

L&G Engineering

Transportation Consultants

December 14, 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. 55

Dear Mr. Pena:

Attached herewith is a counter-offer as submitted by Elias & Andrea Garza, owners of Parcel 55 on December 14, 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 **\$34,047.00** 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

County: Hidalgo

Highway: Mile 6W

Project Limits: From Mile 9 North to Mile 11

Parcel No.: 55

Owner's Name: Elias & Andrea Garza

Approved Offer: \$24,047.00

Date Offer Sent: 09/18/2018

Owner's Counteroffer: \$34,047.00

Date Counteroffer Received: 12/14/2018

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: 8/2019
Possession of this property is needed by: 5/2019
Projected possession date, if settled is: 2/2019
Projected possession date, if condemned is: 7/2018
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)

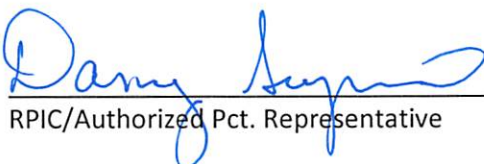
Parcel 55 is a partial acquisition containing 0.091 acres, parcel of land situated in Farm Tract 198 West Tract Subdivision, Hidalgo County, Texas. On 9/18/2018, Acquisition Provider (L&G) made an offer of \$24,047.00 to purchase the property to Elias & Andrea Garza. On Dec. 14, 2018, the property owner submitted a counter offer. The counteroffer indicated that the brick/masonry fence was initially valued at \$10,744.00 by the County appraiser. The property owner feels an additional \$10,000.00 would cover the cost of rebuilding the fence so they are requesting a total of \$34,047.00. Based on the information provided within the the counter offer and discussion by the acquisition team about the history of the fences valued with this project 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 TxDOT's approved value.

This administrative settlement of \$ 34,047.00 is / is not recommended for approval as being reasonable, justified, prudent and in the public interest.

RECOMMENDATION(S):


Project Engineer/ROW Administrator

12/18/18
Date


RPIC/Authorized Pct. Representative

1/2/19
Date

COUNTY APPROVAL:

County Judge

Date

12-14-18

Mr. Fernando Herrera
L&G Engineering
900 S. Stewart Rd., Ste. 10
Mission, TX 78572

RE: Purchase of 0.091 acres, more or less, out of Lot Farm Tract 198 West Tract Subdivision,
Hidalgo County, Texas

Hidalgo County
RE: Mile 6 West Project limits from Mile 9 N to Mile 11 N
RCSJ: 0921-02-356
Parcel No. 55

Dear Mr. Herrera,

I would like to take this opportunity to thank Hidalgo County, Precinct #1 and TxDOT for continuing with the acquisition of this very important project. With the increasing traffic due to schools and commercial development, it is essential that these improvements be made.

I have received your offer letter dated September 16, 2018 along with the appraisal prepared August 31, 2018 by Mr. John Malcom. I have reviewed the offer of **\$24,047.00** and the appraisal provided. After careful consideration I am requesting that you consider my counter offer for an additional **\$10,000.00**. I believe the cost of my improvements (brick/masonry fence) are way too low in the appraisal. Please note the following reasons:

1. I also see that the improvements are given 50% depreciation. I do not believe the cost to place the improvements new again would be sufficient at \$10,744.00 figure Mr. Malcom gives it.
2. If I were to reject the offer and Hidalgo County file condemnation proceedings, there would a loss of time and money for myself and more so, for Hidalgo County.

Therefore; I will sign a Deed and convey my property to Hidalgo County for **\$34,047.00**. I request that the County review my request and approve it so we can continue to proceed to closing Parcel 55.

Sincerely,



Elias & Andrea Garza
Weslaco, Texas 78596

L&G Engineering

Transportation Consultants



September 18, 2018

Certified Mail, Return Receipt Requested
No. 7017 0190 0001 1858 8637

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

ROW CSJ: 0921-02-356
Parcel: 55
From: Mile 9 N
To: Mile 11 N

Elias Garza & Andrea Garza
2720 W. Business 83
Weslaco, Texas 78596

Dear Sir/Madam:

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 \$ 24,047.00 for your property, which includes \$ 13,381.00 for the property to be purchased and \$10,666.00 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 – Masonry & Wood	\$ 1.00
B. Fence – Wire Mesh	\$ 1.00
C. Drive – Asphalt	\$ 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.

