

RESOLUTION NO. \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING A LICENSE AGREEMENT BETWEEN THE TOWN OF ADDISON AND DALLAS AREA RAPID TRANSIT, FOR THE CONSTRUCTION, INSTALLATION, MAINTENANCE AND OPERATION OF A WATERLINE ALONG MIDWAY ROAD, APPROVING THE ABANDONMENT OF AN EXISTING WATERLINE AND SANITARY SEWERLINE, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:**

**SECTION 1.** The License Agreement between the Town of Addison and Dallas Area Rapid Transit, for the construction, installation, maintenance and operation of a waterline along Midway Road, a copy of which is attached to this Resolution as **Exhibit A**, is hereby approved. The City Manager is hereby authorized to execute the agreement.

**SECTION 2.** This Resolution shall take effect from and after its date of adoption.

**DULY RESOLVED AND ADOPTED** by the City Council of the Town of Addison, Texas, on this the **8<sup>th</sup>** day of **DECEMBER** 2020.

**TOWN OF ADDISON, TEXAS**

\_\_\_\_\_  
Joe Chow, Mayor

**ATTEST:**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Irma Parker, City Secretary

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A

AGREEMENT NO. 221815

## LICENSE AGREEMENT

THIS License Agreement ("License"), is made by and between DALLAS AREA RAPID TRANSIT ("Licensor"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, as amended (the "Act") with offices at 1401 Pacific Ave., Dallas, Texas 75202 and Town of Addison ("Licensee"), a Texas Municipality acting herein by and through its duly authorized official, with offices at 16801 Westgrove Drive, Addison, Texas 75001. Licensor and Licensee are individually referred to herein as a "Party" or collectively as "Parties".

WHEREAS, pursuant to an agreement between Licensor and Dallas, Garland & Northeastern Railroad, Inc., (hereinafter the "Railroad"), freight railroad operations exist on Licensor's railroad corridor ("the Corridor") between Dallas and Richardson, Texas, owned by DART; and

NOW THEREFORE, in consideration of the mutual agreements and covenants contained in this License, the receipt and sufficiency of which is hereby acknowledged by Licensor and Licensee, it is agreed as follows:

1. **Purpose.** Licensor hereby grants a license (the "License") to Licensee for the purposes of constructing, installing, maintaining and operating one 16-inch PVC waterline inside a 30-inch steel casing pipe, cut, fill with grout and abandoning a 16-inch waterline, along with paving work along Midway Road, and cut, fill with grout, and abandon in place a 10-inch sanitary sewer line, (the "Permitted Improvement") all of which are crossing the Corridor at Mile Post 598.98, (Latitude: 32.9566354, Longitude: -96.838548) at Midway Road in Addison, Dallas County, Texas, more particularly described as shown in Exhibits "A-1" to "A-8", dated November, 25, 2019, attached hereto and incorporated herein for all pertinent purposes, (the "Property").

The Property shall be used by Licensee solely for the purpose of operating and maintaining the Permitted Improvement (the "Permitted Use"). Licensee's right to enter upon and use the Property shall be limited solely to the Permitted Use and improved with the Permitted Improvement and only upon the terms provided herein. Licensee acknowledges and agrees that (i) the rights granted to Licensee pursuant to this License are solely contractual in nature and (ii) this License is not intended to convey, and does not convey, to Licensee, any interest in real property, the Property, or any portion of the Corridor. This License may not be recorded.

2. **Term.** The term of this License shall begin on the date last signed by a Party ("Effective Date") and continue thereafter until terminated by either Party as provided herein ("the Term").

3. **Consideration.** The consideration for the granting of this License shall be (a) **TEN AND NO/100 (\$10.00) DOLLARS** cash in hand paid by Licensee to Licensor, the sufficiency and receipt, of which is hereby acknowledged, and (b) the faithful performance by Licensee of all of the covenants and agreements undertaken by Licensee in this License.

4. **Non-Exclusive License.** This License is non-exclusive and is subject to (a) any existing utility, drainage or communication facility located in, on, under, or upon the Property; (b) all vested rights presently owned by any railroad, utility or communication company, or other entity and located within the boundaries of the Property; and (c) any existing lease, license or other interest in the Property granted by Licensor to any individual, corporation or other entity, public or private.

