

LEASE AGREEMENT

LEASE AGREEMENT dated this 13th day of April, 2015, by and between the Trustees of Phillips Exeter Academy (the "Trustees"), a _____ with a mailing address of 20 Main Street, Exeter, New Hampshire 03833 and Town of Exeter (the "Town"), a municipal corporation with a mailing address of 10 Front Street, Exeter, New Hampshire 03833.

RECITALS:

A. The Trustees are the owners of property located in the Town of Exeter (the "Property"). The Town of Exeter is a municipal corporation which operates a municipal water system.

B. Located upon the Property is a groundwater supply well known as the Stadium Well (the "Well"). In 1963, the Town and the Trustees entered into an agreement whereby the Town was permitted to maintain a well and pump house and necessary water transmission line on the Property. The Well was in use as a source of Town drinking water from 1963 to 1973 and remained in service until 1986. The Town now wishes to reactivate the Well, and the Trustees agree to allow the Town to lease that portion of the Property necessary for the operation and maintenance of the Well.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Lease; Description of Leased Premises. The Trustees lease to the Town, and the Town leases from the Trustees, that portion of the Property which is necessary for the use, operation and maintenance of the Well as more fully described in (a) through (d) below and is hereinafter referred to as the "Leased Premises". The Leased Premises are shown on Exhibit A, "Stadium Pump Station Site Plan" and Exhibit B "Stadium Well Sanitary Protective Area", both dated April, 2015 and attached hereto. Specifically, the Leased Premises include:

- (a) the non-exclusive use of Gilman Lane, running from High Street to the Well, for approximately 2,650 feet along Gilman Lane.
- (b) The Well, and a 400 foot protective well radius surrounding the Well (the "Protective Well Radius Area") as depicted on Exhibits A and B;
- (c) the Well pump house and an area twenty (20) feet wide along the

perimeter of the chain link fence enclosing the Well pump house, and including the location of the chain link fence, the 12' wide double leaf gate, the hedgerow, the 12' wide gravel driveway to the Well pump house, the monitoring well, the 12" x 6" anchor tee, and the 6" gate valve hydrant, the propane tank and new overhead electric service, all as depicted on Exhibit A; and,

- (d) the location of the water transmission pipe running underground from the Well pump house across (under) the Exeter River to Gilman Park, also as depicted on Exhibit A.

2. Term; Notice of Lease. The term of this Lease shall begin on the date of execution of the lease (the "Commencement Date"), and shall continue for a period of thirty (30) years. The parties agree to execute and record in the Rockingham County Registry of Deeds a Notice of this Lease that complies in content and form with New Hampshire RSA Section 477:7-a.

3. Rent. The Town agrees to pay the Trustees rent of \$5,000 per year. This amount shall be paid in the form of a credit against the Trustees' water bill.

4. Quiet Enjoyment. The Trustees shall put the Town into possession of the Leased Premises on the Commencement Date, and the Town, upon paying the rent and observing the other requirements herein, upon its part to be observed, shall have peaceful and quiet holding and enjoyment of the Leased Premises.

5. Condition of Leased Premises; Maintenance; Replacement; Repair; Upgrade.

- (a) The Town accepts the Leased Premises "as is" and in their existing condition and agrees that no representation, statement or warranty, express or implied, has been made by or on behalf of the Trustees, as to such condition, or as to the use that may be made of such Leased Premises.
- (b) The Town shall have the right to maintain, replace, repair or upgrade the Well and the Well pump house and the water transmission line thereto on the Trustees' land, as well as the right to access the Leased Premises over and through the Property with personnel, vehicles and equipment. The parties agree that the primary access to the Leased Premises will be via Gilman Lane, but agree that the Town may access the property via other routes if necessary to exercise its rights under this Lease. Such alternate access may be granted by the Trustees, following notice by the Town and written permission by the Trustees, subject to such conditions

as the Trustees may reasonably impose. Such alternate access shall not be unreasonably withheld.

