



City of Palo Alto

Finance Committee Staff Report

(ID # 12389)

Report Type: Action Items

Meeting Date: 8/17/2021

Summary Title: Gas Carbon Offsets Purchase Agreement with Oaxaca

Title: Review and Forward a Recommendation that the City Council Adopt a Resolution Approving the Verified Emission Reduction Agreement With the Integrative Organization of Oaxaca Indigenous and Agricultural Communities to Purchase 24,000 Tons CO₂e for a Total Purchase Price of \$228,000

From: City Manager

Lead Department: Utilities

Recommendation

The Utilities Advisory Commission (UAC) and staff recommend the Finance Committee recommend that the City Council (Council):

1. Adopt the attached resolution (Attachment A) approving the Verified Emission Reduction Agreement (VER Agreement) with the Integrative Organization of Oaxaca Indigenous and Agricultural Communities (ICICO), to purchase 24,000 tons CO₂e at \$9.50 per ton CO₂e for a total purchase price of \$228,000; and
2. Delegate to the City Manager, or his designee, the authority to execute on behalf of the City the VER Agreement and confirmation (Attachment B) with ICICO.

Executive Summary

To implement the Council-approved Carbon Neutral Natural Gas Plan ([Resolution 9930](#)), the City must purchase an annual quantity of carbon offsets (a.k.a. VERs) equal to the greenhouse gas emissions caused by natural gas use by City gas utility customers. The maximum Council-approved price for VERs is \$19 per ton CO₂e. In August 2017 Council adopted a Standard Form VER Master Agreement ([Resolution 9703](#)) to enable those transactions.

In December 2017 the City approved a purchase of 17,000 carbon offsets for \$8.00 from ICICO, a non-governmental organization ([Resolution 9725](#)). While the City had only completed one purchase for carbon offsets prior to this purchase, \$8.00 per carbon offset was a small premium to the City's first purchase. The protocols for the Mexican VERs are very similar to those required in the Carbon Neutral Natural Gas Plan, and the agreement was substantively the same as the City's Standard Form VER Agreement with minor changes to accommodate the international transaction. The revenue from the transaction afforded numerous co-benefits for the community near Oaxaca including salaries for the people who maintain the

forest and supplies for local schools. Bob Wenzlau, Palo Alto's Neighbor's Abroad Representative, attended a thank you celebration and was able to witness the positive impact of the transaction firsthand.

The proposed transaction is another one-time purchase, this time for 24,000 tons CO₂e at \$9.50 per ton CO₂e, for a total price of \$228,000. The proposed quantity is about 15% of the City's annual carbon offset needs. The price of \$9.50 per ton is a premium to the City's last purchase in July at \$7.97 per ton; the net bill increase for an average residential customer is estimated to be about \$1/year. Furthermore, staff expects higher average offset costs in the future based on price projections provided by brokers. The agreement is the same as the one approved for the 2017 transaction with non-substantive edits.

On July 7, 2021, the UAC unanimously voted to recommend the agreement, indicating the city should continue to support its sister city in this type of transaction despite the small financial impact to the City.

Background

In December 2020, Council adopted [Resolution 9930](#) maintaining the Carbon Neutral Natural Gas Plan to achieve carbon neutrality for the gas supply portfolio using high-quality carbon offsets with a cost cap of no greater than a \$19 per ton CO₂e. Forestry projects are one of 6 project types approved for use by the City's program.

Implementation of the Carbon Neutral Gas Plan required executing contracts to enable the City to purchase carbon offsets. In August 2017 Council adopted a Standard Form VER Master Agreement (Master Agreement) ([Resolution 9703](#)). Five Master Agreements have been approved ([Resolution 9704, 9787, 9793, 9798](#)) to enable transactions. Under those agreements, the City has purchased 575,000 carbon offsets at an average price of \$6.40 per ton CO₂e. Approximately 60% of these offsets have been U.S. forestry projects at an average price of \$6.56 per ton CO₂e. In addition, the City previously purchased 17,000 carbon offsets for \$8.00 from ICICO in December 2017.

Discussion

Through Neighbors Abroad of Palo Alto, the City learned of a carbon offset program implemented by ICICO, an NGO established in 2012 with the objective to commercialize ecosystem services on behalf of 12 indigenous and agricultural communities near Oaxaca, Mexico, one of Palo Alto's sister cities. ICICO implements projects located in High Biological Value Zones which contain flora and fauna listed in the Mexican Endangered Species List and the International Union for Conservation of Nature Red List of Threatened Species. The environmental projects have made residents more aware of the health benefits of a well-maintained ecosystem and have provided opportunities for all community members to become involved, including women and youth. Revenue from the sale of carbon offsets has funded fire protection, tree care, freshwater spring recharge, and transportation and equipment for local schools.

The City completed its first transaction with ICICO for 17,000 carbon offsets in October 2017. Since this transaction, ICICO continues to develop additional forestry offset projects and communicates project updates to Neighbors Abroad of Palo Alto and City staff. In February 2021, ICICO informed the City they expect to generate 43,000 carbon offsets and wish to sell 24,000 to Palo Alto for a negotiated price of \$9.50 per ton CO₂e. In the last request for proposals for carbon offsets, the City received proposals for forestry offsets ranging in price from \$7.70 to \$11.30 per ton CO₂e. Assuming future prices will be higher than historical, staff still expects this proposed transaction to cost approximately \$35,000 more than offsets available in the U.S. This estimated incremental cost less than one dollar more per year for an average residential customer.

