

# L&G Engineering

Transportation Consultants

November 13, 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. 38

Dear Mr. Pena:

Attached herewith is a counter-offer as submitted by Robert A. Most, owner of Parcel 38 on November 12, 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 **\$23,000.00** 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,

Fred Herrera  
Right of Way Administrator

Attachments: As noted.  
cc: File  
Carlos Peralez, PE



## HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

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ROW CSJ: 0921-02-356

County: Hidalgo

Highway: Mile 6 W

Project Limits: From Mile 9 North to Mile 11

Parcel No.: 38

Owner's Name: Robert A. Most and Serena K. Most

Approved Offer: \$8,400.00

Date Offer Sent: 07/20/2018

Owner's Counteroffer: \$23,000.00

Date Counteroffer Received: 11/12/2018

### Factors considered in evaluation:

1. Valuation Issues

- a.  Reconciliation of all available appraisals, including Owner's.
- b.  Other: \_\_\_\_\_

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: 04/2019  
Possession of this property is needed by: 04/2019  
Projected possession date, if settled is: 12/2018  
Projected possession date, if condemned is: 02/2019  
Letting date: 04/2019
- b.  Other: \_\_\_\_\_

5. Other Issues

\_\_\_\_\_

\*\* The following documents have been considered and are incorporated by reference: appraisals, appraisal review form, owner's counteroffer and supporting documentation, negotiator's log, 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 38 is a partial acquisition containing 1,822 sq.ft. land , more or less, out of Lot 46, Mile 6 Palms Subdivision, an Addition to the City of Weslaco. On July 20, 2018, Acquisition Provider (L&G Engineering) made offer of \$8,400.00 to purchase the property to Robert A. Most and Serena K. Most. On November 12, 2018 the property owner submitted a counter offer of \$23,000 in order to replace 4 mature Live Oak trees he believes will be affected when the right of way line moves to within 18" of the tree line. In his counter offer letter Mr. Most said the trees provide the only shade in his westward facing backyard where his children's playground is set up. Mr. Most also provided quotes from 3 reputable vendors. Based on the information provided within the counter offer and discussion by the acquisition team it is recommended that the Administrative Settlement be approved. We believe that the proposed counter offer is within a reasonable range.

This administrative settlement of \$ 23,000.00  is /  is not recommended for approval as being reasonable, justified, prudent and in the public interest.

**RECOMMENDATION(S):**

  
\_\_\_\_\_  
Project Engineer/ROW Administrator

11/14/18  
\_\_\_\_\_  
Date

\_\_\_\_\_  
RPIC/Authorized Pct. Representative

\_\_\_\_\_  
Date

**COUNTY APPROVAL:**

\_\_\_\_\_  
County Judge

\_\_\_\_\_  
Date

Robert A. Most & Serena K. Most  
5401 Sable Dr.  
Weslaco, TX 78599

11-12-2018

County: Hidalgo  
ROW CSJ: 0921-02-356  
From: Mile 9 N  
To: Mile 11 N

Mr. Bob Garcia,

Thank you for providing the initial compensation offer for the Mile 11 North expansion project.

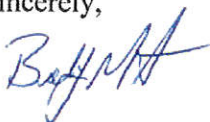
We have reviewed the details provided with the original offer and have taken into account the decline of our initial counter. We would like to counter with an amount of \$23,000. Although this amount doesn't include the full value of the property to be obtained by the county, including the four mature Live Oak trees that will undoubtedly be affected by this project, we would accept this amount. Should the initial offer have included the replacement of these trees, we are sure the original offer would have been substantially greater.

We have received multiple quotes for the purchase of four Live Oak trees of comparable size to replace those currently on our property. Discussions with professional arborists have valued the current state of these four trees at a higher amount than proposed above; however, we would settle for the purchase of new trees of similar size. These trees are the only shade we have in our westward facing backyard for our children's play area and the only four trees on our entire property.

We hope to resolve the status of our property with your company. We are sure LNG and Hidalgo County would like to settle this matter as soon as possible, as would we. I am available all week and can be reached on my cell phone at 956-744-1965 or by email at [mostr@rushenterprises.com](mailto:mostr@rushenterprises.com).

