



**STANDARD AGREEMENT**  
**Compensation Consulting**  
August 6, 2019

## STANDARD AGREEMENT ("Agreement")

AGREEMENT NUMBER  
**2019-01**

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

CONTRACTOR'S NAME **Mercer (US) Inc.**

2. The term of this Agreement is: **Ten (10) weeks to begin August 6, 2019 and end October 15, 2019**

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

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  
Attachment B – Invoicing and Payment Provisions  
Attachment C – General Terms and Conditions  
Attachment D1 – Organization Conflict of Interest and Confidentiality  
Attachment E – Contract Insurance Requirements  
Attachment F – Contractor's Proposal

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

### CONTRACTOR

WCI, Inc. Use Only

CONTRACTOR'S NAME **Mercer (US) Inc., on behalf of itself and as billing and collection agent for Mercer (Canada) Limited**

BY (Authorized Signature)  
Signature on File

DATE SIGNED (Do not  
type) **8/8/19**

PRINTED NAME AND TITLE OF PERSON SIGNING  
**Lyn Harper, Principal**

ADDRESS  
**1060 Connecticut Ave NW Suite 700, Washington**

CONTRACTOR'S NAME  
**Mercer (Canada) Limited**

BY (Authorized Signature)  
Signature on File

DATE SIGNED (Do  
not type) **8/8/2019**

PRINTED NAME AND TITLE  
**Daniel Imbeault**

ADDRESS  
**1981 McGill College Avenue, Suite 800, Montreal, Quebec, H3A 3T6**

### CONTRACTEE

CONTRACTEE'S NAME  
**WESTERN CLIMATE INITIATIVE, INC.**

BY (Authorized Signature)  
Signature on File

DATE SIGNED (Do not  
type)

PRINTED NAME AND TITLE OF PERSON SIGNING  
**Jason Hollett, Secretary**

ADDRESS  
**980 9th Street, Suite 1600, Sacramento, CA 95814**

Contractor agrees, as part of the Agreement, to provide to WCI, Inc. the services described in the Agreement and the Attachments to the Agreement, including the services described in Attachment A, Scope of Work, and in Attachment F, Contractor's Proposal, (all such services, collectively, the "Work" or the "Work Schedule").

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:
Name: Mark Wenzel	Name: Lyn Harper
Phone: 916-322-1769	Phone: 202-331-2508
Fax:	Fax:
Email: mark.wenzel@calepa.ca.gov	Email: lyn.harper@mercercor.com

Direct all administrative inquiries to:

Western Climate Initiative, Inc.	Contractor:
Attention: Greg Tamblyn	Attention: Lyn Harper
Phone: 916-449-9966	Phone: 202-331-2508
Fax: 916-446-7104	Fax:
Email: operations@wci-inc.org	Email: lyn.harper@mercercor.com

## **PURPOSE / BACKGROUND / OVERVIEW**

### **A. PURPOSE**

The purpose of this work is to provide analysis and advice to Western Climate Initiative, Inc. ("WCI, Inc.") on its compensation practices and those of its peers.

### **B. BACKGROUND**

WCI, Inc. is a 501(c)(3) Delaware non-profit corporation that provides administrative and technical services to support the implementation of greenhouse gas emissions trading programs in the US State of California and the Canadian Provinces of Nova Scotia and Québec (the "Participating Jurisdictions"), with the potential to expand to include additional jurisdictions. WCI, Inc. staff work closely with Participating Jurisdictions to understand their needs and regulations, and procure and manage contracts with third-party technology service providers and a market monitor to serve those needs.

The WCI, Inc. team consists of an Executive Director and eight staff positions in seven job classes. WCI, Inc. is headquartered in Sacramento, California, with an office in Québec City, Québec. WCI, Inc. is reviewing its executive and staff compensation as part of a larger organizational review.

### **C. OVERVIEW**

Under this agreement, the Contractor and the WCI, Inc. Compensation Committee and WCI, Inc. staff will meet to exchange information and establish a work plan. They will develop a list of peer organizations to WCI, Inc., (the "peer group") and the Contractor will use this list to analyze compensation in the peer group. The Contractor will provide a report to the Committee with data, analysis, and recommendations. If directed by the Committee, the Contractor will provide a reasonableness opinion.

## **ATTACHMENT A: SCOPE OF WORK**

This Scope of Work describes the compensation consulting services Mercer (US) Inc. ("Contractor") and its affiliate Mercer (Canada) Limited ("Mercer Canada") will provide for WCI, Inc. Contractor shall perform the Services required to be performed in the US and Mercer Canada shall perform the Services required to be performed in Canada. In this Agreement, in addition to referring to Mercer (US), the word "Contractor" will also refer to Mercer Canada: (a) to the extent Mercer Canada performs services hereunder to WCI, Inc., and (b) for purposes of Section 10 (Indemnification).

These Services will cover compensation research and advice for eight job classes:

1. Executive Director
2. Assistant Executive Director
3. Operations Manager
4. Chief Technology Officer
5. IT Project Manager
6. IT Business Analyst
7. IT Architect
8. User Experience Specialist

All services are to be conducted in accordance with the Agreement. The Contractor will work at the direction of the WCI, Inc. Compensation Committee ("Committee"). If any instruction from the Committee is unclear, incomplete, or inconsistent, the Contractor shall seek clarification from the Committee prior to carrying out the instruction.

### **Task 1: Kick-off and Planning Meeting and Work Plan**

**1a.** The Contractor and Committee shall hold a kick-off meeting by teleconference to initiate the project. The Committee will provide its charter, the WCI, Inc. Compensation Philosophy, the WCI, Inc. 2018 – 2021 Strategic Plan, and position descriptions for the eight job classes in advance, and the Contractor shall review these items. The Committee and Contractor shall discuss additional information needs, timelines, and expectations.

**1b.** The Contractor shall create a work plan and schedule, informed by the kick-off meeting. If necessary, the Contractor shall revise the work plan as directed by the Committee.

**1c.** WCI, Inc. will provide a list of entities in the Participating Jurisdictions' cap-and-trade programs. The Contractor shall review the list and identify any potential conflicts of interest. If any are identified, the Contractor shall propose a resolution to the Committee.

**Deliverables:** Work Plan and Schedule; Conflict of Interest Proposal

## **Task 2: Data Collection and Peer Group definition**

**2a.** The Contractor shall meet by teleconference with the WCI, Inc. Executive Director. As established in the work plan, the Contractor may be directed to meet by teleconference with other employees of WCI, Inc. The Executive Director will provide current compensation information, recruitment and retention experience, and other necessary information.

**2b.** The Contractor shall work with the Committee and the Executive Director to develop a Peer Group of similar or comparable organizations for comparison. The Peer Group will be designed in such a manner that makes it as representative of WCI Inc.'s economic and competitive environment as possible, while not unduly limiting the robustness of the data. This work shall include e-mail and teleconference discussions as needed.

**Deliverables:** Peer Group list

## **Task 3: Analysis and Reporting**

**3a.** Using appropriate data sources, such as those identified in its response to the Request for Proposals for Compensation Consulting, the Contractor shall analyze total compensation in the Peer Group for the eight job classes.

**3b.** The Contractor shall prepare and provide to the Committee a draft report on WCI, Inc.'s current compensation and comparisons to the Peer Group. The report will show total cash compensation (base and short-term incentives) for non-executive positions and total remuneration (base, short-term incentives, long-term incentives, benefits and pension) for executive positions. The draft report shall include descriptions of the Consultant's process, findings, and recommendations for compensation for each of the eight job classes to the Committee.

**3c.** The Contractor shall meet with the Committee by teleconference to present the draft report and answer questions.

**3d.** The Contractor shall prepare and provide to the Committee a final report, incorporating changes requested by the Committee if necessary. If so directed by the Committee, the Contractor shall present its report to the full WCI, Inc. Board of Directors by teleconference.

**Deliverables:** Draft report; Final report

## **Task 4: Reasonableness opinion (at Committee option)**

**4.** If so directed by the Committee, the Contractor shall prepare and deliver a reasonableness opinion. The reasonableness opinion, if required, will be prepared by the Contractor only.

