

COMMUNITY BENEFITS AGREEMENT

This AGREEMENT is made this 16th day of December, 2014, by and among FOOTPRINT POWER SALEM HARBOR REAL ESTATE LP, a Delaware limited partnership having its principal offices at 1140 Route 22 East, Suite 303, Bridgewater, New Jersey 08807, FOOTPRINT POWER SALEM HARBOR DEVELOPMENT LP, a Delaware limited partnership having its principal offices at 1140 Route 22 East, Suite 303, Bridgewater, New Jersey 08807 ("Footprint"); and THE CITY OF SALEM, MASSACHUSETTS, a municipality having its principal offices at 93 Washington Street, Salem, Massachusetts 01970 (the "City").

WHEREAS, Footprint is developing, and proposes to construct and operate on a parcel of land located within the City, known as 24 Fort Avenue, as shown on City of Salem Assessor's Map 41, Lot 271 (the "Site"), a state of the art Combined Cycle Gas fired electric generation facility ("CCG Facility") (including a natural gas pipeline, an electric transmission line, and all other ancillary and appurtenant facilities, the "Plant"); and

WHEREAS, the City and Footprint agree and acknowledge that the construction and operation of the Plant has and will provide benefits to the City, including the entry by Footprint into a Payment in Lieu of Taxes Agreement, dated as of December 16, 2014 incorporating a schedule of payments as set forth on Attachment A hereto (the "Tax Agreement") and a commitment by Footprint to employ union labor during construction of the Plant;

WHEREAS Footprint RealCo currently owns the Site as well as the adjacent parcel as shown on City of Salem Assessor's Map 41, Lot 339 ("Lot 2") which together with the Site comprises the entire 65 acre site of the existing Salem Harbor Station; and

WHEREAS, Footprint has applied and will continue to apply for numerous licenses, permits, and approvals necessary for the development and construction of the Plant, including approval by the Massachusetts Energy Facilities Siting Board (the "Siting Board") in proceedings docketed as: In the Matter of the Petition of Footprint Power Salem Harbor Development LP for Approval to Construct a Bulk Generating Facility in the City of Salem, Massachusetts, EFSB Docket No. 12-2 (the "Siting Board Proceeding") and In the Matter of the Initial Petition and Application of Footprint Power Salem Harbor Development LP for a Certificate of Environmental Impact and Public Interest, EFSB Docket No. 13-1 which incorporates all required state and local permits (the "Certificate Proceeding");

WHEREAS, the Mayor of Salem convened a City of Salem Power Plant Stakeholders Group, comprised of over a dozen community leaders and chaired by the Mayor, which Group met on numerous occasions over several months with the purpose of helping to formulate and assist in the terms, conditions and provisions of this Agreement on behalf of the community;

WHEREAS, the City and Footprint agree and acknowledge that the City has identified certain concerns with respect to the impact of the construction and operation of the Plant on the City; and

WHEREAS, the City and Footprint agree and acknowledge that the performance by Footprint and Footprint RealCo of their respective obligations as set forth herein will address such concerns to the City's satisfaction.

Now, THEREFORE, in consideration of the covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Footprint and the City hereby agree as follows.

I. Non-Opposition and Other Consideration to be Provided by the City

A. From the date of this Agreement, neither the City nor any of its agents or representatives will take any action, either directly or indirectly, publicly or privately, in any forum, to oppose or to assist any party in the opposition of the development, construction, or operation of the Plant, except as provided below.

B. The City shall work cooperatively with Footprint and Footprint RealCo to achieve a mutually-agreeable plan for the future development or utilization of the land owned by Footprint RealCo that surrounds the Site.

C. Nothing contained herein shall prevent the City from pursuing any claim for physical harm suffered by it, or for injuries or property damage suffered by it or any persons or property lawfully upon its premises arising out of the actual operation of the Plant or Footprint's actions or omissions in connection with the same. Nothing contained herein shall prevent the City or any of its permitting boards, commissions, or officials from legally exercising its or their own legal regulatory authority.

D. Nothing contained herein shall prevent the City from seeking to participate, and Footprint agrees not to oppose the City's seeking to participate, in any adjudicatory proceeding before the Siting Board or other federal or state agency or court in which is being considered significant new information regarding, or a significant change to, the Plant proposal that is not consistent with the filings made in any pending federal, state or municipal proceedings involving the Plant as of the date of this Agreement, if the City and Footprint agree after good-faith consultation that such new information demonstrates, or that such change may cause, significant public health, safety, or environmental impacts to the City that are materially greater and more adverse than those that have been presented in such proceedings as of the date of this Agreement.

