

SETTLEMENT AGREEMENT

This **SETTLEMENT AGREEMENT** (“Agreement”) is entered into by and among the Conservation Law Foundation, (“CLF”) and Footprint Power Salem Harbor Development LP (“Footprint Power”) (hereinafter collectively referred to as, the “Parties”), as of the 18th day of February, 2014 (“Effective Date”).

WHEREAS: Footprint Power submitted a petition to construct a generating facility pursuant to G.L. c. 164, §§ 69H and 69J¼ to the Massachusetts Energy Facilities Siting Board (“Siting Board”) on August 3, 2012 which was docketed as EFSB 12-2 (the “EFSB Approval Case”). The Siting Board issued a Final Decision (“EFSB Final Decision”), dated October 10, 2013, approving Footprint Power’s petition to construct a nominal 630 MW natural gas-fired, quick start, electric generation facility (the “Facility”) with certain conditions.

WHEREAS: Footprint Power submitted an Initial Petition in August 2013 and Application for a Certificate of Environmental Impact and Public Interest in October 2013 pursuant to G.L. c. 164, §§ 69K ½ to 69O½ to the Siting Board, which was docketed as EFSB 13-1 (the “EFSB Certificate Case”). The Siting Board issued a Tentative Decision, dated February 4, 2014, on Footprint Power’s Initial Petition for a Certificate of Environmental Impact and Public Interest (“EFSB Tentative Decision”) proposing to issue a composite certificate incorporating all state and local permits, approvals or authorizations that would otherwise be necessary to construct and operate the Facility.

WHEREAS: The Massachusetts Department of Environmental Protection (“MassDEP”) issued the following approvals in connection with the Facility:

- (1) Decision on Variance Request and Written Determination (“DEP Variance/Written Determination”) dated November 1, 2013 pursuant to its authority under M.G.L. Chapter 91 and waterways regulations at 310 CMR 9.00;
- (2) Air Quality Plan Approval dated January 30, 2014 (the “CPA Approval”) pursuant to its authority under M.G.L. Chapters 111, § 142A-J, 21C, §§ 4 and 6, 21E, § 6, and air pollution control regulations at 310 CMR 7.00: Appendix A, the Nonattainment New Source Review Program established pursuant to the requirements of the federal Clean Air Act at 42 U.S.C. § 7502 and § 7503 and implemented through the regulations approved by EPA pursuant to 42 U.S.C. § 7410; and
- (3) Prevention of Significant Deterioration Permit (“PSD Approval”) dated January 30, 2014, under 42 U.S.C. §§ 7470 *et seq.*, 40 C.F.R. § 52.21, and the Agreement for Delegation of the Federal Prevention of Significant Deterioration Program, dated April 2011, by the United States Environmental Protection Agency, (Region 1) to the MassDEP.

WHEREAS: CLF has challenged the legality of the EFSB Final Decision, the EFSB Tentative Decision, the DEP Variance/Written Determination, and has intervened in the CPA Approval and the PSD Approval as follows:

- (1) On November 8, 2013, CLF filed with the Supreme Judicial Court a Petition for Appeal of the EFSB Final Decision (“EFSB Appeal”);
- (2) On November 8, 2013, CLF filed with MassDEP a Motion for Mandatory Intervention in the Matter of Footprint Power Salem Harbor Development LP, Transmittal No. X254064, Application No. NE-12-022 (“Air Permitting Proceeding”); and
- (3) On November 22, 2013, CLF filed with the MassDEP Office of Appeals and Dispute Resolution (“OADR”) a Notice of Claim for an Adjudicatory Appeal and Request for Adjudicatory Hearing with respect to the DEP Variance/Written Determination (“DEP Appeal”).

Items (1) through (3) above are collectively referred to as the “Appeals.”

WHEREAS: The Appeals are currently pending before their respective tribunals.

WHEREAS: The Commonwealth of Massachusetts enacted the Global Warming Solutions Act, Chapter 298 of the Acts of 2008 (“GWSA”), in order to, among other things, reduce greenhouse gas (“GHG”) emissions to at least 80% below 1990 levels by 2050 (the “GWSA 2050 mandate”).