**Deliverables:** Reasonableness Opinion



## **ATTACHMENT B INVOICING AND PAYMENT PROVISIONS**

### **A. Invoicing and Payment**

- i. Fixed Price. For services satisfactorily rendered and upon receipt and approval of the invoice for such services satisfactorily rendered, WCI, Inc. agrees to compensate the Contractor and Mercer Canada at the pricing set forth in this Attachment B. The maximum amount payable for each deliverable and task, and total contract value, shall not exceed the value identified in this Attachment B, unless otherwise agreed by the parties in writing. Compensation refers to the consideration set forth in this Attachment B to be paid to Contractor for all of Contractor's services provided and costs incurred to fulfill its duties and obligations about the Agreement.
- ii. Hourly Rates. The hourly rates for duration of this Agreement are inclusive of all taxes, fees, and any other non-travel expenses.
- iii. Travel. Costs for travel will be incurred and charged for on a cost-reimbursable basis, at cost, and only if authorized in writing by the WCI, Inc. Executive Director. When traveling within the United States, travel cost reimbursement must abide by U.S. Federal travel regulations and per diem rates per <https://www.gsa.gov/travel/plan-book/per-diem-rates>. When traveling outside the United States, travel cost reimbursement must abide by the per diem rates used by the U.S. State Department: [https://aoprals.state.gov/web920/per\\_diem.asp](https://aoprals.state.gov/web920/per_diem.asp).
- iv. Invoicing. All services satisfactorily performed shall be payable in arrears for services rendered. Mercer (US) shall invoice WCI, Inc. directly for the Services it performs and Mercer Canada shall invoice WCI, Inc. directly for the Services it performs. Payment terms are NET 30 after receipt of an undisputed invoice for completed services. The invoice shall include the Agreement Number and summary of services performed for the amount invoiced. The invoice shall be submitted at the conclusion of the term of this Agreement. Each item in the invoice must correspond to the budget identified in Attachment [B]. The invoice shall be emailed to [operations@wci-inc.org](mailto:operations@wci-inc.org) and mailed to the following address:

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

### **B. Budget Detail**

Scope	Fees
Task 1. Project Planning and Strategic Alignment	
Task 2. Market Benchmarking	
Task 3. Reporting and Delivery	
Task 4. Optional: Reasonableness letter preparation	
<b>Total NTE Amount:</b>	

### C. Collection

The Contractor will bill and collect fees on the Services it performs and Mercer Canada will bill and collect fees on the Services it performs.

Each party to this Agreement may withhold from payments such taxes as are required to be withheld under applicable law. If applicable, each party to this Agreement supplying services will apply certain taxes (such as value added tax, goods and service tax, sales tax, and other similar types of Taxes ("Indirect Tax")) to its charges as required by the laws of the relevant jurisdiction, and where such Indirect Tax is chargeable, it will be payable by WCI, Inc. Where WCI, Inc. is required by the laws of their relevant jurisdiction to account for Indirect Tax on services rendered, WCI, Inc. will be responsible for payment of such Indirect Tax.

Notwithstanding the foregoing, the parties (including Mercer Canada) also agree that it is the understanding and intention of the parties that the Fees set forth immediately above, including the Total NTE Amount includes any applicable taxes and/or withholds and should there be any applicable taxes required as a result of the paragraph immediately above, such taxes shall not increase the Fees including the Total NTE Amount.



## **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 any such required written approval has been obtained. Contractor represents that the Agreement has been duly authorized by all necessary corporate or other action on the part of Contractor and that the officer or other person 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. 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 (i) evidence that the insurance coverages are being maintained and (ii) copies of the policies providing for such insurance coverages. WCI, Inc., shall be named as an additional insured with respect to liability arising from the operations of the named insured and certificate holder on the Commercial General Liability policy 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 WCI, Inc., each of the Participating Jurisdictions and applicable law.

### **3. SUBSTITUTION OF KEY PERSONNEL**

A. Personnel and Key Personnel. Individuals providing Services that are employed by Contractor or any approved subcontractor are referred to herein as "**Personnel.**" "**Key Personnel**" (or individually, a "**Key Person**") means those individuals employed by Contractor (or who are approved subcontractors) who will play a significant consulting role in providing the Services. Key Personnel includes

B. Personnel and Key Personnel Screening. Prior to assigning any Personnel and Key Personnel to provide Services, Contractor shall complete all the background check and other employee screening processes required by WCI, Inc. or by law, plus any other requirements as may be specified in Attachment [A].

C. Replacement of Personnel and Key Personnel. (i) If WCI, Inc. believes that the performance or conduct of any Personnel or Key Personnel is unsatisfactory for any reason or is not in compliance with the provisions of this Agreement, WCI, Inc. shall so notify

Contractor and Contractor shall promptly address the performance or conduct of such person, or, at WCI, Inc.'s request, immediately replace such person with another person acceptable to WCI, Inc. with sufficient knowledge and expertise to perform the Services in accordance with this Agreement. (ii) Key Personnel shall not be replaced by Contractor without providing WCI, Inc. at least ten (10) days' notice and obtaining WCI, Inc.'s prior written approval, which approval shall not be unreasonably withheld; provided, however, that any such replacement shall have equivalent skills, expertise, qualifications, certifications and knowledge of the Key Person being replaced. (iii) Contractor shall act promptly and diligently to fill any vacancies of Key Personnel. Key Personnel shall be identified in Attachments [A and B], and Attachments [A and B] shall be modified to reflect changes in Key Personnel during the Term of this Agreement.

#### 4. PERFORMANCE; DELIVERY, ACCEPTANCE, AND REJECTION OF DELIVERABLES

A. Contractor shall perform the Work in a professional manner, consistent with the standard of skill and care exercised by the best professionals within Contractor's industry on projects of comparable scope and complexity, and all Work shall be of good quality and free from 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 Sections 5 or 6 of these General Terms and Conditions, no changes in the Work Schedule or any compensation or reimbursement to be paid to Contractor shall be made as a result thereof.

B. Delivery of Deliverables. Upon completion of each Deliverable, Contractor shall deliver to WCI, Inc. the Deliverable in accordance with the delivery criteria set forth in Attachment [A].

C. Deliverable Acceptance and Rejection. Upon WCI, Inc.'s receipt of each Deliverable, WCI, Inc. will review such Deliverable to ensure that it conforms to the requirements set forth in Attachment [A]. If WCI, Inc. determines any Deliverable does not conform to the requirements of Attachment [A], WCI, Inc. shall notify Contractor in writing of such non-conformity(-ies) ("Non-Acceptance Notice"). Following receipt of a Non-Acceptance Notice, Contractor, at Contractor's sole cost and expense, shall remedy all non-conformities and re-deliver the Deliverable in accordance with the delivery criteria set forth in Attachment [A], as promptly as commercially possible and, in any case, within fourteen (14) days or such other timeframe as otherwise agreed by the parties. The parties shall repeat this process until the Deliverable has been accepted; provided, however, that if Contractor fails to re-deliver the Deliverable within the time period specified, or fails more than once to remedy a non-conformity, WCI, Inc. will have the right, at its option, to treat such failure as a material breach incapable of cure and terminate this Agreement in accordance with [Section] of the Agreement. In such event, the applicable fees shall be reduced equitably to reflect the value of the Deliverable as received relative to the value of the Deliverable had it conformed to the requirements of Attachment

[A]. WCI, Inc. shall give Contractor notice of its acceptance of any Deliverable in writing.

## 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 sole 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. WCI, Inc. may amend or vary the terms of the Agreement unilaterally, without the need for a change order under Section 5 of these General Terms and Conditions, to allow for additional time or additional funding for performance by providing Contractor with a copy of the applicable amendment or variation signed by WCI, Inc. No other 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. AUDITS

- A. Financial 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 required by WCI, Inc. Contractor agrees to allow the auditor(s) designated by WCI, Inc., any Participating Jurisdiction or any funding entity, and/or any of their respective 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. 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 of the Agreement. Contractor shall include the provisions of this Section 8.A in any subcontract executed in connection with the Agreement.

- B. Programmatic Audit. 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 through the Agreement to ensure compliance with the Agreement and with regulations governing the greenhouse gas (GHG) reporting or cap-and-trade programs implemented by WCI, Inc.,.

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 required by WCI, Inc. Contractor agrees to allow the auditor(s) designated by WCI, Inc., any Participating Jurisdiction or any funding entity, and/or any of their respective 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., any Participating Jurisdiction or any funding entity, and/or any of their respective duly authorized representatives, to audit records and interview staff in any subcontract related to the performance of tasks that are paid through the Agreement. Contractor shall include the provisions of this Section 8.B in any subcontract executed in connection with the Agreement.

- C. Notwithstanding the foregoing, any audit requested by WCI, Inc. under this Section 8: (i) must be preceded by advance written request of no less than fifteen (15) business days prior to the audit; (b) may pertain to those systems used to provide the services under this Agreement and records related to the services provided; (c) are subject to appropriate confidentiality and non-disclosure provisions; (d) may not unreasonably disrupt the Contractor's normal business operations; and (e) are conducted at the sole cost of WCI, Inc. (excluding any Contractor resources) unless the audit reveals a material breach of the Agreement by Contractor at which the Contractor shall be responsible for immediately reimbursing WCI, Inc. for all costs of the audit including, without limitation, costs of WCI, Inc. staff time and resources.