5. **Safeguard of Property.** Licensee shall take diligent and sufficient measures to insure and safeguard the Property. It is understood and agreed that Licensor shall have no liability whatsoever for the safety or

Addison - Cotton Belt - Midway Rd  
Town of Addison - 16-inch waterline inside 30-inch steel casing  
EC

Page 1 of 15

Mile Post 598.98

security of Licensee or Licensee's employees, officers, agents, contractors, invitees, assigns, or those holding under Licensee, nor for any personal property belonging to those individuals or entities. Notwithstanding any other provisions herein, Licensee expressly waives any claims, if any, against Licensor with respect to third party property or liability claims and claims regarding Licensee's property or the property of any Licensee's agents, employees, contractors or invitees.

**6. Design, Construction, Operation and Maintenance.** Licensor's use of the Property and adjoining property may include the use of electrically powered equipment. Notwithstanding Licensor's inclusion within its system of measures designed to reduce stray current which may cause corrosion, Licensee is hereby warned that such measures may not prevent live electrical current in proximity to the Permitted Improvement and that such presence could produce corrosive effects to the Permitted Improvement. Licensee waives any claim against Licensor in this regard and releases Licensor with regard to any claim arising from such corrosion. Cathodic protection and stray current corrosion control measures shall be made a part of the design and construction of the Permitted Improvement.

6.01. All design, construction, reconstruction, replacement, removal, operation and maintenance of the Permitted Improvement on the Property shall be done in such a manner so as not to interfere in any way with the operations of Licensor or other Railroad operations.

6.02. During the design phase and prior to commencing any construction on the Property, a copy of the construction plans ("the Plans") showing the exact location, type and depth of the construction, any cathodic protection measures and any working area, shall be submitted for written approval to Licensor and Railroad. No work shall commence until the Plans have been approved in writing by Licensor and Railroad.

6.03. Licensee agrees to design, construct and maintain the Permitted Improvement in such a manner so as not to create a hazard on or near the Property. Licensee agrees to pay for any damages which may arise by reason of Licensee's use of the Property.

6.04. Licensee covenants and agrees to institute and maintain a continuous testing program to determine whether or not additional cathodic protection of its Permitted Improvement is necessary and if it is or should become necessary, such protection shall be immediately instituted by Licensee at its sole cost and expense.

6.05. Licensee shall provide to Licensor certified final construction drawings ("as-builts") that are signed and sealed by a Texas Professional Engineer within sixty (60) days after the last date of construction work on the Property by Licensee or Licensee's contractor. Licensor and Licensee agree that Licensor will suffer damages in an amount currently not determinable by the Parties if "as-builts" are not timely provided by Licensee and it is impossible to determine in advance the amount of damages in these circumstances. Accordingly, the Parties agree, not as a penalty but as a measure of reasonable damages, that a fee of \$500 per month (prorated as applicable) until "as-builts" are provided represents reasonable compensation for Licensor's actual damages suffered in lieu of timely receiving certified "as-builts" from Licensee as required herein.

**7. License Without Warranty.** Licensor makes no representations as to the suitability of the Property for any particular purpose. The Property is available for Licensee's use on an "as is, where is and with all faults" basis. Licensor makes no warranties whatsoever, including by example and not limitation, regarding subsurface or aerial installations on or near the Property. Licensee shall conduct its own inspection of same and will not rely on the absence or presence of markers or any information (if any) provided by Licensor.

**8. Governmental Approvals.** Licensee, at its sole cost and expense, shall be responsible for and shall obtain, any and all licenses, permits, or other approvals from any and all federal, state or local agencies required to carry on any activity permitted herein.

**9. Licensor's Standard Contract and Insurance.**

9.01 No work on the Property shall be commenced by Licensee or any contractor for Licensee ("Contractor") until Licensee or Contractor shall have executed Licensor's Construction Agreement and Contractor's Right of Entry covering such work, and furnished then current insurance coverage in such amounts and types as shall be satisfactory to Licensor. A company-issued photo identification of Licensee's employees, contractors or agents shall be required to work on the Property.

9.02 Licensee shall procure and maintain at its sole cost and expense, Commercial General Liability Insurance with a per occurrence limit of liability of no less than \$2,000,000 naming Dallas Area Rapid Transit as an additional insured for ongoing and completed operations without any qualifications or restrictions. Dallas Area Rapid Transit must be given thirty (30) days prior written notice of any proposed cancellation or modification. The policy shall be endorsed waiving the issuing insurance company's rights of recovery against DART whether by way of subrogation or otherwise. Licensee's insurance shall be primary coverage in all instances.