WHEREAS: The petition filed by Footprint Power is the first petition to construct a generating facility filed with the EFSB since the enactment of the GWSA and therefore there is no precedent with respect to the proper standard nor the scope and type of information necessary to demonstrate a proposed facility’s consistency with the GWSA in general or the GWSA 2050 mandate in particular.

WHEREAS: There are currently no regulations in place that provide guidance to applicants before the EFSB or other agencies of the Commonwealth with respect to demonstrating consistency with the GWSA 2050 mandate.

WHEREAS: Achieving the GWSA 2050 mandate is an essential element in mitigating the impacts of climate change on the Commonwealth’s environment.

WHEREAS: The Parties have engaged in settlement discussions to determine the appropriate basis to measure and demonstrate compliance with the GWSA and have arrived at a framework that demonstrates the Facility’s compliance with the GWSA 2050 mandate and that provides a potential set of minimum enforceable conditions that should be met for future applicants seeking to demonstrate compliance of future facilities.

WHEREAS: The absence of regulations imposing GHG emissions limits for the power sector as set forth in the GWSA makes it difficult for proposed natural gas power plant infrastructure to demonstrate conformity with the GWSA and the Act's deep emission reduction requirements. Although stack GHG emissions from natural gas combustion are lower than emissions from combusting coal or oil, natural gas is still a fossil fuel which results in substantial amounts of GHG emissions.

WHEREAS: To the extent that electricity generated from natural gas replaces electricity generated from coal or oil, it can result in decreased GHG emissions. However, the substantial GHG emissions resulting from natural gas combustion require that new natural gas infrastructure, including generating facilities, must be appropriately conditioned to require emission limits in conformance with the GWSA mandates. Such conditions must assure that sector-wide GHG emissions, inclusive of GHG emissions from new natural gas infrastructure including generating facilities, are at or below the 80% reduction level by 2050.

WHEREAS: The Parties agree that the conditions established in this settlement agreement, including the adoption of declining annual carbon dioxide emission limits and a limitation on the useful life of a facility, represent the types of threshold conditions that may permit new fossil fuel infrastructure, including generating facilities, to demonstrate compliance with the GWSA, including the GWSA's 2050 mandate.

WHEREAS: The Facility has been designed as an efficient and flexible generating solution capable of supplanting less efficient, more highly polluting facilities and includes quick start capabilities that may provide reliability services or firming support for renewable resources, a critical element of reaching the GWSA 2050 mandate.

WHEREAS: The Parties have raised competing and disputed claims with regard to various issues contained in the Tentative Decision and the Appeals but have agreed that it is in their mutual interest to resolve and settle the matters raised in the Appeals upon the terms and conditions more fully set forth herein, such resolution and settlement being without any admission by the Parties of any fault or liability or any legal issue not explicitly addressed in this Agreement.

WHEREAS: The Massachusetts Executive Office of Energy and Environmental Affairs has made certain commitments to CLF related to continuing its efforts to achieve the GWSA objectives, as embodied in a "Commitment Letter" enumerating future actions by Massachusetts.

NOW, THEREFORE: In consideration of the following mutual promises, agreements and covenants set forth herein and for other good and valuable consideration, the Parties agree,

subject to approval and incorporation, without modification, of this Agreement into the Certificate of Environmental Impact and Public Interest granted by the EFSB, as follows:

1. Additional Measures Regarding Greenhouse Gases.

In addition to the requirements set forth in the CPA Approval and the PSD Permit (collectively, with this Agreement, the “Permits”), the parties agree that, provided that CLF fully complies with the terms of this Agreement:

- a. GHG Reductions. Subject to the following provisions, the annual Facility-Wide emissions of CO_{2e} (“CO_{2e} Cap”), from the date of commencement of commercial operation of the Facility through the end of calendar year 2025, shall not exceed 2,279,530 tons per year (“tpy”), and, thereafter, the CO_{2e} Cap shall be reduced in amounts consistent with the GWSA mandate of at least 80% reductions of GHG from 1990 levels, as follows:

Year	CO _{2e} Cap (tpy)	Year	CO _{2e} Cap (tpy)	Year	CO _{2e} Cap (tpy)
2016	2,279,530	2028	2,060,698	2040	1,185,370
2017	2,279,530	2029	1,987,754	2041	1,112,426
2018	2,279,530	2030	1,914,810	2042	1,039,482
2019	2,279,530	2031	1,841,866	2043	966,538
2020	2,279,530	2032	1,768,922	2044	893,594
2021	2,279,530	2033	1,695,978	2045	820,650
2022	2,279,530	2034	1,623,034	2046	747,706
2023	2,279,530	2035	1,550,090	2047	674,762
2024	2,279,530	2036	1,477,146	2048	601,818
2025	2,279,530	2037	1,404,202	2049	528,874
2026	2,206,586	2038	1,331,258		
2027	2,133,642	2039	1,258,314		

- b. Demonstration of Compliance. In order to demonstrate compliance with the Facility-Wide CO_{2e} Cap in each calendar year, the Facility may achieve the CO_{2e} Cap by:
 - (i) controlling operations at the Facility to limit Actual CO_{2e} Emissions to a level at or below the applicable year’s CO_{2e} Cap, and/or
 - (ii) in the event that Actual CO_{2e} Emissions exceed the applicable CO_{2e} Cap, the Facility may demonstrate compliance by retiring offsets, as set forth in section c., below, to offset the amount by which the Actual CO_{2e} Emissions exceed the CO_{2e} Cap.

- c. Offsets. For purposes of demonstrating compliance with the CO_{2e} Cap, as set forth in Section 1.b.(ii), above, allowances will be created to be used as offsets as follows:
- (i) CO_{2e} Operating Offsets : In any calendar year in which the Facility’s actual annual facility-wide emissions of CO_{2e} (“Actual CO_{2e} Emissions”) are less than the Facility’s CO_{2e} Cap, the difference (in tpy) between Actual CO_{2e} Emissions and the CO_{2e} Cap for such calendar year shall be deemed offsets at the following rates:
 - a. For CO_{2e} Operating Offsets created from 2016-2021: Offset = 90%
 - b. For CO_{2e} Operating Offsets created from 2022-2026: Offset = 80%
 - c. For CO_{2e} Operating Offsets created from 2027-2031: Offset = 70%
 - d. For CO_{2e} Operating Offsets created from 2032-2036: Offset = 60%
 - e. For CO_{2e} Operating Offsets created from 2037-2046: Offset = 50%
 - f. CO_{2e} Operating Offsets may not be created after 2046.
 - (ii) RGGI Offsets: Actual Regional Greenhouse Gas Initiative (RGGI)¹ CO₂ or CO_{2e} credits or allowances (“Actual RGGI Allowance”) may be used to offset Actual CO_{2e} Emissions calculated as follows: Offset = Actual RGGI Allowance x (price paid per ton/ \$30²), but at no greater than a ton for ton basis.
 - (iii) Other Offsets: The Facility may also procure offsets by purchasing Class 1 Massachusetts Renewable Energy Certificates, investing in Massachusetts RPS-eligible, local renewable generation projects or energy efficiency and demand response projects that supply capacity to the NEMA/Boston area, or other methods that are approved by CLF as real, permanent, verifiable, surplus offsets of GHG emissions in Massachusetts or in connection with electricity supplied to Massachusetts customers. Any offsets created in accordance with this provision shall be calculated as follows:
 - a. Massachusetts Class I REC Offset: 1 Massachusetts Class I REC = Offset equivalent to the marginal CO₂ emission rate for all units in New England as reported in the ISO-NE Electric Generator Air Emissions Report for the year in which the REC was purchased.
 - b. Investment in Massachusetts Class I RPS-eligible, local renewable generation, energy efficiency or demand response measures that supply capacity to the NEMA/Boston area: 1 MWh of wind, solar, EE or DR = Offset equivalent to the marginal CO₂ emission rate for all units in New England as reported in the ISO-NE Electric Generator Air Emissions Report for the year in which the project first begins generating/reducing energy.

