

**ARTICLE 6**: Payment In Lieu Of Tax Agreement

Town of Sandwich & NRG Canal 3 Development LLC

The effectiveness of the attached Payment In Lieu Of Tax Agreement with NRG Canal 3 Development LLC is conditioned on approval by Town Meeting in accordance with State Department of Revenue requirements.

**PAYMENT IN LIEU OF TAX AGREEMENT**

This Payment in Lieu of Taxes Agreement (“PILOT”) is made as of the 19<sup>th</sup> day of October, 2016, by and between the Town of Sandwich, a municipal corporation and body politic of the Commonwealth of Massachusetts (the “Town”), and NRG Canal 3 Development LLC, a Delaware limited liability company (“NRG”), each individually a “Party” and collectively, the “Parties.”

WITNESSETH:

WHEREAS, NRG owns 52 acres of real property located in the Town at 9 Freezer Road, Sandwich, MA 02563 (the “Site”);

WHEREAS, NRG owns existing real and personal property comprised of a steam electric generating facility consisting of Canal Unit 1 and Canal Unit 2 owned by NRG Canal LLC, an affiliate of NRG and associated appurtenances with a total capacity of 1,120 megawatts of energy (the “Existing Facility”) on the Site;

WHEREAS, NRG is developing a new dual fuel, quick start, combustion turbine powered Unit 3 capable of producing a gross electrical output varying from approximately 330 megawatts at higher ambient temperatures to approximately 365 megawatts at very low temperatures (the “New Facility”) on the Site;

WHEREAS, NRG will be subject to certain local taxes in connection with its ownership of the real and personal property related to the New Facility;

WHEREAS, NRG and the Town agree that having an accurate projection of their respective property tax expenses and revenues with respect to the New Facility is essential to the development of the New Facility, provides long-term revenue certainty for the Town and is in their mutual best interests;

WHEREAS, G.L. c. 59 §38H authorizes the Town to enter into an agreement for a negotiated payment in lieu of taxes imposed on real and personal property; and

WHEREAS, NRG and the Town acknowledge that a comprehensive agreement for payments in lieu of taxes under the authority of G.L. c. 59, §38H fixing and maintaining mutually acceptable payments based on reasonable and accurate fair cash values for all real and personal property associated with the New Facility for twenty-one (21) years commencing with commercial operations of the New Facility is appropriate and serves their respective interests; and

WHEREAS, NRG and the Town have reached this PILOT as a result of good faith negotiations so that NRG’s payments to the Town shall be the equivalent of the property tax obligations which would otherwise be owed to the Town by NRG during the term of this PILOT based on full and fair cash valuation.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which hereby

are acknowledged, the Parties do hereby covenant and agree as follows:

1. Property to be Taxed. The real and personal property that comprises the New Facility to be owned or leased by NRG which shall be taxed subject to the terms of this PILOT is described in Exhibit A attached hereto and incorporated herein by reference as the New Facility. The New Facility also shall include any material additions, improvements, repairs, replacement, modifications or other changes to the New Facility which occur after the execution of this PILOT. This PILOT covers all real and personal property taxes otherwise due for the New Facility but does not affect any payments, other than real and personal property taxes, owed by NRG to the Town, including, but not limited to, payments due under the Host Community Agreement between the Town and NRG dated as of even date herewith (the "HCA"), vehicle excise taxes, and amounts for services, if any, provided by the Town to NRG and the New Facility such as water and sewer services.

The Existing Facility and the remainder of the Site will continue to be assessed and taxed pursuant to the terms of the Tax Valuation Agreement dated April 3, 2014 by and between the Town and NRG Canal LLC and/or G.L. c. 59, as applicable, and is not subject to this PILOT.

2. Term. This PILOT shall be effective as of the date first written above (but the obligations of the Parties shall be subject to the satisfaction of the conditions precedent set forth in Section 12 herein) and shall govern the taxation of the New Facility for twenty-one (21) fiscal years commencing in the year the New Facility commences commercial operations. "Commercial Operation Date" or "COD" shall mean the date of initial commercial operation of the New Facility.

