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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 Wetland Enhancement  
Amended and Restated Memorandum of Agreement

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Kindly adopt a resolution authorizing the Supervisor to execute the attached Amended and Restated Memorandum of Agreement with Niagara Mohawk Power Corporation, doing business as National Grid.

The amendments contained in this memorandum of agreement reflect the changes to National Grid's previously planned wetland enhancement activities whereby they would have made an \$80,000 monetary contribution to the Town.

As amended and restated, National Grid will make a monetary contribution to the Town of \$61,000.00 and design and construct a wetland viewing platform near Meyer Road.



## AMENDED AND RESTATED MEMORANDUM OF AGREEMENT

This Amended and Restated Memorandum of Agreement (this "Agreement") is made and effective as of the \_\_\_ day of \_\_\_\_\_, 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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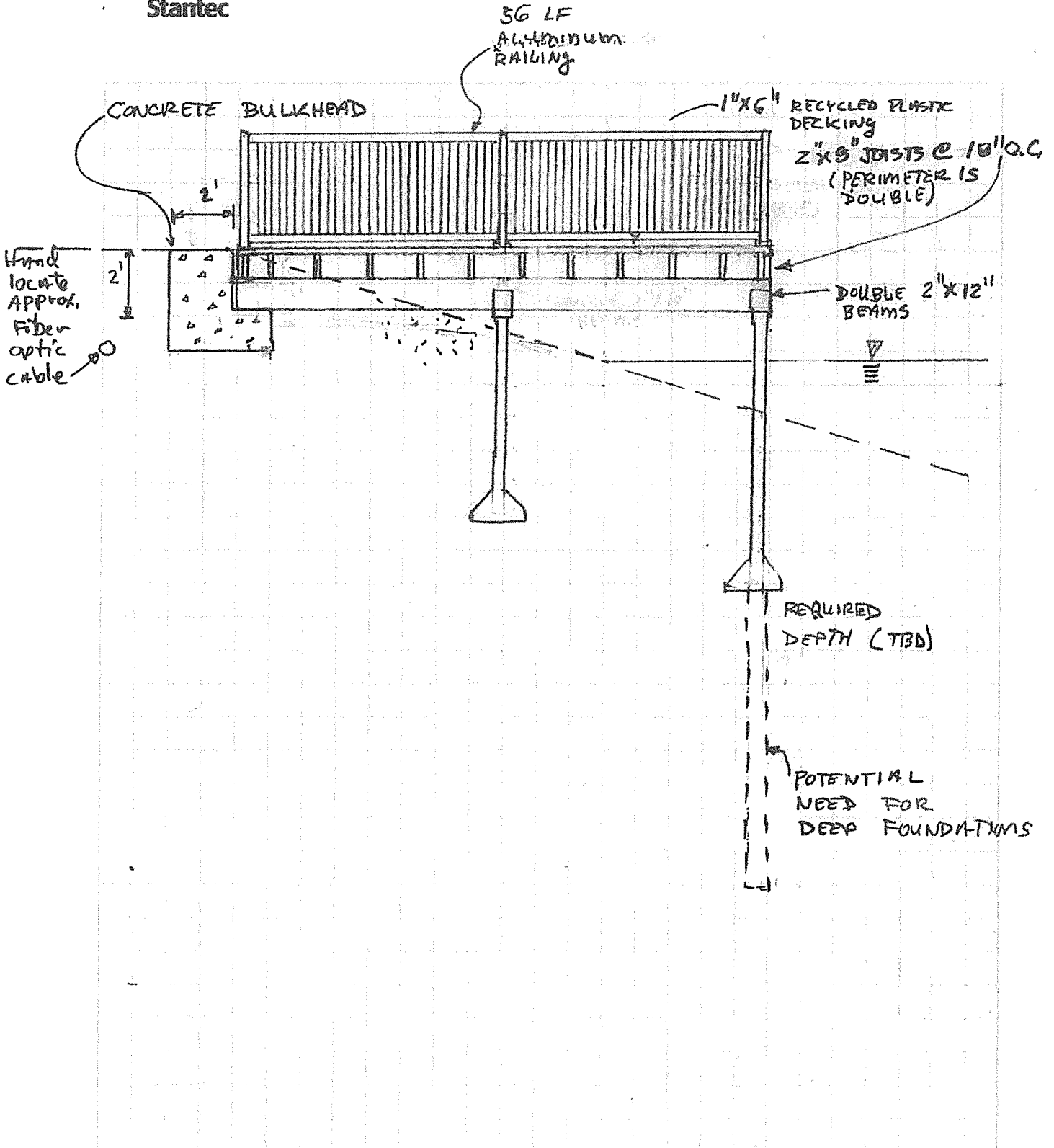




