



AGENDA

ASTORIA CITY COUNCIL SPECIAL MEETING

Thursday, June 4, 2015
2nd Floor Council Chambers
1095 Duane Street • Astoria OR 97103

6:15 P.M.

- 1. CALL TO ORDER**
- 2. ROLL CALL**
- 3. PUBLIC COMMENTS (NON-AGENDA)**
- 4. CHANGES TO AGENDA**
- 5. CONSENT CALENDAR**
The items on the Consent Calendar are considered routine and will be adopted by one motion unless a member of the City Council requests to have any item considered separately. Members of the Community may have an item removed if they contact the City Manager by 5:00 p.m. the day of the meeting.
- 6. REGULAR AGENDA ITEMS**
(a) Carbon Credit Purchase (Public Works)

7:00 P.M.



- 7. DISCUSSION BETWEEN ASTORIA CITY COUNCIL AND PORT OF ASTORIA COMMISSION**
- 8. NEW BUSINESS AND MISCELLANEOUS**
- 9. REPORTS OF COUNCILORS**
- 10. ADJOURNMENT**

<p>THIS MEETING IS ACCESSIBLE TO THE DISABLED. AN INTERPRETER FOR THE HEARING IMPAIRED MAY BE REQUESTED UNDER THE TERMS OF ORS 192.630 BY CONTACTING JULIE YUILL, CITY MANAGER'S OFFICE, 503-325-5824.</p>



CITY OF ASTORIA
Founded 1811 • Incorporated 1856

June 2, 2015

TO:  MAYOR AND ASTORIA CITY COUNCIL
FROM:  BRETT ESTES, CITY MANAGER
SUBJECT: **CARBON CREDIT PURCHASE**

BACKGROUND

At the December 14, 2014 City Council meeting, Council approved a term sheet with The Climate Trust (TCT) for the proposed purchase of carbon credits from the City of Astoria Watershed and to initiate contract negotiations.

Over the past several months, TCT and City staff, with the assistance of legal counsel, City Forester (Mike Barnes), and carbon credit consultant (David Ford), negotiated an acceptable Emissions Reductions Purchase Agreement (copy attached). The Agreement has been thoroughly reviewed by City Attorney Blair Henningsgaard, with the assistance of environmental counsel, Christine Hein of Ring/Bender Law. This Agreement was approved by TCT Board of Directors on June 2.

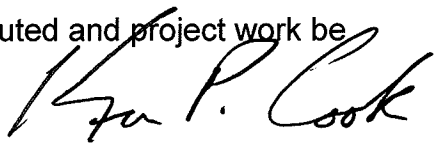
The Agreement obligates TCT to purchase from the City of Astoria verified carbon credits in years 2016 and 2017 for estimated net revenue to the City of approximately \$1,918,340. Additional credits may be sold in future years to TCT or other carbon buyers.


Attached is a background document that provides a summary of the proposed carbon project, the commitments required of the City by the American Carbon Registry (ACR), and a summary of revenue and expenses over the next 20 years.

The key project costs are in developing the carbon project to ACR's standards and completing third-party verification prior to sale of the credits to TCT. This work will be initiated following approval of the contract by City Council.

RECOMMENDATION

It is recommended that Council authorize the contract to be executed and project work be authorized to prepare the credits for sale to The Climate Trust.

Submitted by: 
Ken P. Cook, Public Works Director

Prepared by: 
Mike Barnes, City Forester

City of Astoria - Bear Creek Watershed Forest Carbon Project Proposal

Project Purpose

The purpose of this forest carbon project proposal is to generate non-timber revenue that will diversify the income stream from the Bear Creek watershed.

Project Location

The proposed forest carbon project is located within the City of Astoria's Bear Creek watershed. The watershed is comprised of approximately 3,700 acres of commercial forest which currently provides high quality drinking water to city residents and timber harvest revenue to support City services.

Current Bear Creek Watershed Forest Management

The forest management of the Bear Creek watershed is guided by a Forest Resource Management Plan. This plan was updated in January 2014 and can be reviewed online at:
http://astoria.or.us/Assets/dept_9/pm/pdf/forest%20management%20plan%202014.pdf

The updated Forest Management Plan identifies that the City may evaluate the opportunity to develop a forest carbon project and that the project would be based on a commitment to maintain harvests below a level that would otherwise meet all federal and state legal requirements.

The management of the Bear Creek watershed is independently third-party certified through the Forest Stewardship Council (FSC). This certification validates that the City's management activities conform to the highest environmental and social standards of forestry practices around the world.

Forest Inventory

As a requirement to maintain FSC certification, a new forest inventory of the Bear Creek watershed was completed in December 2013 by Mason Bruce & Girard (MB&G) – a nationally prominent forestry consulting firm based in Portland, Oregon. This new inventory was designed to provide information on merchantable volumes of commercial timber, as well as an estimate of the amount of carbon stored within the watershed. The inventory identified greater amounts of standing merchantable tree volume than was estimated prior to the inventory.

The 2013 forest inventory determined that the Bear Creek watershed contains a standing volume of 100 million board feet (MMBF). Conservative projections indicate an annual growth rate of 4%. MB&G determined that an annual harvest rate of 3 MMBF per year would maintain the current standing volume into perpetuity. The average annual harvest level over the past 10 years has been about 800 thousand board feet.

Based on the 2013 inventory, the current harvest level could be increased while still achieving the objectives of high quality drinking water, maintaining FSC certification, and meeting the requirements of federal law and the State's forest practices law. However, with the emergence of a carbon market over the past decade, there is now an alternative way to generate a new and diverse stream of revenue while managing the Bear Creek watershed – a forest carbon project. Implementing a forest carbon project would allow the City to maintain a moderate timber harvest level while creating a new revenue source to support City services.

Project Opportunity

The City began exploring the potential of a forest carbon project in 2012. In consultation with City forester Mike Barnes and L&C Carbon - a nationally recognized Oregon-based forest carbon consulting firm - the carbon offset potential of the Bear Creek watershed was evaluated. The analysis indicates that the Bear Creek watershed is an excellent candidate for a forest carbon project due to well-stocked forest stands across the watershed and the City's long-term sustainable management practices.

Currently, a forest carbon project that achieves the standards set by the American Carbon Registry (ACR) is the only viable pathway to access the carbon offset market. ACR, a nonprofit enterprise of Winrock International, was founded in 1996 as the first private voluntary greenhouse gas registry in the world. Winrock operates ACR to create confidence in the environmental and scientific integrity of carbon offsets in order to accelerate transformational emission reduction actions. As a pioneer in harnessing the power of markets to improve the environment, ACR has set the bar for offset quality that is the market standard today and continues to lead market innovations.

Project Methodology

The proposed forest carbon project would be developed under ACR's approved forest carbon methodology – *Improved Forest Management Methodology for Quantifying GHG Removals and Emission Reductions through Increased Forest Carbon Sequestration on Non-Federal U.S. Forestlands*. ACR published this methodology in September 2011. L&C Carbon led the development of this new methodology to create access to carbon markets for non-federal public lands and family woodlands. The methodology can be reviewed online at: http://americancarbonregistry.org/carbon-accounting/standards-methodologies/improved-forest-management-ifm-methodology-for-non-federal-u-s-forestlands/columbia-carbon-acr-ifm-methodology_final-28aug2014_v1-1.pdf

This methodology is designed to quantify greenhouse gas (GHG) emission reductions resulting from forest carbon projects that reduce emissions by exceeding common (baseline) forest management practices. This means that carbon offsets are generated by a landowner agreeing to harvest less timber than is legally permissible over an agreed number of years (crediting period). Thus, the landowner gets paid to maintain more carbon stocking in the forest than what is considered the common practice (harvest rates) of neighboring forestland.

Carbon offsets are referred to in this methodology as Emission Reduction Tons (ERTs). To determine the number of ERTs that can be generated and sold from a forest carbon project, a project scenario (what you plan to harvest) is compared to a baseline scenario (what you can legally harvest). The difference between these two harvest forecasts is the basis for determining carbon impacts and ERTs attributable to the project. The City's project scenario will be based on a harvest level of about 800 thousand board feet per year.

ACR Requirements & Commitments

To qualify and participate in a forest carbon project under ACR, the landowner must meet a set of requirements and agree to a set of commitments. Following is a summary of the ACR requirements and commitments.

Requirements

A forest carbon project must meet ACR's eligibility requirements, demonstrate that carbon produced from the project is additional and meet ACR's permanence standard. Based on a review by L&C Carbon, the proposed project would meet all ACR requirements.

Eligibility – the City meets all eligibility requirements; including the ability to document clear land title, demonstrate lands within the project boundary are subject to commercial timber harvesting activities, and the property's forest management is third-party certified.

Additionality – ACR requires that a carbon project demonstrate forest practices exceed all legally mandated requirements, exceed the common practice in the forestry sector and geographic region, and that carbon revenue will incentivize implementing the carbon project.

Permanence – ACR requires landowners to commit to a minimum crediting period of 20 years. After the initial 20 years, the landowner can choose to commit to one additional 20 year crediting period. The total project term is 40 years. In addition, the project must address risk mitigation through the establishment and maintenance of carbon offsets contributed to a buffer pool account held by ACR.

