



**6-B LEGAL ITEMS**

1. (continued)

Town Attorney John Fenz stated under Real Property Tax Law Section 485-b exemptions are available for industrial and commercial property operating under commercial or industrial use that have alterations or an installation in an amount greater than \$10,000. The Industrial & Commercial Incentive Board was created to review policy in order to target businesses the town would like to see enhance their property. Local Law No. 2017-3 states the exemptions will only apply to C-1, C-2, M-1 or M-2 zoning designations and the alteration needs to be greater than \$50,000 in assessed value to qualify. There is an accelerated schedule for the exemptions and it only applies to town taxes, not school or special district taxes.

Councilman Hart stated this is a financial incentive program for businesses that exist in the town or businesses wishing to locate in West Seneca who want to make changes and add value to their buildings to conform with the new design standards.

Beverly Leising questioned how long the exemption will last. Councilman Hart responded the exemption is a declining percentage over a period of ten years. He further noted the exemption is only applied to the added value.

Assessor Kandace Wittmeyer stated the town already has Section 485-b on the county portion for businesses as they add value, but it is at a lesser scale for a ten year period.

Jerry Hathaway of the West Seneca Chamber of Commerce stated there are ECIDA programs that offer financial incentives, but only for certain types of businesses and not for retail. This is a way to encourage businesses to locate in West Seneca, to improve the facade of their business and complete expansions on their current property.

Mr. Fenz noted a business cannot have a pilot agreement from the ECIDA and a 485-b exemption at the same time.

Motion by Supervisor Meegan, seconded by Councilman Hart, to close the public hearing.

Ayes: All

Noes: None

Motion Carried

Motion by Supervisor Meegan, seconded by Councilman Hart, to adopt Local Law No. 2017-3, Business Investment Tax Exemption, in the Town of West Seneca.

Ayes: All

Noes: None

Motion Carried  
\*APPENDICES\*

**6-B LEGAL ITEMS**

2. Proofs of publication and posting of legal notice: "OF THE ADOPTED CHANGE IN THE ZONING ORDINANCE FOR PROPERTY LOCATED AT 2730 TRANSIT ROAD, BEING PART OF LOT NO. 362 & 363, CHANGING ITS CLASSIFICATION FROM M-1 TO C-2(S), FOR CONSTRUCTION OF 40 TOWNHOME UNITS WITH ASSOCIATED ACCESS DRIVES/DRIVEWAYS" in the Town of West Seneca, received and filed.

**6-C COMMUNICATIONS**

1. Town Attorney re National Grid lease agreement  
Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize the Supervisor to execute the attached license agreement with Niagara Mohawk Power Corporation, doing business as National Grid, noting this agreement supersedes and replaces the previous lease agreement dated November 27, 1989 and grants permission for the town to enter certain property situated at the north of Meyer Road for the purpose of maintaining a bird sanctuary, together with providing a parking area and access trail to the wetland viewing platform.

On the question, Councilman Hanley stated National Grid will be constructing a wetland viewing platform near their Meyer Road station. Councilman Hart stated this is part of the reconstruction of the Gardenville power plant and in response to the environmental impact the new construction will have on the wetlands.

Ayes: All

Noes: None

Motion Carried  
\*APPENDICES\*

2. Town Attorney re National Grid Memorandum of Agreement  
Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize the Supervisor to execute the attached amended and restated Memorandum of Agreement with Niagara Mohawk Power Corporation, doing business as National Grid, noting the amendments reflect changes to National Grid's previously planned wetland enhancement activities and National Grid will make a monetary contribution of \$61,000 to the town and design and construct a wetland viewing platform near Meyer Road.

**6-C COMMUNICATIONS**

2. (continued)

On the question, Councilman Hart questioned if there are restrictions on where the \$61,000 can be spent. Councilman Hanley advised the money must be tied to environmental issues and is not for land purchase.

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Ayes: All

Noes: None

Motion Carried  
\*APPENDICES\*

3. Highway Sup't. re General Reserve Fund transfer

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize transfer of the General Reserve Fund balance amount of \$27,359.54 in the 2016 line item #001.7110.0202 into the same line item for 2017.

Ayes: All

Noes: None

Motion Carried

4. Highway Sup't. re Purchase of cargo van

Motion by Supervisor Meegan, seconded by Councilman Hart, to approve the purchase of a 2017 Chevrolet Express 2500 cargo van at a cost of \$22,374.28 under the piggyback provision through Chautauqua County bid E-11-14 PFTH, Group III, Item 3, base vehicle 2.

Ayes: All

Noes: None

Motion Carried

5. Chief Denz re Attendance at Empire State Traffic Safety Conference

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize Lieutenant David Szmania to attend the Empire State Traffic Safety Conference, April 6 – 7, 2017 in Albany, NY at a cost not to exceed \$400.

Ayes: All

Noes: None

Motion Carried

6. Chief Denz re Attendance NYS Crisis Negotiators Training Conference

Motion by Supervisor Meegan, seconded by Councilman Hart, to authorize three officers assigned to the Crisis Negotiation Team to attend the NYS Crisis Negotiators Training Conference, May 24 – 26, 2017 in Rochester, NY at a cost not to exceed \$1,500.

Ayes: All

Noes: None

Motion Carried

**6-C COMMUNICATIONS**

7. Chief Denz re Termination of inactive crossing guards

Motion by Supervisor Meegan, Seconded by Councilman Hart, to remove inactive crossing guards Simone Fallon, Donald Hilbert and Peggy Thomson from the employee roster effective March 28, 2017 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All                      Noes: None                      Motion Carried

8. Senior Recreation Therapist of Sr. Services re Status change to seasonal – Marirose Bless

Motion by Supervisor Meegan, seconded by Councilman Hart, to change the status of part-time food service worker Marirose Bless to part-time seasonal effective April 1 – 30, 2017 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel, noting this is a correction of the previous request of March 1 – 31, 2017.

Ayes: All                      Noes: None                      Motion Carried

9. Senior Recreation Therapist of Sr. Services re Status change to seasonal – Carol Kennedy

Motion by Supervisor Meegan, seconded by Councilman Hart, to change the status of part-time food service worker Carol Kennedy to part-time seasonal effective March 1 – 31, 2017 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All                      Noes: None                      Motion Carried

10. Recreation Supervisor re Mathletes 5K

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize the Supervisor to execute the necessary documents to enter into an agreement with 14 Holy Helpers for their annual Mathletes 5K to be held April 29, 2017.

