



STATE OF NEW HAMPSHIRE
DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES

BUSINESS ADMINISTRATION
STATE MILITARY RESERVATION
4 PEMBROKE ROAD
CONCORD, NEW HAMPSHIRE 03301-5652

David J. Mikolaities, Major General
The Adjutant General

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Warren M. Perry
Deputy Adjutant General

November 4, 2019

His Excellency Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

The Department of Military Affairs and Veterans Services respectfully requests authority to enter into an Agreement and Consent to Joint Use (the "Joint Use Agreement" or "JUA") with Public Service Company of New Hampshire d/b/a Eversource Energy to provide for the forbearance from the exercise of certain rights by Eversource Energy with respect to the construction, maintenance, operation and use of a roadway with underground utilities and a sewer force main by the Department within a power transmission line right-of-way easement area that crosses Department land in Pembroke.


EXPLANATION

The State of New Hampshire Department of Military Affairs and Veterans Services is the owner of land located at 722 Riverwood Drive in Pembroke, New Hampshire (the "Property"). This Property was acquired in October 2009 subject to a power transmission line right-of-way easement held by Eversource Energy (the "Easement"). This Easement includes the right to remove all structures or obstructions which may be found within the Easement area.

As part of ongoing construction to build a 27,700 square foot Readiness Center and 9,100 square foot State Active Duty Annex for the New Hampshire Army National Guard, the Department desires to construct, maintain, operate and use within the Easement area a roadway with underground utilities and a sewer force main. Eversource Energy is willing to forbear from exercising its right under the Easement to remove such improvements from the Easement area, subject to the terms and provisions of the JUA.

There are no costs to the State resulting directly from the JUA. The covenants contained within the JUA shall run with the land in perpetuity or until the Easement is extinguished or terminated. The JUA has been approved for form, substance and execution by the New Hampshire Department of Justice.

Respectfully Submitted,


David J. Mikolaities
Major General
The Adjutant General

Return to:
Eversource Energy
Attn: Russell Maille
Real Estate EP-2
P.O. Box 330
Manchester, NH 03105
AGA-_____

AGREEMENT AND CONSENT TO JOINT USE

BETWEEN

**STATE OF NEW HAMPSHIRE, DEPARTMENT OF MILITARY AFFAIRS
AND VETERANS SERVICES**

AND

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

AGREEMENT made this 31st day of October, 2019 by and between PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a Eversource Energy, a New Hampshire corporation with its principal place of business at 780 North Commercial Street, Manchester, New Hampshire, 03101 (hereinafter called "EVERSOURCE"); and THE STATE OF NEW HAMPSHIRE, by and through its DEPARTMENT OF MILITARY AFFAIRS AND VETERANS SERVICES, having a business administration office at 4 Pembroke Road, Concord, New Hampshire 03301 (hereinafter called "THE STATE OF NEW HAMPSHIRE");

WITNESSETH THAT

WHEREAS, EVERSOURCE acquired a 265 foot wide easement by deed of Laurence F. and Edith Whittmore dated December 2, 1950 and recorded in the Merrimack County Registry of Deeds at Book 693, Page 29 (hereinafter called the "Easement"), the relevant area subject to such Easement being shown as that portion of the "265' Wide Electric Transmission and Distribution Easement" extending over 1,500 feet northerly of the "Rumford Line," so-called, on "Sheet 2 of 2" of a certain plan entitled "Boundary Plan, Land of Riverwood Commercial Properties, Inc., Assessors Map 632 Lot 18, Riverwood Drive – Sheep Davis Road, Pembroke, New Hampshire" dated December

2007, revised February 2, 2008, prepared by T.F. Bernier, Inc., recorded in the Merrimack County Registry of Deeds as Plan # 19303 (hereinafter the "Easement Area"), which Easement is essential to its operations in the "Greater Concord Area" area and has poles, lines and appurtenant equipment across portions of the Easement Area;

