

MEMORANDUM OF AGREEMENT

**Between
Town of Medway
and**

Exelon West Medway II, LLC

This MEMORANDUM OF AGREEMENT (“MOA”) is made as of the 7th day of April, 2017 (the “Effective Date”), by and between the Town of Medway, a municipal corporation and body politic of the Commonwealth of Massachusetts (“Town”) having its offices at 155 Village Street, Medway, Massachusetts 02053 and Exelon West Medway II, LLC, a Delaware limited liability company (“Exelon”) having offices at 300 Exelon Way, Kennett Square, Pennsylvania 19348, each individually a “Party” and collectively, the “Parties.”

RECITALS

WHEREAS, Exelon (together with Exelon West Medway, LLC) has filed a request with the Energy Facilities Siting Board (“EFSB”) for a Certificate of Environmental Impact and Public Interest (“Certificate”) which was docketed by the EFSB as EFSB 17-01 (the “Certificate Proceeding”);

WHEREAS, as part of the Certificate Proceeding, Exelon is seeking to obtain from the EFSB a composite of all individual permits, approvals or authorizations (including local permits) which would otherwise be necessary for construction and operation of Exelon’s proposed new 200 MW fast-starting peaking facility (the “Facility”) located on Summer Street in the Town;

WHEREAS, Exelon and the Town have entered into that certain Host Community Agreement dated October 14, 2015 (“HCA”) to document the environmental, public health and public safety payments and other investments, protective and mitigation measures and certain non-monetary public health and public safety measures made by Exelon to the Town in connection with the Facility;

WHEREAS, Exelon and the Town, as a result of good faith negotiations, have entered into that certain Payment in Lieu of Taxes Agreement dated May 16, 2016 (“PILOT”) as a comprehensive agreement for payments in lieu of taxes for the Facility under the authority of G.L. c. 59, §38H;

WHEREAS, the EFSB in EFSB 15-1, granted Exelon’s petition to construct the Facility (the “Construction Proceeding”) and the EFSB in D.P.U. 15-25, granted Exelon’s petition for certain exemptions from the Town’s Zoning Bylaw pursuant to G.L. c. 40A, §3 (the “Zoning Exemption Proceeding”);

WHEREAS, Exelon recognizes that the issuance of a Certificate by the EFSB could limit certain permit fees that would be due and owing to the Town and has agreed to enter into an amendment to the HCA to provide the Town of Medway the alternate revenues set forth herein;

WHEREAS, the Town is a party to the Certificate Proceeding and has been asked by the EFSB to provide the EFSB with the conditions that the Town would like to see included in the Certificate relating to approvals in lieu of the local permits that Exelon would otherwise have obtained from the Town;

WHEREAS, Exelon and the Town intend to collaborate in good faith to develop a set of permit criteria for the Certificate; and

WHEREAS, Exelon and the Town intend to continue the positive business working relationship that has existed throughout the project development process to date and to demonstrate the same have agreed to the amendments to the HCA and PILOT herein that most accurately reflect both revenues and appropriate dates of delivery for payments.

NOW THEREFORE, the Parties wish to set forth the additional agreements between them as set forth herein:

1. HCA.

1.1 **Definitions.** Terms not specifically defined in this Section 1 shall have the meanings assigned to them in the HCA.

1.2 **Amendment.** The Parties hereby agree to enter into an amendment to the HCA in the form of the First Amendment set forth in Exhibit A hereto. The Parties shall enter into such amendment no later than April 7, 2017.

1.3 **Future Coordination.** Within sixty (60) days after the third anniversary of the Commercial Operation Date of the Facility, Exelon and the Town shall use good faith efforts to meet and consider the impacts on the Town's municipal operations related to the operation of the Plant and the Facility.

2. PILOT.

The Parties hereby agree to enter into an amendment to the PILOT in the form of the First Amendment set forth in Exhibit B hereto in order to account for delays (beyond the control of Exelon) in obtaining the required permits to commence construction and the projected delay of the Commercial Operation Date for the Facility. The Parties shall enter into such amendment no later than April 7, 2017.

3. The Certificate Proceeding.

The Parties agree to cooperate with each other with respect to the formation of criteria and conditions for all local permits and approvals that are necessary for the construction and operation of the Facility and that should be included in the requested Certificate in lieu of such local permits and approvals in accordance with G.L. c. 164, §§69K½-69O½. The Parties agree to work constructively and in good faith with each other to provide material and documentation related to such local permits and approvals. Exelon agrees to furnish the Town, when available,

copies of all engineering plans, drawings, architectural designs and related material for each component of the Project that requires a permit.