Ayes: All                      Noes: None                      Motion Carried



**6-C COMMUNICATIONS**

11. Recreation Supervisor re Appointment of Matthew Skrzypczyk as Pool Supervisor

Motion by Supervisor Meegan, seconded by Councilman Hanley, to re-appoint Matthew Skrzypczyk as part-time Recreation Supervisor at a rate of \$14 per hour effective April 1 – October 1, 2017; and further, change the status of Matthew Skrzypczyk to part-time seasonal effective May 1 – October 1, 2017 and authorize the Supervisor to complete and sign the necessary forms for Erie County Personnel.

Ayes: All                      Noes: None                      Motion Carried

12. Recreation Supervisor re Summer Day Camp

Motion by Supervisor Meegan, seconded by Councilman Hanley, to approve the 2017 Veterans Day Camp Safety Plan, Camper Orientation Manual and Field Trip itinerary, noting the written plans address the requirements of Subpart 7-2 of the New York State Sanitary Code (7-2.4(c)(1), 7-2.5(n), 7-2.25) for the Erie County Department of Children’s Camp permit.

Ayes: All                      Noes: None                      Motion Carried

13. Recreation Supervisor re Kiwanis Easter Egg Hunt

Motion by Supervisor Meegan, seconded by Councilman Hanley, to authorize the Supervisor to execute the necessary documents to enter into an agreement with the West Seneca Kiwanis Club for their annual Easter Egg Hunt to be held April 15, 2017.

Ayes: All                      Noes: None                      Motion Carried

14. Senior Code Enforcement Officer re Approval of Electronic message board – 300 Harlem Rd - SPCA

Motion by Supervisor Meegan, seconded by Councilman Hanley, to approve an electronic message board at the SPCA located at 300 Harlem Road, noting this sign meets the requirements of the electronic sign ordinance and was approved at the March 22, 2017 Zoning Board of Appeals meeting.

Ayes: All                      Noes: None                      Motion Carried

15. Town Engineer re Ice rink mold remediation

Motion by Supervisor Meegan, seconded by Councilman Hart, to authorize Town Engineer Steven Tanner to proceed with a request for proposals for cleaning of mold from the ice rink.

**6-C COMMUNICATIONS**

15. (continued)

On the question, Supervisor Meegan advised the air quality at the ice rink was tested and there were no issues. The mold will be removed before the start of summer day camp and going forward the ice rink will not be opened until October 1<sup>st</sup> to avoid a repeat of this issue.

Ayes: All

Noes: None

Motion Carried

**6-D APPROVAL OF WARRANT**

Motion by Supervisor Meegan, seconded by Councilman Hanley, to approve the vouchers submitted for audit, chargeable to the respective funds as follows: General Fund - \$408,460.39; Highway Fund - \$82,457.54; Special Districts - \$27,080.31; Capital Fund - \$140,477.00 (vouchers 98456 - 99120) Trust - \$250,059.04 (vouchers 98959 - 98990)

Ayes: All

Noes: None

Motion Carried

**ISSUES OF THE PUBLIC**

**LOCATION OF ADDRESSES**

Beverly Leising requested in the future the Town Board offer some explanation/landmarks for the location of addresses.

**PRESENTATION OF COMMUNICATIONS BY BOARD MEMBERS AND DEPARTMENT HEADS**

**STAR PROGRAM**

Assessor Kandace Wittmeyer stated the Assembly unanimously passed a bill to revert the STAR program to its original form. The matching bill that is before the Senate is still in negotiations.

**SENIOR CENTER UPDATES**

Senior Recreation Therapist of Senior Services Mary Josefiak stated AARP has sponsored free tax services every Wednesday for the month of March and this Wednesday is the last day.

**RECREATION DEPARTMENT UPDATES**

Recreation Supervisor Lauren Masset gave the following updates for the Recreation Department:

- Registration for summer 2017 programs is currently taking place, including but not limited to adult softball, summer day camp (half and full day) and swim lessons.

**PRESENTATION OF COMMUNICATIONS BY BOARD MEMBERS AND DEPARTMENT HEADS**

**RECREATION DEPARTMENT UPDATES** (continued)

- Skate with the Easter Bunny will take place Sunday, April 9, 2017 from 1:15 – 3:05 PM at the ice rink; regular admission fees apply.
- Recreation Department is now accepting applications for summer employment and open interviews will be held in April. Applications are also being accepted for clerk typist and volunteers for the West Seneca Youth Board.

**SAFE NEIGHBORHOODS**

Supervisor Meegan announced the Town of West Seneca was recognized as having four out of the top ten of the safest neighborhoods in WNY.

**EXECUTIVE SESSION**

Motion by Supervisor Meegan, seconded by Councilman Hanley, to recess to executive session at 7:45 P.M. to discuss two personnel issues and one legal item.

Ayes: All

Noes: None

Motion Carried

The board members returned from executive session at 9:30 P.M.

**ADJOURNMENT**

Motion by Supervisor Meegan, seconded by Councilman Hart, to adjourn the meeting at 9:30 P.M.

Ayes: All

Noes: None

Motion Carried

  
JACQUELINE A FELSER, TOWN CLERK



**Business Investment Tax Exemption  
Local Law No. 3 - 2017**

Section 1 – Purpose

- A. The Town of West Seneca has established and appointed an Industrial and Commercial Incentive Board ("ICIB") and the ICIB has recommended to the Town Board of the Town concerning the various types of business real property which should be granted eligibility for an exemption pursuant to §485-b of the Real Property Tax Law.
- B. The Town finds that the recommendations presented will encourage the investment of small businesses which may not avail themselves of the benefits available to larger businesses through the government Industrial Development Agencies.
- C. The Town further finds that these exemptions are necessary to encourage targeted economic development, create or retain permanent private sector jobs, and that the value of the exemptions be provided is justified by the need to provide employment opportunities and broaden the tax base.

Section 2 - Applicability of exemptions; computation.

