

Justification for a Non-Competitive Procurement Process

Cap-and-Trade Financial Services for Auctions and Reserve Sales

September 5, 2013

Introduction

In support of its purpose to “provide administrative and technical services” to its Participating Jurisdictions, WCI, Inc. proposes to procure Cap-and-Trade Financial Services for Auctions and Reserve Sales. The scope of work for the financial services administrator is based on and defined to meet the specifications and requirements of the two Participating Jurisdictions that are implementing cap-and-trade programs: California and Québec. This document summarizes the justification for procuring these services through a non-competitive procurement process.

Description of Services

The purpose of this work is to provide financial and transactional escrow agency services for Participating Jurisdictions that are linking their cap-and-trade programs. This work builds upon the substantial, competitively-procured effort by California for financial services of its cap-and-trade program, and enables a Québec only auction and a Québec /California practice joint auction in 2013, and will help Québec and California prepare for joint auctions and reserve sales in 2014. The specific services being procured in the proposed WCI, Inc. contract are:

- **Auction and Reserve Sale Preparation Services**, which includes preparing, updating, and communicating auction and reserve sale processes and participating in bidder trainings and a practice auction as needed;
- **Pre-Auction and Pre-Reserve Sale Services**, which includes processing financial qualification applications, opening and maintaining accounts for approved auction and reserve sale participants, and reviewing financial guarantees; and
- **Post Auction and Post Reserve Sale Services**, which includes conducting the financial settlement for each auction and reserve sale and processing and distributing proceeds and financial guarantee deposits, per instructions from the Participating Jurisdictions.

The financial services administrator will coordinate with WCI, Inc., the California Air Resources Board, the Québec Minister of Sustainable Development, Environment, Wildlife, and Parks, the designated auction and reserve sale operator, and the designated market monitor as appropriate to provide these services.

Steps Taken to Procure the Services Using Competitive Procurement Procedures

The proposed contract would extend the capabilities of the California cap-and-trade financial services to include Québec and enable joint auctions. California developed its capabilities through a transparent, competitive procurement process. California issued a request for proposals on November 8, 2011 and

issued on December 27, 2011 a notice of intent to award to Deutsche Bank. No additional steps were taken to competitively procure the proposed services for WCI, Inc.

Alternative Procurement Approach

To provide the services required by the Participating Jurisdictions implementing cap-and-trade programs, the following approach was taken:

- **Timing:** The procurement must result in a qualified contractor that can initiate work immediately and reliably in order to provide financial services in 2013.
- **Scope:** The scope of work is limited to the items essential for the Participating Jurisdictions' immediate needs to implement a linked cap-and-trade system.

WCI, Inc. and Participating Jurisdiction staff approached Deutsche Bank to confirm its interest in and availability for this work. A gap analysis was conducted by Deutsche Bank and presented to WCI, Inc. and Participating Jurisdiction staff to identify the subtasks, level of effort, and costs of meeting the objectives of the work. A draft contract was prepared by WCI, Inc., in consultation with Participating Jurisdiction staff, and sent to Deutsche Bank. Through discussions with Deutsche Bank, the draft contract, including the Scope of Work, Terms and Conditions, Insurance Requirements, Cost, and Schedule, was revised and a complete contract was finalized on September 5, 2013.

During the process of developing the contract with Deutsche Bank, the draft contract Terms and Conditions were reviewed by WCI, Inc. counsel. The draft contract was also presented to Participating Jurisdiction staff and some members of the WCI, Inc. Board for review and discussion. The final proposed contract addresses the requirements of the Participating Jurisdictions' cap-and-trade programs, and responds to the direction from Participating Jurisdictions.

The cost proposal from Deutsche Bank provides detail on expected costs necessary to perform the project. The detail and costs were reviewed and determined to be consistent with the requirements of the project. Overall, the Deutsche Bank cost proposal was found to be reasonable and competitively priced.

Justification

Deutsche Bank is uniquely and singularly qualified to meet the timing, contracting, and staffing resources necessary to achieve the project objectives. Deutsche Bank has the experience and qualifications to provide client financial and transactional escrow agency services as well as a unique knowledge of the auction and reserve sale processes and technology platform that must be used for the auctions and reserve sales described above.

WCI, Inc.'s Procurement Policy (approved January 12, 2012) provides for non-competitive procurement in certain instances. In this case, the non-competitive procurement is justified based on the following allowable exemptions:

“Contracts for services provided by contractors that have been selected by a federal, state, city, county, provincial, or other regulatory entity, usually through a competitive process.”



CONTRACT
Cap-and-Trade Financial Services
for Auctions and Reserve Sales

September 19, 2013

STANDARD AGREEMENT ("Agreement")

AGREEMENT NUMBER

2013-05

1. This Agreement is entered into between Western Climate Initiative, Incorporated (WCI, Inc.) and the Contractor named below:

CONTRACTOR'S NAME

Deutsche Bank National Trust Company

2. The term of this Agreement is: **Beginning upon signature by both parties and ending on December 31, 2013.**

3. The maximum amount of this Agreement is: **██████████ (US)**

4. The parties agree to comply with the terms and conditions of the following attachments, which are by this reference made a part of the Agreement. WCI, Inc. is not an agent of the WCI, Inc. Participating jurisdictions or any of its funding entities.

Attachment A – Scope of Work ("Work" or "Work Schedule")

Attachment B – Budget Detail and Payment Provisions

Attachment C – General Terms and Conditions

Attachment D – Individual Conflict of Interest and Confidentiality

Attachment E – Contract Insurance Requirements

Attachment F – Contractor's Technical and Cost Proposal

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR

CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)

Deutsche Bank National Trust Company

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Jane Snyder, Vice President

BY (Authorized Signature)

DATE SIGNED

PRINTED NAME AND TITLE OF PERSON SIGNING

Andrew Ball, Vice President

ADDRESS

1761 East St. Andrew Place, Santa Ana, CA 92705

CONTRACTEE

CONTRACTEE'S NAME

Western Climate Initiative, Inc.

BY (Authorized Signature)

DATE SIGNED (Do not type)

PRINTED NAME AND TITLE OF PERSON SIGNING

Patrick Cummins, Executive Director

ADDRESS

980 Ninth Street, Suite 1600, Sacramento, CA 95814

WCI, Inc. Use Only

Contractor agrees to provide to WCI, Inc. the services as described in Attachment A, Scope of Work, and in Attachment F, Contractor's Technical and Cost Proposal.

Project Representatives are responsible for administrative and financial oversight and accountability. The Contractor Project Representative has the authority to make executive level administrative decisions for the Contractor and any subcontractor(s).

The project representatives during the term of this agreement will be:

Western Climate Initiative, Inc.	Contractor: Deutsche Bank National Trust Company
Name: Patrick Cummins	Name: Jane Snyder and Lisa McDermid
Phone: 916-449-9966	Phone: 714-247-6038 and 212-250-6674
Email: pcummins@wci-inc.org	Email: jane.snyder@db.com, lisa.mcdermid@db.com

Direct all administrative inquiries to:

Western Climate Initiative, Inc.	Contractor: Deutsche Bank National Trust Company
Attention: Patrick Cummins	Name: Jane Snyder and Lisa McDermid
Phone: 916-449-9966	Phone: 714-247-6038 and 212-250-6674
Email: pcummins@wci-inc.org	Email: jane.snyder@db.com, lisa.mcdermid@db.com

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PURPOSE / BACKGROUND / OVERVIEW

A. Purpose

The purpose of this work is to provide financial and transactional escrow agency services for WCI, Inc. Participating Jurisdictions that are linking their cap-and-trade programs.

B. Background

California and Québec are currently in the process of linking their greenhouse gas cap-and-trade programs. This process includes co-development of market infrastructure for the registration, sale, and monitoring of greenhouse gas emission allowances. Under a competitively-awarded contract with the California Air Resources Board (ARB), Deutsche Bank is providing financial and transactional escrow agency services for California auctions and California reserve sales. Deutsche Bank has been working with WCI, Inc., Québec, and California to understand the regulations and requirements for Québec auctions and reserve sales and for joint California-Québec auctions. This contract enables the additional work required to expand the financial and transactional escrow agency services to enable a linked California-Québec carbon market.

C. Overview

The scope of work in this contract is similar to Deutsche Bank's scope of work with ARB. This ensures efficient administration and seamless services to jurisdictions and covered entities in the linked market.

Financial and transactional escrow agency services will be provided for calendar year 2013 and include, but are not limited to, auction and reserve sale preparation services, pre-auction and pre-reserve sale services, and post auction and post reserve sale services. The anticipated events during 2013 include one Québec auction and one practice California-Québec joint auction. In addition, preparation services and experience gained in the 2013 events will facilitate real joint auctions in 2014.

