

January 10, 2018

Hon. David Fuentes
Attn: Jorge Pena, R.P.I.C.
Hidalgo County Commissioner, Pct. #1
1902 Joe Stephens Ave. Suite 1
Weslaco, Texas 78599

RE: County: Hidalgo
TxDOT CSJ No. 0921-02-356
Mile 6 W Rd., (Westgate Ave.)
Parcel No. 47

Dear Mr. Pena:

Attached herewith is a counter-offer as submitted by Miguel Pena and wife Frances Pineda, owners of Parcel 47 on January 9, 2018. L & G Engineering has reviewed the aforementioned and hereby recommends that counteroffer be **approved**. Attached also is the N-9, Administrative Settlement Evaluation and Approval Form.

L & G Engineering believes the counteroffer is a legal and cost savings issue and a timing issue due to the imminent "let" date. More importantly due to recent court awards on similar projects and the cost to litigate through the Special Commissioners' Hearing we recommend that the counteroffer of **\$10,000.00** be accepted.

Please review these documents and feel free to contact me at (956) 585-1909 if you wish to discuss this matter personally.

Sincerely,

Fernando Herrera Jr.
Right of Way Administrator

Attachments: As noted.

cc: File
Carlos Peralez, PE

1/9/14

Fernando Herrera Jr.
L & G Engineering

RE: Parcel 47- Mile 6 W Project

Dear Mr. Herrera,

I am **rejecting** the County offer of \$6,700.00. I believe that my property was severely under-valued the property was appraised on an acreage/farmland basis when my property is less than 1 acre and is residential/commercial. I feel my property is worth more but I am willing to settle for **\$10,000.00** which is **\$3,300.00** over the offer. Thank you.

Sincerely,

Michael H. Pineda and wife

Michael H. Pineda

Frances Pineda

ADMINISTRATIVE SETTLEMENT EVALUATION AND APPROVAL FORM

ROW CSJ: 0921-02-356
Highway: Mile 6 West (Westgate)
Parcel No.: 47
Owner's Name: Miguel Pineda et ux
Approved Offer: \$6,700.00
Owner's Counteroffer: \$10,000.00

County: Hidalgo
Project Limits: From Mile 9 north to Mile 11
Date Offer Sent: 11/30/17
Date Counteroffer Received: 1/9/18

Factors considered in evaluation:

1. Valuation Issues

- a. Reconciliation of all available appraisals, including Owner's.
b. Other: none

2. Legal Issues

- a. Analysis of recent court awards on similar properties or projects.
b. Analysis of recent court decisions which may affect the outcome of a condemnation action.
c. Analysis of previously unlitigated issues.
d. Other: _____

3. Cost Savings

- a. Approximate cost to litigate through Special Commissioners' Hearing \$12,000.00
b. Approximate additional cost to litigate through jury trial \$15,000.00
c. Other: _____

4. Timing Issues

- a. Maintain project schedule: 8/2018
Possession of this property is needed by: 5/2018
Projected possession date, if settled is: 3/2018
Projected possession date, if condemned is: 6/2018
Letting date: 8/2018
b. Other: _____

5. Other Issues

** The following documents have been considered by this team and are incorporated by reference: appraisals, appraisal review form, owner's counteroffer and supporting documentation, negotiator's logs, and _____

Analysis and Conclusion

Our approval / disapproval recommendation is based on the items checked above and has been evaluated as follows: (attach additional sheets as necessary)

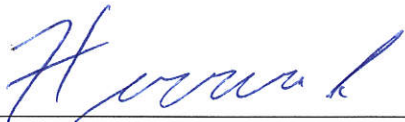
Parcel 47 is a partial acquisition containing 0.066 acre, parcel of land situated in Farm Tract 197, West Tract Subdivision, Volume 2 P34-37, Hidalgo County, Texas. Nov. 30, 2017, Acquisition Provider (L&G) made an offer of \$6,700.00 to purchase the property to Miguel Pineda. On Jan. 9, 2018, the property owner submitted a counter offer. The Counteroffer, indicated a greater value for the fee simple due to the commercial value that was condiered in the appraisal and has submitted a counter offer requesting an additional \$3,300.00 for the total of \$10,000.00. Based on the information provided within the the counter offer and discussion by the acquisition team it is recommended that the Administrative Settlement be approved. Also, the cost and length of time associated with a condemnation would far surpass the counteroffer. We believe that the proposed counter offer is within a reasonable range of Hidalgo County's approved value.