Like the 2017 transaction, the carbon offsets contemplated in the proposed agreement are from a forestry project in San Juan Lachao, Oaxaca and comply with a Mexican Forestry Protocol developed by the Climate Action Reserve (CAR), a carbon offset registry used by CARB. The City's Carbon Neutral Gas Plan includes U.S. Forestry as one of 6 approved project types. While the proposed Oaxaca transaction does not meet all of the elements of the Carbon Neutral Gas Plan because the project is outside the U.S., the U.S. Forestry protocol and the Mexican protocol are similar; the differences are outlined in the Climate Action Reserve ([Linked Document](#)). Council approval also included a preference (with no specified premium) for local projects.

ICICO has 24,000 offsets available for purchase, about 15% of Palo Alto's annual need, that have already been generated and certified by CAR. The proposed agreement is substantively the same as the Council-approved Standard Form VER Master Agreement and the 2017 agreement with ICICO. Minor modifications were made to the Master Agreement to accommodate the international transaction.

City of Palo Alto Municipal Code Section 2.30.340 (c) requires that commodity contracts include the following: (1) governing law shall be the laws of the state of California; (2) choice of venue shall be the county of Santa Clara; and (3) a counterparty shall obtain and maintain during the term of the contract the minimum credit rating established as of the date of award of contract of not less than a BBB- credit rating established by Standard & Poor's and a Baa3 credit rating established by Moody's Investors Services. The proposed agreement, like the Standard Form VER Master Agreement, includes the first 2 provisions. Since this agreement is for spot purchases (a purchase for immediate or near-term delivery) and there is no credit risk associated with the transactions, the third provision regarding credit worthiness is not included. [Resolution 9703](#) waived the investment grade credit requirement for VER agreement counterparties.

The City's energy Risk Management Counterparty Contractual Guidelines require master agreement counterparties to provide audited financial statements of the counterparty or its parent and a contract termination provision that does not provide a defaulting party with any

termination payment or settlement amount for any product. Since, like the Standard Form VER Master Agreement, this agreement is for a spot purchase and there is no credit risk associated with this transaction, these two provisions are not included.

Timeline, Resource Impact, Policy Implications

Funding for purchase of carbon offsets was included in the FY 2022 gas utility supply budget. Approval of the recommendation will not impact rates in the FY 2022 budget.

Policy Implications

Adoption of the proposed resolution conforms to the Council-approved Energy Risk Management Policy and the Palo Alto Municipal Code. Further, the recommendation is consistent with the objectives of the Council-approved Carbon Neutral Gas Plan, and consistent with the Gas Utility Long-term Plan and the Utilities Strategic Plan objective to manage supply cost by negotiating supply contracts to minimize financial risk.

Stakeholder Engagement

This purchase agreement is being presented to the Finance Committee after being recommended by the Utility Advisory Commission (UAC). On July 7, 2021 UAC unanimously voted to recommend that Council approve the agreement, indicating the city should continue to support its sister city in this type of transaction despite the small financial impact to the City. Assuming both the UAC and Finance Committee recommend this purchase, it will then go to Council.

Environmental Review

Council's adoption of the attached resolution approving the VER Agreement with ICICO is not subject to California Environmental Quality Act (CEQA) review as an administrative governmental activity that will not result in any direct or indirect physical change to the environment; in the alternative, Council's approval of the VER Agreement is categorically exempt from CEQA review under CEQA Guidelines sections 15307 and 15308, as an action taken for the protection of natural resources and the environment.

Attachments:

- Attachment A: Resolution Approving VER Agreement
- Attachment B: Verified Emission Reduction (VER) Agreement

NOT YET APPROVED

Resolution No. _____

Resolution of the Council of the City of Palo Alto Approving the Verified
Emission Reduction Agreement (VER Agreement) with the Integrative
Organization of Oaxaca Indigenous and Agricultural Communities

RECITALS

A. On December 5, 2016, the Council adopted Resolution 9649 approving a Carbon Neutral Natural Gas Plan to achieve a carbon neutral gas portfolio by fiscal year 2018 with no greater than a 10¢/therm rate impact.

B. On December 7, 2020, the Council adopted Resolution 9930, approving an updated Carbon Neutral Gas Plan to maintain a carbon neutral gas portfolio with rate impacts of individual transactions limited to under \$19 per ton CO₂e, consistent with the Council-approved maximum rate impact of 10¢/therm.

C. In accordance with the Carbon Neutral Plan, the quantity of offsets purchased to meet the City's Carbon Neutral Plan objectives will be matched to carbon emissions associated with the City's natural gas sales volume.

D. With Resolution 9703 approved August 21, 2017, Council approved the standard form Verified Emissions Reduction Master Agreement.