**10. Duty of Care in Construction.** Licensee and the Contractor shall use diligent care during the Term to avoid damaging any existing buildings, equipment and vegetation on or about the Property and any adjacent property. If the Licensee or its Contractor causes damage to the Property or to any adjacent property, Licensee shall or shall cause the Contractor to immediately replace or repair the damage at no cost or expense to Licensor. If Licensee or Contractor fails or refuses to make or effect any such repair or replacement, Licensor shall have the right, but not the obligation, to make or effect any such repair or replacement at the sole cost and expense of Licensee, which cost and expense Licensee agrees to pay to Licensor upon written demand.

**11. Environmental Protection.**

11.01. Licensee shall not use or permit the use of the Property for any purpose that may be in violation of any local, state or federal laws pertaining to health or the environment, including but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Resource Conservation and Recovery Act ("RCRA"), the Clean Water Act ("CWA") and the Clean Air Act ("CAA").

11.02. Licensee warrants that the Permitted Use of the Property will not result in the disposal or other release of any hazardous substance or solid waste on or to the Property, and that it will take all steps necessary to ensure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractor.

11.03. The terms "hazardous substance" and "release" shall have the meanings specified in CERCLA and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in the RCRA; PROVIDED, HOWEVER, that in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment; and PROVIDED FURTHER, that to the extent that the laws of the State of Texas establish a meaning for "hazardous substance", "release", "solid waste", or "disposal", which is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

11.04. To the extent allowed by law, Licensee shall indemnify, defend and hold Licensor and Railroad harmless against all cost of environmental clean up to the Property required by or resulting from Licensee's use of the Property under this License.

**12. Mechanic's Liens Not Permitted.** Licensee shall fully pay for all labor and materials used in, on, or about the Property and will not permit or suffer any mechanic's or materialmen's liens of any nature to be affixed against the Property by reason of any work done or materials furnished to the Property at Licensee's

instance or request.

**13. Maintenance of Completed Improvements.** The Permitted Improvement shall be maintained by the Licensee in such a manner as to keep the Property in a good and safe condition. In the event the Licensee fails to maintain the Property as required, upon discovery, Licensor shall notify Licensee of such occurrence in writing. In the event Licensee shall not have remedied the failure within ten (10) days from the date of such notice, Licensor shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event Licensor exercises its right to remedy Licensee's failure, Licensee agrees to immediately pay to Licensor all costs incurred by Licensor upon written demand by Licensor.

**14. Future Use by Licensor.**

14.01. This License is granted expressly subject and subordinate to the right of Licensor to use the Property for any purpose whatsoever.

14.02. In the event that Licensor shall, at any time subsequent to the date of this License, at its sole discretion, determine that the relocation of the Permitted Improvement shall be necessary or convenient for Licensor's use of the Property, Licensee shall, at its sole cost and expense relocate the Permitted Improvement so as not to interfere with use of the Property by Licensor or its respective assigns. In this regard, Licensor may, but is not obligated to, designate other property for the relocation of the Permitted Improvement. Licensor shall give a minimum of thirty (30) days' written notice of any required relocation of the Permitted Improvement pursuant to this Section 14.02 (the "Relocation Notice"). Licensee shall promptly commence to make the required changes thereafter and shall diligently complete the relocation as required within a reasonable period, but in any case not later than ninety (90) days after delivery of the Relocation Notice to Licensee unless otherwise agreed in writing by Licensor. Nothing herein shall limit Licensor from requiring relocation of the Permitted Improvement more than once during the Term of this License.

**15. Relocation Benefits.** The Parties hereto agree that the construction of the Permitted Improvement on the Property shall be and is subsequent to the acquisition of the Property by Licensor. Licensee hereby waives any and all claim that it may have under the Act, under Chapter 460 of the Texas Transportation Code, or otherwise, regarding the payment of any and all relocation benefits and that all costs associated with any relocation the Permitted Improvement shall be borne by Licensee. The waiver made by Licensee in this Section 15 shall apply regardless of the number of times the Permitted Improvement are relocated.

**16. Duration of License.** This License shall terminate and be of no further force and effect in the event (a) Licensee shall discontinue or abandon the use of the Permitted Improvement for thirty (30) days or more; (b) in the event Licensee relocates the Permitted Improvement from the Property; or (c) upon termination in accordance with the provisions of this License, whichever event first occurs.

**17. Compliance With Laws and Regulations.** Licensee agrees to abide by and be governed by all laws, ordinances and regulations of any and all governmental entities having jurisdiction over the Licensee and by railroad regulations, policies and operating procedures established by the Railroad, or other applicable regulating bodies, and Licensee agrees to indemnify, defend and hold Licensor harmless from any failure to do so.