For the purposes of this PILOT, each fiscal year shall begin on July 1 and shall end on June 30 of the following calendar year. By way of example, fiscal year 2017 means July 1, 2016 - June 30, 2017.

This PILOT may sooner terminate pursuant to Sections 6, 7 or 13. Upon termination, the Town shall assess the New Facility at its full and fair cash valuation.

3. PILOT Payments. The Parties agree that the respective payments in lieu of paying any other real or personal property taxes with respect to the New Facility ("PILOT Payments") shall be the amounts listed below for each of the fiscal years included in the term of this PILOT. "FY 1" as listed below shall be the first fiscal year in which the Commercial Operation Date occurs by December 31 of such fiscal year.

| <b>FISCAL YEAR</b> | <b>PILOT PAYMENT</b> |
|--------------------|----------------------|
| FY 1               | \$3,559,951          |
| FY 2               | \$2,172,957          |
| FY 3               | \$1,941,791          |
| FY 4               | \$1,710,626          |
| FY 5               | \$1,770,498          |
| FY 6               | \$1,832,465          |
| FY 7               | \$1,859,022          |
| FY 8               | \$1,924,088          |
| FY 9               | \$1,991,431          |
| FY 10              | \$2,061,131          |
| FY 11              | \$2,133,271          |
| FY 12              | \$2,207,936          |
| FY 13              | \$2,285,213          |
| FY 14              | \$2,365,196          |
| FY 15              | \$2,447,978          |
| FY 16              | \$2,555,757          |
| FY 17              | \$2,709,102          |
| FY 18              | \$2,871,649          |
| FY 19              | \$3,043,947          |
| FY 20              | \$3,226,584          |
| FY 21              | \$3,420,179          |
| <b>Total</b>       | <b>\$50,090,772</b>  |

Such amounts shall be paid in equal installments on a quarterly basis and shall be delivered to William Jennings, Town of Sandwich Tax Collector, Town Hall Annex, 145 Main Street, Sandwich, MA 02563 or his successor. Such amounts shall be paid each year in accordance with the following schedule: 1st quarter due August 1<sup>st</sup>; 2nd quarter due November 1<sup>st</sup>; 3rd quarter due February 1<sup>st</sup>; 4th quarter due May 1<sup>st</sup>. Should any due date fall on a weekend or holiday, payment shall be due the first business day following such date. Notwithstanding the foregoing, the Parties acknowledge that depending upon the timing of the Commercial Operation Date in FY 1, the full annual payment for such fiscal year shall be made to the Town and divided equally among the remaining quarters of such fiscal year.

The Parties acknowledge and agree that NRG intends to commence commercial operation of the New Facility in fiscal year 2020. In the event that the Commercial Operation Date is not achieved by May 31, 2021, the Parties will negotiate in good faith a new mutually acceptable PILOT.

4. Community Preservation Act Payments; Sandwich Water District Payments.

(a) The Parties acknowledge and agree that the payments listed below (the “Community Preservation Act Payments”) constitute the full payment(s) for the respective fiscal year of three percent (3%) of each respective PILOT Payment that the Town is entitled to receive

due to it under the Town bylaws and Massachusetts law relating to community preservation. Such payment shall be paid in equal quarterly installments in accordance with the quarterly schedule set forth in Section 3 herein.

| <b>FISCAL YEAR</b> | <b>COMMUNITY<br/>PRESERVATION<br/>ACT PAYMENT</b> |
|--------------------|---|
| FY 1               | \$106,799   |
| FY 2               | \$65,189  |
| FY 3               | \$58,254  |
| FY 4               | \$51,319  |
| FY 5               | \$53,115  |
| FY 6               | \$54,974  |
| FY 7               | \$55,771  |
| FY 8               | \$57,723  |
| FY 9               | \$59,743  |
| FY 10              | \$61,834  |
| FY 11              | \$63,998  |
| FY 12              | \$66,238  |
| FY 13              | \$68,556  |
| FY 14              | \$70,956  |
| FY 15              | \$73,439  |
| FY 16              | \$76,673  |
| FY 17              | \$81,273  |
| FY 18              | \$86,149  |
| FY 19              | \$91,318  |
| FY 20              | \$96,798  |
| FY 21              | \$102,605   |
| <b>Total</b>       | \$1,502,724                                       |

