

MAY 31, 2022

CITY COUNCIL

CITY OF HEWITT, TEXAS

VIA: EMAIL

RE: OLD TEMPLE ROAD INTERSECTION DISCUSSION

COUNCIL:

BACK IN OCTOBER OF 2021, THE CITY WAS PROVIDED A TRAFFIC IMPACT ANALYSIS THAT WAS PREPARED FOR THE MOONLIGHT PHASE 4 DEVELOPMENT. WITHIN THIS STUDY IT WAS A RECOMMENDATION THAT SOME SORT OF REVISION BE MADE TO THE OLD TEMPLE RD/HEWITT DRIVE (OTR/HWT) INTERSECTION, TO IMPROVE THE PROJECTED FUTURE LEVEL-OF-SERVICE (LOS) RATING, ACCOUNTING FOR THE BUILD OUT OF THE OF MOONLIGHT SUBD. AND OVERALL GROWTH OF THE CITY. IT WAS A RECOMMENDATION OF THIS STUDY TO CONSIDER THE INSTALLATION OF A TRAFFIC SIGNAL AT THE OTR/HWT INTERSECTION, ON THE BASIS THAT DURING THE PM PEAK HOUR DATA, THIS INTERSECTION WOULD ACHIEVE A LOS RATING THAT WOULD WARRANT A TRAFFIC SIGNAL.

MOVING FORWARD WITH THAT DESIRE, IT WAS THEN DISCOVERED THE SPACING BETWEEN OTR/HWT AND THAT OF IH 35 AT FM 1695/FM 3148 INTERCHANGE WAS NOT SUFFICIENT TO ALLOW THE INSTALLATION OF A TRAFFIC SIGNAL GIVEN THE POSSIBILITY THAT TRAFFIC IN QUE AT THE OTR/HWT INTERSECTION COULD STACK UP INTO THE IH 35 AT FM 1695/FM 3148 INTERSECTION. FROM THAT TXDOT BEGAN TO SUGGEST OTHER OPTIONS. 1.) RE-ALIGN OTR, 2.) MAKE OTR A CUL-DE-SAC, AND 3.) PERFORM TRAFFIC PATTERN CHANGES TO THE INTERSECTION.

IN LOOKING AT THE OPTIONS BEFORE US THE CITY WORKED TOWARDS EITHER A RE-ALIGNMENT OR TRAFFIC PATTERN CHANGE.

- RE-ALIGNMENT DISCUSSION:
 - ULTIMATELY, I BELIEVE THAT THIS OPTION WOULD BE THE DESIRE OF THE CITY BUT DUE TO LAND USES AND BUDGETING REASONS THIS MAY NOT BE ACHIEVABLE AT THIS TIME. PLEASE REFER TO A POSSIBLE SCHEMATIC OF A REALIGNMENT ATTACHED FOLLOWING THIS MEMO.

- TRAFFIC PATTERN CHANGES:
 - CURRENTLY THIS OPTION IS ACHIEVABLE WITH THE INSTALLATION OF THE IMPROVEMENTS TO BE PERFORMED BY THE MOONLIGHT SUBD. DEVELOPMENT. PLEASE SEE THE ATTACHED EXHIBIT WITH THIS TRAFFIC PATTERN CHANGES ILLUSTRATED. THIS OPTION WOULD REMOVE THE

POSSIBILITY OF HAVING TRAFFIC ON OTR TURN LEFT ONTO HEWITT DR., THUS MEANING THAT THAT TYPICAL TRAFFIC WILL HAVE TO USE ALTERNATE ROUTES, SUCH AS BAXLEY ST. BUT WILL ALSO MEAN THAT TRAFFIC MAY BEGIN TO UTILIZE OTHER RESIDENTIAL STREETS AS WELL TO GAIN ACCESS BACK TO IH-35, SUCH AS GLENLEIGH DR., MERRIFIELD DR. AND THE NEW AGILE ST. WITHIN THE MOONLIGHT SUBD. THIS WOULD BE A CONCERN OF THE CITY DUE TO THE WIDTHS AND METHODS OF CONSTRUCTION USED. BY THIS I MEAN THAT WHAT WAS ONCE A TRUE RESIDENTIAL STREET, MAY NOW SEE LARGER TRAFFIC AMOUNTS AND TYPES, THUS MEANING MAINTENANCE COSTS WOULD INCREASE TO THOSE AREAS.