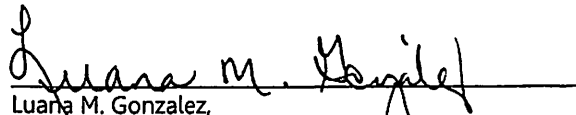
You have the right to discuss with others any offer or agreement regarding the County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as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


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: Mile 6 West (west side), 0.4 mile north of Mile 10 North Road
 Property Owner: Elias and Andrea Garza
 Address of Property Owner: 2720 W. Business 83, Weslaco, TX 78596-1225
 Occupant's Name: Elias and Andrea Garza
 Whole: Partial: Acquisition

ROW CSJ: RCSJ: 0921-02-356
 District: Pharr
 Parcel: 55
 Federal Project No: -
 Highway: Mile 6 County: Hidalgo
 West

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 \$24,047 as of, June 25, 2018 based upon my independent appraisal and the exercise of my professional judgment;

That on June 25, 2018 (date)(s), I personally inspected in the field the property herein appraised; that I afforded, Elias and Andrea Garza 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 and was afforded the opportunity to accompany me on the site visit. The 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 August 23, 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
 August 31, 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 9-3-18
 Reviewing Appraiser Date

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
		Total	\$11,561.00		

TABULATION OF VALUES (continued)

Parcel: 55

Highway: Mile 6 West Road

ROW CSJ: 0921-02-356

III. Damages and Enhancements

Total Non-Exempt Damages	Enhancements	Exempt Damages	Net Damages
\$6,384.00	\$0.00	\$4,282.00	\$10,666.00

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:	6-25-18			Recommended Value
Appraiser's Name:	John H. Malcom, Jr.			
Value of Whole Property	\$291,149.00			\$291,149.00
Parcel Area: 0.091 Ac.				
VALUE FOR PARCEL	\$1,820.00			\$1,820.00
Land: per ac. \$20,000				
Easement	\$0.00			\$0.00
Improvements	\$11,561.00			\$11,561.00
Net Damages or (Enhancements)	\$10,666.00			\$10,666.00
OAS Value(s)	\$0.00			\$0.00
TOTAL COMPENSATION	\$24,047.00			\$24,047.00

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

TABULATION OF VALUES (continued)

Parcel: 55

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: June 25, 2018
Report Dated: August 31, 2018
Review Appraiser: Harvey L. Heerssen
Effective Date of Review: September 2, 2018

Parcel 55 is a partial taking of 0.091 acres out of 5.60 acres of Farm Tract 198, West Tract Subdivision, Volume 2, Pages 34 thru 37 Map Records, Hidalgo County Texas. Said tract is vested to Elias and Andrea Garza by virtue of Warranty Deed with Vendor Lien dated September 29, 1995, recorded in Document Number 479502, Deed Records, Hidalgo County, Texas.

This parcel is located along the west side of Mile 6 West Road, 0.4 mile north of Mile 10 Road, in the ETJ of Weslaco, Texas. The whole property is improved land with a brick veneer residence with accessory and site improvements. The residence is not impacted by the proposed acquisition. Site improvements within the acquisition include a portion of the front masonry and wood fence, side fence and asphalt drive that are valued accordingly. The highest and best use is for residential purposes.

The subject whole property unit value of \$20,000 per acre is supported by five (5) residential sales similar to the subject. There are no market damages to the land but there are market damages to the front fence, entry gate and gate opener as a result of the acquisition. Cost to cure includes the estimated replacement cost for a new fence, gate and gate opener on the remainder in order to restore the remainder to the same utility as existed in the before condition.

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 \$24,047.00 be approved for either re-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 in order to encourage retention and removal.

TABULATION OF VALUES (continued)

Parcel: 55

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. Henman
Contract Reviewing Appraiser (if applicable)

9-3-18
Date

Division Reviewing Appraiser (if applicable)

Date

X. Approval of Values

Ramon Marcia
County/City Representative

9/11/18
Date

ROW Staff Representative

Date

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