(b) In addition to the PILOT Payments and the Community Preservation Act Payments provided for herein, NRG shall pay the Sandwich Water District (“Water District”) the payments (the “Sandwich Water District Payments”, and together with the PILOT Payments and the Community Preservation Act Payments, the “Town Payments”) listed in the table below. NRG shall pay such Sandwich Water District Payments in equal quarterly installments in accordance with the quarterly schedule set forth in Section 3 herein to the Town for the benefit of the Water District and the Town shall in turn remit such payments to the Water District. The Parties acknowledge and agree that: (i) the Water District is a body politic independent from the Town, established pursuant to St. 1947, c. 280; (ii) the Town’s collection and remittance of the payments below to the Water District is in accordance with the procedure set forth in St. 1947, c. 280, as amended; and (iii) NRG shall have no obligation to make the payments set forth below unless and until the Water District independently approves a separate agreement between NRG and the Water District for such payments in accordance with applicable law governing operation of the Water District.

| <b>FISCAL YEAR</b> | <b>SANDWICH WATER<br/>DISTRICT PAYMENT</b> |
|--------------------|--|
| FY 1               | \$183,251                                  |
| FY 2               | \$111,854                                  |
| FY 3               | \$99,955                                   |
| FY 4               | \$88,056                                   |
| FY 5               | \$91,137                                   |
| FY 6               | \$94,327                                   |
| FY 7               | \$97,629                                   |
| FY 8               | \$101,046                                  |
| FY 9               | \$104,582                                  |
| FY 10              | \$108,243                                  |
| FY 11              | \$112,031                                  |
| FY 12              | \$115,952                                  |
| FY 13              | \$120,011                                  |
| FY 14              | \$124,211                                  |
| FY 15              | \$128,558                                  |
| FY 16              | \$134,219                                  |
| FY 17              | \$142,272                                  |
| FY 18              | \$150,808                                  |
| FY 19              | \$159,856                                  |
| FY 20              | \$169,448                                  |
| FY 21              | \$179,615                                  |
| <b>Total</b>       | <b>\$2,617,061</b>                         |

5. Certifications. NRG shall send a certification to the Town identifying the Commercial Operation Date within thirty (30) days of COD. Thereafter, NRG shall submit to the Town no later than the March 1 preceding the beginning of each fiscal year covered by this PILOT an annual certification which describes any material reductions, derates, additions, improvements, repairs, replacement, modifications or retirements that have occurred since the final completion of the New Facility or since NRG's last annual certification, as applicable, in accordance with G.L. c. 59, §29; provided however that NRG shall not be required to submit any such certification in the event it files a Form of List or State Tax Form 2 (or similar filing) with the applicable governmental body for such fiscal year covered by this PILOT. In each annual certification, NRG shall designate a representative who is available to answer any questions that the Town may have regarding the information that was provided in such annual certification. The Parties acknowledge and agree that for the purposes of determining revenue in the forward capacity market, ISO New England will conduct an initial performance test on the New Facility (the initial Claimed Capability Audit or CCA-Establish). The results of the CCA-Establish shall be shared with the Town (and is hereinafter referred to as the New Facility's "Rated Capacity").

6. Adjustments. If, during the term of this PILOT, (i) following COD, the New Facility is physically unable to operate for a period of twelve (12) consecutive months, (ii) the New Facility is taken out of service permanently, (iii) the New Facility is mothballed for a period

of at least twelve (12) consecutive months, or (iv) the Rated Capacity increases or decreases by more than 5% (each of the events listed in clauses (i) to (iv), individually, an “Adjustment Event” and collectively, “Adjustment Events”), NRG shall as soon as possible thereafter provide written notice of such Adjustment Event to the Town (“Adjustment Event Notice”).