The Parties acknowledge that Exelon may not be able to produce certain plans, designs or other information related to certain of the local permits and approvals requested in the Certificate Proceeding during the pendency of such proceeding (information that Exelon would otherwise be required to present to the Town with an application for such permit or approval if were not seeking the Certificate). The Parties further acknowledge that the Town may, as appropriate in the Certificate Proceeding, request that the EFSB incorporate as a condition of the Certificate, a requirement that Exelon file such plans, designs or other information with the Town for review consistent with G.L. c. 164, §69K½ and the Certificate and further subject such permits or approvals to a condition that ensures, consistent with G.L. c. 164, §69K½, Exelon's future compliance with all applicable laws that would otherwise govern such permits and approvals.

Exelon acknowledges that the Town may introduce into evidence in the Certificate Proceeding and shall not object to the Town's introduction into evidence in the Certificate Proceeding, the following: (i) information related to the EFSB's standard of review for a petition under G.L. c. 164, §69K½ and for an application under G.L. c. 164, §69L½; (ii) the terms and requested conditions of the local permits that will be included in the Certificate as approvals in lieu of such local permits ; (iii) payment of any requisite permit fees and mitigation costs (but only those agreed to by the Town and Exelon in this MOA), (iv) a request for inclusion in the Certificate of the Town's inspection and permit enforcement rights in accordance with G.L. c. 164, §69K½.

The rights, duties and obligations of the Parties in accordance with this Section shall be exercised in good faith and in a commercially reasonable manner.

4. Interconnection of Municipal Water Systems – Town of Medway and Town of Millis.

4.1 Terms not specifically defined in this Section 4 shall have the meanings assigned to them in the HCA. It is recognized by the Parties that Exelon asserts that it no longer needs to utilize water from the Town of Millis ("Millis") for the Project's ordinary water needs. Accordingly, Exelon does not intend to execute the previously contemplated water supply agreement with Millis. Notwithstanding the foregoing, if the EFSB requires Exelon to utilize water from Millis for the Project's ordinary water needs and requires Exelon to execute a water supply agreement with Millis, the Town agrees to facilitate the transportation of Millis water to the Facility via the Town water infrastructure currently in place subject to the following conditions:

4.1.1 An interconnection agreement must be completed between the Town and Millis prior to any transfer and/or transportation of water.

4.1.2 The amount of water flowed from Millis must be metered at the point of interconnection between the two systems and also at the point of entry into the Facility property.

4.1.3 The interconnection shall be designed and constructed by Exelon, and shall be so designed to provide for a so-called SMART system whereby water from Millis shall only occur when called for by the Facility, and shall ensure that amounts flowed are identical at both meters. The design of this system shall be approved by the Town and Millis prior to construction.

4.1.4 A backflow device shall be included to prevent any flow of water from the Town to Millis.

4.1.5 Exelon shall be responsible for any system components necessary to protect the Town's water quality and infrastructure, and to ensure that the Town's system integrity is unharmed. The Town of Medway Department of Public Services shall have sole discretion to determine Exelon's compliance with these conditions, provided that such determination shall not be unreasonably withheld by the Town.

4.1.6 Any interconnection agreement between the Town and Millis will require that Exelon serve as the "customer" of the Millis water system, and as such Exelon shall be responsible to Millis for amounts flowed through the meter at the interconnection point.

4.2 In an effort to provide the Town with resources necessary to negotiate interconnection agreement between the Town and Millis, Exelon agrees to reimburse Medway for reasonable legal and engineering costs incurred to negotiate the agreement and design the pumping station connecting the two towns' water supplies.

5. Miscellaneous.

5.1 **Counterparts; Scanned Copies.** This MOA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this MOA bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this MOA notwithstanding the failure or inability to produce or tender an original, executed counterpart of this MOA and without the requirement that the unavailability of such original, executed counterpart of this MOA first be proven.

5.2 **Joint Workproduct.** This MOA shall be considered the workproduct of both Parties hereto, and therefore, no rule of strict construction shall be applied against either Party.

5.3 **Successors and Assigns.** This MOA shall be binding upon Exelon, the Town and each of their affiliates, parents, successors and permitted assigns and inure to the benefit of and be enforceable by Exelon, the Town and each of their affiliates, parents, successors and permitted assigns.

