulation Form	X	No	
Supplemental Appraisal Report			X
Negotiations	X	No	
Excess Takings	X	No	
Compensable Utility Relocation	X	Yes	
TxDOT Approved Administrative Settlement	X	Yes	
LPA Administrative Settlement W/O TxDOT Approval	X	No	
Court, Special Commissioners Costs & Appraisal Expenses	X	Yes	
Cleanup of Contaminated Parcels	X	Yes	
Fencing	X	Yes	
All Recording Fees	X	Yes	
All Other Administrative Fees	X	No	
Relocation Assistance And Payments			X

REGULAR MEETING – FEBRUARY 13, 2007

BE IT REMEMBERED, that on this 13th day of February, A.D., 2007, there was begun and held a REGULAR MEETING of the Honorable Commissioners' Court of Hidalgo County, Texas, wherein the following members thereof were present, to-wit:

HONORABLE JUAN DE DIOS SALINAS, III	HIDALGO COUNTY JUDGE
HONORABLE SYLVIA HANDY	COMMISSIONER, PRECINCT NO. 1
HONORABLE HECTOR (TITO) PALACIOS	COMMISSIONER, PRECINCT NO. 2
HONORABLE JOE M. FLORES	COMMISSIONER, PRECINCT NO. 3
HONORABLE OSCAR L. GARZA JR.	COMMISSIONER, PRECINCT NO. 4

and ARTURO GUAJARDO, JR., COUNTY CLERK & EX-OFICIO CLERK OF THE COMMISSIONERS' COURT of Hidalgo County, Texas, wherein the following proceedings were had, to-wit:

DATE 2/16/07

A true copy I certify
ARTURO GUAJARDO, JR.
County Clerk, Hidalgo County, Texas
By [Signature] Deputy

15. Precinct #1 - Comm. Handy: (SEE EXHIBIT Q)

A. 1. Discussion, consideration and approval to delete vacant Accounts Payable Clerk position, slot #005-027 and create Assistant Human Resource Coordinator position, slot # 005-061). No budgetary impact.

2. Approval of revised salary schedule.

On motion of Commissioner Handy, seconded by Commissioner Palacios, the Court made a UNANIMOUS vote of approval on items #1 & 2.

B. Discussion and action to authorize the County Auditor to process payments for ROW Acquisitions as certified by Tx Dot and Pct. 1 Contract #C-06-145-O3-06 for FM 88 (from 0.2 Mi. N. of FM 1925 to 0.05 Mi. N. of Mile 12 N.) (approximately 60 parcels not to exceed \$450,000.00)

On motion of Commissioner Handy, seconded by Judge Salinas, the Court made a UNANIMOUS vote of approval.

C. Discussion, consideration and approval of a Contractual Agreement for Right of Way Procurement between the State of Texas and Hidalgo County, Texas for the acquisition of right-of-way for FM 493 from mile 10 North Road to US 83, with authority for County Judge to sign the same.

On motion of Commissioner Handy, seconded by Commissioner Palacios, the Court made a UNANIMOUS vote of approval.

16. Precinct #2- Comm. Palacios: (SEE EXHIBIT R)

A. Discussion and possible action for approval of Interlocal Cooperation Agreement between the City of Weslaco, Texas and Hidalgo County, Texas for the participation of "The Compost Utilization Education Project".

On motion of Commissioner Handy, seconded by Commissioner Palacios, the Court made a UNANIMOUS vote of approval.

At this time the Court moved to adjourn.