This administrative settlement of \$10,000.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

Evaluation Date: _____

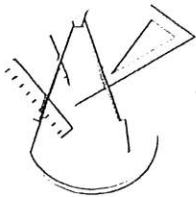
Team Members: _____

_____	_____
_____	_____
_____	_____



Right of Way Manager
~~Region~~

Date



L&G Engineering

Transportation Consultants

Date: 11/30/2017

County: Hidalgo
Federal Project No.: N/A
Highway: Mile 6 West

ROW CSJ: 0921-02-356
Parcel: 47
From: Mile 9 N
To: Mile 11 N

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. 7016 1370 0062 1430 8254

Michael H. Pineda
2511 S. Oklahoma Avenue
Weslaco, TX 78596

Dear Mr. Pineda:

In acquiring property for the highway system of Hidalgo County (the "County") follows a definite procedure for appraising the land needed and for handling personal negotiations with each owner. As has been or will be explained by the County's negotiator, Fernando Herrera, a portion of your property located on Mile 6 West, as described in the enclosed property description, is to be acquired for the construction or improvement of the above-referenced highway project.

We believe at this stage of the purchase process it is mutually beneficial to confirm that, based on an appraisal, the County is authorized to offer you **\$6,700.00** for your property, which includes **\$6,700.00** for the property to be purchased and **\$0.00** for damages to your remaining property. This amount is the total amount of just compensation for all interests in the portion of your property to be acquired, as determined in accordance with State law, less oil, gas and sulphur, subject to clear title being conveyed to the County. In accordance with State law, it is the policy of the County to negotiate with the fee owner(s) of the real property with the understanding that you will, in turn, negotiate with any lessee or other party who may own any interest in the land or improvements, with the exception of public utility easements, which will be handled separately by the County.

This offer to purchase includes the contributory values of the improvement(s) listed below, which are considered to be part of the real property. Since the improvement(s) must be removed, it is the policy of the County to permit owners who convey voluntarily to the County to thereafter retain the improvement(s), if they wish to do so. The retention values shown below are the estimated amounts the improvement(s) would bring if sold on public bids. If you wish to retain title to any of the following improvement(s) and remove it (them) from the right of way, the amount of the above offer must be reduced by the appropriate retention amount(s). This option to retain the improvement(s) does NOT apply should it become necessary for the County to acquire the real property by eminent domain.

<u>Improvement</u>	<u>Amount to be Subtracted if Retained</u>
Gravel Paving	\$1.00
Landscaping (sod)	\$1.00

If you wish to accept the offer based upon this appraisal, please contact Mr. Herrera as soon as possible at (956) 585-1909, so that the process of issuing your payment may be started. If you are not willing to accept this offer, you may submit a written request for administrative settlement/counteroffer, setting forth a counteroffer amount and the basis for such amount, provided such settlement request is received in writing within 30 days from the date of this letter. Please note that your opportunity to submit an administrative settlement shall be forfeited if such a settlement request is not received by the County within the 30 day time deadline. In the event the condition of the property changes for any reason, the County shall have the right to withdraw or modify this offer.



After the date of payment of the purchase price, or the date of deposit in court of funds to satisfy the award of compensation as determined through eminent domain proceedings to acquire real property, you will be reimbursed for any fair and reasonable incidental expenses necessarily incurred in transferring title to the property for use by Hidalgo County. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the County and (2) penalty costs for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property. Voluntary unnecessary expenses or expenses incurred in clearing questionable title will not be eligible for reimbursement. Eligible incidental expenses will be reimbursed upon submission of a claim supported by receipted bills or other evidence of actual expenses incurred. You may file a written request for review if you believe that the County failed to properly determine the eligibility for, or the amount of, incidental expenses to be reimbursed. There is no standard form on which to request a review of a claim; however, the claim must be filed with this office within six months after you are notified of the County's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the County's Relocation Assistance Program. It is emphasized, however, that any benefits to which you may be entitled under this program will be handled entirely separate from and in addition to this transaction. You will receive a brochure entitled "*Relocation Assistance*" which will inform you of eligibility requirements, payments and services which are available.