**18. INDEMNITY AND SHIFTING OF RISK. REGARDLESS OF FAULT OR OF ANY FAULT OR NEGLIGENCE OF LICENSEE OR LICENSOR, LICENSEE AGREES, TO THE EXTENT ALLOWED BY LAW, TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY DALLAS AREA RAPID TRANSIT AND ITS CONTRACTORS AND AGENTS, AS WELL AS DALLAS, GARLAND & NORTHEASTERN RAILROAD INC. (COLLECTIVELY "INDEMNITEES") FROM AND AGAINST ALL LOSS, DAMAGE, CLAIMS, COSTS, EXPENSES, INCLUDING ATTORNEY'S FEES, AND LIABILITY FOR BODILY INJURY TO**

OR DEATH OF ANY PERSONS AND LOSS OF OR DAMAGE TO ANY PROPERTY AND LOSS OF USE THEREOF, ARISING OUT OF, INCIDENT TO OR RESULTING FROM LICENSEE'S ENTRY ON, OVER OR NEAR THE PROPERTY OR ACTIVITY THEREON, INCLUDING ENTRY OR ACTIVITY BY LICENSEE'S EMPLOYEES, SUBCONTRACTORS, AGENTS OR INVITEES (COLLECTIVELY, TOGETHER WITH THE TERM LICENSEE, REFERRED TO HEREIN AS "LICENSEE PARTIES") OR ARISING FROM LICENSEE PARTIES' PERFORMANCE OR FAILURE TO PERFORM UNDER THIS LICENSE, EVEN THOUGH CAUSED IN WHOLE OR PART BY A PRE-EXISTING DEFECT, OR THE NEGLIGENCE (WHETHER SOLE, JOINT OR CONCURRENT) OF ONE OR MORE INDEMNITEES. IN THE EVENT ANY PART OF THE PROVISIONS OF THIS SECTION ARE DETERMINED BY STATUTORY AUTHORITY OR JUDICIAL DECISION TO BE VOID OR UNENFORCEABLE, THEN THIS SECTION SHALL NOT FAIL IN ITS ENTIRETY, BUT WILL BE ENFORCEABLE TO THE EXTENT PERMITTED BY LAW. THIS INDEMNITY PROVISION AND ANY OTHER INDEMNITY PROVISION CONTAINED IN THIS PERMIT SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS LICENSE.

19. **Termination of License.** At such time as this License may be terminated or canceled for any reason whatsoever, Licensee, upon request by Licensor, shall remove all improvements and appurtenances owned by it, situated in, on, under or attached to the Property, regardless of whether or not such improvements were placed thereon by Licensee, and shall restore the Property to a condition satisfactory to Licensor, at Licensee's sole expense.

20. **Assignment.** Licensee shall not assign or transfer its rights under this License in whole or in part, or permit any other person or entity to use the rights hereby granted without the prior written consent of Licensor which Licensor is under no obligation to grant.

21. **Methods of Termination.** This License may be terminated:

21.01. By written agreement of the Parties; or

21.02. By either Party giving the other Party thirty (30) days written notice.

22. **Miscellaneous.**

22.01. **Notice.** When notice is permitted or required by this License, it shall be in writing and shall be deemed delivered when delivered in person or when placed, postage prepaid, in the U.S. Mail, Certified, Return Receipt Requested, and addressed to the Parties at the following addresses:

LICENSOR: Dallas Area Rapid Transit  
1401 Pacific Avenue  
Dallas, Texas 75202-7210  
ATTN: Railroad Management

LICENSEE: Town of Addison  
ATTN: Director of Public Works  
16801 Westgrove Drive  
Addison, Texas 75001

Either Party may from time to time designate another and different address for receipt of notice by giving written notice of such change of address.

22.02. **Governing Law.** This License shall be construed under and in accordance with the laws of

the State of Texas. Any action brought by a party to enforce any provision of this License shall be commenced in a state district court of competent jurisdiction in Dallas County, Texas.

22.03. Attorney Fees. In the event that DART chooses to initiate legal proceedings to enforce any provisions of this License, upon prevailing DART shall be entitled to recover court costs and actual and reasonable attorney fees from Licensee.

22.04. Entirety and Amendments. This License embodies the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the Property and the matters addressed herein, and may be amended or supplemented only by a written instrument executed by the Party against whom enforcement is sought.

22.05. Parties Bound. This License shall be binding upon and inure to the benefit of the Parties and their respective heirs, personal representatives, successors and assigns.

