

*D.* [REDACTED] 1997 DART LICENSE AGREEMENT 12/ [REDACTED] 11  
*W.T.* WATER PIPELINE CROSSING FRONTAGE ROAD  
[REDACTED] *KL*

**DART**

Dallas Area Rapid Transit  
P.O. Box 660163  
Dallas, Texas 75266-0163  
214/749-3278

*original to Andy*

*Keep a copy*

*copy (A)*  
*copy (Meyer)*

September 19, 1997

Mr. John R. Baumgartner, P.E.  
Director of Public Works  
Town of Addison  
P. O. Box 144  
Addison, Texas 75001

Re: License Agreement No. 970910 covering a 12-inch water pipeline crossing at the SB  
Frontage Road of Dallas North Tollway in Addison

Dear John:

Enclosed is a fully-executed agreement as referenced above. Should you need to contact us in the future regarding this document, please reference the agreement number above.

Please contact me at (214) 749-2917 if I can be of assistance with any future projects impacting DART-owned railroad properties.

Sincerely,



Jan Seidner  
Manager, Railroad Facilities  
Commuter Rail & Railroad Management

JMS:  
Enclosure

LICENSE AGREEMENT

THIS Agreement, by and between DALLAS AREA RAPID TRANSIT ("DART"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, formerly Article 1118y, V.A.T.C.S., as amended (the "Act") and the TOWN OF ADDISON, a home rule city, ("Licensee"), acting herein by and through its duly authorized city manager, whose mailing address is P. O. Box 144, Addison, Texas 75001,

WITNESSETH:

In consideration of (1) TEN AND NO/100 (\$10.00) DOLLARS cash in hand paid by Licensee to DART, and (2) the faithful performance by Licensee of all of the covenants and agreements contained in this Agreement to be performed by Licensee, DART HEREBY GRANTS A LICENSE to Licensee for the purpose of constructing, installing, operating and maintaining one 12-inch water pipeline (the "Permitted Improvements") crossing within southbound Frontage Road of Dallas Parkway at Mile Post 597.95 in Addison, Dallas County, Texas, more particularly described shown in Exhibit "A" attached hereto and incorporated herein for all pertinent purposes, (the "Property").

The Property shall be used by Licensee solely for the purpose of installation, maintenance and subsequent use of the Permitted Improvements (the "Permitted Use"). Licensee's right to enter upon and use the Property shall be limited solely to the Permitted Use and the Permitted Improvements.

This License is granted subject to the terms and conditions set out below.

1. Term. The term of this license shall be perpetual subject, however, to termination by either party as provided herein.

2. 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 owned by DART, any railroad, utility, or communication company, public or private; (b) to all vested rights presently owned by any railroad, utility or communication company, located within the boundaries of the Property; and (c) to any existing lease, license or other interest in the Property granted by DART to any individual, corporation or other entity, public or private.

3. Design, Construction, Operation and Maintenance. DART's use of the Property and adjoining property may include the use of electrically powered equipment. Notwithstanding DART'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 electrical current being present in proximity to the Permitted Improvements and that such presence could produce corrosive effects to the Permitted Improvements.

3.01. All design, construction, reconstruction, replacement, removal, operation and maintenance of the Permitted Improvements on the Property shall be done in such a manner so as not to interfere in any way with the operations of DART or other railroad operations. In particular, cathodic protection or other stray current corrosion control measures of the Permitted Improvements as required shall be made a part of the design and construction of the Permitted Improvements.

3.02. During the design phase and prior to commencing construction on the Property, a copy of the construction 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 DART and Railroad (the "Railroad", whether one or more, when the construction is going to be within the area of Railroad operations). Such approval shall not be unreasonably withheld. No work shall commence until said plans have been approved by DART and Railroad.

3.03. By acceptance of this license, Licensee agrees to design and construct the Permitted Improvements in such a manner so as not to create a hazard to the use of the Property, and further agrees to pay any damages which may arise by reason of Licensee's use of the Property under this Agreement.

3.04. By acceptance of this license, Licensee covenants and agrees to institute and maintain a reasonable testing program to determine whether or not additional cathodic protection of its Permitted Improvements is necessary and if it is or should become necessary, such protection shall be immediately instituted by Licensee at its sole cost and expense.

3.05. Absence of markers does not constitute a warranty by DART that there are no subsurface installations on the Property.

4. 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 governmental agencies, federal, state or local, required to carry on any activity permitted herein.