Within thirty (30) days after the Town’s receipt of an Adjustment Event Notice, either Party may send to the other Party a notice as to whether an upward adjustment or downward adjustment in the Town Payments is warranted, the reasons for the adjustment (which for the avoidance of doubt, shall be solely limited to one or more Adjustment Events), together with sufficient documentation regarding the Adjustment Event to support such Party’s request for an adjustment, and a revised future payment schedule for the New Facility. The revised Town Payments schedule shall take effect for the next upcoming fiscal year unless within thirty (30) days of receipt of the revised payment schedule one Party sends the other Party notice that it objects to such payment schedule. If a Party objects to such payment schedule, the Town and NRG will then promptly meet to discuss in good faith the requested adjustment and the objection thereto. If, after forty-five (45) days of discussion, the Parties cannot agree as to the adjusted payment amount, the Parties shall resolve the dispute in accordance with Section 22 below. In the event that the dispute resolution process set forth in Section 22 is initiated, the Town shall have a limited right to audit and inspect NRG’s records during the informal negotiation stage of the process. The scope of such audits shall be limited to reviewing information that is reasonably necessary to ascertain the accuracy of the information provided or omitted on NRG’s most recent annual certification or on NRG’s Adjustment Event Notice. Such examinations shall be made upon not less than seven (7) days’ prior notice during normal business hours at the New Facility and in such manner as to not unreasonably interfere with NRG’s normal business activities. If such records are not kept at the New Facility, NRG shall deliver (at its sole expense) copies of such records to the office of the Town’s Director of Assessing. Any information provided to the Town as part of an audit shall be treated as confidential. In the event the Town requests documents or information that NRG determines is proprietary, upon request by NRG, the Parties will enter into a commercially reasonable confidentiality agreement in order to limit disclosure of such information. The Parties further agree that notwithstanding the dispute resolution provisions of Section 22 of this PILOT, if the Parties are unable to resolve a dispute under this Section 6 by either informal discussions or mediation, either Party may terminate this PILOT (which election shall be made within thirty (30) days of the discontinuance of mediation). In the event this PILOT is so terminated, the Town shall thereafter tax the New Facility on an *ad valorem* basis pursuant to G.L. c. 59.

7. Failure to Make Timely Payments; Right to Cure. In accordance with G.L. c. 59, §57, the Town may assess penalties for late payments of Town Payments due under the provisions of this PILOT. The Town expressly reserves all rights available to it respecting the collection of such Town Payments. In the event a payment is not timely received by the Town, the Town shall issue a notice of default to NRG and NRG shall have twenty (20) days from receipt of such notice within which to cure such default. If NRG (or the Financiers) fails to timely cure the default (after the expiration of all cure periods), at any time thereafter and at its sole option, the Town may declare this PILOT null and void, and the New Facility shall be taxed on an *ad valorem* basis pursuant to G.L. c. 59. In addition, in the event of the occurrence of a uncured payment default that is not the subject of a good faith dispute, NRG shall pay a late fee

of one thousand dollars (\$1,000) per day for each day that any payment under this PILOT is due (after expiration of all cure periods), provided, however, that no more than twenty-five thousand dollars (\$25,000) shall be due and owing for each instance of late payment or nonpayment. Interest shall also accrue on all late payments in accordance with G.L. c. 59, § 57. NRG shall provide the Town written notice of any Financier for the New Facility. The Town shall provide all Financiers that have been so identified to the Town, written notice of any notice of default issued by the Town under this PILOT. The Town acknowledges and agrees that such Financiers shall have ninety (90) days in addition to any cure period available to NRG to cure an NRG default under this PILOT. The Town agrees that it shall not begin to impose the one thousand dollars (\$1,000) per day penalty against NRG until the expiration of the Financier's ninety (90) day cure period. For purposes of this Section 7, the term "Financier" shall mean any individual or entity providing money or extending credit for the New Facility to NRG for: (1) development, bridge, term, construction, permanent debt, tax equity or other financing or refinancing of the New Facility; or (2) working capital or other ordinary business requirements for the New Facility. "Financier" shall not include common trade creditors of NRG.