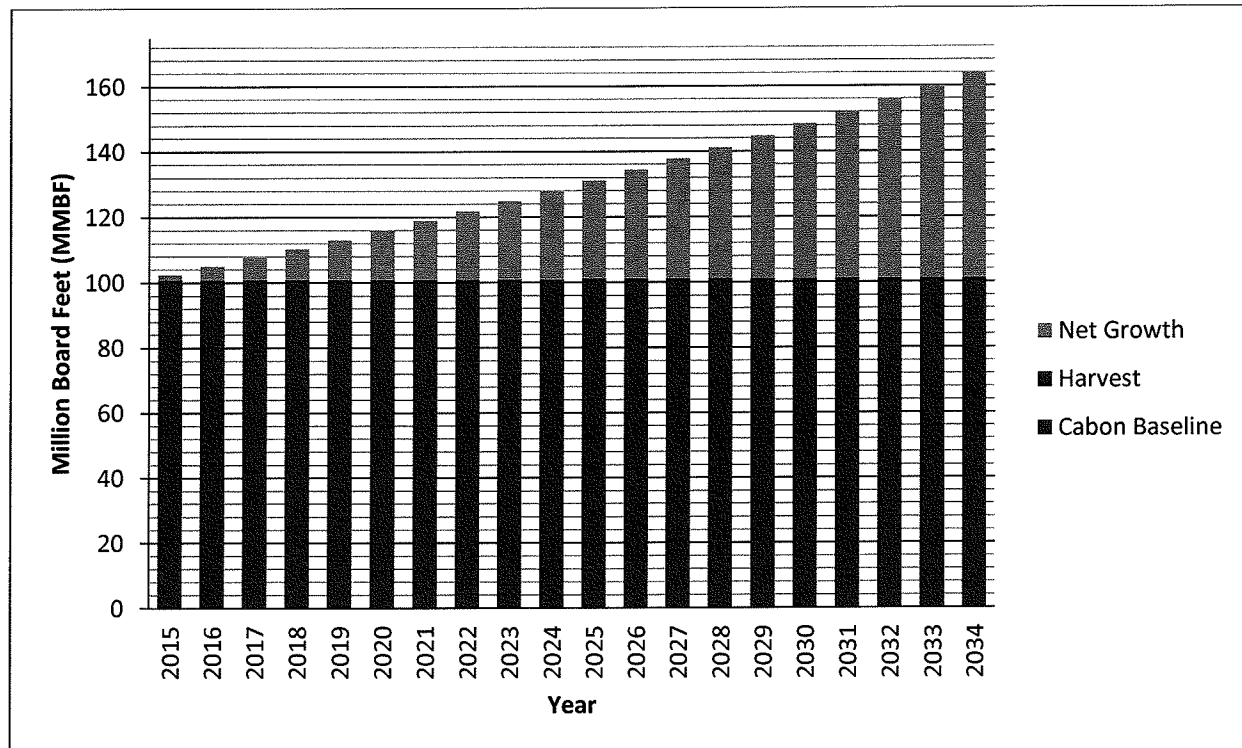
Commitments

A landowner entering into a forest carbon project commits to maintaining or increasing carbon stocks within the project boundary over the project term. In the case of the Bear Creek watershed project, the City will agree to, at minimum, maintain the carbon stocks that currently exist within the watershed during the project life.

Currently, the watershed contains 100 MMBF of timber. Thus, the City must agree to maintain at least that level of timber stocking over the project term. The chart below illustrates that based on a conservative annual growth rate (2.5%) and current harvest levels (0.8 to 1.0 MMBF) over the next 20 years, the Bear Creek watershed inventory will grow to over 160 MMBF by 2034.

Thus, over the next 20 years, the City will maintain significant flexibility to either increase harvests beyond the current level – as long as the stocking never goes below the current level (100 MMBF) – or sell additional carbon credits that equal a maximum of the difference of annual growth minus harvest.

Bear Creek Watershed



Once a forest carbon project is listed, developed, third-party verified, and registered by ACR, the landowner commits to the following:

- An Annual Attestation that confirms the continuance of the project, confirms the ownership remains unchanged, and discloses any significant unanticipated changes to the carbon stocks within the project boundary.
- An Annual Desk Audit in years the landowner monetizes ERTs that is performed by a third-party verifier.
- A Field Audit every five years that is performed by a third-party auditor that confirms the ERTs claimed are still present.
- A New Inventory every 10 years that updates the standing timber volume and carbon stocks, in addition to updating the project scenario model. Any ERT true-up adjustments must be made and third-party verified.

The Climate Trust – A Contract to Buy ERTs

In the summer of 2014, the City issued a RFP to gauge the interest of potential carbon buyers in purchasing offsets generated by a forest carbon project in the Bear Creek watershed. The Climate Trust (TCT) expressed an interest in this proposed project. This interest led to a negotiated Term Sheet that was approved by the City Council at its December 15, 2014 meeting.

TCT is a 501(3)(c) Portland, Oregon-based nonprofit that is a pioneer and nationally recognized leader in the carbon market. The Climate Trust's mission is transforming the economy to value our climate. One way TCT achieves its mission is to purchase quality carbon offsets from projects that meet its stringent quality standards.

Over the last five months, the City and TCT negotiated an Emissions Reductions Purchase Agreement. This agreement has been reviewed by City Attorney, Blair Henningsgaard, and outside environmental counsel, Christine Hein of RingBender Law. The Purchase Agreement details the sale terms of ERTs generated by the proposed Bear Creek watershed forest carbon project, including the number of ERTs, price per unit, and delivery schedule over a two-year period.

The proposed Bear Creek watershed forest carbon project will generate an estimated 247,000 ERTs in the first year of the project. This is due to the significant amount of timber inventory that exists in the watershed today, as compared to neighboring forestland. Thus, the City would get paid for maintaining a higher than average timber volume as compared to the common practice (harvest rates and resulting standing timber volume) of neighboring lands in the Oregon/Washington coast range.

TCT proposes to purchase 245,000 ERTs generated in the first year of the forest carbon project. To lower the project risk, the City would sell to TCT 220,000 ERTs on a firm delivery basis and 25,000 ERTs on a contingent (optional) basis. TCT will pay the City for the ERTs over a two-year period, with payments made in the spring of 2016 and 2017. Thus, the City would commit to deliver these ERTs within a timeframes specified in the Purchase Agreement.

Project Development Steps

For the City to be in a position to deliver ERTs to TCT from the Bear Creek watershed carbon project, the following activities must be completed:

Activity 1 – List the Project with the American Carbon Registry

- I. Open a registry account with the American Carbon Registry (ACR)
- II. Complete the project listing documentation and submit it to ACR
- III. Respond to questions and information requests by ACR generated by the review and approval process

Activity 2 – Project Development

- I. Define and map project boundary
- II. Model growth and yield scenarios based on MB&G inventory
- III. Determine project baseline through modeling to maximize 100 year harvest within all legal constraints
- IV. Select and model management scenarios to compare against project baseline
- V. Finalize ERT forecasts
- VI. Complete ERT quantification worksheets
- VII. Assemble landowner information, documents, and maps
- VIII. Complete the Greenhouse Gas Management Project Plan (GHG) and Project Development Document

Activity 3 – Third-Party Verification

- I. Develop and distribute a Request for Qualifications (RFQ) for completing a third-party verification to ACR-approved verification bodies

- II. Select a qualified verifier that can meet the required project timeline, and execute a contract for verification services
- III. Schedule the verification visit and provide all requested documents to verifier
- IV. Participate in the verification field visit
- V. Review verification findings and complete required changes in the project documentation to obtain a positive verification finding

Activity 4 – ERT Registration

- I. Complete and submit all required project documentation to ACR
- II. Submit positive third-party verification report to ACR
- III. Respond to questions and information requests by ACR generated by the review and approval of project registration

Activity 5 – Distribution of ERTs to Buyer

- I. Confirm verified ERTs are in the City of Astoria's ACR account
- II. Pay account and ERT issuance fees
- III. Transfer year 1 verified ERTs to buyer's ACR account
- IV. Invoice buyer for transferred ERTs

Project Revenue Estimates & Development Cost

Project Revenue Estimates

Based on TCTs' proposed Purchase Agreement, gross revenue for the sale of 2015 vintage ERTs would be \$2,057,500, with half of that revenue occurring in 2016 and the other half in 2017.

It should be noted that TCT has indicated an interest in purchasing additional ERTs generated from the Bear Creek watershed project after the initial Purchase Agreement is completed. This would result in additional revenue to the City.

Project Development Cost Estimates

Prior to selling ERTs generated by a forest carbon project, the project proponent must list, develop, and verify the project. Once the project is verified, it must be registered on the ACR Registry before ERTs can be sold and transferred to a buyer.

The project development costs are incurred in the first year of the project. Following is an estimate of the year one project development costs.

Year 1 Estimated Project Development Costs

Listing & Project Development	\$ 47,500
Third-Party Verification	\$ 30,000
ACR Registry Fees	\$ 2,500
ACR ERT Issuance Fees (Year 1)	\$ 26,950
Estimated Project Budget Year 1	\$106,950

Once all development activities are complete and the project is registered with ACR, further project expenditures¹ will be required to meet ACR project compliance requirements, including:

Annual Attestation – required each year, the City must submit an attestation document to ACR that confirms the continuance of the project, confirms the ownership remains unchanged, and discloses any significant unanticipated changes to the carbon stocks – estimated to cost about \$500.

Desk Audits – required only in years that project ERTs are sold, a third-party verifier must complete a desk audit to confirm the credits are available from the project – estimated to cost about \$5,000.

Field Audit – required every five years, a third-party verifier must complete a field audit to confirm the ERTs claimed are present – estimated to cost about \$20,000.

Updated Inventory – required every ten years, the project proponent must complete a new inventory of the project area and update the project scenario models. Any ERT true-up adjusts must be made and verified by a third-party verifier – estimated to cost about \$30,000. Outside of this carbon project requirement, re-inventorying your forest at least every 10 years is a standard business practice of forest landowners across the country. Investing in new inventory data on a regular basis reaps a return on this investment by providing land managers current data to drive better decision making.

The costs associated with the second year of the project are estimated to be \$32,210. These are ACR reporting costs (\$5,260) and ERT issuance fees (\$26,950). Thus, over the first two years the total project costs are estimated to be \$85,260 and ERT issuance fees are estimated to be \$53,900.

Regarding years 3-20 expenses, project costs are estimated to be \$181,415 whether or not the City sells any more ERTs over this period.

Net Project Revenue Projections

The table below details the net revenue projection over the first two years of the project and is based on TCT's proposed Purchase Agreement gross revenue and projects project costs. Revenues and costs estimates are also projected for years 3 through 20.

Years 1-2 Projected NET Revenue

TCT Contract Gross Revenue	\$ 2,057,500.00
Project Costs	\$ 85,260.00
ERT Issuance Fees	\$ 53,900.00
Project Net Revenue	\$ 1,918,340.00

Years 3-20 Projected NET Revenue

Project Gross Revenue	\$ 770,000.00 ²
Project Costs	\$ 181,415.00
ERT Issuance Fees	\$ 8,800.00
Project Net Revenue	\$ 579,785.00

If the City only receives the initial TCT contract revenue over the 20 year crediting period, the net revenue to the City would be \$1,736,925 - gross revenue from TCT contract of \$2,057,500 minus 20 years of project expenses \$320,575 (years 1&2 costs of \$139,160 plus years 3-20 costs of \$181,415).

¹ All cost estimates are in 2015 dollars.

² Potential revenue if ERTs generated in years 3 – 20 are sold.

Common Questions/Answers About Forest Carbon Offset Projects

What is a carbon offset?

A carbon offset is a reduction in emissions of one ton of carbon dioxide (CO₂) made in order to compensate for an emission made elsewhere. A carbon offset is also a generic term for any tradable certificate or permit representing one ton of CO₂.

What is a carbon registry?

