

L&G Engineering

Transportation Consultants

December 5, 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's.: 37, 38, 44a, 44b, 44c, & 65 Counteroffers for Release of Easements,
NAWSC

Dear Mr. Pena:

Attached herewith is a counteroffer as submitted by North Alamo Water Supply Corporation on November 16, 2018. L & G Engineering has reviewed the aforementioned and hereby recommends that counter-offer 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 below be accepted:

Parcel 38 - \$ 2,674.20

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



HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

ROW CSJ: 0921-02-356

County: Hidalgo

Highway: Mile 6 W

Project Limits: From Mile 9 to Mile 11

Parcel No.: 38

Owner's Name: North Alamo Water Supply Corp.

Approved Offer: \$1,704.00

Date Offer Sent: 07/20/2018

Owner's Counteroffer: \$2,674.20

Date Counteroffer Received: 12/5/18

Factors considered in evaluation:

1. Valuation Issues

- a. Reconciliation of all available appraisals, including Owner's.
- b. Other: Owner feels the property values are too low.

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: 12/2019
Possession of this property is needed by: 5/2019
Projected possession date, if settled is: 1/2019
Projected possession date, if condemned is: 4/2019
Letting date: 8/2019
- 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 _____

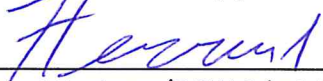
Analysis and Conclusion:

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

The condemnation of a public utility (NAWSC) is very costly and may not be legally possible. The amount of the counteroffer for Parcel 38, is \$2,674.20. The offer by the County is \$1, 704.00, for a difference of \$970.20. The amount is within the cost of condemnation not to mention the possible award of more money to the Utility. Therefore, we recommend that the counteroffer be accepted.

This administrative settlement of \$ 2,674.20 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):


Project Engineer/ROW Administrator

12/7/18
Date


RPIC/Authorized Pct. Representative

12-11-18
Date

COUNTY APPROVAL:

County Judge

Date

NORTH ALAMO WATER SUPPLY CORPORATION

3/8 MILE S OF SH 107 ON DOOLITTLE ROAD
420 S DOOLITTLE RD EDINBURG TX 78542-9707

TELEPHONE 956-383-1618
FAX 956-383-1372

November 16, 2018

To: Mr. Fernando Herrera, Jr., ROW Administrator
L&G Engineering
900 S. Stewart Road, Ste. 10
Mission, Texas 78572

From: North Alamo Water Supply Corporation
420 South Doolittle Road
Edinburg, Texas 78542

RE: CSJ No. 0921-02-356; Mile 6 West Road Project
Counter Offer for Parcel No. 37, Parcel No. 38, Parcel No. 44A, Parcel No. 44B,
Parcel No. 44C and Parcel No. 65

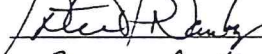
Dear Mr. Herrera:

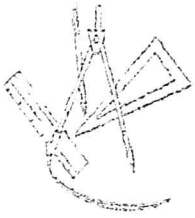
In reference to the above matter, this is to inform you that we do not accept your original offers listed in the table below. The parcels of land needed for the expansion of the road will leave an unusable remainder of North Alamo Water Supply easement on these individual parcels. As a result we are asking for damages in the amount(s) listed below. We will accept a counter offer in the amount listed below for each individual parcel:

Parcel	Original Offer	Additional Value to NAWSC (Damages)	Final Counter - Offer Total
37	\$ 1,075.00	\$ 3,116.89	\$ 4,191.89
38	\$ 1,704.00	\$ 970.20	\$ 2,674.20
44A	\$ 3,966.00	\$ 1,125.82	\$ 5,091.82
44B	\$ 1,961.00	\$ 537.83	\$ 2,498.83
44C	\$ 2,239.00	\$ 465.88	\$ 2,704.88
65	\$ 2,893.00	\$ 1,494.78	\$ 4,387.78

Should you have any questions or require additional information, please do not hesitate to contact our office.

