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Settlement Agreement

This Settlement Agreement ("Settlement Agreement") is entered into this 26th day of February, 2015, by and between Brockton Power Company, LLC, a limited liability company organized under Massachusetts law ("BPC"), Brockton Power LLC, a limited liability company organized under Delaware law ("Brockton Power") (collectively, the "Plaintiffs"); and the City of Brockton ("Brockton" or the "City"), a municipal corporation with a usual place of business at 45 School Street, Brockton, Plymouth County, Massachusetts organized under the laws of the Commonwealth of Massachusetts (the "Settling Defendant").

WHEREAS, Plaintiff BPC proposes the development of a 350 megawatt electric power generating facility on land off Oak Hill Way in Brockton, Massachusetts, identified according to the Brockton Assessor's Map 119 as Lots 3 and 4, Industrial Boulevard, Brockton (the "Generator Site"), and an electricity interconnection switchyard on land on Oak Hill Way in Brockton, Massachusetts, identified according to the Brockton Assessors' Map 119 as Lots 89 and 90 (the "Switchyard Site") (the Generator Site and the Switchyard Site together with the electric power generating facility shall hereafter be referred to as the "Project");

WHEREAS, Plaintiffs filed a complaint (as amended, the "Complaint") in the United States District Court for the District of Massachusetts (the "Court"), Civil Action No.112-CV-1147-LTS on June 12, 2012 against the City of Brockton, the Brockton City Council, the Planning Board of the City of Brockton, former Mayor of Brockton Linda Balzotti, City Councilor Thomas Brophy, City Councilor Michelle Dubois, City Councilor Jass Stewart, former Mayor of Brockton James Harrington, Planning Board Chairperson Wayne McAllister, and former Planning Board Member Susan Nicastro (collectively "the Defendants"), alleging that Defendants violated 42 U.S.C. § 1983 by depriving Plaintiffs of their constitutional rights,

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including the right to develop their land for its permitted use as an electric power generating facility and switchyard, and state law by interfering with Plaintiffs' advantageous business relationships with the City of Brockton and depriving Plaintiffs of municipal water (the "Action"); and

WHEREAS, on May 30, 2013, the Court denied Defendants' motions to dismiss the Action in their entirety, *see, Brockton Power LLC v. City of Brockton*, 948 F. Supp. 2d 48 (D. Mass. 2013); and

WHEREAS, Plaintiffs and the Settling Defendant have agreed to resolve this Action without the need for further litigation; and

WHEREAS, Plaintiffs and the Settling Defendant have agreed to dispose of this Action upon the Defendants' full compliance with the conditions of this Settlement Agreement, as more fully set forth below, by moving for entry of dismissal under Rule 41 after such conditions have been satisfied; and

WHEREAS, the Settling Defendant, by entering into this Settlement Agreement, does not admit any of the allegations of the Complaint other than those facts deemed necessary to the jurisdiction of the Court and those specifically acknowledged in this Settlement Agreement, and expressly denies any liability for any of the matters alleged in the Complaint; and

WHEREAS, the Settling Defendant acknowledges that:

(a) both the Generator Site and Switchyard Site are located within Brockton's I-3 heavy industrial zone, which, at the time Plaintiffs purchased their property interests, had been expressly zoned for more than forty-five years for electric power generating plants and for public utility services and structures to be principal permitted uses; and

(b) the Massachusetts Energy Facilities Siting Board (the "EFSB") and the Massachusetts

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Department of Environmental Protection (the "DEP") have issued authorizations and permits for Plaintiff BPC to proceed with the Project; and

WHEREAS, Plaintiffs acknowledge that Defendants' complete performance of their obligations and achievement of the conditions of this Settlement Agreement will resolve the claims in this Action on behalf of themselves, their successors and assigns, and all their parents, subsidiaries, affiliates, predecessors-in-interest, successors-in-interest, agents, and principals; and

WHEREAS, this Settlement Agreement is agreed to and entered upon each Plaintiff's and the Settling Defendant's representations that its (or his or her) execution, delivery and performance of this Settlement Agreement (a) are authorized by its organizational or constituent documents; (b) have been duly authorized by all requisite organizational actions; (c) do not require the approval or consent of any other governmental agency or authority or, to the extent it is not otherwise stipulated herein, all such approvals and consents have been duly granted and obtained; and (d) will not result in any breach of, or constitute a default under, any instrument or agreement to which such party is bound; and

WHEREAS, this Settlement Agreement shall be binding and inure to the benefit of the parties' successors and assigns, including, without limitation, any successor in ownership to the Generator Site or Switchyard Site or any portion thereof.