- A. Certain real property constructed, altered, installed or improved subsequent to the effective date of this local law for the purpose of commercial, business or industrial activity as identified in North American Industry Classification System Major Divisions 23 through 92 and which is contained within the geographic areas of the Town set forth as C-1, C-2, M-1 or M-2 on the Town Zoning Map and the Amendments thereto shall be exempt from taxation and special ad valorem levies, except for special ad valorem levies for fire district, fire protection district and fire alarm district purposes, to the extent hereinafter provided.
- B. The exemptions described in this Section shall only apply to those projects where the cost of such construction, alteration, installation or improvement exceeds the sum of \$50,000. The amount of the exemption shall be calculated by taking the increase in the assessed value of such real property attributable to such construction, alteration, installation or improvement and reducing that increase in the assessed value of such real property on a declining percentage basis, pursuant to the following accelerated strategic exemption schedule:

<b>Year of Exemption</b>	<b>Percentage of Exemption</b>
1	50%
2	50%
3	50%
4	40%
5	30%
6	20%
7	10%
8	10%
9	10%
10	5%



**LICENSE AGREEMENT**

THIS LICENSE AGREEMENT (this "Agreement") is made the 27<sup>th</sup> day of March, 2017, by and between **NIAGARA MOHAWK POWER CORPORATION**, a New York corporation, with an office at 144 Kensington Avenue, Buffalo, New York 14214 (hereinafter, "Licensor") and the **TOWN OF WEST SENECA**, a Municipal Corporation of the State of New York, with offices located at 1250 Union Road, West Seneca, New York (hereinafter, "Licensee").

**WITNESSETH:**

WHEREAS, pursuant to that certain Lease Agreement (the "Lease") dated November 27, 1989 between the parties, Licensee was authorized to perform agricultural, gardening and landscaping activities for the purposes of developing a bird sanctuary upon a certain portion of Licensor's property situated north of Meyer Road in the Town of West Seneca (the "Property");

WHEREAS, as set forth more particularly in that certain Amended and Restated Memorandum of Agreement of even date herewith (the "Memorandum"), Licensor is presently required to design, construct and, thereafter, own and maintain a Viewing Platform, together with certain related amenities, upon a separate portion of the Property;

WHEREAS, if and when Licensor has completed construction of the planned Viewing Platform and amenities, and secured any and all governmental certificates and approvals required for the intended use thereof, all as more particularly described in the Memorandum, the parties have agreed that Licensee shall be permitted to access and use said Platform and amenities pursuant to this Agreement;

WHEREAS, the parties have further agreed that it would be mutually convenient to memorialize herein Licensee's permission to conduct those activities previously authorized pursuant to the Lease, so as to effectuate one (1) Agreement between the parties with respect to both the existing activities and those future activities contemplated

herein; and

WHEREAS, the parties wish to enter into this Agreement to memorialize the foregoing intent and to set forth the terms and provisions pursuant to which Licensee shall be authorized to access and use Licensor's Property for the foregoing purposes.

**NOW, THEREFORE**, subject to and upon the terms and conditions hereinafter set forth, Licensor and Licensee hereby agree as follows:

---

GRANT OF LICENSE

Licensor does hereby (1) authorize and grant to Licensee, its successors and assigns as hereinafter provided, permission for the continued agricultural, gardening and landscaping activities necessary for the purposes of maintaining the existing bird sanctuary, all upon that portion of the Property (the "Licensed Area") labeled and/or marked as "Licensed Area" on Exhibit "A" attached hereto; and (2) agree that, if and when Licensor has completed construction of the planned Viewing Platform overlooking Wetland BU-13 near (north of) Meyer Road (the "Viewing Platform"), together with the planned parking area and access thereto, and has secured any and all governmental certificates and approvals required for the intended use of said Platform and related amenities beyond all applicable appeal periods, Licensee shall be permitted to access and use the said Platform and amenities subject to the terms and provisions of this Agreement, and the Licensed Area shall be deemed include that portion of the Property labeled and/or marked as "Proposed Viewing Platform" and "Proposed Parking Area" on Exhibit "A" attached hereto upon which the said Platform and amenities are anticipated to be constructed and maintained.

GRANT  
SUBORDINATE TO  
PRIOR RIGHTS

The permission described above is given upon the conditions and covenants set forth herein, each and all of which Licensee shall keep and perform.

1. Licensee's permission granted hereunder is and shall at all times be subject to the following:

A. Any and all outstanding leases, tenancies, easements, licenses or other tenures and/or claims of title affecting the Property and License Area or any portion or portions thereof; and subject also to any and all encumbrances, liens, conditions,



restrictions, and/or reservations subject to or under which Licensor holds the same.

B. The paramount right of Licensor now and hereafter to occupy and use all or any portion or portions of the License Area, and Licensor shall not be responsible to Licensee for changes to Licensee's facilities arising out of Licensor's operations or otherwise.

C. The right of Licensor from time to time hereafter to grant to others or to authorize the occupancy or use by others of any portion or portions of the License Area for any purpose or purposes whatsoever, provided, however, that any such future grant or authorization shall not interfere with the permission conferred herein.

DISCLAIMER OF  
WARRANTY

2. Licensor's consent herein to use its Property at the specific locations as identified in Exhibit "A" is without covenant or warranty, express or implied. The Licensor does not warrant the fitness or suitability of its Property for any purpose(s) granted herein. Licensee, its agents, employees, invitees and any other party or parties claiming by or through Licensee shall access and use the Licensed Area at their sole cost, expense and risk.

INTERFERENCE  
WITH FACILITIES

3. A. Licensee's activities permitted herein shall not injure or damage the Property or injure, damage, or interfere with any of the Licensor's facilities.

B. Licensee shall not block or impede access to or along the Property, or damage roads or trails used to gain access to or along the Property.

RESTORATION OF  
PROPERTY

4. Licensor reserves the right to require that any earth or soil disturbed by Licensee's activities be properly replaced and the surface thereof be restored to its former condition (including reseeded) by Licensee at its sole cost and expense.

Unless otherwise directed or previously agreed upon, all vegetative material and debris removed as a result of Licensee's activities shall be hauled away and properly disposed of by Licensee at its sole expense.

RELOCATION OF  
LICENSEE'S  
FACILITIES

5. Reserved.

INSURANCE/  
INDEMNIFICATION  
REQUIREMENTS

6. Licensee does hereby:

A. Release and waive any and all right to ask for or demand damages

from Licensor for any loss, cost or expense Licensee may sustain as a result of damage to or destruction of said landscaping, plantings and/or bird sanctuary habitat whether the same be attributable in whole or in part to the fault, failure or negligence of Licensor or otherwise.