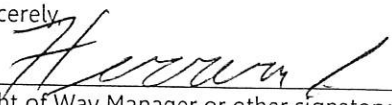
You have the right to discuss with others any offer or agreement regarding the County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as it may apply.

Attached is a copy of the Texas Department of Transportation brochure entitled "*Right of Way Purchase*" which we trust will give you a better understanding of the procedures followed by the County in purchasing property. We respectfully request the opportunity to meet with you or to otherwise discuss and answer any questions you may have regarding the details of the type of facility to be built, or concerning the County's offer or proposed purchase transaction. Also, please do not hesitate to contact Mr. Herrera at the telephone number provided above regarding any question you may have.

Please see the enclosed copy of the Texas Landowner Bill of Rights.

Finally, we enclose copies of all appraisal reports relating to your property being acquired which were prepared in the ten (10) years preceding the date of this offer and produced or acquired by the County, including the appraisal on which this offer is based.

Sincerely,



Right of Way Manager or other signatory

ENCLOSURES:

Appraisal Report(s)
Landowner Bill of Rights
Brochure ("*Right of Way Purchase*")

**REAL ESTATE APPRAISAL REPORT
TEXAS DEPARTMENT OF TRANSPORTATION**

Address of Property: WL Mile 6 West Road, north of Mile 10, Hidalgo County, District: Pharr
Weslaco, Texas 78599
Property Owner: Michael H. Pineda Parcel: 47
Address of Property Owner: 2511 S. Oklahoma Avenue, Weslaco, TX 78596 ROW CCSJ: 0921-02-168 and RCSJ: 0921-02-356
Occupant's Name: Unknown Federal Project No: NA
Whole: Partial: Acquisition Highway: Mile 6 West Road County: Hidalgo

Purpose of the Appraisal

The purpose of this appraisal is to estimate the market value of the fee simple title to the real property to be acquired, encumbered by any easements not to be extinguished, less oil, gas and sulphur. If this acquisition is of less than the whole property, then any special benefits and/or damages to the remainder property must be included in accordance with the laws of Texas.

Market Value

Market value is defined as follows: "Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future." [City of Austin v. Cannizzo. 267 S.W. 2d 808, 815 (Texas 1954)]

Certificate of Appraiser

I hereby certify:

That it is my opinion the total compensation for the acquisition of the herein described property is **\$6,700** as of October 19, 2016, based upon my independent appraisal and the exercise of my professional judgment;

That on October 19, 2016, and other dates, I personally inspected in the field the property herein appraised; that I afforded the property owner the opportunity to accompany me at the time of the inspection; and

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on multiple dates (see comparable data supplement sheets);

That I have not revealed and will not reveal the findings and results of such appraisal to anyone other than the proper officials of the Texas Department of Transportation or officials of the Federal Highway Administration until authorized by State officials to do so, or until I am required to do so by due process of law, or until I am released from this obligation by having publicly testified to such findings;

That my compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value estimate, the attainment of a stipulated result, or the occurrence of a subsequent event.

The appraiser has considered access damages in accordance with Section 21.042(d) of the Texas Property Code, as amended by SB18 of the Texas 82nd Regular Legislative Session and finds as follows:

1. Is there a denial of direct access on this parcel? No (yes or no)
2. If so, is the denial of direct access material? N/A (yes, no, or not applicable)
3. The lack of any access denial or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of \$0.

I certify to the best of my knowledge and belief:

That the statements of fact contained in this report are true and correct;

That the reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, unbiased professional analyses, opinions, and conclusions;

That I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved;

That my analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the appropriate State laws, regulations, and policies and procedures applicable to the appraisal of right of way for such purposes, and that to the best of my knowledge no portion of the value assigned to such property consists of items which are non-compensable under the established law of said State, and any decrease or increase in the fair market value of subject real property prior to the date of valuation caused by the public improvement for which such property is to be acquired, or by the likelihood that the property would be acquired for such improvement, other than that due to the physical deterioration within the reasonable control of the owner, has been disregarded in estimating the compensation for the property.



Appraiser Signature
Matthew C. Whitney, MAI
TX-1326491-G
Certification Number
December 11, 2016
Date

To the best of my knowledge, the value does not include any items which are not compensable under State law.