- (c) The right to maintain the water transmission line shall include the right to excavate for the purposes of replacing, repairing, upgrading, and/or restoring said water transmission line, provided that in the event any excavation is made, the Property shall be restored as nearly as possible to its former condition.
- (d) The Town shall notify, coordinate and receive prior approval from the Trustees for all non-emergency construction projects within the Leased Premises. Such approval shall not be unreasonably withheld or delayed. Such projects shall be scheduled and conducted so as not to interfere unreasonably with the ongoing utilization of the Property for Academy purposes. Any disturbances by the Town of the Leased Premises or of the Trustees' property shall be restored as nearly as possible to its prior condition.

6. Termination.

- (a) The Town may terminate this Lease at any time upon written notice to the Trustees, and shall remove its property as specified in 6(c) below.
- (b) In the event of any of the following ("Default" or "Defaults"), the Trustees shall have the rights set forth in this Section 6(b):
 - (i) the Town defaults in the performance or observance of any other covenant or condition in this Lease and such default remains unremedied or uncured for thirty (30) days after written notice thereof has been given or sent to the Town by the Trustees; provided, however, in the event that such remedy or cure cannot, due to its nature, be completed within thirty (30) days, then the Town shall have such additional time as is needed to complete such cure or remedy so long as it is begun on a timely bases and is prosecuted to completion with diligence; or
 - (ii) the Town shall have assigned or sublet the Leased Premises without the prior written consent of the Trustees; or
 - (iii) the Town does not pump water from the Well for a period of one year, except for such failure to draw water occasioned by necessary repairs.

- (c) In the event of any of such Defaults which are not cured within any applicable cure or remedy period, the Trustees may immediately or at any time thereafter and with demand or notice enter upon the Leased Premises or any part thereof in the name of the whole and repossess the same as of the Trustees' former estate and expel the Town. Nothing herein contained will be deemed to require the Trustees to await the date on which this Lease, or the term hereof, would have expired had there been no default by the Town, or no such termination or cancellation. The Trustees' rights and remedies under this Lease are distinct, separate and cumulative remedies, and no one of them, whether or not exercised by the Trustees, will be deemed to be in exclusion of any of the others herein or by law or equity provided.
- (d) Upon termination, the Town shall remove all of its well and pump house equipment within six (6) months after the termination of its right to draw water at this location.

7. Trustees Right to Use Water.

- (a) The Trustees may use water for irrigation purposes from the Town's river pump station, which shall be limited to 500,000 gallons per year, with a monthly peak usage limit of 100,000 gallons and a daily peak usage of 3,333 gallons.
- (b) In the event sufficient river water is not available to meet the Trustees water usage needs per section 7(a), an amount of water may be drawn by the Trustees from the Stadium Well for irrigation purposes, subject to the usage limitations in section 7(a) for both the river pump station and Stadium Well combined.
- (c) The Trustees will assume responsibility for water treatment and the expense of all improvements necessary to connect to the Town's water system.
- (d) The Trustees must install at their expense a separate pump, meters and controls, sized and designed by their engineers and approved by the Town. Such approval shall not be unreasonably withheld or delayed.
- (e) The Trustees will be responsible for connection to their water distribution system.
- (f) The Trustees ability to use water from the river pump station or Stadium Well is not guaranteed by the Town, as state regulation controls the ability

of the Town to withdraw water from the river and the Well. In times of low or restricted flow, the Town's water supply needs will supersede the Trustees' right to use water from the from river pump station and from Stadium Well.

8. Use Restrictions Within Protective Well Radius Area. The Trustees agree not to locate any building, or conduct any operation or other activity which may adversely affect or be detrimental to the water supply within the Protective Well Radius Area. Additionally, the Trustees agree that within the Protective Well Radius Area, there shall be no use of fertilizers or pesticides, and no significant disturbance of soils, except for the conservation or habitat management uses of the Property. There shall be no dumping, storage, injection, burning, or burial of man-made materials, demolition, construction debris, fill, yard waste, trash, or other materials known to be environmentally hazardous in the Protective Well Radius.