E. Oaxaca, Mexico is a sister city of the City of Palo Alto.

F. The integrative organization of Oaxaca Indigenous and Agricultural Communities (ICICO) sells environmental offsets from a forestry project in Oaxaca (the Oaxaca Project).

G. The carbon offsets generated by ICICO's Oaxaca Project comply with a Mexican Forestry Protocol developed by the Climate Action Reserve, a carbon offset registry used by CARB, and are substantially similar in type and protocol to those contemplated by the City's Carbon Neutral Gas Plan.

H. The proposed Verified Emission Reduction Agreement to be entered into with ICICO to purchase \$228,000 of carbon offsets generated by the Oaxaca Project is substantively similar to the City's Standard Form VER Agreement, with minor changes to reflect the international transaction.

NOW, THEREFORE, the Council of the City of Palo Alto RESOLVES as follows:

SECTION 1. The Council hereby approves the Verified Emission Reduction Agreement (VER Agreement) with the ICICO to purchase 24,000 tons of CO₂e at \$9.50 per ton from the Oaxaca Project, for a total purchase price of \$228,000; and

SECTION 2. The Council finds that execution of the Oaxaca Project VER Agreement meets the objective of the City's Carbon Neutral Gas Plan, mitigating GHG emissions from natural gas used in the City of Palo Alto, since the offsets purchased will comply with the Mexican Forestry Protocol approved by the Climate Action Reserve, and are substantially similar to the CARB-approved protocols included in the Carbon Neutral Plan; and

SECTION 3. The Council hereby delegates to the City Manager, or his designee, the authority to execute the Oaxaca VER Agreement, and confirmation letter, and any documents necessary to administer the Oaxaca VER Agreement that are consistent with the Palo Alto Municipal Code and City Council-approved policies and plans; and

SECTION 4. Adoption of this Resolution approving the VER Agreement with ICICO is not subject to California Environmental Quality Act review as an administrative governmental activity that will not result in any direct or indirect physical change in the environment as a result (CEQA Guidelines section 15378(b)(5)). In the alternative, Council's approval of the VER Agreement with ICICO is categorically exempt from CEQA review under CEQA Guidelines sections 15307 and 15308, as an action taken for the protection of natural resources and the environment.

INTRODUCED AND PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Assistant City Attorney

City Manager

Director of Administrative Services

Director of Utilities

AGREEMENT FOR THE PURCHASE AND SALE OF VERIFIED EMISSION REDUCTIONS

This Agreement for the Purchase and Sale of Verified Emission Reductions (the “**Agreement**”) is made as of this 20 day of September 2021 (“**Effective Date**”), by and between the City of Palo Alto, California, a chartered California municipal corporation with its primary business address at 250 Hamilton Avenue, Palo Alto California 94301 (“**City**” or “**Buyer**”) and Integrator of Campesino and Indigenous Communities of Oaxaca (ICICO AC), a Non-Governmental Organization formed in Oaxaca State, Mexico, with its primary business address at Eucaliptos 307 A, Colonia Reforma, Oaxaca de Juárez, Oaxaca, Postal Code 68050 (“**Seller**”). This Agreement, together with any and all Confirmation Letters and other schedules and exhibits related to Verified Emissions Reductions (as defined herein) shall be referred to as the “**Agreement**”.

RECITALS:

- A. The Parties wish to buy and sell Verified Emission Reductions on the terms set forth in this Agreement;
- B. Buyer wishes to enter into this Agreement with Seller to facilitate Verified Emission Reductions purchases to manage various customer programs administered by the Buyer; and
- C. Seller has access to Verified Emission Reductions and wishes to enter into this Agreement with Buyer to participate in the Verified Emissions Reductions purchases that the City may undertake from time to time.

NOW, THEREFORE, in consideration of the recitals and the covenants, terms and conditions of this Agreement, the Parties agree:

AGREEMENT

1. **Term and Termination.** The term of this Agreement shall commence on the Effective Date, as set forth above, and shall remain in effect until terminated by either Party upon thirty (30) days’ prior written notice, subject to the provisions of Section 24, except that any such termination shall not be effective until all payments, deliveries and other obligations of the Parties under this Agreement, and any Confirmation Letters executed thereunder, have been completed.

2. **Definitions.** As used in this Agreement, the following terms have the respective meanings set forth below, unless the context otherwise clearly indicates. Other capitalized terms are defined elsewhere in this Agreement.

“**Applicable Law**” means all legally binding constitutions, treaties, statutes, laws, ordinances, rules, regulations, orders, interpretations, permits, judgments, decrees, injunctions,

writs and orders of any Governmental Authority or arbitrator that apply to the Verified Emission Reductions or any one or both of the Parties or the terms hereof.

“ARB” means the California Environmental Protection Agency Air Resources Board, or any successor agency thereto.

“Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

“Business Day” means any day, except a Saturday, Sunday, or any day observed as a legal holiday by the City. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Pacific Standard Time or Pacific Daylight Time, as applicable.

“Confidential Information” is defined in Section 12.

“Confirmation Letter” or “Confirm” means a written confirmation materially in the form of Exhibit A attached hereto. The Confirmation Letter constitutes part of, and is subject to, the terms and provisions of this Agreement.

