

**AGREEMENT ON THE PROVISION OF ADDITIONAL FINANCIAL ASSISTANCE IN  
THE AMOUNT OF \$1,892,556 US TO FINANCE THE WESTERN CLIMATE  
INITIATIVE INC. OVER ITS FISCAL YEARS 2016 AND 2017**

**BETWEEN**

**THE MINISTRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT ET DE LA LUTTE CONTRE LES CHANGEMENTS CLIMATIQUES**, Mr. David Heurtel, for and on behalf of the Government of Québec, acting in this agreement under the *Act Respecting the Ministère du Développement durable, de l'Environnement et des Parcs* (CQLR, chapter M-30.001), represented by Ms. Christyne Tremblay, Deputy Minister,

Hereinafter referred to as the "**Minister**";

AND

**WESTERN CLIMATE INITIATIVE, INC.**, a body corporate incorporated under the General Corporation Law (Delaware Code, Title 8, Chapter 1) of the State of Delaware, located at 980 Ninth Street, Suite 1600, Sacramento, California, represented by Ms. Mary Nichols, Chair of the Western Climate Initiative, Inc. Board of Directors, duly authorized under a resolution adopted by the Board of Directors on December 12, 2012,

Hereinafter referred to as "**WCI, Inc.**";

**PREAMBLE**

**WHEREAS** cap-and-trade systems for greenhouse gas emission allowances are a flexible market mechanism capable of facilitating absolute reductions of greenhouse gas emissions while providing an opportunity to reduce total costs associated with emission reduction;

**WHEREAS** linkages among the cap-and-trade systems for greenhouse gas emission allowances implemented by various states and provinces may help reducing emissions at lower costs, result in a broader exchange market, improve liquidity and stimulate innovation;

**WHEREAS** in 2006, the State of California adopted Assembly Bill 32 (AB 32), entitled the *California Global Warming Solutions Act*, directing it to reduce its greenhouse gas emissions to their 1990 level by 2020;

**WHEREAS**, by Order in council number 1187-2009 on November 18, 2009, the Government of Québec adopted a greenhouse gas emission reduction target of 20% below the 1990 level for 2020;

**WHEREAS**, under section 176.1 (1) of the Government of Ontario's *Environmental Protection Act*, the Lieutenant Governor in Council may make regulations establishing programs and other measures for the use of economic and financial instruments and market-based approaches, including without being limited to emissions trading;

**WHEREAS** the State of California adopted the California Cap on Greenhouse Gas Emissions and Market-based Compliance Mechanisms (Subchapter 10 Climate Change, Article 5, Sections 95800 to 96023, Title 17, California Code of Regulations), a regulation regarding the implementation of a cap-and-trade-system for greenhouse gas emission allowances and a related offset credit system;

**WHEREAS** the Government of Québec adopted the Regulation respecting a cap-and-trade system for greenhouse gas emission allowances (CQRL, chapter Q-2, r. 46.1);

**WHEREAS** the Government of the State of California, the Government of Québec and the Government of Ontario are among the founding jurisdictions of the non-profit corporation Western Climate Initiative, Inc., constituted in October, 2011;

**WHEREAS WCI, Inc.** seeks to provide administrative and technical services to the states of the United States and the provinces and territories of Canada with respect to the implementation of their respective cap-and-trade systems for greenhouse gas emission allowances;

**WHEREAS** the government of Québec, as a founding jurisdiction of **WCI, Inc.**, has undertaken, such as the Government of the State of California and the Government of Ontario, to participate in the financing of **WCI, Inc.** operations;

**WHEREAS** participating jurisdiction contributions currently constitute the source of funding for **WCI, Inc.**;

**WHEREAS**, according to the second paragraph of section 46.13 of the *Environment Quality Act* (CQLR, chapter Q-2), as written at that date, by Order in council number 1187-2012 dated 12 December 2012, the Government of Québec adopted the Regulation respecting the delegation of management of certain parts of a cap-and-trade system for greenhouse gas emission allowances (CQLR, chapter Q-2, r.15.1) which delegates to **WCI, Inc.** the management of certain parts of the said system;