A carbon registry is an organization that provides a standard measure of how carbon emission reductions (offsets) are calculated using rules and accounting procedures approved under a specific project protocol. The registry generates naming and numbering systems for each carbon offset ton that is awarded to a particular account holder. This process ensures integrity in that it guarantees that the same ton of carbon is not sold more than once.

What is a carbon offset project?

A carbon offset project is an activity that results in reducing greenhouse gas emissions. Projects can include reducing emission through technology, such as generating electricity by solar panels rather than burning oil; or capturing and storing carbon over long periods of time, such as planting trees or extending the rotation age of existing forests.

What are the steps to complete a forest carbon project?

There are several discrete steps involved in the development of a forestry carbon project, including:

- Step 1:** A carbon inventory of project lands is completed.
- Step 2:** The inventory results are analyzed. The results are used to model and finalize the carbon offset calculations.
- Step 3:** A landowner carbon project account is opened with the selected registry. The carbon documentation is submitted to the registry by a project developer for listing.
- Step 4:** Submitted documentation is reviewed by the registry. Once the project is listed it proceeds to third party verification.
- Step 5:** A third party verifier visits the project site to determine that the field work was conducted correctly, and evaluates the carbon calculations in the project documentation. The verifier writes a verification report and submits it to the carbon registry.
- Step 6:** The carbon registry reviews the verification report, and if the outcome is favorable, the registry issues carbon offsets.
- Step 7:** The carbon offsets are marketed and sold.

What kind of commitments are involved with a carbon project on forestlands?

The forest landowner commits to increase their forest carbon stocks above an agreed to carbon stocking level, for the duration of the project period. In summary, landowner carbon project commitments include the following:

- Increase overall project area carbon stocks over the crediting period
- Maintain your forest certification (FSC, SFI, or ATFS)
- Follow the agreed to management plan, including planned timber harvests

Can I still harvest my trees during the contract period?

Yes. Forest management carbon projects involve the long term forecast of what you plan to harvest (the “project case”) versus what could be harvested under a business as usual or “baseline” case. As long as the overall carbon stocks increase over the project period, the project can include timber harvest.

Why should I enter the carbon market?

Carbon revenue can be a source of income in addition to timber revenue. Carbon markets are real and demand for carbon offsets is growing. By entering the market today, a landowner can begin to generate new annual income sources and be in a position to realize additional value over time.

What are additional landowner benefits (besides carbon) of implementing a project?

In addition to carbon revenue, a forest landowner will obtain valuable information about their forest land that can assist with natural resource assessments and timber management planning. Helpful information that is typically developed during a carbon project include:

- Forest inventory information including species, dbh, height, volume, forest health
- Projection of future timber revenue and resources
- Growth and yield of currently regenerating stands and their associated growth dynamics
- Satellite imagery and GIS data of the forest land base in the project area

Can the carbon contract ever be terminated?

Carbon contracts can be terminated at any time by the landowner, but there are penalties associated with doing so. Each carbon registry has different termination penalties designed to ensure that any offsets issued are supported by real increases in carbon stocks on project lands. All carbon registries require the landowner to replace all tons if the project is terminated prematurely, before the end of the contract period.

EMISSIONS REDUCTIONS PURCHASE AGREEMENT

dated as of

June 2, 2015

by

..... OREGON CLIMATE TRUST.....

and

..... CITY OF ASTORIA.....

EMISSIONS REDUCTIONS PURCHASE AGREEMENT

This Emission Reduction Purchase Agreement ("Agreement") is made and entered into as of June 2, 2015 (the "Effective Date") by and between The Oregon Climate Trust, a nonprofit corporation organized and existing under the laws of the State of Oregon with its principal offices at 65 SW Yamhill Ave., Suite 400, Portland, OR, 97204 ("Buyer") and the City of Astoria, a municipal corporation organized and existing under the laws of the State of Oregon with its principal offices at 1095 Duane Street Astoria, OR, 97103 ("Seller"), each individually referred to as a "Party", and jointly referred to as the "Parties".

RECITALS

WHEREAS, Seller has developed the Project, as defined below, which is expected to generate Offsets; and

WHEREAS, the Project will accelerate climate change mitigation results and deliver other environmental, social or economic co-benefits that are consistent with the mission of The Oregon Climate Trust; and

WHEREAS, the Parties desire to enter into a transaction for the purchase and sale of Offsets in accordance with the terms and conditions of this Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 PURCHASE AND DELIVERY TERMS.

1.1 Seller agrees to sell and Deliver to Buyer and Buyer agrees to purchase and Accept Contract Offsets as set forth below, subject to, and in accordance with, the terms and conditions of this Agreement:

Project:	Bear Creek Watershed Forestry Project
Project Location:	Astoria, Oregon
Program:	American Carbon Registry
Program Oversight Body:	American Carbon Registry (ACR), a nonprofit enterprise of Winrock International
Offset Project Registry:	American Carbon Registry
Standard:	Improved Forest Management Methodology for Quantifying GHG Removals and Emission Reductions through Increased Forestry Carbon

	Sequestration on Non-Federal U.S. Forestlands, Version 1.1 and ACR Forest Carbon Project Standard 2.1
Offset Type:	Emission Reduction Tonnes (ERTs)
Total Firm Delivery Offsets ("Firm Offsets"):	220,000 ERTs
Firm Offset Price:	\$8.50/ERT
Total Unit Contingent Offsets ("UC Offsets"):	Up to 25,000 ERTs
UC Offset Price:	\$7.50/ERT
Total Contract Offsets:	245,000 ERTs
Total Contract Amount:	\$2,057,500
Buyer's Registry Account:	247
Seller's Registry Account:	
Delivery Schedule	
Delivery 1:	Delivery Date: No sooner than 03/15/2016 and no later than 05/15/2016 Quantity: 122,500 ERTs Firm Offsets: 110,000 Unit Contingent Offsets: 12,500 Vintage: 2015 Delivery Contract Amount: a minimum of \$935,000 and up to \$1,028,750
Delivery 2:	Delivery Date: No sooner than 3/15/2017 and no later than 5/15/17 Quantity: 122,500 ERTs Firm Offsets: 110,000 Unit Contingent Offsets: 12,500 Vintage: 2015 Delivery Contract Amount: a minimum of \$935,000 and up to \$1,028,750
Project Validation Date:	March 30, 2016

Validation Failure Damages:	\$10,000
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ARTICLE 2 DEFINITIONS, INTERPRETATION AND TERM

2.1 Definitions. Capitalized terms shall have the meanings assigned to them in this Agreement.

2.2 Interpretation. The following interpretive provisions apply to this Agreement.

- (a) Subject to section 9.4 (*Change in Law*), reference to any law, statute or regulation includes any amendment or modification to, consolidation, reenactment or replacement of such law, statute or regulation.
- (b) References in the singular include the plural and vice versa, pronouns having masculine or feminine gender include the other, and words denoting persons include natural persons, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities, whether or not having separate legal personality. Other grammatical forms of defined words or phrases have corresponding meanings.
- (c) "Include" or "including" means "including without limitation."

2.3 Term. This Agreement shall remain in force from the Effective Date until all obligations under this Agreement are fulfilled, unless terminated earlier in accordance with its terms.

2.4 Upon termination, the respective rights and obligations of the parties in Articles 14 (*Confidentiality*), 18 (*Liabilities*), 19 (*Indemnification*) 20 (*Settlement of Disputes*), 22 (*Change of Verification Standard*) and sections 26.6 (*Third Party Rights*) and 26.7 (*Governing Law and Disputes*), will survive.

ARTICLE 3 VALIDATION FAILURE

3.1 Validation. The Project shall achieve Validation no later than the Validation Date. On or before the date on which the Project achieves Validation, Seller shall provide Buyer with (i) notice that the Project has achieved Validation and (ii) such supporting documentation as is necessary to demonstrate that Validation has been achieved.

3.2 Validation Failure.

- (a) If the Project does not achieve Validation by the Validation Date (a "Validation Failure") for any reason (which includes, for the avoidance of doubt, the occurrence of a Force Majeure or similar event), Buyer in its sole discretion may elect to (i) reasonably extend the Validation Date and adjust the Delivery Dates accordingly by notice in writing, in which case the use of the term "Delivery Date" elsewhere in this Agreement shall be construed to be a reference to the adjusted Delivery Date; or (ii) terminate this Agreement by notice in writing in

which case Seller shall pay Buyer the Validation Failure Damages within ten (10) Business Days of receipt of such written notice.

- (b) If Seller has submitted all required paperwork to the Program Oversight Body Project and has made best efforts to achieve Validation, but a Validation Failure nonetheless occurs, Seller in its sole discretion may elect to terminate this Agreement by notice in writing, in which case Seller shall pay Buyer the Validation Failure Damages along with such written notice.
- (c) Each of Buyer and Seller acknowledges that Buyer's damages relating to a Validation Failure are difficult or impossible to determine, or it may be otherwise difficult to obtain adequate remedy, and that the Validation Failure Damages represent liquidated damages constituting a reasonable approximation or the harm of loss suffered by Buyer due to the Validation Failure and early termination of this Agreement.

ARTICLE 4 OFFSET DELIVERY

4.1 Primary Obligation. With respect to each Delivery Date, the Seller shall sell and Deliver (or cause the Delivery of), and the Buyer shall purchase and Accept (or cause the Acceptance of), the Quantity of the Offsets specified in section 1.1 (*Purchase and Delivery Terms*), and the Buyer shall pay the Seller the Delivery Contract Amount with respect to the Delivered Offsets, subject to and in accordance with this Agreement and the relevant Program Rules and Offset Project Registry Rules.

4.2 Delivery. On or before each Delivery Date set forth in section 1.1 (*Purchase and Delivery Terms*), the Seller shall cause the Quantity of Offsets to be issued or transferred into Buyer's Registry Account or into the Registry Account of a third party designated in writing by Buyer. Provided that the Offsets comply with the requirements of this Agreement, Delivery shall be deemed to have occurred when the transfer of Offsets into Buyer's Registry Account is complete.

4.3 Title. Upon Delivery, Buyer will hold all right, title and interest in and to the Contract Offsets, free and clear of all liens, claims or other Encumbrances, and Seller agrees to convey and properly transfer all right, title and interest in and to the Contract Offsets upon Delivery, subject to Buyer's obligation to make payment as provided in Article 5 (*Billing and Payment*). If Buyer rejects any Delivered Offsets pursuant to section 8.3 (*Failure to Accept*), title and risk of loss to such rejected Offsets shall remain with Seller.