ATTACHMENT A: SCOPE OF WORK

CAP-AND-TRADE FINANCIAL SERVICES FOR AUCTIONS AND RESERVE SALES

SEPTEMBER 5, 2013

The scope of work consists of three tasks as described below and in more detail in Attachment F, Contractors Technical and Cost Proposal, dated September 5, 2013.

Upon request and if applicable, all final and revised deliverables provided under this contract to the jurisdictions which are confidential to the jurisdictions shall be provided in redacted form to WCI, Inc.

The objective of these services is to provide greenhouse gas allowance auction and reserve sale preparation services and financial and transactional escrow agency services for Western Climate Initiative, Inc. and its Participating Jurisdictions. The services will be provided in calendar year 2013 and will allow for completion of preparation services supporting future joint auctions, a Quebec only auction expected in the fourth quarter of 2013, and a Quebec/California practice joint auction expected in the fourth quarter of 2013. Moreover, the services will help the Participating Jurisdictions prepare for joint auctions and jurisdiction-specific reserve sales in 2014.

All services are to be conducted in accordance with the program regulations in effect for California and Quebec. If any instruction from WCI, Inc., ARB, or Quebec Minister of Sustainable Development, Environment, Wildlife, and Parks (herein "Minister") is unclear, incomplete, or inconsistent with program regulations, other data, or instruction provided to contractor, the contractor shall seek clarification prior to carrying out the instruction.

Task 1. Auction/Reserve Sale Preparation Services

The Contractor will work with the ARB, Minister, and Operator on:

- a) Review of regulations, procedures and technical requirements
 - Develop auction/reserve sale processes, controls, and instructions to allow for a) the participation of Quebec-registered participants in Quebec only auctions, b) the administration of separate reserve sales solely for Quebec-registered participants, and c) the participation of Quebec-registered participants and California-registered participants in joint auctions.
 - Review and amend developed financial qualification procedures, instructions, contact information, and training materials for potential participants.
 - Review and amend developed financial settlement procedures, instructions, reconciliation reports, forms, contact information, and training materials for potential participants.

- Review and amend developed procedures for the receipt, review and acceptance of financial guarantees, including communication of discrepancies and the return of unacceptable financial guarantees.
 - Participate in the testing of auction related systems and processes.
- b) Training (includes translation of training materials)
- Provide all participant materials in English and French to WCI, Inc., ARB, Minister, and Operator.
 - If requested by WCI, Inc., participate in live participant training sessions.
- c) System configuration and specialized reporting
- Work with the ARB, Minister, and the Operator to customize technical extracts that are necessary to allow for the reporting of U.S. dollars (USD) and Canadian dollars (CAD) accounts and positions.
- d) Practice auction
- If requested by WCI, Inc., cooperate with the ARB, Minister, and Operator to participate in a practice joint auction for CA and QC participants, expected in the fourth quarter of 2013, to demonstrate and exercise the procedures and capabilities for financial and transactional escrow agency services.

Finally, the Contractor will coordinate with WCI, Inc., the Operator, the market monitor, ARB, and Minister to manage the project and ensure all deliverables are met in a timely manner.

Task 2. Pre-Auction/Reserve Sale Escrow Services

The ARB and/or Minister will designate an Operator and will oversee the pre-auction/reserve sale, auction/reserve sale, and post auction/reserve sale activities. The ARB and/or Minister will be responsible for coordinating the participant application process. Financial qualification applications will be required for both the quarterly auctions of allowances made available by the ARB and/or Minister and the quarterly reserve sales.

- a) Financial qualification application processing (includes bidder on-boarding)
- The Contractor will work in coordination with the ARB, Minister, and the Operator to conduct the financial qualification application process for CITSS auction and reserve sale applicants, including the required Know Your Customer due diligence. In order to complete Know Your Customer due diligence, the Contractor will have access to download entity registration details from the CITSS. ARB and Minister will provide the Contractor with additional entity registration details not available in the CITSS. The additional required information includes the name and address of each auction and reserve sale applicant's directors and officers, and a list of persons controlling over 10% of the voting rights attached to all the outstanding voting securities of the registering entity. The Contractor may contact the auction and reserve

sale applicants directly if questions arise in review of the entity's ownership and list of controlling persons in order to maintain compliance with all Anti-Money Laundering requirements. This includes being able to independently obtain, verify, and record information about any individual or entity with which the Contractor establishes a relationship or opens an account. Jurisdiction representatives from the entity's jurisdiction of CITSS registration will be copied on all requests for additional data. For individual applicants, the Contractor will obtain supplemental information directly from the applicant.

b) Account setup and receipt and review of financial guarantees

- Upon completion of the financial qualification application process, the Contractor will open accounts on behalf of the approved participants and provide updates on established accounts to the Operator, and upon request to the ARB or Minister.
- Receive, review, and report on participant financial guarantees.
- The Contractor will work with the approved participants to have any unacceptable form of financial guarantee amended prior to the financial guarantee submission deadline. In the event that an unacceptable form cannot be amended by the submission deadline, the Contractor will notify ARB, the Minister, or both parties as appropriate, and will return the guarantee directly to the party identified in the auction application for return of bid guarantees per the instructions of the ARB or the Minister, whichever is the applicant's jurisdiction.

Financial guarantees submitted by Quebec entities will be in one or a combination of the following forms:

- A bond issued by a Canadian financial institution in accordance with the applicable regulation.
- Cash in the form of a wire transfer. Certified funds, such as a bank check or cashier's check are acceptable pursuant to the regulations.
- An irrevocable letter of credit issued by a Canadian financial institution, in accordance with the applicable regulation.

For Quebec only auctions and reserve sales, the Contractor will allow for receipt of assurance payments from Quebec registered entities in Canadian dollars (CAD) only. For joint auctions, the Contractor will allow for the receipt of assurance payments from Quebec registered entities in U.S. dollars (USD) and Canadian dollars (CAD). In this case, any Quebec registered entity will be able to provide assurance payments in either but only one currency. Upon receipt and review of the collateral, assurance payments will be placed on account and if applicable, held in the Contractor's vault. The Contractor anticipates any form of Letter of Credit or Bond to be in English, but will accept French documents. If French documents are submitted, the Contractor will request an English translation from the provider. If an English translation can not be provided in a timely manner, the Contractor will provide a copy of the French text to appropriate staff at WCI, Inc. and the Ministry, and WCI, Inc. will be responsible for

translating the documents. A bid guarantee submitted in any form other than cash must be payable within one business day of payment request.

The Contractor will provide the Operator with a daily electronic report of KYC cleared CITSS auction and reserve sale applicants, which includes their financial services account information, during an open auction or reserve sale application window. Upon receipt and deposit of the applicant's financial guarantees, the daily report will be updated to include the amount and type of bid guarantee received. For Quebec participants in a joint auction, the Contractor will reconcile the the currency in which the bid guarantee is submitted to the currency selected during the application process. Processes and procedures will be prepared to determine next steps in the case of a mismatch as per Task 1. The Contractor will provide the final report of all accounts with bid guarantees received no later than (2) business days after the applicable bid guarantee submission deadline. All data reported to the Operator will also be provided by secure means to the ARB or Minister upon request.

Deliverables for each task are described in the Work Plan and Work Schedule of Attachment F. As most deliverables are provided to the ARB and Minister, Contractor will update WCI, Inc. of the status of each task by email. During the open application period for each auction or reserve sale and up to the point of completion of each task prior to each auction or reserve sale, the Contractor will provide a daily email confirming the delivery of the electronic report referenced above. For each auction or reserve sale, Tasks 2a and 2b will be complete after the end of the application period. Final bid guarantee balances must be updated after the bid guarantee submittal deadline and prior to the date on which the participation determination of the applicant must be completed by the auction and reserve sale platform administrators representing the ARB and Minister.

Task 3. Post Auction/Reserve Sale Escrow Services

After each quarterly auction and reserve sale, the Contractor shall process payments from successful participants, distributing auction or reserve sale proceeds to the ARB, Minister, and/or consignees, and after completing a full reconciliation of accounts, returning financial assurance deposits to both successful and unsuccessful participants. For successful participants who posted financial assurance in a cash equivalent, such as a wire transfer or a bank/certified check, the Contractor's services will allow for these funds to be applied towards the invoice for purchase of allowances.

After an auction or reserve sale is completed, the Contractor will be provided with a list of successful bidders (including the quantity and price of allowances purchased) by the ARB, Minister, or the Operator. The Operator will be responsible for reporting to the ARB and/or Minister the results of the auction or reserve sale (awards and prices) and, after the ARB's and/or Minister's approval, and after notification of results has been provided to participants, will make available awards and financial settlement instructions to the Contractor.

Quebec only auction and reserve sale participants will settle all successful allowance bids with cash via a wire transfer in Canadian dollars (CAD) rather than a draw against established financial security. Quebec participants in a joint auction will submit payment in the same currency as the bid guarantee provided for the auction.