## 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 AND LIMITATION OF LIABILITY

- A. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless WCI, Inc., and its directors, officers, employees and agents of (the "Indemnified Parties") from and against any and all debts, losses, claims, damages, costs, expenses, demands, fines, judgments, contracts (implied and expressed, written and unwritten), penalties, obligations, payments and liabilities of every type and nature (whether known or unknown, fixed or contingent), including any costs and expenses of any pending or threatened lawsuit, action or proceeding (including attorneys' fees, out-of-pocket expenses and other costs and expenses incurred in investigating, preparing or defending any such pending or threatened lawsuit, action or proceeding, whether brought by a party to the Agreement or by any other person), (collectively, the "Losses") incurred, suffered or sustained by any Indemnified Party by reason of or in connection with (y) any act or omission or alleged act or omission by Contractor or any of its subcontractors or any of their respective direct or indirect employees, contractors, subcontractors, suppliers or laborers or by any other person, firm or entity furnishing or supplying services, materials or supplies to, for or on behalf of Contractor or any of its subcontractors in connection with the Agreement or (z) any breach or alleged breach of the Agreement by Contractor or any of its subcontractors, including any breach or alleged breach of any representation, warranty, acknowledgement or covenant contained in these General Terms and Conditions or otherwise in the Agreement.
- B. Within a reasonable time after an Indemnified Party obtains actual knowledge of any claim, action, suit or proceeding by a third party (an "Action") as to which recovery may be sought against Contractor pursuant to this Section 10 or Section 24 of these General Terms and Conditions, the Indemnified Party shall give written notice of such Action to the Contractor, which written notice may be provided by WCI, Inc. on its behalf and on behalf of all other Indemnified Parties. Notwithstanding the foregoing, the right to indemnification under this Section 10 or Section 24 of these General Terms and Conditions shall not be affected by any failure or delay in giving such notice unless, and then only to the extent that, the rights and remedies of the Contractor have been materially prejudiced as a result of such failure or delay. If, within fifteen (15) days after such notice has been given, Contractor notifies the Indemnified Party of its election to defend any Action, then, except as described below, the Contractor may control the defense of such Action at its own expense through counsel reasonably satisfactory to the Indemnified Party, provided that the Indemnified Party may participate in such defense at its own expense but, in any event, Contractor will have the right to control such defense as long as it is actively defending such Action. Failure by Contractor to so notify the Indemnified Party shall be deemed a waiver by Contractor of its rights to defend such Action. In such event, the Indemnified Party may tender the defense to Contractor or, at the Indemnified Party's option, select counsel of its own choosing.



- C. The Indemnified Party can take over and assume control of the defense of an Action, or seek a settlement of any Action, if (i) Contractor has failed to accept the defense of, or to actively defend, the Action, (ii) in the Indemnified Party's reasonable judgment there is a conflict of interest between Contractor and the Indemnified Party in conducting the defense, (iii) the Action relates to or arises in connection with any criminal proceeding, action, indictment, allegation or investigation against Contractor, (iv) the Action seeks an injunction or equitable relief against an Indemnified Party or (v) Contractor fails to provide reasonable assurance to the Indemnified Party that it has the financial capacity to defend such Action. In any of the foregoing cases, Contractor will pay the fees and expenses of one (but no more than one) counsel to all Indemnified Parties.
- D. Except with the prior written consent of the Indemnified Party, Contractor shall not, in the defense of any Action, consent to the entry of any judgment (other than a judgment of dismissal on the merits without costs) or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or the plaintiff to the Indemnified Party of a release from all Losses in respect of such Action.
- E. Contractor shall not be responsible for any settlement entered into by the Indemnified Party without the prior written consent of Contractor, which consent shall not be unreasonably withheld.
- F. Within ten (10) days of the Indemnified Party's written request, Contractor shall reimburse the Indemnified Party for the amount of any judgment or settlement rendered with respect to any Action and for all Losses incurred by the Indemnified Party relating to such Action.
- G. Notwithstanding the foregoing subsections of this Section 10 or any other provision of this Agreement, the liability of a party and its affiliates, in tort, contract or otherwise, to the other party and its officers, directors, trustees and employees or shareholders of any of them, for any claim arising in connection with or contributed to by this Agreement and the services hereunder (including without limitation multiple claims arising out of or based upon the same act, error or omission, or series of continuous, interrelated or repeated acts, errors or omissions), shall not (i) exceed five times the total Fixed Price as set forth in Exhibit B of this Contract, and (ii) include loss of profit or incidental, consequential, indirect, or punitive damages. The limitation described in subsection 10G(i) shall not apply to:
- (a) any liability arising from Contractor's breach of its obligations under Section 24 (Intellectual Property) or Section 26 (Confidentiality) (however, any liability of the Contractor for a breach of Section 26 (Confidentiality) obligations shall not exceed                   ); or
  - (b) any liability which has been finally determined to have arisen from wilful or illegal misconduct or fraud on the part of the indemnifying party or which cannot lawfully be limited, modified or excluded.

Notwithstanding any other provision or term of this Agreement, the provisions and terms of this Section 10 shall not be to the benefit of or be asserted by any insurance company under any of the policies set forth in Exhibit E nor shall any other provision or term provisions this Section 10 apply to or limit in any way the insurance policies or coverages set forth in Exhibit E.

#### 11. TERMINATION FOR CAUSE

If Contractor fails to perform any of the requirements of this Agreement at the time and in the manner herein provided, including any failure to meet the performance standards set forth in Section 4 of these General Terms and Conditions, WCI, Inc. may notify Contractor in writing of such failure. 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, and Contractor does not commence the cure within such 15-day period and complete such cure within an additional 15-day period, 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. Additionally, WCI, Inc. shall not be responsible for any additional fees, costs or expenses incurred by Contractor in connection with its efforts to cure any such failure unless WCI, Inc. has agreed to be so responsible in writing. In the event of any such termination, WCI, Inc. has the right to any remaining Work for which it has paid before the termination date. In the event of any 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 provinces of British Columbia, Nova Scotia and Quebec and the state of California (together, 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 maintain control over its employees and its subcontractors and will comply with all tax withholding or contribution requirements, whether federal, state, local or foreign, applicable to its employees and subcontractors. 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 of its funding entities or of any combination of Participating Jurisdictions or its 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. All compensation shall be paid in accordance with WCI, Inc.'s policies and procedures 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 WCI, Inc.'s policies and procedures.

## 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. Notwithstanding the foregoing, if such invalid or unenforceable provision could be more narrowly drawn so as not to be invalid or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of the Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

## 16. SETTLEMENT OF DISPUTES

- A. In the event a dispute shall arise between Contractor and WCI, Inc. and the parties have not been able to resolve the dispute in good faith within thirty (30) days of the existence of the dispute, the dispute shall be arbitrated before three arbitrators each having a minimum of ten (10) years of relevant industry

experience, 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 Sacramento, 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. For clarity, the decision of the arbitrators must conform to the terms and conditions of this Agreement, and in no event shall the arbitrators be authorized to award special, indirect, incidental or consequential damages, including lost profits to either party. 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 American Arbitration Association (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 or elsewhere. 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. Each party shall bear its own costs and expenses related to any arbitration, and the parties shall equally share the fees and expenses of the arbitrators and the arbitral body.

- 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.

## 17. POTENTIAL SUBCONTRACTORS

Contractor shall not subcontract or delegate any of its obligations under the Agreement without prior written approval of WCI, Inc. 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 subcontractor, 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 any or all Work in the event that a dispute should arise, WCI, Inc. receives a request to issue such an order from any Participating Jurisdiction or any funding entity or WCI, Inc. gives Contractor a notice that the Agreement will be terminated. The order to stop any or all Work will be in effect until WCI, Inc. sends a written order to resume the stopped 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. 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.
- C. 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 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 any 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. [INTENTIONALLY OMITTED]

## 22. FINAL PAYMENT

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 Indemnified Parties 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 or neglect of Indemnified Parties 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 patent or copyright laws or other intellectual property rights of any kind.