“Contract VERs” means the VERs specified in the Confirmation Letter and relating to the GHG Reductions generated by the Project during the Vintage Year(s).

“Delivery” has the meaning specified in Section 3(b).

“Delivery Deadline” means three (3) Business Days after the Transaction Date specified in an applicable Confirm.

“Effective Date” has the meaning given to such term in the opening paragraph of this Agreement.

“Force Majeure” is defined in Section 21.

“Governmental Authority” means any national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any Applicable Law and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“GHGs” means one or more of the six greenhouse gases listed in Annex A to the Kyoto Protocol of the UNFCCC, as amended from time to time.

“GHG Reduction” means the removal, limitation, reduction, avoidance, sequestration or mitigation of anthropogenic GHG emissions.

“Party” or “Parties” means Buyer and Seller, individually or collectively, as applicable.

“Project” means an emission reduction project that is located in the United States or Mexico, an “Offset Project” as defined by ARB, and a Project Type approved by ARB, as identified in the applicable Confirmation Letter.

“Project Documentation” means documents, data or other information, whether in written or electronic form, produced by Seller or to which Seller has access relating to the Project or the Contract VERs.

“Project Type” means a Mexico Forest Protocol Project approved and registered by the Climate Action Reserve.

“Registry” means the Climate Action Reserve or any successor registry thereto.

“Transaction” means a written agreement between the Parties in the form of an applicable Confirmation Letter to undertake one or more Deliveries of Contract VERs, subject to the terms of this Agreement.

“Transaction Date” means the date the Parties enter into a Transaction as specified on the applicable Confirm.

“Unit Price” means the price in U.S. Dollars for Contract VERs set forth in the applicable Confirmation Letter.

“VER Payment” means an amount equal to the product of the Unit Price multiplied by the number of Contract VERs Delivered to Buyer in accordance with this Agreement.

“Verification”, “Verify” and “Verified” means the determination by a Verification Provider that an emissions reduction meets the requirements of the Registry as evidenced by a Verification Report and unique serial number.

“Verified Emission Reduction” or “VER” means one (1) metric tonne of CO₂ Equivalent (CO₂e) of Verified GHG Reductions generated by the Project.

“Verification Provider” means an independent verification provider accredited by a Registry (or such other verification provider proposed by Seller and accepted by Buyer in its sole discretion).

“Verification Report” means any written report required by a Registry and prepared by a Verification Provider reviewing and verifying that, in accordance with Project Documentation, Registry Protocols and requirements in effect at the date of its production, the Contract VERs have occurred during the Vintage Year and are eligible for registration in the Registry.

“Vintage Year” means, in respect of a Contract VER, the calendar year in which the emissions reductions and removals represented thereby occurred as specified in the applicable Confirmation Letter.

3. Purchase and Sale of Verification Emission Reductions.

- a. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller

agrees to Deliver to Buyer the Contract VERs on the terms specified in an executed Confirmation Letter, a form of which is attached hereto as Exhibit A. Buyer agrees to purchase all such Contract VERs to the extent they are Delivered on or before the specified Delivery Date for such Contract VERs.

- b. Delivery. Seller shall deliver the Contract VERs to Buyer by the Delivery Deadline. Seller will effect delivery by retiring the Contract VERs on behalf of Buyer in Seller's Registry account identified in the Confirmation Letter, along with the notation "***on behalf of the City of Palo Alto***" or similar expression. The Contract VERs will be deemed to be delivered upon Buyer's receipt of an electronic confirmation from such Registry that the relevant retirement has been completed ("**Delivery**", and variations of such term shall have their corresponding meanings.) Title to the Contract VERs will pass from Seller to Buyer upon Delivery.
- c. Project Documentation.
 - i. Verification Reports. Upon the written request of Buyer, Seller shall deliver to Buyer copies of any Verification Report(s) for the Contract VERs within ten (10) Business Days of such request.
 - ii. Other Project Documentation. Upon the reasonable written request of Buyer, Seller shall provide to Buyer copies of Project Documentation (to the extent that such Project Documentation is made available to Seller) within ten (10) Business Days of such request. All project documentation shall be provided in Spanish except for (a) the certificate of retirement for the purchased VERs in the name of the City of Palo Alto, and (b) the Verification Report, each of which shall be provided in English.

4. Price and Payment.

- i. Price. Buyer agrees to buy the applicable Contract VERs from Seller at the Unit Price specified in the applicable Confirm for each Contract VER Delivered to Buyer. Seller agrees to pay all Registry fees associated with the issuance and Delivery of the Contract VERs to Buyer. The Parties agree that all prices and fees under this Agreement shall be in U.S. Dollars, and that Seller shall be responsible for any fees associated with conversion into U.S. Dollars.
- ii. Billing and Terms of Payment.
 - a. Buyer will remit the VER Payment to Seller net thirty (30) days after the date Buyer receives a properly prepared and accurate invoice sent to Buyer's address for Contract VERs that have been Delivered. Buyer has no obligation to make payment for any Contract VERs that have not been Delivered in accordance with Section 3(b).