17. Purchasing Department - Marty Salazar: (SEE EXHIBIT S)

NOTES:

- 1. FOR ANY CONTRACT(S) AWARDED AND APPROVED UNDER THIS AGENDA, EXECUTED COPIES OF THE CONTRACT(S) WILL BE FORWARDED TO HIDALGO COUNTY AUDITOR'S OFFICE.
- 2. ANY/ALL REQUESTS FOR ACCEPTANCE AND APPROVAL OF CLAIMS/INVOICES UNDER THIS AGENDA WILL INCLUDE AUTHORITY FOR AUDITOR TO ISSUE PAYMENT AFTER REVIEW, AUDIT AND PROCESSING PROCEDURES ARE COMPLETED

A. Hidalgo County

1. New Hidalgo County Jail

Total Inmate Population:

Physical Count:

Males (in house):

Females (in house):

Out of County Facility:

La Villa:

DATE 2/16/07

A true copy I certify

ARTURO GUAJARDO, JR.

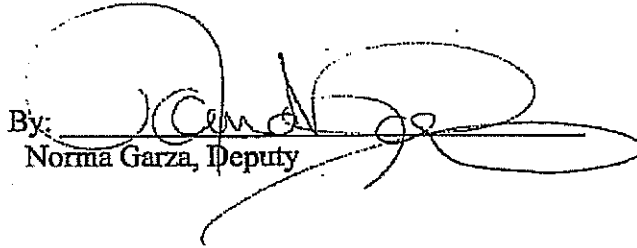
County Clerk, Hidalgo County, Texas

By [Signature] Deputy

There being no further business to come before said Court, the meetings of the Commissioners' Court and the Drainage District #1 Board are now hereby adjourned.

Dated this the 13th day of February, 2007

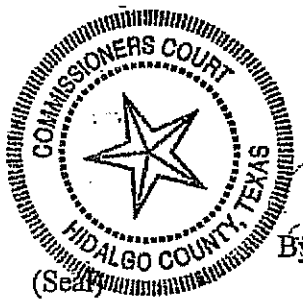
ARTURO GUAJARDO, JR., County Clerk
Hidalgo County, Texas

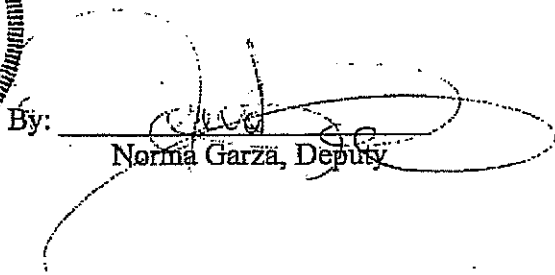
By: 
Norma Garza, Deputy


I, ARTURO GUAJARDO, JR., County Clerk attest that this is an accurate accounting of a proceeding of the Commissioners' Court held on February 13, 2007.

Signed this 16th day of Feb 2007

ATTEST:
ARTURO GUAJARDO, JR.
County Clerk and Ex-Officio Clerk
Of the Commissioners' Court of
Hidalgo County



By: 
Norma Garza, Deputy

DATE: 2/16/07
A true copy I certify
ARTURO GUAJARDO, JR.
County Clerk, Hidalgo County, Texas
By: 



MEMORANDUM

Pete B.
Hazel H.

TO: Luana Gonzalez
Pharr District

Date: March 5, 2007

FROM: Gus E. Cannon *GC*

SUBJECT: Right of Way Release
Hidalgo County (109)
ROW CSJ 0863-01-049
F. M. 493: From Mile 10 North Road
To U. S. 83

Reference is made to your memorandum dated February 20, 2007 requesting authorization to proceed with right of way activities. This is to document that the subject project has received Commission approval, is environmentally clear and the right of way map has been received and found administratively complete. Therefore, you may proceed with right of way activities for acquisition and the adjustment of utilities as authorized under current policies and in accordance with the contractual agreement.

Since State costs are anticipated for this project, right of way job numbers have been assigned. Please use the above captioned project numbers on all correspondence and any associated charges.

We are by copy of this memorandum requesting the Finance Division to set up the fund authorization by M.O.109335, please see the attached Financing Right of Way Accounts funding breakdown spreadsheet. Should you have any questions, please contact Nancy Johnson at (512) 416-2940.

Attachment
cc: Finance Division

**RIGHT OF WAY OFFICE
DISTRICT NO. 81**

MAR 08 2007

RECEIVED