

**MULTIPLE USE AGREEMENT**

STATE OF TEXAS §  
                                                  §  
COUNTY OF COLLIN §

**THIS AGREEMENT** made by the **NORTH TEXAS TOLLWAY AUTHORITY**, a regional tollway authority, hereinafter called the "NTTA," and the **CITY OF FARMERS BRANCH**, a home-rule municipality, herein called the "City," is executed to be effective as of the 27 day of October, 2008 (the "Effective Date").

**WITNESSETH**

WHEREAS, the City has requested that the NTTA enter into a joint use agreement to permit the City’s construction, maintenance and operation of a public parking facility and a trailhead (hereinafter called the "Facility"), all in connection with a public park and nature preserve to be developed and operated by the City, the Facility to be situated on certain right-of-way acquired and owned by the NTTA for Segment IV of the President George Bush Turnpike (the "Turnpike"), bounded on the east by Valley View Lane and on the west by the Trinity River, said right-of-way being described by metes and bounds attached hereto as Exhibit A and made a part hereof (the "Affected Property"); and

WHEREAS, as part of the NTTA’s environmental commitments identified in the Segment IV Final Environmental Impact Statement and Record of Decision, the NTTA agreed to participate in the establishment of the trailhead that is a part of the Facility; and

WHEREAS, the Facility is depicted on the general layout/site plan attached hereto as Exhibit B and made a part hereof; and

WHEREAS, the NTTA desires to approve the construction and operation of the Facility, such approval being expressly conditioned upon: (1) the City entering into this Agreement; (2) the City’s use of the Facility being in the public interest; (3) the Facility being constructed, operated and maintained by the City in such a manner that neither damages the Turnpike nor compromises conditions imposed by, or other features of, the Section 404 permit or related documents pertaining to the Turnpike regarding floodplain considerations as identified in the letter dated March 28, 2003 to Mr. Andrew L. Wallace from Mr. Anthony Kimmey and attached to this Agreement as Exhibit C and made a part hereof (all of such documents having been provided to the City); (4) the Facility not impairing the safety, impeding maintenance, or in any manner impairing the efficient operation, of the Turnpike or the Trinity Floodway, all as determined from engineering and traffic investigations conducted by the NTTA or other governmental body operating within the limits of its jurisdiction; and (5), the Facility’s proposed build-out and operation receiving concurrence from the U.S. Army Corps of Engineers (the "USACE") and Valwood Improvement Authority ("VIA"); and

WHEREAS, the NTTA is responsible for the operation and maintenance of the Turnpike, including the main lanes and all bridge-related elements, and the City will be responsible for the design, construction, operation and maintenance of the Facility, including all costs resulting therefrom.

## **AGREEMENT**

NOW, THEREFORE, in consideration of these premises and of the mutual covenants and agreements of the parties hereto to be by them respectively kept and performed as hereinafter set forth, it is agreed as follows:

### **1. DESIGN AND CONSTRUCTION**

In addition to the general layout/site plan for the Facility attached as Exhibit B, the City will prepare, or cause to be prepared, at the City's cost, the Facility's final plans, specifications and estimate (the "PS&E") in accordance with this Section 1. The parties acknowledge that the majority of the Affected Property is to remain undisturbed and shall be maintained in its current natural state.

The PS&E shall include, at a minimum, the design of the access control, necessary horizontal and vertical clearances for the Turnpike's structures, drainage appurtenances, adequate landscape treatment, adequate detail to ensure compliance with applicable structural design standards, sufficient traffic control provisions, and general layout. The 30%, 60% and 90% PS&E will be submitted to and reviewed by the NTTA, and the NTTA's reasonable design changes, if any, will be incorporated by the City into the final PS&E. Any future revisions or additions to the Facility shall be made only after the prior review and approval of those revisions and additions by the NTTA, the USACE and VIA, and the incorporation by the City of their requested design changes, if any. The City expressly acknowledges and agrees that none of the review rights provided in this Section 1 shall be deemed or construed to transfer any responsibility or duty to, or otherwise create any liability for, the NTTA, the USACE or VIA regarding the completeness, accuracy, soundness, legal compliance or other feature of the PS&E.

The PS&E and the City's overall design, construction and operation of the Facility shall fully comply with all applicable laws, rules, codes, industry standards and court decisions, whether federal, state or local (collectively, the "Applicable Laws"). Without limiting the foregoing, sidewalks, curb ramps, trails and other pedestrian elements to be constructed by the City shall be accomplished in accordance with the requirements of the Americans with Disabilities Act (ADA)

and with the Texas Accessibility Standards (TAS). Elements constructed by the City and found not to comply with ADA, TAS or other Applicable Laws shall be promptly corrected at the expense of the City. The City shall submit the PS&E to the Texas Department of Licensing and Regulation (the "TDLR") for review and inspection. The City shall furnish the NTTA with the TDLR Certification of Substantial Compliance for the Facility. No structures (including footings and foundations) constituting part of the Turnpike shall be altered or affected in any manner in connection with the construction, operation or maintenance of the Facility.

The City shall not undertake any activities on or improvements to the Affected Property prior to its receipt of (a) the NTTA's written approval of the PS&E and (b) such other permits, authorizations and permissions required under this Agreement, including the TDLR Certification of Substantial Compliance described above.

## **2. ACCESS AND INSPECTION**

To facilitate any required maintenance, operation, monitoring or inspection activities by the NTTA, the USACE, VIA, or their designated representatives or contractors for, respectively, the Turnpike, the floodway or the levee system, the City shall ensure that ingress and egress to the Facility is available at all times for those entities' personnel and equipment. If at any time, whether during or after construction of the Facility, the City installs security gates or a security system for the Facility, the NTTA, the USACE and VIA shall be provided keys or other appropriate means by the City to permit continuous, 24/7 access. While any one of those three (3) entities is conducting the above-described maintenance, operation, monitoring or inspection activities, it may require that parking at the Facility be prohibited. The three entities shall make reasonable efforts to provide the City with a minimum forty-eight (48)-hour advance notice prior to prohibiting parking, and the estimated duration of the prohibition, except in the case of an emergency requiring the prohibition, in which case the parking prohibition may be exercised immediately, with subsequent notice to the City occurring within a reasonable period of time thereafter.

## **3. FACILITY PARKING REQUIREMENTS**

Parking requirements (including a prohibition against overnight parking, except as provided below) shall be established and diligently enforced by the City limiting parking to single-unit motor vehicles of a size and capacity no greater than prescribed for 1-1/2 ton trucks, such vehicles to fully conform in size, weight and use to applicable law. Parking shall be permitted only in indicated areas, consistent with posted times (daytime only, except for occasional evening or overnight events approved by permit issued by the City), and otherwise in accordance with this Agreement. Parking shall be regulated so as to avoid any damage to the Turnpike's structures.

## **4. PROHIBITION OF VARIOUS USES AND SIGNS**

Requirements shall be established and diligently enforced by the City prohibiting the parking of vehicles transporting oversized, flammable, corrosive, volatile or explosive loads and prohibiting

use of the area in any manner for peddling advertising or other purposes not in direct furtherance of the objectives of the Facility and this Agreement. The City also shall implement and enforce reasonable restrictions on after-hours/evening parking at the Facility and in no event shall overnight parking be permitted, except for occasional evening or overnight events approved by permit issued by the City. The erection of signs, other than those required for the safe and proper use of the Facility, will be prohibited. All signs and methods of illumination or irrigation must be reviewed and approved in writing by the NTTA prior to their placement at the Facility and no signs shall be attached or other modifications made to the Turnpike's structures without the NTTA's prior written approval.