- b. An invoice that is properly prepared shall include at a minimum:
 - i. Seller's complete name and address where payment is to be remitted;
 - ii. Buyer's complete name and address where bill is to be sent;
 - iii. The Unit Price;
 - iv. The VER Payment;
 - v. Invoice date;
 - vi. Terms of payment, including any applicable discount calculations; and
 - vii. Tax amount/rate information, if applicable.
- c. Payment may be made by wire transfer. Payment by check shall be considered made when received by Seller.

Wiring instructions:

Bank Name: BANCO MERCANTIL DEL NORTE S.A.
(BANORTE)
Bank SWIFT: MENOMXMT
Account Name: INTEGRADORA DE COMUNIDADES
INDIGENAS Y CAMPESINAS DE OAXACA
Account Number: 0335990740

iii. Taxes and Fees.

- a. Seller will pay all taxes and fees arising prior to Delivery.
- b. Seller will pay all mandatory taxes and fees arising out of the transactions contemplated by this Agreement levied by a government or other competent public taxing authority on the transfer of the Contract VERs to Buyer, including any sales tax (if applicable).
- c. Each Party will pay for its own income, property or ad valorem taxes.

5. Events of Default.

A Party is in default hereunder if that Party does any of the following (each an "Event of Default"):

- a. the failure of any Party to make any payment when due if such failure is not remedied within thirty (30) days after receipt of written notice of such failure, provided that if the Buyer, in good faith, disputes all or any portion

of the payment, the Buyer shall pay only that portion of the payment that it does not dispute;

- b. in the case of Seller, if by the applicable Delivery Deadline, Seller fails to Deliver to Buyer any Contract VERs specified on an executed Confirmation Letter and that failure is not remedied within five (5) Business Days of Buyer giving notice of that failure, and such failure is not due to Force Majeure or Buyer's failure to accept such Contract VERs following proper Delivery;
- c. any representation or warranty provided by either Party herein that shall prove to have been false or misleading in any material respect when made or repeated;
- d. the failure by a Party to perform any covenant or agreement set forth in this Agreement and applicable Confirmation Letters and incorporated exhibits (other than its obligations to make any payment or obligations which are otherwise specifically covered as a separate Event of Default), and such failure is not cured within fifteen (15) Business Days after written notice thereof to the affected Party;
- e. the Party becomes Bankrupt; or
- f. the failure by either Party to comply with any of its material obligations under this Agreement and that failure is not remedied within thirty (30) days of the other Party giving notice of that failure.

6. **Remedies for Default.**

In the event of an Event of Default by either Party, the non-defaulting Party may terminate this Agreement and all of the applicable Confirmation Letters immediately upon written notice to the defaulting Party. Upon a valid termination under this provision, Seller (if the non-defaulting Party) will have no further obligation to Deliver additional Contract VERs to Buyer, and Buyer (if the non-defaulting Party) will have no further obligation to purchase additional Contract VERs under this Agreement, including with respect to any applicable Confirmation Letters that have been entered between the Parties but not yet Delivered. Termination of the Agreement under this provision will not limit in any way any remedies available to the Parties under this Agreement.

7. **Representations.**

- a. **Representations by Both Parties.** Each Party represents and warrants to the other Party that:
 - i. it is a legal entity, duly formed and validly existing and in good standing under the laws of the state of its formation;

- ii. it has the power and authority to enter into and perform its obligations under this Agreement;
 - iii. by entering into this Agreement, it will not breach the material terms of any contract with a third party;
 - iv. it is not relying upon any representations of the other Party other than those expressly set out in this Agreement;
 - v. it has entered into this Agreement after a full opportunity to review its terms and conditions, has a full understanding of those terms and conditions and or their risks, and is capable of assuming those risks; and
 - vi. this Agreement constitutes a legal, valid and binding obligation on it enforceable in accordance with its terms by appropriate legal remedy.
- b. **Seller's Representations to Buyer**. Seller hereby represents and warrants to Buyer that:
- i. it has not sold, transferred, assigned, licensed, disposed of or encumbered (nor become legally obligated to do the same) any right, title or interest in the Contract VERs covered by an applicable Confirm to any person other than Buyer and other than as contemplated in this Agreement;
 - ii. Seller conveys the Contract VERs to Buyer free and clear of any liens, encumbrances, claims, security interests, or title defects;
 - iii. it has the right to transfer the Contract VERs covered by an applicable Confirm to Buyer;
 - iv. it has good title to each Contract VER and it obtained and possessed, or will obtain and possess at the time of transfer, the Contract VERs lawfully;
 - v. any Project-related data provided to Buyer is true and correct to the best of Seller's knowledge, information and belief;
 - vi. each Project agreed to under applicable Confirmation Letters to this Agreement is in substantial compliance with all applicable material laws and regulations, including permit requirements for the operation of such a Project;
 - vii. no authorization, consent, notice to or registration or filing with any governmental authority is required for the execution, delivery and performance by Seller;
 - viii. none of the execution, delivery and performance by Seller conflicts with or will results in a breach or violation of any contract or instrument to which such Seller is a party of is bound;
 - ix. there are no proceedings by or before any governmental authority, now

pending or (to the knowledge of Seller) threatened, that if adversely determined could have a material adverse effect on Seller's ability to perform Seller's obligations hereunder;

