

## PAYMENT IN LIEU OF TAX AGREEMENT

This Payment in Lieu of Taxes Agreement (“Agreement”) is made as of the \_\_\_ day of December, 2014, by and between the City of Salem, a municipal corporation and body politic of the Commonwealth of Massachusetts, acting by and through its Mayor and City Council (the “City”) and Footprint Power Salem Harbor Development LP, a Delaware limited partnership (“Footprint”), each individually a “Party” and collectively, the “Parties.”

### WITNESSETH:

WHEREAS, Footprint is the holder of an option to acquire the Site (as defined on Exhibit 1 attached hereto and incorporated herein by reference) located in the City; and

WHEREAS, Footprint is developing on the Site a combined cycle natural gas fired power plant, that cleared ISO-New England, Inc.’s forward capacity auction 7 for 674 megawatts (“MW”), including fuel and electric interconnections (the “Facility”); and

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

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

WHEREAS, Footprint and the City desire to obtain the benefits of a settled relationship during the term of this Agreement; and

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

WHEREAS, Footprint and the City acknowledge that a comprehensive agreement for payments in lieu of taxes under the authority of M.G.L. ch. 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 Facility for the fiscal years 2016 through and including 2032 is appropriate and serves their respective interests; and

WHEREAS, Footprint and the City have reached this Agreement as a result of good faith negotiations so that Footprint’s payments to the City shall be the equivalent of the property tax obligations which would otherwise be owed to the City by Footprint during the term of this Agreement 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:

- Property to be Taxed. The real and personal property owned and to be owned by Footprint which shall be taxed subject to the terms of this Agreement is described in Exhibit 1 attached hereto and incorporated herein by reference (the “Subject Property”). The Subject Property also shall include any material additions, improvements or other changes to the Subject Property certified pursuant to Section 5 which occur after the execution of this Agreement, but shall not include any costs associated with normal repairs to, or maintenance of, the Facility. This Agreement covers all real and personal property taxes otherwise due for the Subject Property but does not affect any payments, other than real and personal property taxes, owed by Footprint to the City, including but not limited to vehicle excise taxes and amounts for services provided by the City to Footprint and the Subject Property including, but not limited to, water and sewer services.
- Term. This Agreement shall govern the taxation of the Subject Property for fiscal year 2016 through and including fiscal year 2032, unless otherwise provided herein. This Agreement may sooner terminate (i) pursuant to Section 6(d), or (ii) pursuant to Section 7 hereof, or (iii) pursuant to Section 15 hereof, or (iv) pursuant to Section 17 hereof, or (v) by written notice from Footprint in the event the Parties are unable to resolve any dispute pursuant to Section 29 of this Agreement, provided such notice is delivered within thirty (30) days after the mediation has concluded. Upon termination, the City shall assess the Subject Property at its full and fair cash valuation.
- Annual Payments. The Parties agree that the respective annual payments (“Annual Payments”) shall be the amounts listed below for each of the fiscal years included in the term of this Agreement in lieu of paying any other real or personal property taxes with respect to the Subject Property. For the purposes of this Agreement, 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 2015 means July 1, 2015 - June 30, 2016.

Fiscal Year	Annual Payment		Fiscal Year	Annual Payment
			2024	\$5,480,971
2016	\$100,000		2025	\$5,617,995
2017	\$100,000		2026	\$5,758,445
2018	\$750,000		2027	\$5,902,406
2019	\$1,000,000		2028	\$6,064,722
2020	\$5,002,000		2029	\$6,231,502
2021	\$5,114,545		2030	\$6,402,869
2022	\$5,229,622		2031	\$6,578,948
2023	\$5,347,289		2032	\$6,759,869

Such amounts shall be paid on a quarterly basis and shall be delivered to the City of Salem Tax Collector, 93 Washington Street, Salem, MA, 01970.

- 1st Quarter due August 1st
- 2nd Quarter due November 1st
- 3rd Quarter due February 1st
- 4th Quarter due May 1st

Notwithstanding the foregoing, amounts which were due on August 1, 2014 and November 1, 2014, shall not be due until thirty (30) days after the conditions precedent set forth in Section 15 are satisfied.

- Additional Payments. The Parties agree that in addition to the Annual Payments provided for herein, the City may receive additional payments (“Additional Payments”) in specific years as follows. In each fiscal year beginning in fiscal year 2023, Footprint shall inform the City of the revenue associated with the so-called “Capacity Payments” to be paid by ISO New England, Inc. to the Facility on a dollars per kilowatt month (“\$/kW-month”) basis (using the so-called “Power Year” that begins on June 1 immediately prior to such fiscal year). Footprint will then calculate the difference between such Capacity Payments and that fiscal year’s applicable threshold as stated below:

Fiscal Year	Applicable Threshold		Fiscal Year	Applicable Threshold
2023	\$12.75		2028	\$14.50
2024	\$13.25		2029	\$15.25
2025	\$13.50		2030	\$15.75
2026	\$13.50		2031	\$16.25
2027	\$13.75		2032	\$16.50

Footprint then will multiply the result of such calculation by 674 megawatts and multiply that result by 5%. Such result shall be added to the Annual Payment for the applicable fiscal year as provided in Section 3 above. Any Additional Payment due in any fiscal year shall not affect the Annual Payment to be paid in any other fiscal year.

By way of example, if for the Power Year beginning on June 1, 2024, the Capacity Payments were \$14.50, and the Annual Threshold for fiscal year 2025 was \$13.50, then the Additional Payment for fiscal year 2025 would be  $\$1.00/\text{kw-month} \times 12 \times 674,000 \text{ kilowatts} \times .05 = \$404,400$ .

- Certifications. Footprint shall send a certification to the City within ten (10) days of commercial operation of the Facility. Thereafter, Footprint shall submit to the City no later than the March 1 preceding the beginning of each fiscal year covered by this Agreement an annual certification which describes any material additions, improvements or retirements that have occurred since the final completion of the Facility or since Footprint’s last annual certification, as applicable, in accordance with M.G.L. ch. 59, § 29. In each annual certification, Footprint shall designate a representative who is available to answer any questions that the City may have regarding the information that was provided in such annual certification.
- Adjustments.
- If, during the term of this Agreement, the Facility (i) fails to achieve commercial operation, (ii) is prevented from operation for a period of 8 consecutive months following the commencement of

- commercial operation due to any reason or (iii) is taken out of service permanently, Footprint and the City will meet to discuss what effect if any such event should have on the Annual Payment of the following fiscal year. If the Parties are unable to reach agreement on this issue, despite their best efforts, the City and Footprint shall have the right to address the issue pursuant to Section 29 of this Agreement.
- ~~If the Facility's seasonal claimed capability (as defined in the ISO New England Inc.'s tariff has decreases by 100 MW from its initial 674 MW during the term of this Agreement, the City and Footprint will meet no earlier than fiscal year 2028 to review and discuss whether any changes will be warranted for any subsequent fiscal years. If the Parties are unable to reach agreement on this issue, despite their best efforts, the City and Footprint shall have the right to address the issue pursuant to Section 29 of this Agreement.~~
  - ~~The deadlines for sending a Party a request for an adjustment for either of the above adjustments to be effective for a fiscal year covered by this Agreement is April 1 of that fiscal year. The deadline for reaching final agreement on an adjustment is June 30 of that fiscal year.~~
  - After July 1, 2025, but on or before June 30, 2028, the City may notify Footprint if it desires to terminate this Agreement effective on June 30, 2029. In the event the City exercises its rights under this Section, the Parties shall negotiate in good faith in an effort to agree upon a successor agreement to take effect July 1, 2029. In the event the Parties are unable to reach agreement on a successor agreement, the Subject Property shall be taxed on an ad valorem basis pursuant to M.G.L. ch. 59.
  - If Footprint provides during or after fiscal year 2020 written notice of termination of the Agreement pursuant to Sections 2, 6, 15 or 29, the effective date of such termination shall be no sooner than twenty-four months from the date of receipt of notice by the City.
  - Failure to Make Timely Payments; Right to Cure. In accordance with M.G.L. ch. 59, §57, the City may assess penalties for late payments of Annual Payments due under the provisions of this Agreement. The City expressly reserves all rights available to it respecting the collection of such Annual Payments. In the event a payment is not timely received by the City, the City shall issue a notice of default to Footprint and Footprint shall have thirty (30) days from receipt of such notice within which to cure such default, subject to any penalties under M.G.L. Chapter 59, §57. If Footprint fails to timely cure the default, the City may declare this Agreement null and void, and the Subject Property shall be taxed on an ad valorem basis pursuant to M.G.L. ch. 59.
  - Exemptions and Abatements. Nothing in this Agreement shall prohibit Footprint or its successors or assigns from filing an application or applications with the Massachusetts Department of Environmental Protection ("MassDEP") for property tax exemption certification pursuant to M.G.L. Chapter 59, § 5(44) for pollution control equipment at the Site. However, during the period that this Agreement is in force and effect, the Annual Payments shall not be reduced as a result of existing or new pollution control equipment being certified by MassDEP for exemption from property tax. During the period that this Agreement is in force and effect, Footprint or its successors or assigns shall provide the City with a copy of each application it files with MassDEP for property tax exemption certification under M.G.L. ch. 59, § 5(44) within five (5) business days of filing. Nothing in this Agreement shall prohibit the City from objecting to and protesting any such application or applications by Footprint or its successors or assigns.
  - Mutual Benefits. The Parties acknowledge that this Agreement is the result of good faith negotiations between the Parties and extensive efforts to determine the fair cash value of the Subject Property and is fair and beneficial to them because it resolves all tax issues between them concerning fiscal years 2016 through and including 2032, avoiding substantial litigation cost and uncertainty.
  - Benefits to the City. The City acknowledges that this Agreement is beneficial to it because it will result in steady, predictable, and reasonable Annual Payments from the Subject Property.
  - Benefits to Footprint. Footprint acknowledges that this Agreement is beneficial to it because it provides predictability and certainty with respect to the Annual Payments due to the City for fiscal years 2016 through and including 2032.
  - No Precedent. This Agreement 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 Annual Payments based on reasonable, accurate, and reliable fair cash values for the Subject Property for fiscal years 2016 through and including 2032. Accordingly, Footprint and the City agree that neither Party shall seek to use the Annual Payments agreed to under this Agreement in any future proceedings regarding the value of the Subject Property in the City or in any other proceeding regarding the value of any other Footprint

property.

- Advice of Counsel. The Parties have entered into this Agreement only after full and due consideration thereof and with the advice of their counsel and of their independent consultants.
- Good Faith Implementation. Footprint and the City agree to act in good faith, each to the other, to carry out this Agreement and shall endeavor to resolve amicably any disputes or disagreements which may arise hereunder.
- Conditions Precedent. The obligations of the Parties under this Agreement are conditioned on (i) approval of this Agreement by the City of Salem acting by a vote of its City Council, and (ii) the City promptly submitting this Agreement to the Massachusetts Department of Revenue (“DOR”) and DOR approving this Agreement in writing within thirty (30) days of receipt. In the event that DOR objects to this Agreement, this Agreement shall become null and void and of no further effect unless otherwise agreed by the Parties in writing.

Nothing in this Agreement shall be construed to obligate Footprint to commence or complete construction of the Facility or all or any part of the Facility. The determination to commence, complete or abandon all or part of the Facility shall be in the sole and absolute discretion of Footprint. If Footprint should decide to not complete the Facility prior to it achieving commercial operation, Footprint shall provide written notice to the City and the Parties agree that this Agreement shall terminate upon the City's receipt of such notice. The Parties agree and acknowledge that upon such termination, the Subject Property shall be assessed and taxed in accordance with applicable state and local law as if this Agreement did not exist.

- Buyer's Exclusive Obligation. Footprint and the City hereby expressly stipulate and agree that in the event that Footprint were to sell the Subject Property, and upon receipt by Footprint of the written consent of the City to assign this Agreement to the buyer, such consent not to be unreasonably withheld, delayed or conditioned the City will look only and exclusively to the buyer to pay the Annual Payments and Additional Payments due under this Agreement or otherwise arising under state law (collectively, “Payment Obligations”), and that this Agreement shall not impose upon Footprint any liability for such Payment Obligations for the Subject Property after the date of such sale, except for such Payment Obligations due and owing the City as of the date of the sale.
- Change in Law. Footprint and the City hereby stipulate and agree that no portion of this Agreement shall be enforceable, and the Agreement shall terminate if (a) any material portion of this Agreement is determined or declared to be illegal, void, or unenforceable; or (b) the Massachusetts General Court abolishes an ad valorem tax on property used for the production of electricity. In the event that the Massachusetts General Court enacts another means of taxation or assessment in addition to ad valorem taxation applicable to the Subject Property during the term of the Agreement, the payments due under the Agreement shall be reduced each fiscal year by the amount of such taxes or assessments actually paid by Footprint.
- Renegotiation Obligations. Footprint and the City agree that in the event this Agreement terminates pursuant to the provisions of Section 17 of this Agreement, 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 Agreement for the same term as is addressed by this Agreement.
- Footprint's Representations and Warranties. Footprint hereby makes the following representations and warranties to the City:
  - Footprint is a limited partnership, validly existing and in good standing under the laws of the State of Delaware and has the full limited partnership power and authority to carry on its business as it is now being conducted.
  - This Agreement constitutes the legal, valid and binding obligation of Footprint 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. Footprint has taken all necessary limited partnership action to authorize and approve the execution and delivery of this Agreement.
  - To the best of Footprint's knowledge, none of the documents or information furnished by or on behalf of Footprint to the City in connection with negotiation and execution of this Agreement 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.
- The person executing this Agreement on behalf of Footprint has the full power and authority to bind it to each and every provision of this Agreement.
- City's Representations and Warranties. The City hereby makes the following representations and warranties to Footprint:
- The City is a municipal corporation and body politic of the Commonwealth of Massachusetts.
- Subject to satisfaction of the conditions precedent in Section 15, this Agreement constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms. The City will take all necessary action to authorize and approve the execution and delivery of this Agreement.
- The person executing this Agreement on behalf of the City has the full power and authority to bind it to each and every provision of this Agreement.
- Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and sent to the individuals and addresses set forth below. Notices hereunder shall be deemed properly served: (i) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (ii) 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 Agreement; or (iii) 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 Agreement. 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 21 by giving notice thereof in the manner required herein.

If to the City:

Mayor Kimberley Driscoll  
Salem City Hall  
93 Washington St.  
Salem, MA 01970

with a copy to:

Deborah Jackson  
Director of Assessing  
Salem City Hall  
93 Washington St.  
Salem, MA 01970

and

Elizabeth Rennard, Esq.  
City Solicitor  
Salem City Hall  
93 Washington St.  
Salem, MA 01970

If to Footprint:

Scott G. Silverstein  
President and COO  
Footprint Power Salem Harbor Development LP  
c/o Footprint Power LLC  
1140 Route 22 East, Suite 303  
Bridgewater, NJ 08807

with a copy to:

Edward S. Hershfield, Esq.  
Brown Rudnick LLP  
One Financial Center

Boston, MA 02111

- Amendments. No amendment to this Agreement shall be effective until reduced to writing and executed and delivered by both Parties.
- Counterparts. This Agreement may be executed in counterparts by the Parties hereto and will become binding upon the Parties at such time as the signatories hereto have signed each counterpart of this Agreement. All counterparts executed shall constitute one Agreement binding all Parties hereto, notwithstanding that all Parties are not signatories to the original or same counterpart.
- Waivers. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement 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 Agreement shall only be effective if made in writing and signed by the Party who is mailing such waiver.
- Construction. The Parties agree that they have shared equally in the drafting of this Agreement, and, therefore, neither shall be treated as the drafter for purposes of the application of any rule of strict construction.
- Entire Agreement; Construction with Other Agreements. Except as expressly provided herein, this Agreement, along with the Exhibit attached hereto, constitute the entire and complete agreement of the Parties with respect to the taxation by the City of the Subject Property, 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.
- Binding Effect. This Agreement shall bind and inure to the benefit of the Parties to this Agreement and any successor or assignee acquiring an interest hereunder, provided however, that in the event Footprint sells or conveys a portion of the Site that is not used in connection with the generation of electric power at the Facility, the Parties agree to amend Exhibit 1 to update the legal description of the Site, but such amendment shall have no effect on the schedule of Annual Payments.
- Applicable Law. The laws of the Commonwealth of Massachusetts shall govern the validity; interpretation, construction and performance of this Agreement.
- Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 29 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use commercially reasonable efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties involved in the dispute. After one Party sends the other Party a written notice of dispute, the Parties shall enter into an agreement tolling any applicable statute of limitations or repose for a mutually agreeable period of time, which at a minimum will allow the Parties sufficient time to complete the dispute resolution process established in this Section 29. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties involved in the dispute agree to submit the dispute to mediation. Within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties involved in the dispute 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 that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. In the event that despite the good faith efforts of both Parties, the Parties are unable to appoint a mediator to commence the mediation within thirty (30) days of the expiration of the time period for informal negotiations, the aggrieved Party may commence judicial action as set forth below. The period for mediation shall commence upon the appointment of the mediator and shall not exceed thirty (30) days, unless such time period is modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each Party involved in the dispute. 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 or

seek injunctive or equitable relief as set forth below, venue for any judicial proceeding shall be any state or federal court in Massachusetts of competent jurisdiction. Notwithstanding the foregoing, injunctive or equitable relief may be sought without resorting to dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement. In any judicial action, the Parties waive their rights to a jury trial and the Prevailing Party (as hereinafter defined) 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.

- Headings. The descriptive headings of the sections in this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

[Remainder of page intentionally left blank]

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

<p><b>CITY OF SALEM</b></p> <p>By:     Kimberley L. Driscoll, Mayor</p>  <p>AS TO FORM:</p>  <p>Elizabeth Rennard, Esquire, City Solicitor</p>	<p><b>FOOTPRINT POWER SALEM HARBOR DEVELOPMENT LP</b></p> <p>By:    Footprint Power SH Devco GP LLC, its general partner</p> <p>By:    Footprint Power Salem Holdings LP, its sole member</p> <p>By:    Footprint Power GP LLC, its general partner</p> <p>By:    Footprint Power LLC, its sole member</p> <p>By:    Footprint Power Holdings LLC, its sole member</p> <p>By:_____</p> <p>Name:</p> <p>Title:</p>
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**EXHIBIT 1**

Description of Subject Property

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

- 1.1 approximately 23.7 acres of land situated in the City of Salem, shown as Lot 1 on that certain Plan of Land entitled "Salem Harbor Power Station" 24 Fort Avenue, Salem, Massachusetts dated February 10, 2014, by Meridian Associates, recorded with the Essex South District Registry of Deeds in Plan Book 441, Page 99 (the "Site").
- 1.2 any and all structures and buildings consisting or relating to the Facility which are constructed or to be constructed on the Site, including any and all equipment, machinery or facilities used in or related to the production of electricity, and ancillary and appurtenant facilities, fixtures, and personal property related thereto, located at the Site, including but not limited to natural gas and electric lines;
- 1.3 any buildings and structures on the Site which were constructed prior to the construction of the Facility;
- 1.4 any and all fuel, supplies, inventories, materials, spare parts and other consumable property located at the Site used in or related to the production of electricity by the Facility; and
- 1.5 any and all other personal property located at the Site and owned by Footprint, including but not limited to, vehicles, office furniture and equipment.

The "Subject Property" shall not include any real or personal property not owned by Footprint or an affiliate thereof, including, without limitation, (1) transmission distribution facilities at or near the Site owned by third parties; (2) easements reserved by New England Power Company as described in a deed to USGen New England, Inc. recorded with the Essex South District Registry of Deeds at Book 15069, Page 350, and (3)

any property, equipment or fixtures of whatever nature presently or hereafter erected or maintained within such easements by New England Power Company or its successors or assigns.

The Parties acknowledge that the definition of Subject Property does not include any pollution control equipment which is qualified by the Massachusetts Department of Environmental Protection for an exemption from local property taxation; provided that if during the term of this Agreement, such pollution control equipment is no longer exempt from local taxation, it shall be deemed to be part of the Subject Property.