Again, thank you for the offer and we look forward to finalizing the negotiations in the near future.

Sincerely,



Robert A. Most  
Serena K. Most

Alfaro Tree Sales, Inc.  
10755 PEARSALL RD  
ATASCOSA, TX 78002 US  
210-622-9875  
cheli\_dg@yahoo.com  
www.alfarotreesalesinc.com

## Estimate

ADDRESS  
Katie Most

SHIP TO  
5401 Sable Dr  
Weslaco, Texas 78599

ESTIMATE #      DATE  
12796            09/19/2018

Please detach top portion and return with your payment.

SALES REP  
Lucio

ITEM	QTY	PER UNIT	AMOUNT
Live Oak 7-8" caliper 20-22' ht		3,200.00	T
Live Oak 9-10" caliper 24-28' ht		4,500.00	T
Live Oak 11-12" caliper 28-30' ht		7,500.00	T

These prices do not include  
tree planting or delivery.

I would like to take a look at the site  
to be able to give you accurate  
quote for tree planting.

Thanks,  
Lucio  
(210) 710-8938

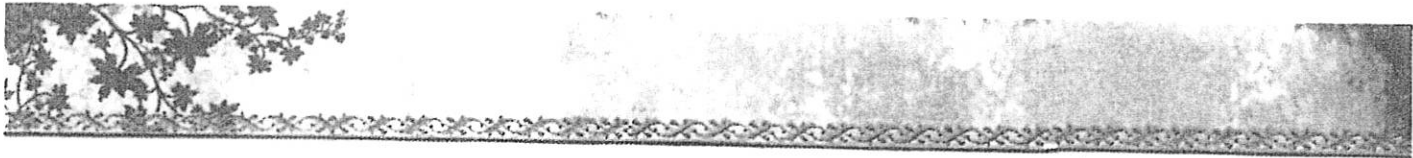
Contact us with any questions.

TOTAL

Sales Rep:  
Lucio Garcia  
(210) 710-8938  
ats\_lucio@yahoo.com

Accepted By

Accepted Date



PROPOSAL

10/01/18,

To:  
Bobby Most

TREE SALES AND RESCUE, LLC  
10231 Rainbow Creek  
San Antonio, TX 78245

Job Location:  
Weslaco Tx

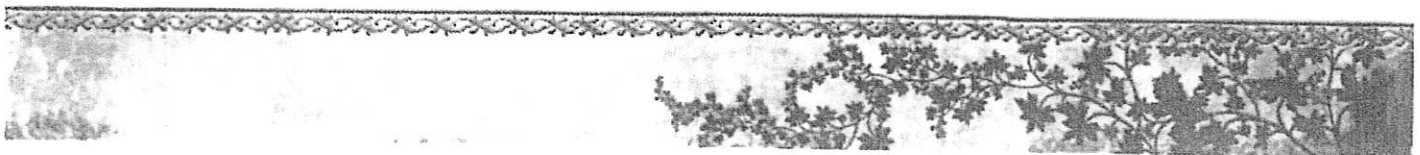
210-274-3078 or 210-274-3542

[www.treesalesandrescue.com](http://www.treesalesandrescue.com)

Sales Rep.	P.O. Number	Ship Date	Ship Via	FOB	Terms
Art					Due Upon Receipt

Quantity	Description	Unit Price	Total
	Relocate trees on premises to new location	\$500 per inch (tree trunk diameter)	
	Or		
	To purchase new trees delivered & planted	\$1,000 per inch (tree trunk diameter)	
	NO WARRANTY for trees relocated		

THANK YOU FOR YOUR BUSINESS!



Quote

Quote expires  
November 13, 2018 12:00 am

**TERMS / PAYMENT SCHEDULE:**  
50% Down Payment 50% Due Upon Completion



Note: This proposal may be withdrawn by Shades of Green, Inc. if not accepted within 30 days.

