

# L&G Engineering

Transportation Consultants

September 30, 2022

The Honorable David Fuentes  
Commissioner, Pct. 1  
c/o **Jorge Pena RPIC**  
1902 Joe Stephens Avenue  
Weslaco, Texas 78599

RE: County: Hidalgo  
RCSJ No. 0921-02-355  
Parcel No. 5  
MILE 6W: From: SH 107 to: Mile 14.5

Dear Commissioner Fuentes:

Attached herewith is a counter-offer as submitted by Ms. Esther Garza, owner of Parcel 5 on August 1, 2022. L & G Engineering has reviewed the aforementioned and hereby recommends that counter-offer **be approved**. Also attached is the N-9, Administrative Settlement Evaluation and Approval Form.

L & G Engineering believes the counter offer is within an acceptable range of value and we recommend that the counteroffer of **\$5,300.00** 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 "Fred" Herrera  
Right of Way Administrator

Attachments: As noted.  
cc: File



## HIDALGO COUNTY ADMINISTRATIVE EVALUATION AND APPROVAL FORM

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ROW CSJ: 0921-02-355

County: Hidalgo

Highway: Mile 6 W

Project Limits: From Mile 14 1/2 North to SH 107

Parcel No.: 5

Owner's Name: The Estate of Maria R. bernal

Approved Offer: \$2,900.00

Date Offer Sent: 06/15/2022

Owner's Counteroffer: \$5,300.00

Date Counteroffer Received: 09/29/2022

### Factors considered in evaluation:

1. Valuation Issues

- a.  Reconciliation of all available appraisals, including Owner's.
- b.  Other: Parcel Owner believes property was undervalued

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: 12/2022  
Possession of this property is needed by: 09/2022  
Projected possession date, if settled is: 09/2022  
Projected possession date, if condemned is: 02/2023  
Letting date: 01/2026
- 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 \_\_\_\_\_

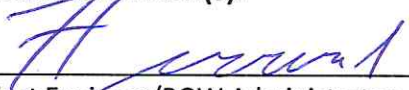
**Analysis and Conclusion:**

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

Parcel 5 is a partial acquisition containing 200 sq.ft. of land situated in Hidalgo County and also being a part of portion of a 0.005 acre tract of land out lot 9, block No. 2. On June 15, 2022, Acquisition Provider (L&G Engineering) made offer of \$2,900.00 to purchase the property to The estate of Maria R. Bernal. On August 1, 2022 the parcel owners submitted a counter offer of \$5,300.00 stating they believed their property was undervalued, and she felt the need to build a protection fence, due to the right of way line being closer to her home. She also feels it is a hazard to the livability of her home. Based on the information provided within the counter offer and discussion by the acquisition team it is recommended that the Administrative Settlement be approved. The difference between the county approved value of versus the property owner's counter offer (difference of \$2,400.00) does not warrant the risk and added expenses associated with standard eminent domain proceedings. Accepting said counter offer will help avoid project time delays and associated condemnation proceedings thus resulting in a cost saving to the county. We believe that the proposed counter offer is within a reasonable range.

This administrative settlement of \$ 5,300.00  is /  is not recommended for approval as being reasonable, justified, prudent and in the public interest.

**RECOMMENDATION(S):**

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

9/30/2022  
Date

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

10-6-22  
Date

**COUNTY APPROVAL:**

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

\_\_\_\_\_  
Date

Maria R. Bernal  
PO Box 1512  
Elsa, Texas 78543

Hidalgo County  
Mile 6 West Road  
RCSJ: 0921-02-355  
Parcel No. 05

RE: Offer Letter dated June 14, 2022

L & G Engineering  
Attn: Novelia Sanchez  
Right of Way Agent

Dear Ms. Sanchez,

I am in receipt of your offer letter dated 6/14/22, in which the Texas Department of Transportation and Hidalgo County are offering me \$2,900.00 for my land and improvements. After a review of the appraisal report and your offer letter, I have decided to reject the offer.

The reasoning and basis for my rejection is that because of the corner clip right of way taking, my land remainder will not be dimensional and will lose value on the real estate market. Furthermore, the proposed right of way line will be closer to my residence and will be a safety hazard to the livability of my home. It will be necessary to construct a protection and privacy fence at the corner of Mile 6 West Rd. and Zapata Street.

