

**MEMORANDUM OF UNDERSTANDING**  
**Regarding Property Interests of the Dallas Area Rapid Transit**  
**and the North Texas Tollway Authority in**  
**President George Bush Turnpike Bridge at Beltline Road**

This Memorandum of Understanding is entered into effective as of March 17, 2003, by and between **DALLAS AREA RAPID TRANSIT** ("DART"), a Texas regional transportation authority organized and existing pursuant to Chapter 452, Texas Transportation Code (the "Code"), whose address is P.O. Box 660163, Dallas, Texas 75266-7240, and the **NORTH TEXAS TOLLWAY AUTHORITY** (the "NTTA"), a Texas regional tollway authority organized and existing pursuant to Chapter 366 of the Code, whose address is P.O. Box 260729, Plano, Texas 75026.

WHEREAS, the NTTA intends to construct and operate Segment IV of the President George Bush Turnpike (the "Project"), a controlled access toll turnpike project, as such term is defined in and permitted by the Code, in accordance with the provisions of the Code, to all terms of which reference is hereby made; and

WHEREAS, DART owns or controls certain right-of-way (the "DART Tract") adjacent to and north of Belt Line Road that is described on Exhibit "A" and as depicted on Exhibit "B", each attached hereto and made a part hereof, said DART Tract being designated by the NTTA as NTTA Parcel No. 24-25; and

WHEREAS, the DART Tract is utilized for freight railroad operations and certain railroad-related facilities and improvements are located on the DART Tract; and

WHEREAS, DART may in the future construct on the DART Tract a light rail line, a commuter line and/or other new railroad or public transit-related improvements (all existing and future improvements are hereby collectively referred to as the "DART Structures"); and

WHEREAS, as part of the Project, the NTTA will construct an elevated roadway (the "Flyover") that will span the DART Tract in generally a north-south direction, together with the embankments, columns, footings, and other structures required to support the Flyover; and

WHEREAS, pursuant to Section 366.170(c) of the Code, the NTTA has full easements and rights-of-way through, across, under, and over any property owned by any local governmental entity, as necessary or convenient to construct, acquire, or efficiently operate a turnpike project or system, including all easements necessary for the construction and operation of the Flyover; and

WHEREAS, DART agrees that the NTTA's design, construction, operation, maintenance and repair of the Flyover, if performed in compliance with the terms and conditions of this Memorandum, are not incompatible with DART's current and future use of the DART Tract; and

WHEREAS, the NTTA and DART now desire to enter into this Memorandum of Understanding in order to (1) clarify the rights, entitlements, and property interests of each party

with respect to the Flyover and the DART Tract, and, (2) prescribe the manner in which the design, construction, maintenance and repair of the Flyover and the DART Structures shall be performed or conducted; and

WHEREAS, the NTTA and DART are authorized to make this type of agreement pursuant to Chapters 366 and 452 of the Code and Chapter 791 of the Texas Government Code, as amended.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions made hereinbelow, the NTTA and DART acknowledge and agree as follows:

**1. The NTTA Easements.** DART acknowledges and agrees that by virtue of Sec. 366.170 of the Code, the NTTA has, and is hereby granted, full easements and rights-of-way through, across, under and over the DART Tract as are necessary or convenient to construct, acquire, or efficiently operate the Project, including the Flyover. Included within the NTTA's easements and rights-of-way is the right of reasonable access to the Flyover over and across the DART Tract for the purposes of construction, inspection, repair, and maintenance thereof. The NTTA's right to the continued use of the airspace over the DART Tract for purposes of operating and maintaining the Project, together with such aerial, surface and subsurface portions of the DART Tract as are necessary or convenient for embankments, columns, and footings to support the Flyover (all such items and all similar items being hereinafter called the "Flyover Supporting Structures") and any similar flyovers as may be reconstructed on the DART Tract in the future is expressly subject to the terms of this Memorandum. Notwithstanding the foregoing, this Memorandum of Understanding authorizes the construction of the Flyover and the Flyover Supporting Structures only in accordance with the Plans (as hereinafter defined), which do not provide for the placement of any embankments, columns, footings or similar structures within or on the DART Tract. The NTTA is not authorized hereunder to place any such structures within or on the DART Tract without the prior written consent of DART.