8. Mutual Benefits. The Parties acknowledge that this PILOT is the result of good faith negotiations between the Parties and extensive efforts to determine the fair cash value of the New Facility and is fair and beneficial to them because it resolves all issues regarding taxation of the New Facility, avoiding substantial litigation cost and uncertainty. The Town acknowledges that this PILOT is beneficial to it because it will result in steady, predictable, and reasonable Town Payments from the New Facility. NRG acknowledges that this PILOT is beneficial to it because it provides predictability and certainty with respect to taxation of the New Facility.

9. HCA. The obligations under this PILOT are completely severable from the obligations of the Parties under the HCA. A default under this PILOT shall not be considered a cross-default under the HCA. A default under the HCA shall not be considered a default under this PILOT.

10. No Precedent. This PILOT is entered into in good faith to resolve future disputes and to achieve predictability and economic stability for both Parties by establishing a schedule of Town Payments based on reasonable, accurate, and reliable fair cash values for the New Facility. Accordingly, NRG and the Town agree that neither Party shall seek to use the Town Payments agreed to under this PILOT in any future proceedings regarding the value of the New Facility in the Town or in any other proceeding regarding the value of any other NRG property, including the Existing Facility.

11. Advice of Counsel. The Parties have entered into this PILOT only after full and due consideration thereof and with the advice of their counsel and of their independent consultants.

12. Conditions Precedent. The obligations of the Parties under this PILOT are conditioned on (i) approval of this PILOT by the Town acting by Town Meeting, and (ii) the Town promptly submitting this PILOT to the Massachusetts Department of Revenue ("DOR"). In the event that DOR objects to this PILOT, this PILOT shall become null and void and of no further effect unless otherwise agreed by the Parties in writing. In addition, the Parties

acknowledge and agree that the obligation of NRG to make any of the Town Payments contemplated under this PILOT are conditioned on NRG's election to construct the New Facility, such that in order for NRG to be obligated to make any of the payment obligations in Sections 3 and 4, NRG must have received a building permit from the Town for the New Facility. The Parties further acknowledge and agree that in the event that the Commercial Operation Date for the New Facility does not occur by May 31, 2021, the Parties shall negotiate in good faith a new mutually acceptable PILOT for the Town Payments.

13. Change in Law.

(a) NRG and the Town hereby stipulate and agree that no portion of this PILOT shall be enforceable, and this PILOT shall terminate if a court of competent jurisdiction or a Massachusetts state agency has determined or declared any material portion of this PILOT to be illegal, void, or unenforceable and such determination or declaration is not subject to further appeal by either Party.

(b) NRG and the Town hereby stipulate and agree that no portion of this PILOT shall be enforceable, and this PILOT shall terminate if the Massachusetts General Court abolishes an *ad valorem* tax on property used for the production of electricity.

(c) In the event that the Massachusetts General Court enacts another means of taxation or assessment in addition to *ad valorem* taxation applicable to the New Facility during the term of the PILOT, the Town Payments due under this PILOT shall be reduced each year by the amount of such taxes or assessments actually paid by NRG.

14. Renegotiation Obligations. NRG and the Town agree that in the event this PILOT terminates pursuant to the provisions of Section 13 of this PILOT, and that such event does not occur through the direct fault of either Party, that the Parties will in good faith attempt to negotiate a new agreement which will seek to accomplish and implement the objectives and purposes of this PILOT for the same term as is addressed by this PILOT.

15. NRG's Representations and Warranties. NRG hereby makes the following representations and warranties to the Town:

(a) NRG is a limited liability company, validly existing and in good standing under the laws of the State of Delaware and has the full power and authority to carry on its business as it is now being conducted.