4.4 Transfer Further Assurances. Each Party shall provide to the other Party any information or documentation reasonably required to initiate a Transfer, cooperate to cause a Transfer to occur, and comply with any and all applicable procedures and requirements of the Program Rules and Registry Rules relating to the Transfer of Offsets.

ARTICLE 5 BILLING AND PAYMENT

5.1 Payment Due Date. Payment for each Delivery shall be due within twenty (20) Business Days of receipt of an invoice (the "Payment Due Date").

- (a) Invoices. On or after a Delivery, the Seller shall deliver a written invoice to the Buyer showing the relevant details for such Delivery, including the date of Delivery, Quantity of Contract Offsets Delivered, type (Firm or UC), vintage, Offset Price(s) and Delivery Contract Amount. For each Delivery, the Delivery Contract Amount shall equal:

$$\frac{(\text{Quantity Firm Offsets} * \text{relevant Firm Offset Price})}{\text{Delivery Contract Amount}} + \frac{(\text{Quantity UC Offsets} * \text{relevant UC Offset Price})}{\text{Delivery Contract Amount}}$$

5.2 Payment Documentation. The Seller shall promptly submit any required documentation as reasonably requested by the Buyer in connection with any such invoice.

5.3 Payment Mechanics. By no later than the Payment Due Date, the Buyer shall pay the amount owing to the Seller. All payments under this Agreement shall be made in US dollars and shall be made by direct bank transfer or equivalent transfer of immediately available funds to the credit of the account specified by the Party to whom such payment is due.

5.4 Interest. If either Party fails to pay any amount due under this Agreement, interest shall be payable on that amount at an annual rate equal to the Interest Rate as applicable from time to time plus three percentage (3%) points compounded monthly from and including the due date for the payment or the last day on which payment can be timely made but excluding the date payment is made.

5.5 Total Contract Amount. Assuming timely payment, the total purchase price due from Buyer to Seller under this Agreement shall under no circumstances exceed the Total Contract Amount set forth in section 1.1 (*Purchase and Delivery Terms*).

ARTICLE 6 TAXES AND FEES

6.1 All amounts referred to in this Agreement are exclusive of any applicable Tax chargeable. Seller will pay or cause to be paid all Taxes imposed by any Governmental Authority on or with respect to the Contract Offsets arising prior to Delivery. Buyer will pay or cause to be paid all Taxes on or with respect to the Contract Offsets at and after Delivery (other than ad valorem, franchise or income taxes which are related to the sale of the Contract Offsets and are, therefore, the responsibility of Seller). In the event Seller is required by law or regulation to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer promptly will reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing herein obligates or causes a Party to pay or be liable to pay any Taxes for which it is exempt under the law.

6.2 Each Party will bear its own costs and expenses including legal costs in connection with the preparation, negotiation and execution of this Agreement.

6.3 Except as otherwise expressly provided in this Agreement (i) Seller is responsible for all fees in connection with the Contract Offsets prior to the Delivery of Contract Offsets; (ii) Seller is responsible for any transfer fee for Contract Offsets Delivered into Buyer's Registry Account; and (iv) Buyer is responsible for all fees in connection with the Contract Offsets after Delivery into Buyer's Registry Account.

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ARTICLE 8 FAILURE TO DELIVER OR ACCEPT

8.1 Failure to Deliver Offsets. Except to the extent caused or excused by the Buyer's non-performance under this Agreement or by a Force Majeure, Program Event, or Change in Law under Article 9 (*Force Majeure, Program Events, and Change in Law*), if the Seller fails to Deliver a Quantity (whether in whole or in part) to the Buyer on or before a Delivery Date and such failure to Deliver is not cured within forty (40) days of Buyer's written demand to cure, Buyer in its sole discretion may (a) declare an Early Termination Date due to an Event of Default by Seller or (b) invoice Seller for the Buyer's Replacement Cost and the Seller shall pay the invoice within sixty (60) days of receipt. If with respect to a Delivery Date Seller fails to Deliver the entire Quantity of Firm Offsets, Buyer in its sole discretion may elect to Accept any Delivered Offsets (in which case the volume of Undelivered Offsets shall equal the difference between the required Firm Offset Quantity and the number of Firm Offsets actually Delivered) or reject any Delivered Offsets (in which case the volume of Undelivered Offsets shall equal the required Firm Offset Quantity).

8.2 Failure to Deliver, UC Offsets. With respect to any UC Offsets, it shall be a failure to Deliver subject to section 8.1 (*Failure to Deliver*) if (a) with respect to any Delivery, Seller fails to Deliver any Offsets actually issued from the Project, up to the maximum number of UC Offsets due for such Delivery; (b) the Project fails to generate emissions reductions suitable for generating Offsets due to the negligence or willful misconduct of Seller or any of Seller's contractors; or (c) Offsets from the Project were not issued due to the negligence or willful misconduct of Seller or any of Seller's contractors. If with respect to a Delivery Date a failure to deliver UC Offsets under this section 8.2 occurs, the number of Undelivered Offsets shall equal the total Quantity of UC Offsets due for such Delivery Date.

8.3 Failure to Accept. Except to the extent caused or excused by the Seller's non-performance under this Agreement (which includes any breach of Seller's representations, warranties and covenants) or by a Force Majeure, Program Event, or Change in Law under Article 9 (*Force Majeure, Program Events, and Change in Law*), if the Buyer fails to Accept a Quantity Delivered to it by Seller, and such failure to Accept is not cured within forty (40) days of Seller's written demand to cure, then Seller may invoice Buyer for the Seller's Replacement Cost and the Buyer shall pay the invoice within sixty (60) days of receipt. Notwithstanding the

foregoing, Buyer shall have the right to reject any Contract Offsets that do not conform to the requirements of this Agreement.

ARTICLE 9 FORCE MAJEURE, PROGRAM EVENTS AND CHANGE IN LAW

9.1 Force Majeure.

- (a) Upon the occurrence of a Force Majeure, the Party affected by the Force Majeure (the "FM Affected Party") shall provide prompt written notice of the Force Majeure, including details of the Force Majeure and a good faith, non-binding estimate of the extent and the expected duration of its inability to perform any of its obligations due to the Force Majeure.
- (b) The obligations of both Parties under this Agreement with respect to the Delivery(s) affected by the Force Majeure (the "FM Affected Deliveries") shall be suspended for the duration of the Force Majeure from the date of the notification given above. During the continuation of the Force Majeure, the FM Affected Party shall use all reasonable efforts to overcome the Force Majeure. Upon the Force Majeure being overcome or it ceasing to exist, both Parties shall resume full performance of their obligations under this Agreement with respect to the FM Affected Deliveries (including, for the avoidance of doubt, any suspended obligations) as soon as reasonably practicable thereafter. For the avoidance of doubt, where a Delivery Date is adjusted in accordance with this clause 9.1(b), then the use of the term "Delivery Date" elsewhere in this Agreement shall be construed to be a reference to the delayed Delivery Date.
- (c) Where a Force Majeure continues for a period of sixty (60) days, either Party may, by written notice to the other Party, terminate all (but not less than all) FM Affected Deliveries.

9.2 Force Majeure Termination Payment. If an FM Affected Delivery is terminated in accordance with section 9.1 (*Force Majeure*), the Parties' corresponding Delivery and Acceptance obligations shall be released and discharged and no termination payment shall be due between the Parties for any FM Affected Delivery, provided, however, that the obligation to pay any Unpaid Amounts shall survive the termination of the FM Affected Delivery.

9.3 Program Events.

- (a) Registry Failure. If, as of the Delivery Date for a Delivery, the Seller is unable to Deliver or the Buyer is unable to Accept Offsets solely because a Registry Failure has occurred, the event shall be treated as a Force Majeure, except that neither Party may terminate the FM Affected Delivery during the continuation of the Registry Failure.
- (b) Program Abandonment. If, at any time, a Program Abandonment occurs, all outstanding Delivery obligations shall be terminated from the effective date of such Program Abandonment as FM Affected Delivery and 9.2 shall apply, unless

Buyer in its sole discretion elects to treat the Program Abandonment as a Change in Law subject to section 9.4.

- (c) Unpaid Amounts. No Party shall be relieved from any obligations to provide any notice or pay any Unpaid Amounts or make any payment required under section 9.2 during or following a Program Event.

9.4 Change in Law.

- (a) Upon the occurrence of a Change in Law, the Party affected by the Change in Law may notify the other Party of such occurrence. The notice shall describe in reasonable detail the Change in Law and the terms and conditions upon which the affected Party is willing to continue to perform its obligations relating to any outstanding Deliveries.
- (b) Upon notice of a Change in Law, the obligations of both Parties shall be suspended and the Parties shall renegotiate in good faith the material terms or conditions so affected in order to appropriately pass through or otherwise address or reflect the effects of the Change in Law.
- (c) If the Parties are unable to agree on revised material terms or conditions within twenty (20) Business Days following the notice of a Change in Law, the Party affected by the Change in Law may terminate any affected Deliveries as FM Affected Deliveries.

9.5 Order of Application. If an event or circumstance would, in the absence of this section 9.5, constitute or give rise to more than one of the following events, it shall be treated solely as the first of the following listed applicable events: (i) a Program Event; (iii) Change in Law; (iv) a Force Majeure; or (v) an Event of Default.

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ARTICLE 11 REPRESENTATIONS AND WARRANTIES

11.1 Mutual Representations and Warranties. Each Party hereby represents and warrants to the other Party that:

- (a) Organization. It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation, and is qualified to conduct its business in that jurisdiction.
- (b) Power. It has the power to execute this Agreement and perform its obligations under this Agreement, and it has taken, or obtained, as the case may be, all

approvals, consents, resolutions or other actions that are legally required to authorize such execution, delivery and performance.

- (c) No Conflicts. The execution, delivery and performance of its obligations under this Agreement do not violate or conflict with Applicable Law, any provision of its constitutional documents, or any contractual restriction binding on or affecting it or any of its assets.
- (d) Authorizations. Required authorizations, including all governmental and other licenses, authorizations, permits, consents, contracts and other approvals (if any) that are required to enable the Party to fulfill any of its obligations under this Agreement have been obtained and are in full force and effect, and all conditions of such required authorizations have been complied with.
- (e) Physical Settlement. It enters into this Agreement with the intention that it shall be physically settled through Delivery of Offsets and shall not be financially settled or otherwise constitute a "swap" within the meaning of the Commodity Exchange Act, 7 U.S.C. 1a(47)(A);
- (f) Obligations Binding. Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application.
- (g) No Event of Default. No Event of Default has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement.
- (h) No Litigation. No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it that would, if adversely determined, be likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.
- (i) No Reliance. It is not relying upon any representations of the other Party other than those expressly set out in this Agreement.
- (j) Risk Assumption. It has entered into this Agreement after a full opportunity to review their terms and conditions, has a full understanding of those terms and conditions and of their risks, and is capable of assuming those risks.
- (k) Accurate Information. All applicable information that is furnished in writing by or on behalf of it to the other Party and is identified as being subject to or connected to this Agreement is, as of the date it is furnished to the other Party, true, accurate and complete in every material respect.