II. Consideration to be Provided by Footprint and Footprint RealCo

A. *Tax Agreement*

Footprint and the City have entered into the Tax Agreement for the annual tax payment for the Site.

B. *Port Development*

Footprint RealCo and the City have agreed to work collaborative to ensure the mutually beneficial ongoing development of Salem's Port and related infrastructure. In particular,

Footprint RealCo has entered into a separate agreement with the City that provides long term access and shared use of the current power plant pier for visiting cruise ship vessels, tall ships and the like. ("Wharfing Agreement"). Additionally, Footprint RealCo and the City shall work cooperatively to create a Port Authority or a similar third party independent entity on terms, including ongoing economic terms, that are mutually agreeable to hold title to the land on and around the Wharf (approximately 3-5 acres) to be deeded by Footprint RealCo to said Port Authority at no charge, for the purpose of managing the pier/Wharf and maritime activities related thereto. The Port Authority or similar third party independent entity shall have a Managing Board comprised of representatives appointed by both Footprint and the City. The parties shall work diligently to establish said Port Authority or similar third party independent entity with a goal of establishing same within 24 months from the date of this agreement.

C. *Public Access*

1. Footprint RealCo and the City agree to involve the community in discussions regarding land use, public access, and phasing of the remainder of the site.
2. Footprint will provide the City with clarity regarding the management of the power plant site including the landscape berm prior to commercial operation of the power plant.
3. Footprint RealCo will provide a maintenance plan for publicly accessible areas on the waterfront and the Derby Street edge prior to any development of Lot 2.
4. Footprint will contribute up to \$75,000 to the City to fund a process to amend the Harbor Plan as needed to achieve these public access goals and ensure continuity and comprehensive planning along Salem's waterfront. Such payments will be made in three annual installments of \$25,000 beginning on the Effective Date of this agreement and on the next two anniversaries thereof.
5. Footprint RealCo agrees to use all reasonable efforts to assure safe public use of the breakwater/jetty as a part of the next phase of development and construction.
6. Footprint RealCo will provide signage / environmental graphics to encourage public access and draw visitors from the historic portion of the harbor walk to the non-plant portion of the site. Footprint RealCo will coordinate design, placement and timing of such signage with the City's Planning Department.

D. *Environmental Initiatives*

1. The Energy Facility Siting Board has directed Footprint to contribute at least \$300,000 to the City of Salem dedicated to the development of an off-site emission reduction program targeted to greenhouse gases and PM2.5, among other air pollutants. Footprint, with the assistance of the City, shall prepare a report detailing the activities that are to be funded by the off-site emissions

reduction program, including the costs, timeframes, and anticipated environmental benefits of the identified projects, to be submitted to the Siting Board within one year of commercial operation of the proposed facility. Such contribution will be made in three equal annual installments of \$100,000 each beginning on the date of the submission of such report to the Siting Board.

2. Footprint and Footprint RealCo support Salem's efforts to engage in climate change adaptability planning and implementation. Footprint RealCo will encourage environmentally responsible development on the Lot 2.
3. Footprint will provide seed funding in the amount of \$50,000 per year for 5 years for a revolving loan program for sustainable initiatives in Salem pursuant to a mechanism to be mutually agreed between Footprint and the City.
4. Footprint RealCo will support renewable energy initiatives, and will work with the City to assist with off shore wind interconnections to the National Grid switchyard on the site.
5. Footprint will continue to provide funding in the amount of \$50,000 per year for 5 years that will support the city's existing environmental initiatives.
6. Footprint will define next steps and conduct any studies necessary to move forward on potential symbiotic opportunities with SESD including, but not limited to the continued exploration of the use of the SESD's greywater in the CCG Facility's cooling process.
7. Footprint RealCo will, at every reasonable opportunity, support legislation that advocates for responsible natural gas extraction.
8. Footprint RealCo will work with the City to provide the necessary infrastructure at the port to allow for a plug-in / cold ironing option for docked vessels, where feasible.

E. Employment and Inclusion

1. Footprint will provide funding needed to train public safety personnel on an ongoing basis as needed, in particular a minimum of 4, quarterly drills per year for Fire Department personnel or as agreed to with the Fire Chief; provided, that such funding shall not exceed \$10,000 per year in the aggregate.
2. Footprint will adopt a "hire local" initiative whereby local workers are sought out and trained by Footprint. Footprint and the City will work together to identify appropriate goals in terms of the percentage of employees to be hired locally. The parties expressly recognize that highly specialized training is required to safely operate the CCG Facility and that nothing herein is intended to prevent Footprint from hiring employees necessary to safely and reliably operate the CCG Facility. Moreover, nothing herein is intended to interfere in any way

with any agreements that will govern the employment of individuals subject to a collective bargaining agreement.