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements set forth herein, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Conditions of the Settlement and Dismissal of the Action.

The Plaintiffs' full satisfaction and release of all claims against the Defendants, future dismissal of the Action and execution of mutual releases are conditioned on:

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- (a) execution of this Settlement Agreement by all parties hereto;
- (b) action by the City of Brockton and the relevant City Boards and Commissions in accordance with applicable standards and provisions of law relative to the Plaintiffs' requests/applications for the permits, approvals and authorizations set forth in Section 3, below, and the passage of all appeal periods with all appeals being dismissed or denied; and
- (c) execution by the Mayor of the City of Brockton and/or the City's Commissioner of the Department of Public Works (the "DPW Commissioner") of a contract for the sale of treated effluent from the City's advanced waste water reclamation facility (the "AWRF") located on Oak Hill Way and directly adjacent to the proposed Project, as set forth in Section 4 below; and
- (d) issuance by the City of Brockton of authorization for connection of the Project to the AWRF, as set forth in Section 5, below; and
- (e) issuance by the City Council of Grant(s) of Location for Crossing of City of Brockton streets for pipes and wires as set forth in Section 6, below; and
- (f) issuance by the City of Brockton of the authorizations of approvals for physical water and sewer connections as set forth in Section 7, below.

The conditions set forth in Section 1(a)-(f), above, shall hereafter be referred to as the "Conditions." Once all the Conditions of this Settlement Agreement have been satisfied to Plaintiffs' satisfaction, including the expiration of any applicable appeals periods with all appeals being dismissed or denied, then the Action will be dismissed in accordance with Rule 41, the Parties will execute mutual releases, and Plaintiffs will perform the obligations set forth in Sections 9 and 10 herein.

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2. No Opposition to EFSB and DEP Filings.

- (a) The City of Brockton shall not oppose any of Plaintiff BPC's future filings with the EFSB relating to changes to the Project that do not involve a major increase in the size of the Project, including no opposition to filings with respect to BPC requesting that the EFSB grant permission to use the City's potable water supply for the cooling tower and shall support such filings with written communications to the EFSB by the Mayor or his representatives, provided that BPC shall not seek permission from the EFSB to operate the Project using coal as fuel.
- (b) All the other Defendants shall not oppose any of Plaintiff BPC's future filings with the EFSB relating to changes to the Project.
- (c) To resolve the appeal filed by the City of Brockton on August 9, 2011, regarding the Conditional Air Plan Approval issued for the Project by DEP, the City of Brockton and Plaintiff BPC have agreed to specific stipulations for conditions to be included in any final air plan approval that may be issued by DEP and have agreed to file a settlement agreement in that proceeding presenting the conditions.
- (d) The City of Brockton shall not oppose any of Plaintiff BPC's filings with the DEP with respect to any necessary future amendments to BPC's Air Permit and will support such filings with written communications to the DEP by the Mayor or his representatives provided that BPC shall not seek permission from DEP to operate the Project using coal as fuel.
- (e) All the other Defendants shall not oppose the issuance of any Air Permit by DEP in connection with the Project.

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- (f) The foregoing provisions (b) and (e) shall not restrict the right of any Defendant, in his or her private and individual capacity, to express opinions about the Project.