- (a) No Fiduciary. The other Party is not acting as its fiduciary or financial investment advisor.

11.2 Seller Representations and Warranties. Seller represents and warrants to Buyer upon execution and upon each Delivery:

- (a) All Contract Offsets Delivered will be Verified in accordance with the Program and Standard and on the basis of reliable and replicable data;
- (b) All Contract Offsets shall satisfy all of the additionality and other criteria of the Program and Standard;
- (c) Forest Buffer Account:
 - (i) Upon Delivery, Seller has made, and will continue to make, all contributions to the Forest Buffer Account required under the Standard and Program; and
 - (ii) Seller has not, and will not, place any Encumbrance on the Project land which will cause Seller to have to make additional contributions to the Forest Buffer Account or which will otherwise materially and adversely impact Buyer's rights under this Agreement.
- (d) Each representation, warranty, covenant and attestation made by Seller, and each of Seller's contractors to any Verifier, the Offset Project Registry, the Program Oversight Body and/or any other party involved in the issuance of the Contract Offsets is true and correct. Each such representation, warranty and attestation is incorporated herein by reference and made for the benefit of Buyer.
- (e) With respect to the Project, the offset project activity and implementation of the offset project is and was in accordance with all Applicable Laws, including all applicable local, state, or national environmental and health and safety regulations at all times during the Reporting Period(s) for which all vintages of the Contract Offsets was/were issued;
- (f) Offset credits have not been issued in any other voluntary or mandatory program within the same offset project boundary and for the same Reporting Period in which Contract Offsets were issued for Emission Reductions from the Project;
- (g) Seller has not claimed and will not claim, directly or indirectly, any Contract Offset or the underlying Emission Reductions, as part of their own carbon inventories, including on any voluntary or mandatory program.
- (h) The Emission Reductions for the Project for each vintage are measured in accordance with the Standard, and all information required to be submitted to the Offset Project Registry, including each required annual report and

Verification, for each vintage of Contract Offsets is true, accurate and complete and does not contain material errors.

ARTICLE 12 COVENANTS

12.1 Seller Covenants. The Seller covenants to the Buyer that with respect to all Contract Offsets,

- (a) No Encumbrances at Delivery. It shall convey to the Buyer full legal and beneficial title to the Contract Offsets and Emission Reductions on which the Contract Offsets are based, (whether or not such Offsets constitutes property) free and clear of any Encumbrances or any interest in or right to use the Contract Offsets by any other Entity and the Seller shall indemnify and hold the Buyer harmless for any such adverse claims with respect to the Contract Offsets.
- (b) No Encumbrances during Term. The Seller shall not sell, transfer, assign, license, dispose of, retire for its own benefit, grant or otherwise dispose of, or create any interest or Encumbrance in the Contract Offsets, Emission Reductions on which the Contract Offsets are based, or any of its related general intangibles other than as contemplated in this Agreement, and will not do so except in accordance with this Agreement.
- (c) Issuance. With respect to any Contract Offsets not yet issued, Seller shall take all necessary measures to cause the issuance of such Offsets and the Delivery of such Contract Offsets into Buyer's Registry Account. For the avoidance of doubt, failure to issue any Contract Offsets by the relevant Delivery Date is a Failure to Deliver subject to section 8.1 and section 8.2.
- (d) The Seller will remain in material compliance with the any agreement with the Program Oversight Body, including any project implementation agreement (or similar agreement) relating to the Project.

ARTICLE 13 EVENTS OF DEFAULT AND TERMINATION

13.1 Events of Default. Subject to Article 8 (*Failure to Deliver or Accept*) and section 9.5 (*Order of Application*), an "Event of Default" means the occurrence at any time with respect to a Party (the "Defaulting Party") of any of the following events:

- (a) Non-payment. The Party fails to pay any amount when due under this Agreement, and that failure is not remedied on or before the forty-fifth (45th) day after the Non-Defaulting Party gives the Defaulting Party written notice of that failure.
- (b) Failure to Deliver. Seller fails to Deliver Contract Offsets in accordance with section 4.2 and such Delivery is not made within forty (40) days of written notice from Buyer. If Buyer elects to receive payment of Buyer's Replacement Cost

pursuant to clause 8.1(b) and Seller pays such amount in the required time, the failure to Deliver shall not be an Event of Default.

- (c) Representation, Warranty or Covenant. Any material representation, warranty or covenant made, or deemed to have been made, by the Party in this Agreement proves to have been false or misleading in a material way. If such failure occurred without knowledge of the Party, the Party shall have sixty (60) days after the Non-Defaulting Party gives written notice of the failure to remedy the failure. If the Party knew of such failure, there shall be no cure period.
- (d) Material Obligations. The Party fails to perform a material obligation under this Agreement (other than an obligation constituting a separate Event of Default) and that failure is not remedied within ten (10) Business Days of the Non-Defaulting Party giving the Defaulting Party notice of that failure.
- (e) Insolvency. The Party becomes Bankrupt.
- (f) Repudiation of Agreement. The Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of this Agreement, and the repudiation is not retracted or remedied within fifteen (15) days of the date on which such repudiation is made.
- (g) Project or Offset Defect. The occurrence of any of the following, which is not remedied on or before the fortieth (40th) day after the Buyer gives the Seller written notice of that failure:
 - (i) Any material non-compliance of any Contract Offsets with the Program or Standard;
 - (ii) Seller or any of Seller's contractors intentionally interferes with the work of, or knowingly provides materially false information to Verifier or the Buyer;
 - (iii) Seller fails to maintain buffer credits required by the Program or Standard;
- (h) Offset Sales to Third Parties. Seller retains for its own benefit or sells or delivers to any third party any Offsets generated by the Project or issues credits under any other mandatory or voluntary program prior to Delivery to Buyer of the Total Contract Offsets, unless Seller has tendered such Offsets to Buyer and Buyer has rejected such Offsets.
- (i) Material Adverse Effect. The occurrence of a Material Adverse Effect with respect to the Seller which is not remedied within thirty (30) Business Days of the Buyer giving the Seller notice, provided that:

- (i) within five (5) Business Days of notice, Buyer and Seller shall meet to discuss whether it is possible to remedy the Material Adverse Effect and agree on what, if any, remedy is reasonable;
 - (ii) within ten (10) Business Days of notice Seller shall materially commence to implement the remedy; and
 - (iii) Seller shall diligently and continuously undertake to complete the remedy during the thirty (30) day cure period.
 - (iv) If (a) there is no reasonable remedy, (b) Seller fails to materially commence to implement the remedy as provided in (ii), or (c) Seller does not diligently and continuously undertake to complete the remedy as provided in (iii), then Buyer may immediately designate an Early Termination Date.
- (j) Prohibited Assignment. Seller assigns this agreement (whether pursuant to a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets or otherwise) without the written consent of the Buyer (which consent shall not be unreasonably withheld or delayed).

13.2 Suspension Following Event of Default. Notwithstanding any other provision of this Agreement, after the occurrence of an Event of Default, the Non-Defaulting Party may withhold or suspend payments under this Agreement; or suspend its compliance with Article 4 (*Offset Delivery*).

13.3 Early Termination Date. If, at any time, an Event of Default has occurred and is continuing, the Non-Defaulting Party may designate a date (the "Early Termination Date") on which to terminate, liquidate and accelerate all outstanding Deliveries and calculate its Termination Payment and terminate this Agreement by providing an Early Termination notice in writing to the other Party. Such notice must specify and describe in reasonable detail the applicable Event of Default. Upon the effective designation of an Early Termination Date: (a) no further payments or compliance with Article 4 (*Offset Delivery*) is required with respect to any Delivery, and (b) the amount, if any, payable with respect to an Early Termination Date shall be determined pursuant to section 13.4 (*Termination Payments*). The Early Termination Date shall not be earlier than the date of the Non-Defaulting Party's notice to the other Party and not later than fifteen (15) Business Days after the date of such notice.

13.4 Termination Payments.

- (a) On, or as soon as reasonably practicable after, the Early Termination Date, the Non-Defaulting Party shall liquidate each terminated Delivery by in good faith calculating the termination payment (the "Termination Payment"), which is an amount equal to:

- (i) If the Seller is the Defaulting Party:
 - (A) Buyer's Replacement Cost for any Undelivered Offsets (which includes any Offsets which will not be Delivered in the future due the occurrence of an Early Termination Date); and
 - (B) all Unpaid Amounts owed by Seller (to the extent such payment is not duplicative of Buyer's Replacement Cost); less
 - (C) any Unpaid Amounts owing to the Seller, provided, however, that Buyer shall have the right to return to Seller any Offsets that do not conform to the requirements of this Agreement and shall owe Seller no amounts for any such Offsets.
 - (D) To the extent the amount resulting from (A) through (C) is a negative number, Buyer shall pay the absolute value of such amount to Seller.
- (ii) If the Buyer is the Defaulting Party,
 - (A) Seller's Replacement Cost for any Unaccepted Offsets (which includes any Offsets which will be not be accepted in the future due to the occurrence of the Early Termination Date); and
 - (B) All Unpaid Amounts owed by Buyer (to the extent such payment is not duplicative of Seller's Replacement Cost); less
 - (C) Any Unpaid Amounts owing to the Buyer.
 - (D) To the extent the amount resulting from (A) through (C) is a negative number, Seller shall pay the absolute value of such amount to Buyer.
- (b) The Non-Defaulting Party shall provide written notice to the Defaulting Party of the Termination Payment amount on the Early Termination Date including detailed support for the Termination Payment calculation.
- (c) A Party is not required to enter into replacement transactions in order to determine the Termination Payment.
- (d) Any amounts due shall be paid by the relevant Party within sixty (60) days of receipt of written notice of the Termination Payment amount (the "Termination Payment Date").
- (e) The Non-Defaulting Party may, at its option, set off the Termination Payment against any other amounts owing (whether or not matured, contingent or invoiced) between the Parties under this Agreement or under any other agreements, instruments or undertakings between the Parties. The right of set-

off is without prejudice and in addition to any other right of set-off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise). If an amount is unascertained, the Non-Defaulting Party may reasonably estimate the amount to be set off. The Parties shall make any adjustment payment required within three (3) Business Days of the amount becoming ascertained.