9. Disputes Between the Parties. Should the parties have any dispute regarding this Lease, including any claim of breach of the Lease, the party alleging the breach shall notify the other party of the alleged breach, and the notified party shall have fifteen (15) days to cure any alleged breach; provided, however that in the event that the breach is of a nature that it cannot be cured within fifteen (15) days, then the breaching party may have such additional time, not to exceed ninety (90) days, so long as the cure of the breach is begun within the first fifteen (15) days and is prosecuted to completion with diligence. In the event that the parties are unable to resolve the matter informally or by mutual agreement, they agree to engage in private, non-binding mediation in an effort to resolve the matter. The costs of any such mediation shall be split equally between the parties. If mediation fails to resolve the matter, the parties may take whatever legal steps they deem necessary to resolve the issue.

10. Assignment; Subleasing. The Town shall not, voluntarily, by operation of law, or otherwise, assign, transfer, mortgage, pledge or encumber this Lease or sublease the Leased Premises or any part thereof, or grant a right to any person other than the Town, its employees, agents, servants and invitees to occupy or use the Leased Premises or any portion thereof, without the express prior written consent of the Trustees. Any attempt to do any of the foregoing without such written consent shall be null and void and of no affect, and shall further constitute a material default under this Lease.

11. Taxes and Assessments. The Town shall not assess property taxes upon the Trustees for any improvements which are located on the Leased Premises by the Town.

12. Insurance and Indemnification.

- (a) The Town shall, for the duration of this Agreement, name the Trustees as an additional insured on the Town's general liability and workers' compensation insurance policies or the equivalent and shall provide the Trustees with a current certificate of insurance. Said insurance shall have no reductions in the then existing limits and shall not be cancelled without 30 days' prior written notice to the Trustees. In the event of notice or cancellation reduction of existing limits of insurance, the Trustees shall provide the Town with a reasonable time, not to exceed five (5) business days, to provide acceptable replacement insurance equivalent to the cancelled or then existing insurance, failing which the lease may be terminated until such time as similar replacement insurance is obtained.
- (b) The Town shall indemnify and hold the Trustees harmless from and against any and all claims, costs, losses and damages, including but not limited to attorneys' fees, caused or arising from the Town's or the Town's employees, agents, contractors, subcontractors use of or presence at the Leased Premises or any Property of the Trustees, only to the extent that such employees, agents, contractors, subcontractors are on the Leased Premises or Property for purposes relating to this Lease.
- (c) The Trustees shall indemnify and hold the Town harmless from and against any and all claims, costs, losses and damages, including but not limited to attorneys' fees, caused or arising from the Trustees' or the Trustees' employees, agents, contractors, subcontractors use of or presence at the Leased Premises.

13. Mechanics' Liens. In the event of the filing in the Rockingham County Registry of Deeds of any notice of a builder's, supplier's or mechanic's lien on the Leased Premises arising out of any work performed by or on behalf of the Town, the Town shall cause without delay proper proceedings to be instituted to test the validity of the lien claimed, and before the end of the term, to discharge the same by the posting of a bond or otherwise; and during the pendency of any such proceeding, the Town shall completely defend and indemnify the Trustees against any such claim or lien, and all costs of such proceedings wherein the validity of such lien is contested by the Town, and during the pendency of such proceeding, such lien may continue until disposition of such proceeding, and after disposition thereof, the Town shall cause said lien to be released and discharged.

14. Access to Leased Premises. The Trustees or its representatives, shall have free access to the Leased Premises at all times in cases of emergency and at reasonable intervals during normal business hours for the purpose of inspection; provided that, with the exception of emergency situations, the Trustees shall not unreasonably interfere with the Town's business.

15. Notices. Any written notice, request or demand required or permitted by this Lease will, until either party notifies the other in writing of a different address, be properly given if sent by certified mail, return receipt requested, or delivered by a nationally recognized overnight delivery service and addressed as follows:

If to the Trustees: Phillips Exeter Academy (the "Trustees")
20 Main Street
Exeter, New Hampshire 03833
Telephone: _____

With a copy to: _____

If to the Town: Town of Exeter, New Hampshire
Attention: Town Manager
10 Front Street
Exeter, New Hampshire 03833-2792
Telephone: 603/778-0591

With a copy to: George Dana Bisbee, Esq.
Devine, Millimet & Branch
Professional Association
111 Amherst Street, P.O. Box 719
Manchester, NH 03105-0719
Telephone: 603/669-8626

16. Non-recordation of Notice of Lease; Copies of Lease with Parties. The Trustees and the Town agree that a Notice of Lease for this Lease shall be recorded in the Rockingham County Registry of Deeds. The Town shall maintain a copy of this Lease with exhibits in the Office of the Town Clerk, which will be available for view by the public.