**WHEREAS**, according to the Agreement between the Government of Québec and the California Air Resources Board Concerning the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Émissions signed in Sacramento on September 25, 2013 and in Montréal on September 27, 2013, approved by the National Assembly on November 2, 2013 and ratified by the Government of Québec by Order in council number 1181-2013 on November 13, 2013, the government of the State of California and the Government of Québec has linked their cap-and-trade systems for greenhouse gas émission allowances;

**WHEREAS**, according to this Agreement, Parties shall continue coordinating the administrative and technical support through the **WCI, Inc.**

## **THEREFORE THE PARTIES AGREE AS FOLLOWS:**

### **1. PURPOSE OF THE AGREEMENT**

The purpose of this agreement is for the provision by the **Minister** of a maximum of one million eight hundred ninety-two thousand five hundred and fifty-six US dollars (**\$1,892,556 US**) in financial assistance to the **WCI, Inc.** non-profit corporation in order to contribute to the financing of its operations for its 2016 and 2017 fiscal years.

The mandate of **WCI, Inc.** includes three (3) major components:

- Implementing a tracking system for monitoring all emissions allowances issued by the **Minister** and providing the services associated with using and operating the system, including but not limited to:
  - creating, hosting and operating the tracking system;
  - providing customer service and a help desk service in French and English;
  - ensuring the system's security.
- Administering allowance auctions and reserve sales, including the administration of registrations for those auctions or sales, the management and evaluation of financial guarantees submitted, the

monitoring of those sales, the calculation of their results, firstly, for certification by appropriate jurisdiction authorities, and secondly, the processing of sums owed to the **Minister**, for payment into the Green Fund in accordance with section 46.16 of the Environment Quality Act (CQRL, chapter Q-2), in payment of emission units sold;

- Conduct the monitoring of transactions of emission allowances and any other system operation in collaboration with Québec authorities.

Services provided by **WCI, Inc.** should provide for any linking with another jurisdiction designated by the **Minister**.

**WCI, Inc.** shall open a Canadian office in Québec by March 31, 2016.

## 2. TERMS OF DISBURSEMENT

The amount of financial assistance provided for in Section 1 will be paid by the **Minister** to **WCI, Inc.** in the following manner:

- 1° in the first quarter of 2016 or at the latest within thirty (30) days following the date of the last signature of this agreement, the **Minister** agrees to pay a first instalment of nine hundred forty-four thousand five hundred eighty-nine US dollars (**\$944,589 US**);
- 2° in the first quarter of 2017, the **Minister** agrees to pay the balance of Québec's contribution in the amount of nine hundred forty-seven thousand nine hundred sixty-seven US dollars (**\$947,967 US**).

Each instalment is subject to the availability of funds in the Green Fund for this purpose, in accordance with the provisions of Sections 21, 50 and 55 of the *Financial Administration Act* CQLR, chapter A-6.001).

## 3. OBLIGATIONS OF THE PARTIES

3.1 The **Minister** undertakes to:

3.1.1 provide **WCI, Inc.** with relevant technical assistance for achieving the objective of this agreement, subject to the availability of its human and material resources;

3.1.2 support the agreement financially with the maximum amount of one million eight hundred ninety-two thousand five hundred and fifty-six US dollars (**\$1,892,556 US**).

3.2. In order to benefit from the financial assistance provided for in Section 1, **WCI, Inc.** undertakes to:

3.2.1 use the financial assistance granted by this agreement solely for the purposes specified herein unless this amount is postponed, with the agreement of the **Minister**, on a financial year posterior than those aimed by the present agreement;

3.2.2 submit to the **Minister**, within one hundred fifty (150) days following the end of each fiscal year, a report containing a review of activities and audited financial statements;

3.2.3 submit to the **Minister**, within one hundred fifty (150) days following the end of this agreement, a final report containing a review of activities and audited financial statements;

- 3.2.4 upon request, provide the **Minister** with any document or information, in its possession or under its control, relevant to the use of the financial assistance;
- 3.2.5 conserve all documents related to financial assistance for a period of seven (7) years following the expiration of this agreement, grant access to such documents to a representative of the **Minister** and allow such representative to take copies of them;
- 3.2.6 comply with applicable legislation, regulations, orders in council, ministerial orders and standards.