The Contractor will proceed with settlement upon certification of the auction or reserve sale. The Contractor will obtain from the Markit Auction Platform a list of all bidders with the total cost of the awarded GHG allowances, if any. This amount represents the amount to be paid for settlement of the allowances. Bidders are required to pay for allowances purchased in the currency in which the bid guarantee was submitted. Cash settlement from successful bidders is required to be completed within seven (7) calendar days after certification of the auction or reserve sale. If a bidder provided cash as their form of bid guarantee, the Contractor will net the amount owed from the amount on deposit, notify the bidder, and return any excess to the bidder. If a bidder provided a Letter of Credit or a Bond and has not submitted the cash to the Contractor within seven (7) calendar days, the Contractor will draw on the bid guarantee to ensure that funds are available to complete financial reconciliation within 3 business days after the due date for receiving all payments from successful bidders.

If a joint auction is conducted, the Contractor will provide a report to the ARB and the Minister of the status of settlement of the auction. The report will include a complete list of successful bidders, the proceeds received by each bidder to pay for the allowances purchased in the auction, and the currency of the funds used for settlement. The sum of all the proceeds will equal the sum of all total successful bid cost as provided in the financial settlement report from the Operator. The ARB and Minister will provide a joint request to pay proceeds indicating the currency required for each entity receiving proceeds and request a quote be given to process any foreign exchange required to complete the distribution of proceeds from the auction. The Contractor will provide the quote to the ARB and Minister and the ARB and Minister will provide a direction to process the currency exchange, including the dollar amount of the trade. The Contractor will process the trade pursuant to developed procedures referenced in Task 1 and timing of the trade instruction. Upon settlement of the currency exchange, ARB and Minister will provide direction to the Contractor to disburse the proceeds of the auction to any consignees, ARB and Minister. The direction will include the amount of USD to be distributed to consignees and the ARB and the amount of CAD to be distributed to Minister and wire instructions for each. After completing the distribution of proceeds, the Contractor will provide the final reconciliation report to the ARB and Minister by secure FTP. The ARB and Minister will then close the auction in the auction platform. The Contractor will receive an email from the auction platform that the auction has been closed which will constitute the ARB and Ministers acceptance of the final reconciliation report.

- a) Conduct financial settlement (including confirmation and statements) and process distribution of proceeds
 - Auctions
 - After each auction is certified, the Contractor will receive and process invoice payments from auction participants.

- The Contractor will provide electronic reconciliation reports to the ARB and Minister by secure FTP upon request during the seven (7) day payment period and an interim final reconciliation report no later than three (3) business days after the payment due date confirming all funds received for payment and the return of all bid guarantees and indicating the proceeds to be paid.
 - For Quebec-only auctions, the Contractor will not provide the above lists and reports to ARB.
 - Quebec Reserve Sales
 - After each Quebec reserve sale is certified, the Contractor will receive and process invoice payments from reserve sale participants.
 - The Contractor will provide electronic reconciliation report to Minister by secure FTP upon request during the seven (7) day payment period and an interim final reconciliation report no later than three (3) business days after the payment due date confirming all funds received for payment and the return of all bid guarantees and indicating the proceeds to be paid.
 - Processing Distribution of Proceeds
 - The Contractor will be provided with instructions for the distribution of auction/reserve sale proceeds by the ARB and/or Minister. In the event a foreign exchange between U.S. dollars (USD) and Canadian dollars (CAD) is necessary, the Contractor will process the required exchange transaction at the direction of the ARB and/or Minister prior to delivering the proceeds as provided in the instructions.
 - Upon completion of all the required payments, the Contractor must provide a final reconciliation report to ARB and Minister by secure FTP.
- b) Return financial assurance payments
- The Contractor will return financial assurance payments to their respective bidders/reserve sale participants no later than 12 business days after each auction/reserve sale has been certified.
 - The Contractor will notify the participants and return any unacceptable forms of bid guarantees to the participants.

Deliverables for each task are described in the Work Plan and Work Schedule. As most deliverables are provided to the jurisdictions, Contractor will update WCI, Inc. of the status of completion of each task by email. The Contractor will provide an email to the WCI, Inc. confirming the completion and delivery of the interim reconciliation report provided to the ARB and/or Minister when financial settlement, including receipt of all payment from successful bidders and return of all bid guarantees, is complete but prior to authorization to pay proceeds. Acceptance of the interim reconciliation report will be evidenced by the ARB and/or the Minister's authorization to distribute proceeds. The Contractor will provide an additional email notification to WCI, Inc. confirming the completion and delivery of the final reconciliation report provided to the ARB and/or Minister. This email will be provided to WCI, Inc. at the time the final reconciliation report is provided to the ARB and/or Minister. Acceptance of the final reconciliation report will be evidenced by the ARB and/or the Minister through the email notification

from the Markit Auction Platform that the auction is closed. The Contractor will provide a third email notification to WCI, Inc. confirming the distribution of auction or reserve sale proceeds, including payments to consignees and jurisdiction(s). This email will include a copy of the email notification from the Auction Platform that auction/reserve sale is closed.

Task 4. Consignee Setup and Payments

If a real (non-practice) joint auction is performed, ARB will provide the Contractor with a list of entities who have consigned allowances in the applicable auction. The Contractor will contact each Consignee and request wire instructions to deliver payment of proceeds from the sale of allowances successfully sold in the given auction. Post auction, the Contractor will be provided with auction proceeds report detailing the number of allowances sold and the proceeds payable to each Consignee. The Contractor will generate a statement detailing this information and provide it via email to each of the Consignees and ARB. Upon ARB direction, the Contractor will pay the proceeds to each of the Consignees as detailed in the auction proceeds report.

As part of the deliverables described above for Task 3, the Contractor will provide email notifications to WCI, Inc. confirming the completion and delivery of reconciliation reports, which will include payments to consignees and email notifications from the Auction Platform that the auction or reserve sale is closed. The Contractor will also include confirmation that the statements of Consigned Allowances were sent to each of the Consignees.

French Translation

The following training material, email notifications and standard communications will be provided to Quebec auction and reserve sale participants in French and English:

- QC - Individual Participant Form
- Sample Form LOC
- Bidder Guarantee Return Email

Confidential material including developed procedures and normal correspondence provided to the Minister will be provided in English.

If in the course of its duties, Contractor receives correspondence in French, the Contractor will send the correspondence to the WCI and/or Minister who will be responsible for the translation.

ATTACHMENT B: BUDGET DETAIL AND PAYMENT PROVISIONS

A. Invoicing and Payment

1. For services satisfactorily rendered, and upon receipt and approval of the invoice, WCI, Inc. agrees to compensate the Contractor in accordance with the Contractor's Cost Proposal, which is incorporated as Attachment F. The maximum payable will not exceed the value identified in the Standard Agreement. Compensation refers to the consideration to be paid to Contractor for all of Contractor's services provided and costs incurred to fulfill its duties and obligations in connection with the Agreement.

All tasks shall be payable in arrears for each month. Payment terms are NET 30.

Costs for travel will be incurred and charged for on a cost-reimbursable basis, at cost, and only if duly authorized in writing by the WCI, Inc. Project Manager. When traveling within the U.S., travel cost reimbursement must abide by U.S. Federal travel regulations and per diem rates per <http://www.gsa.gov/portal/category/21287>. When traveling outside of the U.S., travel cost reimbursement must abide by the per diem rates used by the State Department http://aoprals.state.gov/web920/per_diem.asp.

Invoices shall include the Agreement Number and summary of services performed for the amount invoiced. Invoices shall be submitted in arrears. Each item in the invoice must correspond to costs identified in this attachment and Attachment F. Invoices shall be submitted to the following address:

**Western Climate Initiative, Inc.
980 Ninth Street, Suite 1600
Sacramento, CA 95814**

B. Budget Detail

Not-to-exceed budget for this agreement is [REDACTED] (US). See Attachment F, Contractor's Technical and Cost Proposal, for invoice basis.

ATTACHMENT C GENERAL TERMS AND CONDITIONS

1. APPROVAL; AUTHORIZATION

The Agreement shall be of no force or effect until signed by both parties and approved by the Board of Directors of WCI, Inc., if required. Contractor may not commence performance until such written approval has been obtained. Contractor represents that the Agreement has been duly authorized by all necessary corporate action on the part of Contractor and that the officer signing the Agreement and any documents related thereto on behalf of Contractor possessed full authority to do so.

2. INSURANCE

Contractor shall, and shall cause any subcontractors to, carry and maintain in effect the insurance coverages set forth on Attachment E: Contract Insurance Requirements at all times while performing the work detailed in Attachment A ("Work"). Contractor shall provide WCI, Inc. with current insurance certificates evidencing these required coverages prior to commencing the Work, and shall give at least 30 days' advance written notice to WCI, Inc. of the cancellation or material alteration of such policies. At WCI, Inc.'s request, Contractor shall provide WCI, Inc. with evidence that the insurance coverages are being maintained. WCI, Inc. shall be named as an additional insured and certificate holder on all such insurance policies and subrogation against WCI, Inc. shall be waived. Contractor shall pay any deductibles, and all insurance shall be primary, without right of contribution by any insurance carried by WCI, Inc. Contractor shall comply with all financial responsibility standards required by applicable law.