(b) This PILOT constitutes the legal, valid and binding obligation of NRG enforceable in accordance with its terms, except to the extent that the enforceability may be limited by applicable bankruptcy, insolvency or other laws affecting other enforcement of creditors' rights generally or by general equitable principles. NRG has taken all necessary action to authorize and approve the execution and delivery of this PILOT.

(c) To the best of NRG's knowledge, none of the documents or information furnished by or on behalf of NRG to the Town in connection with negotiation and execution of this PILOT contains any untrue statement of a material fact or omits to state any material fact required to be

stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

(d) The person executing this PILOT on behalf of NRG has the full power and authority to bind it to each and every provision of this PILOT.

16. Town's Representations and Warranties. The Town hereby makes the following representations and warranties to NRG:

(a) The Town is a municipal corporation and body politic of the Commonwealth of Massachusetts.

(b) Subject to satisfaction of the conditions precedent in Section 12, this PILOT constitutes the legal, valid and binding obligation of the Town enforceable in accordance with its terms. The Town will take all necessary action to authorize and approve the execution and delivery of this PILOT.

(c) The person executing this PILOT on behalf of the Town has the full power and authority to bind it to each and every provision of this PILOT.

17. Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this PILOT shall be in writing and addressed to the following:

If to the Town:

Town Manager  
Sandwich Town Hall  
130 Main Street  
Sandwich, MA 02563

with a copy to:

Jeffrey M. Bernstein, Esq.  
BCK Law, P.C.  
271 Waverley Oaks Road, Suite 203  
Waltham, MA 02452

If to NRG:

NRG Energy, Inc.  
804 Carnegie Center  
Princeton, NJ 08540  
Attention: Tom Atkins

with a copy to:

NRG Energy, Inc.  
804 Carnegie Center  
Princeton, NJ 08540  
Attention: General Counsel – Asset Management

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this PILOT; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this PILOT; or (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this PILOT. Notices may also be transmitted by electronic mail, provided that any notice transmitted solely by electronic mail which is not confirmed as received by the receiving Party shall be followed up by personal delivery or overnight delivery within forty-eight (48) hours. Either Party may change its address and contact person for the purposes of this Section by giving notice thereof in the manner required herein.

18. Entire and Complete Agreement; Binding Effect. This PILOT, along with the Exhibit(s) attached (or to be attached) hereto, 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. This PILOT shall bind and inure to the benefit of the Parties to this PILOT and any successor or assignee acquiring an interest hereunder.

19. Survival. Termination of this PILOT for any reason shall not relieve NRG of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations to make payments due on or before such termination as set forth in Sections 6 and 7.

20. Other Documents. Each Party promises and agrees to execute and deliver any instruments and to perform any acts which may be necessary or reasonably requested by the other Party in order to give full effect to this PILOT.

21. Governing Law. This PILOT and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

22. Dispute Resolution. Unless otherwise expressly provided for in this PILOT, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this PILOT between the Town and NRG. The Town and NRG agree to

use their respective best efforts to resolve any dispute(s) that may arise regarding this PILOT.

Any dispute that arises under or with respect to this PILOT that cannot be resolved in the daily management and implementation of this PILOT shall in the first instance be the subject of informal negotiations between a member (or designee or representative) of senior management of NRG and the Town Manager of the Town of Sandwich, as the case may be, who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties involved in the dispute. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute.

In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph of this Section, the Parties agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request the American Arbitration Association to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation.

In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, either Party shall be entitled to seek judicial enforcement of this PILOT. The venue for judicial enforcement of this PILOT shall be any state or federal court of competent jurisdiction in Massachusetts. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this PILOT. In any such judicial action, the “Prevailing Party” shall be entitled to payment from the opposing Party of its reasonable costs and fees, including but not limited to attorneys' fees, arising from the civil action. As used herein, the phrase “Prevailing Party” shall mean the Party who, in the reasonable discretion of the finder of fact, most substantially prevails in its claims or defenses in the civil action.