## 24. INTELLECTUAL PROPERTY



- A. Except as set forth in the Work Schedule, 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 shall defend, indemnify and hold the Indemnified Parties harmless against all Losses promptly upon the incurrence thereof resulting from any third party claim that work product produced, used, created or delivered by Contractor, its employees or its subcontractors, including any documentation associated with any work product and any work product which includes any third party content, under the Agreement (the "Contractor Work Product") infringes, misappropriates or otherwise violates a trademark, copyright or other third party's proprietary right. Notwithstanding the foregoing, Contractor shall have no obligation or liability with respect to any such claim 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 accompanying the Contractor Work Product when such combination, operation or use is part of any allegedly infringing process; or (iii) use of the Contractor Work Product in a manner not authorized in the documentation accompanying the Contractor Work Product when such claim or liability would have been avoided but for such unauthorized use. Contractor will promptly notify the Indemnified Parties of any such claim. In addition to the obligations above, if any Contractor Work Product becomes the subject of any third party claim, demand or allegation that the Contractor Work Product 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 the Agreement; or (ii) replace the subject Contractor Work Product with non-infringing and substantially equivalent work.
- C. Except as set forth in the Work Schedule, Contractor agrees that all Contractor Work Product created, developed, conceived, made, invented or suggested

during the term of the Agreement by or for Contractor, its employees or any of its subcontractors it engages to perform work for WCI, Inc. and relating generally to any matter or thing that may be connected with the Agreement or in any way with WCI, Inc.'s existing or contemplated products, services or business or containing WCI, Inc.'s proprietary or sensitive information shall become the absolute and exclusive property of WCI, Inc., including (i) concepts, trademarks, slogans, works, ideas, designs, discoveries, inventions, improvements, advances, methods, practices, techniques, and developments and relationships with customers and prospective customers, (ii) reports, drawings, studies, specifications, estimates, maps, computations and other data and correspondence, (iii) software, computer programs and similar processes and (iv) materials, including books, magazines and periodicals and office material, purchased under the Agreement for WCI Inc., (collectively, the "WCI, Inc. Intellectual Property"). All WCI, Inc. Intellectual Property shall automatically be deemed to become the property of WCI, Inc. immediately when made or conceived. 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 any WCI, Inc. Intellectual Property. Contractor shall, and shall cause employees and subcontractors 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 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 any copyrightable materials or other intellectual property related to the WCI, Inc. Intellectual Property.
- E. Contractor and its subcontractors shall not 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.
- 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.

- G. Notwithstanding anything to the contrary set forth in this Agreement,

Contractor will retain all copyright, patent and other intellectual property rights in the methodologies, methods of analysis, ideas, concepts, know-how, models, tools, techniques, skills, knowledge and experience owned or possessed by Contractor before the commencement of the performance of the services, or developed or acquired by Contractor during or after the performance of the Services (provided however such work does not include any WCI, Inc. Intellectual Property), including without limitation, all systems, software, specifications, documentation and other materials created, owned or licensed and used by Contractor or Contractor's affiliates or subcontractors in the course of providing the Services (the "Contractor Intellectual Property"), and Contractor shall not be restricted in any way with respect thereto. To the extent any Contractor Work Product incorporates any Contractor Intellectual Property; Mercer hereby grants WCI, Inc. a non-exclusive, non-transferable, perpetual right and license to use such Contractor Intellectual Property, without additional costs or fees, solely for purposes of utilizing the Contractor Work Product in accordance with the terms of the Agreement.

## 25. RIGHTS IN DOCUMENTS, MATERIALS, AND DATA PRODUCED

Contractor shall deliver or cause the delivery to WCI, Inc. of all WCI, Inc. Intellectual Property as soon as practical and in any event no later than the termination or completion of the Work. WCI, Inc. shall have the right to use the WCI, Inc. Intellectual Property 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. All reports, maps and other documents completed by Contractor as a part of the Agreement shall bear on the title page of such report, map, or document, the following legend: *"Prepared by (Insert name of Contractor) for submission under Agreement with Western Climate Initiative, Inc. The preparation of this (insert report, map or document, as appropriate) was financed in part by funds provided by (insert name of the funding agency, if applicable)." The month and year in which the document was prepared shall also be shown.*

## 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 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. For the purposes of the Agreement, "Confidential Information" shall include any information so described elsewhere in the Agreement, all data stored or made accessible through the Compliance Instrument Tracking System Service or any additional or successor tracking system service, unless WCI, Inc. notifies Contractor in writing that such information is not confidential, 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, and any confidential, proprietary or trade secret information of WCI, Inc., any Participating Jurisdiction and any funding entity 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 the Agreement by Contractor; (ii) that as of the time of receipt by Contractor, is already known to or in Contractor's possession other than as a result of an improper disclosure to Contractor; (iii) is independently developed by or for Contractor without the use of

any Confidential Information as evidenced by Contractor's own files and records; (iv) is received in good faith by Contractor from a third party that was lawfully in possession of, and entitled to disclose, the information; or (v) that the parties mutually agree in writing to release from the terms of the Agreement. Contractor shall use best endeavors to prevent any disclosure of Confidential Information by Contractor, its subcontractors, or its or their agents and employees. 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. Notify WCI, Inc. promptly and in writing of the circumstances surrounding any possession, use or knowledge of Confidential Information or any part thereof by any person in a manner other than as authorized by this Section 26 of which Contractor is aware.
- B. Contractor will sign and submit to WCI, Inc. Attachment D1: Organization Conflict of Interest and Confidentiality Statement on its own behalf, and obtain and submit to WCI, Inc. Attachment D1: Organization Conflict of Interest and Confidentiality Statement signed by each subcontractor.
- C. Adhere to all WCI, Inc. confidentiality and disclosure policies disclosed to Contractor in writing and, if directed by WCI, Inc., enter into agreements 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.
- D. Treat all Confidential Information, Deliverables (as defined in Attachment A), and Contractor Work Product as Confidential Information in accordance with this Agreement. No Confidential Information, Deliverables, Work or Contractor Work product 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 when required by law or legal process. Contractor is authorized to maintain a copy of all information necessary to comply with its contractual obligations and applicable professional standards including where required by a regulator having jurisdiction over Contractor's business. If WCI, Inc.'s Executive Director or his or her authorized agent so requires, the following disclaimer must accompany all Confidential Information prepared by Contractor or prepared or provided by WCI, Inc. and copied or reproduced in any form by Contractor:  
*"Publication of this document shall not be construed as endorsement of the views expressed therein by Western Climate Initiative, Inc. or any federal, state or provincial agency."*



- E. Not use, without WCI, Inc.'s written approval, any WCI, Inc. materials for any purpose other than performing the contracted services.
- F. 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.
- G. Upon full payment to Contractor, surrender all documents, property (whether in written or electronic form) and transportable recorded media of any kind belonging to WCI, Inc. or containing WCI, Inc. Confidential Information at the conclusion of the engagement, upon termination of the Agreement, or upon the written request of WCI, Inc.
- H. Upon confirmation of loss or theft of Confidential Information in any form, immediately report to WCI, Inc. the occurrence of such loss or theft.
- I. 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.
- J. Use best practices to make security arrangements to protect Confidential Information from unauthorized access, collection, use, disclosure, alteration or disposal. Upon WCI, Inc.'s written request, Contractor shall provide a reasonably detailed summary of the security arrangements it maintains to protect Confidential Information. WCI, Inc. or its representatives may conduct security inspections of such security arrangements upon reasonable notice to Contractor during normal business hours.
- K. 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. Complete copies of all such formal policies and procedures shall be provided to WCI, Inc. prior to Contractor's commencement of Work under the Agreement.
- D. Contractor and its subcontractors must not be subject to any laws or regulations specific to any greenhouse gas (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 any entity subject to any of the provisions of any GHG reporting or

cap-and-trade program in any WCI, Inc. Participating Jurisdiction or any funding entity. In addition, the Contractor and its subcontractors must not be a beneficial owner of more than 5% of the voting interests of 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 program in any WCI, Inc. Participating Jurisdiction or any funding entity.

- E. Contractor must ensure that its employees and subcontractors meet and comply with the requirements described in Sections 27.A through 27.C above.
- F. 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., WCI, Inc. may terminate the Agreement immediately upon written notice to Contractor.
- G. Contractor will advise WCI, Inc. if performing services for other clients could potentially interfere with Contractor's duties pursuant to 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., any Participating Jurisdiction or any funding entity 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. REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants that:

- A. it is duly organized, validly existing and in good standing as a corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation or organization;
- B. it has the full right, power, and authority to enter into this Agreement and to perform its obligations under this Agreement;
- C. the execution of this Agreement by its representative whose signature is set forth herein is authorized by Contractor;
- D. it will perform the services using personnel with the required specialized skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and will devote adequate resources to meet its obligations under this Agreement; and
- E. the services, including any deliverables provided hereunder, as delivered by Contractor and used in accordance with this Agreement, will not infringe, misappropriate, or otherwise violate any intellectual property rights or other rights of any third party, and will comply with all applicable laws and regulations.

### 30. COMPLIANCE WITH LAWS, SAFETY

Contractor shall give all necessary notices, secure all necessary permits, 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 covenants, laws, rules or regulations that would restrict, impair or prevent the performance of its duties and obligations under the Agreement.

### 32. STATUS

Contractor's performance pursuant to this Agreement will not violate the legal or equitable rights of any third party.

### 33. RIGHTS AND REMEDIES

Contractor expressly acknowledges that this Agreement is not effective to bind any party other than WCI, Inc. 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 party, their directors, officers, employees and agents and any other Indemnified Party shall be liable for any special, indirect, incidental, or consequential damages, including economic damages such as lost profits, arising out of or in connection with the Agreement or the performance of the Work, regardless of whether any such person or entity has been told, has reason to know or, in fact, knows of the possibility of any such damages or whether any related claim sounds in tort, contract, breach of warranty or any other theory.