Shades of Green Nursery  
7401 Coit Road  
Frisco, TX 75035

Ticket #: 600-102604  
Ticket date: 8/15/18  
Station: 1

Sold to: Katie Most  
5401 Sable Dr.  
Weslaco, TX 78599  
972-816-7542

Ship to:

Customer #: 606225  
SIs rep: JARRATT

Ship date:  
Location: 100

Ship-via code:  
Terms:

Quantity	Item #	Description	Price	Selling unit	Ext prc
4.0	*ITEM	OAK Live - 12" B&B	11,875.00	EACH	47,500.00
1	.	P&G	0.00	EACH	0.00

User: STORE	Total line items: 2	Sale subtotal:	47,500.00
		Tax:	3,918.75
		Total:	51,418.75

Shades of Green is not responsible for damage or alterations to existing irrigation, telephone, electrical or cable (TV or Computer) lines located within the planting or prepared areas. Location of these items are the customer's responsibility before installation occurs. Any repair(s) of such items will be an additional charge above and beyond the original proposal.

Initials \_\_\_\_\_

This is an Estimate only. Quantities may change depending on location and size. Other issues may arise during installation that may not be covered in this Estimate.

Initials \_\_\_\_\_

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from specifications above involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workmans Compensation Insurance.

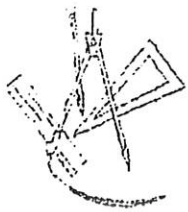
Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to perform work as specified. Payment will be made as outlined.

Signature: \_\_\_\_\_  
Date: \_\_\_\_\_

FAX 972-377-2022  
WWW.SHADESOFGREENINC.COM





# L&G Engineering

Transportation Consultants

July 20, 2018

**Certified Mail, Return Receipt Requested**  
**No. 7013 0600 0002 4176 5994**

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

ROW CSJ: 0921-02-356  
Parcel: 38  
From: Mile 9 N  
To: Mile 11 N

Robert A. Most & Serena K. Most  
5401 Sable Drive  
Weslaco, Texas 78599

Dear Mr. & Mrs. Most:

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 **\$8,400.00** for your property, which includes **\$8,342.00** for the property to be purchased and **\$58.00** 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>
A. Fence – Wood	\$ 1.00
B. Landscaping - Grass	\$ 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.

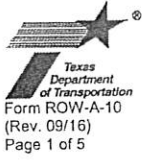
Please see the enclosed copy of the Texas Landowner Bill of Rights.

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*")



**TABULATION OF VALUES**

Parcel: 38 Highway: Mile 6 West Road ROW CSJ: 0921-02-356  
 Taking Type: Partial District: Pharr  
 Size of Remainder: 21,973 sf. County: Hidalgo  
 Type of Property: Improved//SFR  
 Contract Fencing: N/A  
 Appraised by: John H. Malcom, Jr.  
 Date Appraised: 5-4-18

Access will be  provided or  denied to the new facility. If access will be partially provided or denied, explain in comments.

Agency	Participating Percentage	Expense Description
Hidalgo County Precinct No. 1	20%	ROW Acquisition Expenses

Interest Owner	Acquisition Interest	Land Area	Value	Lease (Y/N)
Robert A. Most and wife, Serena Kate Most North Alamo Water Supply Corporation	Fee Simple	1,822 sf.	\$2,304.00	No
	Easement	1,549 sf.	1,704.00	No

**I. Appraised Values**

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$4,008.00	\$6,038.00	\$0.00	\$58.00	\$10,104.00

**II. Improvements**

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Fence	Wood	\$3,038.00	\$1.00	N/A
B.	Landscaping	Gras	3,000.00	1.00	N/A

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
		Total	\$6,038.00		

TABULATION OF VALUES (continued)

Parcel: 38

Highway: Mile 6 West Road

ROW CSJ: 0921-02-356

III. Damages and Enhancements

Total Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$0.00	\$0.00	\$58.00	\$58.00