#### 4. **TERM OF THE AGREEMENT**

This agreement shall take effect on the date on which it is signed by the last of the parties and will end, with the exclusion of subsection 3.2.7 of Section 3 regarding the conservation of documents, Section 5 regarding the responsibilities of **WCI, Inc.** and subsection 14.4 of Section 14 regarding the protection of personal and confidential information, on the date when its purpose and the obligations provided for in this agreement have been met.

#### 5. **RESPONSIBILITIES**

**WCI, Inc.** undertakes to assume sole and full legal liability towards third parties and to assume sole liability for any proceedings, claims, or actions that may result from fulfilling the purpose of this agreement.

**WCI, Inc.** shall be responsible for any damages caused by it, its employees, agents, representatives or subcontractors under, or in connection with, that may result from fulfilling the purpose of this agreement, including damages resulting from a breach of an undertaking made under this agreement.

**WCI, Inc.** undertakes to indemnify, protect and hold harmless the **Minister**, his representatives and the government against any recourse, claim, demand, lawsuit or other procedure initiated by any person that may result from fulfilling the purpose of this agreement.

#### 6. **TERMINATION**

The **Minister** reserves the right to terminate this agreement at any time if:

- 1° **WCI, Inc.** has presented false or misleading information or made false representations;
- 2° the **Minister** believes there is a situation that, for reasons of public interest, casts doubt on the purpose for which the financial assistance was granted;
- 3° **WCI, Inc.** fails to meet any of the terms, conditions and obligations under this agreement;
- 4° **WCI, Inc.** ceases its operations in any way whatsoever, including as a result of bankruptcy, liquidation or assignment of its property.

In the cases provided for in subsections 1°, 2° and 4°, the agreement will be terminated as of the date of receipt by **WCI, Inc.** of notification from the **Minister** to that effect.

The noting of default by means of such notification is equivalent to a formal notice.

The **Minister** shall on the date of the notification cease all payment of financial assistance, except, amounts of financial assistance due for expenses incurred and paid by **WCI, Inc.**, in relation to services covered by this agreement prior to the date of such notice.

In the cases provided for in subsection 3, the **Minister** must send notice of termination to **WCI, Inc.** which will have thirty (30) working days to remedy the defaults stated in the notice and advise the **Minister** to that effect, failing which the agreement will be automatically terminated, effective from the date of receipt of the notice, without compensation or indemnity for any cause or reason whatsoever.

In the cases provided for in subsections 1° and 3°, the **Minister** reserves the right to demand reimbursement in full or in part of the amount of financial assistance paid at the date of termination.

The **Minister's** failure to exercise his right of termination should not be construed as a waiver of that right.

Termination of this agreement does not waive the application of subsection 3.2.7. of Section 3 regarding the conservation of documents, of Section 5 regarding the responsibility of **WCI, Inc** nor of subsection 14.4 of Section 14 regarding protection of personal and confidential information.

## 7. **ASSIGNMENT**

The rights and obligations provided for in this agreement may not be assigned, sold or transferred in whole or in part, without the prior written authorization of the **Minister**, who may then set conditions to these purposes.

## 8. **AUDIT**

The financial transactions arising from fulfilling the purpose of this agreement are subject to audit by the Comptroller of Finance appointed under the *Act respecting the Ministère des Finances* (CQRL, chapter M-24.01).

## 9. **AMENDMENTS**

Any amendments to the content of this agreement must be agreed upon in writing by the parties. Such amendments cannot change the nature of the initial agreement and shall become an integral part of it.

## 10. **RESOLVING DISPUTE**

In the event a dispute shall arise while fulfilling the purpose of this agreement or regarding its interpretation, the parties undertake, before exercising any recourse, to seek an amicable solution to the dispute and, if necessary, involve a third party under the terms to be agreed upon to help them resolve the issue.

In the event of a disagreement, **WCI, Inc.** shall continue with its responsibilities under the agreement .