### 35. THIRD PARTIES

The parties agree that the Participating Jurisdictions and any funding entity are intended third-party beneficiaries of the Agreement. Other than the Participating Jurisdictions and any funding entity, there are no other third party beneficiaries with any rights under the 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 Section 36 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 the Agreement. Accordingly, Contractor agrees that if Contractor breaches or threatens to breach any of such covenants in the Agreement, 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. Subject to the requirements of Section 16 of these General Terms and Conditions, 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 nationally recognized overnight courier 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, on the date of delivery or refusal of delivery in the case of delivery by overnight courier or on the delivery or refusal date as specified on the return receipt in the case of certified mail.

#### 40. CONSTRUCTION

The Agreement shall be construed neutrally and without regard to the party that drew it, and any ambiguity shall not be interpreted against the drafting party. Headings used in the Agreement are provided for convenience only and shall not be used to construe meaning or intent. Where the context allows, the word "including" shall mean "including without limitation." The word "or" not exclusive.



#### 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, and any notifying party shall resume or begin the performance of any delayed or unperformed obligations as soon as reasonably practicable after the end of the *force majeure* event.

#### 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. WAIVER

Each party may extend or waive compliance with any of the agreements of the other party or conditions to such other party's obligations contained in the Agreement. Any such extension or waiver shall be valid only if set forth in a writing signed by the party to be bound thereby. Any waiver of any term or condition of the Agreement shall not be construed as a subsequent waiver of the same term or condition or a waiver of any other term or condition of this Agreement. The delay or failure of any party to assert any of its rights under the Agreement shall not constitute a waiver of any such rights or in any way affect the validity of such rights. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

#### 44. SURVIVAL

The provisions of Sections 8, 10, 15, 16, 24, 25, 26, 28, 29, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44 and 45 hereof shall survive the expiration or termination of the Agreement.

#### 45. ORDER OF PRECEDENCE

To the extent any inconsistencies or ambiguities arise among the terms of the Agreement and incorporated documents, the following order of precedence shall be used: (1) Applicable laws and regulations; (2) The terms and conditions of the Agreement; (3) The RFP including any addenda thereto; and (4) Contractor's



response to the RFP. To the extent any inconsistencies or ambiguities arise between the exhibits of the Agreement, the following order of precedence shall be used: (1) Attachment [C] General Terms and Conditions; (2) Attachment [B] Invoicing and Payment Provisions; (3) Attachment [A] Scope of Work;; (4) Attachment [D1] Organization Conflict of Interest and Confidentiality; (5) Attachment [E] Contractor Insurance Requirements; (6) Attachment [F] Contractor's Technical Proposal; and (7) Attachment [G] Contractor's Cost Proposal.



## ATTACHMENT D1 ORGANIZATION CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

I certify that Contractor is not a 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 WCI, Inc., any Participating Jurisdiction or any funding entity.

I certify that if Contractor acquires 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 WCI, Inc., any Participating Jurisdiction or any funding entity, I will immediately disclose this information to WCI, Inc.

I certify that Contractor is not a 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 greenhouse gas (GHG) reporting or cap-and-trade programs implemented by WCI, Inc., any Participating Jurisdiction or any funding entity.

I certify that if Contractor acquires beneficial ownership 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 greenhouse gas (GHG) reporting or cap-and-trade programs implemented by WCI, Inc., any Participating Jurisdiction or any funding entity, I will immediately disclose this information to WCI, Inc.

I certify that 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.

I certify that Contractor 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 any other confidential or proprietary information which Contractor learns or acquires in the course of performing duties under the Agreement, and will follow any instructions provided by the WCI, Inc. Project Manager relating to the confidentiality of Project information.

Contractor understands 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., any Participating Jurisdiction or any funding entity 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., any Participating Jurisdiction or any funding entity, or otherwise obtained in the course of performing requirements under the Project.
- D. Communications with staff of WCI, Inc., any Participating Jurisdiction or any funding entity 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 Contractor that contain or are based upon confidential information.
- F. All other information identified in the Agreement as Confidential Information.

I certify that Contractor 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 Contractor is authorized to disclose information pursuant to law or legal process.

I certify that Contractor understands that any unauthorized disclosure of confidential information will be handled in accordance with Section 26 of the Agreement.

Date: - August 19, 2019  
 Signature: - Signature on File  
 Printed Name: - Daniel Imbeault  
 Title: -  
 Organization: - Mercer  
 Telephone No.: -  
 Fax No.: -  
 Email Address: -

Capitalized terms used but not defined in this Conflict of Interest and Confidentiality Statement shall have the meanings assigned to such terms in the Standard Agreement, dated August 6, 2019, between Western Climate Initiative, Inc. and Contractor

## **ATTACHMENT E**

### **CONTRACT INSURANCE REQUIREMENTS**

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

Throughout the life of the Agreement, 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 General Liability Insurance** Commercial General Liability insurance written on an occurrence basis (Insurance Services Office, Form CG 00 01 or equivalent) with limits of at least : per occurrence and at least : products/completed operations aggregate and a : general aggregate limit. Contractor shall not provide general liability insurance under any Claims Made General Liability form. The General Liability Insurance policy must expressly cover, without limitation, all liability to third parties arising out of or related to Contractor's services or other activities associated with the Agreement, including, without limitation, Contractor's indemnification obligations under the Agreement. Contractor's liability insurance must be issued by responsible insurance companies, maintaining an A.M. Best's Rating of A-VII or better. The insurance policy shall waive right of recovery (waiver of subrogation) against WCI, Inc., each Participating Jurisdiction and each funding entity.
2. **Additional Insured on General Liability Policy** WCI, Inc., as additional insured under the commercial general liability policy identified in the preceding paragraph above. The additional insured status shall include ongoing operations and completed operations coverage. Specifically, the policy shall include a combination of ISO forms CG2010 10/01 and CG 2037 10/01 or is equivalent and shall stipulate that the insurance afforded the additional insureds shall apply as primary insurance, and that any other insurance coverage carried by or otherwise available to an "Additional Insured" will be excess only and will not contribute with this insurance.
3. **Workers Compensation Insurance** If required in the jurisdictions in which the Work is being performed, Contractor's Workers Compensation Insurance with minimum limits of : each for bodily injury by accident (per accident per person), bodily injury by disease (policy limit) and bodily injury by disease (each employee). Contractor must maintain such a policy and provide a certificate of insurance and must provide a waiver of subrogation endorsement.
4. **Automobile Insurance** If applicable, Automobile Liability Insurance, including liability for all owned, hired and non-owned vehicles, with minimum limits of : for bodily injury per person, : property damages and : combined single limit per occurrence; such coverage must be for (A) "any auto" or (B) "all owned autos, hired autos and non-owned autos".
5. **Professional E&O Insurance (if applicable)** Professional Liability Insurance in an amount of not less than : per claim and written on a claims made basis, : aggregate.



6. **CYBER LIABILITY COVERAGE: (if applicable)** Insurance with limit no less than \$\_\_\_\_\_, per occurrence or claim, \_\_\_\_\_ aggregate that includes:

- Security and privacy liability
- Media liability
- Business interruption and extra expense
- Cyber extortion

7. If the **PROFESSIONAL LIABILITY (ERRORS AND OMISSIONS)** and/or **CYBER LIABILITY COVERAGE** insurance above is written on a claims-made basis, it shall be maintained continuously for a period of no less than 3 years after the date of Final Completion. The insurance shall have a retroactive date of placement prior to or coinciding with the date services are first provided that are governed by the terms of the Agreement and shall include, without limitation coverage for professional services as called for in the Agreement.

8. **General Insurance Provisions**

- Certificates of Insurance, as evidence of the insurance required by this Contract Insurance Requirements Attachment shall be submitted by Contractor to WCI, Inc. Contractor shall provide prior written notice to WCI, Inc. before any cancellation or reduction in coverage required under this Agreement becomes effective.
- Proper Address for Mailing Certificates, Endorsements and Notices shall be:

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

- If at any time during the life of the Agreement or any extension, the Contractor fails to maintain the required insurance in full force and effect, all work under the Agreement 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 immediately terminate the Agreement.
- Contractor shall ensure that its sub-contractors of every tier also carry insurance with the provisions of this Contract Insurance Requirements Attachment

**ATTACHMENT F  
CONTRACTOR'S PROPOSAL**



HEALTH WEALTH CAREER

# COMPENSATION CONSULTING

WESTERN CLIMATE INITIATIVE

14 JUNE 2019

RFP#2019-01



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*The information included in this proposal is strictly confidential and is proprietary to Mercer.  
Any unauthorized use and/or distribution of this material are strictly prohibited  
unless explicitly agreed to in writing by Mercer.*



## INTRODUCTION

Mercer is pleased to provide Western Climate Initiative (WCI) with our proposal for the provision of compensation consulting services. We understand that WCI operates in an important niche that requires people with particular backgrounds. With the added complexity of operating in different geographies in the US and Canada, there is a desire to validate that the compensation offered at WCI is both internally equitable and competitive with relevant markets.