23. Confidentiality. The Parties understand that the Town is subject to, among other laws, the Massachusetts Public Records Act, G.L. c. 66, §10 and G.L. c. 4, §7, cl. 26, pursuant to which all documents and records made or received by the Town shall, absent an exemption or law to the contrary, constitute a public record subject to disclosure. To the extent not inconsistent with the Town’s duty set forth in the preceding sentence, if either Party or its representatives provides to the other Party or its representatives confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the New Facility or of a Party’s business (“Confidential Information”), the receiving Party shall protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary

information, but in any event not less than a commercially reasonable degree of care, and refrain from using such Confidential Information except in the negotiation and performance of this PILOT.

Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed by a governmental authority, under all applicable laws or pursuant to a validly issued subpoena, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

24. Amendments. This PILOT may only be amended or modified by a written amendment to this PILOT signed by both Parties hereto.

25. Severability. If any section, phrase or portion of the PILOT is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of the PILOT will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of the PILOT and the benefits to the Parties are not substantially impaired.

26. Headings and Captions. The headings and captions appearing in this PILOT are intended for reference only, and are not to be considered in construing the PILOT.

27. Counterparts; Scanned Copies. This PILOT 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 PILOT 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 PILOT notwithstanding the failure or inability to produce or tender an original, executed counterpart of this PILOT and without the requirement that the unavailability of such original, executed counterpart of this PILOT first be proven.

28. Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this PILOT shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this PILOT shall only be effective if made in writing and signed by the Party who is making such waiver.

29. Joint Workproduct. This PILOT shall be considered the workproduct of both

Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

30. Successors and Assigns. This PILOT shall be binding upon NRG, the Town and each of their affiliates, parents, successors and permitted assigns and inure to the benefit of and be enforceable by NRG, the Town and each of their affiliates, parents, successors and permitted assigns.

31. No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

32. Further Assurances. From time to time and at any time at and after the execution of the PILOT, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this PILOT that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this PILOT.

33. Good Faith. All rights, duties and obligations established by this PILOT shall be exercised in good faith and in a commercially reasonable manner.

34. No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this PILOT shall be deemed to be an agreement by the Town to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Town or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with all applicable laws.

Executed under seal as of the date first above-written.

**TOWN OF SANDWICH**

By:   
Name: George H. Dunham  
Title: Town Manager

**NRG Canal 3 Development LLC**

By:   
Name: John Chittami  
Title: President

EXHIBIT A  
Description of New Facility

As used herein, the term "New Facility" shall include all of the following real and personal property:

The New Facility will be primarily located on approximately twelve (12) acres within Sandwich Assessors' Map Parcel numbers 91-003 and 92-002. The plot plan below depicts the location of components of the New Facility. The New Facility will include one (1) GE 7HA.02 CTG, or a comparable turbine, with a net nominal electrical output of approximately 350 megawatts.

The New Facility will include the following major components and structures:

- GE 7HA.02 CTG, or a comparable turbine
- Evaporative inlet air cooler
- Tempering air fans
- SCR system with ammonia injection skid
- Oxidation catalyst system
- Continuous emissions monitoring system
- Power distribution center and distributed control system enclosure
- 220-foot exhaust stack
- Three (3) sound attenuating walls around gas turbine and generator, SCR tempering fan and cooling fan module
- Trailer-mounted demineralized water system
- Hydrogen and carbon dioxide storage cylinders and associated piping
- Ammonia tank enclosures
- Enclosed natural gas compressor station with an associated natural gas pre-heater
- 500 kilowatt emergency diesel generator
- Two (2) emergency fire pumps
- Waste sump equipment
- Transformers and electrical interconnection facilities
- Natural gas piping and interconnection equipment
- Fuel oil transport piping
- Stormwater management system
- Perimeter access road

The New Facility shall not include any real or personal property not owned by NRG or an affiliate thereof.

Natural gas for the proposed New Facility will be delivered via an interconnection to the existing Algonquin Gas Transmission pipeline located along the northern section of the

Site. Additionally, the New Facility will connect to the existing Eversource 345 kV switchyard located on the southern section of the Site.

**PLOT PLAN:**