3. SUBSTITUTION OF KEY PERSONNEL

Key Personnel includes Lisa McDermid, Jane Snyder, Andrew Ball, David McGuire, Kyshawn White, Tony Gomez, Aldrin Bayne, Kisha Holder, and Christina Van Ryzin. Contractor shall notify WCI, Inc. of any change in Key Personnel.

4. PERFORMANCE

Contractor shall perform the Work safely, in accordance with the highest standard of care, skill, and diligence provided by a professional person or company in performance of work similar to the Work, and all Work shall be of good quality and free from material faults and defects. Time is of the essence for the Agreement, and Contractor shall perform the Work in accordance with the Work Schedule. Although the Work may be interrupted, altered, delayed, or accelerated due to a *force majeure* event as listed in Section 41 of these General Terms and Conditions, the conduct of WCI, Inc.'s business operations, governmental regulation, or similar conditions, except as set forth in Section 5 of these General Terms and Conditions, no changes in the Work Schedule or Compensation shall be made as a result thereof.

5. CHANGE ORDERS

If either party proposes that changes be made in the Scope of Work or the Work Schedule, Contractor shall submit a written change order request with the complete description of the proposed change, a statement of cost, revised Work Schedule impact, and any other information requested by WCI, Inc. Contractor bears all risks of performing, and WCI, Inc. shall be under no obligation to pay for, any changed Work without prior written approval of WCI, Inc. of the changes, which approval may be given or withheld at WCI, Inc.'s reasonable discretion.

6. FULL UNDERSTANDING; AMENDMENT

The Agreement contains the full and complete understanding of the parties and supersedes all prior understandings or agreements on the subject matter hereof. The language contained in the Agreement shall prevail over any other language, including that of any proposal submitted by Contractor. No amendment or variation of the terms of the Agreement shall be valid unless made in writing and signed by WCI, Inc. and Contractor. No oral understanding or agreement outside of the Agreement is binding on any of the parties.

7. ASSIGNMENT

Neither the Agreement nor any interest in the Agreement is assignable by Contractor, either in whole or in part, without the prior written consent of, and on such terms as may be approved by, WCI, Inc. in the form of a formal written amendment signed by Contractor, WCI, Inc. and Contractor's assignee.

8. AUDIT

If the Agreement allows for Contractor to be paid fees at a daily or an hourly rate or for Contractor to be paid or reimbursed for expenses, Contractor shall maintain time records and books of account, invoices, receipts and vouchers of expenses in support of these payments, in form and content reasonably satisfactory to WCI, Inc. Contractor agrees that WCI, Inc. or its designated representative shall have the right to review and to copy any of Contractor's records and supporting documentation pertaining to the performance of tasks that are paid on the basis of a daily or an hourly rate or reimbursed as expenses. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) designated by WCI, Inc., the funding entity, and/or any of their duly authorized representatives access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of WCI, Inc., the funding entity, and/or any of their duly authorized representatives to audit records and interview staff in any subcontract related to performance of tasks that are paid on the basis of a daily or hourly rate or reimbursed as expenses. Contractor shall promptly reimburse WCI, Inc. for any expenditures judged by an audit conducted by any of the above to be not in compliance with the requirements

in this Agreement. Contractor shall include the provisions of this paragraph in any subcontract executed in connection with the Agreement.

9. GRATUITIES

If WCI, Inc. finds that Contractor or any of Contractor's employees, agents, or subcontractors offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any director, officer, employee or agent of WCI, Inc. or of any Participating Jurisdiction or of any funding entity in any attempt to secure the Agreement or favorable treatment in awarding, amending or making any determinations related to the performance of the Agreement, WCI, Inc. may, by written notice to Contractor, terminate the Agreement, and pursue such other rights and remedies that the law or the Agreement provides.

10. INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless the provinces of British Columbia and Quebec, the State of California (together, the "Participating Jurisdictions"), WCI, Inc., any funding entity, and their directors, officers employees and agents (the "WCI Indemnified Parties") from and against any and all debts, losses, claims, damages, costs, demands, fines, judgments, contracts, penalties, obligations, payments, liabilities of every type and nature (whether known or unknown), arising from a claim asserted against a WCI Indemnified Party by a third party relating to this Agreement and the matters contemplated herein, including, without limitation, (a) those accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying services, materials, or supplies in connection with the performance of the Agreement and (b) those arising out of any lawsuit, action or proceeding (whether brought by a party to the Agreement or by any other person), together with any costs and expenses (including, without limitation, attorneys' fees, out-of-pocket expenses and other costs and expenses incurred in investigating, preparing or defending any pending or threatened lawsuit, action or proceeding) incurred in connection with the foregoing (collectively, the "WCI Indemnified Costs"), suffered or sustained by any WCI Indemnified Party by reason of any act, omission or alleged act or omission by Contractor or any subcontractor, supplier or other person employed by Contractor, as a result of Contractor's negligence, willful misconduct or a breach of the Agreement, including but not limited to breaches or alleged breaches of representations, warranties, acknowledgements or covenants herein or in the Agreement, provided that Contractor shall not be liable for any of the foregoing to the extent arising from the negligence, willful misconduct or material violation of this Agreement on the part of the person to be indemnified, as determined by a court of competent jurisdiction in an order that is no longer subject to appeal or review.

To the fullest extent permitted by law, WCI, Inc. shall indemnify, defend and hold harmless the Contractor and its directors, officers employees and agents (the "Contractor Indemnified Parties") from and against any and all debts, losses, claims,

damages, costs, demands, fines, judgments, contracts, penalties, obligations, payments, liabilities of every type and nature (whether known or unknown), arising from a claim asserted against a Contractor Indemnified Party by a third party relating to this Agreement and the matters contemplated herein, including, without limitation, (a) those accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying services, materials, or supplies in connection with the performance of the Agreement and (b) those arising out of any lawsuit, action or proceeding (whether brought by a party to the Agreement or by any other person), together with any costs and expenses (including, without limitation, attorneys' fees, out-of-pocket expenses and other costs and expenses incurred in investigating, preparing or defending any pending or threatened lawsuit, action or proceeding) incurred in connection with the foregoing (collectively, the "Contractor Indemnified Costs"), suffered or sustained by any Contractor Indemnified Party by reason of any act, omission or alleged act or omission by WCI, Inc. or any subcontractor, supplier or other person employed by WCI, Inc., as a result of WCI, Inc.'s negligence, willful misconduct or a breach of the Agreement, including but not limited to breaches or alleged breaches of representations, warranties, acknowledgements or covenants herein or in the Agreement, provided that WCI, Inc. shall not be liable for any of the foregoing to the extent arising from the negligence, willful misconduct or material violation of this Agreement on the part of the person to be indemnified, as determined by a court of competent jurisdiction in an order that is no longer subject to appeal or review.

11. TERMINATION FOR CAUSE

If Contractor fails to perform the requirements of this Agreement at the time and in the manner herein provided, WCI, Inc. may notify Contractor in writing. If Contractor does not cure the failure within 15 days from the notice date, or if such failure is of such a nature that it cannot be cured within such 15-day period, if Contractor does not commence the cure within such 15-day period and promptly and diligently thereafter prosecute such cure to completion, WCI, Inc. may, upon an additional 5 days' written notice, terminate this Agreement and be relieved of any further obligation to make payments for Work performed after the termination date. In the event of such termination, WCI, Inc. has the right to any remaining Work for which it has paid before the termination date. In the event of such termination, the cost incurred by WCI, Inc. to take over and complete the Work on its own behalf, over and above the payments that would have been made to Contractor to complete the Work had there been no termination for cause, shall be deducted from any sums due Contractor under the Agreement, and the balance, if any, shall be paid to WCI, Inc. by Contractor upon demand.

12. INDEPENDENT CONTRACTOR

Contractor, and the agents and employees of Contractor, in the performance of the Agreement, shall act in an independent capacity and not as directors, officers, employees or agents of WCI, Inc. or the Participating Jurisdictions or any funding

entity. Contractor is not entitled to receive employee benefits or insurance coverage including worker's compensation, disability insurance, Social Security, unemployment compensation coverage, or any other statutory benefit. Contractor will have the ability to obtain and maintain the required paperwork appropriate to perform the services required by the Agreement. Contractor will pay all the appropriate taxes on its compensation by WCI, Inc. and will indemnify WCI, Inc. for any unpaid tax obligations on fees paid to Contractor.

13. ACKNOWLEDGEMENT

The parties acknowledge that WCI, Inc. is not an agent of any Participating Jurisdiction or any funding entity or the collectivity of Participating Jurisdictions and any funding entities.