Respectfully submitted,

By: 
Title: General Manager



July 20, 2018

County: Hidalgo
CSJ: 0921-02-356
Highway: Mile 6 West
From: Mile 9 N
To: Mile 11 N
Parcel: 38 Easement Rights

North Alamo Water Supply
420 S Doolittle Rd
Edinburg, Texas 78542

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. 7013 0600 0002 4176 6007

Dear Sirs:

The County of Hidalgo (the "County") by and through its acquisition consultant, L & G Engineering Acquisition Services (the "Contractor"), is presently proceeding with the acquisition of right of way for the construction of Mile 6 West from Mile 9 North to Mile 11 North.

In acquiring property for the highway systems of Texas, the Texas Department of Transportation (the "Department") and the County follow a definite procedure for appraising the land needed and for handling personal negotiations with each Interest Owner. As has been or will be explained by the L&G's negotiator, Fernando Herrera, Jr., your easement rights located within Parcel No. 38 of this project are to be acquired.

We believe at this stage of the purchase process it is mutually beneficial to confirm that based on an appraisal(s) made by an independent appraiser(s) and an analysis by an independent review appraiser, the County is authorized to offer you **\$1,704.00** for a portion of your easement. This amount is the total amount of just compensation for the easement rights, as determined through the appraisal process.

If you wish to accept the offer based upon this appraisal, please contact L&G Engineering 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 Contractor within the 30 day time deadline.*

In the event the condition of the property changes for any reason, the State/County shall have the right to withdraw or modify this offer.

It will be necessary that both the easement and fee title to subject tract be acquired through normal acquisition negotiations in order to consummate this transaction and obtain payment from the County.

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 the Texas Department of Transportation. Expenses eligible for reimbursement may include (1) recording fees, transfer taxes and similar expenses incidental to conveying the real property to the Department 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 Department's determination on any claim for reimbursement.

You may be entitled to additional payments and services under the State'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.

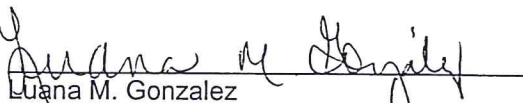
You have the right to discuss with others any offer or agreement regarding the County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as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

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 Department/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 Department'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 Department/County, including the appraisal on which this offer is based.

Sincerely,


Luana M. Gonzalez
Right of Way Manager or other signatory

ENCLOSURES:

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



1 REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: 5401 Sable Drive
Property Owner: Robert A. Most and wife, Serena Kate Most
Address of Property Owner: 5401 Sable Dr., Weslaco, TX 78599
Occupant's Name: Same
Whole: Partial: Acquisition

ROW CSJ: RCSJ: 0921-02-356
District: Pharr
Parcel: 38
Federal Project No: --
Highway: Mile 6 West Rd 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."

Certificate of Appraiser

I hereby certify:

That it is my opinion the total compensation for the acquisition of the herein described property is \$10,104 as of, May 4, 2018 based upon my independent appraisal and the exercise of my professional judgment;

That on May 4, 2018 (date)(s), I personally inspected in the field the property herein appraised; that I afforded, Robert A. Most and wife, Serena Kate Most the property owner or the representative of the property owner, the opportunity to accompany me at the time of the inspection; A certified letter was sent to the owners address but was returned to sender with the notation 'Not deliverable as addressed, Unable to forward'. The property owner was not present during the site visit.

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on June 1, 2018 and other (date)(s);

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 denial of access for a highway improvement project (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

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 noncompensable 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
John H. Malcom, Jr., MAI, AI-GRS, SRWA
Certification Number 1320239-G
June 20, 2018
Date

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

Harvey L Heerssen 6-22-18
Reviewing Appraiser Date

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

Henry L. Hanson
Contract Reviewing Appraiser (if applicable)

6-22-18
Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values

Rosman Garcia
County/City Representative

7/18/18
Date

ROW Staff Representative

Date

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