B. Licensee shall furnish to Licensor evidence that a public liability insurance policy satisfactory to Licensor in the amount of 1,000,000.00 for injury to one person and \$500,000.00 for any one accident and against liability for damage to property in the amount of \$500,000.00, and not subject to cancellation or material change without ten (10) days' prior written notice to Licensor, has been issued to Licensee to indemnify Licensor and Licensee and save them harmless from all loss, damage or injury to property or persons (including personal injuries resulting in death) arising out of, caused by or in any way connected with Licensee's uses permitted herein and of and from all detriment, damage, loss, claim, demands, sums and expenses connected with such loss, damage or injury whether the loss, damage or injury result to or be sustained by (i) officers, contractors, agents or employees of Licensee or of Licensor; or (ii) any other persons, firms or corporations; whether the same be attributable in whole or in part to the fault, failure or negligence of Licensor or otherwise. In the event that Licensee has in force a public liability insurance policy in the above limits, then Licensee may obtain an endorsement **naming National Grid USA, its subsidiaries and affiliates as additional insured** as an insured party so as to indemnify Licensor and Licensee as previously set out in this paragraph (B).

NOTICE

7. Any notice given to either party under the terms of this Agreement (except construction notification as set forth in paragraph 3 hereof), shall be given by certified or registered mail, return receipt, or by overnight delivery service, addressed as follows:

To Licensor:  
Niagara Mohawk Power Corporation  
Attn: Real Estate Department  
144 Kensington Avenue  
Buffalo, New York 14214

To Licensee:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notice shall be deemed to have been given three (3) days after mailing if made by certified or registered mail, and one (1) day after mailing if made by overnight courier.

COMPLIANCE  
WITH LAW

8. Licensee shall, at its own cost, comply with all applicable laws, ordinances, orders, rules and regulations of the United States, of the State of New York, of any departments, bureaus, authorities or commissions created under the laws of either government and of the several municipalities in which the Property and License Area are situated insofar as the same relate to the exercise of any privilege or the performance of any duty under this Agreement, and whether the same are obligatory upon the Licensee or upon the Licensor.

TERM

9. The term of this Agreement shall automatically renew itself from year to year, unless terminated under the conditions set forth.

REVOCATION

10. Licensor hereby reserves the right to terminate, cancel and revoke the privileges or permissions extended to Licensee by the terms of this Agreement at any time, without cause, upon sixty (60) days' written notice, or immediately for cause. Upon revocation, this Agreement shall become null and void and all permissions of Licensee hereunder shall forever cease and determine and be in all respects forfeited.

ENTIRE  
AGREEMENT

11. No provision of this Agreement shall be deemed to have been waived by Licensor unless such waiver is in writing signed by Licensor. This Agreement contains the entire agreement between the parties and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by Licensor and Licensee. In the event that any part of this Agreement is determined to be invalid, illegal or unenforceable, such determination shall not affect the validity, legality or enforceability of any other part hereof and the remaining parts shall be enforced as if such invalid, illegal or unenforceable part were not contained herein. The parties acknowledge and agree that, upon the full execution and delivery hereof, this Agreement shall supersede and replace the Lease in its entirety, and the same shall be deemed terminated in all respects.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or authorized representatives as of the day and year first above written.

**NIAGARA MOHAWK POWER CORPORATION  
d/b/a NATIONAL GRID**

By \_\_\_\_\_  
Name:  
Title:

**TOWN OF WEST SENECA**

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



EXHIBIT "A"

LICENSED AREA

**Legend**

 Licensed Area

 NYSDEC Wetland Boundary of BU-13

**Notes**  
 1. Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere  
 2. Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar  
 Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, IGP, Mapbox, and the GIS User Community

**Project Location:**  
 National Grid  
 Town of West Seneca

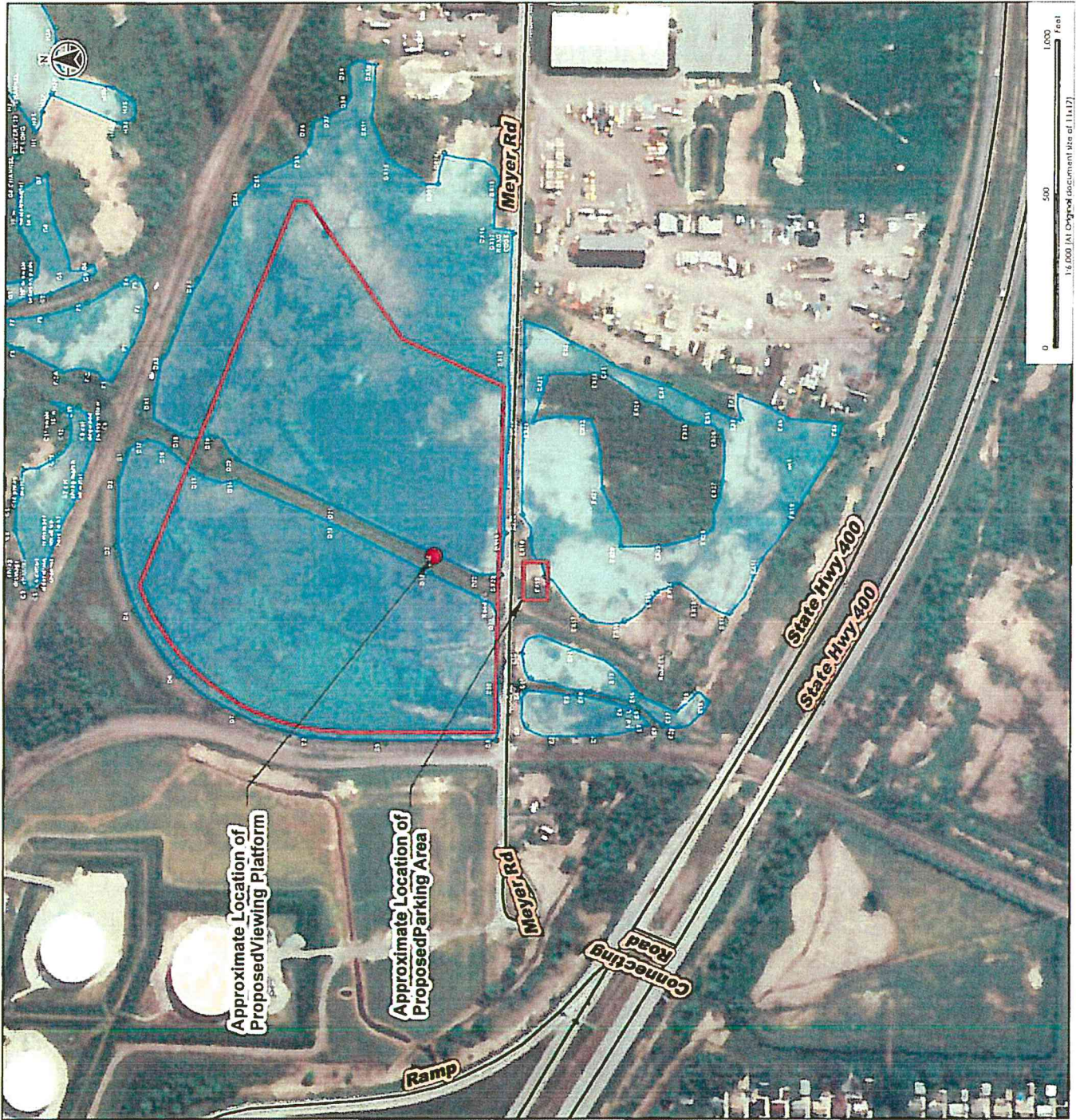
**Prepared by:** APJ on 2017-03-03  
**Technical Review by:** AS on 2017-03-03  
**Independent Review by:** MF on 2017-03-03