¹ Or any similar mandatory program applicable to the Facility that replaces or supplements RGGI.

² Annually adjusted based on any increase in the Consumer Price Index commencing in 2017.

d. Monitoring and Reporting Requirements: Within 60 days after the end of each calendar year covered under this agreement, Footprint Power shall provide CLF with documentation demonstrating compliance with the CO_{2e} emissions limitations included in this agreement. Documentation of facility-wide emissions may be in the form of reports accepted by EPA in compliance with Title V, or such other form as mutually agreed upon by the Parties. Separate documentation shall be provided to the extent that compliance is achieved through the use of offsets. Documentation regarding offsets shall include proof of the purchase of RGGI offsets, Massachusetts Class I RECs, investment in Massachusetts Class I RPS-eligible local renewable generation, energy efficiency or demand response measures, or, in the case of any other CLF-approved offset, documentation that is mutually agreed upon by the Parties.

2. Final shut-down and decommissioning:

The parties agree that, provided that CLF fully complies with the terms of this Agreement, the Facility shall cease commercial operations no later than January 1, 2050, unless otherwise required by law and shall be fully decommissioned within two calendar years of shutdown.

3. Expiration of Conditions.

Notwithstanding anything in the foregoing to the contrary, the parties agree that the provisions of Paragraph 1 above shall no longer apply and be of no further force or effect in the event that either:

- a. MassDEP promulgates and implements new regulations, pursuant to the GWSA, which establish declining annual aggregate emissions limits consistent with the GWSA's requirements to reduce Massachusetts greenhouse gas emissions at least 25% below 1990 levels by 2020 and at least 80% below 1990 levels by 2050, provided that such new regulations are binding on new and existing power plants (including Salem Harbor Station) in Massachusetts until the ends of their operational lives; or
- b. the Federal government adopts and implements regulations restricting GHG emissions nationally to levels commensurate with those provided in the GWSA (i.e., no less stringent than 80% reduction from 1990 level by 2050);

4. Siting Board Proceedings:

The Parties agree jointly to file this Agreement with the Siting Board, during the comment period on the Tentative Decision requesting that the Siting Board append this Agreement to its final decision in the Certificate Case and require compliance with this Agreement as an enforceable condition of its approval of the Certificate.

5. Air Permits

Concurrent with filing its application for Title V Operating Permit for the Facility, Footprint Power shall submit an application for minor permit modification to MassDEP to incorporate the terms of this Agreement into the Facility's Comprehensive Plan Approval. In addition, Footprint Power shall include this Agreement as an appendix to its application for a Title V Operating Permit for the Facility and shall request that MassDEP include the terms of this Agreement in the Title V Operating Permit as part of the federally enforceable emission limitations for the facility.

6. Withdrawal of Appeals and Pleadings.

CLF agrees to voluntarily dismiss its pending Appeals, including, as follows:

- (a) CLF agrees, within 5 business days of the approval of the Siting Board pursuant to paragraph 4 above, to file to voluntarily dismiss with prejudice the EFSB Appeal and that it will not file or support any future appeals of the EFSB Final Decision or any final decision that complies with Paragraph 4 above or the underlying permits contained therein; provided that Footprint Power fully complies with the terms of this Agreement. Notwithstanding the foregoing, CLF will not be barred from enforcing the terms of this Agreement nor does this Agreement in any way bar CLF from challenging any new application before the Siting Board;
- (b) CLF agrees, within 5 business days of the approval of the Siting Board pursuant to paragraph 4 above, to withdraw its motion for intervention in the Air Permitting Proceeding and to withdraw as Authorized Representative for the ten persons group;
- (c) CLF agrees that it will not file or support any appeals of the Comprehensive Plan Approval that was issued for the facility on January 30, 2014 provided that Footprint Power fully complies with the terms of this Agreement. Notwithstanding the foregoing, CLF will not be barred from enforcing the terms of this Agreement nor does this Agreement in any way bar CLF from challenging any future applications to modify or enforce the terms of the CPA Approval (except in accordance with this Agreement or that do not increase emission levels) or any applications for new air permits for sources at this site;
- (d) CLF agrees that it will not file or support any appeal of or other challenge or objection to the PSD Approval that was issued for the facility on January 30, 2014 provided that Footprint Power fully complies with the terms of this agreement. Notwithstanding the foregoing, nothing in this Agreement shall be construed to act as a bar to CLF challenging the authority of MassDEP to issue PSD permits pursuant to the existing Delegation Agreement with respect to any facility other than the Facility, nor does this Agreement represent an admission by CLF that such Delegation Agreement is authorized under Massachusetts or federal law;