5. DART's Standard Contract and Insurance. No work on the Property shall be commenced by Licensee or any contractor for Licensee until such Licensee or contractor shall have executed DART's Standard Contractors Agreement covering such work, and has furnished insurance coverage in such amounts and types as shall be satisfactory to DART.

6. Duty of Care in Construction. Licensee or its contractor shall use reasonable care during the construction period and thereafter, to avoid damaging any existing buildings, equipment and vegetation on or about the Property and any adjacent property owned by or under the control of DART. If the failure to use reasonable care by the Licensee or its contractor causes damage to the Property or such adjacent property, the Licensee and/or its contractor shall immediately replace or repair the damage at no cost or

expense to DART. If Licensee or its contractor fails or refuses to make such replacement, DART 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 DART upon demand.

## 7. Environmental Protection.

7.01. Licensee shall not use or permit the use of the Property for any purpose that may be in violation of any laws pertaining to health or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), the Resource Conservation and Recovery Act of 1976 ("RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act.

7.02. 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 insure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractors.

7.03. 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.

7.04. Licensee shall indemnify and hold DART and Railroad harmless against all cost of environmental clean up to the Property resulting from Licensee's use of the Property under this Agreement.

8. 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.

9. Maintenance of Completed Improvements. After the Permitted Improvements have been constructed, they shall be maintained by the Licensee in such a manner as to keep the Property in a good and safe condition with respect to Licensee's use. In the event the Licensee fails to maintain the Property as required, upon discovery, DART 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, DART shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event DART exercises its right to remedy Licensee's failure, Licensee agrees to immediately pay to DART all costs incurred by DART upon demand.

## 10. Future Use by DART.

10.01. This license is made expressly subject and subordinate to the right of DART to use the Property for any purpose whatsoever.

10.02. In the event that DART shall, at any time subsequent to the date of this Agreement, at its sole discretion, determine that the relocation of the Permitted Improvements shall be necessary or convenient for DART's use of the Property, Licensee shall, at its sole cost and expense relocate said Permitted Improvements so as not to interfere with DART's or DART's assigns use of the Property. In this regard, DART may, but is not obligated to, designate other property for the relocation of the Permitted Improvements. A minimum of thirty (30) days written notice for the exercise of one or more of the above actions shall be given by DART.

11. Relocation Benefits. The parties hereto agree that the construction of the Permitted Improvements on the Property shall be subsequent to the acquisition of the Property by DART and that the Licensee does hereby waive any and all claim that it may have under the Act, or otherwise, regarding the payment of any and all relocation benefits and that all costs associated with any relocation of such Improvements shall be borne by the Licensee.

12. Duration of License. This license shall terminate and be of no further force and effect (a) in the event Licensee shall discontinue or abandon the use of the Permitted Improvements; (b) in the event Licensee shall relocate the Permitted Improvements from the Property; (c) upon termination in accordance with paragraph 17 of this Agreement, whichever event first occurs.

13. 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 railroad regulating bodies, and Licensee agrees to indemnify and hold DART harmless from any failure to so abide and all actions resulting therefrom.

## 14. Indemnification.

14.01. Licensee shall defend, protect, and keep DART forever harmless and indemnified against and from any penalty or damage or charge imposed for any violation of any law, ordinance, rule or regulation arising out of the use of the Property by Licensee, whether occasioned by the neglect of Licensee, its employees, officers, agents, contractors, or assigns, or those holding under Licensee;

14.02. Licensee shall at all times protect, indemnify and it is the **express intention of the parties hereto** that Licensee hold DART harmless against and from any and all loss, cost, damage or expense, including attorney's fees, arising out of or from any accident or other occurrence on or about the Property causing personal injury, death, or

property damage, except when caused by the willful misconduct or negligence of DART, its officers, employees or agents, and then only to the extent of the proportion of any fault determined against DART for its willful misconduct or negligence;

14.03. Licensee shall at all times protect, indemnify and hold DART harmless against and from any and all loss, cost, damage or expense including attorney's fees arising out of any failure of Licensee, its employees, officers, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions hereof.

15. Action Upon Termination of License. At such time as this license may be terminated or cancelled for any reason whatever, Licensee, upon request by DART, shall remove all improvements and appurtenances owned by it, situated in, under or attached to the Property and shall restore the Property to the condition existing at the date of execution of this License, at Licensee's sole expense.