## 5. MAINTENANCE AND OPERATIONAL RESPONSIBILITIES

Maintenance and operation of the Facility shall be entirely the responsibility of the City and at the City's cost. This Agreement shall not be transferred, assigned or conveyed to a third party by the City without the NTTA's prior written approval, provided, however, that upon prior written notice to the NTTA, the City may retain a qualified contractor to perform the operation or maintenance of the Facility. By this Agreement, the NTTA hereby authorizes the hiring of Metro Landscape Maintenance by the City to perform mowing, trimming, and irrigation repairs along the Facility roadways; any successor contractors shall require the prior written notice described in the preceding sentence. Generally speaking, the City intends for the majority of the Affected Property to remain in its current natural state. The City's maintenance responsibilities shall include, but not be limited to, picking up trash and debris, mowing, landscape and irrigation maintenance, taking reasonable steps to prevent erosion and subsidence and otherwise keeping the Facility in a clean, sanitary and safe condition, and reasonable surveillance by police patrol in order to limit the possible creation of a nuisance or hazard to the public. Hazardous or unreasonably objectionable smoke, fumes, vapor or odors shall not be permitted to rise above the grade line of the Turnpike, nor shall the Facility subject the Turnpike or the Turnpike's frontage road to hazardous or objectionable discharge of any kind or otherwise impair the structural integrity, or the safe and efficient operation, of the Turnpike. Any irrigation method utilized at the Facility shall be designed, constructed and maintained to prevent the spraying or discharge of water onto the Turnpike or its frontage road at any time and shall include properly installed and maintained rain and freeze sensors. All structures located or constructed within the area covered by this Agreement and under, or within one hundred feet (100') of, any Turnpike feature shall be fireproof. The City hereby acknowledges that the NTTA owns, operates and maintains the Turnpike over and in the vicinity of the Facility and nothing in this Agreement limits or abrogates the NTTA's rights with respect thereto. The City's design, construction, operation and maintenance of the Facility shall under no circumstances interfere with or otherwise adversely affect the NTTA's ability to comply with and perform under any permit(s) issued for storm sewer or storm water drainage systems in connection with the Turnpike. Without limiting the foregoing, the City shall design, operate, and maintain the Affected Property in complete compliance with the NTTA's permit issued for the storm sewer and storm water drainage systems (the "MS4 Permit") utilizing best maintenance practices to minimize the discharge of litter and hazardous substances from the Facility to surface water during rainfall events. The City also shall deliver to the NTTA every January an annual report indicating the results of the City's maintenance activities on the Affected Property (e.g., the quantity of litter collected, impact of

impervious area relative to storm water runoff, and drainage improvements undertaken by the City), the number and nature of, and approximate attendance at, educational events held at the Facility, and other community benefits provided by the Facility, all over the preceding calendar year.

**6. FEES**

No fees will be collected by the City for parking at the Facility.

**7. TERM**

The initial term of this Agreement will be for a period of twenty (20) years commencing on the Effective Date. Upon the expiration of the initial twenty-year term, this Agreement shall be automatically extended for additional one (1)-year terms until terminated in the manner provided by Section 8 of this Agreement.

**8. TERMINATION**

After the expiration of the initial twenty-year term, either the City or the NTTA may terminate this Agreement by providing not less than twelve (12) months' prior written notice to the other party.

**9. MODIFICATION/TERMINATION OF AGREEMENT**

Notwithstanding the term and termination provisions contained in Sections 7 and 8 of this Agreement, if the Facility is abandoned, constitutes a nuisance or is not being operated in accordance with this Agreement, or in the reasonable judgment of either the City or the NTTA traffic or other conditions have changed so that the existence or use of the Facility is (a) impeding maintenance of, (b) constraining necessary expansion or other improvements to, or (c) damaging or impairing the safe and efficient operation of either the Turnpike or its frontage road, this Agreement may be: (i) modified if corrective measures acceptable to the City and the NTTA can be applied to eliminate the objectionable features of the Facility or (ii) only if after using all reasonable efforts to modify this Agreement pursuant to clause (i) the NTTA is unable to eliminate the objectionable feature, terminated.

**10. RESTORATION OF AREA**

Upon the expiration or termination of this Agreement, and if the NTTA requests by prior written notice that the Affected Property be restored to its condition as of the Effective Date, the City shall accomplish that work within a time frame reasonably acceptable to the NTTA, but not less than ninety (90) days. The City shall be responsible for all resulting restoration costs, unless the termination was accomplished as described in the concluding sentence of Section 9 of this Agreement.

**11. PREVIOUS AGREEMENTS**

It is understood that this Agreement in no way modifies or supersedes the terms and provisions of any existing agreements between the City and the NTTA.

## 12. INDEMNIFICATION

The City acknowledges that it is not an agent, servant, or employee of the NTTA, and that it is responsible for its own acts and deeds and for those of its agents, employees and contractors during the construction, operation and maintenance of the Facility.

The City and the NTTA do not intend that this Agreement be construed as indicating that those parties have formed a joint enterprise and hereby disclaim such relationship. The purposes for which each party has entered into this Agreement are separate and distinct and there are no pecuniary interests, no common purpose and no equal right of control among the parties hereto.

By entering into this Agreement or otherwise, neither the City nor the NTTA intends to waive, relinquish, limit or condition its rights of governmental immunity.

The City shall, within ninety (90) days after its receipt of the NTTA's written notification thereof, pay (or reimburse the NTTA for) the full cost of repairing any Turnpike or frontage road facilities, components or structures damaged or impaired by the City's construction, maintenance or operation of the Facility or the City's other exercise of its rights under this Agreement. If the City disputes that it is responsible for such payment or reimbursement under this paragraph, it shall so inform the NTTA, in writing, within forty-five days (45) days after its receipt of the NTTA's written notification described above.

Nothing in this Agreement shall be construed as creating any liability in favor of any third party against the City or the NTTA. Additionally, this Agreement shall not be construed as relieving any third party from any liability to the City or the NTTA, and the City shall become fully subrogated to the NTTA's rights with respect to sums paid under this paragraph and shall be entitled to maintain an action over and against the third party that may be liable for having caused the City to pay such sums.

To the greatest extent permitted by law, the City shall and does hereby indemnify and release the NTTA against any and all claims, damages, suits, costs, causes of action, losses and all other damages, including those arising from injury or death of persons or loss or damage to property, arising out of, incident to, or in any manner connected with construction, maintenance or operation of the Facility; said indemnification shall extend to and include, if timely requested in writing by the NTTA, the obligation to defend a suit brought against the NTTA for the acts, activities or conduct described in this paragraph.

The City's obligations under this Section 12 shall survive the termination or expiration of this Agreement; provided, however, that the event giving rise to the City's obligations herein occurs during the term of the Agreement.

### **13. INSURANCE**

The City acknowledges and fully accepts its responsibility for the Facility. The City shall provide necessary safeguards to protect the public on the Turnpike, including the provision of adequate insurance for payment of any damages which might result during the construction or operation of the Facility, and to save the NTTA harmless from damages, as provided in Section 12 of this Agreement. Specifically, the City shall obtain, prior to its exercise of any rights under this Agreement and maintain through the term hereof, comprehensive general liability insurance with limits of not less than \$2,000,000 for bodily injury, including those resulting in death, and \$500,000 for property damage on account of any one occurrence, with an aggregate limit of \$1,000,000. The City, for itself and all agents and contractors, waives all claims which arise or may arise in its favor against the NTTA pursuant to this Agreement which are covered in whole or part by valid and collective insurance. The certificate(s) evidencing the coverage of the required insurance shall indicate that (a) the indemnity provided and liability assumed under Paragraph 12 hereof is covered by the described insurance, (b) that the insurance shall not be cancelled or materially changed without at least thirty (30) days' prior written notice to the NTTA, (c) that the foregoing waiver of claims by the City does not invalidate or otherwise affect the insurance, and (d) the naming of the NTTA as an additional insured. The City shall provide a certificate of insurance conforming to this Section 13 prior to the commencement of any construction work on the Affected Property and shall deliver an updated certificate thirty (30) days prior to the stated expiration date of any previously provided certificate.