ARTICLE 14 CONFIDENTIALITY

14.1 The Parties shall treat the terms of this Agreement and all information provided under or in connection with it (collectively, "Confidential Information") as confidential subject to Oregon Revised Statutes 192.502(4) and may not either disclose Confidential Information or use it other than for bona fide purposes connected with this Agreement without the prior written consent of the other Party, except that consent is not required for disclosure to:

- (a) directors, employees or Affiliates of a Party, as long as they in turn are required by that Party to treat the Confidential Information as confidential in favor of the other Party on terms substantially the same as those set out in this Article 14;
- (b) persons professionally engaged by a Party, as long as they in turn are required by that Party to treat the Confidential Information as confidential in favor of the other Party on terms substantially the same as those set out in this Article 14;
- (c) the extent required by any Governmental Authority having competent jurisdiction over that Party;
- (d) any bank, other financial institution or rating agency to the extent required in relation to the financing of a Party's business activities, as long as the bank or other financial institution or rating agency, as the case may be, is required by that Party to treat the Confidential Information as confidential in favor of the other Party on terms substantially the same as those set out in this Article 14;
- (e) the extent required by any applicable laws, judicial process or the rules and regulations of any regulated market or recognized stock exchange;
- (f) any assignee of the rights and interests of a Party under this Agreement or to a person intending to acquire an interest in a Party or that Party's Affiliate as long as such assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favor of the other Party on terms substantially the same as those set out in this Article 14;
- (g) the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Article 14; or
- (h) price reporting agencies for the calculation of an index as long as the identity of the other Party is not revealed. It must also be a precondition of the disclosure

agreement between a Party and the price reporting agency that only the price is released by the price reporting agency and not the identity of either Party.

14.2 The obligations under this Article 14 shall survive termination of this Agreement for a period of two (2) years.

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ARTICLE 17 ASSIGNMENT

17.1 Prohibition of Assignment. Seller may not assign or transfer to any person any of its rights or obligations with respect to this Agreement without the written consent of the Buyer (which consent shall not be unreasonably withheld or delayed). Buyer may assign any of its rights and transfer any of its obligations hereunder without the consent of Seller. This Agreement is binding on the Parties and their successors and permitted assigns.

ARTICLE 18 LIABILITIES

18.1 No Consequential Loss. Except to the extent included in any payment made in accordance with Article 3 (*Validation Failure*) Article 8 (*Failure to Deliver or Accept*) or sections 9.2 (*Force Majeure Termination Payment*), or 13.4 (*Termination Payments*) or provided in Article 19 (*Indemnification*), neither Party is liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise at law, for any business interruption or loss of use, profits, contracts, production, or revenue or for any consequential or indirect loss or damage of any kind however arising.

18.2 Breach of Warranty or Covenant. Except to the extent provided in Article 19 (*Indemnification*), neither Party shall be liable with respect to any breach of warranty under Article 11 (*Representations and Warranties*) or covenant under Article 12 (*Covenants*) in relation to any Delivery for any greater sum than it would be liable for under Article 13 (*Events of Default and Termination*) in relation to such Delivery for any breach of Article 4 (*Offset Delivery*) or Article 8 (*Failure to Deliver or Accept*).

18.3 Reasonable Pre-estimate and Maximum Liability. Each Party acknowledges that the payment obligations in Articles 3 (*Validation Failure*), 8 (*Failure to Deliver or Accept*), 9 (*Force Majeure, Program Events, Change of Law*) and 13 (*Events of Default and Termination*) are reasonable in the light of the anticipated harm and the difficulty of estimation or calculation of actual damages. Each Party waives the right to contest those payments as an unreasonable penalty. Each Party further acknowledges that the payment obligation in Article 13 (*Events of Default and*

Termination) shall constitute the maximum liability in the event of termination of this Agreement.

18.4 Sole Remedy. Except as expressly provided in Article 19 (*Indemnification*), the rights to suspend, take action, terminate, liquidate and accelerate and to be paid a Termination Payment under Article 13 (*Events of Default and Termination*) together with any interest arising thereunder are in full and final satisfaction of the rights of the Non-Defaulting Party if an Event of Default occurs with respect to the Defaulting Party.

ARTICLE 19 INDEMNIFICATION

19.1 In addition to any other indemnification obligation imposed by this Agreement, Seller will indemnify and hold harmless Buyer from and against (a) fines, penalties, costs, fees, or damages incurred by Buyer or which Buyer must pay any third party ("Losses") to the extent that such costs are due to failure by Buyer or such third party to meet a deadline for retiring Offsets and such failure was caused by Seller's failure to Deliver; (b) Losses relating to any situation in which some or all of the Contract Offsets are revoked, suspended, frozen or otherwise become impaired due to any impairment to the Project or the acts or omissions of Seller, or Seller's contractors, including revocation or removal of Contract Offsets by the Program Oversight Body due to later-discovered defects to annual reports, verification reports or other documents associated with the Project.

ARTICLE 20 SETTLEMENT OF DISPUTES

20.1 Either Party may commence negotiations to resolve any dispute arising out of or in connection with this Agreement (including any question regarding its existence, validity or termination) by giving the other Party written notice of any dispute not resolved in the normal course of business (Dispute Notice).

20.2 The Parties will attempt in good faith to resolve any dispute promptly by negotiation between executives authorized to resolve such disputes. If the dispute has not been resolved by negotiation within twenty-five (25) Business Days of delivery of the Dispute Notice, the complaining Party may submit the dispute to arbitration in accordance with section 20.3 below.

20.3 Any claim, controversy or dispute arising under or relating to this Agreement that the Parties are unable to resolve themselves will be settled by binding arbitration in Portland, Oregon, administered by the JAMS in accordance with its then current Comprehensive Arbitration Rules and Procedures, as modified or supplemented hereby, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The language of the arbitration will be English. Unless otherwise agreed by the Parties, there will be only one arbitrator. The arbitrator will be prohibited from granting any relief that is inconsistent with the terms and conditions of this Agreement. Process in any such arbitration proceeding may be served on any Party anywhere in the world by notice given to the Party in accordance with section 26.5.

ARTICLE 21 INSURANCE

21.1 Insurance. Seller shall, at its own expense, provide liability insurance, which will cover the Project. Such insurance may be provided as part of Seller's overall insurance coverage. Such insurance shall include liability limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate coverage, and Buyer shall be an additional insured on such insurance with respect to the Project. Such insurance may not be cancelled without thirty (30) days prior written notice to Buyer. Within five (5) Business Days of the Effective Date of this Agreement, Seller shall provide proof of such insurance to Buyer.

ARTICLE 22 CHANGING VERIFICATION STANDARD.

22.1 Buyer may, upon receipt of written consent of Seller, have any or all of the Emission Reductions generated by the Project verified to a Program other than the Program and/or a standard other than the Standard. Such consent of Seller shall not be unreasonably withheld or delayed. Buyer shall be responsible for all additional costs relating to the change in the Program and/or Standard.

22.2 If the Emission Reductions or Contract Offsets generated by the Project are or become eligible to qualify as emission offsets under any other federal, state, provincial, or regional cap-and-trade program, then, at the request of Buyer or the then-current owner of the Contract Offsets, and at Buyer's or the then-current owner's expense, Seller shall cooperate to take all actions necessary to convert the Contract Offsets into emission offsets under the federal, state, provincial or regional offset program, including but not limited to the verification (or re-verification) of the Offsets, listing the Project and registering the Project with the registry established or designated by such cap-and-trade program.

22.3 If Buyer requests a change under section 22.1 or 22.2, Seller shall provide an estimate of Seller's reasonable costs, including its commercially reasonable and then-standard rates; Buyer or the then-current owner will reimburse Seller's documented costs including but not limited to employee hourly rate charges at the rates provided in the cost estimate, travel, payables and overhead associated with the conversion; and Seller shall continue to be responsible for costs under the existing Standard and Program Rules to the extent contemplated under this Agreement with respect to the existing Standard, including but not limited to verification costs and issuance fees therefor.

22.4 If Buyer changes, supplements or alters the Program and/or Standard under clause 22.1 or 22.2, all references to the Program and/or Standard and associated terminology in this Agreement will be taken to be references to, or equivalent terminology used in, the replacement standard except that any references to Standard contained in section 11.2 (Seller's Representations and Warranties), shall refer to the Standard in effect at the time such representation and warranty is made.

ARTICLE 23 AUDIT

23.1 Buyer and its duly authorized representatives shall have access to the accounting records and other documents maintained by the Seller which relate to the Offsets being transferred under this Agreement. Buyer shall have the right to audit such records once a year at any reasonable time or times within twenty-four (24) months of the rendition of any statement or invoice forming the basis of such audit request.

ARTICLE 24 PROJECT REPORTS

24.1 Unless otherwise provided in this Agreement, until Delivery of any Contract Offsets due under this Agreement, Seller shall provide at Buyer's request a reasonably detailed report of the Project no less frequently than every 180 days, beginning from the Effective Date.

ARTICLE 25 PUBLICITY AND MARKETING

25.1 Seller and the Buyer may desire to generate marketing and publicity regarding the Buyer's purchase of Offsets from the Projects and will work together to develop such materials. All marketing materials are subject to the prior written approval of both Parties, which approval shall not be unreasonably withheld. Neither Party hereto shall issue any press release or make any public announcement(s) relating in any way whatsoever to this Agreement or the relationship established by this Agreement without the prior consent of the other Party. A Party's consent or approval under this section 25.1 shall be deemed to be given if the Party has not responded or objected to materials within 5 Business Days of receiving the materials.

ARTICLE 26 MISCELLANEOUS

26.1 Waiver. No waiver by either Party of any breach by the other of this Agreement operates unless expressly made in writing, and any such waiver is not to be construed as a waiver of any other breach.

26.2 Amendment. No amendment to the provisions of this Agreement is valid unless it is in writing and signed by each Party.

26.3 Entire Agreement. This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made with respect to its subject matter other than those given or made in this Agreement

26.4 Severability. If any provision or part of a provision of this Agreement is found by a court, arbitrator or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.