17. Miscellaneous.

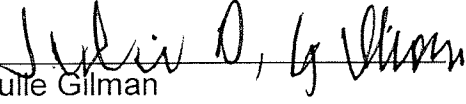
- (a) This Lease will be construed and interpreted exclusively in accordance with the laws of the State of New Hampshire.
- (b) This Lease may be executed in two (2) or more counter-parts, each of which will be deemed an original and all collectively but one and the same agreement.

- (c) This Lease contains and embraces the entire agreement between the parties hereto and no part of it may be changed, altered, amended, modified, limited or extended orally or by agreement between the parties, unless such agreement is expressed in writing and signed by the Trustees and the Town or their respective successors in interest.
- (d) The headings at the beginning of each of the Sections in this Lease are solely for purposes of convenience and identification and are not to be deemed or construed to be part of this Lease.
- (e) If any term, clause or provision of this Lease is judged to be invalid and/or unenforceable, the validity and/or enforceability of any other term, clause or provision in this Lease will not be affected thereby.
- (f) The captions of the Articles or Sections of this Lease are to assist the parties in reading this Lease and are not a part of the terms or provisions of this Lease. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. In any provision relating to the conduct, acts or omissions of the Town, the term "the Town" shall include the Town's agents, employees, contractors, customers, agents, invitees or successors. In addition, in any provision relating to the conduct, acts or omissions of the Town, the term "the Town" shall also include others using the Leased Premises with the Town's permission. In any provision relating to the conduct, acts or omissions of the Trustees, the term "the Trustees" shall include the Trustees' agents, employees, contractors, customers, agents, invitees or successors. In addition, in any provision relating to the conduct, acts or omissions of the Trustees, the term "the Trustees" shall also include others using the Leased Premises with the Trustees' permission. This Lease shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that the Trustees and the Town have contributed with the advice of counsel to the preparation of this Lease.

[Signatures Follow on Next Page]

TOWN OF EXETER

Dated: 4.14.15

By: 
Julie Gilman

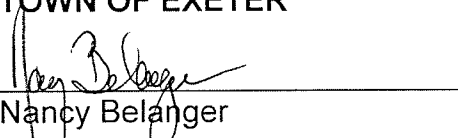
TOWN OF EXETER

Dated: 4-14-2015

By: 
Don Clement

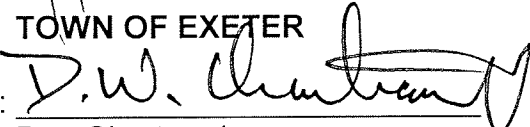
TOWN OF EXETER

Dated: April 16, 2015

By: 
Nancy Belanger

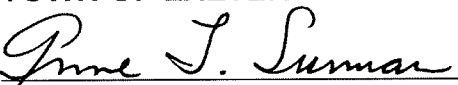
TOWN OF EXETER

Dated: 4/15/2015

By: 
Dan Chartrand

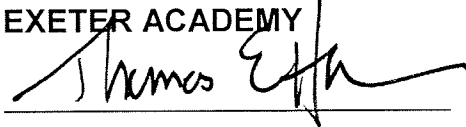
TOWN OF EXETER

Dated: 4-15-2015

By: 
Anne L. Surman

TRUSTEES OF PHILLIPS
EXETER ACADEMY

Dated: 4/27/2015

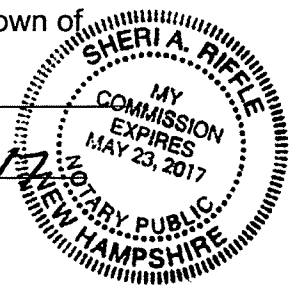
By: 

STATE OF NEW HAMPSHIRE

COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 14 day of April, 2015 by Julie Gilman, Chair of the Board of Selectmen of the Town of Exeter, New Hampshire, a New Hampshire body politic, on behalf of said Town of Exeter.