22.06. Number and Gender. Words of any gender used in this License shall be held and construed to include any other gender; and words in the singular shall include the plural and vice versa, unless the text clearly requires otherwise.

22.07. No Joint Enterprise. The Parties do not intend that this License be construed as finding that the Parties have formed a joint enterprise. The purposes for which each Party has entered into this License are separate and distinct. It is not the intent of any of the Parties that a joint enterprise relationship is being entered into and the Parties hereto specifically disclaim such relationship. This License does not constitute a joint enterprise, as there are no common pecuniary interests, no common purpose and no equal right of control among the Parties hereto.

22.08. Counterparts. The Parties may execute this License in multiple originals and when taken together, those originals constitute a whole.

22.09. Third Party Beneficiaries. It is agreed between the Parties and deemed that there are no third party beneficiaries to this License.

22.10. Construction and Interpretation. This License shall not be construed against any Party due to drafting as both Parties have or are entitled to consult legal counsel.

22.11. Severability. If any provision of this License is determined to be illegal or unenforceable in any respect, such determination will not affect the validity or enforceability of any other provision, each of which will be deemed to be independent and severable.

(Signatures on Following Page)

IN WITNESS WHEREOF, the Parties have signed and agreed to this License on the date last signed below.

LICENSOR: DALLAS AREA RAPID TRANSIT

BY: \_\_\_\_\_  
BONNIE MURPHY

Vice President  
Commuter Rail and Railroad Management

Date: \_\_\_\_\_

LICENSEE: TOWN OF ADDISON

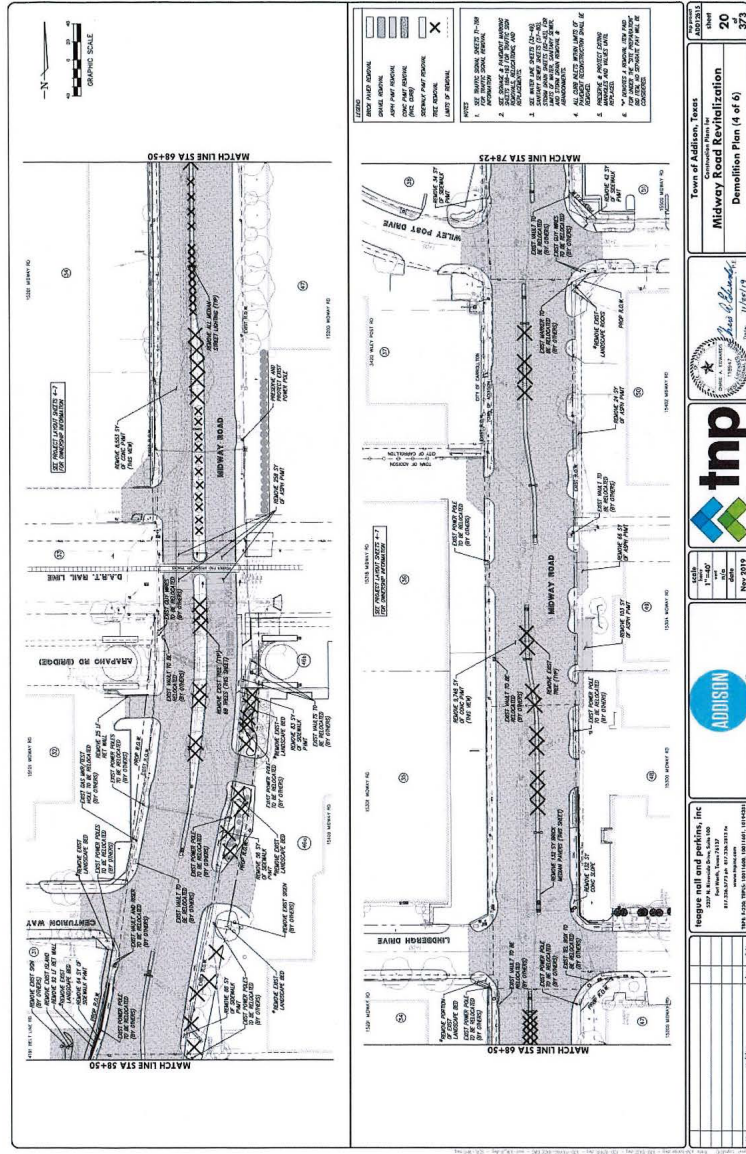
BY: \_\_\_\_\_  
WESLEY S. PIERSON, City Manager