WHEREAS, THE STATE OF NEW HAMPSHIRE is the fee owner of land located on/off Riverwood Drive in Pembroke, New Hampshire (hereinafter the "Premises"), which it acquired subject to the Easement by Warranty Deed of Riverwood Commercial Properties, Inc. dated October 1, 2009, recorded in the Merrimack County Registry of Deeds at Book 3157, Page 1644;

WHEREAS, THE STATE OF NEW HAMPSHIRE wishes to construct, maintain, operate, and use within the Easement Area on the Premises a roadway with underground utilities, and a sewer force main (hereinafter called the ENCROACHMENTS), which ENCROACHMENTS shall cross the Easement Area between EVERSOURCE structures 39 and 40 on a 34.5 kV distribution line # 318, between structures 26 and 27 on a 115 kV transmission line # M108, and between structures 69 and 70 on a 115 kV transmission line # P145, as shown on a plan entitled "New Hampshire Army National Guard Readiness Center & State Active Duty Annex, Pembroke, New Hampshire", dated August 23, 2018 and prepared by Stantec (hereinafter called "the Plan"), which is attached hereto and made a part hereof, but not recorded herewith;

WHEREAS, the Easement includes the right to remove all structures or obstructions which may be found within the Easement Area;

WHEREAS, EVERSOURCE desires to cooperate with THE STATE OF NEW HAMPSHIRE in the construction/retention, operation, use, and maintenance of the ENCROACHMENTS, and THE STATE OF NEW HAMPSHIRE desires to cooperate with EVERSOURCE to protect its easement rights.

NOWTHEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

- 1) It is the express intention of the parties that the covenants contained within this Agreement shall run with the land and shall benefit and burden the Premises and the Easement, respectively, in perpetuity or until such time as the Easement is extinguished or terminated.
- 2) EVERSOURCE consents to the construction, maintenance, operation, and use of

the ENCROACHMENTS within the Easement Area by THE STATE OF NEW HAMPSHIRE as described above and as shown on the Plan; such consent is neither to be deemed a waiver of any of the rights of EVERSOURCE under the Easement nor construed as a waiver of any of the rights of the STATE OF NEW HAMPSHIRE in and to the Premises.

- 3) While EVERSOURCE retains the right under the Easement to remove all structures or obstructions which may be found within the Easement Area, this Agreement witnesses that EVERSOURCE shall forbear from exercising its right under the Easement to remove the ENCROACHMENTS from the Easement Area to the extent that said ENCROACHMENTS are constructed as configured in the Plan.
- 4) THE STATE OF NEW HAMPSHIRE and EVERSOURCE agree to jointly use a certain portion of the Easement Area as described above and shown on the Plan, in accordance with the Easement and subject to the conditions contained herein.
- 5) THE STATE OF NEW HAMPSHIRE and EVERSOURCE agree to use their best efforts to cooperate in said joint use and to use their best efforts to provide each other, when requested, with engineering and surveying plans, maps or information necessary or helpful in locating or determining rights of the other.
- 6) THE STATE OF NEW HAMPSHIRE agrees to take all safety precautions when working under and near EVERSOURCE's 34.5 kV distribution line and 115 kV transmission lines, including but not limited to compliance with applicable Occupational Safety and Health Administration (OSHA) requirements. See Exhibit A.
- 7) THE STATE OF NEW HAMPSHIRE agrees to provide notification to EVERSOURCE prior to beginning construction and/or maintenance of the ENCROACHMENTS adjacent to EVERSOURCE facilities and equipment within the Easement Area. Notification to EVERSOURCE shall be addressed to Donald Di Buono, Engineering Lead or his successor at P.O. Box 330, Manchester, New Hampshire, 03105 or at telephone number (603) 634-2254.
- 8) THE STATE OF NEW HAMPSHIRE agrees to construct, maintain, operate, and/or use the ENCROACHMENTS within the Easement Area in such a manner that does not prevent EVERSOURCE from replacing, repairing, rebuilding, operating,

patrolling and removing its towers, poles, cables or any other equipment owned, constructed or maintained by EVERSOURCE, or from complete and unobstructed access to and along the EVERSOURCE 34.5 kV distribution line # 318, and EVERSOURCE transmission lines # P145 and M108.