### **14. USE OF RIGHT-OF-WAY**

The NTTA's execution and delivery of this Agreement does not impair or relinquish the rights of the NTTA to construct, operate, maintain and repair the Turnpike, nor shall the City's use of the Affected Property ever be construed as abandonment by the NTTA of any of its rights in and to the Turnpike. The NTTA does not grant any interest in the Turnpike or its rights therein but merely consents to the City's use to the extent that the NTTA's authority and interests permit.

### **15. ADDITIONAL CONSENT REQUIRED**

The NTTA asserts only that it has sufficient title or rights for the operation of the Turnpike and related purposes. The City shall be responsible for obtaining such additional consent or agreement as may be necessary to perform its rights under this Agreement. Those additional consents and agreements include any required from the USACE, VIA, other governmental entities and public utilities.

### **16. FHWA ADDITIONAL REQUIREMENTS**

Insofar as the Facility is located on the Federal-Aid Highway System, the City shall use the Facility in compliance with all other requirements imposed by or pursuant to Title 23, Code of Federal Regulations, Part 710, subpart D, as said regulations may be amended. The NTTA will provide notice to the City regarding any future amendments to the applicable regulations that affect this Agreement.

**17. AMENDMENTS**

Any changes in the time frame, character, rights or responsibilities of the parties hereto shall be enacted by a written amendment executed by all parties hereto.

**18. LEGAL CONSTRUCTION**

In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained in this Agreement. The parties agree that this Agreement shall be construed in accordance with Texas law. No provision of this Agreement shall be interpreted against or to the disadvantage of any party by any court, other governmental or judicial authority or arbitrator by reason of such party having or being deemed to have drafted, structured or dictated such provision.

**19. NOTICES**

All notices required under this Agreement shall be mailed or hand delivered to the following respective addresses:

NORTH TEXAS TOLLWAY AUTHORITY

North Texas Tollway Authority  
Executive Director  
5900 W. Plano Parkway, Suite 100  
Plano, TX 75093

CITY OF FARMERS BRANCH

City of Farmers Branch  
City Manager's Office  
City Hall Plaza  
PO Box 819010  
Farmers Branch, TX 75381-9010

**20. EARLY TERMINATION**

Notwithstanding anything to the contrary contained in this Agreement, if within two (2) years following the Effective Date the City has not obtained all required permits, authorizations and permissions to construct the Facility (including any required of the USACE or VIA), the NTTA may terminate this Agreement for cause.

[Remainder of Page Intentionally Left Blank]




IN WITNESS WHEREOF, the parties have hereunto affixed their signatures. Said Agreement becomes effective when last executed.

NORTH TEXAS TOLLWAY AUTHORITY

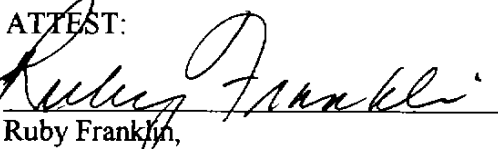
CITY OF FARMERS BRANCH

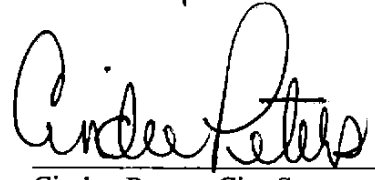
By:   
Title: Executive Director

By:   
Title: Gary D. Greer, City Manager

Date: 10-27-08

Date: September 12, 2008


ATTEST:  
  
Ruby Franklin,  
Secretary

  
Cindee Peters, City Secretary

Approved as to Form:

Approved as to Form:

Locke Lord Bissell & Liddell LLP,  
the NTTA's General Counsel

By:   
Frank E. Stevenson II  
JAMES T. RAIN

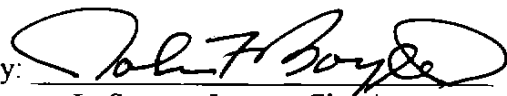
By:   
L. Stanton Lowry, City Attorney

Exhibit A

Description of the Affected Property

[see following pages]

EXHIBIT A

COUNTY: DALLAS  
HIGHWAY: SH190  
PROJECT LIMITS: From I.H. 35E Near Trinity Mills Road in Dallas County To I.H. 636 West Near Valley View Lane in Dallas County  
PARCEL: NTTA 258-51

Page 1 of 3  
June 26, 2001  
Revised November 02, 2001  
Revised May 15, 2002  
Revised January 29, 2004

Being 30.4930 acres of land in the James F. Cheroeth Survey, Abstract Number 287 in the City of Farmers Branch, Dallas County, Texas, and being that certain tract of land as described in deeds to Martha Myra as recorded in Volume 91069, Page 6469 (called 1.001 acre tract), Volume 87094, Page 1636 (called 2.4188 acre and 16.767 acre tracts) and Volume 2002069, Page 3842 (called 10.368 acre tract) of the Deed Records of Dallas County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at a one-half inch steel rebar found for the most southerly corner of that certain tract of land as described in a deed to City of Irving as recorded in Volume 82147, Page 2080 of said Deed Records, also being on the existing northwest right-of-way line of Valley View Lane (a variable width right-of-way);

THENCE, NORTH 47 degrees 16 minutes 36 seconds EAST, along said existing northwest right-of-way line of Valley View Lane, a distance of 129.04 feet to the POINT OF BEGINNING, said beginning point being on the centerline of the Elm Fork of the Trinity River;

1. THENCE, NORTH 18 degrees 36 minutes 22 seconds WEST, departing said existing northwest right-of-way line of Valley View Lane along the centerline meanders of the Elm Fork of the Trinity River, a distance of 173.70 feet to a point;
2. THENCE, NORTH 00 degrees 18 minutes 46 seconds WEST, continuing along said centerline meanders of the Elm Fork of the Trinity River, a distance of 144.00 feet to a point;
3. THENCE, NORTH 25 degrees 43 minutes 51 seconds EAST, continuing along said centerline meanders of the Elm Fork of the Trinity River, a distance of 396.00 feet to a point;
4. THENCE, NORTH 13 degrees 03 minutes 07 seconds EAST, continuing along said centerline meanders of the Elm Fork of the Trinity River, a distance of 321.21 feet to a point;
5. THENCE, NORTH 23 degrees 43 minutes 33 seconds WEST, continuing along said centerline meanders of the Elm Fork of the Trinity River, a distance of 853.42 feet to a point for the northwest corner of said 10.368 acre tract common with the southwest corner of that certain tract of land as described in a deed to the City of Farmers Branch as recorded in Volume 76108, Page 0372 of said Deed Records;