3. Issuance of City Permits and Approvals.

At the earliest practicable time, BPC shall file with the respective City boards, commissions or officers any and all applications, requests and supporting documentation necessary for issuance of the permits, approvals and authorizations referenced below. The City shall thereupon take all actions necessary to process and issue the said permits, approvals and authorizations needed for the construction and operation of the Project in accordance with applicable legal standards as set forth in an opinion of the City Solicitor, including, but not limited to:

- (a) The City Planning Board shall review and act upon the Project's Site Plan for the Generator Site in accordance with applicable legal standards as set forth in an opinion of the City Solicitor.
- (b) The City Building Inspector shall review and act upon applications for necessary Building Permit(s) for the Generator Site in accordance with applicable legal standards as set forth in an opinion of the City Solicitor.
- (c) The City Building Inspector shall review and act upon applications for necessary Building Permit(s) for the Switchyard Site, including commencing review by the Massachusetts Executive Office of Transportation, in accordance with applicable legal standards as set forth in an opinion of the City Solicitor.
- (d) The City Planning Board shall review and act upon the pending Subdivision Plan filed by the Project for the Switchyard Site in accordance with applicable legal standards as set forth in an opinion of the City Solicitor.

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- (e) The City Conservation Commission shall review and act upon a roadway crossing of Edson Brook to provide access to the Switchyard Site in accordance with applicable legal standards as set forth in an opinion of the City Solicitor.

4. Execution of an Advanced Water Reclamation Facility (“AWRF”) Agreement.

- (a) Pursuant to this Settlement Agreement, BPC agrees to purchase up to 2,000,000 GPD of treated effluent from the AWRF at a price of \$100,000 per year.
- (b) In connection with this Settlement Agreement, and in accordance with applicable state and local procurement statutes and/or regulations, the Mayor has executed an AWRF Purchase and Sale Agreement (the “AWRF Agreement”) on behalf of the City with Plaintiff BPC in the form attached as **Exhibit 1** to this Settlement Agreement.
- (c) BPC agrees that the AWRF Agreement shall include a provision stating that BPC will hold harmless the City of Brockton if the AWRF is directed by a court or regulatory agency with relevant jurisdiction to reduce the quantity of treated effluent provided to the Project in order for the AWRF to maintain a minimum discharge of treated effluent during periods of extreme natural low flow in the Salisbury Plain River, and at its own expense BPC may participate in any proceeding on such issues before a court or regulatory agency.
- (d) The City of Brockton represents and warrants that the City is and will continue to be legally bound by the AWRF Agreement to the fullest extent permitted by law.

5. Irrevocable License for Connections to AWRF

- (a) The Plaintiffs and the City of Brockton acknowledge that facilities will need to be installed at the AWRF and pipe connections from the AWRF to the Project will

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need to be placed across the AWRF property in order to enable BPC to interconnect and transmit treated effluent pursuant to the AWRF Agreement.

- (b) The Mayor agrees to approve an irrevocable license for the connections from the AWRF to the Project facilities to be made once all necessary permits and approvals for the Project to be issued by the City have become final.
- (c) BPC will reimburse the City for all necessary costs associated with implementing modifications to the AWRF in order to accommodate the effluent interconnection, including adjustments to the AWRF's NPDES permit.

6. Grant of Location for Crossing of City Streets for Pipes and Wires

The Brockton City Council shall grant approval(s) for the Project's wires and pipes other than the connections to the AWRF to be located under and over City property or streets.

7. Issuance of Authorizations of Approvals of Physical Water and Sewer Connections

- (a) The parties acknowledge that the Project requires the City of Brockton Department of Public Works' and City of Brockton Water Commission's approval (i) to connect to the City's potable water system for 270,000 gallons per day for boiler make-up water and not for Project cooling tower use, and (ii) to connect to the City of Brockton's sewer system for waste water discharge.
- (b) The City of Brockton Department of Public Works shall approve a potable water connection of 270,000 gallons per day.
- (c) The City of Brockton Water Commission shall approve a potable water connection of 270,000 gallons per day.
- (d) The Department of Public Works shall upon application therefor and compliance with all applicable, laws, regulations, orders and decrees regarding its wastewater

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disposal system, approve an industrial wastewater discharge connection to permit the Project to discharge to the City's sewer system.