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

17. Methods of Termination. This Agreement may be terminated in any of the following ways:

17.01. Written Agreement of both parties;

17.02. By either party giving the other party thirty (30) days written notice;

17.03. By either party, upon failure of the other party to perform its obligations as set forth in this Agreement.

18. Miscellaneous.

18.01. Notice. When notice is permitted or required by this Agreement, 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:

DART: Dallas Area Rapid Transit  
P. O. Box 660163  
Dallas, Texas 75266-7210  
ATTN: Railroad Management

LICENSEE: Town of Addison  
P. O. Box 144  
Addison, Texas 75001  
ATTN: Director of Public Works

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

18.02. Attorney Fees. Any signatory to this Agreement who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Agreement shall be entitled to recover court costs and reasonable attorney fees from the non-prevailing party.

18.03. Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Texas.

18.04. Entirety and Amendments. This Agreement 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.

18.05. Parties Bound. This Agreement shall be binding upon and inure to the benefit of the executing parties and their respective heirs, personal representatives, successors and assigns.

18.06. Number and Gender. Words of any gender used in this Agreement 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.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple originals this 4<sup>th</sup> day of September, 1997.

LICENSOR:

DALLAS AREA RAPID TRANSIT

BY:

Lonnie E. Blaydes, Jr.  
LONNIE E. BLAYDES, JR.

Vice President

Commuter Rail & Railroad Management

LICENSEE:

TOWN OF ADDISON

BY:

Ron Whitehead  
Printed Name: Ron Whitehead

Title:

City Manager

APPROVED AS TO FORM:

David Cottam  
Office of DART General Counsel



EXHIBIT A

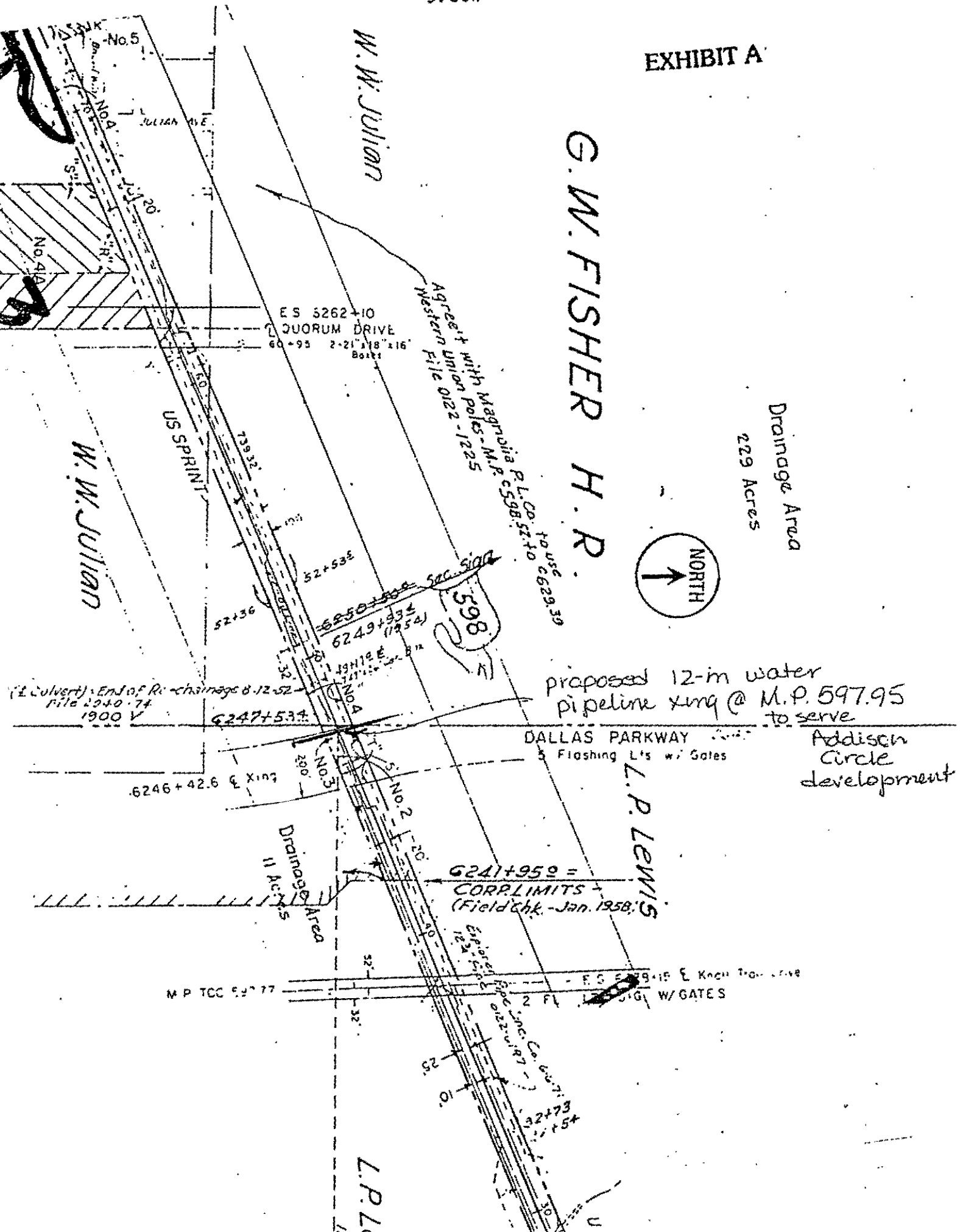
G. W. FISHER H. R.