14. COMPENSATION

The consideration to be paid to Contractor, as provided in the Agreement, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly provided to the contrary elsewhere in the Agreement and, in all events, subject to the provisions of Attachments A and B. All compensation shall be paid in accordance with the Agreement with respect to the compensation and payment of contractor business expenses. WCI, Inc. shall not be responsible for any expense incurred by Contractor that is not in accordance with the Agreement.

15. UNENFORCEABLE PROVISIONS

If any provision of the Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then the remaining provisions of the Agreement will remain in full force and effect as if such invalid or unenforceable provision had never been included.

16. SETTLEMENT OF DISPUTES

A. In the event a dispute shall arise between Contractor and WCI, Inc., the dispute shall be arbitrated before three arbitrators, one to be selected by each party and the third to be selected by the other two selected arbitrators. Any such arbitration shall be held in California, and notwithstanding anything to the contrary set forth elsewhere in these General Terms and Conditions, this agreement to arbitrate shall be enforceable through a proceeding brought in any court of competent jurisdiction within the state of California. The arbitrators shall apply the substantive law of the state of California, without regard to its Conflicts of Laws provisions. Arbitration may be conducted in accordance with the standard rules of the AAA Commercial Arbitration except that the arbitrators may not make any award not strictly in conformance with this Agreement. The decision of the arbitrators shall be final and conclusive upon the parties and may, notwithstanding anything to the contrary set forth elsewhere in these General Terms and Conditions, be entered and enforced in any court of competent jurisdiction within the state of California. In connection with any

proceeding brought in accordance with this Section 16 in the state of California, Contractor and WCI, Inc. waive any objection to such jurisdiction on the grounds of venue or forum non conveniens and any similar grounds, consent to service of process by mail or in any other manner permitted by law, and agree to be bound by any judgment rendered by any such court in connection with the Agreement.

- B. The existence of a dispute not fully resolved shall not delay Contractor in its performance of the Agreement. Contractor shall continue with its responsibilities under the Agreement, which shall not be affected by the dispute.
- C. Each of WCI, Inc. and Contractor hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to the Agreement or the transaction contemplated hereby.

17. POTENTIAL SUBCONTRACTORS

Contractor shall not subcontract any of its obligations under the Agreement without prior written approval of WCI, Inc., which approval shall not either directly or indirectly be unreasonably withheld. Contractor shall require all subcontractors to comply with the obligations of Contractor in these General Terms and Conditions by incorporating the terms of these General Terms and Conditions into all subcontracts.

Nothing contained in the Agreement or otherwise shall create any contractual relation between WCI, Inc., any Participating Jurisdiction or any funding entity, on the one hand, and any subcontractors, on the other, and no subcontract shall relieve Contractor of its responsibilities and obligations under the Agreement. Contractor agrees to be as fully responsible to WCI, Inc. for the acts and omissions of its subcontractors and of persons employed by any of them in their performance of the subcontract as it is for the acts and omissions of persons directly employed by Contractor. Contractor's obligation to pay its subcontractors is an obligation independent from WCI, Inc.'s obligation to make payments to Contractor. As a result, WCI, Inc. shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

18. STOP WORK ORDER

WCI, Inc. reserves the right to issue a written order to stop work in the event that a dispute should arise, or in the event that WCI, Inc. gives Contractor a notice that the Agreement will be terminated. The stop-work order will be in effect until WCI, Inc. sends a written order to resume work.

19. TERMINATION

- A. WCI, Inc. reserves the right to terminate the Agreement in its sole discretion at any time upon thirty (30) days' prior written notice to Contractor.

- B. Contractor shall have the right to resign hereunder at any time upon one hundred eighty (180) days' prior written notice to WCI, Inc., such resignation to be effective at the end of such 180 day period.
- C. In the case of early termination, Contractor shall submit an invoice and a report covering services to the termination date, following the invoice and progress report requirements of the Agreement. A copy and description of any data collected up to the termination date shall also be provided to WCI, Inc., along with all other materials required by the Agreement.
- D. Upon receipt of such invoice, progress report, data and other materials, a final payment will be made to Contractor. This payment shall be for all WCI, Inc.-approved, actually incurred costs that in the reasonable opinion of WCI, Inc. are justified and conform to the requirements of the Agreement, and shall include labor and materials purchased or utilized (including all non-cancellable commitments) prior to the termination date, and pro rata indirect costs as specified in the Agreement.

20. COUNTERPARTS

The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

21. PROGRESS PAYMENTS

To the extent not provided otherwise elsewhere in the Agreement, in computing the amount of any progress payment, WCI, Inc. shall determine what Contractor has earned during the period for which payment is being made on the basis of the Agreement terms, but shall retain out of such earnings an amount equal to 10 percent thereof, pending satisfactory completion of the entire agreement. However, if the Agreement consists of the performance of separate and distinct tasks, then at the discretion of WCI, Inc., any funds so withheld with regard to a particular task may be paid upon completion of that task. A final invoice must be submitted by Contractor to WCI, Inc. and approved by WCI, Inc. to release the withheld funds.

22. FINAL PAYMENT

Except as otherwise provided herein, the acceptance by Contractor, or by anyone claiming by or through it, of final payment shall be and shall operate as a full and final release of the WCI, Inc. as to all claims by and all liability to Contractor for all things done or furnished in connection with the Agreement and for every act and neglect of WCI, Inc. and others relating to or arising out of the Agreement, including claims arising out of breach of contract and claims based on claims of third persons.

23. COMPUTER SOFTWARE

Contractor certifies that it has appropriate systems and controls in place to ensure that WCI, Inc. funds will not be used in the performance of the Agreement for the

acquisition, operation or maintenance of computer software in violation of copyright laws.

24. INTELLECTUAL PROPERTY

- A. Except as set forth in the Scope of Work, the right to use all material, software, firmware, compositions of matter, manufactures, apparatus, appliances or processes required in connection with the Agreement and to which a patent, copyright or other intellectual property right applies or may apply shall be obtained by Contractor without separate or additional compensation whether the same is patented, copyrighted or otherwise protected as an intellectual property right before, during or after the performance of the Agreement.
- B. Contractor hereby represents and warrants that the Contractor work product delivered under this Agreement will not infringe, constitute a misappropriation or otherwise violate a trademark, copyright or other third party's proprietary right. Notwithstanding the foregoing, Contractor shall have no obligation or liability with respect to any claim or liability for infringement, misappropriation, or other violation based upon (i) Contractor work product that has been altered, modified or revised by anyone other than Contractor and such claim or liability would have been avoided but for the alteration, modification or revision; (ii) the combination, operation or use of Contractor work product with products not furnished by Contractor or set forth in the documentation when such combination is part of any allegedly infringing process; or (iii) use of the Contractor work product(s) in a manner not authorized in the documentation when such claim or liability would have been avoided but for such unauthorized use. WCI, Inc. shall promptly notify Contractor of any such claim. In addition to the obligations above, if Contractor work product becomes the subject of any third party claim, demand or allegation that the Contractor work product(s) infringes, misappropriates or otherwise violates any third party's patent, trademark, copyright, or other proprietary right, then Contractor, at its sole option, shall: (i) promptly obtain, at no expense to WCI, Inc., the right for WCI, Inc. to continue exercising all rights and licenses in such Contractor work product in accordance with the terms of this Agreement; or (ii) replace the subject Contractor work product with non-infringing and substantially equivalent work. The foregoing states the entire liability of Contractor with respect to any claims subject to this Section.
- C. Except as set forth in the Scope of Work, Contractor agrees that all work product directly related to WCI, Inc.'s products, services or business, or containing WCI, Inc.'s proprietary or sensitive information, created hereunder by Contractor, its employees or any subcontractors it engages to perform work for WCI, Inc. shall become the absolute and exclusive property of WCI, Inc., including but not limited to concepts, trademarks, slogans, works, ideas, designs, discoveries, inventions, improvements, advances, methods, practices, techniques, developments, expirations, and relationships with customers and prospective

customers that Contractor, its employees or any subcontractors it engages to perform services for WCI, Inc., may conceive, make, invent or suggest during the term of the Agreement relating generally to any matter or thing that may be connected with the Agreement or in any way with WCI, Inc.'s existing or disclosed products, services or business (hereinafter "WCI, Inc. Intellectual Property"). All such work product shall automatically be deemed to become the property of WCI, Inc. immediately as soon as made or conceived. For sake of clarity, the WCI, Inc. Intellectual Property shall not include any pre-existing materials, including but not limited to software, firmware, compositions of matter, manufactures, apparatus, appliances, or processes and any concepts, works, ideas, designs, discoveries, inventions, improvements, advances, methods, practices, techniques, or developments embodied therein, or any materials purchased from non-subcontracting third parties. Contractor and its subcontractors agree to cooperate with and assist WCI, Inc. to apply for and to execute any applications and/or assignments reasonably necessary to obtain any patent, copyright, trademark, or other statutory protection for WCI, Inc. Intellectual Property. Contractor shall, and shall cause employees and contractors of Contractor to, promptly sign any and all lawful papers, take all lawful oaths and do all lawful acts, including giving testimony, upon request by WCI, Inc., in connection with any patent, trade name, trademark, service mark or copyright application or issued patent, or registered copyright or trademark and/or any divisions, continuations, renewals, re-examinations, reissues or the like of any of them. Such lawful papers include, but are not limited to, any and all declarations, powers, assignments, and other papers reasonably deemed by WCI, Inc. to be necessary or advisable in connection with the filing or prosecution of any patent, trademark, service mark or copyright application or in connection with the grant of any letters patent, trademark or service mark registration, or copyright registration, or in connection with the transfer of any rights to any invention, trademark, trade name, service mark, or copyright. Contractor agrees to keep and maintain adequate and current written records of the foregoing described in this paragraph and promptly to disclose to WCI, Inc. all WCI, Inc. Intellectual Property.