8. Dismissal of the Action and Execution of Mutual Releases.

Upon the Defendants' achievement of all the Conditions of this Settlement Agreement, the Action will be withdrawn and dismissed in accordance with Rule 41, and all parties will execute mutual releases to release and discharge each other from any and all suits, causes of action, complaints, obligations, demands, appeals, or claims of any kind, whether in law or in equity, direct or indirect, known or unknown, which any party ever had, now has, or may have, with regard to any other party, from the beginning of the world to the date of the dismissal of the Action, provided that the mutual releases shall not preclude any claims and causes of action, whether at law or in equity, arising out of non-performance under this Settlement Agreement.

9. Community Benefits.

Further, upon the Defendants' achievement of all the Conditions of this Settlement Agreement, the Plaintiffs shall, in consideration of the mutual promises, commitments and considerations stipulated herein, tender to the City the following contributions toward Brockton public infrastructure improvements:

- (a) Within fifteen (15) days after a financial closing of the Project, the Plaintiffs shall pay to the City the sum of One Million Dollars (\$1,000,000.00) to be expended by the City for public safety purposes, as determined by the Mayor;
- (b) Within fifteen (15) days after a financial closing of the Project, the Plaintiffs shall pay to the City the sum of Eight Hundred Fifty Thousand Dollars (\$850,000.00) to be expended by the City for the purpose of the design, permitting, construction and installation of an artificial turf athletic field, with related amenities, at the City property located at 166 East Ashland Street, Brockton. In furtherance of and

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as a component of this commitment, the Plaintiffs shall forthwith upon Defendants' achievement of all the Conditions of this Settlement Agreement release to the City sufficient funds to commence the design and permitting of said athletic field or, alternatively, shall donate said design and permitting services, in kind, to the City;

- (c) Within fifteen (15) days after a financial closing of the Project, the Plaintiffs shall pay to the City the sum of One Million Dollars (\$1,000,000.00) to be expended by the City for the Brockton public schools.

As used herein, "financial closing" shall mean the closing of the financing of a construction loan for the Project and initial disbursement of funds by the lenders.

10. Payment In Lieu of Tax Agreement and Total Annual Payments.

Pursuant to the provisions of G.L. c. 59, § 38H(b) and any other applicable enabling laws or regulations, the Plaintiffs and the City shall engage in good faith negotiations and execute a Payment In Lieu of Taxes ("PILOT") Agreement with respect to the generation facility referenced herein, and the City Council agrees to support such PILOT Agreement in accordance with applicable procedures. In accordance with said statute and any regulations promulgated thereunder, said PILOT Agreement shall provide to the City over the term thereof payments equivalent to the anticipated property tax obligations the owner of the generation facility would have incurred had the property been taxed based upon its full and fair valuation. In consideration of the potential for the specific amount of the annual PILOT payment to the City calculated as described above to be less than \$3.9 million, BPC agrees that the aggregate and total annual payments made to the City by BPC on account of the Project shall be Four Million Dollars (\$4,000,000), which amount is intended to include: (i) the annual payment under the PILOT

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Agreement, (ii) the annual payment for AWRP effluent under the AWRP Agreement, and (iii) any additional amount necessary to bring BPC's annual payments to the City to a total of \$4 million.

11. Counterparts

This Settlement Agreement may be executed in original counterparts and shall be valid as if signed in one document.

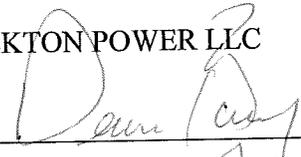
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IN WITNESS WHEREOF, the parties have executed this Settlement Agreement on the date of set forth above by the undersigned who represent that they are fully authorized to act on behalf of their principals.

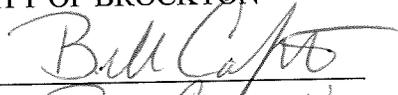
BROCKTON POWER COMPANY LLC

By: 
Name: Thomas E. Spang
Title: President

BROCKTON POWER LLC

By: 
Name: Dennis Barry
Title: Manager

THE CITY OF BROCKTON

By: 
Name: Bill Carpenter
Title: MAYOR

APPROVED AS TO FORM AND LEGALITY:
PHILLIP NESSRALLA, CITY SOLICITOR

