

Justification for a Non-Competitive Procurement Process

Preparation of an Impact Assessment Report for the Article 8 Accounting Mechanism

INTRODUCTION

Before WCI, Inc. was created, technical and contracted support for the Western Climate Initiative (“WCI”), an informal organization of US states and Canadian provinces, was provided through the Western Governors’ Association (“WGA”). States and provinces contributed funds to the WGA to further the objectives of the WCI, including work on carbon pricing. As the work with the WGA ended, unused funds (approximately [REDACTED]) were transferred to WCI, Inc. In May 2014, the WCI, Inc. Board of Directors designated the WGA funds for “logistical and technical support for discussions about carbon pricing among US states and Canadian provinces.” WCI, Inc. currently has approximately [REDACTED] remaining that can only be spent on specific purposes.

Jurisdiction staff in California and Quebec have identified an opportunity to develop a methodology to account for flows of compliance instruments across linked programs and for how those flows of compliance instruments can be accounted for in demonstrating progress towards achieving jurisdictional GHG targets, while ensuring there is no double counting. This topic is also of interest in the international community under Article 6 of the Paris Agreement.

WCI, Inc. has received a proposal from Kelley Kizzier and Andrew Howard (“Contractors”) to prepare an impact assessment report for the Article 8 Accounting Mechanism (“Proposal”). The Contractors are independent contractors focused on supporting governments, international institutions and business groups in their development of policy responses to climate change. Ms. Kizzier and Mr. Howard are focused on the development of new modes of government cooperation and market instruments under Article 6 of the Paris Agreement, including their linkages to other forms of support and climate finance. The amount of the agreement is [REDACTED] (USD). A copy of the Agreement and a budget for the Proposal are attached (“Agreement”).

JUSTIFICATION FOR NONCOMPETITIVE PROCUREMENT PROCESS

The selection of Ms. Kizzier and Mr. Howard without a competitive process is justified by policy and technical considerations. On the policy side, Ms. Kizzier and Mr. Howard are uniquely placed to provide the services set forth in the Agreement, building on their vast international expertise supporting UN Climate Change Secretariat in the negotiation and implementation under the UNFCCC of all matters relating to market instruments, from the initial design of the Kyoto mechanisms, to their implementation and accounting systems, to the development of Article 6 of the Paris Agreement.

This is both a technical and policy activity that is relevant to any linked cap-and-trade program and falls within the WCI, Inc. resolution because it would support carbon pricing discussions with existing, emerging programs, and provides critical information for how such accounting could be established at an international level.

Given the justifications discussed above, it is the recommendation of the Executive Director and WCI, Inc. legal counsel that entering into the agreement with the Contractors on a non-competitive process provides the best value to achieve the Board’s purposes in designating funds for logistical and technical support of carbon pricing discussions.

**WESTERN CLIMATE INITIATIVE, INC.
STANDARD SERVICES AGREEMENT**

This Standard Services Agreement (“**Agreement**”) is entered into effective as of October 12, 2018 (the “**Effective Date**”) by and between the Western Climate Initiative, Inc., a nonprofit corporation (“**WCI, Inc.**”), and Kelley Kizzier and Andrew Howard, individuals (each a “**Contractor**” and collectively, “**Contractors**”). In consideration of the promises and the mutual covenants and agreements set forth below, the parties hereto agree as follows:

1. **Services.** Contractors agree to perform those services required under this Agreement and as specifically set forth in the scope of work attached hereto and incorporated herein by reference as Exhibit A (“**Scope of Work**”) and any amendments or additions to the Scope of Work as agreed to in writing and signed by the parties (collectively, “**Services**”). Use of the term “Agreement” shall include the Scope of Work. Contractors may not subcontract to any third party any portion of the Services nor may Contractors, voluntarily or by operation of law, assign or transfer any of their rights or obligations under this Agreement, without the prior written consent of the WCI, Inc.
2. **Ownership of Work Product.** Contractors acknowledge and agree that all work product and deliverables prepared for, arising from, related to, or incorporated in the Services including, without limitation, all ideas, concepts, inventions, expressions, information, material or works of authorship (and all corrections, modifications, and derivative works to such work product or deliverables) shall be owned solely and exclusively by WCI, Inc.
3. **Compensation and Expenses.** WCI, Inc. shall pay to Contractors the fees set forth in the Scope of Work (“**Fees**”). Unless otherwise stated in the Scope of Work, the Fees shall include, and Contractors shall be responsible for, all expenses and taxes incurred by Contractors in connection with providing the Services.
4. **Payment Terms.** Except as may otherwise be set forth in the Scope of Work, Contractors shall submit to WCI, Inc. on a monthly basis a single invoice listing in detail all Services provided to WCI, Inc. and Fees incurred by Contractors in the prior month (“**Invoice**”). The Invoice shall indicate the amount to be paid to each Contractor. WCI, Inc. shall remit payment to Contractors on undisputed Invoices within forty-five (45) days (excluding holidays) of the WCI, Inc.’s receipt of the Invoice.
5. **Term and Termination.** The Agreement shall commence on the Effective Date and, unless otherwise provided in the Scope of Work, shall terminate upon Contractors’ completion of the Services to WCI, Inc.’s satisfaction, provided that WCI, Inc. may terminate this Agreement: (i) at any earlier time, without cause or penalty, by giving at least five (5) days’ written notice to Contractors; or (ii) immediately upon written notice to Contractors in the event of either Contractor’s material breach of this Agreement. Any early termination of this Agreement shall be without prejudice to any claims or damages a party may have.
6. **Independent Contractor Relationship.** Each Contractor is and shall be an independent contractor of the WCI, Inc. Contractors and Contractors’ employees or subcontractors shall **not** be deemed to be employees or agents of WCI, Inc. Contractors and Contractors’ employees and subcontractors will **not** be entitled to any benefits made available to WCI, Inc. employees. Nothing in this Agreement is intended to establish a partnership, joint venture, or agency relationship between WCI, Inc., on the one hand, and Contractors on, the other hand. Contractors and Contractors’ employees or

subcontractors are **not** authorized to bind WCI, Inc. or make any representations on its behalf in any matter.

7. **Confidentiality.** At all times hereafter, Contractors will keep in confidence and trust all confidential and proprietary information that Contractors learn of or receives during the term of this Agreement, and will not use, reproduce, or disclose to others any confidential information without WCI, Inc.'s advance written consent, except as may be directly necessary in the ordinary course of performance of the Services under this Agreement, or as otherwise may be required by law.

8. **Contractor's Representations and Warranties.** Each Contractor represents and warrants that: (a) Contractor will comply with all federal, state and WCI, Inc. laws, rules, regulations and policies in performing the Services, (b) the Services will be performed in compliance with generally accepted professional procedures and industry standards prevailing at the time the Services are performed, (c) all Services will meet the specifications set forth in the Scope of Work, and (d) Contractor has, and shall maintain in effect for the duration of this Agreement, all licenses, permits, qualifications, and approvals which are legally required for Contractor to render the Services.

9. **Indemnification.** Contractors, jointly and severally, agree to hold harmless and indemnify WCI, Inc. and its officers, directors, employees and agents from and against all claims, damages, losses, and expenses (including without limitation attorneys' fees and costs) (collectively, "**Losses**") arising out of (i) the performance of the Services by each Contractor, except to the extent that such Losses are caused by the sole negligence or willful misconduct of WCI, Inc., or (ii) any breach or default in the performance of any of Contractor's obligations hereunder including, without limitation, any breach of any warranty or representation. This indemnity shall not be limited by reason of any insurance coverage required under this Agreement.

10. **Survival.** The provisions of Sections 5 (Term and Termination), 6 (Independent Contractor Relationship), 7 (Confidentiality), 8 (Contractor's Representations and Warranties), 9 (Indemnification), 11 (Limitation on Damages), 12 (Governing Law; Dispute Resolution), 13 (WCI, Inc. Names and Logos), and 14 (General Provisions) shall survive termination of this Agreement.

11. **Limitation on Damages.** In no event shall a party be liable to the other parties for any special, consequential, indirect, exemplary, punitive, incidental, or similar damages (including, without limitation, loss of profits), even if such party has been apprised of the possibility thereof; provided, however, that the foregoing limitation shall not apply in the event that a Contractor breaches the provisions of Section 7 (Confidentiality) of this Agreement.

12. **Governing Law; Dispute Resolution.** This Agreement, and any dispute between the parties arising out of or related to this Agreement, shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws rules. Any and all legal action that is initiated to enforce any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court located in California. The prevailing party shall be entitled to recover the cost of enforcing the understanding and agreements as reflected herein, including, without limitation, any attorney's fees and costs incurred.

13. **WCI, Inc. Names and Logos.** Contractors agrees that they shall not use the WCI, Inc.'s name, logo or insignia, or the name, logo or insignia of any participating jurisdiction, or otherwise identify WCI, Inc. or any of its participating jurisdictions in any form of publicity or disclosure without the prior

written permission of WCI, Inc., which permission may be given or withheld in WCI, Inc.'s sole discretion.