- D. WCI, Inc., at its discretion, may grant a nonexclusive and paid-up license to Contractor and its subcontractors to use said copyrightable materials or other intellectual property related to the WCI, Inc. Intellectual Property.
- E. Contractor and its subcontractors shall not, except as required by law, a court order or any relevant regulatory body and provided that contractor shall promptly notify WCI, Inc. and afford WCI, Inc. an opportunity, to the extent reasonably practicable, to challenge any such requirement, disclose any of the WCI, Inc. Intellectual Property, or any portion thereof, to any other organization or person without the prior written consent of WCI, Inc., provided that this obligation shall not prevent Contractor, its employees or any subcontractors it engages from using any residual knowledge, i.e., ideas, concepts, know-how or techniques developed by and retained in the unaided memories of parties, not subject to an

existing WCI, Inc. application for or grant to WCI, Inc. of a statutory intellectual property right.

- F. Contractor and its subcontractors shall not use the WCI, Inc. Intellectual Property, or any portion thereof, in any other work without the prior written consent of WCI, Inc., subject to any license granted in writing to Contractor by WCI, Inc.

25. RIGHTS IN DOCUMENTS, MATERIALS, AND DATA PRODUCED

WCI, Inc. shall have the right to use the items referenced in Section 24(C) hereof without restriction or limitation and without compensation to Contractor other than that provided for in the Agreement. Any document produced in whole or in part under the Agreement shall not be the subject of an application for copyright by or on behalf of Contractor or its subcontractors.

26. CONFIDENTIALITY

Contractor acknowledges that the Confidential Information (as hereinafter defined) of WCI, Inc. has independent economic value, is not known to other persons who might profit from its use and is the subject of efforts by WCI, Inc. to maintain its secrecy that are reasonable under the circumstances. Contractor agrees to use such Confidential Information solely for the purposes permitted by the Agreement and further agrees, until Confidential Information has been transferred or returned to WCI, Inc. or destroyed by Contractor, not to, directly or indirectly, disclose to any other person any Confidential Information except to the extent expressly required by law or authorized in writing by WCI, Inc. The phrase "expressly required by law" shall be deemed to mean and include a requirement of regulation, legal or regulatory process or a request from any self-regulatory organization or governmental authority applicable to or with jurisdiction over Contractor, provided, that upon Contractor's receipt of a request from any such body for release of Confidential Information, or Contractor's determination that release is required pursuant to any such regulation or legal or regulatory process, Contractor shall promptly notify WCI, Inc., and afford WCI, Inc. an opportunity, to the extent reasonably practicable, to challenge any such request or to contest any such determination. For the purposes of the Agreement, "Confidential Information" shall include (i) any information so described elsewhere in the Agreement, (ii) all data stored or made accessible through the Compliance Instrument Tracking System Service, unless WCI, Inc. notifies Contractor in writing that such information is not confidential, (iii) any information identified as confidential in agreements entered into by WCI, Inc. with Participating Jurisdictions or any funding entity and identified elsewhere in the Agreement, (iv) any personally identifying information, proprietary process or sensitive, non-public market data, (v) any third-party Confidential Information included with, or incorporated in, information provided by WCI, Inc., or otherwise obtained in the course of performing requirements under the Project, (vi) communications with WCI, Inc. staff and/or Participating Jurisdiction staff, related to any of the requirements under the Project, including oral discussions, telephone

conversations, emails, attachments, letters and faxes, (vii) all notes, data, analyses, compilations or reports prepared by Contractor that contain or are based upon confidential information and (viii) any of WCI, Inc.'s confidential, proprietary or trade secret information that is disclosed to Contractor or Contractor otherwise obtains in the course of its performance of the Agreement such as, but not limited to, information related to articles, electronic data, recordings, papers, bulletins, reports or other material reporting the plans, progress, analysis or results and findings of the Work, business plans, party lists, benefit plans, designs, pricing offered to or agreed upon by parties, commissions or commission structures, financial statements, software diagrams, flow charts, product plans and other items and information belonging to WCI, Inc., its personnel, customers and affiliates. Confidential Information shall not include any information: (i) that as of the time of receipt by Contractor is in the public domain or subsequently enters the public domain without breach of this Agreement by Contractor; (ii) that as of the time of receipt by Contractor, is already known to or in Contractor's possession; (iii) is independently developed by or for Contractor without the benefit of Confidential Information; (iv) is received in good faith by Contractor from a third party that was lawfully in possession of the information, provided, that Contractor did not know or reasonably have reason to know that such third party was bound by an obligation of confidentiality with respect to such information; or (v) that the Parties mutually agree in writing to release from the terms of this Agreement. Contractor may disclose Confidential Information to those of its affiliates and its and their respective directors, officers, employees, subcontractors, attorneys and agents (collectively, "Contractor Parties") who need access to the Confidential Information in order for Contractor to carry out its obligations under the Agreement, but shall use best commercially reasonable measures to prevent any disclosure of Confidential Information by any Contractor Parties. Contractor further agrees to not deliver, "reverse engineer," reconstruct, reproduce or in any way allow such Confidential Information, knowledge, data or other information, or any documentation relating thereto to be delivered or used by any third party without specific direction or consent of WCI, Inc. In addition, Contractor shall:

- A. Not use Confidential Information, or any part thereof, in the performance of services or for the benefit of any person or entity, in any form, whether gratuitously or for valuable consideration, except as provided under the Project, without the prior written consent of WCI, Inc. Contractor is authorized to disclose information pursuant to law or legal process, subject to WCI, Inc.'s right to challenge such disclosure as set forth herein.
- B. Notify WCI, Inc. promptly and in writing of the circumstances known to it surrounding any possession, use or knowledge of Confidential Information or any part thereof by any person other than those authorized by this paragraph.
- C. Ensure that Contractor's Key Personnel sign and submit to Contractor Attachment D: Individual Conflict of Interest and Confidentiality Statement.

Contractor will then certify to WCI, Inc. as to the submission of such statements by all such required individuals.

- D. Adhere to all WCI, Inc. confidentiality and disclosure policies disclosed to Contractor in writing and, if directed by WCI, Inc., enter into agreements with Participating Jurisdictions and funding entities related to the management, sharing, and disclosure of information. Contractor and any subcontractor in connection with the performance of the Agreement must make available for WCI, Inc.'s inspection all requested background information on staff performing the Work employed by the Contractor and any subcontractor.
- E. Treat all Confidential Information, Deliverables (as defined in Attachment A), and work products as Confidential Information in accordance with this Agreement. No Deliverables, Work or Work products may be disclosed in any form to any third party without the written consent of the Executive Director of WCI, Inc. or his or her authorized agent, except as permitted in the Agreement. Contractor is authorized to maintain a copy of all information necessary to comply with its contractual obligations and applicable professional standards. If WCI, Inc.'s Executive Director or his or her authorized agent so requires in writing, the following disclaimer must accompany all Confidential Information: *"Publication of this document shall not be construed as endorsement of the views expressed therein by the Western Climate Initiative, Western Climate Initiative, Inc. or any federal, state or provincial agency."*
- F. Not use, without WCI, Inc.'s written approval, any Confidential Information for any purpose other than performing the contracted services.
- G. Not remove any WCI, Inc. or Participating Jurisdiction or any funding entity equipment and/or data on any activities from WCI, Inc.'s secured environment without advance written approval from WCI, Inc.
- H. Upon full payment to Contractor, surrender or destroy, as permitted by the Agreement, all documents, property (whether in written or electronic form) and transportable recorded media of any kind belonging to WCI, Inc. or containing Confidential Information at the conclusion of the engagement, upon termination of the Agreement, or upon the written request of WCI, Inc., provided, however, that to the extent required for legal or regulatory purposes or to satisfy internal compliance policies or procedures, Contractor may retain Confidential Information, but Contractor shall be required to maintain such Confidential Information in confidence in accordance with the requirements of the Agreement until such Confidential Information is destroyed or transferred or returned to WCI, Inc.
- I. Upon learning of loss or theft, promptly notify WCI, Inc. of any lost or stolen hardware and/or transportable-recorded media connected to the Work.