- 9) EVERSOURCE reviews and accepts site plan submittals only to the extent that specific plan details are required for the evaluation of the requested joint use. EVERSOURCE review of submitted site plans is not to be construed as a comprehensive engineering or drafting review, and therefore EVERSOURCE is not responsible for any loss suffered as a result of plan discrepancies unrelated to the requested joint use. THE STATE OF NEW HAMPSHIRE agrees that any field changes in the Plan within the Easement Area during construction or thereafter, or any blasting activities, future construction or change of use within the Easement Area shall be subject to prior written approval by EVERSOURCE, which approval shall not be unreasonably withheld. Requests for approval shall be addressed to Donald Di Buono, Lead Line Designer or his successor at P.O. Box 330, Manchester, New Hampshire, 03105 or at telephone number (603) 634-2254.
- 10) THE STATE OF NEW HAMPSHIRE agrees not to pile any snow or construction materials or store any equipment within the Easement Area.
- 11) THE STATE OF NEW HAMPSHIRE agrees that this Agreement does not grant it the right to construct any permanent structures other than the ENCROACHMENTS, including storage sheds, within the Easement Area.
- 12) THE STATE OF NEW HAMPSHIRE agrees that this Agreement does not grant it the right to place any wells or septic systems within the Easement Area.
- 13) Following any construction and/or maintenance of the ENCROACHMENTS, THE STATE OF NEW HAMPSHIRE agrees: to dispose of all waste material outside of the Easement Area; to grade, resoil and reseed the affected portion of the Easement Area in a reasonable manner when necessary; to employ any necessary erosion control measures; and to restore the affected portion of the Easement Area to its prior condition in a manner acceptable to EVERSOURCE.
- 14) THE STATE OF NEW HAMPSHIRE agrees to obtain and keep in force during the term of this Agreement any and all permits or approvals required by any authority

having jurisdiction over construction of this nature, and shall be responsible for payment of any and all taxes levied on it for which the STATE OF NEW HAMPSHIRE is liable.

- 15) The State of New Hampshire shall require that anyone, excluding officials and employees of the State, who may perform activities under this Agreement within the Easement Area relating to construction and maintenance of the Encroachments and as part of The State of New Hampshire's agreement with such agents and/or subcontractors, to indemnify and hold Eversource harmless from and against any and all loss, cost, damage, expense and claims, and against any and all claims, actions or proceedings for property damage, personal injury or death arising out their actions within the Easement Area and not resulting from acts or omissions of EVERSOURCE or its agents or subcontractors and to supply Eversource with a Certificate of Insurance naming Eversource as an additional insured prior to commencing such activity.
- 16) Any consent, express or implied, by either party to a breach by any other party of a covenant, or a condition contained herein, shall not constitute a waiver of any prior or succeeding breach of any covenant or condition contained herein.
- 17) This Agreement shall be binding upon and inure to the benefit of the parties and their heirs, administrators, successors and assigns.
- 18) Nothing contained in this Agreement shall be deemed to constitute a waiver of the sovereign immunity of the STATE OF NEW HAMPSHIRE, which sovereign immunity is hereby expressly reserved.
- 19) The Agreement shall be interpreted in accordance with the law of the STATE OF NEW HAMPSHIRE and it shall be specifically enforceable.
- 20) This Agreement contains the entire Agreement between the parties and any amendment thereof shall be in writing and executed by the parties to this Agreement.
- 21) This Agreement and any amendments hereto shall be recorded in the Merrimack County Registry of Deeds.

EXECUTED by the parties the day and year first above written.