3. The parties recognize that Footprint Power Salem Harbor Operations LLC has provided workforce retraining to individuals who were formerly employed at the existing power plant when it was permanently shut down. The parties acknowledge that in addition to providing plant employees with the necessary time to complete their training courses, Footprint Power Salem Harbor Operations LLC contributed in excess of \$300,000 to fund such training which was instrumental in assisting these employees transition to new careers upon the shut down of the existing facility.

4. Footprint will establish an internship program for local youth. This program would provide, to the extent permitted by law, unpaid internships for 4 college and 2 high school interns per year to participate in 12-week internships focusing on skills and industries related to Footprint's operations (power generation, alternative energy development, etc)..

5. Footprint will translate key planning documents related to the construction of the power plant into Spanish in order to reach the widest group of stakeholders.

F. Improvements to Salem's Infrastructure

1. Footprint will contribute \$75,000 per year for ten (10) consecutive years, to a fund that will be applied towards pavement management and roadway repair on and around surrounding roadways.

2. Footprint will fund and construct an improved sidewalk along Derby Street for the length of the entire Footprint site in coordination with National Grid and prior to the completion of construction of the power plant.

3. Footprint RealCo will work with the city at each stage in the development of Lot 2 to help ensure access is maintained to the public parking at the Salem Wharf on Blaney Street.

4. Footprint will provide to the City up to \$67,000 per year for two (2) years during demolition and construction to assist with additional operating and maintenance costs of the Harbormaster Department associated with the power plant project.

5. Footprint will provide to the City up to \$28,000 per year for two (2) years during demolition and construction to assist with communication and distribution of information related to the project through the City's Building Salem initiative.

6. Footprint will work with the City and others involved in local development to support and fund traffic calming measures including appropriate

signage, information outreach (web-based, radio and television broadcasts, letters and fliers) to inform Salem residents of possible traffic disruptions during construction of the power plant; provided, that such funding shall not exceed \$10,000 per year in the aggregate.

7. Footprint will continue its support of the City's telecom/teldata/surveillance needs by providing space on its stack for city-owned equipment, both during (to the extent feasible) and after construction, and by installing additional surveillance cameras on site in consultation with public safety personnel.

G. *Other Community Investments*

1. Footprint will contribute the following amounts to support Salem's educational goals: (A) \$50,000 per year for 15 years to support Salem Schools' digital initiative, and (B) \$25,000 per year for 15 years to support Salem Schools' athletic and enrichment programs.

2. In order to leverage State funding, Footprint will contribute a total of \$75,000 per year for 10 years to the City for the Community Preservation Act ("CPA") fund in order to support workforce housing and fund the construction and maintenance of city recreational amenities. Such contribution shall be made annually beginning on January 1, 2020 and shall be reduced dollar for dollar by the amount paid by Footprint in CPA surcharge related to payments made to the City under the Tax Agreement, any successor agreement, or on an ad valorem basis should that agreement be terminated for any reason.

3. Footprint will work with the City to support and fund public art initiatives on the waterfront and the power plant site and will contribute \$40,000 a year toward that effort for a period of 3 years.

III. *Community Impacts*

A. *Noise*

Footprint shall meet all noise limitations imposed with respect to the Plant under its operating permits, licenses and municipal permits under applicable municipal, state, and federal statutes and regulations. Footprint shall comply with the applicable DEP noise monitoring protocol and shall promptly forward the results of such monitoring directly to the City's designated representative.

B. *Air*

Footprint shall meet all air emissions requirements imposed with respect to the Plant under its operating permits and licenses and under applicable municipal, state, and federal statutes and regulations. Footprint shall comply with all applicable requirements and regulations concerning the safe transportation, handling, use, and storage of aqueous ammonia.

C. *Construction and Building Permit Fee*

1. Footprint and the City shall negotiate in good faith and shall attempt to agree with respect to a protocol for construction of the Plant. Such protocol may include provisions concerning the coordination of the anticipated impacts of Plant construction with those of other projects undertaken in the vicinity of the Plant, and the specification of routes for construction worker access and major plant component deliveries to the Site. A Construction Management Plan has been completed and submitted by Footprint to the City Planner in accordance with conditions outlined in the Planning Board Decision.
2. Footprint and the City agree that the total application fee for all building permits and inspections required for the construction of the Plant shall be two hundred fifty thousand dollars (\$250,000.00).