## 11. **SUBCONTRACTING**

**WCI, Inc.** shall obtain prior authorization from the **Minister's** representative for all possible subcontracting while fulfilling the purpose of this agreement. The

**Minister** reserves the right to refuse any subcontract without the need to provide a rationale for his decision.

The subcontractor shall comply with the same terms, conditions and obligations of this agreement.

When its mandate involves the participation of subcontractors, the mandate's completion and resulting obligations shall remain the responsibility of **WCI, Inc.**

## 12. INDEPENDENCE OF PARTIES

**WCI, Inc.**, its employees, agents, representatives, partners and subcontractors, shall not act as a representative of the **Minister**, the Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques or the Government of Québec while fulfilling the purpose of this agreement.

## 13. LINGUISTIC OBLIGATIONS

All services and deliverables provided by **WCI, Inc.** from fulfilling the purpose of this agreement must be available in French and of a quality deemed satisfactory by the **Minister**. These services and deliverables must be available without additional delay and be equal in quality to English documents.

In addition, all communication with users of the services provided by **WCI, Inc.** shall be in English and French. Staff called upon to communicate with Francophone users must speak French fluently.

## 14. PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

### 14.1 Definitions:

14.1.1 "Personal information": Any information that concerns a natural person and that can be used to identify that person;

14.1.2 "Confidential information": Any information whose access is accompanied by one or more restrictions provided for in the *Act Respecting Access to Documents Held by Public Bodies and the Protection of Personal Information* (CQRL, chapter A-2.1), hereinafter the "Act Respecting Access," including information having an impact on intergovernmental relations, negotiations between public bodies, the economy, the administration of justice and public security, administrative or policy decisions or audit.

**14.2 WCI, Inc.** shall make a commitment to the **Minister** to comply with each of the provisions applicable to personal and confidential information listed below, whether the information is provided under the execution of the purpose of this agreement or generated in connection with this execution.

14.2.1 Inform its staff of the obligations specified in these provisions and disseminate all relevant information in this regard.

14.2.2 Make personal and confidential information accessible only to its employees, agents, representatives or subcontractors who are qualified to receive it, when it is necessary for performing their duties and is used for the purposes for which it was collected or where the law authorizes its use.

- 14.2.3 Refrain from disclosing, without the consent of the person concerned, personal information to anyone except in instances involving subcontracts and in accordance with subsection 14.2.12.
- 14.2.4 Submit the consent to disclosure of personal information form of the person concerned for approval by the **Minister**.
- 14.2.5 Use personal and confidential information solely for the purpose of the execution of its mandate.
- 14.2.6 Collect personal information on behalf of the **Minister** only in cases where it is necessary for the purpose of the execution of its mandate and give advance notice to any person subject to such information gathering as to how the information will be used as well as the other elements referred to in Section 65 of the Act Respecting Access.
- 14.2.7 Take all safeguards required to ensure the confidentiality of personal and confidential information at all stages of the execution of its mandate.
- 14.2.8 Destroy, at its own expense, personal and confidential information.
- 14.2.9 Immediately inform the **Minister** of any breach of the obligations under these provisions or any event that might impair the security or confidentiality of personal or confidential information.
- 14.2.10 Provide, at the request of the **Minister**, all relevant information regarding the protection of personal and confidential information and give any person designated by the **Minister** access to documentation, systems, data and physical facilities related to its mandate in order to ensure compliance with these provisions.
- 14.2.11 Subject to any particular confidentiality agreement between the parties concerning the disclosure of information, obtain the **Minister's** written authorization before providing or transferring any personal or confidential information whatsoever, even for technical purposes, outside of Québec.
- 14.2.12 When the execution of its mandate is entrusted to a subcontractor and involves providing personal and confidential information by **WCI, Inc.** to the subcontractor or the collection of personal and confidential information by the subcontractor:
- submit to the **Minister** for approval the list of personal and confidential information provided to the subcontractor;
  - sign a contract with the subcontractor stipulating the same obligations as those specified in these provisions;
  - require the subcontractor to undertake not to keep any document containing personal or confidential information, regardless of the medium, once the subcontract has terminated, and to hand over any such documents to **WCI, Inc.** within sixty (60) days after the contract's end.
- 14.2.13 Transmit personal or confidential information securely when it is sent via email or Internet. The information must be encrypted or protected by a proven security mechanism. If personal or confidential information is transmitted by fax, the issuer of the document shall ensure that the receiver is authorized to receive it and shall take all measures necessary to protect the information.