5.4 **No Limitation on Regulatory Authority.** The Parties acknowledge that nothing in this MOA shall be deemed to be an agreement by the Town to limit or otherwise affect the ability of the Town to fulfill its regulatory mandate or execute its regulatory powers consistent with all applicable laws, including G.L. c. 164, §69K½.


5.5 **Entire Agreement.** This MOA constitutes the entire and complete agreement of the Parties with respect to the subject matter hereof, exclusive of all prior understandings, arrangements and commitments, all of which, whether oral or written, having been merged herein, except for contemporaneous or subsequent written understandings, arrangements or commitments signed by the parties intended to be bound thereby.

5.6 **Governing Law; Dispute Resolution.** The governing law and dispute resolution provisions of this MOA shall be as set forth in Sections 28 and 29, respectively, of the HCA.

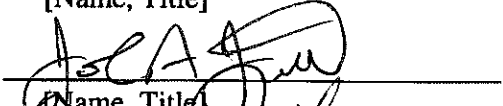
[Signature Page to Follow]


IN WITNESS WHEREOF, the Parties have executed this MOA as of the Effective Date.

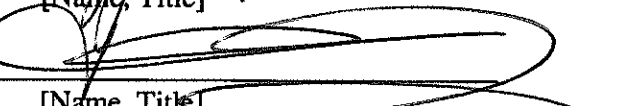
TOWN OF MEDWAY

By: 
[Name, Title]

By: _____
[Name, Title]

By: 
[Name, Title]

By: 
[Name, Title]

By: 
[Name, Title]

EXELON WEST MEDWAY 11, LLC


By: 
Todd D. Cutler, Assistant Secretary

EXHIBIT A
[FORM OF]
FIRST AMENDMENT TO
HOST COMMUNITY AGREEMENT

This First Amendment Agreement (“Amendment”) is entered into as of _____, 2017 (the “Effective Date”), by and between the Town of Medway, a municipal corporation and body politic of the Commonwealth of Massachusetts (“Town”) having its offices at 155 Village Street, Medway, Massachusetts 02053 and Exelon West Medway II, LLC, a Delaware limited liability company (“Exelon”) having offices at 300 Exelon Way, Kennett Square, Pennsylvania 19348, each individually a “Party” and collectively, the “Parties.”

RECITALS

WHEREAS, the Town and Exelon are parties to that certain Host Community Agreement dated October 14, 2015 (“Agreement”); and

WHEREAS, the Parties wish to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the promises, agreements, covenants and benefits contained herein, the Parties hereby agree as follows:

1. **Definitions.** All capitalized terms used in this Amendment have the same meaning given in the Agreement, unless otherwise defined herein.

2. **Amendment to HCA.**

2.1. **Permitting.** Section 4 (Permitting) of the HCA is hereby deleted and replaced in its entirety with the following:

“4. **Permitting.** Exelon shall be responsible for paying a one-time, all-inclusive permit fee of three hundred and fifty thousand dollars (\$350,000) covering all local permits issued as part of the comprehensive permit approval process in EFSB 17-01 (the “Certificate Proceeding”). Exelon shall pay said fee to the Town on or before August 1, 2017. Exelon shall not object to the Town’s request in the Certificate Proceeding to retain inspection and oversight authority required for determining compliance with any local permit or approval included in any certificate issued by the EFSB in the Certificate Proceeding. In the event that after the commencement of commercial operation, Exelon must seek additional permits from the Town for alterations, additions or other changes to any structure or component of the Facility, Exelon shall be responsible for applying for such permits and shall be responsible for the payment of all permitting and inspection fees in effect at the time of application for each. In addition, Exelon shall facilitate any on-site inspections required for determining compliance with such permit or approval by the appropriate Town official.

2.2 **Environmental and Technical Review.** Section 6(B) (Environmental and Technical Review Fund) of the HCA is hereby amended by adding a second paragraph as follows:

“Exelon shall provide the Town with the sum of fifty thousand dollars (\$50,000) on or before May 1, 2017 for legal and technical services associated with the Town’s participation in the Certificate Proceeding and continued review of the Project.”

2.3 **Community Improvement Funds.** The following new Section 6(G) is hereby added to the HCA:

“G. Community Improvement Funds. Exelon shall pay to the Town Community Improvement Funds, available for any general municipal purpose, as follows: (i) seven hundred thousand dollars (\$700,000) on or before December 31, 2017; and (ii) seven hundred thousand dollars (\$700,000) on or before June 1, 2018.