Drainage Area  
229 Acres



W. W. Julian

W. W. Julian



ES 5262+10  
QUORUM DRIVE  
60+93 2-21' 18" x 16"  
Boxed

Agree with Magnolia P.L. Co. 52+10 to use 623539  
Western File 0122-1225

proposed 12-in water  
pipeline xing @ M.P. 597.95  
to serve

DALLAS PARKWAY  
Flashing L's w/ Gates

Addison  
Circle  
development

6241+95.9 =  
CORR LIMITS  
(Field Chk. - Jan. 1958)

M.P. TCC 93+77  
E.G. 529+15 E. Knox Tron. 1948  
2 FT. W/GATES

L.P. LEWIS

9/4/07 Add. Cir. file  
AGREEMENT # 970910

### LICENSE AGREEMENT

THIS Agreement, by and between DALLAS AREA RAPID TRANSIT ("DART"), a regional transportation authority, created, organized and existing pursuant to Chapter 452, Texas Transportation Code, formerly Article 1118y, V.A.T.C.S., as amended (the "Act") and the TOWN OF ADDISON, a home rule city, ("Licensee"), acting herein by and through its duly authorized city manager, whose mailing address is P. O. Box 144, Addison, Texas 75001,

### WITNESSETH:

In consideration of (1) TEN AND NO/100 (\$10.00) DOLLARS cash in hand paid by Licensee to DART, and (2) the faithful performance by Licensee of all of the covenants and agreements contained in this Agreement to be performed by Licensee, DART HEREBY GRANTS A LICENSE to Licensee for the purpose of constructing, installing, operating and maintaining one 12-inch water pipeline (the "Permitted Improvements") crossing within southbound Frontage Road of Dallas Parkway at Mile Post 597.95 in Addison, Dallas County, Texas, more particularly described shown in Exhibit "A" attached hereto and incorporated herein for all pertinent purposes, (the "Property").

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This License is granted subject to the terms and conditions set out below.

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2. 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 owned by DART, any railroad, utility, or communication company, public or private; (b) to all vested rights presently owned by any railroad, utility or communication company, located within the boundaries of the Property; and (c) to any existing lease, license or other interest in the Property granted by DART to any individual, corporation or other entity, public or private.

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5. DART's Standard Contract and Insurance. No work on the Property shall be commenced by Licensee or any contractor for Licensee until such Licensee or contractor shall have executed DART's Standard Contractors Agreement covering such work, and has furnished insurance coverage in such amounts and types as shall be satisfactory to DART.

6. Duty of Care in Construction. Licensee or its contractor shall use reasonable care during the construction period and thereafter, to avoid damaging any existing buildings, equipment and vegetation on or about the Property and any adjacent property owned by or under the control of DART. If the failure to use reasonable care by the Licensee or its contractor causes damage to the Property or such adjacent property, the Licensee and/or its contractor shall immediately replace or repair the damage at no cost or

expense to DART. If Licensee or its contractor fails or refuses to make such replacement, DART 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 DART upon demand.

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7.02. 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 insure that no such hazardous substance or solid waste will ever be discharged onto the Property by Licensee or its Contractors.

7.03. 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.

7.04. Licensee shall indemnify and hold DART and Railroad harmless against all cost of environmental clean up to the Property resulting from Licensee's use of the Property under this Agreement.

8. 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.

9. Maintenance of Completed Improvements. After the Permitted Improvements have been constructed, they shall be maintained by the Licensee in such a manner as to keep the Property in a good and safe condition with respect to Licensee's use. In the event the Licensee fails to maintain the Property as required, upon discovery, DART 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, DART shall have the right, but not the obligation to remedy such failure at the sole cost and expense of Licensee. In the event DART exercises its right to remedy Licensee's failure, Licensee agrees to immediately pay to DART all costs incurred by DART upon demand.

10. Future Use by DART.

10.01. This license is made expressly subject and subordinate to the right of DART to use the Property for any purpose whatsoever.

10.02. In the event that DART shall, at any time subsequent to the date of this Agreement, at its sole discretion, determine that the relocation of the Permitted Improvements shall be necessary or convenient for DART's use of the Property, Licensee shall, at its sole cost and expense relocate said Permitted Improvements so as not to interfere with DART's or DART's assigns use of the Property. In this regard, DART may, but is not obligated to, designate other property for the relocation of the Permitted Improvements. A minimum of thirty (30) days written notice for the exercise of one or more of the above actions shall be given by DART.

11. Relocation Benefits. The parties hereto agree that the construction of the Permitted Improvements on the Property shall be subsequent to the acquisition of the Property by DART and that the Licensee does hereby waive any and all claim that it may have under the Act, or otherwise, regarding the payment of any and all relocation benefits and that all costs associated with any relocation of such Improvements shall be borne by the Licensee.

12. Duration of License. This license shall terminate and be of no further force and effect (a) in the event Licensee shall discontinue or abandon the use of the Permitted Improvements; (b) in the event Licensee shall relocate the Permitted Improvements from the Property; (c) upon termination in accordance with paragraph 17 of this Agreement, whichever event first occurs.

13. 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 railroad regulating bodies, and Licensee agrees to indemnify and hold DART harmless from any failure to so abide and all actions resulting therefrom.

14. Indemnification.

14.01. Licensee shall defend, protect, and keep DART forever harmless and indemnified against and from any penalty or damage or charge imposed for any violation of any law, ordinance, rule or regulation arising out of the use of the Property by Licensee, whether occasioned by the neglect of Licensee, its employees, officers, agents, contractors, or assigns, or those holding under Licensee;

14.02. Licensee shall at all times protect, indemnify and it is the express intention of the parties hereto that Licensee hold DART harmless against and from any and all loss, cost, damage or expense, including attorney's fees, arising out of or from any accident or other occurrence on or about the Property causing personal injury, death, or

property damage, except when caused by the willful misconduct or negligence of DART, its officers, employees or agents, and then only to the extent of the proportion of any fault determined against DART for its willful misconduct or negligence;

14.03. Licensee shall at all times protect, indemnify and hold DART harmless against and from any and all loss, cost, damage or expense including attorney's fees arising out of any failure of Licensee, its employees, officers, agents, contractors or assigns in any respect to comply with and perform all the requirements and provisions hereof.

15. Action Upon Termination of License. At such time as this license may be terminated or cancelled for any reason whatever, Licensee, upon request by DART, shall remove all improvements and appurtenances owned by it, situated in, under or attached to the Property and shall restore the Property to the condition existing at the date of execution of this License, at Licensee's sole expense.

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

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17.01. Written Agreement of both parties;

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17.03. By either party, upon failure of the other party to perform its obligations as set forth in this Agreement.

18. Miscellaneous.

18.01. Notice. When notice is permitted or required by this Agreement, 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:

DART: Dallas Area Rapid Transit  
P. O. Box 660163  
Dallas, Texas 75266-7210  
ATTN: Railroad Management

LICENSEE: Town of Addison  
P. O. Box 144  
Addison, Texas 75001  
ATTN: Director of Public Works

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

18.02. Attorney Fees. Any signatory to this Agreement who is the prevailing party in any legal proceeding against any other signatory brought under or with relation to this Agreement shall be entitled to recover court costs and reasonable attorney fees from the non-prevailing party.

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18.06. Number and Gender. Words of any gender used in this Agreement 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.

IN WITNESS WHEREOF, the parties have executed this Agreement in multiple originals this 4<sup>th</sup> day of September, 1997.

LICENSOR:

DALLAS AREA RAPID TRANSIT

BY:

  
LONNIE E. BLAYDES, JR.