TxDOT IS REQUIRING SOME SORT OF ACTION BE TAKEN AT THIS INTERSECTION, AND SINCE MOONLIGHT SUBD. IS PROVIDING THE FUNDS AND LABOR TO PERFORM THEM, TxDOT AND MOONLIGHT SUBD. HAVE ENTERED INTO A DONATION AGREEMENT THAT WILL REQUIRE MOONLIGHT SUBD. FOLKS TO COMPLETE THIS WORK. HOWEVER, SINCE THIS IS AN EXISTING CITY STREET, THE COUNCIL MUST APPROVE THESE MEASURES PRIOR TO THEM BEGINNING THE WORK. IF APPROVED, THIS WORK WOULD BEGIN WITHIN THE MONTH.

I WOULD RECOMMEND APPROVING THIS TRAFFIC PATTERN CHANGE, BUT WORK TOWARDS A FUTURE REALIGNMENT OF OTR, TO INCLUDE PROPERTY PURCHASES/DONATIONS.

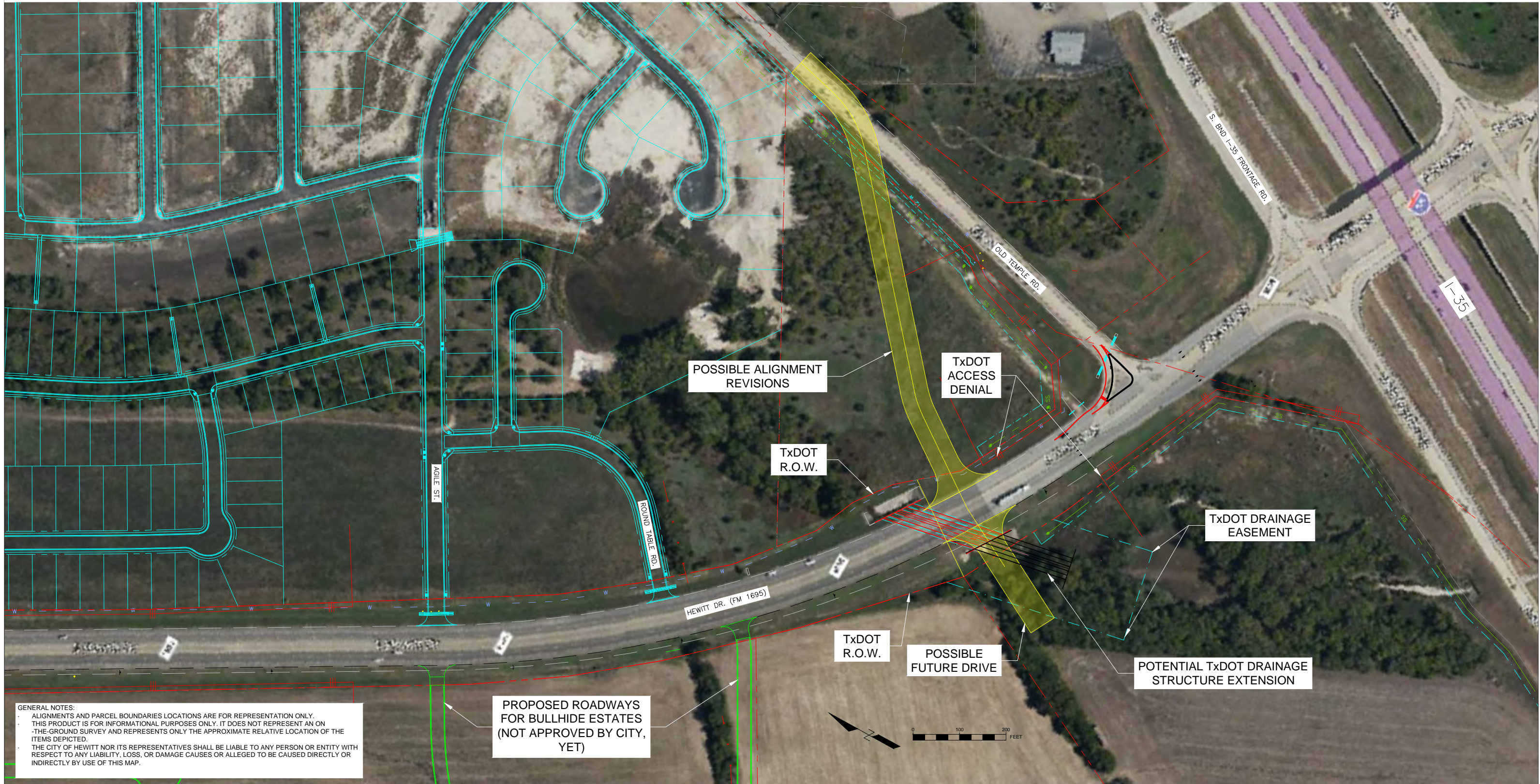
ATTACHMENTS/EXHIBITS:

- POSSIBLE REALIGNMENT OF OLD TEMPLE RD. OPTION
- TRAFFIC PATTERN CHANGE PLAN SHEET FROM DEVELOPMENT.
- MOONLIGHT SUBD./ TxDOT DONATION AGREEMENT

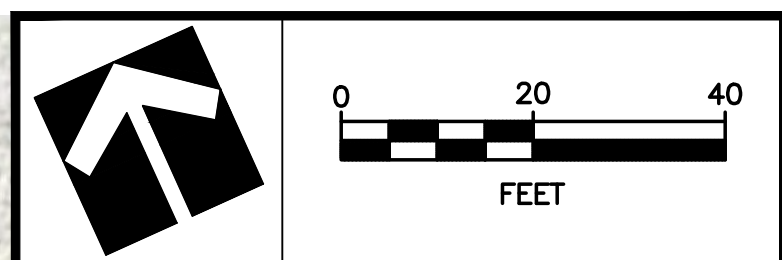
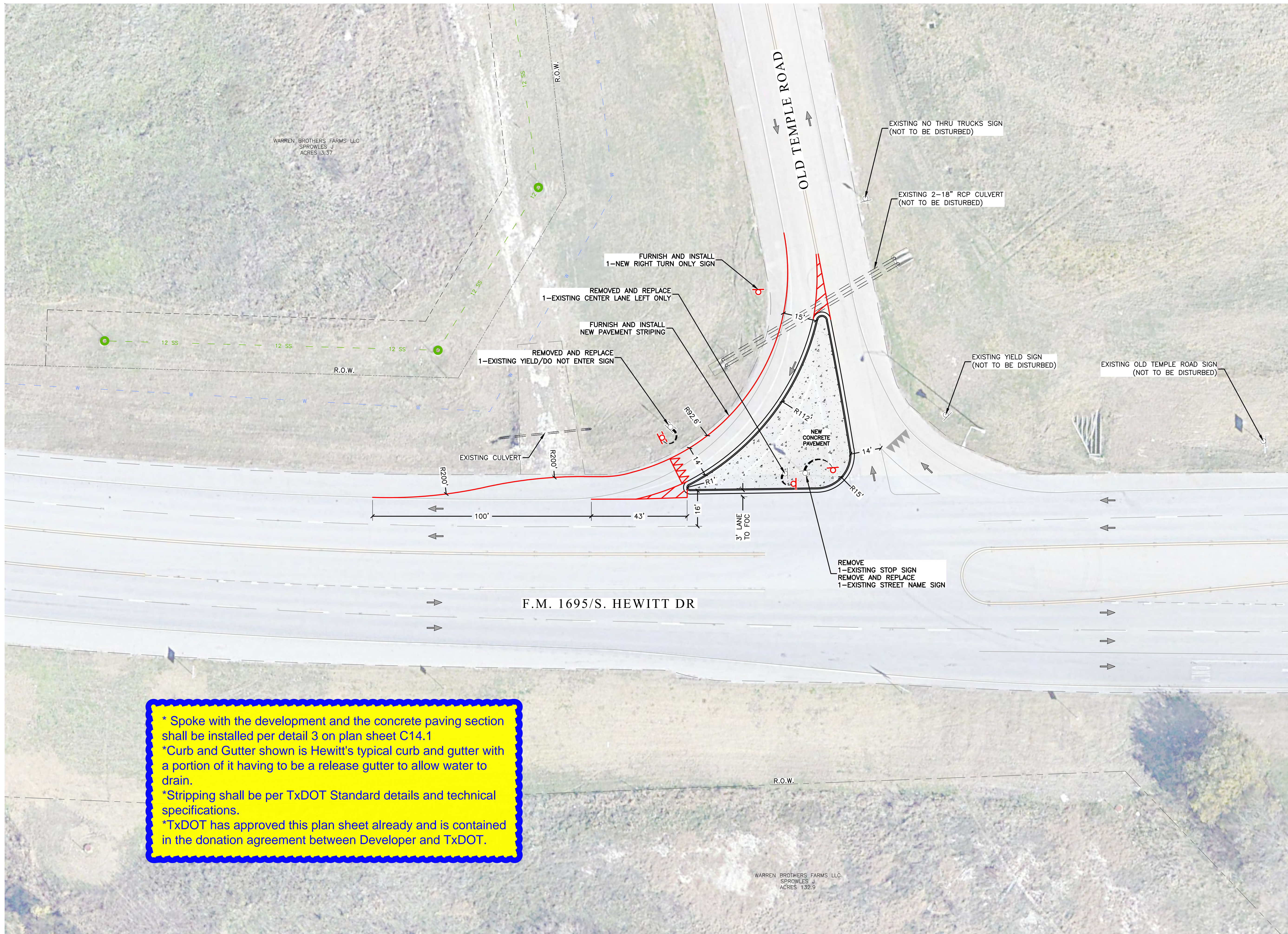
SINCERELY:


MILES W. WHITNEY, P.E.

DRAFT REALIGNMENT OPTION



GENERAL NOTES:
- ALIGNMENTS AND PARCEL BOUNDARIES LOCATIONS ARE FOR REPRESENTATION ONLY.
- THIS PRODUCT IS FOR INFORMATIONAL PURPOSES ONLY. IT DOES NOT REPRESENT AN ON-THE-GROUND SURVEY AND REPRESENTS ONLY THE APPROXIMATE RELATIVE LOCATION OF THE ITEMS DEPICTED.
- THE CITY OF HEWITT NOR ITS REPRESENTATIVES SHALL BE LIABLE TO ANY PERSON OR ENTITY WITH RESPECT TO ANY LIABILITY, LOSS, OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY USE OF THIS MAP.



LEGEND

	TRAFFIC FLOW ARROWS (FOR INFORMATIONAL PURPOSES ONLY)
	NEW SIGN
	NEW REINFORCED CONCRETE PAVEMENT SECTION
	NEW CONCRETE CURB AND GUTTER

* Spoke with the development and the concrete paving section shall be installed per detail 3 on plan sheet C14.1
 *Curb and Gutter shown is Hewitt's typical curb and gutter with a portion of it having to be a release gutter to allow water to drain.
 *Stripping shall be per TxDOT Standard details and technical specifications.
 *TxDOT has approved this plan sheet already and is contained in the donation agreement between Developer and TxDOT.



**MOONLIGHT PARK
 PHASE IV
 NEW RESIDENTIAL SUBDIVISION
 HEWITT, TEXAS**

**OLD TEMPLE ROAD
 AND HEWITT DRIVE
 NEW INTERSECTION EXHIBIT
 DRAWING STATUS**

THESE DRAWINGS WERE PREPARED UNDER THE AUTHORITY OF MONTY L. CLARK P.E. 90894, CLARK & FULLER, PLLC FIRM NO: F-10384.
 FOR REVIEW: THIS DOCUMENT IS RELEASED FOR THE PURPOSES OF INTERIM REVIEW ONLY AS PER DATE ON DRAWING. IT IS NOT TO BE USED FOR BIDDING OR CONSTRUCTION PURPOSES. ONLY DRAWINGS ISSUED "FOR CONSTRUCTION" CAN BE CONSIDERED COMPLETE.
 FOR CONSTRUCTION: FINAL DRAWINGS

	1-14-2022	Designed	MLC
		Drafted	ECB
		Project No	171750.05
		Plot Date	1-14-22
			2

WARREN BROTHERS FARMS LLC
 SPROWLES J
 ACRES 132.9

Donation #: CS-22-DON-46305
Log No. 46305
Project Name: Moonlight Hewitt LLC

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT TO ACCEPT DONATION
FROM OWNER OF LAND ADJACENT TO STATE HIGHWAY SYSTEM
FOR IMPROVING ACCESS TO OWNER’S LAND**

THIS AGREEMENT is entered between the State of Texas and the Donor, shown below as Contracting Parties, under Government Code, Chapter 575.