We help clients optimize their performance by addressing their people issues. We do this by providing best-in-class trusted advisory, data and support services, solutions, products and implementation in the areas of broad-based rewards, executive remuneration, HR effectiveness, organizational development, change management, and workforce strategies. See Appendix A for details of the services we can offer under our Career business.

Mercer understands the subtleties and challenges of the not-for-profit sectors in the US and Canada (in both English and French), but also brings deep experience providing compensation advice and services to the broader private and not-for-profit sectors.

## IN THIS PROPOSAL

In this proposal we have provided Mercer's Consulting Firm Response, as requested in your RFP. We have proposed an experienced specialist consulting team with public sector and not-for-profit expertise to support the compensation review you require. In this proposal you will find our Company Profile, Technical Expertise and Approach, Time and Cost and References.

We have thoroughly reviewed the Standard Agreement from your RFP and believe it can form the basis for negotiating a mutually acceptable agreement. Our desired edits have been provided separately. Mercer also confirms that no sub-contractors will be used for the services requested in this RFP. Mercer will work directly with the WCI.

We trust we have demonstrated our knowledge, resources and expertise to work with the WCI to meet your needs for this critical initiative. We look forward to the opportunity to discuss our proposal with you.

Daniel Imbeault, Partner  
Mercer (Canada) Limited

# 1

## SECTION 1: COMPANY PROFILE

### 4.1 Consulting Firm Profile

<b>Company Name :</b>	Mercer (Canada) Limited
<b>Company Address :</b>	1981 Avenue McGill College, Montréal, QC., Canada H3A 3T5
<b>Contact Name :</b>	
<b>Title:</b>	Associate
<b>Phone Number:</b>	
<b>E-Mail Address:</b>	
<b>Web Address:</b>	<a href="http://www.mercer.ca">www.mercer.ca</a>

#### 4.1.1. Please provide a brief overview of your firm.

Mercer is the largest HR consulting company globally. Our primary areas of focus are Career, Health and Wealth, which are aimed at helping organizations offer their employees the best experiences work-wise, health-wise and financially. The image below details our work across these three areas:



**4.1.2. What is the scope of executive compensation clients you typically work with (size, for-profit/non-profit, sectors)? In what industry do you have the most clients or most revenue? Approximately what percentage of your firm's work is compensation services and products?**

Mercer has a 30+ year history of providing compensation services. In fact, compensation represents the majority of our work in Career. Executive compensation is a recognized speciality within our Career business, with a Community of Interest that meets monthly and shares best practice, new insights and learnings across consultants in North America and beyond. While the majority of our work in Career is with large, publicly-traded organizations, we serve over 500 active U.S. not-for-profit and public sector organizations in the healthcare, education, government, research, associations and general-not-for-profit sectors across all lines of business.

**1.3. Please describe your process for identifying potential, perceived, and real conflicts of interest. Do you have any clients that might create a conflict of interest for work for WCI, Inc. (e.g., firms subject to the greenhouse gas regulations in the Participating Jurisdictions)? If so, please describe how such conflicts would be mitigated.**

We are not aware of any such conflicts at this time, although it is possible that some of our clients are subject to greenhouse gas regulations. This said, it is important that the advice we give to our clients be in their best interest, and that the advice cannot be influenced in any way by the fact that Mercer is advising another party.

Mercer has adopted Global Business Standards for all executive compensation projects which are attached to every statement of work (see Appendix X for our global business standards). This provides our clients regardless of industry, size or location with the highest quality of independent services.

In conflict situations, Mercer immediately declares the conflict to both parties and seeks to resolve the conflict in a way that is acceptable to both parties. Furthermore, any resolution is set out in an agreement that is signed by the affected parties.

The resolution may take the form of building a "firewall". This involves:

- Separating the Mercer teams working on the assignments (no member of one team can also be a member of the other team).
- Warranting that there will be no passing of information or advice between the teams without agreement in writing from the clients.



- Physically separating paper files associated with the projects and storing them in a secured area where access is restricted to team members.
- Protecting electronic project files stored on a Mercer server with passwords, and restricting access to members of the team.
- If requested, monitoring the security of the "firewall" on a regular basis by the Chair of Mercer's Compliance and Professional Standards Committee who will provide a report of each audit.

In the event that a conflict cannot be resolved in a mutually acceptable way, Mercer will withdraw from the assignment with one of the parties or both, if necessary.

## 2

## SECTION 2: TECHNICAL EXPERTISE AND APPROACH

### 4.2.1 Please describe your experience in compensation consulting for non-profits in the United States. Please include examples relevant to WCI, Inc.

, a Principal from our Baltimore/Washington office, will serve as the US not-for-profit expert on this project. She specializes in consulting to non-profit organizations and has worked with over 100 tax-exempt clients while at Mercer, 50 of them in executive compensation. A partial list of her tax-exempt executive compensation clients is below.

• QSource	• Fairfield University
• Episcopal Home Services	• Northwestern University
• PA Chamber of Business Industry	• Project Management Institute
• Kaplan University	• Urban Child Institute

### 4.2.2 Please describe your experience in compensation consulting for non-profits in Canada. Please include examples relevant to WCI, Inc.

a Principal and compensation consultant based in our Toronto and Calgary offices, will serve as the Canadian not-for-profit expert on this project. He has provided consulting support for the following similar clients:

• Ontario Securities Commission	• Infrastructure Ontario
• CAA South Central Ontario	• Region of Niagara
• Royal Botanical Gardens	• Halton District School Board
• College of Massage Therapists of Ontario	• Hamilton Wentworth District School Board



#### 4.2.3 What tools and data sets do you use for performing competitive compensation analyses in the US and Canada?

Below are a few of our relevant resources for the US and Canada.

- Mercer Global Disclosure Database: executive and director rewards data from public filings of 3,000 publicly traded and not-for-profit companies.
- Executive Remuneration Suite (ERS): a comprehensive survey comprising executive positions from Mercer compensation surveys. ERS contains compensation data from over 500 executive level positions from roughly 1,600 distinct organizations.
- Mercer Job Library: a globally consistent catalog for Mercer's compensation and benefits surveys, providing one global job catalog and job analysis approach. It includes data from the following Canadian and US survey: Mercer Benchmark Database.
- Form 990 data: Tax-exempt organizations, nonexempt charitable trusts, and section 527 political organizations file this form to provide the IRS with the information required by section 6033.

#### 4.2.4 Describe your approach to staffing an advisory role like the one outlined in this RFP. Highlight the types of roles needed from your organization. Please include CVs of team members who will assigned to these roles.

Mercer has a team approach to working with clients. This ensures a continuity of approach and personnel that provides confidence and security for our clients. We propose the following core team to work with WCI. These individuals have provided similar services for many years with Mercer.

**US non-profit expert:** is a Principal at Mercer in the Baltimore/Washington DC's Office, advising clients on compensation and benefits, performance management, and executive employment agreements. She has particular expertise in assisting with higher education, healthcare, and other tax-exempt organizations. frequently consults with boards, committees and management on executive compensation and best practice governance for non-profit organizations. Specific services include:

- Advising and drafting a compensation philosophy which supports the organization's mission, vision and objectives
- Designing a comprehensive compensation program process compliant with regulations and meeting organizational strategies

- Evaluation of market positioning for executive compensation and benefits.
- Designing and assessing both annual variable pay plans and long-term incentive plans as components to total compensation.
- Structuring and implementing performance management programs and leadership assessments.
- Writing Opinion Letters that boards may rely upon for reasonableness of compensation

| is particularly active several of Mercer's Communities of Interest: Higher Education, Healthcare and Non-Profit. She contributes by developing tools and resources specific to the needs of these sectors as well as to speak at Mercer sponsored events on current issues affecting these industries. She was also a speaker for World at Work on Total Rewards, the Washington Area Compensation and Benefits Association on Career Frameworks, the Association of Jesuit Colleges and Universities, and the College and University Professional Association for Human Resources. She has spent 25 years providing strategic, human resources, operational and financial guidance to education, healthcare, real estate, technology, small utilities, private and public pension funds, and many other tax-exempt clients throughout the United States.

| graduated from the University of Virginia with a Bachelor of Planning and subsequently earned an MBA from the University's Colgate Darden Graduate School of Business Administration. She serves on the board of a privately owned utility provider, People's Water Service, and is past board Executive Committee member for Habitat for Humanity of the Chesapeake.

**Canadian non-profit expert:** | is a Principal at Mercer in the Calgary and offices and works closely with clients to solve their most challenging compensation and performance management problems. Alex primarily works with public sector and not-for-profit organizations to ensure they have competitive and equitable compensation systems. His work typically encompasses the completion of market compensation reviews, the implementation of job evaluation systems, the development of salary and pay-for-performance structures, and performance management programs.

| joined Mercer in 2009. He graduated from the University of Toronto with a Bachelors of Commerce with a major in economics and finance.