In view of the above information, I have determined that the following calculations better indicate the valuation of my land and damages to my residential property after the proposed right of way acquisition.

Fee Land – 200 SF @ \$4.00 PSF – As in appraisal	\$800.00
Fence-Chain-Link – As in appraisal	\$600.00
Palm-40 Foot – As in appraisal	\$1,200.00
Grass Sod Lawn – As in appraisal	\$300.00
Damage to land remainder	\$1,500.00
Rebuilt fence for safety purposes	<u>\$900.00</u>
<b>Total Value for ROW Purchase</b>	<b>\$5,300.00</b>

In consideration to the above calculations, my counter offer is for \$5,300.00. If this amount is considered and approved, I am willing to finalize the acquisition of Parcel 5.

Sincerely,

*By Ester Ganga*  
*The Estate of Maria R. Bernal*  
*9/29/22*



# L&G Engineering

Transportation Consultants

June 14, 2022

**Via Certified Mail, Return Receipt Requested**  
**No. 7021 0350 0002 1531 1599**

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

ROW CSJ: 0921-02-355  
Parcel: 05  
From: SH107  
To: Mile 14.5

María R. Bernal  
PO Box 1512  
Elsa, TX 78543-1512

Dear Ms. Bernal:

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 Right of way Manager, 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 **\$ 2,900.00** for your property, which includes **\$ 2,900.00** for the property to be purchased and **\$0.00** for damages to your remaining property. This amount is the total amount of just compensation for all interests in the portion of your property to be acquired, as determined in accordance with State law, less oil, gas and sulphur, subject to clear title being conveyed to the County. In accordance with State law, it is the policy of the County to negotiate with the fee owner(s) of the real property with the understanding that you will, in turn, negotiate with any lessee or other party who may own any interest in the land or improvements, with the exception of public utility easements, which will be handled separately by the County.

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

<u>Improvement</u>	<u>Type</u>	<u>Amount to be Subtracted if Retained</u>
A. Fence	Chain Link – 40 LF.	\$1.00
B. Landscaping	Palm Tree – 1 EA.	\$1.00
C. Landscaping	Grass Sod Lawn – 200 SF.	\$1.00

If you wish to accept the offer based upon this appraisal, please contact Project Manager Robert "Bob" Garcia or Fernando Herrera Right of Way Manager, 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.

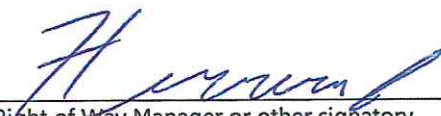
You have the right to discuss with others any offer or agreement regarding the County's acquisition of the subject property, or you may (but are not required to) keep the offer or agreement confidential from others, subject to the provisions of Chapter 552, Government Code (the Public Records Act) as 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 Project Manager Robert "Bob" Garcia or Fernando Herrera Right of Way Manager 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*")



1 REAL ESTATE APPRAISAL REPORT - TEXAS DEPARTMENT OF TRANSPORTATION

Address of Property: 200 Mile 6 W. Rd, Elsa, Hidalgo County, TX
Property Owner: Maria R. Bernal
Address of Property Owner: P.O. Box 1512, Elsa, TX 78543
Occupant's Name: Unknown
Whole: [ ] Partial: [x] Acquisition

District: Pharr
Parcel: 5
ROW CSJ: 0921-02-355
Federal Project No: NA
Highway: Mile 6 West Road County: Hidalgo

Purpose of the Appraisal

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

Market Value

Market value is defined as follows: "Market Value is the price which the property would bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of buying it, taking into consideration all of the uses to which it is reasonably adaptable and for which it either is or in all reasonable probability will become available within the reasonable future."

Certificate of Appraiser

I hereby certify:

That it is my opinion the total compensation for the acquisition of the herein described property is \$2,900 as of February 21, 2022, based upon my independent appraisal and the exercise of my professional judgment;

That on February 21, 2022, I personally inspected in the field the property herein appraised; that I afforded Maria R. Bernal the opportunity to accompany me at the time of the inspection. A certified letter was mailed on February 11, 2022. At the time of the inspection, the owner was not present.

That the comparables relied upon in making said appraisal were as represented by the photographs contained in the appraisal report and were inspected on or before March 21, 2022;

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 L&G Engineering 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
2. If so, is the denial of direct access material? 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.

[Handwritten signature of John Malcom, Jr.]