**Client/Project:**  
 National Grid - Gardenville  
 Licensed Area  
 Town of West Seneca

**Figure No:**  
 1

**Title:**

**Exhibit A**  
**Licensed Area, Town of West**



18,000 | Aerial imagery document size of 11,137  
 Disclaimer: DataSIC assumes no responsibility for data supplied in electronic format. The recipient accepts all responsibility for verifying the accuracy and completeness of the data. The recipient accepts all responsibility for any error and claims arising in any way from the content or provision of the data.



## AMENDED AND RESTATED MEMORANDUM OF AGREEMENT

This Amended and Restated Memorandum of Agreement (this "Agreement") is made and effective as of the 21<sup>st</sup> day of March, 2017 by and between the Town of West Seneca, a municipal corporation of the State of New York, with offices located at 1250 Union Road, West Seneca, New York (hereinafter referred to as the "Town") and Niagara Mohawk Power Corporation, d/b/a National Grid, a New York corporation with offices located at 300 Erie Boulevard West, Syracuse, New York (hereinafter referred to as "National Grid").

### Background

A. National Grid and the Town (hereinafter, the "Parties") entered into that certain Memorandum of Agreement (the "Original Agreement") dated August 17, 2015 regarding certain wetland mitigation support actions in connection with National Grid's planned upgrades and improvements to its Gardenville Electric Substation complex (the "Project") located on Indian Church Road in the Town of West Seneca (the "Site").

B. The Original Agreement contemplated, among other things, that National Grid would make a financial contribution to the Town to support its planning and execution of certain components of its planned wetlands enhancement activities, including the Town's construction of a wetland viewing platform.

C. Subsequent to the Original Agreement, the New York Department of Environmental Conservation ("DEC") issued a permit (the "Article 24 Permit") to National Grid which imposed certain conditions, including a condition that National Grid construct, as Project mitigation, a wetland viewing platform at the Site in the Adjacent Area of Wetland BU-13.

D. Given the changed circumstances since the execution of the Original Agreement, the Parties have reached a further understanding with respect to their continued mutual interest in furthering wetland enhancement activities within the Town, and have agreed to memorialize their mutual understanding herein.

**NOW, THEREFORE**, in consideration of the mutual terms, covenants and conditions and recitals set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and incorporated herein, the parties agree as follows:

1. National Grid Contribution. National Grid shall make a monetary contribution (the "National Grid Contribution") to the Town in the amount of SIXTY ONE THOUSAND

DOLLARS (\$61,000.00) within sixty (60) days of the execution of this Agreement. The Parties acknowledge and agree that the National Grid Contribution reflects the difference between the amount that National Grid initially agreed to contribute to the Town for the purposes set forth in the Original Agreement, and the Parties' agreement as to the amount representing a reasonable, good faith estimate as to the costs and expenses of building materials and labor required for the Viewing Platform, as defined in Section 3 below.

2. Use of the National Grid Contribution. The Town shall use the National Grid Contribution to further the planning and execution of its planned wetland enhancement activities, including, but not limited to:

a. The planting of low growing (under 10 ft. maximum height) shrubs along the banks of Buffalo Creek within the National Grid transmission line corridor directly north of Mineral Springs Road. The stream bank plantings will extend approximately 100 ft. along both sides of the stream and are intended to stabilize the stream banks at that location, enhance stream bank wildlife habitat, shade a portion of the Buffalo Creek channel and provide a visual break along the transmission corridor; and

b. The removal of invasive shrub species at the Buffalo Creek fishing access on Indian Church Road adjacent to the abandoned railroad bridge directly across from the Gardenville Station. Invasive shrub species will be removed in favor of planting selected native shrub species to enhance the site aesthetics and habitat potential.

The above-listed work will be undertaken directly by Town staff and/or by contract labor with oversight by Town staff with no further participation by National Grid. The Town reserves the right to use the National Grid Contribution (or any portion thereof) to leverage additional funding opportunities by third parties to further support the above-listed actions.

