



City of Palo Alto

City Council Staff Report

(ID # 9418)

Report Type: Consent Calendar

Meeting Date: 8/13/2018

Summary Title: Resolution Approving Verified Emission Reduction (Carbon Offset) Purchase Agreement with Carbonfund

Title: Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Purchase a Portion of the City's Verified Emission Reductions Requirements From Carbonfund.org Foundation Under Specified Terms and Conditions During Calendar Years 2018 through 2027, Inclusive

From: City Manager

Lead Department: Utilities

Recommendation

Staff recommends that the City Council (Council):

1. Adopt the attached resolution (Attachment A) authorizing the City Manager to approve the Verified Emission Reduction Master Agreements (VER Master Agreements) with Carbon Fund.org Foundation (Carbonfund) and authorizing the City Manager to purchase VERs from Carbonfund under specified terms and conditions during calendar years 2018 through 2027, inclusive, subject to the following limitations:
 - a. The maximum aggregate transaction limit under these Master Agreements shall be \$10 million;
 - b. All transactions are subject to the Palo Alto Municipal Code; and
 - c. All transactions are subject to the City's Energy Risk Management Policy, Guidelines and Procedures; and
2. Delegate to the City Manager, or his designee, the authority to execute on behalf of the City the VER Master Agreements with Carbonfund.

Executive Summary

To implement the Council-approved Carbon Neutral Natural Gas Plan (Resolution 9649), 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. In August 2017 Council adopted a Standard Form VER Master Agreement (Resolution 9703) and approved VER Master Agreements with two suppliers (Resolution 9704). Carbonfund has agreed to the terms and conditions of the Standard Form VER Master Agreement. The proposed resolution (Attachment A) authorizes the City Manager to execute the agreement (Attachment B) and

purchase VERs under the agreement within a maximum expenditure and transaction term limits.

Background

Palo Alto Municipal Code Section 2.30.340 (Contracts for Wholesale Utility Commodities) allows for the use of master agreements to buy and/or sell electricity, gas and related services through various preapproved (“enabled”) suppliers. Contracts or transactions executed under Council-approved master agreements must be done in accordance with the City’s Energy Risk Management Policy, Guidelines and Procedures.

On August 15, 2016, Council approved an ordinance modifying the Municipal Code to streamline the purchase and sale of wholesale utility commodities and services and to explicitly allow for a Council-approved standard form master agreement ([August 15 City Attorney Report](#)). The ordinance modified Section 2.30.140 clarifying the process to enable suppliers by specifically allowing the use of a standard form master agreement that contains the City’s minimum contract terms and conditions. Execution of standard form master agreements and delegation of authority to transact under the standard form master agreements with specific suppliers is subject to Council approval. This process is also used when contracting for natural gas commodity.

In December 2016, Council adopted Resolution 9649 approving a Carbon Neutral Natural Gas Plan to achieve carbon neutrality for the gas supply portfolio by FY 2018 using high-quality carbon offsets or VERs with a cost cap of 10 ¢/therm. Implementation includes executing contracts to enable the City to purchase VERs. In August 2017 Council adopted a Standard Form VER Master Agreement (Resolution 9703) and approved VER Master Agreements with two suppliers (Resolution 9704).

Discussion

Maintaining a set of active counterparties is essential to achieving competitive pricing. Master Agreements with specific VER suppliers including maximum expenditures and transaction term limits must be approved by Council. Carbonfund has agreed to the terms and conditions of the Standard Form VER Master Agreement. The proposed resolution (Attachment A) authorizes the City Manager to execute the agreement and purchase VERs under the agreement within a maximum expenditure and transaction term limits. The proposed VER Master Agreement with Carbonfund is included as Attachment B.

All transactions under all VER Master Agreements will be executed in accordance with the Council-approved Energy Risk Management Policy. The anticipated annual cost of carbon offsets is \$1.3 M to \$3M. Staff recommends a maximum transaction limit of \$10 million per counterparty.

Resource Impact

Approval of the recommendation will not impact the FY 2019 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 Council-approved Carbon Neutral Gas Plan and the Gas Utility Long-term Plan and the Utilities Strategic Plan objective to manage supply cost by negotiating supply contracts to minimize financial risk.

Environmental Review

Council's adoption of the proposed resolution authorizing the City Manager to approve the VER Master Agreement with Carbonfund and authorizing the City Manager to purchase VERs from Carbonfund do not meet the definition of a project for the purposes of the California Environmental Quality Act, under Public Resources Code Section 21065 and CEQA Guidelines Section 15378(b)(5), because it is an administrative governmental activity which will not cause a direct or indirect physical change in the environment. VER project developers will be responsible for performing necessary environmental reviews and acquiring permits as offset projects are developed.

Attachments:

- Attachment A: RESO Authorizing CM to Purchase a Portion of the City's Verified Emission Reduction Requirements from Carbonfund
- Attachment B: Carbonfund.org Master Agreement for the Purchase and Sale of Verified Emission Reduction

Resolution No. XXXX

Resolution of the Council of the City of Palo Alto Authorizing the City Manager to
Purchase a Portion of the City's Verified Emission Reductions Requirements from
Carbonfund.org Foundation Under Specified Terms and Conditions during
Calendar Years 2018 through 2027, Inclusive

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. In accordance with the Carbon Neutral Plan, the City must purchase environmental offsets or verified emission reductions equal to the annual emissions from natural gas use by all City of Palo Alto Natural Gas Utility customers.