STATE OF NEW HAMPSHIRE
By and through its
DEPARTMENT OF MILITARY AFFAIRS
AND VETERANS SERVICES

PUBLIC SERVICE COMPANY
OF NEW HAMPSHIRE d/b/a
EVERSOURCE ENERGY

By: *David J. Mikolaitis*

Major General David J. Mikolaitis
Adjutant General
Duly Authorized

By: *Theresa L. Feuersanger*

Theresa Feuersanger, Supervisor
Transmission & Distribution
Rights of Way & Survey Engineering
Duly Authorized

State of New Hampshire
County of Merrimack

The foregoing instrument was acknowledged before me this 23rd day of
October, 2019 by Major General David J. Mikolaitis, Adjutant General of the State
of New Hampshire, on behalf of the State of New Hampshire.

Mary Tarbell
~~Notary Public~~ Justice of the Peace

Print/Type Name: Mary Tarbell

My commission expires: Aug. 24, 2021

MARY F. TARBELL, Justice of the Peace
State of New Hampshire
My Commission Expires August 24, 2021

State of New Hampshire
County of Hillsborough

The foregoing instrument was acknowledged before me this 31st day of October, 2019 by Theresa Feuersanger, Supervisor, Transmission & Distribution Rights of Way & Survey Engineering, on behalf of Public Service Company of New Hampshire d/b/a Eversource Energy, a New Hampshire corporation.

Pauline A. Boire
~~Notary Public~~ Justice of the Peace

Print/Type Name: Pauline A. Boire

My commission expires: May 4, 2021

Approved as to Form, Substance and Execution, New Hampshire Department of Justice

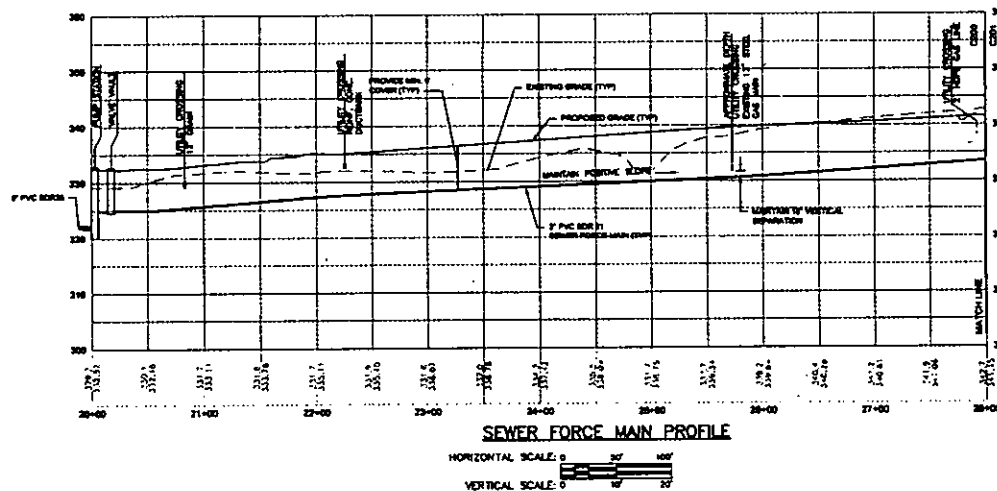
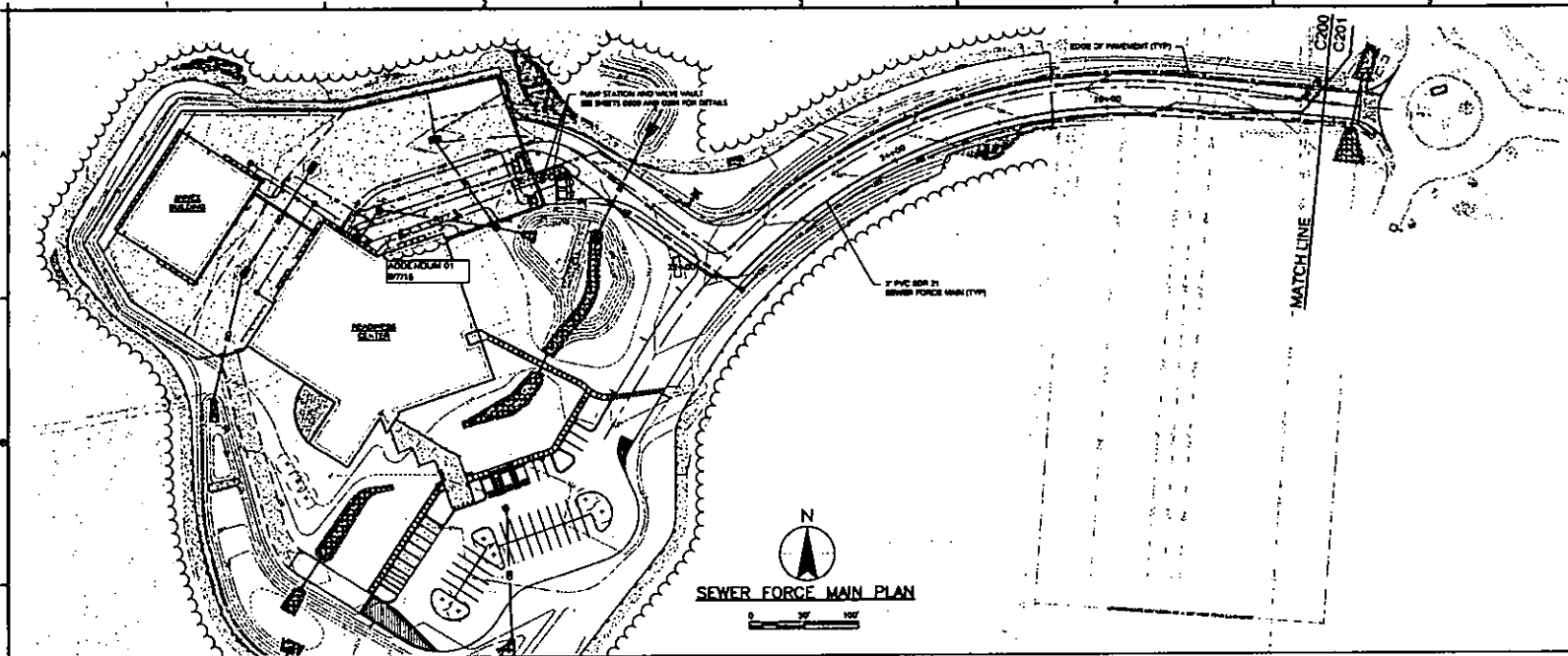
J. D. Lusselle
Approving Attorney
Assistant Attorney General

