

GATEWAY MONUMENT AGREEMENT

THE STATE OF TEXAS §

COUNTY OF TRAVIS §

THIS AGREEMENT is made by and between the State of Texas, acting by and through the Texas Department of Transportation, hereinafter called the "State", and the City of Farmers Branch, acting through its duly authorized officials, as evidenced by Resolution or Ordinance Number _____, dated _____, hereinafter called the "Local Entity".

BACKGROUND

The State owns and maintains a system of highways, including _____ in Dallas County, Texas, for public use and benefit. The State agrees to allow for the construction of a Gateway Monument within the State's right of way and the Local Entity agrees to construct the Monument and to conduct the long term maintenance for this structure located at _____ from _____ to _____, referred to as the "Gateway Monument," more specifically described in **Attachment "A,"** Project Map, which is attached hereto. The Local Entity will conduct the Monument's long term maintenance activities through the use of Local Entity forces, contractors, or other means satisfactory to the Local Entity and the State.

THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree to the following.

A G R E E M E N T

SECTION 1. PERIOD OF THE AGREEMENT

This Agreement becomes effective when finally executed by the State and shall continue unless or until otherwise terminated as provided by this agreement.

SECTION 2. FINANCIAL RESPONSIBILITIES

All costs covered by this agreement including design, engineering, testing, construction, installation, access for maintenance, maintenance, labor, materials, supplies, traffic control, additional improvements, and if required, removal of the Gateway Monument, shall be the responsibility of the Local Entity.

Any administrative costs associated with the Gateway Monument that are incurred by the State, such as those related to proposal review, as well as developing, issuing, and monitoring the Agreement for approved the Gateway Monument project shall be the responsibility of the State.

SECTION 3. RESPONSIBILITY OF THE PARTIES

A. The Local Entity agrees to:

1. Provide Gateway Monument design plans to the State before execution of this agreement according to State policy and, upon final approval, furnish and construct the Gateway Monument according to plans approved by the State, which are set out more specifically in **Attachment "B,"** Local Entity's Final Gateway Monument Proposal, which is attached to this Agreement, and include any other related installation items that may be required; and
2. Furnish, erect, and maintain any barricades, signs and traffic handling devices, in accordance with the latest Texas Manual of Uniform Traffic Control Devices (MUTCD) and to the satisfaction of the State related to this project, as may be required to protect the safety of the public; and
3. Conduct periodic inspections of the Gateway Monument as deemed necessary; and
4. Provide for the construction and maintenance of all associated appurtenances that are considered by the State to be a part of the project. The Local Entity further agrees to remove such items from the project's location and restore the area to the satisfaction of the State upon termination of this Agreement in accordance with Section 9.

B. The State agrees to:

1. Review and evaluate the Gateway Monument proposal submitted by the Local Entity with due consideration to safety (location, potential for motorist distraction, accessibility for maintenance, etc.), aesthetics, community support and maintainability; and
2. Coordinate with other State Divisions, as appropriate, as well as interact with the Federal Highway Administration (FHWA) for input, review and approval; and
3. Cooperate with the Local Entity to determine the requirements for barricades, signs, and traffic handling devices to be used by the Local Entity during the construction and maintenance of the Gateway Monument; and
4. Provide maintenance access to the project location for the Local Entity or for its Contractor or group, and if possible, from outside the highway right of way; and
5. Conduct periodic inspections of the Gateway Monument as deemed necessary.

C. The Local Entity and State further agree that nothing contained in this Agreement will be construed to:

1. Give either party the power to direct and control the day-to-day activities of the other; or
2. Constitute the parties as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking; or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

SECTION 4. DESIGN AND PLACEMENT OF GATEWAY MONUMENTS

A. Gateway Monuments shall be designed and placed so as to:

1. Be freestanding.
2. Feature only the letters of the community name and/or officially adopted seal.
3. Include, if required by the State, approved protective graffiti coatings.
4. Be appropriate to its proposed setting and community context.
5. Be in proper size and scale with its surroundings.
6. Be composed of materials that are durable for the projected life span of the project.
7. Be located beyond the clear zone, for both main lane traffic and frontage road traffic.
8. Be located where maintenance can be safely performed, as specified in the Gateway Monument Agreement, and in conformance with State procedures.
9. Be subject to the review and approval of the State in consideration of design, size, and scale for appropriate integration on urban or rural highway features.

B. Gateway Monuments shall not:

1. Be allowed within the center median areas of interstate highway rights-of-way.
2. Contain religious, political, special interest, private, or commercial messages of any sort, including, but not limited to, symbols, logos, business names, trade names, jingles, or slogans.
3. Contain any displays of any sort, advertising, decorative banners, flags, or flag poles.
4. Display telephone numbers, street addresses, or Internet addresses.
5. Interfere with airspace above the roadway.
6. Create a distraction to the motoring public; for example, the Gateway Monument shall be large enough to interpret at highway speed, but not be so large that it demands attention from the motorist.
7. Include reflective or glaring surface finishes.
8. Include illumination that impairs or distracts the vision of transportation system users. Other lighting may be permitted.
9. Display blinking or intermittent or moving lights, including changeable message signs, digital displays, or lighted static displays such as LED.
10. Include moving elements (kinetic art) or simulate movement.
11. Include water features of any sort.
12. Interfere with official traffic control devices, nor interfere with the operational right-of-way above the roadway.
13. Be placed within State right-of-way upon trees, or painted or drawn upon rocks or other existing natural features.
14. Make use of or simulate colors or combinations of colors usually reserved for official traffic control devices described in the Texas Manual on Uniform Traffic Control Devices.
15. Require the removal of trees or other vegetation for visibility, or harm trees during construction. Pruning of tree branches or roots, and removal of shrubs should be avoided.
16. Negatively impact existing highway features, including existing signs, irrigation systems, necessary drainage patterns, and facilities.

SECTION 5. MAINTENANCE

The Local Entity shall provide regularly scheduled maintenance, as described in **Attachment "B,"** the Local Entity's Final Gateway Monument Proposal, for its projected lifespan. Maintenance shall include, but not be limited to, restoration work to maintain the integrity of the approved Gateway Monument, maintenance of any associated landscaping or lighting, and graffiti removal. Gateway Monuments shall be kept clean, free of graffiti, and in good repair. Graffiti removal shall conform to the most current State policies and guidelines, which require prompt removal of offensive messages and timely removal of all other graffiti. Maintenance practices of the Local Entity or its agent shall protect air and water quality as required by federal and state law.

SECTION 6. MONUMENT REMOVAL

The Local Entity shall remove the Gateway Monument covered by this agreement, if in the opinion of the State, it creates safety or operational concerns due to deterioration or inadequate maintenance or upon termination of the main Gateway Monument Agreement. The State will notify the Local Entity when it has determined that the Gateway Monument requires special attention. In the event the Local Entity fails to maintain, repair, rehabilitate, or remove the Gateway Monument in a timely manner, the State may choose to remove the Gateway Monument after thirty (30) days following notification to the Local Entity, and bill the Local Entity for all costs of removal and restoration of the area.

The State reserves the right to remove the Gateway Monument due to construction, rehabilitation, violation of the terms of this agreement, or other necessary activities affecting the transportation facilities without any obligation, compensation to, or approval of the Local Entity. The State will strive to notify the Local Entity of its intent to remove the Gateway Monument to allow for timely removal and salvage by the Local Entity, if possible.

The State reserves the right to remove or alter any Gateway Monument that presents an immediate safety hazard to the public without delay or advanced notification to the Local Entity.

SECTION 7. USE OF CONTRACTOR OR GROUP

The Local Entity shall have the right to engage any responsible Contractor or group to perform or provide any portion of the Local Entity's Gateway Monument activities specified in this Agreement. However, notwithstanding this provision, the Local Entity shall continue to remain responsible to the State to ensure performance of all its duties and responsibilities specified in this Agreement. The Local Entity shall ensure that any Contractor or group complies with all provisions of this agreement, and federal, state, and local laws, and regulations as may be applicable.

In the event the Local Entity engages a Contractor to perform Gateway Monument construction or maintenance activities under this Agreement, the Local Entity shall ensure that said Contractor shall indemnify the State for any and all damages and claims for damages by said Contractor, its employees, agents, or representatives, including any claims resulting from bodily injury or death to others, or, for loss of or damage to property of others, arising out of, incident to, or in any manner connected to Gateway Monument construction or

maintenance activities, and, for any or all liability arising from the negligent acts of said Contractor, its employees, agents, or representatives.

In the event the Local Entity engages and approves a responsible group to perform Gateway Monument construction or maintenance activities under this Agreement, the Local Entity shall require and ensure that said Contractor or group follow all the terms of this Agreement as well as all Attachments.

SECTION 8. INDEMNIFICATION

The Local Entity and the State each acknowledge responsibility for the acts, deeds, errors and omissions of its own employees. The parties agree that the Texas Tort Claims Act pertaining to governmental liability for tortious conduct and/or property damage shall apply to this Agreement.

The Local Entity shall also indemnify and save harmless the State from any and all expense, including, but not limited to, attorney fees, which may be incurred by the State in litigation or otherwise resisting a claim or liabilities that may be imposed on the State as a result of error, omission, or act of the Local Entity, its agents, or its employees.

SECTION 9. TERMINATION

This Agreement may be terminated under any of the following conditions:

- A. By mutual written agreement and consent of both parties; or
- B. By either party upon giving the other party thirty (30) days prior written notice; or
- C. By the State, upon giving the Local Entity ninety (90) days' prior written notice in the event the State reasonably determines that the Gateway Monument is not in the best interest of the traveling public.
- D. By the State, in the event the Local Entity is in Default of this agreement and the Local Entity has failed to cure such default on or before the thirtieth (30th) day after receipt of written notice from the State describing the nature of the default.

If either party terminates this Agreement, as provided herein, the Local Entity will be responsible for repair or removal of the Gateway Monument. In the event that the Local Entity does not provide the repair or removal services, the State may remove or repair the Gateway Monument and shall be entitled to reimbursement from the Local Entity for any reasonable costs incurred by the State to restore the State's right of way to its original condition.

SECTION 10. AMENDMENTS

Amendments to this Agreement shall be in writing and shall be executed by both parties.

SECTION 11. AUDIT

The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the contract or indirectly through a subcontract under the contract. Acceptance of funds directly under the contract or indirectly through a subcontract under this contract acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those

funds. An entity that is the subject of an audit or investigation must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.

SECTION 12. SUCCESSORS AND ASSIGNS

Subject to the provisions of Section 7, the Local Entity shall not assign or otherwise transfer its rights and obligations under this Agreement except with prior written consent of the State, and any prohibited assignment or transfer shall be null and void.

SECTION 13. REMEDIES

This Agreement shall not be considered as specifying the exclusive remedy for any default. All legal remedies may be pursued by either party and shall be cumulative.

SECTION 14. INSURANCE

If this agreement authorizes the Local Entity or its contractor to perform any work on State right of way, before beginning work, the entity performing the work shall provide the State with a fully executed copy of the State's Form 1560 Certificate of Insurance verifying the existence of coverage in the amounts and types specified on the Certificate of Insurance for all persons and entities working on the State right of way. This coverage shall be maintained until all work on the State right of way is complete. If coverage is not maintained, all work on State right of way shall cease immediately, and the State may recover damages and all costs of completing the work.

SECTION 15. NOTICES

All notices to either party by the other under this Agreement shall be delivered personally or sent by U.S. mail, postage prepaid, addressed to such party at the following addresses:

STATE : <u>Texas Department of Transportation</u> <u>District Engineer</u> <u>4777 E HWY 80</u> <u>Mesquite, Texas 75150</u>	LOCAL ENTITY: City of <u>Farmers Branch</u> Attn: <u>City Manager</u> <u>13000 William Dodson Pkwy</u> <u>Farmers Branch, TX 75234</u>
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SECTION 16. GRATUITIES

Texas Transportation Commission policy mandates that employees of the State shall not accept any benefits, gifts, or favors from any person doing business or who reasonably speaking may do business with the State under this Agreement. Any person doing business with or who may reasonably speaking do business with the State under this Agreement may not make any offer of benefits, gifts or favors to State employees. Failure on the part of the Local Entity to adhere to this policy may result in the termination of this Agreement.

SECTION 17. INCORPORATION OF PROVISIONS

Attachments “A” and “B” are made part of this contract. The parties shall comply with the provisions of Attachments “A” and “B” as if they were set forth in full within the body of this contract.

SECTION 18. SIGNATORY WARRANTY

Each signatory warrants that the signatory has necessary authority to execute this agreement on behalf of the entity represented.

THEREFORE, the Parties have executed this Agreement in duplicate originals.

THE CITY OF FARMERS BRANCH

By: _____

Title: _____

Date: _____

Attest: _____
City Clerk

THE STATE OF TEXAS

Certified as being executed for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by The Texas Transportation Commission

By: _____
District Engineer
Dallas District

Date: _____

Approved as to form:

City Attorney

List of Attachments:

- “A” – Project Map for Gateway Monument**
- “B” - Local Entity’s Final Gateway Monument Proposal**