- J. Provide WCI, Inc. all pass phrases/passwords used as private keys to encrypt data used, produced or acquired in the course of performing duties under the Agreement.
- K. Make reasonable security arrangements consistent with the highest standards of the financial industry to protect Confidential Information from unauthorized access, collection, use, disclosure, alteration or disposal.
- L. Not damage or harm WCI, Inc.'s reputation, goodwill and business relations with any person or entity, including but not limited to customers, official bodies, governmental agencies and WCI, Inc. employees.

27. CONFLICTS OF INTEREST

- A. Contractor must ensure that no conflicts of interest exist between the services required under the Agreement and services provided by Contractor to other clients or Contractor's other business operations.
- B. Contractor must not have any financial interests in the outcome of any services it provides under the Agreement except for fees for service under the Agreement.
- C. Contractor must have in place formal policies and procedures to identify and mitigate conflicts of interest and ensure that Contractor's organization, management and employees avoid financial interests and activities that potentially create conflicts of interest.
- D. Contractor and its subcontractors must not be subject to any laws or regulations specific to any GHG reporting or cap-and-trade program in any WCI, Inc. Participating Jurisdiction or any funding entity. Contractor and its subcontractors must not be a beneficial owner of more than 5% of the voting interests of (i) any entity that is subject to any of the provisions of any GHG reporting or cap-and-trade programs implemented by any WCI, Inc. Participating Jurisdiction or any funding entity, (ii) any direct parent company, direct subsidiary or sister company of an entity subject to any of the provisions of any GHG reporting or cap-and-trade programs implemented by any WCI, Inc. Participating Jurisdiction or any funding entity, (iii) any entity that owns, trades, facilitates trades, or advises on trades in instruments (such as derivatives) that derive their value in whole or in part from the provisions of the GHG reporting or cap-and-trade programs implemented by any WCI, Inc. Participating Jurisdiction or any funding entity, or (iv) any direct parent company, direct subsidiary or sister company of an entity that owns, trades, facilitates trades, or advises on trades in instruments (such as derivatives) that derive their value in whole or in part from the provisions of the GHG reporting or cap-and-trade programs implemented by any WCI, Inc. Participating Jurisdiction or any funding entity. WCI, Inc. will, at the three (3) month anniversary of the date of the Agreement, and every three (3) months thereafter, update the list of covered entities and make that list available to Contractor. Contractor shall be entitled to rely conclusively and exclusively on such list for purposes of this Section 27.

- E. If Contractor acquires beneficial ownership of more than 5% of the voting interests of (i) any entity that is subject to any of the provisions of the GHG reporting or cap-and-trade programs implemented by any WCI, Inc. Participating Jurisdiction or any funding entity, or (ii) any entity that owns, trades, facilitates trades, or advises on trades in instruments (such as derivatives) that derive their value in whole or in part from the provisions of the GHG reporting or cap-and-trade programs implemented by any WCI, Inc. Participating Jurisdiction or any funding entity, Contractor will promptly disclose this information to WCI, Inc.
- F. Contractor must ensure that its employees and subcontractors meet and comply with the requirements described in Subsections 27.A through 27.E above.
- G. Notwithstanding the foregoing, WCI, Inc. reserves the right to determine, at its sole discretion, whether information received from any source indicates the existence of an actual or potential conflict of interest. If WCI, Inc. determines that a conflict of interest exists, or that there is an unavoidable appearance of a conflict of interest that cannot be resolved to the satisfaction of WCI, Inc., such determination shall be grounds for termination of the Agreement immediately for cause.
- H. Contractor agrees to advise WCI, Inc. if performing services for other clients could potentially interfere with Contractor's duties pursuant to this Agreement.
- I. Contractor will not accept any gift, benefit, gratuity or consideration from anyone, based on any understanding that it would influence Contractor's performance under this Agreement.

28. PUBLICITY

Neither Contractor nor any of its subcontractors shall issue or permit to be issued any press release, advertisement, or literature of any kind that refers to WCI, Inc. or the Participating Jurisdictions or any funding entities or the Work performed in connection with the Agreement without first obtaining the written approval of WCI, Inc. Such approval may be withheld for any reason.

29. NO CONFLICT

[Intentionally Left Blank]

30. COMPLIANCE WITH LAWS, SAFETY

Contractor shall give all necessary notices required by law to be given by it, secure all necessary permits required by law to be obtained by it, and comply with all applicable federal, state, provincial and local laws, ordinances, rules and regulations applicable to the Work including, without limitation, all nondiscrimination in employment, safety, health, and environmental laws, rules, and regulations.

31. NO VIOLATION OF OTHER AGREEMENTS OR COVENANTS

Contractor has not signed any other agreement, and has not accepted any obligation, that would interfere or conflict with its ability to fulfill its duties and

obligations in connection with the Agreement. Contractor has not entered into and is not bound by any other restrictive covenants, laws, rules or regulations applicable to Contractor related to its duties and obligations in connection with the Agreement.

32. STATUS

Contractor has the power and authority to enter into and perform its obligations under this Agreement. To the best of Contractor's knowledge after due inquiry, Contractor's performance pursuant to this Agreement will not violate the legal or equitable rights of any third party.

33. RIGHTS AND REMEDIES

Contractor has no recourse against the Participating Jurisdictions or any funding entities, elected officials, commissioners, employees or agents of any Participating Jurisdiction or funding entity for any claim, right or demand arising out of or related to the Agreement.

34. LIMITATION OF DAMAGES

Neither WCI, Inc. nor Contractor shall be liable for any indirect, incidental, or consequential damages arising out of or in connection with the Agreement or the performance of the Work.

35. THIRD PARTIES

The Parties agree that the California Air Resources Board (CARB) and the Quebec Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs are intended third-party beneficiaries of this Agreement. Other than CARB and the Quebec Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs, there are no other third party beneficiaries with any rights under this Agreement.

36. RESTRICTIONS ON CONTACT WITH WCI, INC. EMPLOYEES AND CONSULTANTS

Unless otherwise agreed to in writing, the parties hereto agree that during the term of this Agreement and for a period of one (1) year after the expiration or termination of this Agreement, neither party shall knowingly solicit for employment any person employed by the other working under this Agreement. This Article shall not restrict in any way the right of either party to solicit or recruit generally in the media, and shall not prohibit either party from hiring an employee of the other who answers any advertisement or who otherwise voluntarily applies for hire without having been personally solicited by the hiring party.

37. REMEDIES OF WCI, INC.

Contractor agrees that it would be impossible or inadequate to measure and calculate WCI, Inc.'s damages from a breach of the covenants of this Agreement. Accordingly, Contractor agrees that if Contractor breaches or threatens to breach any of such covenants, WCI, Inc. will have available in addition to any other right or

remedy available to it at law or in equity, the right to seek an injunction from a court of competent jurisdiction restraining such breach or threatened breach and ordering specific performance of any such provision of this Agreement. Contractor further agrees that no bond or other security shall be required in obtaining such equitable relief, and Contractor hereby consents to the issuance of such injunction and to the ordering of specific performance.

38. GOVERNING LAW; FORUM

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California without reference to its conflict-of-law principles. Contractor and WCI, Inc. consent to the exclusive jurisdiction of the federal and state courts of California, in connection with any action or proceeding arising out of the Agreement, or any document or instrument delivered in connection with the Agreement. Contractor and WCI, Inc. waive any objection to such jurisdiction on the grounds of venue or forum non conveniens and any similar grounds, consent to service of process by mail or in any other manner permitted by law, and agree to be bound by any judgment rendered by any such court in connection with the Agreement.

39. NOTICES

All notices or other communications required or to be given under the Agreement shall be given in writing and delivered personally or by certified mail, postage prepaid, return receipt requested, to the receiving party at the address set forth in the Agreement. Notice shall be deemed given on the date of delivery in the case of personal delivery, or on the delivery or refusal date as specified by the U.S. Postal Service on the return receipt in the case of certified mail.

40. CONSTRUCTION; HEADINGS

The Agreement shall be construed neutrally and without regard to the party that drew it. Headings used in the Agreement are provided for convenience only and shall not be used to construe meaning or intent.

41. FORCE MAJEURE

Neither Contractor nor WCI, Inc. shall be responsible or liable for any failure or delay in the performance of its obligations under the Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation, acts of God, earthquakes, fires, floods, wars, civil or military disturbances, sabotage, epidemics, riots, loss or malfunctions of utilities, computer (hardware or software) or communications service disruptions, labor disputes, acts of civil or military authority, or governmental, judicial or regulatory actions, or the unavailability of the Federal Reserve Bank wire or telex or other wire or communication facility that are beyond the Party's reasonable control and that prevent the Party from performing its obligations under the Agreement. Each Party shall notify the other of the occurrence of a *force majeure* event as soon as possible after learning of same.