IV. Sign Values

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

V. Recapitulation

Date:	5-4-18	Recommended Value
Appraiser's Name:	John H. Malcom, Jr.	
Value of Whole Property	\$231,830.00	\$231,830.00
Parcel Area: 1,822 sf.		
VALUE FOR PARCEL		
Land: per sf. 273 sf. Unencumbered @ \$2.20 sf. & 1,549 sf. Encumbered @ \$1.10	\$600.00 1,704.00	\$600.00 1,704.00
Easement 1,549 sf. @1.10 sf.	\$1,704.00	\$1,704.00
Improvements	\$6,038.00	\$6,038.00
Net Damages or (Enhancements)	\$58.00	\$58.00
OAS Value(s)	\$0.00	\$0.00
TOTAL COMPENSATION	\$10,104.00	\$10,104.00

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

TABULATION OF VALUES (continued)

Parcel: 38

Highway: Mile 6 West Road

ROW CSJ: 0921-02-356

**VI. Comments and Conclusions on Values in the Appraisal Report**

Appraiser: John H. Malcom, Jr.  
Effective Date of Report: May 4, 2018  
Report Dated: June 20, 2018  
Review Appraiser: Harvey L. Heerssen  
Effective Date of Review: June 21, 2018

Parcel 38 is a partial taking of 1,822 square feet out of Lot 46, Mile 6 Palms Subdivision, an Addition to the City of Weslaco, Texas., being a re-subdivision out of the North 33.388 acres of Farm Tract 191, West Tract Subdivision, Volume 38, Page 122, Map Records, Hidalgo County, Texas. Said Tract is vested to Anthony and Flor Caballero by virtue of Special Warranty Deed with Vendor Lien dated July 18, 2007, recorded in Document No. 1104333 in the Deed Records, Hidalgo County, Texas. Further research by the appraiser indicates that current ownership is Robert A. Most and wife, Serena Kate Most.

This parcel is located at the northwest corner of Sable Drive and Date Drive, ETJ of Weslaco, Texas. The whole tract is improved with a single family residence and related site improvements. The residence is not impacted by the proposed acquisition. The whole property is encumbered by a utility easement owned by North Alamo Water Supply Corporation.

The appraiser has selected six (6) commercial sales to value the unencumbered portion of the whole property at \$2.20 per sf. The acquisition includes 273 sf. that is unencumbered land and 1,549 sf. that is encumbered with the easement. Since the fee owner does not enjoy the full bundle of rights within the easement area, the appraiser estimates that the amount of rights taken amount to 50% of the fee value or \$1.10 per sf. Thus, the encumbered fee portion is valued at \$1.10 per sf. and the utility easement is also valued at \$1.10 per sf. There are no market damages the remainder land. Additionally, cost to cure damages are applied to the wood fencing in order to replace the fencing on the remainder to retain the same utility.

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. The result of the findings is that there is no denial of direct access nor material impairment of direct access on or off the remaining property that affects the market value of the remaining property. Therefore, there are no access damages to the remainder property.

The report prepared by the appraiser John H. Malcom, Jr. is an Appraisal Report presented on TxDOT form ROW-A-5 and appears to comply with USPAP and the Texas Department of Transportation's Appraisal and Review Manual. The appraisers' opinion and conclusions appear to be well supported by information contained within this appraisal report. It is recommended that the total value of \$10,104.00 be approved for negotiations and acquisition.

**VII. Justification and Explanation for Credit if Retained.**

Retentions of \$1.00 are applied to each improvement in order to encourage retention.

TABULATION OF VALUES (continued)

Parcel: 38

Highway: Mile 6 West Road

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

*John L. Heenan*  
\_\_\_\_\_  
Contract Reviewing Appraiser (if applicable)

\_\_\_\_\_  
6-22-18  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Division Reviewing Appraiser (if applicable)

\_\_\_\_\_  
Date

X. Approval of Values

*Ramon Garcia*  
\_\_\_\_\_  
County/City Representative

\_\_\_\_\_  
7/18/18  
\_\_\_\_\_  
Date

\_\_\_\_\_  
ROW Staff Representative

\_\_\_\_\_  
Date

APPROVED BY  
COMMISSIONERS' COURT  
ON: *11/15/16*