Sheri A. Riffle
Justice of the Peace/Notary Public
My Commission Expires: 5-23-17
Notary Seal or Stamp:

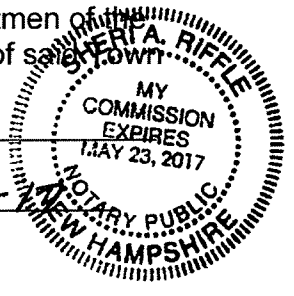


[Sign in Black Ink]

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 14 day of April, 2015 by Don Clement, vice chair of the Board of Selectmen of the Town of Exeter, New Hampshire, a New Hampshire body politic, on behalf of said Town of Exeter.

Sheri A. Riffle
Justice of the Peace/Notary Public
My Commission Expires: 5-23-17
Notary Seal or Stamp:

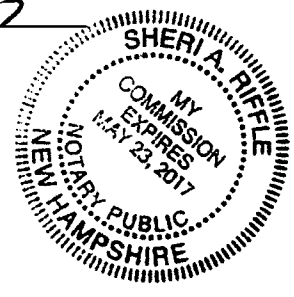


[Sign in Black Ink]

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 16 day of April, 2015 by Nancy Belanger, Clerk of the Board of Selectmen of the Town of Exeter, New Hampshire, a New Hampshire body politic, on behalf of said Town of Exeter.

Sheri A. Riffle
Justice of the Peace/Notary Public
My Commission Expires: 5-23-17
Notary Seal or Stamp:

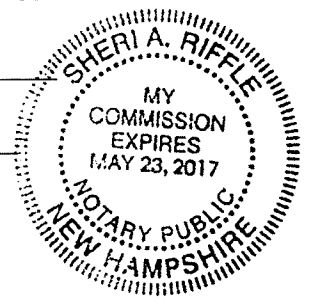


[Sign in Black Ink]

STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 15 day of April, 2015, by Dan Chartrand, Member of the Board of Selectmen of the Town of Exeter, New Hampshire, a New Hampshire body politic, on behalf of said Town of Exeter.

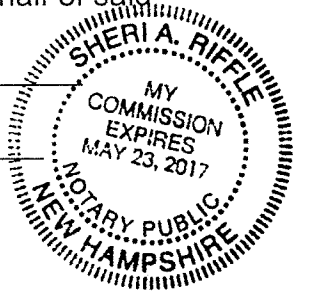
[Signature]
Justice of the Peace/Notary Public
My Commission Expires: 5-23-17
Notary Seal or Stamp:
[Sign in Black Ink]



STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 15 day of April, 2015 by Anne L. Surman, Member of the Board of Selectmen of the Town of Exeter, New Hampshire, a New Hampshire body politic, on behalf of said Town of Exeter.

[Signature]
Justice of the Peace/Notary Public
My Commission Expires: 5-23-17
Notary Seal or Stamp:
[Sign in Black Ink]



STATE OF NEW HAMPSHIRE
COUNTY OF ROCKINGHAM

The foregoing instrument was acknowledged before me this 27th day of APRIL, 2015, by Thomas E. Hassan (name), Principal, of Phillips Exeter Phillips Exeter Academy, a Corporation organized under the laws of the State of New Hampshire, on behalf of the Trustees of Phillips Exeter Academy.

[Signature]
Justice of the Peace/Notary Public
My Commission Expires: 9/14/16
Notary Seal or Stamp: LAURA E. BUELL, Notary Public
My Commission Expires September 14, 2016