**Engagement lead, Quebec-based expert:** | is a Talent Strategy Partner within Mercer's Career business in Montreal. For the last 17 years, | has been focusing on working with organizations to align their talent management programs and processes with their business strategy to drive employee engagement and business results. He delivers solutions

related to a number of HR topics including rewards programs, talent management, change management, HR function effectiveness and technology implementation. Focusing on evidence based decisions, [redacted] helps HR functions around the world playing a strategic role in their respective organization and deploying their full potential. [redacted] is a citizen of the world; he has experience operating in North-America, Latin-America, Europe and Asia on many large projects and he speak five languages. [redacted] is currently sponsoring many Career sustainability initiatives, such as the Future of Work and Career's very new sustainability offering.

#### Experience (17+ years)

- **HR Re-organizations and business transformations.** Based on business insight, define new structure, determine appropriate change management activities, collaborate to identify technology and process design requirements and select appropriate vendors.
- **Project management office for a technology implementation.** To resolve issues after go-live, we identified pain points throughout the "order to cash" process, identified solutions, developed program plan (47 different projects, more than 300 people and 7 major consulting firms involved), reporting tools for executive committee, risk mitigation plan and change management strategy.
- **Total Rewards strategy and optimization of reward package.** Treat your employees as consumers: identify main sources of costs, facilitate workshops to identify alternatives while controlling costs and maintaining employee engagement level, design and manage on-line surveys to gather employees' perspectives and align program to enrich employee experience.
- **Design of job architecture / job evaluation systems & compensation structures.** Ensure leadership alignment, facilitate design meetings with key stakeholders, calibrate system at regional and global level, validate design with steering committee, develop communication strategy and manage change. Alignment with HRMS parameters (Workday and others).
- **Organizational design projects & M&A including:** defining the scope for the function, aligning governance and key processes, defining operating model and organization structure, staffing requirements, and conducting talent review.
- **Change Management in major business transformation :** Our mission: determine overall change management strategy, establish appropriate change game plan, facilitate alignment session, build communication and change management toolkit and provide coaching to stakeholders.

#### Education

- **Master's Degree Industrial Relations,** Laval University - Quebec



**Project Manager** is a consultant within Mercer's Career business in Montreal. He primarily provides project management and support in mandates covering talent strategy, compensation benchmarking, job evaluation, salary structures, employee engagement, human resources transformation and performance management. He also leads Marsh & McLennan's Canadian internal sustainability team, and for the past two years has been developing Mercer Career's sustainability service offering, aimed at helping clients build sustainability into their core business.

**Experience (7+ years)**

His main areas of expertise are talent strategy, compensation, employee engagement, career architecture, sustainability and building purpose. Before joining Mercer, he was an external consultant mandated to review the human resources and consulting processes for a human resources consulting organization. He also worked for a large pharmaceutical company for close to three years, spending two of those years as an Associate HR Business Partner and one as a Senior Purchasing Agent. He also has two years of experience working in sales and marketing for a healthcare company.

**Education**

He holds a bachelor's degree with distinction in Commerce from Concordia University's John Molson School of Business. While he completed a major in Management and minor in Marketing, he specialized in human resources as part of the academic competitions, where he stood out as a participant and subsequently as a coach for the human resources teams for the university for five years.

**Supporting Consultant** is a consultant within Mercer's Career business in Montreal. She provides support for client projects dealing with employee compensation, workforce benchmarking, etc. She also has much interest in the sustainability space.

**Experience**

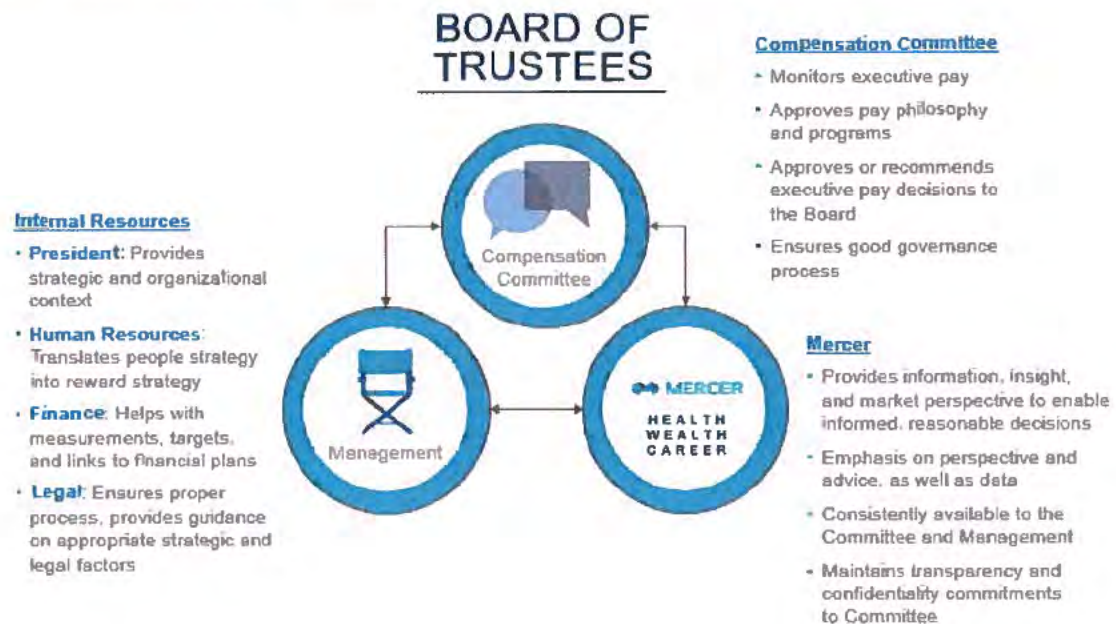
Her areas of expertise include job evaluation, pay structure design, development of targeted compensation surveys, workforce benchmarking, pay equity and engagement surveys.

**Education**

She has a bachelor's degree in Commerce, with a specialization in Finance, from the John Molson School of Business, at Concordia University, in Montreal.

#### 4.2.5 What is your typical relationship with the Board of Directors, Compensation Committee and management when conducting an executive compensation study?

### WE WORK **FOR** THE BOARD AND **WITH** MANAGEMENT



#### 4.2.6 When assessing a client's executive compensation and benefits programs, describe how you take a total compensation perspective to your audit/review.

We define total compensation as a mix of the following:





#### 4.2.7 Outline the process you would use to conduct a review of our compensation.

### 1 - Project Planning and Strategic Alignment

- Project kick-off and planning meeting
- Confirm understanding of current compensation philosophy, strategic plan and compensation needs
- Identify key stakeholders
- Interview Exec Director + up to 3 stakeholders (assuming interviews are conducted in a single half day)
- Identify peer group and market pricing and confirm market pricing methodology

### 2 – Market Benchmarking

#### 2.a. Executive Director: 990 and Survey Data – Total Remuneration

- Assess total remuneration for the Exec Director using methodology above, as approved. Total remuneration will be calculated using Mercer's Non-profit Executive Benefits Survey.

#### 2.b. All other positions: Survey Data – Total Cash Compensation

- Assess total cash (cash + short term incentive) using survey data and approved peer groups

### 3 – Reporting and Delivery

- Produce draft report on compensation (with an option to have a reasonableness opinion letter at the cost of an incremental \$8,000 US)
- Present draft report, recommendations and reasonableness opinion to the WCI Compensation Committee
- Prepare final report incorporating changes where needed
- Present final report to WCI Compensation Committee and Board

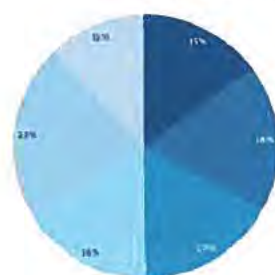
#### 4.2.8 Do you have any perspectives on non-profit executive and staff compensation practices that you consider unique from your competitors?

##### OUR PROPRIETARY BENEFITS SURVEY

- Mercer can leverage current market data to assist clients through our proprietary *Executive Benefits and Perquisites Survey for Tax-Exempt Organizations*, which contains information from **over 400 tax-exempt organizations**, including **45+ higher education institutions**.

- This tool gives clients significant power to analyze market best practices for both broad-based and executive benefits.
- Information can be broken down to focus on higher education institutions, as well as broader tax-exempt organizations of comparable size.

Survey Participants by Revenue



- Contains information on the following:
  - Broad-based Retirement
  - Executive Retirement
  - Life Insurance
  - Long-term Disability
  - Long-term Care
  - Executive Medical
  - Executive Severance
  - Executive Perquisites
- Participatory biennial survey with ongoing additions of new clients/participants
- We can solicit your comparison institutions if those institutions are not currently participants.

#### 4.2.9 What makes your company stand above the other firms competing for WCI, Inc.'s business for compensation consulting?