- x. the Contract VERs covered by an applicable Confirmation Letter have not been used by Seller or any third party to meet any international, federal, state or local requirement, renewable energy procurement, renewable portfolio standard or other mandate;
- xi. Seller will not offer, sell, transfer, dispose, encumber or otherwise deal in the GHG Reductions associated with the applicable Contract VERs other than as provided herein;
- xii. the Contract VERs are, and will be at the time of Delivery, validly issued and in force in accordance with the protocols of the Registry specified in the applicable Confirmation Letter;
- xiii. the Contract VERs are, and will be immediately prior to Delivery, duly registered to Seller in the Registry specified in the applicable Confirmation Letter;
- xiv. neither the Seller, nor any of its associated or parent organizations or affiliates or its customers, has claimed (or will claim) directly or indirectly, including on any voluntary or mandatory greenhouse gas registry program (including EPA Climate Leaders), any of the Contract VERs to be Delivered under this Agreement or any associated GHG Reductions, carbon reductions, offsets, or benefits as part of its own carbon inventory, footprint, or other carbon statement or declaration as anything other than sold to Buyer. Any such reporting of emissions or emissions reductions shall include as Seller's emissions an amount equal to the VER Quantity and Vintages of the Contract VERs sold hereunder, and indicate their sale to Buyer;
- xv. the Contract VERs have been Verified by the Verification Provider in a Verification Report for the Vintage Year(s);
- xvi. no document or information supplied by Seller in connection with this Agreement contains any untrue statement or omits to state a material fact necessary in order to make such document not misleading; and
- xvii. Delivery shall occur within the United States, and there are no federal, state or local fees, taxes, levies or assessments related to the importation of Contract VERs into the United States.

8. **Obligations and Liabilities.**

- a. This Agreement sets out the full extent of the Parties' obligations and liabilities

arising out of or in connection with this Agreement, and there are no conditions, warranties, representations or terms, express or implied, that are binding on the Parties except as specifically stated in this Agreement. Any condition, warranty, representation or other term which might otherwise be implied into or incorporated in this Agreement, whether by statute, common law or otherwise, is hereby expressly excluded.

- b. Save as expressly provided otherwise in this Agreement, neither Party will be liable under or in connection with this Agreement for any loss of income, loss or profits or loss of contracts, or for any consequential, incidental, punitive, exemplary, or indirect losses or damages in tort (including negligence), contract, or otherwise pursuant to this Section 8, except for any claims indemnified pursuant to Section 9.

9. **Indemnification**

- a. **Indemnification of Buyer:** To the fullest extent permitted by Applicable Law, Seller agrees to protect, defend, hold harmless and indemnify Buyer, its City Council, commissioners, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Buyer shall become liable arising from Seller's acts, errors, or omissions with respect to or in any way pursuant to this Agreement and subsequent transactions and related Confirmation Letters, except for claims, liabilities and damages caused by the Buyer's sole negligence or willful misconduct.
- b. **Indemnification of Seller:** To the fullest extent permitted by Applicable Law, Buyer agrees to protect, defend, hold harmless and indemnify Seller, its board of directors, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which Seller shall become liable arising from Buyer's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the maintenance, assistance and services performed by Buyer pursuant to this Agreement and subsequent and related Confirmation Letters, except for claims, liabilities and damages caused by the Seller's comparative negligence or willful misconduct.

10. **Relationship of the Parties.**

The relationship of the Parties under this Agreement is that of independent contractors. The Parties specifically state their intention that this Agreement is not intended to create a partnership or any other co-owned enterprise unless specifically agreed to by the Parties in a separate written instrument. Except as specifically provided herein, each Party shall continue to have the right to contract independent of the other Party with individuals and entities. Each Party shall be responsible for its own operating expenses and personnel expenses.

11. **Notices.**

All notices required or permitted to be given hereunder in writing shall, unless expressly provided otherwise, be in writing, properly addressed, postage pre-paid and delivered by hand, facsimile, certified or registered mail, courier or electronic messaging system to the appropriate address as either Party may designate from time to time by providing notice thereof to the other Party.

If to Buyer:

250 Hamilton Ave.
Palo Alto, CA 94301
Attention: City Clerk
Phone: 650-329-2571
Fax: 650-328-3631

If to Seller:

Eucaliptos 307-A_____
Colonia Reforma_____
Oaxaca de Juárez, Oaxaca
C.P 68050 _____
TEL/FAX 9515743391

With a copy to:

250 Hamilton Ave.
Palo Alto, CA 94301
Attention: Director of Utilities
Phone: 650-329-2277
Fax: 650-329-2154

Notices delivered by facsimile or by an electronic messaging system shall require confirmation through a reply facsimile or electronic message.

12. **Confidential Information.**

- a. **"Confidential Information"** shall mean and include information consisting of documents and materials of a disclosing Party and/or any other technical, financial or business information of or about a disclosing Party which is not

available to the general public, as well as all information derived from such information, which is furnished or made available to the other Party and is clearly labeled, marked or otherwise identified as “confidential” or “proprietary information.”