42. PARTICIPATING JURISDICTIONS' AND FUNDING ENTITIES' POLICE POWER AND OTHER SOVEREIGN POWERS UNIMPAIRED

Notwithstanding any provision to the contrary elsewhere in this Agreement or these General Terms and Conditions, nothing in this Agreement or these General Terms and Conditions shall limit or otherwise impair in any respect any Participating Jurisdiction's or any funding entity's future exercise of their police power or any other sovereign powers.

43. SURVIVAL

The provisions of Sections 8, 10, 14, 15, 16, 24, 25, 26, 28, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 hereof shall survive the expiration or termination of the Agreement.

44. U.S.A. PATRIOT ACT

The parties hereto acknowledge that in accordance with Section 326 of the U.S.A. Patriot Act, Contractor, like all financial institutions and in order to help fight the funding of terrorism and money laundering, is required to obtain, verify, and record information that identifies each person or legal entity that establishes a relationship or opens an account with Contractor. The parties hereto agree that they will provide Contractor with such information as it may request in order for Contractor to satisfy the requirements of the U.S.A. Patriot Act.

45. RIGHTS OF CONTRACTOR

- A. Contractor may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, indebtedness or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties.
- B. The duties, responsibilities and obligations of Contractor shall be limited to those expressly set forth herein and Contractor shall not be deemed to be a trustee for WCI, Inc. or any third party beneficiary hereunder.
- C. Except as provided herein, Contractor shall not be required to expend or risk any of its own funds or otherwise incur any liability, financial or otherwise, in the performance of any of its duties hereunder.
- D. Contractor may consult with legal counsel of its own choosing as to any matter relating to the Agreement, and Contractor shall not incur any liability in acting reasonably and in good faith in accordance with any advice from such counsel when fully apprised of the facts and circumstances relevant to such advice.

ATTACHMENT D INDIVIDUAL CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

I certify that I and any member of my immediate family (parents, siblings, spouse, children, or domestic partner) are not a partner, director, officer, key employee, or beneficial owner of more than 5% of the voting interests of any entity that is subject to any of the provisions of the greenhouse gas (GHG) reporting or cap-and-trade programs implemented by any of WCI, Inc. Participating Jurisdictions or any funding entities.

I certify that if I or any member of my immediate family becomes a partner, director, officer, or key employee or acquire beneficial ownership of more than 5% of the voting interests of any entity that is subject to any of the provisions of the GHG reporting or cap-and-trade programs implemented by any of WCI, Inc. Participating Jurisdictions or any funding entities, I will immediately disclose this information to _____ who will disclose this information to WCI, Inc.

I certify that I and any member of my immediate family are not a beneficial owner and are not a partner, director, officer, key employee, or beneficial owner of more than 5% of the voting interests of any entity that owns, trades, facilitates trades, or advises on trades in instruments (such as derivatives) that derive their value in whole or in part from the provisions of the greenhouse gas (GHG) reporting or cap-and-trade programs implemented by any of WCI, Inc. Participating Jurisdictions or any funding entities.

I certify that if I or any member of my immediate family becomes a beneficial owner or a partner, director, officer, key employee, or beneficial owner of more than 5% of the voting interests of any entity that owns, trades, facilitates trades, or advises on trades in instruments (such as derivatives) that derive their value in whole or in part from the provisions of the greenhouse gas (GHG) reporting or cap-and-trade programs implemented by any of WCI, Inc. Participating Jurisdictions or any funding entities, I will immediately disclose this information to _____ who will disclose this information to WCI, Inc.

I certify that I will not accept any gift, benefit, gratuity or consideration from anyone other than my employer, based on any understanding that it would influence my performance under this Agreement.

I certify that I will keep confidential and secure and will not copy, give, or otherwise disclose to any other person or entity who has not signed a copy of this conflict of interest and confidentiality statement, all appropriately marked or verbally deemed confidential information concerning the Project (as defined in the Work Schedule) which I learn or acquire in the course of performing duties under this Agreement, and I will follow any instructions provided by WCI, Inc. Project Manager relating to the confidentiality of Project information. I understand that the information that must be kept confidential ("confidential information") includes, but is not limited to:

- A. All data, analyses, specifications, requirements, concepts and discussions received from WCI, Inc. in the course of performing requirements under the Project.
- B. Any personally identifying information, proprietary process or sensitive, non-public market data.
- C. Any third-party confidential information included with, or incorporated in, information provided by WCI, Inc., or otherwise obtained in the course of performing requirements under the Project.
- D. Communications with WCI, Inc. staff, related to any of the requirements under the Project, including oral discussions, telephone conversations, emails, attachments, letters and faxes.
- E. All notes, data, analyses, compilations or reports prepared by me that contain or are based upon confidential information.

I certify that I will not use confidential information, or any part thereof, in the performance of services or for the benefit of any person or entity, in any form, whether gratuitously or for valuable consideration, except as provided under the Project, without the prior written consent of WCI, Inc. I understand that _____ is authorized to disclose information pursuant to law or legal process.

I certify that if I leave this Project before it ends, or at the termination of the Project, I will return all confidential information and copies thereof in my possession or control to_____, and I will not disclose such information or otherwise make it available, in any form or manner, to any other person or entity. I certify that I have read and understand this Conflict of Interest and Confidentiality Statement, including the requirements set forth therein related to conflict of interest, confidentiality and limitations on the use of confidential information.

I certify that I understand that any unauthorized disclosure of confidential information will be handled in accordance with Article 26 of this Agreement.

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Organization: _____

Telephone No.: _____

Fax No.: _____

Email Address: _____

ATTACHMENT E

CONTRACT INSURANCE REQUIREMENTS

WCI, Inc. retains the right to increase insurance requirements when additional risk exposures are evident.

These requirements constitute the Contract Insurance requirements.

Throughout the life of this Contract, the Contractor shall pay for and maintain in full force and effect with an insurance company(s) (Company) rated not less than "A: VII" in Best Insurance Key Rating Guide, the following policies of insurance:

1. **COMMERCIAL OR COMPREHENSIVE GENERAL LIABILITY** insurance which shall include Contractual Liability, Products and Completed Operations coverages, Bodily Injury and Property Damage (including Fire Legal Liability) Liability insurance with combined single limits of not less than [REDACTED] per occurrence, and if written on an Aggregate basis, [REDACTED] Aggregate limit.
2. **COMMERCIAL (BUSINESS) AUTOMOBILE LIABILITY** insurance, for "any auto" with combined single limits of liability of not less than [REDACTED] each occurrence.
3. **Professional Liability (Errors and Omissions):** Insurance appropriate to the Contractor's profession, with limit no less than [REDACTED] per occurrence or claim, [REDACTED] aggregate.
4. *[N/A as the contract does not include services or products related to on-line activity]*
Cyber liability coverage: Insurance with limit no less than [REDACTED] per occurrence or claim, [REDACTED] aggregate that includes:
 - Security and privacy liability
 - Media liability
 - Business interruption and extra expense
 - Cyber extortion

The Policy(s) shall also provide the following:

1. The Commercial General Liability and Automobile Liability insurance shall be written on ISO approved occurrence form (see item 1 and 2 above) and name WCI, Inc., their officers, representatives, agents, employees and volunteers as additional insureds.
2. For any claims related to Contractor's negligence under this project, the Contractor's insurance coverage shall be primary insurance as respects WCI, Inc., their officers, representative, agents, employees and volunteers. Any coverage maintained by WCI, Inc. shall be excess of the Contractor's insurance and shall not contribute with it. Policy shall waive right of recovery (waiver of subrogation) against WCI, Inc.

3. Should any of the above-described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the provisions of Paragraph 2 of the General Terms and Conditions, Attachment C.
4. The Company shall furnish WCI, Inc. with the Certificates that include the blanket additional insured endorsement for all required insurance, within 10 days of commencing the Work.
5. Proper Address for Mailing Certificates, Endorsements and Notices shall be:

**Western Climate Initiative, Inc.
980 Ninth Street, Suite 1600
Sacramento, CA 95814**

6. Upon notification of receipt by WCI, Inc., of a Notice of Cancellation, major change, modification, or reduction in coverage, the Contractor shall file with WCI, Inc. in accordance with the policy an original certificate of insurance for such policy.

If at any time during the life of the Contract or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Contract shall be discontinued immediately, and all payments due or that may become due to the Contractor shall be withheld until acceptable replacement coverage notice is received by WCI, Inc. Any failure to maintain the required insurance shall be sufficient cause for WCI, Inc. to terminate this Contract.

If the Contractor should subcontract all or any portion of the work to be performed in this contract, the Contractor shall require each subcontractor to adhere to all subparagraphs of this Insurance Requirements Attachment.

**ATTACHMENT F:
CONTRACTOR'S TECHNICAL AND COST PROPOSAL**

[This attachment has been removed from the public document for
business confidentiality reasons.]