26.5 Notices. Any notice or other communication to be given or made with respect to this Agreement by one Party to the other is to be given or made in writing to the other at the address or contact number or in accordance with the electronic messaging system or e-mail details provided below:

<p>If to Seller:</p> <p>Name: City of Astoria Attn: Ken Cook Address: 1095 Duane St, Astoria, OR 97103 Phone: 503-338-5173 Fax: 503-325-2017 Email: kcook@astoria.or.us</p> <p>With mandatory copy to:</p> <p>Ring Bender McKown & Castillo LLLP Attn: Christine L. Hein 621 SW Morrison St., Suite 600 Portland, OR 97205 Phone: 503-964-6726 Email: chein@ringbenderlaw.com</p>	<p>If to Buyer:</p> <p>Name: Oregon Climate Trust Attn.: Sheldon Zakreski Address: 65 SW Yamhill Ave., Suite 400, Portland, OR 97204 Phone: 503-238-1915 Fax: 503-238-1953 Email: szakreski@climatetrust.org</p> <p>With mandatory copy to:</p> <p>Anderson Law Firm Attn: Erika Anderson 1563 Solano Ave. #422 Berkeley, CA 94707 Phone: 415-265-6401 Email: erika@erikaandersonlaw.com</p>
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A written notice is deemed to have been received:

- (a) if sent by e-mail, on the Business Day the e-mail is sent or on the first (1st) Business Day after the date the e-mail is sent if sent on a day other than a Business Day, unless the sender receives an automatically generated response indicating that the e-mail address is not valid.
- (b) if delivered by hand, on the Business Day of delivery or on the first (1st) Business Day after the date of delivery if delivered on a day other than a Business Day;
- (c) if sent by registered mail, on the Business Day of delivery or on the first (1st) Business Day after the date of delivery if delivered on a day other than a Business Day; or
- (d) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 5:00 p.m. on a Business Day or otherwise at 9:00 a.m. on the first Business Day after transmission.

26.6 Third Party Rights. Subject to the rights that may accrue to any successor or permitted assignees of the Parties, no provision of this Agreement is to be construed as creating any rights

enforceable by a third party, and all third party rights implied by law are, to the extent permissible by law, excluded from this Agreement.

26.7 Governing Law and Disputes. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON. THE PARTIES SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN PORTLAND, OREGON, FOR THE PURPOSES OF ANY DISPUTE UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH IT. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

26.8 Bankruptcy Code Acknowledgments. The Parties hereto intend for:

- (a) The Deliveries hereunder and this Agreement each to be a "forward contract" and the Parties to be "Forward Contract Merchants" within the meaning of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, including without limitation as such term is used in Sections 101, 362 and 555 thereof;
- (b) A Party's right to liquidate, terminate or accelerate any Delivery, to offset, net or net out termination values, payment amounts or other Delivery obligations, and to exercise any other remedies upon the occurrence of any Event of Default under this Agreement or any Delivery thereunder with respect to the other Party that results in the termination or cancellation of this Agreement or any Delivery hereunder to constitute a "contractual right" within the meaning of Sections 560 and 561 of the Bankruptcy Code;
- (c) All payments or deliveries for, under or in connection with this Agreement or each Delivery hereunder, all payments for any securities or other assets and the transfer of such securities or other assets to constitute "settlement payments" and "transfers" "under" or "in connection with" this Agreement and each Delivery hereunder, and in each case within the meaning of the Bankruptcy Code.

26.9 Counterparts. This Agreement may be executed in any number of counterparts and all counterparts taken together will be deemed to constitute one and the same instrument. This Agreement may be authenticated by manual signature, facsimile or ".PDF" email attachment, all of which shall be equally valid.

26.10 Conflict of Interest. Except as otherwise expressly provided herein, no director, employee or agent of either Party, its subcontractors or vendors, shall give or receive from any director, employee or agent of the other Party or any Affiliate any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Agreement. In addition, no director, employee or agent of either Party, its subcontractors or vendors, shall enter into any business arrangement with any director, employee or agent of the other Party or any Affiliate who is not acting as a representative of such Party or its Affiliate without prior written

notification thereof. Any representative(s) authorized by either Party may audit the applicable records of the last three (3) years of the other Party for the sole purpose of determining whether there has been compliance with this section. All financial settlements, reports, and billings rendered to a Party are to properly reflect the facts about all activities and transactions.

26.11 The Parties acknowledge that the relationship created pursuant to this Agreement is one of Seller and Buyer on an arm's length basis. Nothing in this Agreement shall be construed to create a partnership or joint venture between the Parties.

ARTICLE 27 DEFINITIONS

The following words or phrases, where they appear in this Agreement, have the following respective meanings:

"Accept" means, unless the circumstances require otherwise, the receipt and acceptance by Buyer of Contract Offsets into Buyer's Registry Account, and "Acceptance" and "Accepted" shall be construed accordingly.

"Affiliate" means, with respect to any Entity, any other Entity that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the Entity. The terms "controls", "controlled by" and "under common control with" mean the possession, directly or indirectly through one or more intermediaries, of more than fifty percent (50%) of the outstanding voting stock of, or the power to direct or cause the direction of the management policies of, any Entity, whether through ownership of stock, as a general partner or trustee, by contract or otherwise.

"Applicable Law" means any applicable international, federal, provincial, state, local or municipal statute, law, constitution, treaty, rule, by-law, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, interpretation, advice letter, authorization, resolution, judgment, decree or other legal or regulatory determination or restriction by any Governmental Authority, court or arbitrator of competent jurisdiction that apply to the Program or any one or both of the Parties (or any of their assets) or the terms hereof; and any binding interpretation of the foregoing. Applicable Law includes Program Rules made available by the Program Oversight Body and, with respect to a Program, have analogous effect of law.

"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, (v) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or

other legal process levied, enforced or sue on or against all or substantially all of its assets; or (v) is generally unable to pay its debts as they fall due.

"Business Day" means any day other than a Saturday, Sunday, or a US federal government holiday.

"Buyer's Registry Account" means Buyer's account(s) at the Offset Project Registry, as set forth in section 1.1 (*Purchase and Delivery Terms*).

"Buyer's Replacement Cost" means, with respect to a failure to Deliver a volume of Offsets ("Undelivered Offsets"):

- (a) any amount previously paid by the Buyer to the Seller for the Undelivered Offsets; plus
- (b) the product of (x) the positive difference, if any, between (A) the price the Buyer, acting in a commercially reasonable manner, does or would pay to per credit to replace the Undelivered Offsets in an arm's length transaction for an equivalent quantity of Offsets of the same vintage generated under the same Standard and in the same geographic location; and (B) the relevant Offset Price, multiplied by (y) the volume of Undelivered Offsets; plus
- (c) interest on the amount calculated in accordance with paragraph (a) above for the period from (and including) the Delivery Date to (but excluding) the Early Termination Date (or the date of the invoice, as relevant) at the rate specified in section 5.4 (*Interest*); plus
- (d) the amount of reasonable costs and expenses that the Buyer incurs with respect to the Undelivered Offsets (including, without limitation, broker fees, commissions and legal fees);
- (e) For the avoidance of doubt, with respect to a failure to Deliver UC Offsets (as described in section 8.2 (*Failure to Deliver, UC Offsets*)) or a Seller Event of Default, the number of UC Offsets which shall be Undelivered Offsets for which Seller is obligated to pay Buyer shall equal the total number of UC Offsets due for the relevant Delivery Date or under this Agreement, as relevant.

"Change in Law" means the adoption, enactment or promulgation of any new Applicable Laws or the amendment, modification, revision or repeal of any existing Applicable Laws, or the issuance by a Governmental Authority or the Program Oversight Body, as relevant, of an order, decision or interpretation of any existing Applicable Laws as a result of which (i) the implementation or continuance of the Project is prevented or prohibited; (ii) Emission Reductions with respect to the Project are required; (iii) the Program is permanently discontinued; or (iv) the Buyer or a third party is no longer permitted to use the Offsets to satisfy its compliance obligations under Applicable Law. For the avoidance of doubt, Change in

Law does not include decisions or interpretations of the Program Rules by the Program Oversight Body which make transacting in Offsets impracticable or less financially attractive or which diminish the number of Offsets that can be issued based on Emission Reductions from the Project. In the event that the Program Oversight Body issues such decisions or interpretations, the Parties agree to engage in good faith discussions to determine whether it is appropriate to modify any terms of this Agreement.

"Confidential Information" is defined in Article 14 (*Confidentiality*).

"Contract Offsets" means Offsets generated by the Project to be Delivered as provided in this Agreement. Contract Offsets includes Firm Offsets and UC Offsets (up to the number that are or should be available for Delivery).

"Defaulting Party" is defined in section 13.1 (*Events of Default*).

"Deliver" means, as the circumstances require, (a) the completion by the Seller of the transfer of un-Encumbered of Contract Offsets into Buyer's Registry Account; or (b) the actual issuance of un-Encumbered Contract Offsets into Buyer's Registry Account. "Delivery" and "Delivered" shall be construed accordingly.

"Delivery Contract Amount" means, for each Delivery, the amount (expressed in U.S. Dollars) calculated by multiplying the Offsets Price by the Quantity for that Delivery.

"Delivery Date" means, in relation to a Delivery, the Business Day agreed between the Parties as the date by which Contract Offsets are to be transferred to Buyer's Registry Account (or the account of a third party, as relevant).

"Dispute Notice" is defined in section 20.1.

"Early Termination Date" is defined in section 13.3 (*Early Termination Date*).

"Effective Date" means the date set out on the first page of this document.

"Emission Reduction" means all existing and future legal and beneficial rights arising from the physical reduction or sequestration of greenhouse gases (GHG reductions and GHG removal enhancements) by the Project measured in increments of one metric ton of carbon dioxide equivalent, including any right, interest, credit, entitlement, benefit, allowance, certificate or registrable right arising from or in connection with that reduction or sequestration.

"Encumbrance" means any mortgage, charge, pledge, lien, tax, claim, assignment, demand, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, or other encumbrance or any interest in or right to use the Contract Offsets (or the Emission Reductions on which they are based) by any other Entity.

"Entity" means an individual, government or state or division of it, government or state agency, corporation, partnership or such other entity as the context may require.

"ERT" means Emission Reduction Tonne or the greenhouse gas Offset issued by the American Carbon Registry.

"Event of Default" is defined in section 13.1 (Events of Default).

"Firm Offsets" means the number of Contract Offsets set forth in section 1.1 (*Purchase and Delivery Terms*) that Seller is obligated to Deliver on each Delivery Date.

"Firm Offset Price" means the price per Firm Offset that Buyer will pay for each Firm Offset Delivered, as set forth in section 1.1 (*Purchase and Delivery Terms*).

"FM Affected Party" is defined in section 9.1 (*Force Majeure*).

"FM Affected Delivery" is defined in section 9.1 (*Force Majeure*).

