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TOWN OF WEST SENECA

TOWN SUPERVISOR  
SHELLA M. MEEGAN  
TOWN COUNCIL  
EUGENE P. HART  
WILLIAM P. HANLEY, JR.

To: The Honorable Town Board

From: John J. Fenz, Esq.  
Town Attorney

Date: March 21, 2017

Re: National Grid - License Agreement

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Kindly adopt a resolution authorizing the Supervisor to execute the attached License Agreement with Niagara Mohawk Power Corporation, doing business as National Grid.

This Agreement supersedes and replaces the previous Lease Agreement dated November 27, 1989. Pursuant to this License Agreement, National Grid authorizes and grants to the Town permission to enter certain property situated at the north of Meyer Road for purposes of maintaining a bird sanctuary, together with providing a parking area and access trail to the wetland viewing platform.



## LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "Agreement") is made the \_\_\_ day of \_\_\_\_\_, 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:

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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

**Note:**

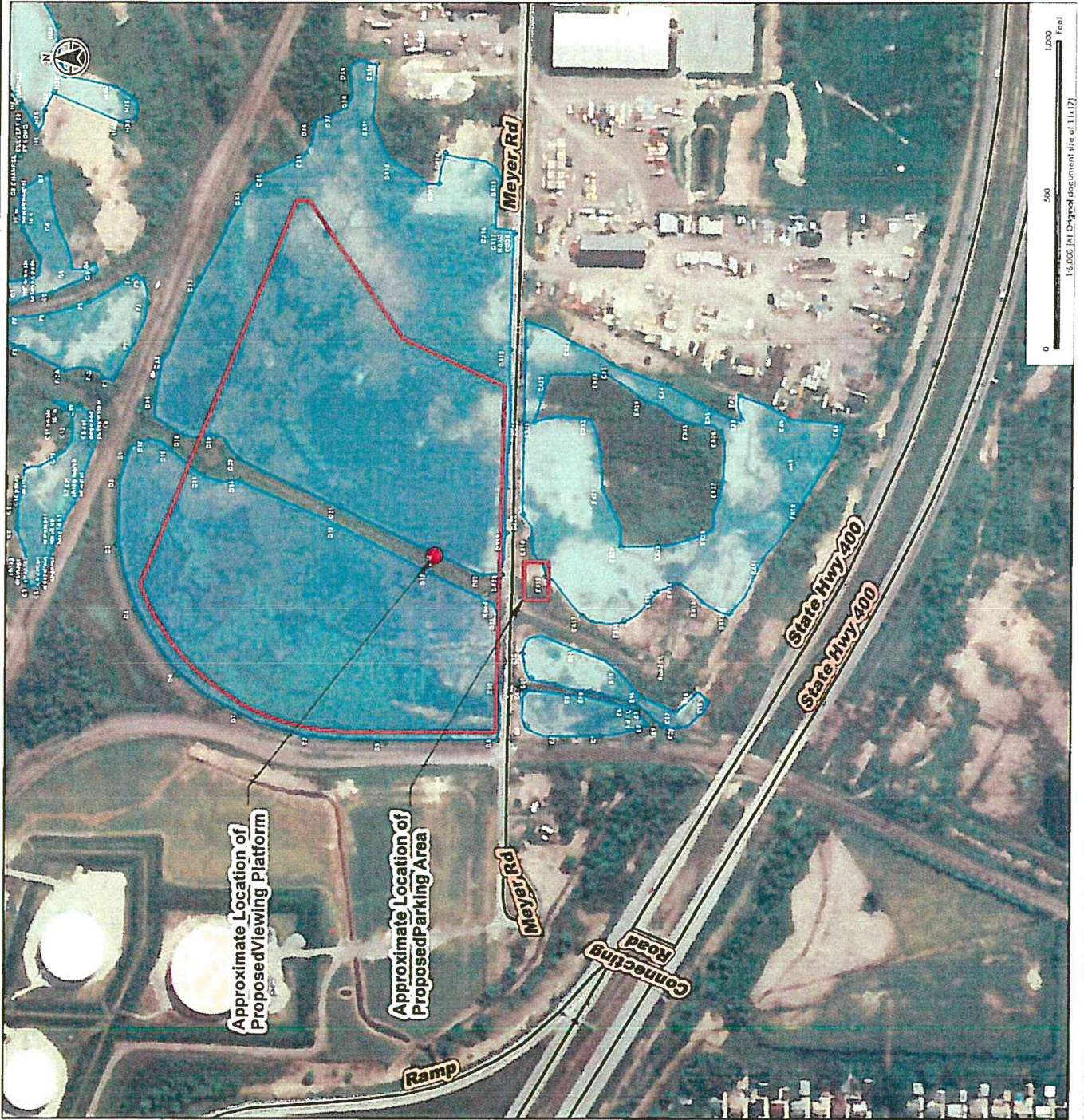
1. Coordinate System: WGS 1984 Web Mercator Auxiliary Sphere
2. Service Layer Credits: Source: Esri, DeLorme, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroX, GEBCO, IGN, iSatellite, and the GIS User Community

Project Location:  
National Grid  
Town of West Seneca

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

Figure No:  
1

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



Approximate Location of Proposed Viewing Platform

Approximate Location of Proposed Parking Area

Disclaimer: National Grid assumes no responsibility for data supplied in this electronic format. The recipient accepts full responsibility for verifying the accuracy and completeness of the data. The recipient releases National Grid, its officers, employees, contractors, and agents, from any and all claims arising in any way from the content or provision of the data.