Date: \_\_\_\_\_





EXHIBIT A-1 to A-8

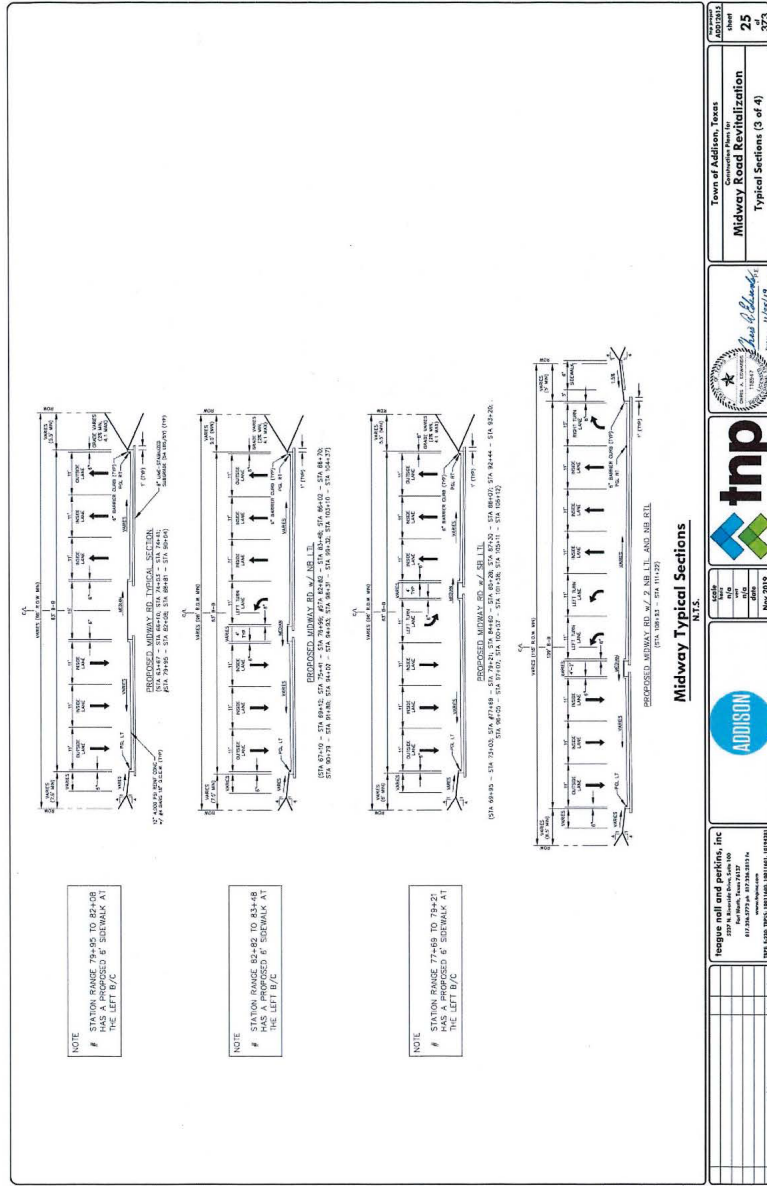


Addison - Cotton Belt - Midway Rd  
 Town of Addison - 16-inch waterline inside 30-inch steel casing  
 EC