3. The Wetland Viewing Platform. National Grid is required by the conditions of its Article 24 Permit to construct a wetland viewing platform (the "Viewing Platform") overlooking Wetland BU-13 near (north of) Meyer Road, on National Grid property.

a. Design. National Grid shall be responsible for the design of the Viewing Platform. National Grid shall make the final determination with respect to such design, provided that the final design will be substantially consistent with the schematic plan prepared by Stantec Consulting Services Inc. attached hereto as Exhibit A.

b. Costs and Expenses. National Grid shall be responsible for all costs and expenses associated with the design, construction and, thereafter, routine maintenance of the Viewing Platform. The Town acknowledges and agrees that construction of the Viewing Platform will not proceed until the majority of the Project work has been completed (currently anticipated to



be in late 2018 or early 2019) and that, in any event, National Grid shall have no obligation to complete construction of the Viewing Platform any sooner than as may be required by the terms and conditions of its Article 24 Permit, as the same may be amended from time to time. The projected costs and expenses for the Viewing Platform are set forth in the cost summary prepared by Stantec Consulting Services Inc. attached hereto as Exhibit B. The Town acknowledges, however, that the cost summary is only a good faith estimate and that it is impossible to project the actual costs and expenses at this time. The Parties agree that so long as National Grid completes construction of the Viewing Platform as required by the terms and conditions of its Article 24 Permit, no adjustment shall be made with respect to the amount of the National Grid Contribution, regardless of whether actual costs and expenses for building materials and labor are less than (or greater than) the projected costs therefor as set forth in the attached cost summary. In the event that the terms and conditions of its Article 24 Permit are subsequently amended or modified in such a manner that (1) relieves National Grid of the obligation to construct the Viewing Platform; and (2) does not impose an alternate mitigation condition in lieu thereof, National Grid shall make an additional contribution to the Town in the amount of Nineteen Thousand Dollars (\$19,000.00), said amount to be paid not later than sixty (60) days following completion of the Project and National Grid's satisfaction of all regulatory permit obligations, including, without limitation, its obligations under its Article 24 Permit.

c. License Agreement. Contemporaneously herewith, National Grid and the Town shall enter into a new License Agreement, which (i) incorporates terms and provisions substantially similar to the terms and provisions of that certain Lease Agreement dated November 27, 1989 (the "Lease"), pursuant to which National Grid granted the Town certain rights to (among other things) develop a bird sanctuary and perform related landscaping, it being the intent of the Parties that the License Agreement shall, upon execution, supersede and replace the Lease and effectuate the termination thereof (assuming the same has not previously been terminated); and (ii) shall permit the Town to access and use the Viewing Platform (along with the planned parking area and access trail) if and when National Grid has completed construction thereof and secured any and all governmental certificates and approvals required for the intended use thereof (e.g., certificates of completion or the equivalent) beyond all applicable appeal periods.

4. Notices. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested, sent to the intended addressee at the address set forth above, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery.

5. Modifications. This Agreement cannot be changed orally, and no agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such agreement is

in writing and is signed by the party against whom enforcement of any waiver, change, modifications or discharge is sought.

6. Entire Agreement. This Agreement, including the Exhibits hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter, including, without limitation, the Original Agreement.

7. Counterparts. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

8. Applicable Law. This Agreement shall be governed by and construed in accordance with New York laws, without reference to conflict of laws principles.

9. Dispute Resolution. The parties agree that any dispute arising under this Agreement shall be the subject of good-faith negotiations between the parties. Any dispute that is not resolved through good-faith negotiations after a negotiation period of not less than thirty (30) days may be submitted by either party for resolution to a court or to an agency with jurisdiction over the dispute. Notwithstanding the foregoing, any such dispute may be submitted to non-binding arbitration or any other form of alternative dispute resolution upon the agreement of both parties to participate in such an alternative dispute resolution process.

10. No Third-Party Beneficiary. The provisions of this Agreement and of any agreements to be executed and delivered in furtherance hereof are and will be for the benefit of the Parties and their successors and permitted assigns only and are not for the benefit of any third party. Accordingly, no third party shall have the right to enforce the provisions hereof.

11. Headings and Section References. The article and section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

12. Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any Exhibits or amendments hereto.

13. Force Majeure. Neither party shall be responsible for any failure or inability to perform under this Agreement to the extent such failure or inability is caused by the acts or omissions of the other party, or of any third party, or otherwise by reasons beyond its reasonable control.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Agreement as of the day and year first above written.

**TOWN OF WEST SENECA**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**NIAGARA MOHAWK POWER CORPORATION**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit A**

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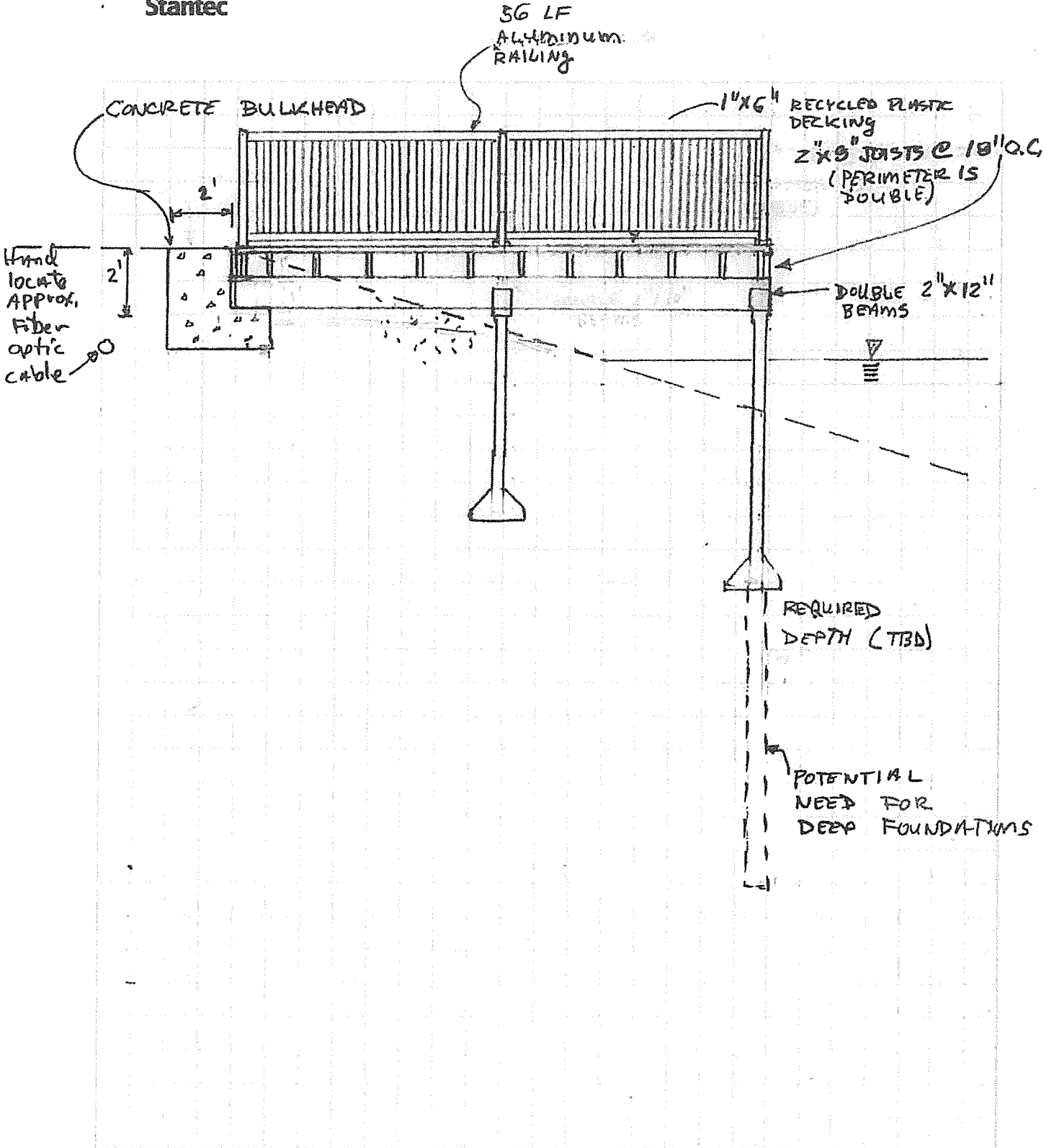