D. *Other Community Impacts*

Commencing on June 1, 2015, and on each anniversary of such date during the term of this Agreement, Footprint shall pay to the City the amount of ten thousand dollars (\$10,000), to be allocated to defraying a portion of the costs incurred by the Salem Fourth of July Celebration Committee for an annual Independence Day fireworks display, or for other recreational or related purposes.

IV. Term, Termination

A. *Term.*

The term of this Agreement will commence on the Effective Date and terminate on June 30, 2032; provided, that this Agreement shall automatically terminate and become null and void and of no further effect in the event the conditions precedent set forth in Section 15 of the Tax Agreement are not satisfied as set forth in the Tax Agreement.

B. *Termination.*

Upon the substantial and material breach of any provision of this Agreement by a party hereto, the other party may exercise any and all remedies available to it, in law, in equity, or otherwise; and further provided that the breaching party shall be entitled to cure its breach within a reasonable amount of time following its receipt of written notice from the other. Notwithstanding the foregoing, the parties acknowledge and agree that, in the event of a breach of the terms of this Agreement, the remedies available at law would be inadequate, and that the non-breaching party shall therefore be entitled to equitable relief enforcing the terms of this Agreement. This Agreement shall also terminate automatically in the event that the City terminates the Tax Agreement for any reason.

V. Force Majeure

It is distinctly understood and agreed that all parties hereto shall make a reasonable and good faith effort to perform their obligations under this Agreement. If and to the extent that either party is prevented from performing its obligations hereunder by an event of force majeure, such party shall be excused from performing hereunder and shall not be liable in damages or otherwise, and the parties instead shall negotiate in good faith with respect to appropriate modifications to the terms hereof. For purposes of this Agreement, the term force majeure shall mean any supervening cause beyond the reasonable control of the affected party, including without limitation requirement of statute or regulation; action of any court, regulatory authority, or public authority having jurisdiction; storm, flood, fire, earthquake, explosion, civil disturbance, labor dispute, or act of God or the public enemy.

VI. Miscellaneous

1. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, assigns, successors in interest, mortgagees, nominees, shareholders, trustees, directors, officers, agents, employees, and affiliates (collectively, "Representatives"), to the fullest extent permitted by law. The assumption of this Agreement and the obligations thereunder shall be a specific condition of any sale or transfer of the Plant or the Site or any substantial interest therein during the term of this Agreement to any party not an affiliate of Footprint. Footprint and/or Footprint RealCo may in their discretion transfer its interests, rights, and obligations hereunder to any parent or affiliate by assignment, merger, or otherwise without the prior approval of the City, and may also in its discretion collaterally assign such interests as security to the parties providing construction or long-term financing for the plant without the prior approval of the City, but written notice of such transfer shall be given. The City shall execute any and all acknowledgments and other documentation required by such financing parties in connection therewith. Any other transfer by Footprint or Footprint RealCo of their interests, rights, and obligations hereunder shall require the prior approval of the City, such approval not to be unreasonably withheld or delayed. Provided, however, that the sale of Footprint or Footprint RealCo to a third party shall not require the prior consent of the City so long as the rights and obligations hereunder are also transferred. Footprint and Footprint RealCo shall be entitled in their discretion to perform any or all of its obligations under this agreement through one or more affiliates. The liability of Footprint and Footprint RealCo or its Representatives to the City or its Representatives hereunder shall be limited solely to its or their respective interests in the Plant and the Site and Lot 2.

2. The rights and obligations of Footprint and Footprint RealCo are individual and not joint and several. Each party shall be responsible only for the payments and obligations specifically assigned to it herein and shall not in any way be responsible for payments and obligations specifically assigned to another

party. Obligations of Footprint and Footprint RealCo herein that do not specifically require funding shall be interpreted as being on a commercially reasonable basis and not to require Footprint to incur expenses, impair property rights or cede value or opportunities, except with compensation deemed sufficient by Footprint or Footprint RealCo, each in its sole discretion.

3. All notice permitted or required under the provisions of this Agreement shall be in writing, and shall be sent by registered or certified mail, postage prepaid, or shall be delivered by private express carrier, as follows or at such other address as may be specified by a party in writing and served upon the other in accordance with this section.

If to the City
Mayor
City of Salem
93 Washington Street
Salem, Massachusetts 01970

If to Footprint:
President
Footprint Power Salem Harbor Development LP
1140 Route 22 East, Suite 303
Bridgewater, New Jersey 08807

With a copy to:
City Solicitor
City of Salem
93 Washington Street
Salem, Massachusetts 01970

With a copy to:
John A. DeTore, Esq.
Rubin and Rudman LLP
50 Rowes Wharf
Boston, Massachusetts 02110

If to Footprint RealCo:
President
Footprint Power Salem Harbor Real Estate LP
1140 Route 22 East, Suite 303
Bridgewater, New Jersey 08807

With a copy to:
Joseph Correnti, Esq.
Serafini, Darling & Correnti LLP
63 Federal Street
Salem, Massachusetts 01970

4. This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law rules.

5. The Effective Date of this agreement shall be the date upon which Footprint closes on the construction financing for the CCG Facility. Footprint shall promptly notify the City of such closing.