Date November 22, 2019

EXHIBIT A

The following is a list of relevant OSHA regulations applicable to work near high voltage wires:

1. 1910.333(c)(3)(i)
2. 1910.333(c)(3)(i)(A)
3. 1910.333(c)(3)(i)(A)(1)
4. 1910.333(c)(3)(i)(A)(2)
5. 1926 Subpart L
6. 1926 Subpart O
7. 1926 Subpart V
8. 1926 Subpart CC



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REVISIONS AND FINAL SCALED COPY
ADDENDUM 1 - 8/1/2010

PROJECT NUMBER: 100112190
OWNER: CONTRACT C
COOVER CLARK JOB NUMBER: 201001

PROJECT TITLE:
NEW HAMPSHIRE ARMY
NATIONAL GUARD
READINESS CENTER
& STATE ACTIVE
DUTY ANNEX
PEPPERIDGE,
NEW HAMPSHIRE

DRAWING TITLE:
SEWER FORCE MAIN PLAN &
PROFILE (1 OF 2)

DATE: AUGUST 23, 2010	PROJECT NUMBER: C200
REV:	

PLOTTED 8/7/2010

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www.cooverclark.com

Stantec

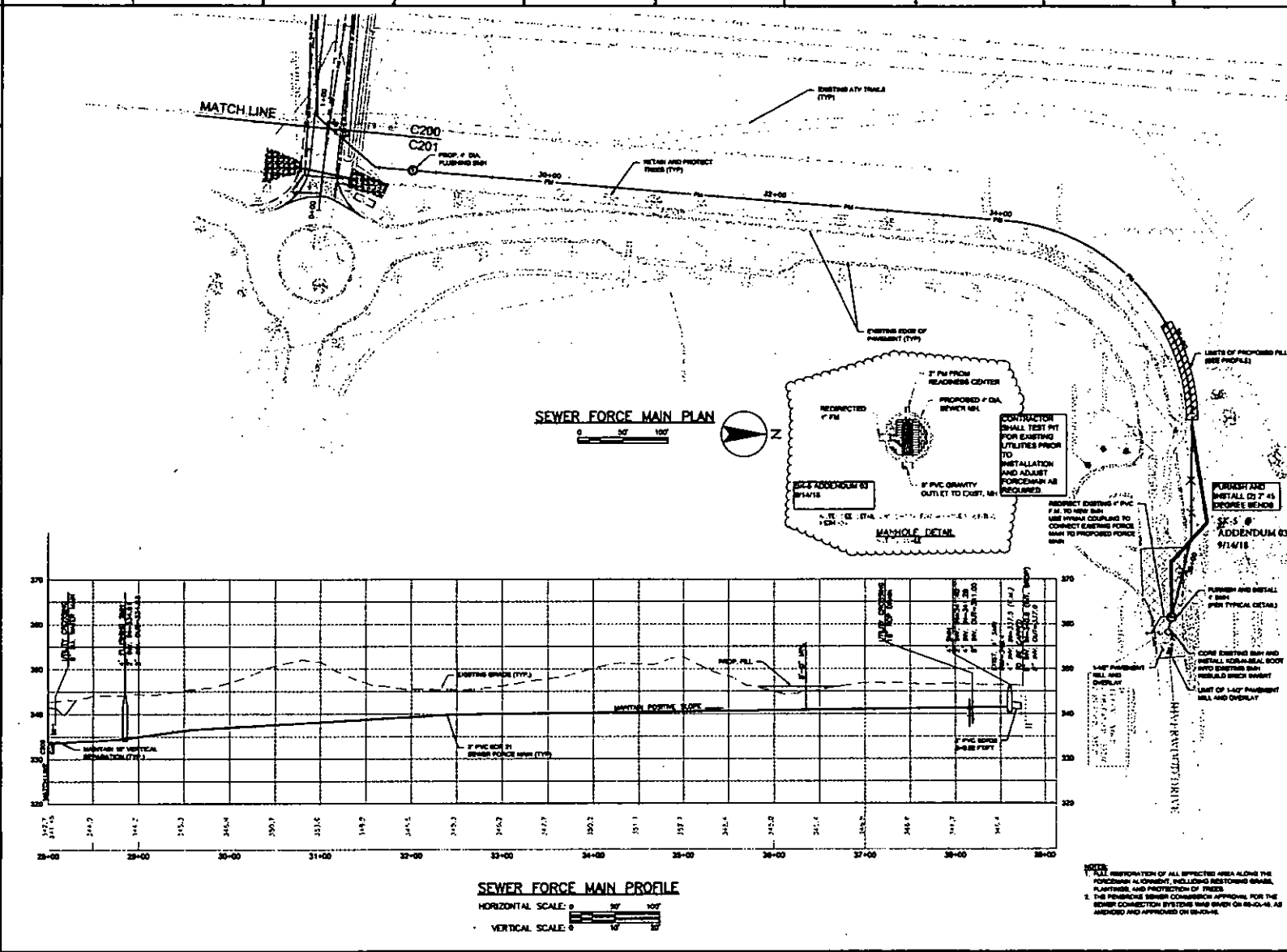
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DATE: 08/23/19
BY: [Signature]

PROJECT NO: 8088R - CONTRACT C
CONTRACT NO: 281401

PROJECT TITLE:
NEW HAMPSHIRE ARMY NATIONAL GUARD READINESS CENTER & STATE ACTIVE DUTY ANNEX
PENSACOLA, NEW HAMPSHIRE

DATE: AUGUST 23, 2019
PAGE NUMBER: C201



PLOTTED: 8/7/2019