- (e) CLF agrees that it will, within 5 business days of the approval of the Siting Board pursuant to paragraph 4 above, file to voluntarily dismiss without prejudice the action for declaratory judgment that it filed in Massachusetts Superior Court on behalf of CLF and a ten residents group on January 14, 2014, captioned as *CLF et al. v. Massachusetts Department of Environmental Protection*, Civil Docket #SUCV2014-00161-H. Notwithstanding the foregoing, nothing in this Agreement shall be construed to act as a bar to CLF challenging the authority of MADEP to issue PSD permits pursuant to the existing Delegation Agreement with respect to any facility other than the Facility, nor does this Agreement represent an admission by CLF that such Delegation Agreement is authorized under Massachusetts or federal law;
- (f) CLF agrees that it will, within 5 business days of the approval of the Siting Board pursuant to paragraph 4 above, file to voluntarily dismiss its appeal of the c. 91 variance/written determination issued by the Massachusetts Department of Environmental Protection on November 1, 2013 and will withdraw as the authorized representative for the ten residents group. Notwithstanding the foregoing, nothing in this Agreement shall have any precedential effect with respect to the authority of the Massachusetts Department of Environmental Protection to issue variances for non-water dependent electric generating facilities nor will it serve as an admission by CLF that the Siting Board has the authority to incorporate such decisions into a Certificate thereby terminating the administrative appeal process, nor shall it be construed to act as a bar to CLF challenging the authority of the Massachusetts Department of Environmental Protection to issue a variance for a non-water dependent electric generating facility other than the Facility or the authority of the Siting Board to incorporate such a variance into a Certificate, nor does this Agreement represent an admission by CLF that such a variance is authorized under Massachusetts law;
- (g) Footprint Power will work with CLF to obtain sufficient environmental information from Algonquin Gas Transmission with respect to the gas lateral from the HubLine to the Facility to ensure that the construction methods will appropriately protect the environment and will demonstrate that the construction of the lateral will not serve to increase the capacity of Algonquin's system. Upon receipt of such satisfactory information so demonstrating, CLF agrees not to protest or appeal or otherwise delay any approval of such lateral.

7. Level Playing Field.

It is the intention of the Parties that Footprint Power not be disadvantaged in the wholesale electricity market by agreeing to the foregoing terms. In addition, it is the intention of the parties that any subsequently permitted facility will be subjected to conditions at least as stringent as those set forth herein. Accordingly, if after five years of commercial operation of the Facility, Footprint Power reasonably believes that a power plant that received approvals from the EFSB and a MassDEP air permit, arising from applications filed on or after the date of this Agreement, is in any respect subject to materially less stringent requirements than those which are set forth in this Agreement, Footprint Power may provide notice to CLF (including an explanation of the terms and conditions applicable to the subsequently approved power plant, and proposed

modifications to the terms and conditions set forth herein), and may reopen these terms to seek agreement with CLF on conforming terms and conditions analogous to those applicable to the subsequently approved plant. The Parties will work cooperatively to identify proceedings before EFSB and MassDEP that may impact this provision with the intent that they will be in a position to submit public comments or intervene in the proceedings to advocate for terms consistent with this Agreement. Upon the approval of any applicable subsequent permits, CLF will negotiate in good faith to ensure analogous terms and will not oppose or unreasonably withhold consent to analogous terms.