14. **General Provisions.** No provision of this Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any provision of this Agreement. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. This Agreement shall be interpreted in an even-handed manner and without regard to any presumption against the party that was responsible for its drafting. Time is of the essence. If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby. This Agreement including its Exhibits, may not be modified except in writing executed by duly authorized representatives of the parties. This Agreement together with the exhibits hereto constitutes the entire agreement between the parties pertaining to its subject matter, superseding all prior and contemporaneous agreements, proposals, letters of intent and memorandums of understanding. Accurate and legible photocopies, images or PDF versions of signatures or faxed versions of signatures to this Agreement shall have the same legal effect as an original signature, and this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute the same document.

[Signature page to immediately follow]

IN WITNESS WHEREOF, this Agreement has been duly executed on behalf of the parties hereto as of the Effective Date.

WESTERN CLIMATE INITIATIVE, INC.

CONTRACTORS

By: Signature on file
Name: Greg Tamblyn
Title: Executive Director

Signature on file
Kelley Kizzier

[Address]
[City, State, Zip]
Attn: _____
Fax number: _____

[Address]
[City, State, Zip]
Attn: _____
Fax number: _____

Signature on file
Andrew Howard

[Address]
[City, State, Zip]
Attn: _____
Fax number: _____

Exhibit A

SCOPE OF WORK

SERVICES:

Prepare an impact assessment report for the Article 8 Accounting Mechanism

The Contractors will conduct an assessment of options for the Accounting Mechanism under Article 8 of the California-Quebec linking agreement. They will record the results of the impact assessment process in a comprehensive, objective and evidence-based report to promote informed decision-making and better regulation. The impact assessment will help structure the reflection and analyses for WCI jurisdictions and can be published to justify the accounting methodology selected for use in the WCI linked program. The impact assessment will elaborate and evaluate options and make recommendations based on agreed criteria drawn primarily from Article 8 and from the work undertaken by the WCI jurisdictions over the last year.

The impact assessment process will involve the following main steps:

- The establishment of an Advisory Group to support the work by guiding the impact assessment process and collectively agreeing on recommendations. It will include the Contractors and several members of the WCI jurisdictions. The Contractors will conduct the work and regularly share issues, options, analysis, evidence and findings in the Group, which shall in return provide feedback and evidence.
- The sharing in the Group of inputs and results of the discussions via a secure webpage.
- Group discussion and feedback on at least one full draft of the assessment report.
- Submission of a draft revised report to WCI jurisdictions for review, followed by revision to take account of its recommendations for improvement.

The impact assessment process will include the following key deliverables:

- **Iterative discussion process** through the Advisory Group.
- **Inception report** setting out the key issues and initial options, assessment criteria and an initial consideration of relevant impacts of these policy options.
- **Impact assessment report** and **executive summary** presenting the final options and assessment of impacts, using previously agreed data sets, against the criteria established in Article 8, their ability to facilitate future linking partners and, to the extent relevant, their ability to support the achievement of Nationally Determined Contributions under the Paris Agreement. The accounting options will be drawn from other international linking agreements, discussions on cooperative approaches under the Paris Agreement and those developed by WCI jurisdictions. The report will be empirically rich and capture relevant experience and standards from countries and jurisdictions that have designed and

implemented international or inter-jurisdictional accounting systems to support carbon pricing, as well as legal frameworks in WCI jurisdictions. The impact assessment will include quantified costs and benefits whenever possible.

COMPENSATION:

Contractors’ total compensation including, without limitation, the “Expenses” set forth immediately below, shall not exceed ██████ USD without prior written authorization from WCI, Inc.

EXPENSES:

WCI, Inc. will reimburse Contractors for the following total travel expenses which amounts shall include travel expenses for both Contractors:

Travel for one meeting (USA or Canada)	██████ (USD)
1 flight (from USA)	██████ (USD)
1 flight (from Europe)	██████ (USD)
Expenses (6 nights x 1 meeting)	██████ (USD)

No reimbursement for expenses shall be provided unless Contractors substantiate the expenses claimed by submitting to WCI, Inc. receipts or other documentation acceptable to WCI, Inc. in its sole discretion. All costs, including reimbursement for travel, lodging, etc., are part of a not-to-exceed amount of ██████ (USD). All expenses, plus all compensation, will be reported by the WCI, Inc. on IRS Form 1099-misc.

PAYMENT TERMS:

Contractors will submit joint invoices to WCI, Inc. and WCI, Inc. will pay undisputed invoices within 45 calendar days of receipt. Each of the Payment Milestones will be divided equally between the Contractors and made to Contractors per the schedule listed below:

Payment milestone	
Inception Meeting	██████ (USD)
1 st draft impact assessment report	██████ (USD)
2 nd draft impact assessment report	██████ (USD)

TERM:

The Agreement will expire upon Contractors’ completion of the Services to WCI, Inc.’s satisfaction.