C. By Ordinance 5387 adopted August 15, 2016, Council approved changes to the Municipal Code specifically streamlining the purchase and sale of wholesale utility commodities and services and explicitly allowing for standard form Master Agreements.

D. The standard form Verified Emissions Reduction Master Agreement was approved by Council on August 21, 2017.

E. The City intends to purchase verified emission reductions from one or more prequalified suppliers from delivery during calendar years 2018 through 2027, inclusive, so long as the supplier with whom the City negotiates a specific purchase transaction continues to be qualified and otherwise eligible to transact with the City.

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

SECTION 1. The Council hereby authorizes the City Manager or his designee, the Director of Utilities, to purchase a portion of the City's verified emission reduction requirements from Carbonfund.org Foundation by negotiating one or more individual transactions, including, but not limited to, contracts, addenda, confirmations, and transactions.

SECTION 2. The purchases negotiated under Section 2 with Carbonfund.org Foundation shall not exceed \$10 million in aggregate.

SECTION 3. Adoption of this Resolution 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)).

INTRODUCED AND PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Deputy City Attorney

City Manager

Director of Administrative Services

Director of Utilities

MASTER AGREEMENT FOR THE PURCHASE AND SALE OF VERIFIED EMISSION REDUCTIONS

This Master Agreement for the Purchase and Sale of Verified Emission Reductions (the “**Master Agreement**”) is made as of this _____ day of _____, 2018 (“**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 Carbonfund.org Foundation, Inc., a 501-c-3 non-profit formed in Delaware, with its primary business address at 853 Main Street, East Aurora, NY 14052 (“**Seller**”). This Master 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 Master Agreement;
- B. Buyer wishes to enter into this Master Agreement with Seller to facilitate future Verified Emission Reductions purchases to manage various customer programs administered by the Buyer;
- C. Seller has access to Verified Emission Reductions and wishes to enter into this Master Agreement with Buyer to participate in the future Verified Emissions Reductions purchases that the City may undertake from time to time; and
- D. This Master Agreement facilitates, but does not guarantee, Seller’s qualifications to competitively participate with other sellers in future Verified Emission Reductions purchases, and it does not guarantee that the City will enter into any future Verified Emission Reductions purchases with the Seller.

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

AGREEMENT

1. **Term and Termination.** The term of this Master 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 Master Agreement, and any Confirmation Letters executed thereunder, have been completed.

2. **Definitions.** As used in this Master 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 Master 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 Master 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 Master 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 and an “Offset Project” as defined by ARB and of a Project Type approved by ARB and is 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 U.S. Forest, U.S. Urban Forest, U.S. Livestock, U.S. Sourced and Destroyed Ozone Depleting Substances, U.S. Mine Methane Capture, and U.S. Rice Cultivation; or any other Project Type subsequently approved by ARB.

“Registry” means either the Climate Action Reserve, the Verified Carbon Standard, or the American Carbon Registry 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 Master Agreement.

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

“Unit Price” means the price 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 Master 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.

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.
- 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:	M&T Bank One M&T Bank Buffalo, NY 14203 716-652-6010
Bank ABA:	022000046
Account Name:	Carbonfund.org Foundation, Inc.
Account No.:	9862644896
Swift Code:	MANTUS33

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 Master 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); and
- 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.

8. Obligations and Liabilities.

- a. This Master Agreement sets out the full extent of the Parties' obligations and liabilities arising out of or in connection with this Master 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 Master Agreement. Any condition, warranty, representation or other term which might otherwise be implied into or incorporated in this Master Agreement, whether by statute, common law or otherwise, is hereby expressly excluded.
- b. Save as expressly provided otherwise in this Master Agreement, neither Party will be liable under or in connection with this Master 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 Master 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 Master 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 Master Agreement is that of independent contractors. The Parties specifically state their intention that this Master 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:
853 Main Street
East Aurora, NY 14052

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 confidentially 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master 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 Master Agreement shall be enforceable unless executed in writing by the Party to be bound thereby.

18. Assignment.

This Master Agreement is binding on any successors and assigns of the Parties. Neither Party may otherwise transfer or assign this Master 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 Master Agreement or any matter or default arising in connection with this Master 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 Master Agreement. This Master 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 Master Agreement.

20. Severability.

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

24. Fiscal Provisions.

The Transactions under this Master Agreement are subject to the fiscal provisions of the Charter of the City of Palo Alto and the Palo Alto Municipal Code. The Master 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 Master 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 Master 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 Master 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:

Counsel to the City of Palo Alto

APPROVED:

Director of Administrative
Services

General Manager of Utilities

**CARBONFUND.ORG FOUNDATION,
INC.
("SELLER")**

DocuSigned by:
By: Eric Carlson
99F307C3EF604E7...

Name: Eric Carlson

Title: President

Taxpayer Identification No.

20-0231609

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 (“**Master Agreement**”) between the City of Palo Alto and _____ dated _____, 20__.

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

Basic Commercial

Terms:

Transaction Date:	
Seller:	
Buyer:	City of Palo Alto
Product:	VERs
Registry:	
Project Name and Registry ID:	
Project Location:	
Vintage Year(s):	
Quantity of Contract VERs:	
Unit Price (\$/VER):	
VER Payment (\$):	

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

The Parties agree to the Transaction set forth herein.

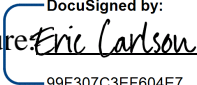
City of Palo Alto (“Buyer”)		XXX (“Seller”)	
Signature		Signature	
Name		Name	
Title		Title	
Date		Date	

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: 7/17/2018