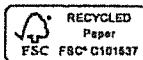
Stantec

# NATIONAL GRID WETLAND VIEWING PLATFORM SCHEMATIC

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

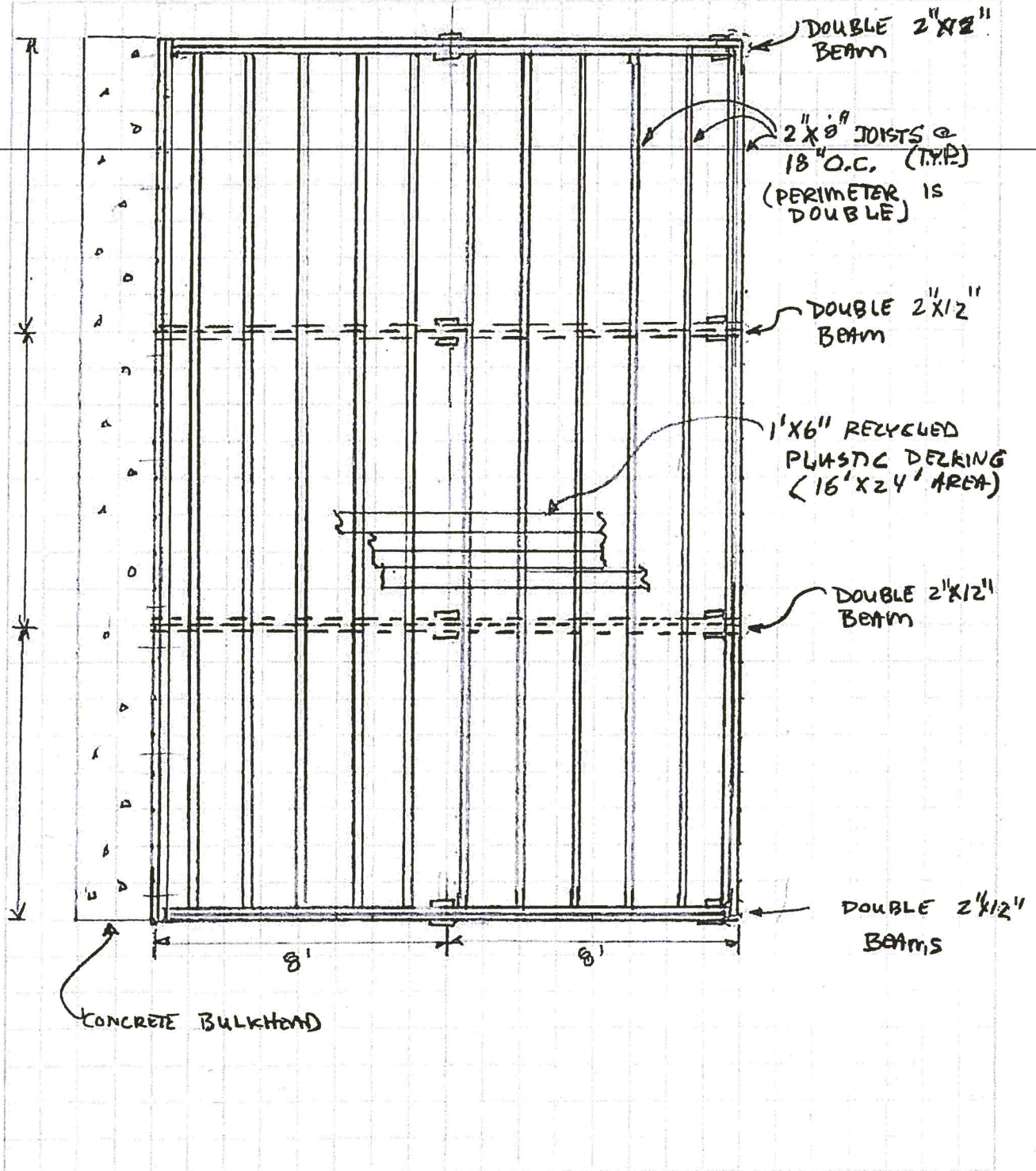