"Force Majeure" means the occurrence of any other event or circumstance, beyond the control of the FM Affected Party, that could not, after using all reasonable efforts, be overcome and which makes it impossible for the FM Affected Party to either (a) cause the issuance of Offsets, (b) Deliver the Offsets from any Registry Account; or (c) Accept the Delivery of Offsets into the relevant Buyer's Registry Account in accordance with the Program Rules. Without limitation, the following events shall not constitute a Force Majeure: (i) the inability of a Party to perform a relevant Delivery or Acceptance obligation as a result of it (x) in the case of the Buyer, having insufficient funds, or (y) in the case of the Seller, having insufficient Offsets due to the acts or omissions of Seller or any of Seller's contractors; (ii) a failure to generate or issue Offsets due to the acts or omissions of Seller or any of Seller's contractors, (iii) a change in the market value for Offsets; (v) any situation in which Contract Offsets are revoked, suspended, frozen or otherwise become impaired due to any impairment to the Project or the acts or omissions of Seller, or Seller's contractors, including revocation or removal of Contract Offsets by the Program Oversight Body due to later-discovered defects to annual reports, verification reports or other documents associated with the Project; (vi) for offsets from a forestry project, the occurrence of any event which is an unintentional or intentional reversal or a project termination..

"GHG" or "Greenhouse Gas" means a gas with high global warming potential, including carbon dioxide (CO₂), methane (CH₄), nitrogen trifluoride (NF₃), nitrous oxide (N₂O), sulfur hexafluoride (SF₆), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and other fluorinated greenhouse gases.

"Governmental Authority" means any international, national, federal, provincial, state, regional, municipal, county or local government, administrative, judicial or regulatory Entity

operating under any Applicable Law and includes any court, administrative agency, board, bureau, commission, department or regulatory body of any government. The term Governmental Authority includes the Program Oversight Body.

"Interest Rate" means the rate per annum equal to the "Monthly" Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

"Material Adverse Effect" means an event or condition that does, or is reasonably likely to, (i) have a significant adverse effect on (A) Seller's ability to operate the Project or complete Delivery of Offsets, (B) Seller's required rights or abilities to perform its obligations, or (C) Seller's business, operations, properties, assets, prospects or condition (financial or otherwise), (D) Buyer's customers, or (ii) subject Buyer, or any of its executives, agents, directors, or employees, to any (A) criminal or third party civil liability or (B) enforcement action or investigation by any Governmental Authority.

"Non-Defaulting Party" means the Party that is not the Defaulting Party.

"Offset" means an Emission Reduction, representing one metric ton of carbon dioxide equivalent that has been issued by the Program Oversight Body in accordance with the Program and Standard, and including all rights, title and interest in and to any reporting rights associated with such Emission Reductions generated by the Project and verified by the Verifier in accordance with the Program and Standard. Offsets include the Contract Offsets and are anticipated to be Emission Reduction Tonnes (ERTs) unless otherwise agreed by the Parties in writing. For the avoidance of doubt, the term Offset includes the rights to the underlying Emission Reduction, an Emission Reduction is not an Offset unless it has been validated, verified and issued according to the Program and Standard.

"Offset Price" means, for a particular Quantity, vintage, type (Firm or UC) and Delivery Date, the amount agreed to be the price for that Quantity (per Offset) as designated in section 1.1 (*Purchase and Delivery Terms*)

"Offset Project Registry" means the system or systems established by the Program Oversight Body to track issuance, transfer and retirement of Offsets as specified in section 1.1 (*Purchase and Delivery Terms*).

"Pacific Time" means Pacific Standard Time or Pacific Daylight Savings Time, as applicable.

"Party" means one or other of the parties to this Agreement and "Parties" is to be construed accordingly.

"Payment Due Date" is defined in section 5.1 (Payment Due Date).

“Program” means the specific program set forth in section 1.1 (*Purchase and Delivery Terms*) pursuant to which Emission Reductions are to be validated and/or verified in order to generate Contract Offsets.

“Program Abandonment” means the Program Oversight Body has permanently discontinued the effective application of the Program Rules and such Program Oversight Body action is final and non-appealable, and such circumstance is not within the reasonable control of, or the result of the negligence of, either Party.

“Program Event” means a Registry Failure or a Program Abandonment. Without limitation, the following events will not constitute a Program Event: (i) the inability of a Party to perform a relevant Transfer or Receipt obligation as a result of it having insufficient Offsets in the relevant Registry Account; or (ii) decisions or interpretations of the Program Rules by the Program Oversight Body which make transacting in Offsets impracticable, less financially attractive, or which diminishes the number of Offsets that can be issued based on Emission Reductions from the Project.

“Program Oversight Body” means the body set forth in section 1.1 (*Purchase and Delivery Terms*), whether governmental or private, responsible for rulemaking and oversight of the Program.

“Program Rules” means the rules governing the Program as provided by the Program Oversight Body, including manuals, policies, guides, Registry Rules and applicable Standards (each as may be amended from time to time), as well as interpretations and other guidance made available by the Program Oversight Body from time to time.

“Project” or “Bear Creek Watershed Forestry Project” means the management of the 3,700 acre Bear Creek Watershed by the City of Astoria in a manner that reduces greenhouse gas emissions.

“Quantity” means the aggregate quantity of Offsets that the Parties have agreed to Deliver and Accept for each Delivery Date as specified in section 1.1 (*Purchase and Delivery Terms*).

“Registry Account” means an account in the Offset Project Registry that an Entity receives when it registers with the Program Oversight Body pursuant to the Program Rules, which will be used to record the issuance or Transfer of Offsets.

“Registry Failure” means a disruption in the ability of either Party to Deliver or Accept Offsets, as applicable, caused solely by the Offset Project Registry that (i) is not specific to either Party’s Registry Account, and (ii) is not within the control of, or the result of the negligence of, such Party and which could not have been avoided by the exercise of reasonable due diligence.

“Registry Rules” means all policies, procedures and requirements adopted by the Program Oversight Body in connection with the management of its registry program, including, but not

limited to, operating procedures, terms of use, program manual(s), and all applicable Standards.

"Reporting Period" is the discrete period of time for which a Project Developer quantifies and reports Emission Reductions, as well as required project data, to the Program Oversight Body as defined the Program Rules and/or Standard.

"Seller's Registry Account" means the account that Seller has established in the Offset Project Registry which is eligible to receive or hold Offsets.

"Seller's Replacement Cost" means with respect to a failure to Accept (or cause the Acceptance of) a Delivery of a volume of Contract Offsets ("Unaccepted Offsets"):

- (a) any positive difference between (i) the relevant Offset Price multiplied by the volume of Unaccepted Offsets, and (ii) the price the Seller, acting in a commercially reasonable manner, does or would receive in an arm's length transaction for an equivalent volume of like Offsets; plus
- (b) interest on the amount calculated in accordance with paragraph (a) above for the period from (and including) the Delivery Date to (but excluding) the Early Termination Date (or the date of the invoice, as relevant) at the rate specified in section 5.4 (*Interest*); plus
- (c) the amount of such reasonable costs and expenses which the Seller incurs with respect to the Unaccepted Offsets (including, without limitation, broker fees, commissions and legal fees).

"Standard" means the Protocol and Standard promulgated by the Program Oversight Body as specified in section 1.1 (*Purchase and Delivery Terms*), which contain the requirements for issuing Offsets based on Emission Reductions from the Project.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Termination Payment" is defined in clause 13.4(a) (*Termination Payments*).

"Termination Payment Date" is defined in clause 13.4(d) (*Termination Payments*).

"Total Contract Amount" means the maximum amount that Buyer is obligated to pay Seller for Offsets Accepted under this Agreement, as set forth in section 1.1 (*Purchase and Delivery Terms*).

"Total Contract Offsets" means the maximum total number of Contract Offsets that Seller is obligated to Deliver and Buyer is obligated to Accept under this Agreement, as set forth in section 1.1 (*Purchase and Delivery Terms*).

"Transfer" means (whether used as a verb or a noun) with respect to a Delivery, the transfer of ownership, receipt and deposit of Offsets from the Seller's Registry Account to the Buyer's Registry Account in accordance with the relevant Program Rules, and "Transferred" and "Transferable" are to be construed accordingly.

"UC Offsets" means Contract Offsets that Seller is obligated to Deliver if such Offsets are issued for the Project, up to the total number indicated in section 1.1. Subject to the terms of this Agreement, including without limitation section 8.2 (*Failure to Deliver, UC Offsets*), in the event that the Project generates fewer than the number of UC Offsets, Seller shall have no obligation to Deliver Offsets above the actual amount of Offsets issued.

"UC Offset Price" means the price per UC Offset that Buyer will pay for each UC Offset Delivered, as set forth in section 1.1 (*Purchase and Delivery Terms*).

"Unaccepted Offsets" is defined in the definition of Seller's Replacement Cost.

"Undelivered Offsets" is defined in the definition of Buyer's Replacement Cost and discussed in Sections 8.1 and 8.2.

"Unpaid Amounts" owing to any Party means

- (a) any amount that became payable to that Party or that relates to obligations performed by the Party prior to the first day of the period for which the obligations of the Parties are suspended or terminated under Article 9 (*Force Majeure, Program Events and Illegality*) which remains unpaid; or
- (b) any amount that became payable to that Party on or prior to an Early Termination Date under Article 13 (*Events of Default and Termination*) which remains unpaid.

"Validation" means the successful validation of the GHG Project Plan (as defined in the Standard) for the Project, as required by the Standard.

"Validation Failure" is defined in section 3.2.

"Validation Failure Damages" is the amount of liquidated damages Seller will pay Buyer if Buyer terminates the Agreement based on the occurrence of a Validation Failure. The amount of Validation Failure Damages is set forth in section 1.1 (*Purchase and Delivery Terms*).

"Verification" means the determination by the Verifier that the Emission Reductions generated by the Project meet the verification criteria of the Standard.

"Verifier" means the independent third party selected by Seller in accordance with the Standard to Verify the Project.

IN WITNESS WHEREOF the Parties have duly executed and delivered this Agreement on the respective dates set out below with effect from the Effective Date.

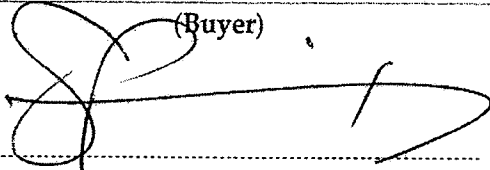
Oregon Climate Trust

City of Astoria

(Buyer)

(Seller)

By: _____



By: _____

Name: Sean Penrith
Title: Executive Director
Date: June 3, 2015

Name:
Title:
Date: