

L&G Engineering

Transportation Consultants

December 20, 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. 10

Dear Mr. Pena:

Attached herewith is a counter-offer as submitted by Adam and Juan Aguilar, owner of Parcels 10 on December 19, 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 **\$35,000.00** 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



HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

ROW CSJ: 0921-02-356

Highway: Mile 6 W

Parcel No.: 10

Owner's Name: Adam Aguilar and Juan Aguilar

Approved Offer: \$17,798.00

Owner's Counteroffer: \$35,000.00

County: Hidalgo

Project Limits: From Mile 9 North to Mile 11

Date Offer Sent: 10/27/2018

Date Counteroffer Received: 12/19/2018

Factors considered in evaluation:

1. Valuation Issues

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

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: 01/2018
Possession of this property is needed by: 02/2019
Projected possession date, if settled is: 12/2018
Projected possession date, if condemned is: 04/2019
Letting date: 06/2019
- 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)

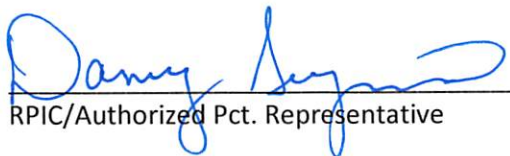
Parcel 10 is a partial acquisition containing 450 sq. ft., parcel of land situated in Lot 2, BLK 7 Sun Country Estates Subdivision Unit No. 2, City of Weslaco, Hidalgo County, Texas. On October 27, 2018 Acquisition Provider (L&G) made an offer of \$17,798.00 to purchase the property to Adam and Juan Aguilar. On December 19, 2018 the property owner submitted a counter offer for \$35,000 dollars. In the counter-offer they stated that their business Aguilar Auto Sales would be greatly affected by the loss of their side entrance from Judi St. A variance was offered from the county but could not be used because it would effect their garage bays used for auto repairs. A new entrance along the frontage will require reconfiguration of their parking lot and the loss of parking spaces used for car sales. They also said they expected to lose business due to the road construction based on their experience the last time it happened. 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 counter offer. We believe that the proposed counter-offer is within a reasonable range.

This administrative settlement of \$ 35,000.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):

Project Engineer/ROW Administrator

Date



RPIC/Authorized Pct. Representative

1/2/19

Date

COUNTY APPROVAL:

County Judge

Date

December 19, 2018

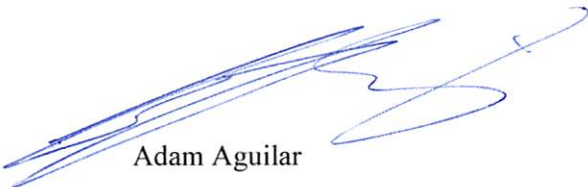
To: Fernando Herrera, Jr.
L&G Engineering
900 S. Stewart Road, Ste. 10
Mission, Texas 78572

RE: Counter Offer for Parcel 10
Mile 6 West Project
Hidalgo County, Texas

Dear Mr. Herrera,

My brother, Juan R. Aguilar and I, Adam A. Aguilar do not accept your offer of \$17,798 for our land. I will have to make a new entrance in another area on my lot, which will take some more spots of where I park my cars for sale, and I will have to remove another tree, concrete, pavement, and fences to accommodate for my new entrance. Another reason is two spots where I park my vehicles are going to be taken as well, so I will be losing a total of 4 spots to sell my cars. I will also be losing business since Westgate will be partially blocked off, people will be going around the area of construction. When the street was fixed the last time a couple years ago, my family lost a lot of business, because it was only supposed to last a couple of months, and it almost took the whole year to fix. Also my two fences are going to be taken down the chain fence and the pipe fence, my two trees, cement, pavement, and my business sign. Taking into account all the damages to our property we will accept \$35,000.00 dollars for the part of our property to be acquired to widen Mile 6. If you have any questions feel free to call me at 956-968-4370.

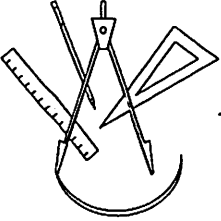
Respectfully Submitted,



Adam Aguilar



Juan Aguilar



L&G Engineering

Transportation Consultants

Date: 10/29/2014

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

ROW CSJ: 0921-02-356
Parcel: 10
From: Mile 9 N
To: Mile 11 N

BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED NO. 7014113000213385524

Juan Aguilar, Adam Abel Aguilar and Juan Rodolfo Aguilar
1210 Judi Street
Weslaco, Texas 78599-3814

Dear Gentlemen:

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 \$17,798.00 for your property, which includes \$8,895.00 for the property to be purchased and \$8,903.00 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. Asphalt-Paving	\$1.00
B. Concrete-Paving	\$1.00
C. Chain Link-Fence & Gate	\$1.00
D. Pipe-Fence & Gate	\$1.00
E. Trade-Pip Frame-Sign	\$1.00
F. Oak Tree-Landscaping	\$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.

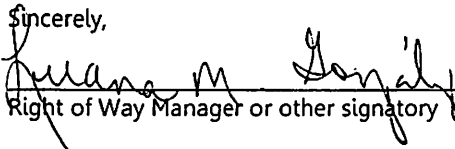
You may be entitled to additional payments and services under the County's Relocation Assistance Program. It is emphasized, however, that any benefits to which you may be entitled under this program will be handled entirely separate from and in addition to this transaction. You will receive a brochure 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: 10 Highway: Mile 6 West Road ROW CSJ: 0921-02-356
 Taking Type: Partial District: Pharr
 Size of Remainder: 13,950 sf. County: Hidalgo
 Type of Property: Improved/Commercial Federal Project: N/A
 Contract Fencing: N/A
 Appraised by: John H. Malcom, Jr.
 Date Appraised: 10-8-18

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)
Juan Aguilar, Adam Aguilar and Juan Adolfo Aguilar	Fee Simple	450 sf.	\$2,025.00	No

I. Appraised Values

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$2,025.00	\$6,870.00	\$0.00	\$8,903.00	\$17,798.00

II. Improvements

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Paving	Asphalt	\$72.00	\$1.00	N/A
B.	Paving	Concrete	1,512.00	1.00	N/A
C.	Fence & Gate	Chain Link	234.00	1.00	N/A
D.	Fence & Gate	Pipe	522.00	1.00	N/A
E.	Sign	Trade-Pip Frame	3,630.00	1.00	N/A
F.	Landscaping	Oak Tree	900.00	1.00	N/A

TABULATION OF VALUES (continued)

Parcel: 10

Highway: Mile 6 West Road

ROW CSJ: 0921-02-356

III. Damages and Enhancements

Total Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$261.00	\$0.00	\$8,642.00	\$8,903.00

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:	10-8-18	Recommended Value
Appraiser's Name:	John H. Malcom, Jr.	
Value of Whole Property	\$186,196.00	\$186,196.00
Parcel Area: 450 sf.		
VALUE FOR PARCEL		
Land: per sf. \$4.50	\$2,025.00	\$2,025.00
Easement	\$0.00	\$0.00
Improvements	\$6,870.00	\$6,870.00
Net Damages or (Enhancements)	\$8,903.00	\$8,903.00
OAS Value(s)	\$0.00	\$0.00
TOTAL COMPENSATION	\$17,798.00	\$17,798.00

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

TABULATION OF VALUES (continued)

Parcel: 10

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: October 8, 2018
Report Dated: October 8, 2018
Review Appraiser: Harvey L. Heerssen
Effective Date of Review: October 8, 2018

Parcel 10 is a partial taking of 450 sf. of land, more or less, out of Lot 2, Block 7, Sun Country Estates Subdivision Unit No. 2, an Addition to the City of Weslaco, Tx. being a subdivision out of Farm Tract 141, Block 139, West Tract Subdivision, Hidalgo County, Texas, according to the map thereof recorded in Volume 17, Page 52, Map Records, Hidalgo County Texas. Said Lot 1 is vested to Juan Aguilar, Adam Abel Aguilar, and Juan Rodolfo Aguilar by virtue of a Warranty Deed dated August 4, 2008, recorded by Document No. 1962385, Official Records, Hidalgo County, Texas.

This parcel is located on the east side of Mile 6 West Road at the northeast corner of Mile 6 Road and Edna Street, Weslaco, Texas. The whole property is utilized as an automobile sales and service facility that includes the main masonry store building and related site improvements. The main building is not impacted by the proposed acquisition.

The appraiser John H. Malcom, Jr. has selected five recent comparable sales to value the whole at \$4.50 per sf. The part taken is properly valued as a pro-rata part of the whole. Site improvements within the acquisition include a portion of the asphalt and concrete paving, chain link and pipe fencing with gates, a trade sign and landscaping that have been appraised accordingly. There are no market damages to the remaining land. Cost to cure damages are necessary to compensate for the improvements that were depreciated within the acquisition in order to replace these items 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. Negotiations to acquire this have been unsuccessful to date. Therefore, it is recommended that the total value of \$17,798.00 be approved for either new negotiations and/or acquisition by Eminent Domain Proceedings.

VII. Justification and Explanation for Credit if Retained.

Retentions of \$1.00 are applied to each site improvement on this parcel to encourage retention and removal.

TABULATION OF VALUES (continued)

Parcel: 10

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. Herrera

Contract Reviewing Appraiser (if applicable)

10-9-18

Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values

Ramon Garcia

County/City Representative

10/19/18

Date

ROW Staff Representative

Date

APPROVED BY
COMMISSIONERS' COURT
ON: *11/15/18*

1 REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: 1616 Edna Street
 Property Owner: Juan Aguilar, Adam Aguilar, and Juan Adolfo Aguilar
 Address of Property Owner: 1610 Judi Street, Weslaco, TX 78599-4070
 Occupant's Name: Aguilar's Auto Sales
 Whole: Partial: Acquisition

ROW CSJ: RCSJ: 0921-02-356
 District: Pharr
 Parcel: 10
 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 \$17,798 as of, October 8, 2018 based upon my independent appraisal and the exercise of my professional judgment;

That on June 25, 2018 and October 8, 2018 (date)(s), I personally inspected in the field the property herein appraised; that I afforded, Juan Aguilar, Adam Aguilar, and Juan Adolfo Aguilar the property owner or the representative of the property owner, the opportunity to accompany me at the time of the inspection; The property owner was contacted by certified mail which was successfully delivered. I met with Mr. Aguilar at the property 6/25/2018.

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on September 25, 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;

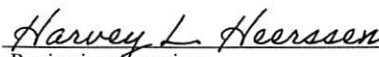
That I have no present or prospective interest in the property that is the subject of this report, and I have no personal interest or bias with respect to the parties involved;

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, SR/WA
 Certification Number 1320239-G
 October 8, 2018
 Date

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


10/09/2018
 Reviewing Appraiser Date