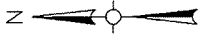
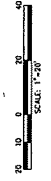
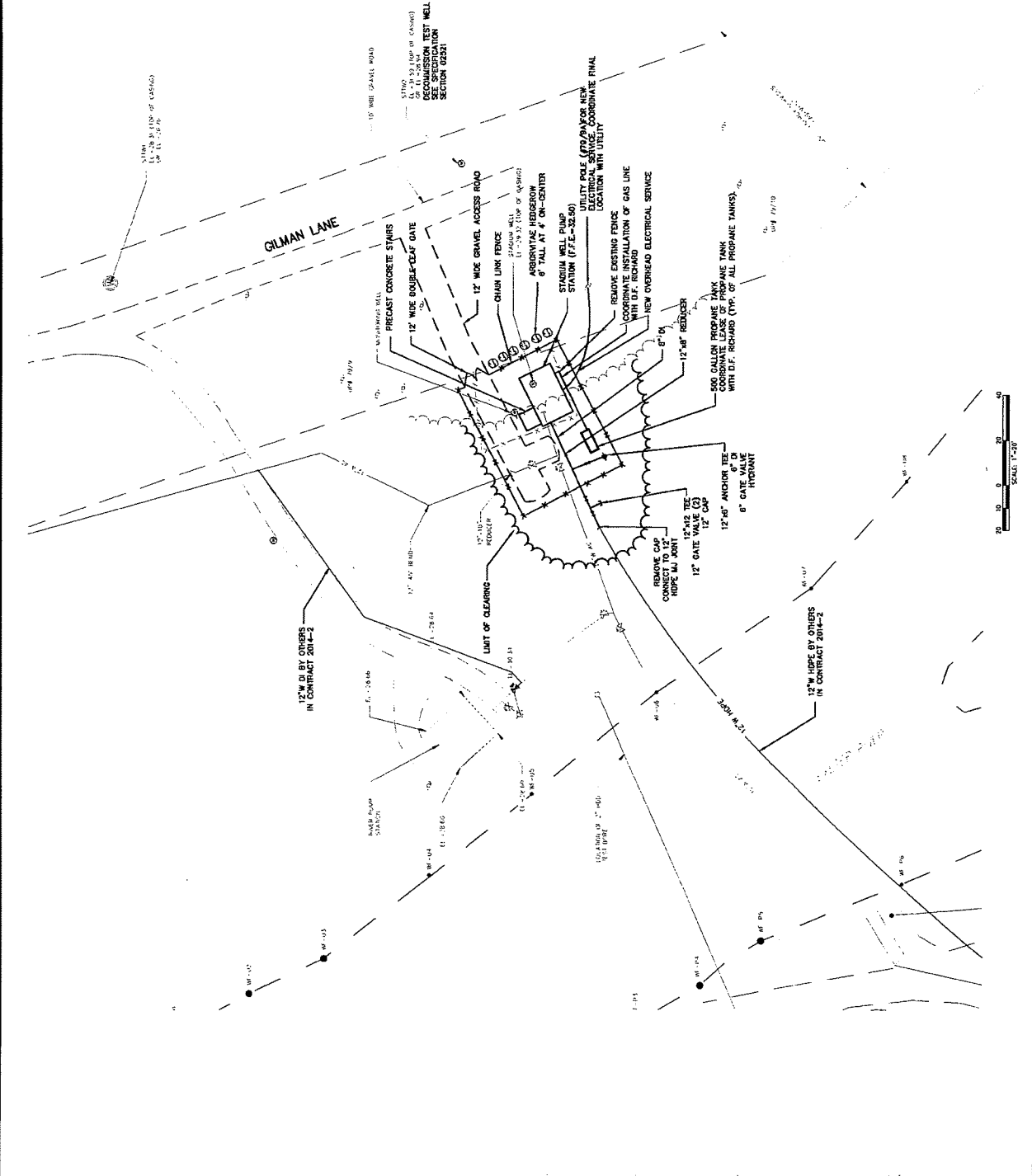
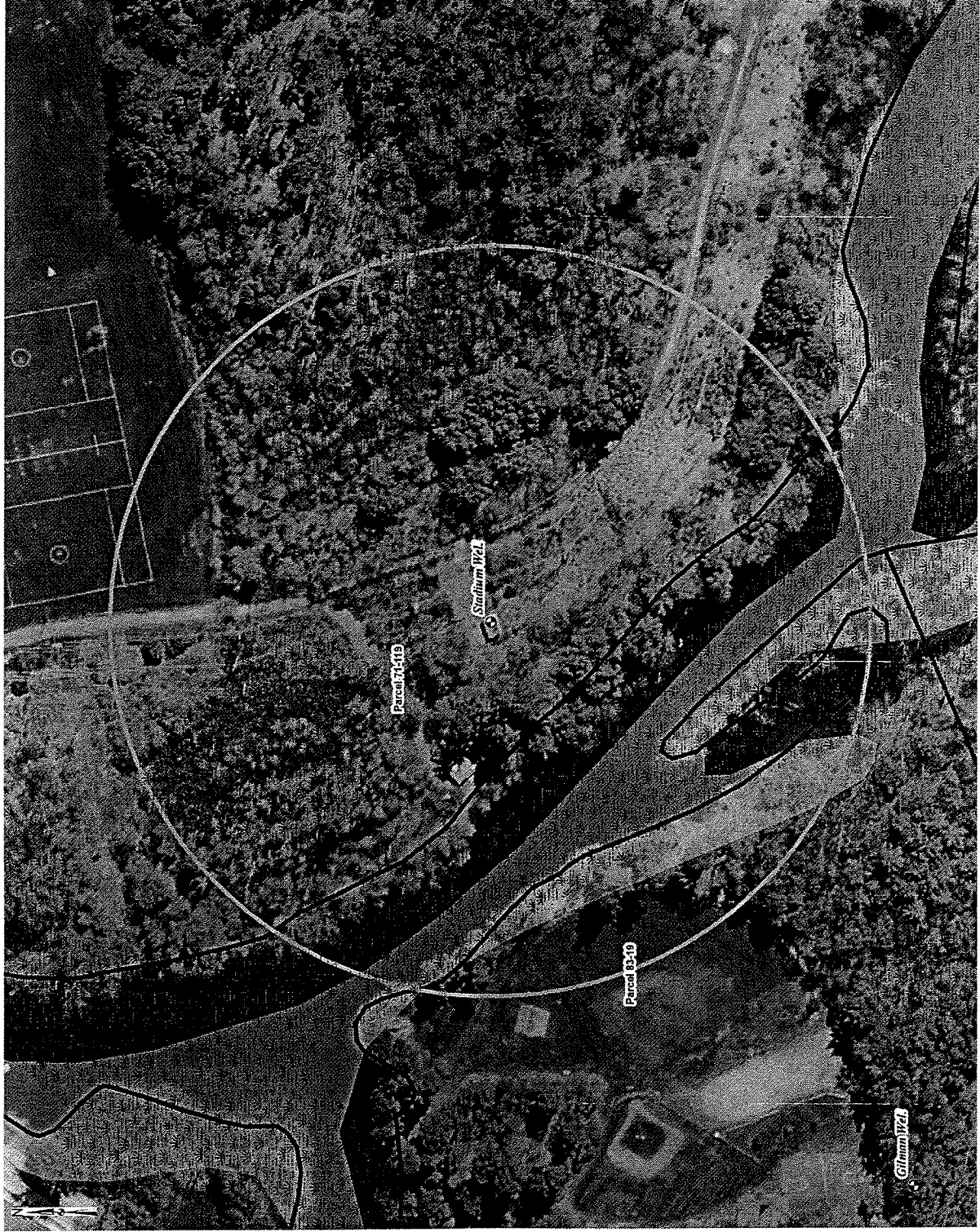






EXHIBIT A
STADIUM PUMP STATION SITE PLAN
APRIL 2015 SCALE: 1" = 20'
Weston&Sampson





Legend

-  NWI Wetlands
-  400-foot Sanitary Protective Area
-  Parcel Boundaries
-  River

DATA SOURCES:
 New Hampshire GIS - GRANIT (<http://granit.unh.edu>);
 NWI (National Wetlands Inventory) Wetlands
 Exeter River

Town of Exeter,
 Parcel Boundaries

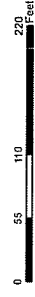


EXHIBIT B	
STADIUM WETLAND SANITARY PROTECTIVE AREA	
1 inch = 100 feet	APRIL 2015
<i>WestonSampson</i>	