- 9. THENCE, SOUTHWEST, departing said common line, along said existing northwest right-of-way line of Valley View Lane and along said non-tangent curve to the left having a central angle of 27 degrees 20 minutes 07 seconds, a radius of 1687.28 feet and an arc length of 804.98 feet, the chord of said non-tangent curve bears South 60 degrees 50 minutes 33 seconds West having a chord distance of 797.87 feet to a point for the end of said curve;
- 8. THENCE, NORTH 89 degrees 58 minutes 55 seconds EAST, along the common north line of said 2.4188 acre tract and the south line of said City of Farmers Branch tract passing at 344.03 feet, the northeast corner of said 2.4188 acre tract common with the northwest corner of said 1.001 acre tract, and continuing along the common north line of said 1.001 acre tract and the south line of said City of Farmers Branch tract in all a total distance of 732.58 feet to a set one-half inch steel rubber yellow plastic cap marked "AZB" for the east corner of said 1.001 acre tract on the existing northwest right-of-way line of said Valley View Lane and being on a non-tangent curve to the left;
- 7. THENCE, NORTH 88 degrees 39 minutes 55 seconds EAST, along the common north line of said 18.757 acre tract and the south line of said City of Farmers Branch tract a distance of 416.55 feet to a three-quarter inch galvanized steel pipe found for the northeast corner of said 2.4188 acre tract common with the northwest corner of said 2.4188 acre tract;
- 6. THENCE, NORTH 88 degrees 40 minutes 01 seconds EAST, departing said centerline meanders of the Elm Fork of the Trinity River, along the common north line of said 10.368 acre tract and the south line of said City of Farmers Branch tract passing at 80.00 feet a set one-half inch steel rubber with yellow plastic cap marked "AZB", continuing a total distance of 880.66 feet to a point for the northeast corner of said 18.388 acre tract common with the northwest corner of said 15.757 acre tract from which a wire in a tree bears SOUTH 00 degree 47 minutes 56 seconds WEST a distance of 0.77 feet;

EXHIBIT 'A'

COUNTY: DALLAS  
 HIGHWAY: 54190  
 PROJECT LIMITS: From I.H. 36E Near Trinity Mills Road to Dallas County To L.H. 635 West Near Valley View Lane in Dallas County  
 NTA 259-61

Page 2 of 3  
 June 25, 2001  
 Revised November 02, 2001  
 Revised May 18, 2002  
 Revised January 29, 2004

EXHIBIT "A"

COUNTY: DALLAS  
HIGHWAY: SH190  
PROJECT LIMITS: From I.H. 35E Near Trinity  
Mills Road in Dallas County  
To I.H. 635 West Near Valley  
View Lane in Dallas County  
PARCEL: NTTA 259-51

Page 3 of 3  
June 25, 2001  
Revised November 02, 2001  
Revised May 15, 2002  
Revised January 29, 2004


10. THENCE, SOUTH 47 degrees 12 minutes 52 seconds WEST, continuing along said existing northwest right-of-way line of Valley View Lane, a distance of 119.68 feet to a point for the southwest corner of said 2.4188 acre tract common with the southeast corner of said 15.757 acre tract;

11. THENCE, SOUTH 47 degrees 16 minutes 20 seconds WEST, continuing along said existing northwest right-of-way line of Valley View Lane, a distance of 1675.85 feet to the POINT OF BEGINNING containing 30.4930 acres of land, more or less.

This description accompanies parcel map of even date herewith.

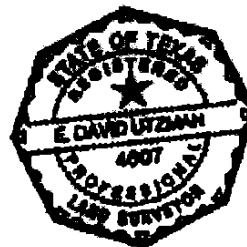
All bearings are based on project coordinates for North Texas Tollway Authority Segment IV of the President George Bush Turnpike.

FIELD NOTES PREPARED FROM FIELDWORK PERFORMED IN 1999 and 2000.

  
E. David Utzman  
Registered Professional Land Surveyor  
Texas No. 4607

FEB 02, 2004  
Date

Azedondo, Zapeda & Brunz, Inc.  
11365 McGee Road  
Dallas, Texas 75238  
(214) 341-9900  
(214) 341-9925 - Fax



**JAMES F. CHENORTH SURVEY  
ABSTRACT NO. 267**

MARSHA MYRE  
VOL. 87034, PG. 1838  
D.R.D.C.T.  
(CALLED 15.737ac & 2.488ac)

MARSHA MYRE  
VOL. 92028, PG. 2468  
D.R.D.C.T.  
(CALLED 1509 ac)

CITY OF FARMERS SURVEY  
VOL. 1908, PG. 0252  
D.R.D.C.T.

VALLEY BANCH  
LIMITED PARTNERSHIP  
VOL. 86264, PG. 1328  
D.R.D.C.T.

TIP OF BANK

CENTRAL LINE

LEGEND

1/4" = 100'
2/4" = 200'
3/4" = 300'
1" = 400'
1 1/4" = 500'
1 1/2" = 600'
1 3/4" = 750'
2" = 1000'
2 1/2" = 1250'
3" = 1500'
3 1/2" = 1750'
4" = 2000'
4 1/2" = 2250'
5" = 2500'
5 1/2" = 2750'
6" = 3000'
6 1/2" = 3250'
7" = 3500'
7 1/2" = 3750'
8" = 4000'
8 1/2" = 4250'
9" = 4500'
9 1/2" = 4750'
10" = 5000'

STATE OF TEXAS  
REGISTERED PROFESSIONAL LAND SURVEYORS  
S. DAVID UZTMANN  
4007  
INTERNATIONAL  
LAW SERVICES

*E. J. Smith*  
Certified  
Registered Professional Land Surveyor  
Texas No. 1207  
Date: 03/24/04

*J. J. [Signature]*  
Recommended  
Taylor Dean W. Graham, III  
Surveyor General  
Date: 2/19/04

*John F. Baker*  
Approved  
DATE Corporation  
General Engineering Consultant  
Date: 2/16/04

*Marcus Brown*  
Approved  
North Texas Railway Authority  
Director of Engineering  
Date: 2-11-04

OWNER: MARSHA MYRE  
JAMES F. CHENORTH SURVEY, ABSTRACT NO. 267  
DALLAS COUNTY, TEXAS

MORTH TEXAS TOLLWAY AUTHORITY  
President George Bush Turnpike  
WEST OF THE PLAZA

ARREDONDO, ZEPEDA & DIAZ, INC.  
10358 MCCREY ROAD  
DALLAS, TEXAS 75238 (214) 341-9900

DATE BY - 000 APPROV BY - 000

Exhibit B

General Layout/Site Plan for the Facility

[see following page]