Exhibit A-1 to A-8

Mile Post 598.98

EXHIBIT A-1 to A-8

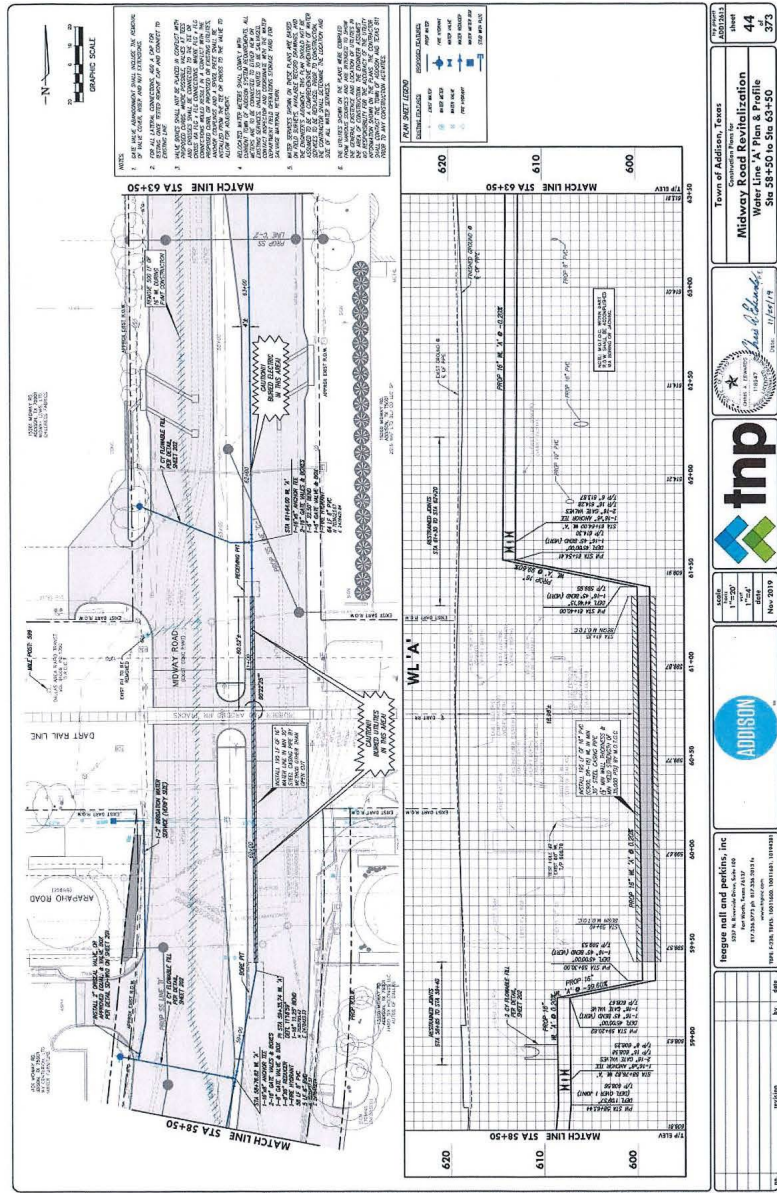


Addison - Cotton Belt - Midway Rd  
Town of Addison - 16-inch waterline inside 30-inch steel casing  
EC