Vice President

Commuter Rail & Railroad Management

LICENSEE:

TOWN OF ADDISON

BY:

  
Printed Name: Ron Whitehead

Title:

City Manager

APPROVED AS TO FORM:

  
Office of DART General Counsel

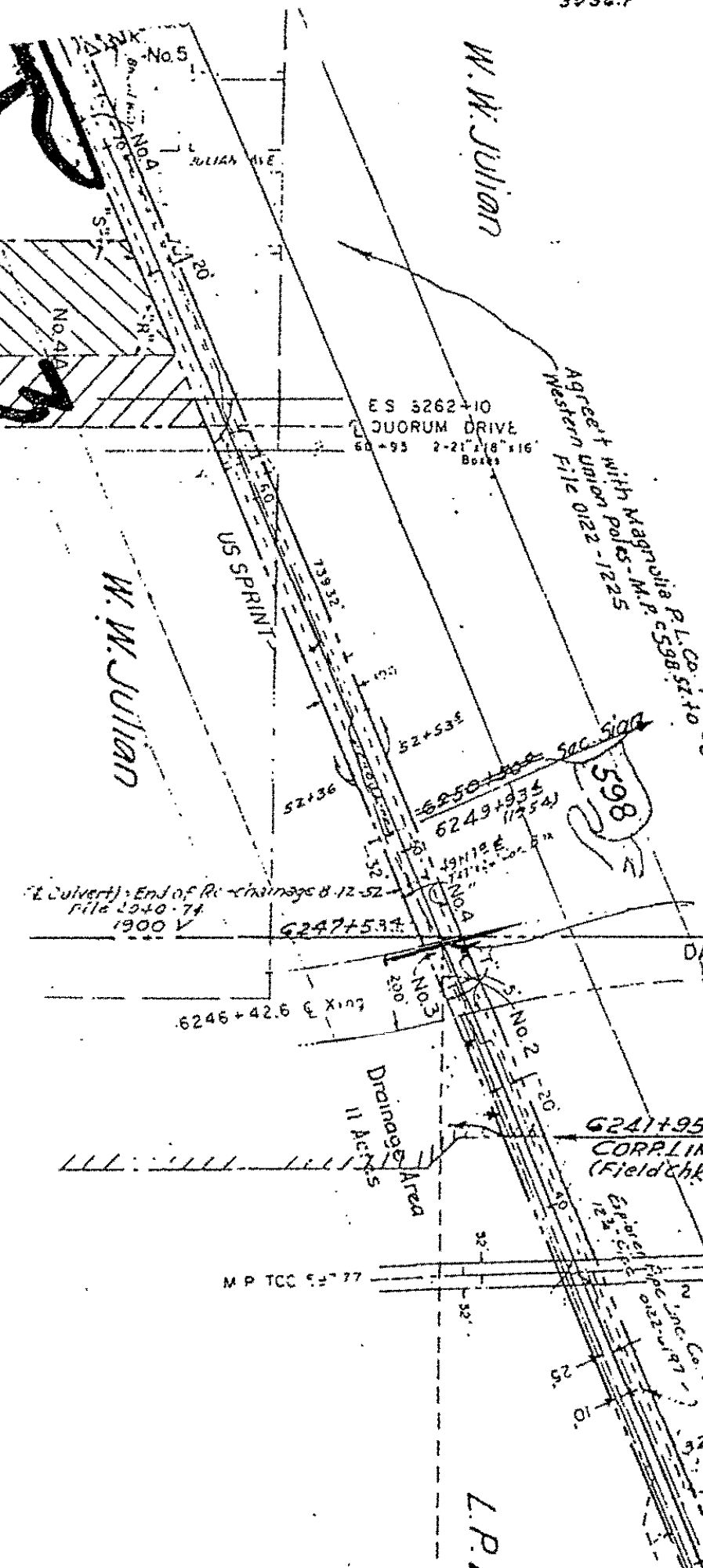
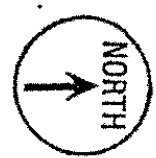
Drainage) 3536.7

Isobalt Surface

# EXHIBIT A

## G. W. FISHER H. R.

Drainage Area  
229 Acres



proposed 12-in water pipeline xing @ M.P. 597.95 to serve

Addison Circle development

DALLAS PARKWAY  
Flashing L's w/ Gates

62+11+95.9 =  
CORP. LIMITS  
(Field Chk. - Jan. 1958)

M.P. TCC 5-77  
2 FT. L.S. SIG. W/ GATES