6. All payments due by Footprint or Footprint RealCo or actions to be taken by Footprint or Footprint RealCo hereunder shall undertaken only after the CCG

Facility achieves Commercial Operation unless an earlier date is specifically provided herein.

7. The provisions of this Agreement are separate and divisible, and if any court of competent jurisdiction determines that any provision of this Agreement is void or unenforceable, the remaining provisions hereof shall remain in full force and effect.

8. This Agreement may be amended or modified only by writing executed by the parties hereto; provided, however, that if any applicable federal or state law mandates the inclusion of any term or provision into this Agreement, this section shall be understood to import such term or provision into this Agreement.

9. This Agreement has been drafted jointly by the parties hereto and accordingly shall not be construed for or against any such party solely on account of such drafting.

10. Nothing in this Agreement shall be construed as creating any rights or granting any benefits to anyone other than the City, Footprint and Footprint RealCo.

11. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. Facsimile signatures on this Agreement shall be deemed to be original signatures.

12. Footprint and Footprint RealCo shall provide to the City other evidence of the capacity and authority of the party executing this Agreement for and on behalf of Footprint and Footprint RealCo. Footprint and Footprint RealCo shall comply with all applicable provisions of Massachusetts law relating to the appointment of a resident agent, and shall maintain on file with the Secretary of State any and all documents required by law for the conduct of business in Massachusetts.

13. Any disbursement of funds to satisfy the action items agreed upon in the CBA must be documented and made available by the City to its residents in a transparent, clear and timely way.

VII. CBA Committee

A CBA Committee shall meet quarterly to discuss the operation of the CBA and any issues thereunder. The CBA Committee shall also meet at the call of the Mayor of Salem to discuss any issues related to the operation of the CBA or any party's obligations thereunder. The CBA Committee shall be comprised of 11 members: (1) the Mayor of Salem; (2) a representative of Footprint; (3) a representative of Footprint RealCo; (4) a representative of Salem Alliance for the Environment, (5) a representative of the Historic Derby Street Neighborhood Association, (6) a representative of the Point Neighborhood Association, (7) a representative of the Salem Chamber of Commerce, (8) a representative of Salem State University, (9) a representative of Harbor Plan

Implementation Committee, (10) a representative of the Salem Partnership and (11) a member of the City Council designated by the President of the City Council. The right to membership on the CBA Committee shall belong to the represented organization and not to the individual representatives, each of whom will serve at the pleasure of their represented organization. The CBA Committee shall retain the right to seek enforcement of any applicable permit from the board, agency, or other regulatory authority with jurisdiction over the enforcement of such permit.

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In witness whereof, THE CITY OF SALEM, FOOTPRINT SALEM HARBOR DEVELOPMENT LP and FOOTPRINT SALEM HARBOR REAL ESTATE LP have caused this Agreement to be executed by their respective duly authorized officials and officers as of the date and year first above written.

Attachments: Wharfing Agreement
 Tax Agreement

**FOOTPRINT POWER SALEM HARBOR
DEVELOPMENT LP**

Scott G. Silverstein, President and COO
Footprint Power SH DevCo GP LLC,
General Partner, duly authorized

CITY OF SALEM



Kimberley L. Driscoll, Mayor
duly authorized

**FOOTPRINT POWER SALEM HARBOR
REAL ESTATE LP**

Scott G. Silverstein, President and COO
Footprint Power SH RealCo GP LLC,
General Partner, duly authorized

APPROVED AS TO FORM:



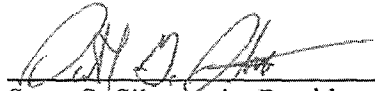
Elizabeth Rennard, City Solicitor

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**FOOTPRINT POWER SALEM HARBOR
DEVELOPMENT LP**

CITY OF SALEM

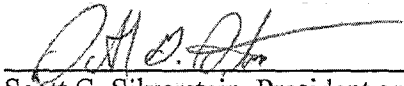


Scott G. Silverstein, President and COO
Footprint Power SH DevCo GP LLC,
General Partner, duly authorized

Kimberley A. Driscoll, Mayor
duly authorized

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REAL ESTATE LP**

APPROVED AS TO FORM:



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Elizabeth Rennard, City Solicitor