I. Contracting Parties:

The State: The Texas Department of Transportation
The Donor: Moonlight Hewitt LLC

II. Background:

Texas Transportation Code, §223.049, authorizes the State to contract with an owner of land adjacent to a highway that is part of the state highway system to construct an improvement on the highway right-of-way that is directly related to improving access to or from the owner’s land.

Texas Transportation Code §201.103, authorizes the State to plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads.

Texas Transportation Code, §201.206, authorizes the State to accept, from any source, a donation or contribution in any form, including realty, personalty, money, materials, or services, for the purpose of carrying out its functions and duties.

Texas Government Code, Chapter 575, requires the governing board of a state agency, not later than the 90th day after a donation valued at \$500 or more is accepted, to acknowledge the acceptance of the donation by majority vote at an open meeting and prohibits a state agency from accepting a donation from a person who is a party to a contested case before the agency until the 30th day after the date the decision in the case becomes final.

To provide guidance on when a donation may be accepted by the State, the Texas Transportation Commission has adopted rules relating to the State acceptance of donations, codified as 43 TAC §§1.500-1.506.

Acceptance of donations must be approved by the State’s Executive Director or his designee. The State’s Executive Director has authorized the State to accept the donation. The State and the Donor must execute a donation agreement if the donation is valued at more than \$1,500.00.

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III. Agreement:

The Donor agrees to donate and the State agrees to accept services, tangible personal property, and performance of highway improvement work on State highway right of way that is adjacent to the Donor's land that is directly related to improving access to the Donor's land (the "Project").

The Project consists of the design and construction of a concrete pavement to allow for a right-in/right-out/left-in for vehicle traffic off Old Temple Road onto Hewitt Drive in Hewitt, McLennan County, Texas. The Project is generally located as described in Exhibit A, Project Location Map, which is attached to this agreement. All design and construction work will be provided by the Donor, its consultant, or its contractor.

The estimated value of the donation is \$52,000.

All monetary donations shall be made by check or warrant made payable to the "Texas Department of Transportation Trust Fund" and mailed or delivered to the Texas Department of Transportation at the State address provided in XXV: Notices below.

IV. Representations and Warranties:

- A. The Donor represents and warrants that it has unrestricted use of the property and items described above and that by signing this agreement it relinquishes and transfers all rights and interest in and use to the State.
- B. The State does not approve and is not responsible for any representations made by the Donor for tax purposes.
- C. The Donor acknowledges that the State will act in reliance on and in consideration of the promises made by the Donor in this agreement.

V. Donation Accepted for Limited Purposes:

- A. Acceptance of the donation does not bind the State to a course of action or promise of performance except as specifically described in this Agreement above.
- B. No benefit will accrue to the Donor as a result of the State's acceptance of the donation except as specifically described in this Agreement above.

VI. Public Information:

- A. This agreement is public information and will be furnished to a requestor under the Public Information Act, Government Code, Chapter 552.
- B. The Donor is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

VII. Right of Access:

The Donor shall permit the State or its authorized representative access to sites owned by the donor that are used for performance of the work. The Donor will provide for all necessary right of way and utility adjustments or relocations in compliance with State utility accommodation policy needed for performance of the work on sites not owned or to be acquired by the State.

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VIII. Hold Harmless:

The Donor shall save harmless the State and its officers and employees from all claims and liability due to its materials or activities of itself, its agents, or employees, performed under this contract and that are caused by or result from error, omission, or negligent act of the Donor or of any person employed by the Donor. The Donor shall also save harmless the State from any and all expense, including, but not limited to, attorney fees that may be incurred by the State in litigation or otherwise resisting the claim or liabilities that may be imposed on the State as a result of such activities by the Donor, its agents, or employees.

IX. Pre-Construction Funding:

Upon execution of this agreement, the Donor shall remit to the State a check or warrant in an amount equal to \$0, made payable to the State in accordance with this Agreement. This amount is estimated to be the total of all pre-construction costs, including indirect costs that will be incurred by the State prior to the Donor's receipt of the construction bids.

X. Preliminary Project Development:

The Donor will prepare the preliminary schematic designs for access improvements and submit them to the State for review and approval.

The State, with assistance from the Donor, will conduct any public hearing or meetings required by the State's public involvement processes.

XI. Design:

The Donor will prepare the construction plans, specifications, and cost estimates. The construction plans shall be in a format prescribed by the State and in accordance with the State's current design standards as detailed in the *Highway Design Division Roadway Design Manual*. The specifications shall be the State's *2014 Standard Specifications for Construction and Maintenance of Highways, Streets and Bridges* or its currently approved revisions and any special specifications and provisions as provided by the State. The State will furnish to the Donor the pavement design and any standard design details as may be appropriate for the Project.

The State shall review the plans, specifications, and estimates provided by the Donor upon completion or at any time deemed necessary by the State. Should the State determine that the complete plans, specifications, and estimates are unacceptable, the Donor shall correct the design documents to the State's satisfaction. Should additional specifications or data be required by the State, the Donor shall redesign the plans and specifications to the State's satisfaction. The costs for additional work on the plans, specifications, and estimates shall be borne by the Donor.

The final construction plans furnished to the State shall be in electronic .pdf format and reproducible tracings.

XII. Utility Adjustments/Relocations:

The Donor will provide for all utility adjustments or relocations required by construction of the Project, and adjustments and relocations shall conform to the State Utility Accommodation Policy.

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If the Project requires the adjustment, removal, or relocation of utility facilities, the Donor and the State will establish the necessary utility work and the Donor will notify the utility owners of this necessity. The Donor shall be responsible for all costs associated with the adjustment, removal, or relocation of utility facilities, and the adjustment, removal, or relocation shall be in accordance with applicable State law, regulations, policies, and procedures. If additional utilities are required to be adjusted, removed, or relocated during the construction of the Project, the Donor will be responsible for all costs associated with the additional work. Utilities will adjust joint use agreements and attach the plan of adjustment.

XIII. Construction Funding:

The State will provide written notification to the Donor outlining the estimated funding necessary for the State's construction inspection and oversight of the Project, including the costs to be incurred by the State to provide any required construction engineering oversight and management services and indirect costs. Within thirty (30) days from receipt of the State's notification, the Donor shall remit to the State a check or warrant for the estimated amount, made payable to the State in accordance with III. Agreement above.

XIV. Design and Construction:

All aspects of the Project shall be carried out in compliance with applicable federal and state laws and regulations. The Project shall be designed and constructed in accordance with the latest state policies, procedures, standards, and guidelines. The Donor shall award and manage all construction work.

XV. State Construction Management:

The State will provide oversight and inspect all work performed and provide whatever engineering inspection and testing services may be required to ensure that the construction is accomplished in accordance with the approved plans and specifications. All correspondence and instructions to the contractor will be the sole responsibility of the Donor under the oversight and with the concurrence of the State.

Upon completion and acceptance of the Project, the State will issue to the Donor a "Final Construction Inspection Report," acknowledging that the Project has been constructed in accordance with the approved plans, specifications, and estimates.

XVI. Maintenance, Control, and Ownership of the Project:

After completion of construction, the Project will be an integral part of the State Highway System and thus under the ownership, control, and jurisdiction of the State. The State will assume full and complete control and operation of the Project. The State does not purport to convey or assign any interest or right of ownership in the completed highway facility to the Donor, its successors, or assigns. The Project may be modified, relocated, closed, or removed at the State's sole discretion. The State will not be held responsible to the Donor for any reimbursement if the Project is modified, relocated, closed, or removed.

XVII. Insurance:

The Donor shall furnish to the State a completed Certificate of Insurance (Form 1560-CS) and shall maintain the insurance in full force and effect during the period that the Donor or its agents are performing work on the State's right of way. The certificate of insurance must be received by the State before this Agreement is fully executed.

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For actual construction of the roadway and its appurtenances, the Donor and its contractors shall furnish a completed Certificate of Insurance and shall maintain the insurance in full force and effect until the construction is completed.

Self-insurance documentation acceptable to the State may be substituted for all or part of the coverage's required above for the Donor, but not for its agents or contractors.

XVIII. Performance and Payment Bonds:

The Donor shall furnish to the State a performance bond if the estimated value of the donation is in excess of \$100,000 and a payment bond if the estimated value of the donation is in excess of \$25,000. The bonds must be provided before work begins and must be received by the State before this Agreement is fully executed. Bonds must be executed by a corporate surety authorized to do business in this state and licensed by this state to execute the bonds as surety. Bonds must be payable to the State on forms approved by the Attorney General.

If the estimated value of the project increases, the Donor shall notify the State immediately. The State reserves the right to require the donor increase the value of the bonds.

The performance bond is solely for the protection of the State, in the amount of the estimated value of the donation as stated in this Agreement, and conditioned on the faithful performance of the work in accordance with the State-approved plans, specifications and contract documents.

The payment bond is solely for the protection and use of payment bond beneficiaries who have a direct contractual relationship with the Donor to supply public work labor or material and is in the amount of the estimated value of the donation as stated in this Agreement.

The bonds must clearly and prominently display on the bond or on an attachment to the bond:

1. The name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or
2. The toll-free telephone number maintained by the Texas Department of Insurance under Subchapter B, Chapter 521, Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number.

XIX. Final Accounting:

On completion of the Project, the State will make a final accounting in accordance with its established accounting procedures. Any funds previously deposited by the Donor and not expended for the cost of the work covered under this agreement will be returned to the Donor.

XX. Document and Information Exchange:

The Donor agrees to deliver to the State all general notes, specifications, copies of all contract documents, and related documentation electronically in a Microsoft® Word or similar document. If requested by the State, the Donor will use the State's document template.

XXI. Interest:

The State will not pay interest on funds provided by the Donor. Funds will be deposited into and retained in the State Treasury.

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XXII. Increased Costs:

If the State determines at any time that the funding provided by the Donor will be insufficient to cover the State's current cost for oversight of the Donor's work, the Donor will pay to the State the additional funds necessary to cover the anticipated additional cost. The State shall send the Donor a written notification stating the amount of additional funding needed and stating the reasons for the needed additional funds. The Donor shall pay the funds to the State within 30 days of the written notification, unless otherwise agreed to by all parties to this agreement. If the Donor cannot pay the additional funds, the State may terminate the contract.

XXIII. Termination:

If the Donor withdraws from the Project after the agreement is executed, it shall be responsible for all direct and indirect Project costs incurred by the State for the portion of the Project in which the State was participating. Except for the hold harmless provision and as otherwise provided in this paragraph, the termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the State and the Donor under this agreement. If the termination of this agreement is due to the failure of the Donor to fulfill its contractual obligations, the State will notify the Donor that breach of contract has occurred. Within sixty (60) days from the State's written notification, the Donor must remedy the breach as outlined by the State. If the Donor does not remedy the breach, the State may make a claim against the surety under the Performance Bond or take over the Project and prosecute the work to completion. In such case, the Donor shall continue to be liable to the State for the cost of the Project and any additional costs incurred by the State.

XXIV. Sole Agreement:

If the terms of the agreement are in conflict with the provisions of any other existing agreements between the Donor and the State, the latest agreement shall take precedence over the other agreements in matters related to the Project.

XXV. Notices:

All notices to either party by the other party will be delivered personally or sent by U.S. Mail, postage prepaid, to the following addresses:

Donor	State
Moonlight Hewitt LLC Attn: Mr. Jonathan Garza, Manager 1224 Austin Ave., Suite 330 Waco Texas., 76701	Texas Department of Transportation Attn: District Engineer 100 S. Loop Drive Waco, TX, 76704

The notice shall be received by the addressee on the date delivered or deposited in the mail. Either party may change its address by sending written notice of the change to the other in the manner provided.

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Each party is signing this agreement on the date stated under that party's signature.

THE STATE

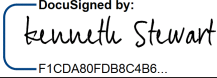
THE DONOR

Executed for the Executive Director and approved by the Texas Transportation Commission for the purpose and effect of carrying out the orders, established policies, or work programs approved and authorized by the Texas Transportation Commission.

The undersigned signatory warrants that he or she is an official representative of the organization making the donation described and is authorized to make the donation and to enter into this agreement on behalf of the organization.

Texas Department of Transportation

Moonlight Hewitt LLC

BY: 
F1CDA80FDB8C4B6...

AUTHORIZED SIGNATURE

BY: 
B9507F0644144BA...

AUTHORIZED SIGNATURE

Kenneth Stewart
Director of Contract Services

TYPED OR PRINTED NAME AND TITLE

Cody Turner
Manager

TYPED OR PRINTED NAME AND TITLE

DATE: 4/8/2022

DATE: 3/1/2022

EXHIBITS:
A – Project Location Map