- b. The disclosing Party is the Party to whom the Confidential Information originally belongs and who shall, after appropriate notice from the receiving Party, bear the burden of pursuing any legal remedies to retain the confidential status of the Confidential Information, as set forth in Section 12(e), below.
- c. Confidential Information disclosed by either Party to the other shall be held by the receiving Party in confidence, and shall not be:
 - i. used by the recipient to the detriment of the disclosing Party; or
 - ii. made available for third parties to use.
- d. Each Party will direct its employees, contractors, consultants and representatives who have access to any Confidential Information to comply with all the terms of this Section. Information received by the receiving Party shall not be Confidential Information if:
 - i. it is or becomes available to the public through no wrongful act of the receiving Party;
 - ii. it is already in the possession of the receiving Party and not subject to any confidentiality agreement between the Parties;
 - iii. it is received from a third party without restriction for the benefit of the disclosing Party and without breach of this Agreement;
 - iv. it is independently developed by the receiving Party; or
 - v. it is disclosed pursuant to a requirement of law or a duly empowered government agency or a court of competent jurisdiction after due notice and an adequate opportunity to intervene is given to the disclosing Party, unless such notice is prohibited.
- e. Seller acknowledges that City is a public agency and is subject to the requirements of the California Public Records Act Cal. Gov. Code section 6250 et seq. Seller may submit Confidential Information to the City pursuant to Section 12(a), above and the City will maintain such identified documents as confidential to the fullest extent allowed by law. However, upon request or demand from any third person or entity not a party to this Agreement (“Requestor”) for production, inspection and/or copying of information designated by a disclosing Party as Confidential Information, the receiving Party

shall notify the disclosing Party that such request has been made in accordance with Section 12 of this Agreement. Upon receipt of this notice, the disclosing Party shall be solely responsible for taking whatever legal steps may be necessary to protect the information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the receiving Party. If within ten (10) days after receiving the foregoing notice from the receiving Party, the disclosing Party takes no such action, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

- f. Upon termination or expiration of this Agreement, the receiving Party shall, at the disclosing Party's direction, either return or destroy all of the disclosing Party's Confidential Information and so certify in writing. The obligations of this provision will survive for one (1) year after any termination or expiration of this Agreement.

13. Publicity and Disclosure.

Seller shall not use the name, tradename, trademarks, service marks of or owned by Buyer, or logos of Buyer, or share Confidential Information in any publicity releases, news releases, annual reports, product packaging, signage, stationery, print literature, advertising, websites or other media without securing the prior written approval of Buyer. Seller shall not, without the prior written consent of Buyer, represent, directly or indirectly, that any product or service offered by Seller has been approved or endorsed by Buyer. Seller agrees that Buyer may make oral and written reports and other communications regarding this Agreement and subsequent Contract VER Transactions to the Palo Alto City Manager, City Council and other public officials as required by law, which reports and communications will be public reports and communications.

14. Nondiscrimination.

As set forth in Palo Alto Municipal Code section 2.30.510, Seller agrees that in the performance of this Agreement, it shall not discriminate in the employment of any person because of the race, skin color, gender, age, religion, disability, national origin, ancestry, sexual orientation, housing status, marital status, familial status, weight or height of such person. Seller acknowledges that it has read and understands the provisions of Chapter 2.30 of the Palo Alto Municipal Code relating to Nondiscrimination Requirements and the penalties for violation thereof, and agrees to meet all requirements of Chapter 2.30 pertaining to nondiscrimination in employment, including completing the form furnished by Buyer and set forth in Exhibit B.

15. Choice of Law.

The laws of the State of California shall be applied and be controlling for all purposes

and all matters relating to this Agreement. In the event that an action is brought, the Parties agree that trial of such action will be vested exclusively in the United States District Court for the Northern District of California in the County of Santa Clara, State of California.

16. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, whether oral or written, of the Parties.

17. Amendments.

Except to the extent herein provided, no amendment, supplement, modification, termination or waiver of this Agreement shall be enforceable unless executed in writing by the Party to be bound thereby.

18. Assignment.

This Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Agreement, in whole or in part, without the other Party's written consent. Such consent shall not be unreasonably withheld, conditioned or delayed.

19. Non-Waiver; No third Party Beneficiaries.

No waiver by any Party of any of its rights with respect to the other Party or with respect to this Agreement or any matter or default arising in connection with this Agreement, shall be construed as a waiver of any other right, matter or default. Any waiver shall be in writing signed by the waiving Party. No payment, partial payment, acceptance or partial acceptance by Buyer will operate as a waiver on the part of the Buyer of any of its rights under the Agreement. This Agreement and subsequent Confirmation Letters are made and entered into for the sole benefit of the Parties, and their permitted successors and assigns, and no other Person shall be a direct or indirect legal beneficiary of, have any rights under, or have any direct or indirect cause of action or claim in connection with this Agreement.

