

Standard Agreement

**UPDATED:
FEBRUARY 6, 2020**





Standard Agreement (“Agreement”)

AGREEMENT NUMBER
2020-01

- This Agreement is entered into between Western Climate Initiative, Inc. (WCI, Inc.) and the Contractor named below:
CONTRACTOR'S NAME
- The term of this Agreement is:
- The maximum amount of this Agreement is: \$0
- 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 and Work Authorization
- Attachment B – Invoicing and Payment Provisions
- Attachment C – General Terms and Conditions
- Attachment D – Individual Conflict of Interest and Confidentiality
- Attachment D1 – Organization Conflict of Interest and Confidentiality
- Attachment E – Contract Insurance Requirements
- Attachment F – Contractor’s Technical Proposal
- Attachment G – Contractor’s Cost Proposal

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

CONTRACTOR		WCI, Inc. Use Only
CONTRACTOR'S NAME (if other than an individual, state whether a corporation, partnership, etc.)		
BY (Authorized Signature)	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		
CONTRACTEE		
CONTRACTEE'S NAME		
BY (Authorized Signature)	DATE SIGNED(Do not type)	
PRINTED NAME AND TITLE OF PERSON SIGNING		
ADDRESS		

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 Work Authorization, and in Attachment F, Contractor’s Technical Proposal, (all such services, collectively, the “Work” or the “Work Schedule”), provided, however, that Contractor shall not commence any Work unless expressly authorized by WCI, Inc. in writing to begin performing such Work.

This Agreement may be extended and Contractor may be engaged for additional Work, only by mutual agreement of the parties in writing. The cost of the extension or additional Work must be mutually agreed to by WCI, Inc. and the Contractor based on the scope of work of the requested services.

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:	Name:
Phone	Phone:
Fax:	Fax:
Email:	Email:

Direct all administrative inquiries to:

Western Climate Initiative, Inc.	Contractor:
Attention:	Attention:
Phone:	Phone:
Fax:	Fax:
Email:	Email:

Purpose / Background / Overview

A. Purpose

[To be completed once Contractor’s services are identified.]

B. Background

WCI, Inc. supports the Participating Jurisdictions registering to the programs and in executing coordinated auctions of greenhouse gas emission allowances that conform to the Participating Jurisdictions’ requirements. WCI, Inc. also supports the execution of reserve sales from the Participating Jurisdictions’ programs. WCI, Inc. through RFP # 2020-01, sought to contract with several experienced and qualified contractors to develop a consolidated platform to manage the single market registry and the auction of emission allowances (the “System”) for all Participating Jurisdictions (the “Project”).

C. Overview

[To be completed once Contractor’s services are identified.]

Attachment A: Scope of Work and Work Authorization(s)

[Once the RFP is awarded, the Scope of Work from the RFP will be inserted here, including any addenda.]

Attachment B Invoicing and Payment Provisions

A. Invoicing and Payment

- i. **Fixed Price.** For completed deliverables satisfactorily rendered, and upon receipt and approval of the invoice for such services satisfactorily rendered, WCI, Inc. agrees to compensate the Contractor 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, and shall include all applicable taxes, fees, and any other non-travel. 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 under the Agreement.
- ii. **Hourly Rates.** The hourly rates, if applicable, for the duration of this Agreement are inclusive of all taxes, fees, and any other non-travel expenses.
- iii. **Holdback.** Ten percent (10%) of the amount of each invoice for completed deliverables satisfactorily provided by Contractor under this Agreement, and invoiced in accordance with subsection (d) below, will be deducted as a holdback from each payment by WCI, Inc. to Contractor. Upon acceptance of the final deliverable for each [task] and after receiving an invoice from Contractor, WCI, Inc. shall within 45 days remit to Contractor the holdback amount withheld for such [task].
- iv. **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.
- v. **Invoicing.** All completed deliverables satisfactorily performed shall be payable in arrears after delivery and acceptance. Payment terms are NET 45 after receipt of undisputed invoices for completed deliverables that have been accepted by WCI, Inc. Invoices shall include the Agreement Number and summary of deliverables and services performed for the amount invoiced. Invoices shall be submitted monthly in arrears. Each item in the invoice must correspond to the budget identified in Attachment [B]. Invoices shall be emailed to 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

[Insert budget detail from Contractor's Cost Proposal. Add necessary info here if Contractor's cost proposal is confidential.]

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 of any Work until a Work Authorization is executed or any other 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., each Participating Jurisdiction (as defined in Section 10 of these General Terms and Conditions), each funding entity and their respective directors, officers, representatives, agents, employees and volunteers shall be named as an additional insured and certificate holder on all such insurance policies and subrogation against WCI, Inc. shall be waived. Contractor shall pay any deductibles, and all insurance shall be primary, without right of contribution by any insurance carried by WCI, Inc. Contractor shall comply with all financial responsibility standards required by 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 or administrative role in providing the Services. Key Personnel are identified in Attachment [A] or the applicable Work Authorization.