Reviewing Appraiser
12/11/16
Date



TABULATION OF VALUES (continued)

Parcel: 47

Highway: Mile 6 West

ROW CSJ: 0921-02-356

III. Damages and Enhancements

Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$0.00	\$0.00	\$0.00	\$0.00

IV. Sign Values

Item No.	Sign Owner	Type Construction	Improvement Value	Retention Value	Bisect. Cat.
Total			\$0.00	\$0.00	

V. Recapitulation

Date	October 19, 2016		Recommended Value
Appraiser's Name:	Matthew C. Whitney, MAI		
Value of Whole Property	\$74,780.00		\$74,780.00
Parcel Area: 0.066 Ac.			
VALUE FOR PARCEL	\$5,280.00		\$5,280.00
Land: per <u>Ac.</u>	\$80,000		\$80,000
Easement	\$0.00		\$0.00
Improvements	\$1,420.00		\$1,420.00
Net Damages or (Enhancements)	\$0.00		\$0.00
OAS Value(s)	\$0.00		\$0.00
TOTAL COMPENSATION	\$6,700.00		\$6,700.00

Calculations for Net Damages or (Enhancements) consider Direct Access Denial damages.

TABULATION OF VALUES (continued)

Parcel: 47

Highway: Mile 6 West

ROW CSJ: 0921-02-356

VI. Comments and Conclusions on Values in the Appraisal Report

Effective Date of Review:	December 11, 2016
Date of Review Report:	December 11, 2016
Purpose of Review Appraisal:	The purpose of this appraisal review is to verify that the referenced appraisal report is prepared in compliance with the Texas Department of Transportation Appraisal and Review Manual, the Uniform Standards of Professional Appraisal Practice (USPAP), and 49 CFR 24.103.
Client:	Hidalgo County and TXDOT – Pharr District
Intended User:	Hidalgo County, TXDOT – Pharr District, and their assigns
Intended Use:	Provide a recommended compensation for the acquisition
Scope of the Review:	I personally inspected the subject property from the existing road right of way and the comparable sales utilized in the appraisal report. The property owner was not present at the time of my inspection. I have read the report in its entirety and provided comments for the consideration of the appraiser. I did perform additional sales research. I have not personally confirmed the sales price for each of the comparable sales.

This Appraisal Review is of the Appraisal Report dated December 11, 2016 prepared by Matthew C. Whitney, MAI. The property under review is commonly referred to as Parcel 47 on the Mile 6 West Highway Project in Hidalgo County, Texas. The effective date of value is October 19, 2016 which is the date of Mr. Whitney's most recent inspection of the property.

The Parent Tract contains 0.917 acre of land located on the west line of Mile 6 West, north of Mile 10. The subject property is not subject to zoning. However, it is deed restricted for single family residential use. The highest and best use of the subject, land only, is determined to be for residential use. The subject property is improved with a single family residence and supporting site improvements that would not be razed for redevelopment. Thus, the highest and best use, as improved, is its existing use.

The land was valued via the Sales Comparison Approach to Value through the utilization of five similar land sales that range in date of sale from March 2015 through July 2016 and have an adjusted sales price range from \$29,145 to \$84,013 per acre. The appraiser concludes a value of \$80,000 per acre for the whole property, or \$73,360.00. Adjustments were applied for market conditions (time), location, size, flood plain, and utilities. All adjustments appear to be reasonable.

The subject property is improved with a single family residence and supporting site improvements that are not believed to be impacted by the acquisition and have not been valued in the appraisal report. Considering the distance of the residence from the proposed right of way, omission of the valuation of the main residence is appropriate and reasonable. Thus, the subject is appraised as effectively vacant land with minor site improvements. Vacant land is not typically purchased based on an anticipated income stream. Thus, the Income Approach, and the Sales Comparison Approach, as Improved, were not developed. The Cost Approach indicated a value for the land and improvements acquired to be \$74,780.00. Thus, the appraiser concludes a value for the land and improvements acquired to be \$74,780.00. All valuation appears to comply with typical appraisal practices.

The acquisition consists of a fee simple interest in 0.066 acre (2,879 sq. ft.) of land and site improvements to include gravel paving and landscaping. Improvements in the acquisition were valued at \$1,420.00 and the land was valued at \$5,280.00. The land was valued on a pro rata basis of the whole property.