Appraiser Signature
John Malcom, Jr., MAI, AI-GRS, CCIM, SR/WA
Certification Number: 1320239-G
Appraisal Report Date: March 30, 2022

To the best of my knowledge, the value does not include any items which are not compensable under State law.
Harvey L. Heerason 5/25/2022
Reviewing Appraiser Date

### TABULATION OF VALUES

Parcel: 5 Highway: Mile 6 West Road ROW CSJ: 0921-02-355  
 Taking Type: Partial District: PHR  
 Size of Remainder: 0.245 Acres County: Hidalgo  
 Type of Property: Res-SFR  
 Contract Fencing: N/A  
 Appraised by: John H. Malcom, Jr.  
 Effective Date of Appraisal Report 2/21/2022  
 Date Appraised Report Signed: 3/30/2022

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)
Maria R. Bernal	Fee Simple	0.005 Ac. -200 sf. .	\$800.00	No

#### I. Appraised Values

Land Value	Improvement Value	Sign Value	Damages/Enhancements	Total Value
\$800.00	\$2,100.00	\$0.00	\$0 00	\$2,900.00

#### II. Improvements

Item No.	Improvement Type	Type Construction	Improvement Value	Retention Value	Bisection Category
A.	Fence	Chain Link-40 LF.	\$600.00	\$1.00	N/A
B.	Landscaping	Palm Tree-1 EA.	1,200.00	1.00	N/A
C.	Landscaping	Grass Sod Lawn - 200 SF.	300.00	1.00	N/A



**TABULATION OF VALUES (continued)**

Parcel: 5

Highway: Mile 6 West Road

ROW CSJ: 0921-02-355

**III. Damages and Enhancements**

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

**IV. Sign Values**

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

**V. Recapitulation**

Date:	2/21/2022 Effective Date			Recommended Value
Appraiser's Name:	John H. Malcom, Jr.			
Value of Whole Property (Economic Unit-0.227 Net Acres)	\$41,700.00			\$41,700.00
Parcel Area: 200 sf.				
<b>VALUE FOR PARCEL</b>				
Land: per sf. \$4.00	\$800.00			\$800.00
Easement	\$0.00			\$0.00
Improvements	\$2,100.00			\$2,100.00
Net Damages or (Enhancements)	\$0.00			\$0.00
OAS Value(s)	\$0.00			\$0.00
<b>TOTAL COMPENSATION</b>	<b>\$2,900.00</b>			<b>\$2,900.00</b>

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

**TABULATION OF VALUES (continued)**

Parcel: 5

Highway: Mile 6 West Road

ROW CSJ: 0921-02-355

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

**Appraiser: John H. Malcom, Jr.**  
**Effective Date of Report: February 21, 2022**  
**Report Dated: March 30, 2022**  
**Review Appraiser: Harvey L. Heerssen**  
**Effective Date of Review: May 25, 2022**

Parcel 5 is a partial taking of 0.005 acres (200 sf.) parcel of land situated in Hidalgo County, Texas and also being a part or portion of Lot 9, Block 2, First Section of Farmer's Home Subdivision No. 1, according to the plat or map thereof recorded in Volume 18, Page 19, of the Map Records of Hidalgo County, described in a deed dated October 7, 1975, from United States of America to Maria R. Bernal recorded in Volume 1459, Page 63, of the Official Records of Hidalgo County, Texas.

The whole property of 0.248 acres is located at the southeast corner of Mile 6 West Road and Zapata Street within the Elsa City Limits of Hidalgo County, Texas. The whole tract is improved with a single family residence and related site improvements. The residence is not impacted by the proposed right of way. The whole property contains land within a 20 foot alley easement that is excluded from the part taken.

Three comparable residential land sales support the land value of \$4.00 per sf. There are site improvements within the proposed taking that are valued accordingly. There are no market damages to the remainder land.

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 \$2,900.00 be approved for negotiations and acquisition.

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

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

**TABULATION OF VALUES (continued)**

Parcel: 5

Highway: Mile 6 West Road

ROW CSJ: 0921-02-355

**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

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

\_\_\_\_\_  
5/25/2022  
\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

**X. Approval of Values**

  
\_\_\_\_\_  
County/City Representative

\_\_\_\_\_  
6/7/22  
\_\_\_\_\_  
Date

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

\_\_\_\_\_  
Date

APPROVED BY  
COMMISSIONERS COURT  
ON: 