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 safely, in accordance with the highest standard of care, skill, and diligence provided by a professional person or company in performance of work similar to the Work, and all Work shall be of good quality and free from 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 11] 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 in accordance with the timing set forth in Attachment [A].

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. 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 on the basis of a daily or hourly rate or reimbursed as expenses. Contractor shall promptly reimburse WCI, Inc. for any expenditures judged by an audit conducted by any of the above to be not in compliance with the requirements 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., any Participating Jurisdiction or any funding entity.

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.

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

A. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless (i) the provinces of British Columbia, Nova Scotia and Quebec, the State of California and any other governmental jurisdiction participating in the greenhouse gas (GHG) reporting or cap-and-trade programs administered by WCI, Inc. (together, the "Participating Jurisdictions"), (ii) WCI, Inc., (iii) any funding entity and (iv) the directors, officers, employees and agents of each of the foregoing (clauses (i) through (iv) together, 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 subcontractor 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.

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 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, 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. 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. PROGRESS PAYMENTS

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

22. FINAL PAYMENT

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 the 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.

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 WCI, Inc.’s information technology and tracking systems or any additional or successor systems and services, 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 auctions, 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 not otherwise subject to confidentiality obligations:

(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.

- B. Ensure that Contractor's and all subcontractors' senior management with operating knowledge of the Work, and all of their respective employees, agents, and representatives working directly on the tasks provided for in the Agreement, sign and submit to Contractor Attachment D: Individual Conflict of Interest and Confidentiality Statement. Contractor will then certify to WCI, Inc. as to the submission of such statements by all such required individuals, and will in addition 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 with Participating Jurisdictions and funding entities related to the management, sharing, and disclosure of information. Contractor and any subcontractor in connection with the performance of the Agreement must make available for WCI, Inc.'s inspection all requested background information on staff performing the Work employed by the Contractor and any subcontractor.
- 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. 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 report 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

WCI, Inc., its directors, officers, employees and agents and any other Indemnified Party shall not 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 directly or affirmatively 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; (4) Contractor's response to the RFP; (5) The proposed SOW including any addenda thereto; and (6) Contractor's response to the proposed SOW. 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 [D] Individual Conflict of Interest and Confidentiality; (5) Attachment [D1] Organization Conflict of Interest and Confidentiality; (6) Attachment [E] Contractor Insurance Requirements; (7) Attachment [F] Contractor's Technical Proposal for the [SOW/Work Authorization]; and (8) Attachment [G] Contractor's Cost Proposal for the [SOW/Work Authorization].

Attachment D Individual Conflict of Interest and Confidentiality Statement

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

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

I certify that I and any member of my immediate family are not a partner, director, manager, officer or key employee of, or 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 I or any member of my immediate family becomes a partner, director, manager, officer or key employee of, or 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 will immediately disclose this information to _____ who will disclose this information to WCI, Inc.

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

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

- A. All data, analyses, specifications, requirements, concepts and discussions received from WCI, Inc., 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 me that contain or are based upon confidential information.

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

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

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

Date:
Signature:
Printed Name:
Title:
Organization:
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_, between Western Climate Initiative, Inc. and _____.

Attachment D1 Organization Conflict of Interest and Confidentiality Statement

I certify that _____ 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 _____ 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 _____ 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 _____ 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 _____ will not accept any gift, benefit, gratuity or consideration from anyone, based on any understanding that it would influence _____'s performance under this Agreement.

I certify that _____ 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 ___ 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. _____ 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 _____ that contain or are based upon confidential information.
- F. All other information identified in the Agreement as Confidential Information.

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

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

Date:
Signature:
Printed Name:
Title:
Organization:
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_, between Western Climate Initiative, Inc. and _____.

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 \$1,000,000 per occurrence and at least \$2,000,000 products/completed operations aggregate and a \$2,000,000 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., each Participating Jurisdiction and each funding entity and their respective directors, officers, representatives, agents, employees and volunteers as additional insureds under each 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 Contractor’s Workers Compensation Insurance with minimum limits of \$1,000,000 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 \$1,000,000 for bodily injury per person, \$1,000,000 property damages and \$1,000,000 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 \$1,000,000 per claim and written on a claims made bases.

6. CYBER LIABILITY COVERAGE: (if applicable) Insurance with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 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 Technical Proposal

[To Be Provided]

Attachment G Contractor's Cost Proposal

[To Be Provided]