**2. Construction, Use, and Maintenance of the Flyover.** The NTTA acknowledges that DART allows ongoing freight operations on the DART Tract by a railroad company (the "Operating Railroad") and, potentially in the future, by DART, its successors or assigns. If the NTTA constructs or reconstructs the Flyover or performs other construction, inspection, maintenance or major repair activities with respect to the Flyover, the NTTA shall provide DART and the Operating Railroad (which is currently the Fort Worth & Western Railroad Company) with reasonable notice of its intent to perform any such activities if those activities will affect any equipment or facilities comprising the DART Structures or will affect the use or operation of the DART Structures or the DART Tract. For routine inspection and/or maintenance activities on, under, over or adjacent to the DART Tract, "reasonable notice" shall mean written notice to DART and the Operating Railroad describing the extent and nature of such activities at least fifteen (15) calendar days before commencement of such activities. For construction and major repair activities that either involve more than a nominal use of the DART Tract or that substantially affect DART's or the Operating Railroad's operations of the DART Structures or use or operation of the DART Tract, the NTTA shall endeavor to provide DART and the Operating Railroad with as much prior written notice as possible, but in any event, no less than ninety (90) days' prior written notice of the construction and/or major repair activity. Notwithstanding the foregoing, (a) this Memorandum serves as adequate and timely notice of the

NTTA's initial construction of the Flyover and the Flyover Supporting Structures, and (b) in the event that emergency repairs to the Flyover or the Flyover Supporting Structures are necessary, and, if DART's or the Operating Railroad's use or operation of the DART Structures or the DART Tract are affected by such repairs or the repair activities, the NTTA shall contact DART as soon as the need for the repair is apparent and DART and the NTTA shall cooperate so that the repairs can be made in a manner that causes as little disruption or damage as possible to DART's or the Operating Railroad's ongoing use or operation of the DART Structures or the DART Tract. Additionally, before the NTTA constructs or reconstructs the Flyover, the NTTA will provide DART and the Operating Railroad with a reasonable opportunity to review and comment on the NTTA's design (preliminary and final) and its construction plans and specifications, and will provide DART and the Operating Railroad with copies of such plans and specifications (collectively, the "Plans"). The Plans shall contain all such design safeguards as are reasonably necessary to protect the DART Tract and the DART Structures thereon from damage during construction and thereafter by the NTTA's activity on, over, under, or near the DART Tract. Notwithstanding DART's review of the Plans, the NTTA shall be and remain fully responsible and liable for all features of said Plans, including, without limitation, for the compliance of the Plans with all applicable ordinances, codes, regulations, statutes and other laws, including all applicable federal and state railroad safety laws, rules, regulations and orders, light rail safety rules and Operating Railroad safety rules and policies regarding activities within railroad rights-of-way. The NTTA and its contractors shall conduct all of their activities and operations on, over, under and across the DART Tract, whether in connection with the operation and use of the Flyover or otherwise, including, but not limited to, construction, inspection, maintenance or repair activities of the Flyover and the Flyover Supporting Structures, in such a manner so as not to endanger, interfere with, or impede DART's or the Operating Railroad's operations or its use and maintenance of the DART Structures or the DART Tract, and the NTTA and its contractors shall make reasonable efforts not to interfere with or impede DART's or the Operating Railroad's operations on and maintenance of the DART Tract. The NTTA shall provide DART and any railroad identified to the NTTA by DART as currently operating on the DART Tract with reasonable notice of its intent to perform any such construction, inspection, maintenance or repair activities within twenty-five (25) feet of any portion of the DART Structures. The NTTA shall immediately suspend activities on the DART Tract that violate the terms of this Memorandum of Understanding upon notification from DART that said activities impair the safe and efficient operation of the DART Structures or DART's or the Operating Railroad's use of the DART Tract for transit purposes. The NTTA and its contractors shall comply with reasonable safety requirements designed to protect the DART Tract and DART's or the Operating Railroad's operations during the aforementioned activities, including all applicable federal and state railroad safety laws, rules, regulations and orders, including, but not limited to, all light rail transit safety standards and Operating Railroad safety rules and policies regarding activities within railroad rights-of-way. Provided, however, that notwithstanding anything to the contrary in this Memorandum of Understanding, it is the parties' shared intention and agreement that if DART and the NTTA (including their respective contractors) comply with their respective obligations under this Memorandum of Understanding (including the construction of the Flyover and the Flyover Supporting Structures in accordance with the Plans and their operation in accordance with all applicable laws, rules, and regulations), the respective operations of the parties shall not be incompatible and neither party, together with the Operating Railroad, shall have the right or need to impede, or cause to be suspended, the activities of the other regarding

the DART Tract (including the construction or operation of the Flyover or the Flyover Supporting Structures).

**3. The NTTA and the NTTA Contractor Insurance.** Before any NTTA contractor begins work on, over, under or near the DART Tract, the NTTA shall require the contractor to obtain General Liability Insurance which shall provide a combined single limit of not less than \$2,000,000 for bodily injury and/or property damage resulting from any one occurrence, as well as Business Automobile Liability coverage in an amount of \$500,000 for bodily injury, including death, to any one person, and \$1,000,000 on any one occurrence and \$500,000 for property damage on any one occurrence. Additionally, if DART operates (or permits the operation of) a light rail transit or other railroad line on the DART Tract when the work is performed, the contractor shall obtain Railroad Protective Liability Insurance (Bodily Injury and Property Damage) that shall provide a combined single limit of not less than \$1,000,000 per occurrence, \$2,000,000 in the aggregate and \$6,000,000 umbrella for bodily injury and/or property damage resulting from the NTTA's or its contractor's activities with respect to any one occurrence. The foregoing insurance shall include DART, its successors and assigns, and any railroad identified to the NTTA by DART as currently operating on the DART Tract as additional insureds and shall contain a "cross liability" endorsement which shall cause the insurance to apply as though separate policies were written for the contractor and DART. The herein-described insurance shall protect DART (and the other additional insureds) from liability arising out of the Flyover construction, inspection, maintenance or repair activities on the DART Tract, whether caused or contributed to by an act or omission of DART, or its agents or employees. The NTTA shall cause the contractor to furnish DART with a certificate of insurance, reasonably acceptable to DART, certifying that all of said insurance is in effect when the work is begun and continues in effect until the work is completed. The certificate of insurance shall expressly state that the insurance cannot be cancelled, or amounts reduced, unless DART, acting by and through its designated officer or manager, is given thirty (30) days prior written notice thereof. DART also shall require the NTTA or its contractor to execute and deliver DART's "Standard Construction Agreement and Contractor's Right of Entry" prior to the NTTA's or its contractor's commencement of work on the DART Tract, including without limitation the obligation to provide flagmen at no cost to DART or the Operating Railroad.

**4. DART's Property Interests.** By the statutory power and consistent with the authority granted to it under Section 452.056 (a)(1) and Section 452.058 of the Code, and pursuant to Texas common law, DART has the right to reasonably maintain and use the DART Tract, subject to the NTTA's easement interests and other rights described in Section 1 and elsewhere in this Memorandum.

**5. Construction, Use, and Maintenance of the DART Structures.** Before DART or its contractors perform any construction, reconstruction, inspection, maintenance or major repair activities with respect to any DART Structures or the DART Tract that could affect any portion of the Flyover, the Flyover Supporting Structures, or the NTTA's use of the Flyover, DART shall provide the NTTA with reasonable notice of DART's intent to perform any such activities. For DART's routine inspection and/or maintenance activities on, under, over or adjacent to the DART Tract, "reasonable notice" shall mean written notice to the NTTA describing the extent and nature of such activities at least fifteen (15) calendar days before

commencement of such activities. For construction and major repair activities that either involve more than a nominal use of the DART Tract or that substantially affect the Flyover, the Flyover Supporting Structures, or the NTTA's use of the Flyover, DART shall endeavor to provide the NTTA with as much prior written notice as possible, but in any event, no less than ninety (90) days' prior written notice of the construction and/or major repair activity. Notwithstanding the above, in the event that emergency repairs to the DART Structures are necessary, and if the Flyover, the Flyover's Supporting Structures, or the NTTA's use of the Flyover is affected by such repairs or the repair activities, DART shall contact the NTTA as soon as the need for the repair is apparent and DART and the NTTA shall cooperate so that the repairs can be made in a manner that causes as little disruption or damage as possible to the Flyover, the Flyover Supporting Structures, or the NTTA's use of the Flyover. DART agrees that, prior to DART's or the Operating Railroad's construction of any DART Structures on the DART Tract, and, further, prior to DART or its contractors performing any construction activity within five (5) feet of the Flyover or the Flyover Supporting Structures, DART shall provide the NTTA with a reasonable opportunity to review and comment on DART's design (preliminary and final) and construction plans and specifications and will provide the NTTA with copies of such plans and specifications. The plans and specifications shall contain all such design safeguards as are reasonably necessary to protect the Flyover and the Flyover Supporting Structures from damage during construction and thereafter by DART and from DART's or the Operating Railroad's use of and activities conducted on the DART Tract. Notwithstanding the NTTA's review of the plans, DART shall be and remain fully responsible and liable for all features of said plans, including, without limitation, for the compliance of the plans and specifications with all applicable ordinances, codes, regulations, statutes and other laws. DART will conduct all of its activities and operations on the DART Tract, whether in connection with the DART Structures or otherwise, including, but not limited to, construction, inspection, maintenance or repair activities, in such a manner so not to endanger, interfere with, or impede the operations and maintenance of the Flyover, the Flyover Supporting Structures or any other the NTTA property in and around the DART Tract. DART shall provide the NTTA with reasonable notice of its intent to perform any such activities (other than normal day-to-day operations of the DART Structures) within five (5) feet of any portion of the Flyover. DART and its contractors shall comply with reasonable safety requirements designed to protect the Flyover and the Flyover Supporting Structures during the aforementioned activities, including all applicable federal, state and NTTA highway safety standards. DART shall immediately suspend activities on the DART Tract that violate the terms of this Memorandum of Understanding upon notification from the NTTA that said activities impair the safe and efficient operation of the Project. DART or its contractors will not allow to be parked or stored under or in the vicinity of the Flyover's columns any explosive, corrosive, or flammable loads or materials.

**6. DART and DART Contractor Insurance.** Before any contractor acting on behalf of DART or the Operating Railroad begins any work near the Flyover, DART shall require any contractor DART retains, and use all reasonable efforts to require any contractor the Operating Railroad retains, to obtain commercial liability insurance, General Liability Insurance which shall provide a combined single limit of not less than \$2,000,000 for bodily injury and/or property damage resulting from any one occurrence, as well as Business Automobile Liability coverage in an amount of \$500,000 for bodily injury, including death, to any one person, and \$1,000,000 on any one occurrence and \$500,000 for property damage on any one occurrence.

The foregoing insurance shall include the NTTA and its successors and assigns as additional insureds and shall contain a "cross liability" endorsement which shall cause the insurance to apply as though separate policies were written for both the contractor and the NTTA. The insurance shall protect the NTTA from liability arising out of the construction activities on the DART Tract, whether caused or contributed to by an act or omission of the NTTA, its agents or employees. DART shall cause the contractor to furnish the NTTA with certificate of insurance as evidence that all of said insurance is in effect when the construction work is begun and continues in effect until the work is completed. The certificate of insurance shall expressly state that the insurance cannot be cancelled, or amounts reduced, unless the NTTA's Director of Operations is given thirty (30) days prior written notice thereof.

**7. Minimum Clearance Levels.** With respect to the DART Tract, DART agrees not to construct any DART Structures in a manner that will cause the NTTA to violate minimum clearance levels as may be established by applicable state or federal regulations. The NTTA agrees that in the event that it reconstructs the Flyover following the construction of DART Structures, it will consult with DART as to the proposed height of the Flyover over the DART Tract, and, at a minimum, it will not construct the Flyover at any height lower than the current heights crossing the DART Tract.

**8. Liability.** Without hereby waiving any governmental immunity generally available to any signatory party to this Memorandum under Texas law with respect to any third parties, each signatory party to this Memorandum is and shall be responsible for its own acts and deeds and for those of its contractors, agents or employees as related to that parties' respective activities in and around, across or under the Flyover, the Flyover Supporting Structures and the DART Tract and for the breach of its contractual obligations under this Memorandum. This Memorandum is solely for the benefit of the parties hereto and their successors and assigns. Nothing contained in this Memorandum is intended to, nor shall be deemed or construed to create or confer any rights, remedies, or causes of action in any person or entities that are not parties to this Memorandum or their successors or assigns. Nothing stated herein shall limit the right of DART or the NTTA to assert any governmental immunity defense to any claim of such other signatory party or entity or to any claim of any third party.

**9. Notices.** All notices or other communication required or permitted hereunder shall be presumed given when hand-delivered, or three (3) business days after being mailed by certified mail, return receipt requested, addressed as follows:

If intended for DART, to:

Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-7240  
Attn: President/Executive Director

If intended for the NTTA, to:

North Texas Tollway Authority  
P.O. Box 260729  
Plano, Texas 75026  
Attn: Executive Director

Notwithstanding the foregoing, each signatory party shall notify the other signatory party within 24 hours of the reporting signatory party's first notice of any accident or other event on or adjacent to the DART Tract that results in, or might result in, injury to the person or property of

any person or entity. Each signatory party may change its address for notices and communications hereunder by providing notice pursuant to this section.

**10. Miscellaneous.**

(a) This Memorandum embodies the entire agreement between the parties and there are no oral or written agreements between the parties, or any representations made, which are not expressly set forth herein. This Memorandum may be amended only by written instrument executed by the parties hereto.

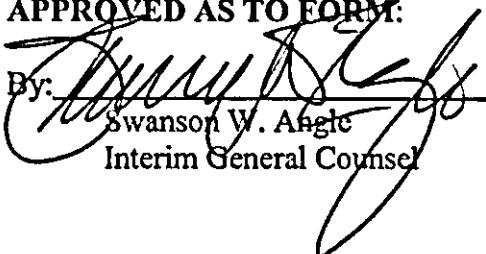
(b) This Memorandum shall bind DART and the NTTA, and their successors and assigns.


(c) No provision of this Memorandum shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party having or being deemed to have drafted, prepared, structured or dictated such provision.

EXECUTED this, the 17<sup>th</sup> day of March, 2003, by DART, acting through its duly authorized officials; and by the NTTA, acting through its duly authorized officials.

**DALLAS AREA RAPID TRANSIT**

**APPROVED AS TO FORM:**


By:   
Swanson W. Angle  
Interim General Counsel

By:   
Name: Barry C. Thomas  
Title: President/Executive Director

**NORTH TEXAS TOLLWAY AUTHORITY**

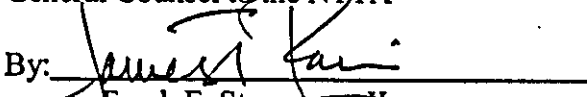
**ATTEST:**

  
Ruby Franklin, Secretary

By:   
Jerry Hiebert  
Executive Director

**APPROVED AS TO FORM:**

Locke Liddell & Sapp LLP,  
General Counsel to the NTTA

By:   
Frank E. Stevenson, II  
JAMES T. RAIN

**EXHIBIT "A"**

**THE DART TRACT  
[NTTA Parcel 24-25]  
Legal Description**

**(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. 635 West  
Near Valley View Lane in Dallas County  
PARCEL: NTTA 24-25

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March 27, 2002

Being 20,371 square feet of land in the James Kennady Survey, Abstract Number 741, City of Carrollton, Dallas County, Texas, and being part of that certain tract of land described in a deed to Dallas Area Rapid Transit (DART tract) as recorded in Volume 91008, Page 1341 of the Deed Records of Dallas County, Texas and being more particularly described by metes and bounds as follows:

**COMMENCING** at a three-inch diameter steel post found at the southwest interior corner of that certain tract of land described in a deed to William G. Thompson, Trustee as recorded in Volume 90067, Page 4246 of said Deed Records and the northeast corner of that certain tract of land as described in a deed to Dallas Pistol Club as recorded in Volume 86142, Page 1632 of said Deed Records;

**THENCE, SOUTH 03 degrees 44 minutes 07 seconds EAST**, along the common west line of said Thompson tract and the east line of said Dallas Pistol Club tract, a distance of 720.96 feet to a one-half inch steel rebar found for the common southwest corner of said Thompson tract and the southeast corner of said Dallas Pistol Club tract, said steel rebar also being on the north line of said DART tract;

**THENCE, NORTH 86 degrees 11 minutes 49 seconds EAST**, departing said common line, along the common south line of said Thompson tract and the north line of said DART tract, a distance of 478.04 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB", set for the **POINT OF BEGINNING**, said steel rebar also being on the proposed west right-of-way line of the President George Bush Turnpike;

1. **THENCE, NORTH 86 degrees 11 minutes 49 seconds EAST**, continuing along said common line, a distance of 205.73 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB", set for the southeast corner of said Thompson tract and being on the existing west right-of-way line of Luna Road, a 100.00 foot right-of-way width as described in a donation deed to City of Carrollton as recorded in Volume 99158, Page 8184 of said Deed Records;
2. **THENCE, SOUTH 00 degrees 30 minutes 40 seconds WEST**, departing said common line, a distance of 100.28 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB", set for corner on the south line of said DART tract and being on the existing north right-of-way line of Belt Line Road, a variable width right-of-way;

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 24-25

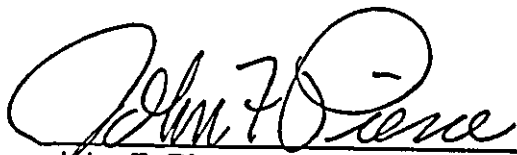
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March 27, 2002

3. THENCE, SOUTH 86 degrees 11 minutes 49 seconds WEST, along the south line of said DART tract and said existing north right-of-way line of Belt Line Road, a distance of 202.31 feet to a one-half inch steel rebar with yellow plastic cap marked "AZB", set for corner on the proposed west right-of-way line of the President George Bush Turnpike and being on a non-tangent curve to the left;
4. THENCE, NORTHWEST, departing said south line of DART tract and said existing north right-of-way line of Belt Line Road, along said proposed west right-of-way line of the President George Bush Turnpike and along said non-tangent curve to the left having a central angle of 02 degrees 04 minutes 21 seconds, a radius of 2,766.79 feet and an arc length of 100.09 feet, the chord of said non-tangent curve bears North 01 degrees 26 minutes 30 seconds West having a chord distance of 100.08 feet to the POINT OF BEGINNING and containing 20,371 square feet 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.

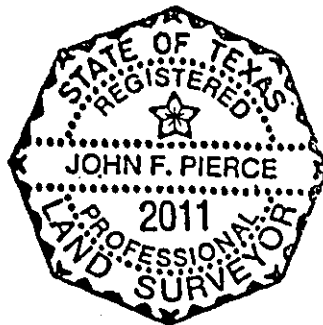
FIELD NOTES PREPARED FROM FIELDWORK PERFORMED IN 1999 and 2000.



John F. Pierce  
Registered Professional Land Surveyor  
Texas No. 2011

MARCH 27, 2002  
Date

Arredondo, Zepeda & Brunz Inc.  
11355 McCree Road  
Dallas, Texas 75238  
(214) 341-9900  
(214) 341-9925 - Fax



**EXHIBIT "B"**

**THE DART TRACT  
[NTTA Parcel 24-25]  
Survey Plat Depiction**

**(See following page)**