8. Effective Date.

This Settlement Agreement is effective upon the Siting Board's adoption of the Agreement, without reservation, in its entirety as a condition of approving Footprint Power's Application for a Certificate.

9. Additional Conditions.

- (a) This Agreement establishes no principles, and shall not be deemed to foreclose any party from making any contention in any future proceeding or investigation, with respect to any issues raised in this proceeding except as to those issues and terms that are stated in this Agreement as being specifically resolved by approval and incorporation of this Agreement as a condition of the Certificate;
- (b) This Agreement shall not be deemed in any respect to constitute an admission by any party that any allegation or contention in this proceeding, or any fact relating to any other pending proceeding cited in this document, is true or false.
- (c) Except as specified in this Agreement to ensure compliance with the GWSA, the issuance of a Final Decision by the Siting Board incorporating this Agreement as a condition of the Certificate shall not in any respect constitute a determination by the Siting Board, by virtue of incorporation in this Agreement, as to the merits of any other issue raised in this proceeding or any proceeding cited in this document;
- (d) This Agreement is the product of settlement negotiations. The Parties agree that the content of those negotiations (including any workpapers or documents produced in connection with the negotiations) are confidential, that all offers of settlement are without prejudice to the position of any party or participant presenting such offer or participating in such discussion, and, except to enforce rights related to this Agreement or defend against claims made under this Agreement, that they will not use the content of those negotiations in any manner in these or other proceedings involving one or more of the parties to this Agreement, or otherwise;

- (e) The provisions of this Agreement are not severable. This Agreement is conditioned on its approval and incorporation into the Final Decision as a condition of the issuance of the Certificate by the Siting Board no later than March 3, 2014 (“Requested Approval Date”). The Parties agree that the Requested Approval Date of this Agreement may be extended upon the mutual consent of the Settling Parties and notification of such extension to the Siting Board;
- (f) If the Siting Board does not approve and incorporate this Agreement in its entirety by the Requested Approval Date, as may be extended by mutual Agreement of the Parties, this Agreement shall be null and void and this Agreement shall be deemed to be withdrawn and shall not constitute a part of the record in any proceeding or be used for any other purpose;
- (g) The Parties agree to bear their own costs, expenses and attorney fees associated with all proceedings referenced herein;
- (h) This Agreement shall constitute the complete and entire agreement and understanding between the Parties relating to the subject matter hereof, and all previous agreements, discussions, communications and correspondence with respect to the subject matter hereof shall be superseded by the execution and delivery of this Agreement. This Agreement may not be modified or amended except in a writing signed by or on behalf of the Parties hereto, or, if such modification or amendment affects less than all of the Parties hereto, signed by the affected ones of the Parties.
- (i) This Agreement shall be governed, interpreted and construed in accordance with the laws of the Commonwealth of Massachusetts, and, as applicable, the United States of America, the Massachusetts courts (including, as appropriate, the United States District Court for the District of Massachusetts) being the sole and exclusive jurisdiction for the determination of any future disputes relating hereto, arising hereunder or in connection herewith.
- (j) The undersigned represent and warrant that they have the right, capacity and all necessary authorization to execute this Agreement, and that the Agreement is binding upon the Parties their successors and assigns.
- (k) The Parties acknowledge that they have been represented with respect to this Agreement by legal counsel of their own choosing, that they have read this Agreement and have had it fully explained to them by counsel and are completely aware of its contents and legal effects, and agree that no presumption in the interpretation of this Agreement shall arise based upon the identity of the drafter of this Agreement or any of its provisions. It is agreed and understood that this Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and collectively shall constitute one Agreement.

- (1) Notwithstanding any foregoing provisions in this Agreement to the contrary, CLF and Footprint Power reserve their rights to enforce the Parties' obligations under this Agreement.

{Signature Page Follows}

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives as of the Effective Date.

CONSERVATION LAW FOUNDATION

By: _____

Sean Mahoney
Executive Vice-President

FOOTPRINT POWER SALEM HARBOR
DEVELOPMENT LP, by its General Partner,
FOOTPRINT POWER SH DEVCO GP LLC

By: _____

Scott G. Silverstein
President & COO