Exhibit A-1 to A-8

Mile Post 598.98

EXHIBIT A-1 to A-8

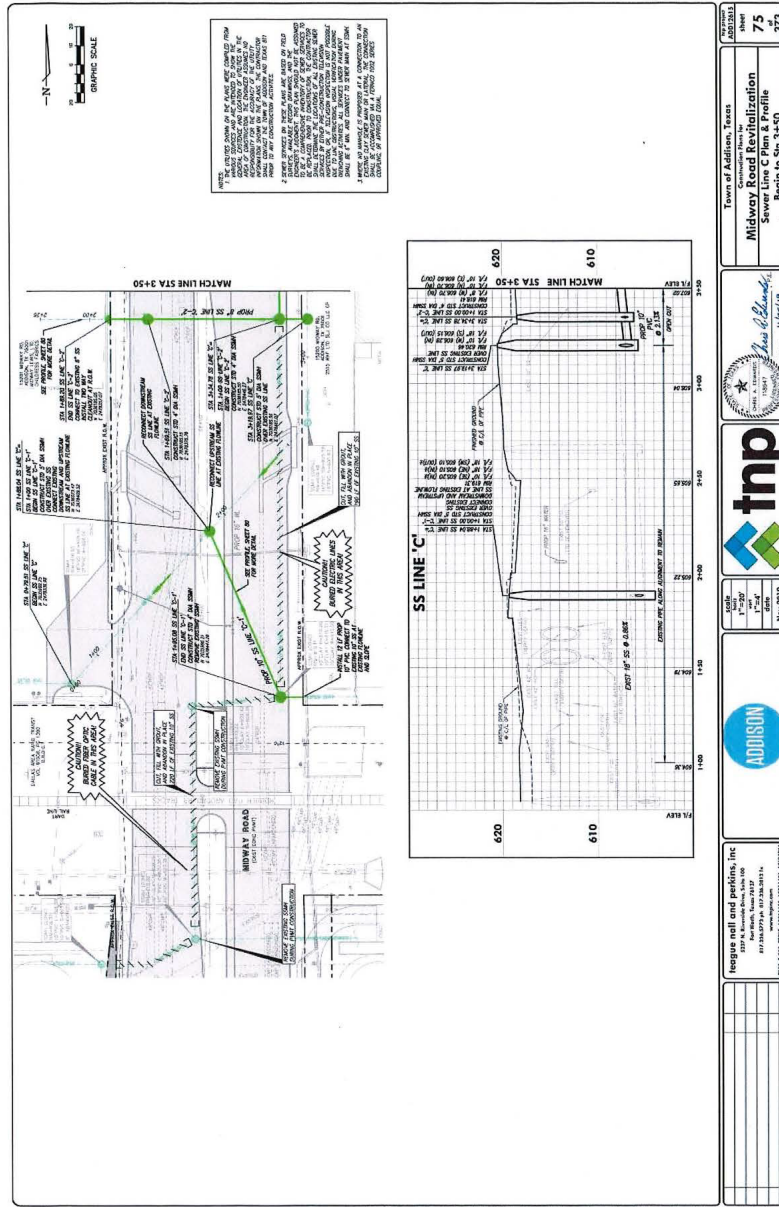


Addison - Cotton Belt - Midway Rd  
 Town of Addison - 16-inch waterline inside 30-inch steel casing  
 EC

Exhibit A-1 to A-8

Mile Post 598.98

EXHIBIT A-1 to A-8

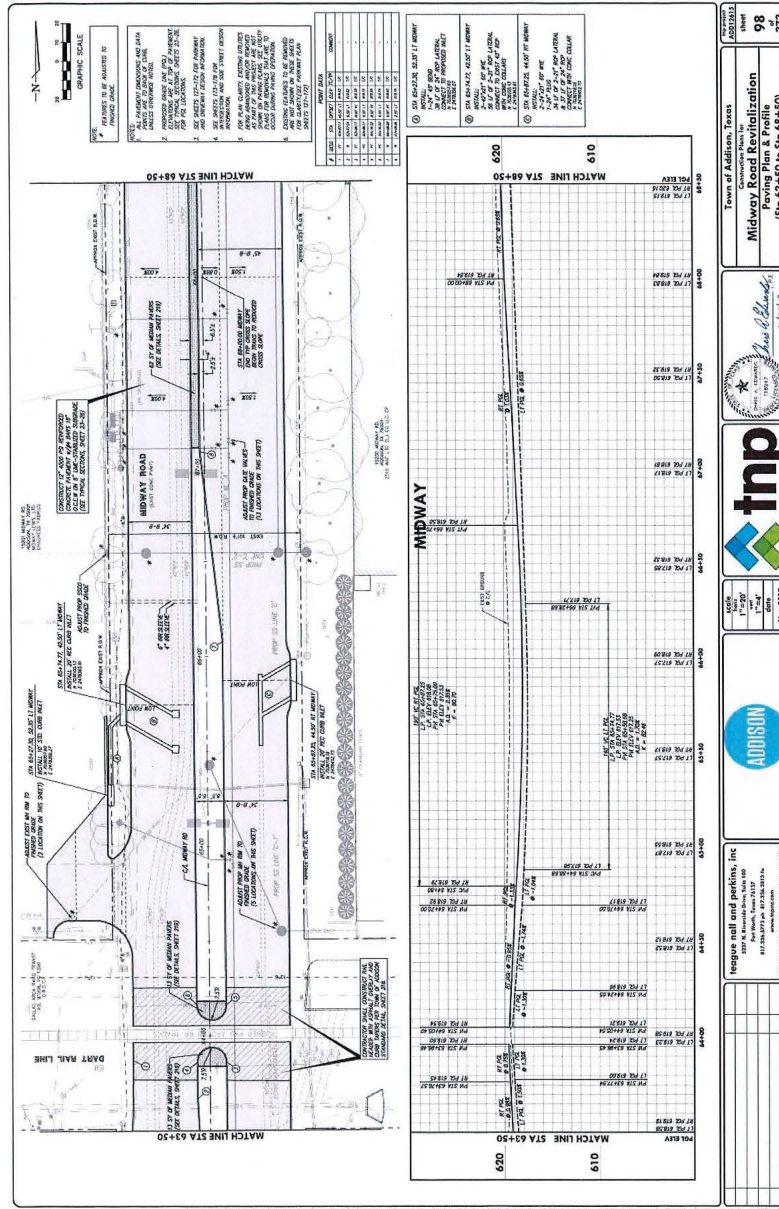


Addison - Cotton Belt - Midway Rd  
 Town of Addison - 16-inch waterline inside 30-inch steel casing  
 EC

Exhibit A-1 to A-8

Mile Post 598.98

EXHIBIT A-1 to A-8



Addison-Cotton Belt-Midway Rd  
 Town of Addison - 16-inch waterline inside 30-inch steel casing  
 EC

Exhibit A-1 to A-8

Mile Post 598.98