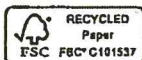
Stantec

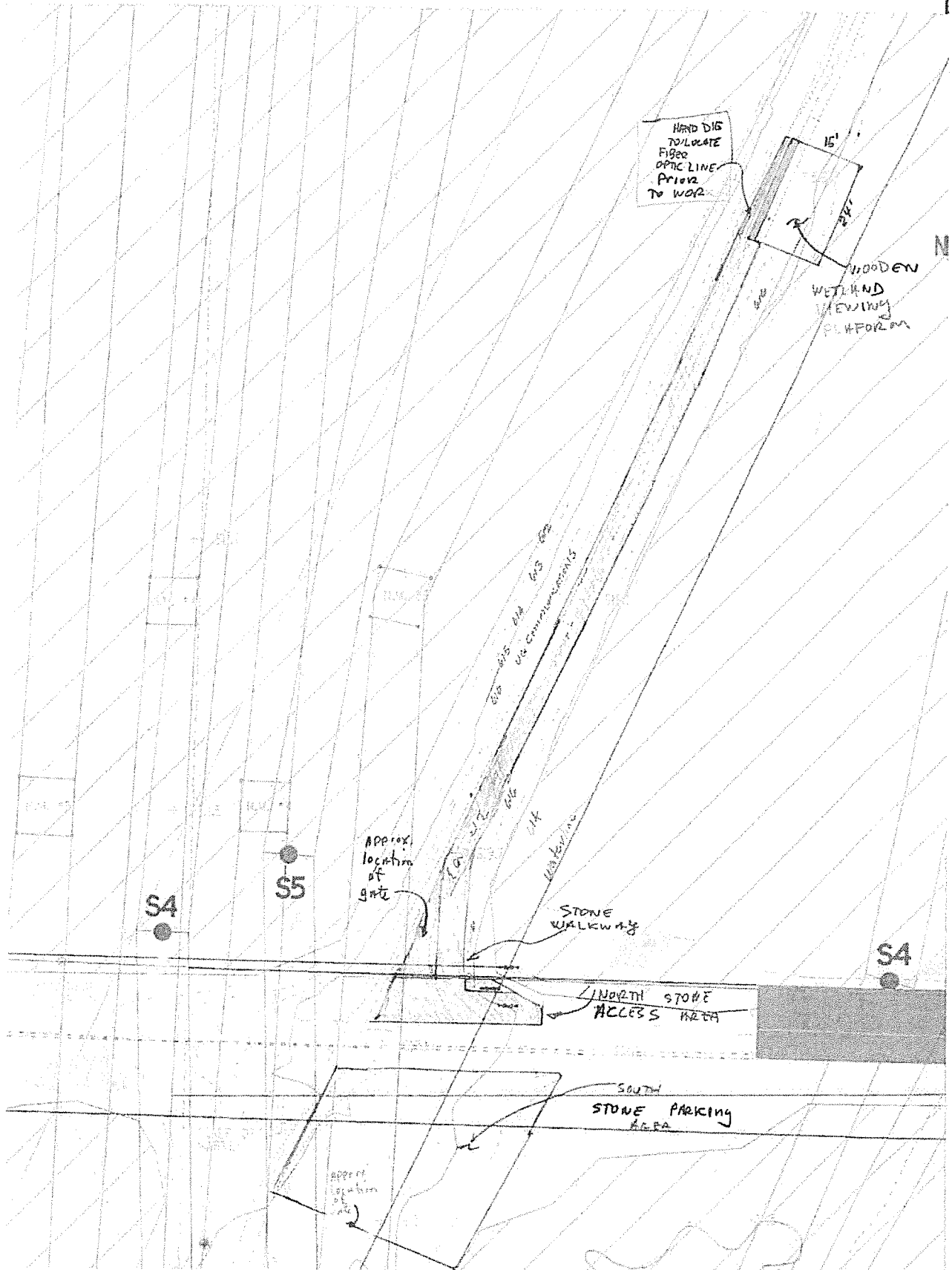
NATIONAL GRID  
WETLAND VIEWING PLATFORM  
SCHEMATIC

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.