3. **Miscellaneous.**

3.1 **Consistency with Agreement.** This Amendment is intended to be construed harmoniously with the Agreement to the maximum extent possible. In the event that any provision of this Amendment conflicts with the terms of the Agreement, the provisions of this Amendment shall control. Except as specifically set forth herein, the Agreement shall remain in full force and effect.

3.2 **Successors and Assigns.** This Amendment shall be binding upon Exelon, the Town and each of their affiliates, parents, successors and permitted assigns and inure to the benefit of and be enforceable by Exelon, the Town and each of their affiliates, parents, successors and permitted assigns.

3.3 **Authorization.** The Parties represent and warrant, as of the date hereof, that the execution and delivery of this Amendment and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of each such Party. This Amendment is a valid and binding obligation of the Parties enforceable in accordance with its terms.

3.4 **Counterparts; Scanned Copies.** This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Amendment bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Amendment notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Amendment and without the requirement that the unavailability of such original, executed counterpart of this Amendment.

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

TOWN OF MEDWAY

By: _____
[Name, Title]

By: _____
[Name, Title]

By: _____
[Name, Title]

By: _____
[Name, Title]

By: _____
[Name, Title]

EXELON WEST MEDWAY 11, LLC

By: _____
[Name, Title]

EXHIBIT B
[FORM OF]
FIRST AMENDMENT TO
PAYMENT IN LIEU OF TAXES AGREEMENT

This First Amendment Agreement (“Amendment”) is entered into as of _____, 2017 (the “Effective Date”), by and between the Town of Medway, a municipal corporation and body politic of the Commonwealth of Massachusetts (“Town”) having its offices at 155 Village Street, Medway, Massachusetts 02053 and Exelon West Medway II, LLC, a Delaware limited liability company (“Exelon”) having offices at 300 Exelon Way, Kennett Square, Pennsylvania 19348, each individually a “Party” and collectively, the “Parties.”

RECITALS

WHEREAS, the Town and Exelon are parties to that certain Payment in Lieu of Taxes Agreement dated May 16, 2016 (“PILOT”); and

WHEREAS, the Parties wish to amend the PILOT as set forth herein.

NOW, THEREFORE, in consideration of the promises, agreements, covenants and benefits contained herein, the Parties hereby agree as follows:

1. **Definitions.** All capitalized terms used in this Amendment have the same meaning given in the PILOT, unless otherwise defined herein.

2. **Amendment to PILOT.**

2.1 **Initial Payment.** The third paragraph of Section 2 (Term) of the PILOT is hereby deleted and replaced in its entirety with the following:

“Subject to the New Facility achieving COD, the initial payment hereunder shall be due in full no later than February 1, 2019, which payment shall relate to project operations for the period from COD through the end of such tax year. Thereafter, payment shall be made on a quarterly basis.”

2.2 **Payment Years.** Subject to the New Facility achieving COD, the Parties acknowledge and agree that for purposes of the Years listed on the table set forth in Section 3 of the PILOT: (i) the full payment for Year 1, including the CPA Payment Amount, shall be made no later than February 1, 2019; and (ii) Year 2 shall commence on July 1, 2019, Year 3 on July 1, 2020, and so on.

3. **Miscellaneous.**

3.1 **Consistency with Agreement.** This Amendment is intended to be construed harmoniously with the PILOT to the maximum extent possible. In the event that any provision of

this Amendment conflicts with the terms of the PILOT, the provisions of this Amendment shall control. Except as specifically set forth herein, the PILOT shall remain in full force and effect.

3.2 **Successors and Assigns.** This Amendment shall be binding upon Exelon, the Town and each of their affiliates, parents, successors and permitted assigns and inure to the benefit of and be enforceable by Exelon, the Town and each of their affiliates, parents, successors and permitted assigns.

3.3 **Authorization.** The Parties represent and warrant, as of the date hereof, that the execution and delivery of this Amendment and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action on the part of each such Party. This Amendment is a valid and binding obligation of the Parties enforceable in accordance with its terms.

3.4 **Counterparts; Scanned Copies.** This Amendment may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Amendment bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Amendment notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Amendment and without the requirement that the unavailability of such original, executed counterpart of this Amendment.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

TOWN OF MEDWAY

By: _____
[Name, Title]

By: _____
[Name, Title]

By: _____
[Name, Title]

By: _____
[Name, Title]

By: _____
[Name, Title]

EXELON WEST MEDWAY 11, LLC

By: _____
[Name, Title]