**14.3** The **Minister** may subsequently submit a confidentiality agreement to **WCI, Inc.**, its employees, agents, representatives, partners and subcontractors. Where appropriate, the terms, conditions and obligations of such an agreement shall be added to those of this agreement and cannot, unless otherwise specified by the **Minister**, waive them.

**14.4** The expiration of the agreement does not relieve **WCI, Inc.** and its employees, agents, representatives or subcontractors of their obligations and commitment regarding the protection of personal and confidential information.

## **15. CONFIDENTIALITY**

**WCI, Inc.** undertakes to take the necessary measures to ensure that each of its employees, agents, representatives, partners and subcontractors shall certify that any information obtained as a result of their assignment to execute the mandate entrusted to them will not be disclosed or brought to anyone's attention and that they will not use this information for their personal benefit.

## **16. CONFLICT OF INTEREST**

**WCI, Inc.** undertakes to avoid any situation that would place the personal interest of its administrators and the interest of the **Minister** in conflict or give the appearance of such a conflict, excluding however a conflict arising out of the interpretation or application of this agreement. If such a situation occurs, **WCI, Inc.** must immediately inform the **Minister** who may, at his discretion, issue a directive to **WCI, Inc.** indicating how to remedy this conflict of interest or terminate the agreement.

## **17. PREVALENCE OF FRENCH**

In the event of a discrepancy between the French version and the English version of this agreement, the French version shall prevail.

## **18. GOVERNING LAWS AND JURISDICTION**

This agreement is governed by the laws applicable in Québec and, if disputed, Québec courts shall have sole jurisdiction.

## **19. REPRESENTATIVES OF THE PARTIES**

For the purposes of the application of this agreement, including any approvals that are required, the **Minister** designates **Ms. Guylaine Bouchard, Director General of the Direction générale du Bureau des changements climatiques (General Direction of the Climate Change Office)**, to represent him. If a replacement becomes necessary, the **Minister** shall immediately notify **WCI, Inc.**

Similarly, **WCI, Inc.** designates **Mr. Greg Tamblyn, Executive Director**, as its representative. If a replacement becomes necessary, **WCI, Inc.** shall immediately notify the **Minister**.

In the event that there are several representatives, each may act separately and authorization by any such representatives shall constitute valid authorization.



**20. COMMUNICATION**

Any notice, instruction, recommendation or document required under this agreement, to be valid and binding on the parties, must be given in writing and delivered by hand or by bailiff, telegram, fax, messenger, courier, or by mail or registered mail to the party concerned at the addresses indicated below:

The **Minister:**

**Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques**

Ms. France Delisle  
Director General  
Direction générale de la réglementation carbone et des données d'émission  
675 René-Lévesque Boulevard East, 6th Floor, Box 31  
Québec, Québec G1R 5V7

Telephone: (418) 521-3868, ext. 4565  
Fax: (418) 646-4920

**WCI, Inc.:**

**Western Climate Initiative, Inc.**

Mr. Greg Tamblyn  
Executive Director  
980 Ninth Street, Suite 1600  
Sacramento, California 95814  
USA

Telephone: (916) 449-9966

**IN WITNESS HEREOF** the parties have signed two (2) copies in the French language and two (2) copies in the English language:

**The MINISTRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT ET DE LA LUTTE CONTRE LES CHANGEMENTS CLIMATIQUES**

By: (Signature on file)  
Christyne Tremblay, Deputy Minister  
Ministère du Développement durable,  
de l'Environnement et de la Lutte contre  
les changements climatiques

\_\_\_\_\_ Date

Place

\_\_\_\_\_ Place

**WESTERN CLIMATE INITIATIVE, INC.**

By: (Signature on file)  
Mary Nichols, Chair, Board of Directors  
Western Climate Initiative, Inc.

\_\_\_\_\_ Date

\_\_\_\_\_ Place