Your executive compensation consulting partner must have proven multifaceted expertise to help WCI align the executive compensation strategy with organizational performance and talent. Simply put, **Mercer is that partner**. We offer a team of highly qualified professionals across the US and Canada with significant experience in design and development of compensation programs that support an organization and lead to alignment with your organizational strategy.





# 3

## SECTION 3: TIME AND COST

- 4.3.1. How long does it typically take to address the scope of services described in Section 1.3? Would you be able to commence and complete this work in a timely manner? The WCI, Inc. Compensation Committee will strive to be responsive to a consultant to facilitate completion of the work.**

Mercer could begin the work within [redacted] of obtaining a signed agreement from WCI. From that point on the anticipated delays would be as illustrated in the following high-level work plan:



- 4.3.2. What are your fees for addressing the scope of services described in Section 1.3? Do you bill by the hour? Do you charge any other administrative fees, mark-ups, data charges, overhead, indirect expenses, or other fees? If so, what and how much?**

The anticipated fees for addressing the scope of services described in Section 1.3 are summarized in the chart below. These amounts represent the sum of anticipated hours to go into each phase and are inclusive of everything other than taxes and expenses, which will be billed as incurred as per Mercer policies.

- 4.3.3. Please provide your best estimate of the total price for the work outlined in this RFP.**

Scope	Fees
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
<b>Total</b>	[redacted]

Note: Additional travel and expenses will be billed as incurred per Mercer's policy, at no mark-up.

# 4

## SECTION 4: REFERENCES

### 4.5 References

Please provide three references for services previously similar to the scope, complexity, and level of service required for the work described in this RFP.

Client / Date	Services / Contact
Ontario Securities Commission 2015 – current	<ul style="list-style-type: none"> <li>• Compensation Consulting</li> <li>• [REDACTED]   [REDACTED] [REDACTED] [REDACTED]</li> </ul>
Infrastructure Ontario 2015 - current	<ul style="list-style-type: none"> <li>• Compensation Consulting</li> <li>• [REDACTED]   [REDACTED] [REDACTED] [REDACTED]</li> </ul>
QSource 2016 and 2019	<ul style="list-style-type: none"> <li>• Executive Compensation, Incentive Plan Review, Governance Best Practice</li> <li>• [REDACTED]</li> <li>• 49 Music Square West, Suite 402</li> <li>• Nashville, TN 37203</li> <li>• [REDACTED] [REDACTED]</li> <li>• [REDACTED]</li> </ul>
Episcopal Communities and Services 2019	<ul style="list-style-type: none"> <li>• Executive Compensation and Reasonableness Letter</li> <li>• [REDACTED]</li> <li>• 605 East Huntington, Suite 207</li> <li>• Monrovia, CA 91016</li> <li>• [REDACTED] [REDACTED]</li> <li>• [REDACTED]</li> </ul>



Fairfield University 2017,  
2018, 2019

- Executive Compensation and Governance
- [REDACTED]
- 1073 North Benson Rd
- Fairfield, CT 06824
- [REDACTED]
- [REDACTED]

Contact



# APPENDICES

An abstract geometric pattern composed of various-sized triangles in shades of blue and grey, arranged in a complex, overlapping fashion on the right side of the page. The triangles are oriented in different directions, creating a dynamic and modern visual effect.

11 MARCH 2016

# A

## APPENDIX A: TALENT BUSINESS

Our services include consulting and expertise on leadership and organizational performance, talent strategy, workforce analytics and planning, communication, rewards, and mobility. We also provide a full range of best-in-class information and technology solutions.

### AN UNMATCHED RANGE OF HR ADVISORY SERVICES



#### Talent strategy

- Workforce strategy & planning
- Talent assessment & development
- Performance & career management



#### Executive rewards

- Board/management advisory
- Plan design & performance measurement
- Governance and M&A support



#### Talent mobility

- Mobility strategy & policy benchmarking
- Expatriate data
- Mobility co-sourcing & services



#### Workforce rewards

- Total rewards strategy & program design
- Job evaluation and career frameworks
- Data, insights and technology



#### HR Transformation

- HR service model, process design
- HR talent assessment & development
- HR technology optimization and HCM system advisory/deployment



#### Communication

- Employee communications associated with health, wealth, and career programs
- Change communications (HRIS implementations, structural changes, and M&A activity)

We have provided some detail on each of the above service areas below.



## **Change Implementation**

Change implementation and management is a hot topic among Mercer clients and is increasingly a standard component of the work we deliver out of our Talent HR Transformation and Communication businesses. We have developed a solid change implementation process. Mercer works across our lines of business to deliver a robust client solution.

## **Communication**

Talent's Communication business provides a full spectrum of communication tools and services to help clients engage their workforce to drive change throughout the organization. Using proprietary methodologies, our global network of specialists delivers communication strategy and measurement, and works across a broad range of creative media.

## **Executive Rewards**

In the Talent Executive Rewards practice, we develop ongoing board and management-level relationships through our executive compensation solutions. We are trusted advisors to our clients on rewards decision-making, providing counsel and completing a variety of projects, both annual and ad hoc, on behalf of the client.

## **HR Transformation**

In the Talent HR Transformation practice, we partner with our clients to improve the performance and outcomes of their HR functions, resulting in lower cost of operations, improved service levels, and additional capabilities. Our Workday and Change Implementation are important parts of our HR Transformation solutions.

## **Information Solutions**

Information Solutions is a vertical within Mercer's Talent business that gathers information and develops products that aid in the delivery of consulting services to our clients and provide key metrics that our clients use on a daily basis.

## **Mobility**

In the Talent Mobility practice, we facilitate business growth and optimal talent investments for clients by helping them move key talent where it is needed internationally, develop global leaders through carefully planned international assignments, and create and implement talent mobility strategies.

## **Talent Strategy**

In the Talent business' Talent Strategy practice, we help organizations face workforce challenges that cut across industry, size, and geography. These challenges include having sustained access to the right talent, developing a ready supply of leaders to take advantage of new opportunities and drive continued performance, and determining how much to invest in which parts of the workforce to get the best results/return.

## **Workforce Products**

Workforce Products governs the data, surveys and reports, comprised of our Benefits, Compensation and Policy benchmarking information, which we deliver to clients through participation plans, one-off purchases and memberships.











## **Workforce Rewards**

In the Talent Workforce Rewards practice, we develop strong relationships with client executives and management through our workforce rewards advisory solutions. We are trusted advisors to our clients on rewards decision making, providing ongoing advice and counsel and completing a variety of projects, both annual and ad hoc, on behalf of the client.

## B APPENDIX B: OUR CLIMATE OFFERINGS

### MMC Sustainability Offerings & Key People

Marsh & Guy Carpenter	Oliver Wyman	Mercer	MMC
<ul style="list-style-type: none"><li>- <b>Environmental Risk &amp; Insurance</b> <u>Jeff T Johnson</u>, <u>Chris Smy</u>, <u>George Bolte</u></li><li>- <b>Marsh Risk Consulting</b> <u>Mark Alesio</u></li><li>- <b>Marsh &amp; McLennan Agency</b> <u>Noel Drawwas</u>, <u>Danielle White</u></li></ul>	<ul style="list-style-type: none"><li>- <b>Climate Hub</b> <u>Lauren Wyble</u>, <u>Michael Donatti</u></li><li>- <b>TCFD Implementation</b> <u>Alban Pysinet</u>, <u>Edwin Anderson</u></li><li>- <b>Decommissioning</b> <u>Geoff Bauer</u></li><li>- <b>Org. Effectiveness</b> <u>Adam Smith</u></li></ul>	<ul style="list-style-type: none"><li>- <b>Responsible Investments</b> <u>Karen Leckridge</u>, <u>Alex Bernhardt</u></li><li>- <b>Environmental H&amp;B</b> <u>Lorna Friedman</u>, <u>MJ LeBlanc</u></li><li>- <b>Sustainable Career</b> <u>Christopher Lalonde</u>, <u>Daniel Imbeault</u>, <u>David Cohn</u></li></ul>	<ul style="list-style-type: none"><li>- <b>Insights, Climate Resilience</b> <u>Lucy Nottingham</u>, <u>Rob Bailey</u></li></ul>
			<b>Nera (ow)</b>
			<b>Lippincott (ow)</b>

1  <b>Business Case &amp; Leadership Align.</b>	2  <b>Building Purpose &amp; Empl. Engagement</b>	3  <b>Responsible Cultures</b>	4  <b>Policies Review</b>	5  <b>Change Management</b>
6  <b>Integr. of Sustainability into Core Business</b>	7  <b>Org. Design &amp; COE Creation</b>	8  <b>Workforce Analytics</b>	9  <b>Performance &amp; Compensation Align.</b>	10  <b>Stakeholder Mgt. &amp; Communication</b>

**NSF:** Footprint & Materiality Assessments, Sustainability Benchmarking, Sustainability Projects, Other Support



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