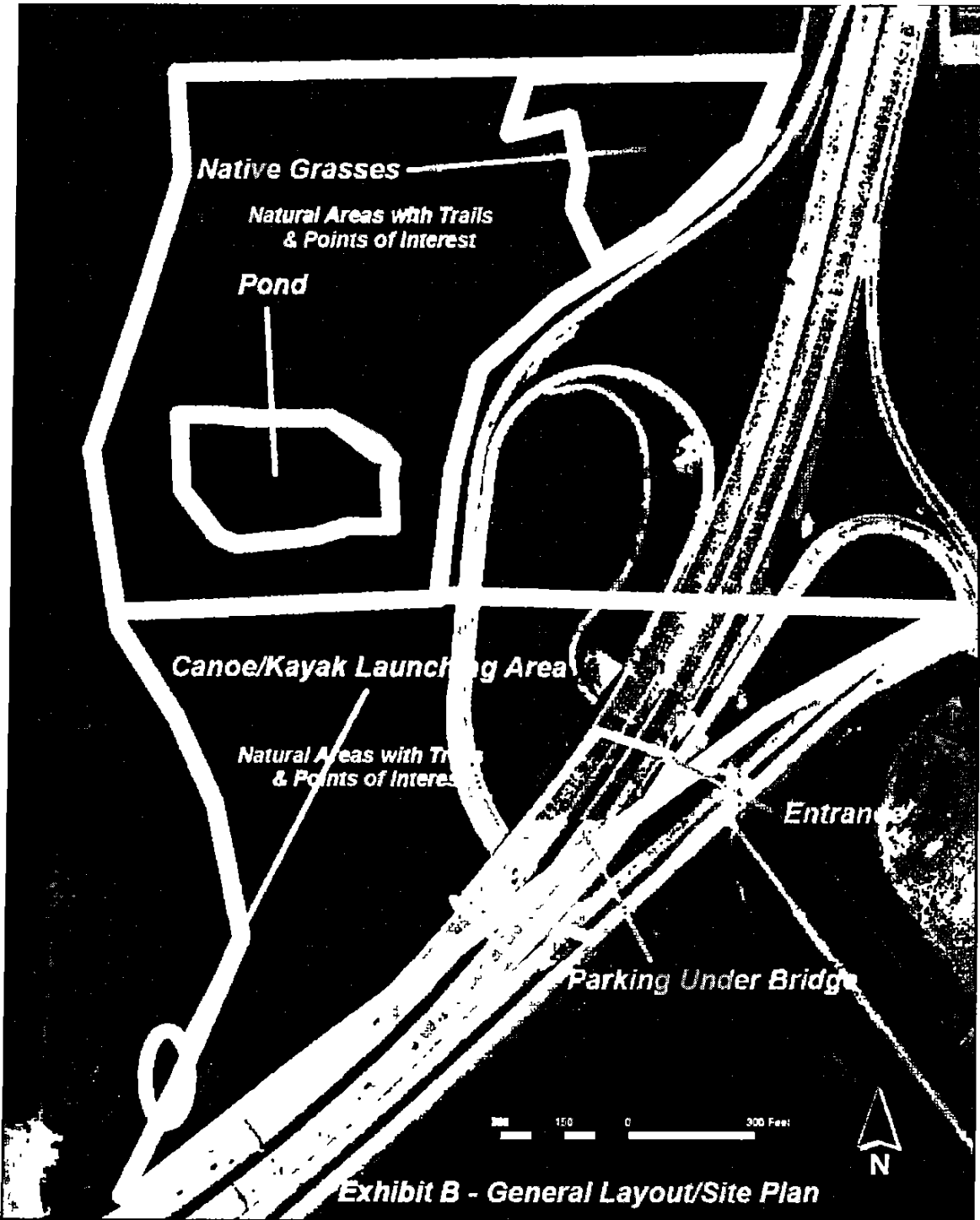




Exhibit C

Letter dated March 28, 2003 to Mr. Andrew L. Wallace from Anthony Kimmey

[see following pages]

**Carter Burgess**

PARCELS 25S-51

March 28, 2003

Mr. Andrew L. Wallace  
White & Wiggins, LLP  
1999 Bryan Street, Suite 3470  
Dallas, Texas 75201

**Re: President George Bush Turnpike – Right-of-Way Acquisition  
Parcels 25S-51 and 25S-57**

Dear Mr. Wallace:

This letter summarizes some of the permitting requirements that could be applied to development of all or part of the "25S-51 & 25S-57" properties, located in the Elm Fork Trinity River floodplain north of Valley View Lane in Farmers Branch, Dallas County, Texas. Because the subject properties occur within the area encompassed by the Trinity Regional Environmental Impact Statement (TREIS), several provisions would apply in addition to the "traditional" Section 404 permitting requirements. These provisions are primarily associated with flood protection and stem from the 1988 Record of Decision (ROD) for the TREIS and subsequently implemented Corridor Development Certificate (CDC) process. These provisions are briefly explained below along with a summary of the potential Section 404 permitting scenario for the subject properties.

**1988 Record of Decision and Corridor Development Certificate Requirements**

The 1988 ROD for the TREIS includes several requirements that apply to all project actions requiring a permit under Section 10 of the Rivers and Harbors Act or Section 404 of the Clean Water Act within a prescribed area of the Trinity River basin, which includes the subject property. These requirements include:

- No increase in the 100-year flood or Standard Project Flood (SPF).
- Maximum valley storage decrease of 0% and 5% for the 100-year and SPF events, respectively.
- No increase in erosive water velocity off-site.

These requirements must be addressed during the Section 404 permitting process for all projects within the Regulatory Branch of the Fort Worth District, U.S. Army Corps of Engineers (USACE) within the TREIS study area.

The 1998 TREIS ROD requirements led the cities and counties within the study area to form the Trinity River Steering Committee, which was facilitated by the North Central Texas Council of Governments (NCTCOG). This committee adopted numerous resolutions, including a "Resolution for a Joint Trinity River Corridor Development Certificate Process." This eventually led to the formation of the CDC process in place today. As with the 1988 ROD, the CDC process has several common permitting criteria, including:

- No increase in the 100-year flood water surface elevation and no significant increase in the SPF water surface elevation.

- Maximum valley storage decrease of 0% and 5% for the 100-year and SPF events, respectively.
- No increases in erosive water velocity onsite or off-site.
- Equal conveyance reductions on both sides of the channel incorporated into hydraulic modeling.

Ultimately, the CDC process leaves floodplain development decisions to local governments. However, the CDC process allows other communities along the Trinity River Corridor to review and comment on projects in neighboring communities' jurisdiction. Because the subject property lies within the CDC Regulatory Zone, it must meet the four CDC common criteria previously listed.

#### **General Section 404 Permitting Considerations**

Waters of the U.S constitute approximately 2.5 and 0.2 acres of parcels 25S-51 and 25S-57, respectively. Development activities within Waters of the U.S. are regulated by the USACE under the authority of Section 404 of the Clean Water Act. The USACE has developed different types of permits under Section 404. These permits include the Individual Permit and General Permits.

The General Permits were developed to expedite the permit process for those impacts that are similar in nature and have minimal impacts on the aquatic environment. These permits can include Regional, Nationwide or Programmatic General Permits. Nationwide Permits (NWP) are the most commonly used type of General Permit. Since February 1997, the NWP has had the maximum allowable acreage reduced from 10 acres, thence to 3 acres, and to today's maximum threshold of 0.5 acres.

- ➔ There are numerous NWPs that could apply to development activities on the subject property. However, the most commonly used permit for development activities is NWP 39, which covers residential, commercial and institutional developments. NWP 39 authorizes impacts less than or equal to 0.5-acres of jurisdictional waters, and impacts less than or equal to 300 linear feet of perennial streambed. Pre-construction notification is required if proposed impacts to Waters of the U.S. are: (1) greater than 0.10-acres; (2) occur in open waters including perennial and intermittent streams; or (3) impact greater than 300 linear feet of intermittent streambed. In order for impacts to be authorized under NWP 39, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed. Note that NWP 39 cannot be used to authorize impacts to Waters of the U.S. within the floodway or within the floodplain below the headwaters of a streambed (defined as the point at or below the average flow velocities measure 5 cubic feet per second [cfs]). For impacts to 0.10-acres or less of Waters of the U.S., the permittee must submit a report within 30 days of completion of the work to the USACE.

Development projects that exceed 0.50-acres of impacts to Waters of the U.S. would have to apply for an Individual Permit. The Individual Permit requires a lengthy public review process, detailed alternatives analysis, and oftentimes, extensive agency coordination. Mitigation is normally required. The Individual Permit process can take anywhere from six months to 1-plus years before an applicant receives a permit.

During the Section 404 permit process, the USACE will require that an applicant go through a sequence of steps to ensure minimal impacts to the aquatic environment. The first step is avoidance. This step involves examining measures/designs to avoid filling or otherwise discharging into Waters of the U.S. In the event an applicant is unable to avoid impacting jurisdictional waters, one must attempt to minimize impacts. Finally, if attempts at avoiding or minimizing impacts are unsuccessful in eliminating all discharges into jurisdictional waters, one must then provide compensatory mitigation. Depending on the types and quantities of impacts, a mitigation ratio of 1:1 up to 10:1 can be assessed to compensate for impacts to jurisdictional waters. For this project, the mitigation ratio would likely be 1:1 up to 2:1.

Mitigation is generally required on-site and in-kind. This means that the USACE and reviewing agencies prefer to see mitigation conducted somewhere within the project area, or adjacent to it, and within similar habitat. Due to the impacts, a mitigation plan would likely involve shrub and tree planting, native grass and forb plantings, and irrigation (although the latter is often not required of an applicant, it is oftentimes recommended to ensure survival). Any mitigation areas would have to be deed-restricted or placed in some other similar protective covenant. Plantings would have to meet a measurable success criteria (e.g., 80 percent ground cover) and monitoring would be required. Annual monitoring reports would be required during the monitoring period, which may last from five years to an indefinite period. Other mitigation measures available may include a fee payment, by way of mitigation banks and in-lieu fees. These systems require a payment prior to construction efforts.

The following cost estimates could be used to have a better understanding of the potential permitting cost to develop this tract of land.

Section 404 Permitting (Individual permit)	\$75,000 – \$250,000
Mitigation (onsite)	\$1,700 – \$10,000 per acre
Mitigation (bank)	\$21,000 – \$ 25,000 per acre
Mitigation (in-lieu)	\$10,000 – \$28,000 per acre
Monitoring (5 years)	\$30,000

#### **Floodplain Consideration**

In order to develop these properties to meet City of Farmers Branch requirements, they must be raised a minimum of 1-foot above the 100-year water surface elevation. The 100-year water surface elevation through these properties is 437.18 as indicated at hydraulic cross section 687+05 located north of Valley View Lane. Because the 100-year water surface elevation is 437.18, parcel 25S-51 will need to be raised by an average height of 9-feet and parcel 25S-57 will need to be raised by an average height of 8-feet to meet this development requirement. However, it is unlikely that the entire property could be developed because the USACE typically requires the valley storage impacts to be mitigated within the same river reach as the property. Furthermore, because a large portion of each property is within the effective flow limits for the 100-year flood and Standard Project Flood (SPF), placing embankment on these sites probably will cause an unacceptable rise in the 100-year and SPF water surfaces. Refer to the enclosed Exhibits for the overall property limits and the effective flow limits of the 100-year and SPF events.

Mr. Andrew Wallace  
March 28, 2003  
Page 4 of 4


**Conclusions**

Because portions of these sites would have to be filled prior to development and because Waters of the U.S. would be impacted, it may be difficult to obtain CDC and Section 404 permits. The major obstacle to permitting would be the flood protection requirements associated with CDC permit review. The enclosed spreadsheet summarizes some of the costs that the property owner(s) would encounter to develop each parcel based on two options. Option 1 consists of developing the entire property west of the Valwood Improvement Authority right-of-way easement as shown on the enclosed exhibit (Option 1). This option will require impacts to the valley storage and Waters of the U.S. to be mitigated on an undetermined off-site property within the Elm Fork of the Trinity River floodplain. Option 2 is based on developing a portion of each property as shown on the enclosed exhibit (Option 2). With this option, the valley storage impacts are mitigated onsite and the impacts to Waters of the U.S. will be mitigated through the use of a mitigation bank.

If you have any questions or need additional information, please feel free to call me at 214-638-0145.

Sincerely,

CARTER & BURGESS, INC.

  
Anthony Kimmey, P.E.  
Associate Principal

c: Mark Bourna, P.E., NTTA

Enclosures

02190901.L06.doc

**PRESIDENT GEORGE BUSH TURNPIKE  
RIGHT-OF-WAY ACQUISITION  
ESTIMATED DEVELOPMENT COST  
FOR  
PARCEL 25a-61**

**OPTION 1  
FULLY DEVELOPED PROPERTY  
OFF-SITE VALLEY STORAGE AND WATERS OF THE U.S. MITIGATION  
(APPROXIMATELY 16.7 ACRES)**

Description	Quantity	Unit	Unit Cost		Total Cost	
			Lower	Upper	Lower	Upper
Embankment (see note 1)	315,494	CY	\$1.00	\$15.00	3,154,940	4,732,426
Property for Valley Storage & Waters of the U.S. Mitigation (see note 2)	47	AC	\$4,500.00	\$12,000.00	211,500	564,000
USACE Section 404 Mitigation Planning (see note 3)	6	AC	\$1,700.00	\$10,000.00	10,200	60,000
USACE Section 404 Permitting	1	LS	\$2,000,000	\$25,000,000	2,000,000	25,000,000
USACE Section 404 Permit Monitoring	1	LS	\$3,000,000	\$30,000,000	3,000,000	30,000,000
Engineering for Site Development (approximately 7%)	1	LS	\$2,500,000.00	\$400,000.00	2,500,000	400,000
<b>Total Developed Area (Acres)</b>					<b>16.7</b>	<b>16.7</b>
<b>Total Cost</b>					<b>\$3,724,840</b>	<b>\$3,048,746</b>
<b>Cost Per Square Foot</b>					<b>\$3.16</b>	<b>\$3.31</b>

- Notes:
- Embankment quantity required to bring the entire site to elevation 438.18 (1-foot above the 100-year water surface elevation).
  - The valley storage & Jurisdictional Waters of the U.S. mitigation cost is based on purchasing a nearby tract within the Elm Fork of the Trinity River floodplain. A minimum 47-acre tract excavated to a depth of 4 feet is required to mitigate the loss in valley storage (66% of the total fill volume below the SPF event).
  - Mitigation planning is based on mitigating Jurisdictional Waters of the U.S. impacts at a 2:1 ratio. The impacted surface area is approximately 2.6 acres.

**OPTION 2  
PARTIALLY DEVELOPED PROPERTY  
OFF-SITE VALLEY STORAGE AND OFF-SITE WATERS OF THE U.S. MITIGATION  
(APPROXIMATELY 7.7 ACRES)**

Description	Quantity	Unit	Unit Cost		Total Cost	
			Lower	Upper	Lower	Upper
Embankment (see note 1)	109,775	CY	\$10.00	\$15.00	1,097,750	1,646,625
And W/ty Fiber Device	1	EA	\$50,000.00	\$1,000,000.00	50,000	1,000,000
Jurisdictional Waters of the U.S. Mitigation (see note 2)	6	AC	\$21,000.00	\$28,000.00	126,000	168,000
USACE Section 404 Permitting	1	LS	\$75,000.00	\$250,000.00	75,000	250,000
Engineering for Site Development (approximately 7%)	1	LS	\$25,000.00	\$150,000.00	25,000	150,000
<b>Total Developed Area (Acres)</b>					<b>7.7</b>	<b>7.7</b>
<b>Total Cost</b>					<b>\$1,422,750</b>	<b>\$2,214,625</b>
<b>Cost Per Square Foot</b>					<b>\$4.34</b>	<b>\$4.77</b>

- Notes:
- Embankment quantity required to bring the developed site to elevation 438.18 (1-foot above the 100-year water surface elevation).
  - Mitigation for the Jurisdictional Waters of the U.S. is based on utilizing a mitigation bank at a 2:1 mitigation ratio. The impacted surface area is approximately 2.6 acres.
- Note: This analysis does not account for hydrologic impacts to the Elm Fork of the Trinity River. Possible impacts include: increasing the 100-year and SPF water surface elevations, restricting the 100-year effective flow limits and increasing the channel velocity during storm events.

**PRESIDENT GEORGE BUSH TURNPIKE  
RIGHT-OF-WAY ACQUISITION  
ESTIMATED DEVELOPMENT COST  
FOR  
PARCEL 254-57**

**OPTION 1  
FULLY DEVELOPED PROPERTY  
OFF-SITE VALLEY STORAGE AND WATERS OF THE U.S. MITIGATION  
(APPROXIMATELY 10.4 ACRES)**

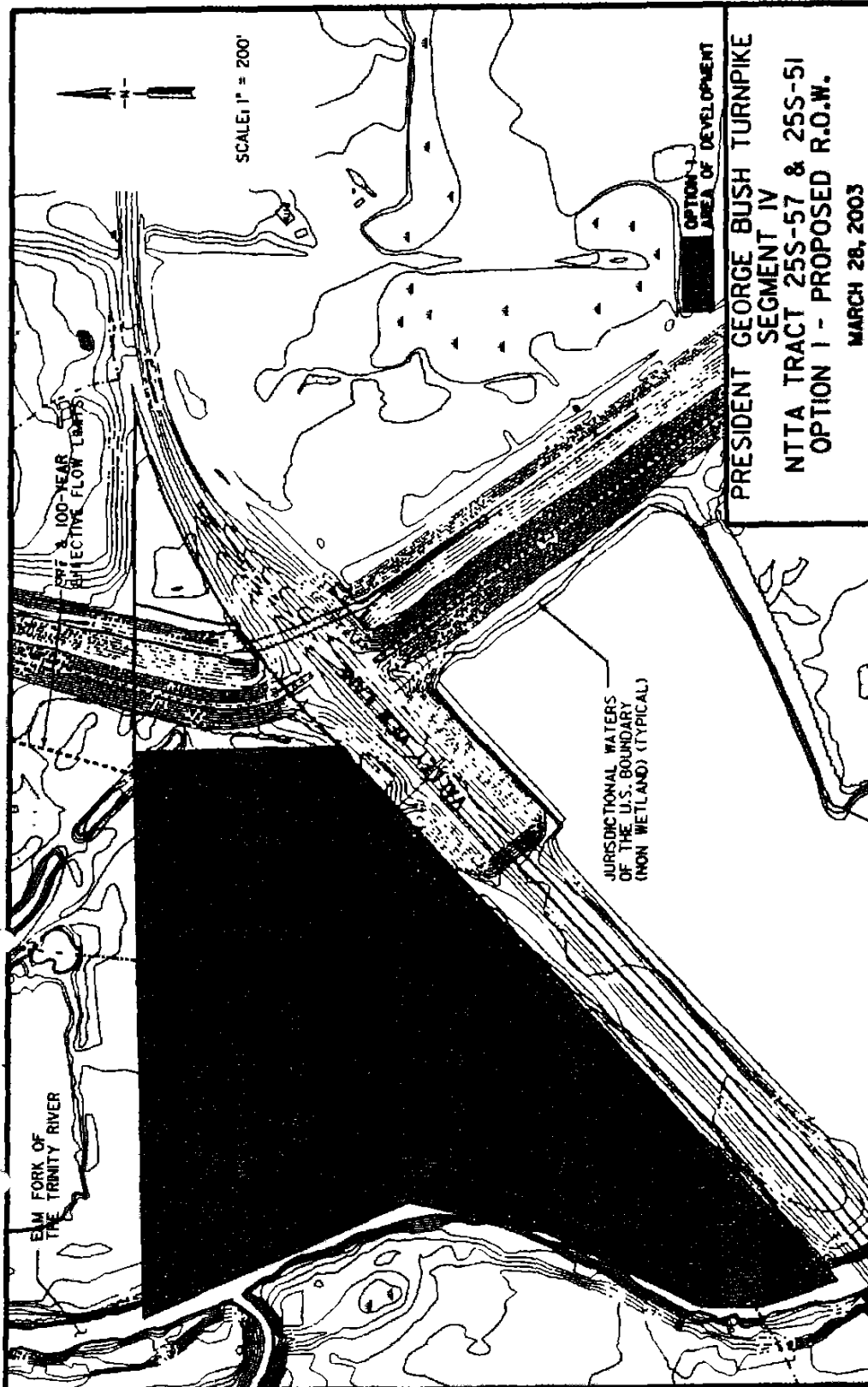
Description	Quantity	Unit	Unit Cost		Total Cost	
			Lower	Upper	Lower	Upper
Embankment (see note 1)	188.147	CY	\$10.70	\$16.00	1,881,470	2,824,304
Property for Valley Storage & Waters of the U.S. Mitigation (see note 2)	28	AC	\$4,547.50	\$12,000.00	128,000	336,000
USACE Section 404 Mitigation Planting (see note 3)	0.4	AC	\$1,700.00	\$9,000.00	680	4,000
USACE Section 404 Permitting	1	LS	\$75,000.00	\$1,500,000.00	75,000	250,000
USACE Section 404 Permitting	1	LS	\$30,000.00	\$30,000.00	30,000	30,000
Engineering for Site Development (approximately 7%)	1	LS	\$12,000.00	\$250,000.00	12,000	260,000
					1,910,000	2,610,000
					10.4	10.4
					\$2,283,150	\$3,082,205
					\$218.50	\$296.35
					\$218.50	\$296.35

- Notes:
- Embankment quantity required to bring the entire site to elevation 438.18 (1-foot above the 100-year water surface elevation).
  - The valley storage & Jurisdictional Waters of the U.S. mitigation cost is based on purchasing a nearby tract within the Elm Fork of the Trinity River floodplain. A minimum 28-acre tract equivalent to a depth of 4 feet is required to mitigate the loss in valley storage (85% of the total fill volume below the SPF event).
  - Mitigation planting is based on mitigating Jurisdictional Waters of the U.S. impacts at a 2:1 ratio. The impacted surface area is approximately 0.2 acres.