TABULATION OF VALUES (continued)

Parcel: 47

Highway: Mile 6 West

ROW CSJ: 0921-02-356

VI. Comments and Conclusions on Values in the Appraisal Report (Continued)

The remainder after the acquisition contains 0.851 acre of land and will be improved with all the main improvements. There is no denial of access to the remainder. In addition, the appraiser concludes the residence will be located at a sufficient distance from the proposed right of way. Thus, the appraiser concludes there are no permanent damages (Non-Exempt Damages) to the remainder. In addition, the appraiser concludes there are no Exempt Damages (Cost to Cure) to the remainder. Total damages were calculated to be \$0.00. Damages have been addressed in a manner consistent with TXDOT policy.

The appraisal is prepared on the ROW A-5, TXDOT Long Form, and the format is properly applied and adequately documented to provide a basis for compensation. The appraisal report appears to comply with USPAP. The data contained in the appraisal report is adequate and the adjustments to the sales are adequately supported and reasonable.

Based on my analysis of the appraisal report, I believe the analyses, opinions, and conclusions set forth in the appraisal are appropriate and reasonable. Mr. Whitney's compensation of \$6,700.00 is approved by the contracted review appraiser (Todd L. Bland, MAI; TX-1323490-G), and recommended for approval by Hidalgo County.

VII. Justification and Explanation for Credit if Retained.

Salvage and minimal retention values are applied to the improvements being acquired.

The appraiser has considered access damages in accordance with Section 21.042(d) of the Texas Property Code, as amended by SB18 of the Texas 82nd Regular Legislative Session and finds as follows:

1. Is there a denial of direct access on this parcel? No (yes or no)
2. If so, is the denial of direct access material? Not Applicable (yes, no, or not applicable)
3. The lack of any access denial or the material impairment of direct access on or off the remaining property affects the market value of the remaining property in the sum of \$0.00.

TABULATION OF VALUES (continued)

Parcel: 47

Highway: Mile 6 West

ROW CSJ: 0921-02-356

VIII. Conditions

Values for signs, if any, are applicable only if sign owner has compensable interest.
Fencing is applicable only to actual cost or lump sum fencing on 90-10 Right of Way projects and State cost participation in fences to be in accordance with State's Right of Way Manual.
The values indicated hereon have been approved on the basis that all improvements within the taking will be acquired in the name of the State through negotiation.

IX. Reviewing Appraisers' Statements

Reviewing Appraiser's Statement

It is my opinion that the appraiser's report for this parcel appears adequately supported and in compliance with all appropriate appraisal standards, laws, and regulations, and I recommend this appraisal for use by the appropriate Agency Official and his/her assigns. I have no direct or indirect present or contemplated future personal interest in such property or in any benefit from the acquisition of the parcel. To the best of my knowledge, the value does not include any items that are not compensable under State law.

Reviewing Appraiser

Date

Todd Bland

December 11, 2016

Contract Reviewing Appraiser (if applicable)

Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values

Ramon Marcio

County/City Representative

12/21/16

Date

ROW Staff Representative

Date

APPROVED BY
COMMISSIONERS' COURT
DATE 11/15/16 *me*

CERTIFICATION OF REVIEW APPRAISER

I Certify that to the best of my knowledge and belief:

- the facts and data reported by the review appraiser and used in the review process are true and correct.
- the analyses, opinions, and conclusions expressed in this review report are limited only by the reported assumptions and limiting conditions stated in this review report, and are my personal, impartial, and unbiased professional analysis, opinions, and conclusions;
- I have no present or prospective interest in the property that is the subject of work under review and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of the work under review or to the parties involved with this assignment.
- my engagement in this assignment was not contingent upon developing or reporting predetermined results.
- my compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of, this review.
- my analyses, opinions, and conclusions were developed, and this review was prepared in conformity with the Uniform Standards of Professional Appraisal Practice; the requirements of the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute;
- I personally inspect the subject property of the report under review.
- no one provided significant professional assistance to the person signing this Appraisal Review Report;
- the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives;
- I have performed no appraisal services, as an appraiser or in any other capacity, regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment.
- as of the date of this report, Todd L. Bland, MAI has completed the requirements of the continuing education program of the Appraisal Institute and the Texas Appraiser Licensing and Certification Board;

As of the date of this review, I am currently certified under the requirements of the State of Texas as a general real estate appraiser.



Todd L. Bland, MAI
Todd L. Bland, MAI
State Certified General RE Appraiser
Certificate No. TX-1323490-G

December 11, 2016
Date