20. Severability.

In the event that any provision of the Agreement is found to be void or unenforceable, such findings shall not be construed to render any other provision of the Agreement

either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

21. Force Majeure.

Neither Seller shall be liable in any respect for failure to Deliver the Contract VERs to Buyer, nor Buyer shall be liable in any respect for failure to accept the Contract VERs from Seller, if such performance is hindered or prevented, directly or indirectly, by an event beyond the reasonable control of either Party, including, without limitation, war, public emergency or calamity, fire, earthquake, Acts of God, strikes, labor disturbance or actions, civil disturbances or riots, litigation brought by third parties against the Parties, or any act of a superior Governmental Authority or court order. Force Majeure may not be based on (i) Seller's ability to sell the Contract VERs to another at a price greater than the Unit Price specified in the Confirmation Letter, (ii) Buyer's inability economically to use the Contract VERs, or (iii) Buyer's ability to purchase Contract VERs at a price less than the Unit Price specified in the Confirmation Letter.

22. Exhibits.

The exhibits attached hereto are incorporated into this Agreement by reference. The exhibits may only be revised upon mutual written agreement between the Parties unless otherwise specified in the exhibits.

23. Compliance with the Law.

Each Party will comply with all lawful federal, state and local law, ordinances, resolutions, rate schedules, rules and regulations that may affect its rights and obligations under the Agreement.

24. Fiscal Provisions.

The Transactions under this Agreement are subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. The Agreement and all related Confirmation Letters and Agreements will terminate without penalty (i) at the end of any fiscal year in the event that funds are not appropriated for the following fiscal year, or (ii) at any time within a fiscal year in the event that funds are only appropriated for a portion of the fiscal years and funds for the City's obligations are no longer made available. This provision will take precedence in the event of a conflict with any other term or condition of the Agreement or a Confirm.

25. Interpretation.

In this Agreement, unless the context requires another meaning, a reference:

- a. to any document (including this Agreement) is to that document as varied, amended, novated, ratified or replaced from time to time;
- b. to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- c. to the singular includes the plural and vice versa, and to a gender includes all genders;
- d. to the Sections are inserted for convenience of reference only and do not affect the interpretation of this Agreement;
- e. to a Confirmation Letter is to the active Confirmation Letter; and
- f. if there is any conflict between the provisions of an applicable Confirmation Letter and any other provisions of this Agreement, if it has been signed by both Parties, the terms of that Confirmation Letter will prevail.

IN WITNESS WHEREOF, each of the Parties hereto acknowledge that they have read the terms and conditions contained herein, understand and agree to the same and agree to be bound thereby and have caused this Agreement to be executed in duplicate originals by its duly authorized representative on the respective dates entered below.

**CITY OF PALO ALTO
("BUYER")**

City Manager

APPROVED AS TO FORM:

**Integrator of Campesino and Indigenous
Communities of Oaxaca (ICICO AC)
("SELLER")**

By: _____

Name: C. Netzar Arreortúa Martínez

Title: Administration Council President

Assistant City Attorney

APPROVED:

Taxpayer Identification No. ICI120626GB3

Director of Administrative
Services

Director of Utilities

EXHIBIT A

VERIFIED EMISSION REDUCTIONS CONFIRMATION LETTER

PRO FORMA

The following describes a Transaction between Buyer and Seller for the sale, purchase and delivery of Contract VERs pursuant to the terms and conditions of the Verified Emission Reductions Purchase and Sale Agreement (“**Agreement**”) between the City of Palo Alto and Integrator of indigenous and peasant communities of Oaxaca (ICICO AC) dated September 20th, 2021.

Initially capitalized terms used and not otherwise defined herein are defined in the Agreement.

Basic Commercial Terms:

Transaction Date:	
Seller:	Integrator of indigenous and peasant communities of Oaxaca (ICICO AC)
Buyer:	City of Palo Alto
Product:	VERs
Registry:	Climate Action Reserve
Project Name and Registry ID:	CAR 1399; CAR 1411; CAR 1443
Project Location:	La Trinidad, Ixtlán (CAR1399); Santiago Xiacuí (CAR1411); San Miguel Maninaltepec (CAR1443)
Vintage Year(s):	2019, 2020
Quantity of Contract VERs:	24,000
Unit Price (\$/VER):	\$9.50
VER Payment (\$):	\$228,000

This Confirmation Letter is executed pursuant to and in accordance with the Agreement, and constitutes part of and is subject to the terms and provisions of the Agreement.

The Parties agree to the Transaction set forth herein.

City of Palo Alto (“Buyer”)		Integrator of indigenous and peasant communities of Oaxaca (ICICO AC) (“Seller”)	
Signature		Signature	

Name		Name	C. Netzar Arreortúa Martínez
Title		Title	Administration Council President
Date		Date	

EXHIBIT B**CERTIFICATION OF NONDISCRIMINATION**

As suppliers of goods or services to the City of Palo Alto, the firm and individuals listed below certify that they do not and will not during the course of this Agreement discriminate in the employment of any person because of the race, skin color, gender, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, pregnancy, genetic information or condition, housing status, marital status, familial status, weight or height of such person and that they are in compliance with all Federal, State and local directives and executive orders regarding nondiscrimination in employment.

THE INFORMATION HEREIN IS CERTIFIED CORRECT BY SIGNATURE(S) BELOW.

Authorized Signature: _____

Date: _____