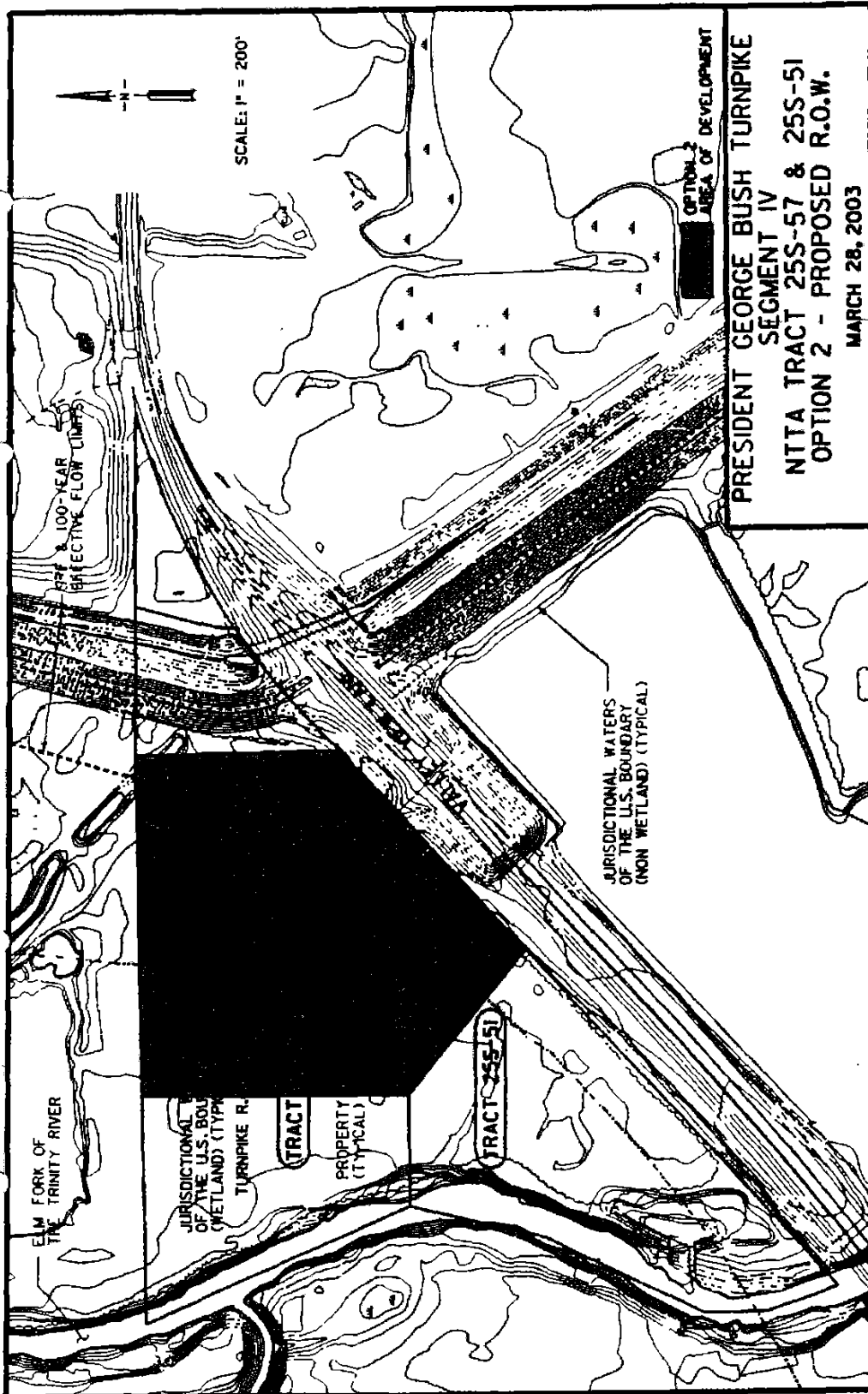
**OPTION 2  
PARTIALLY DEVELOPED PROPERTY  
ON-SITE VALLEY STORAGE MITIGATION AND OFF-SITE WATERS OF THE U.S. MITIGATION  
(APPROXIMATELY 6.0 ACRES)**

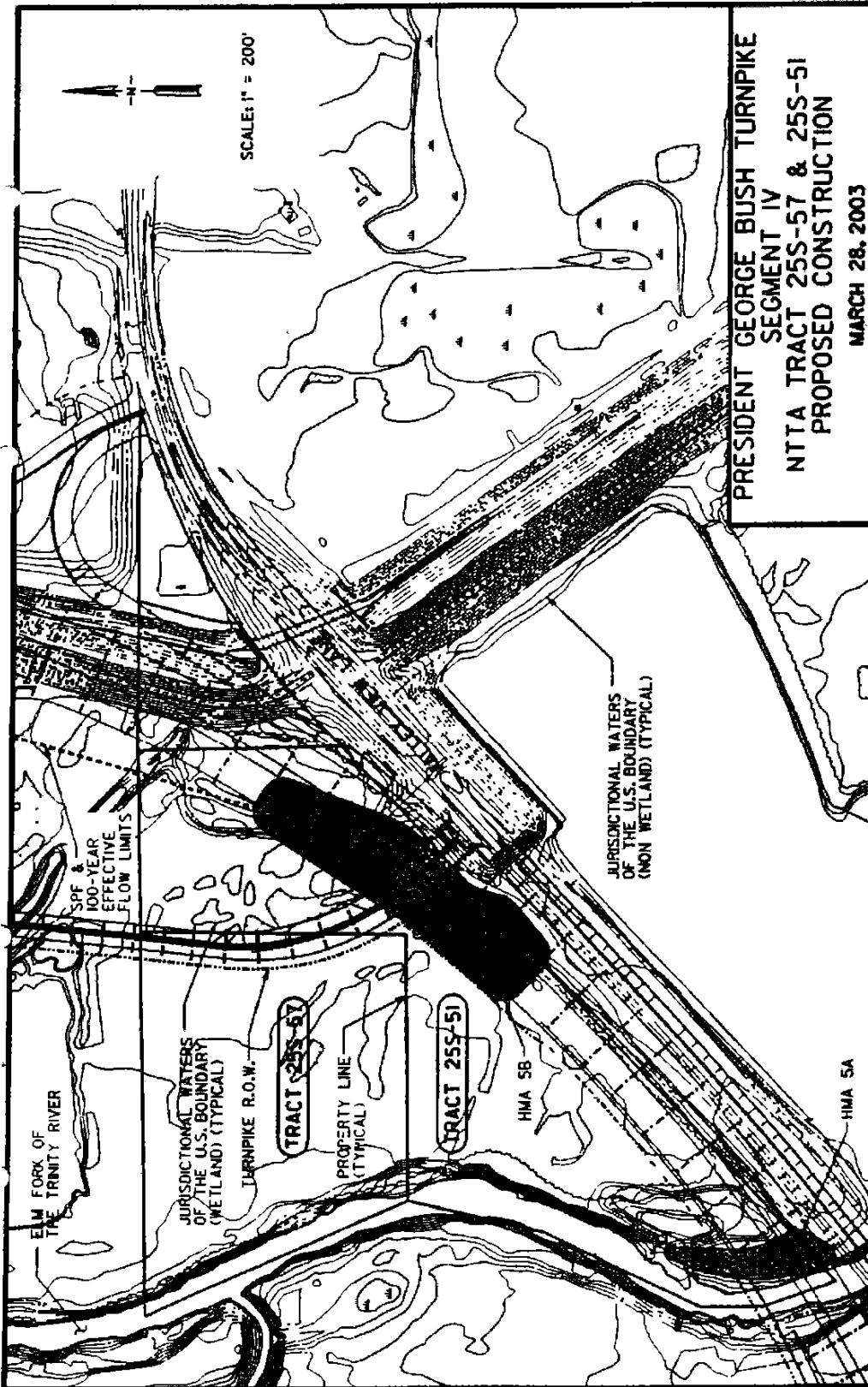
Description	Quantity	Unit	Unit Cost		Total Cost	
			Lower	Upper	Lower	Upper
Embankment (see note 1)	75.301	CY	\$10.00	\$15.00	753,010	1,054,515
On-site Flow Device	1	EA	\$50,000.00	\$100,000.00	50,000	100,000
Jurisdictional waters of the U.S. Mitigation (see note 2)	0.40	AC	\$21,765.00	\$27,500.00	8,400	10,800
USACE Section 404 Permitting	1	LS	\$75,000.00	\$1,500,000.00	75,000	250,000
Engineering for Site Development (approximately 7%)	1	LS	\$65,000.00	\$1,250,000.00	65,000	1,250,000
					183,410	250,800
					6.0	6.0
					\$937,410	\$1,664,815
					\$156.24	\$267.47
					\$156.24	\$267.47

- Notes:
- Embankment quantity required to bring the developed site to elevation 438.18 (1-foot above the 100-year water surface elevation).
  - Mitigation for the Jurisdictional Waters of the U.S. is based on utilizing a mitigation bank at a 2:1 mitigation ratio. The impacted surface area is approximately 0.2 acres.
- Note: This analysis does not account for hydraulic impacts to the Elm Fork of the Trinity River. Possible impacts include: increasing the 100-year and SPF water surface elevations, restricting the 100-year effective flow limits and increasing the channel velocity during storm events.









**PRESIDENT GEORGE BUSH TURNPIKE  
 SEGMENT IV  
 NTTA TRACT 25S-57 & 25S-51  
 PROPOSED CONSTRUCTION  
 MARCH 28, 2003**