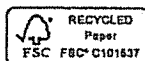
Stantec

# NATIONAL GRID WETLAND VIEWING PLATFORM SCHEMATIC

1/2



Designed by: DWIGHT H. 8/4/2016 Checked by:

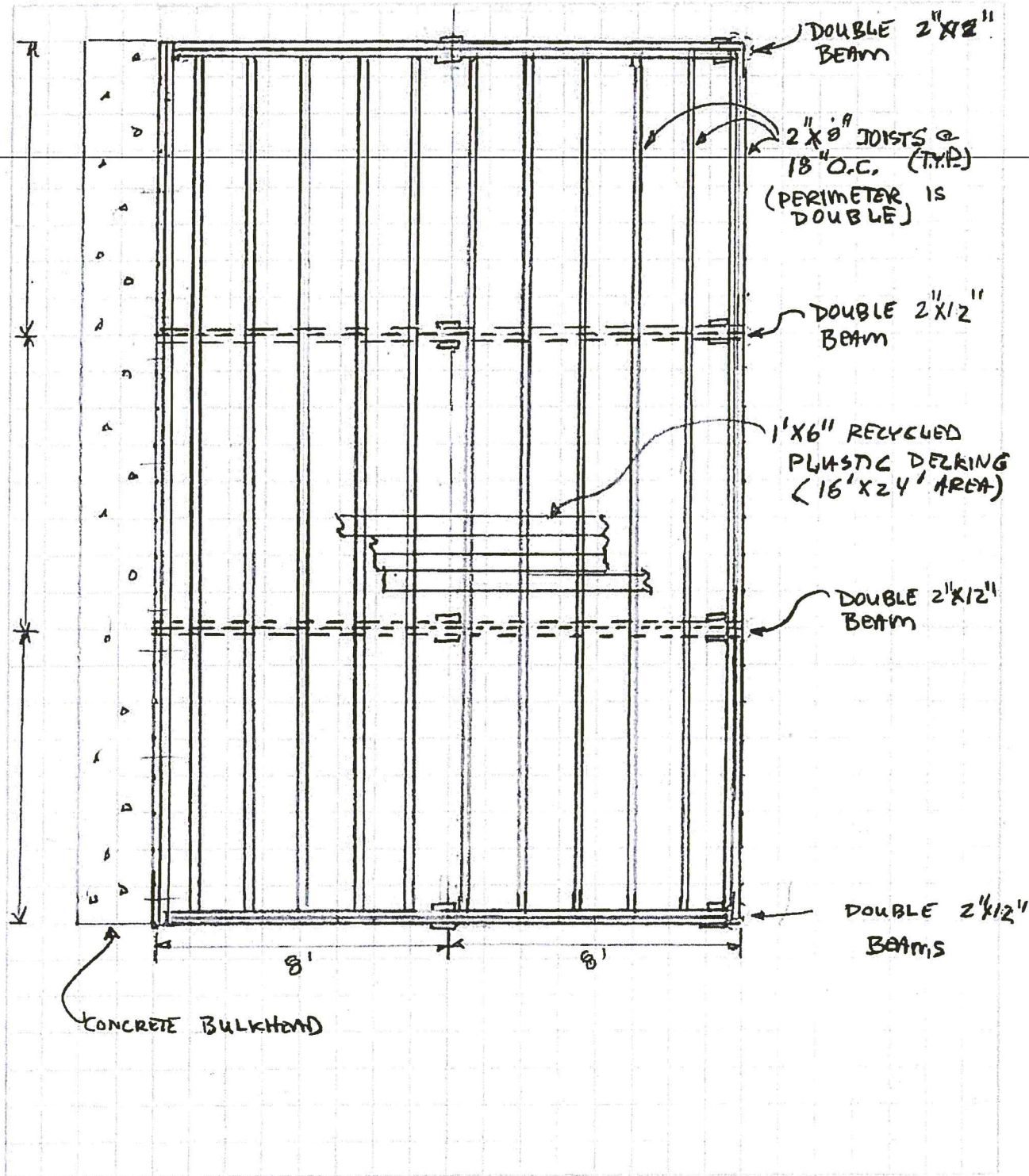




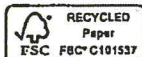
Stantec

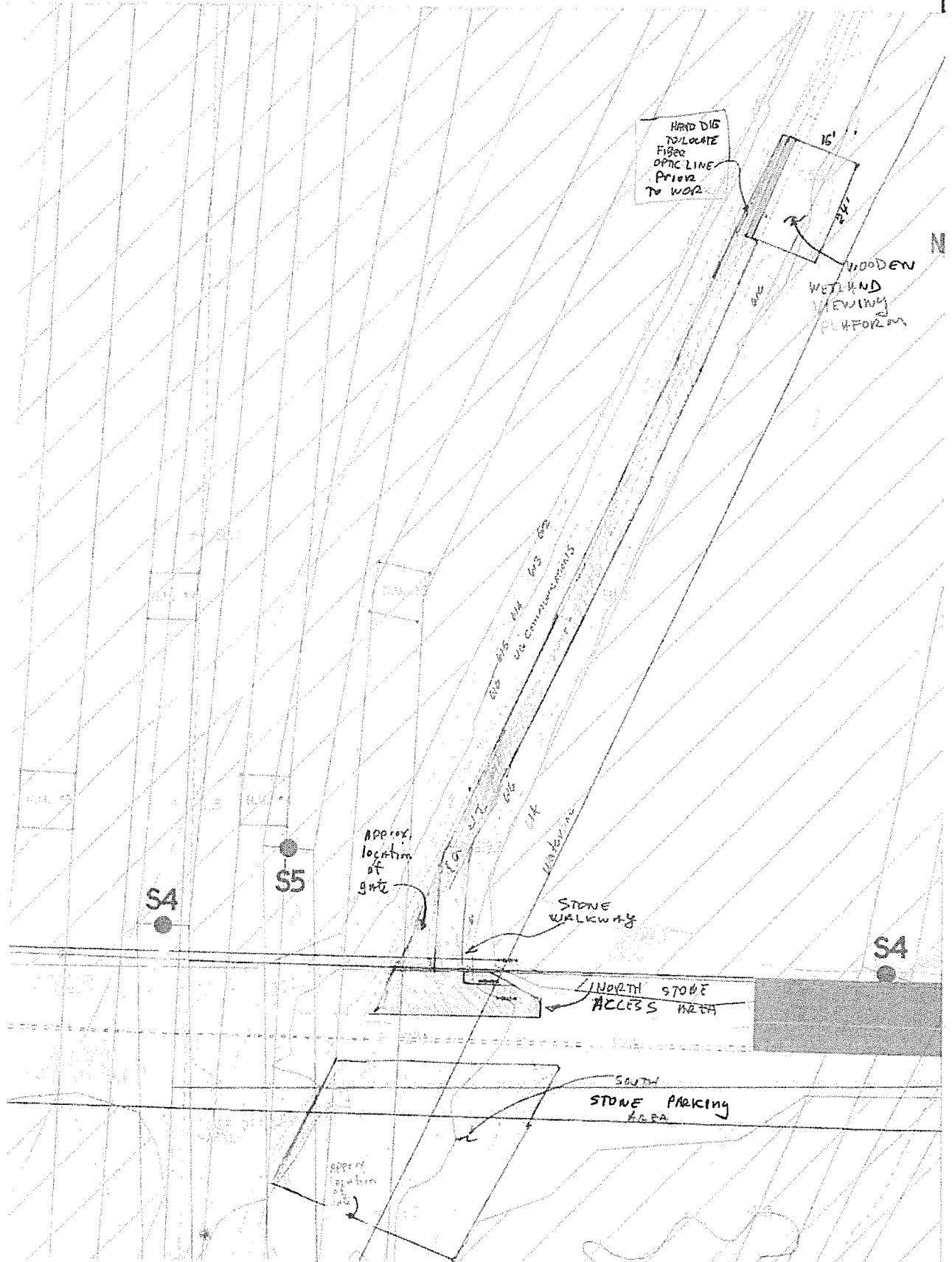
NATIONAL GRID  
WETLAND VIEWING PLATFORM  
SCHEMATIC

2/2



Designed by: DWIGHT H 8/4/2016 Checked by:





**Exhibit B**

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Wood			
Qty	Item Dimensions/Description	Unit Price (\$/Item)	Total (\$)
8	2"x12"x16'	28.00	224.00
18	2"x8"x16'	15.37	276.66
14	2"x8"x8'	7.47	104.58

Foundation Footings/Posts <sup>A</sup>			
Qty	Item Dimensions	Unit Price (\$/Item)	Total (\$)
8	Posts with Footings	500.00	4000.00

Concrete Bulkhead				
Linear Length (ft)	Cross Sectional Area (ft <sup>2</sup> )	Concrete Needed (cy)	Unit Price (\$/cy)	Total (\$)
16	7	4.15	300.00	1244.44

Hardware			
Qty	Item Description	Unit Price (\$/Item)	Total (\$)
40	Simpson Hot Dipped Galvanized (2"x8" Joist Hangers)	5.00	200.00
4	Corners	5.00	20.00
2	Misc. Simpson HD Screws	50.00	100.00
10	Post Caps	8.00	80.00
100	Nuts	0.39	39.00
50	Washers	0.30	15.00
25	12" Galvanized Carriage Bolts	10.00	250.00

Decking (Recycled Plastic-1"x6" boards)				
Qty (boards)	Board Length (ft)	Total Linear Footage (ft)	Unit Price (\$/LF)	Total (\$)
48	16	768	2.50	1920.00

Railing				
Deck Length (ft)	Deck Width (ft)	Perimeter (ft) <sup>B</sup>	Unit Price (\$/LF)	Total (\$)
24	16	56	40.00	2240.00

Parking Area				
Stone				
Area (ft <sup>2</sup> )	Depth (ft)	Volume (cy)	Unit Price (\$/cy)	Total (\$)
1800	1	66.67	25.00	1666.67
Geotextile (Mirafi 500X)				
Area (ft <sup>2</sup> )	Area (yd <sup>2</sup> )		Unit Price (\$/yd <sup>2</sup> )	Total (\$)
1800	200.00		1.50	300.00

Walkway and North Stone Access Area				
Stone				
Area (ft <sup>2</sup> )	Depth (ft)	Volume (cy)	Unit Price (\$/cy)	Total (\$)



1900	1	70.37	25.00	1759.26
<i>Geotextile (Mirafi 500X)</i>				
Area (ft <sup>2</sup> )	Area (yd <sup>2</sup> )		Unit Price (\$/yd <sup>2</sup> )	Total (\$)
1900	211.11		1.50	316.67

Summary	
Materials	14,756.28
Labor <sup>C</sup>	14,756.28
Subtotal	29,512.55
Contingency <sup>D</sup>	8,853.77
<b>Total</b>	<b>38,366.32</b>

Key:

cy=cubic yards

LF=linear feet

Notes:

- A) Foundation type to be determined.
- B) Deck is surrounded by water on 3 sides.
- C) Labor is estimated as being equal to the cost of materials.
- D) 30% of the total of labor and materials.