

**AGREEMENT ON THE PROVISION OF ADDITIONAL FINANCIAL ASSISTANCE IN
THE AMOUNT OF \$1,548,749 US TO FINANCE THE WESTERN CLIMATE
INITIATIVE INC. OVER ITS FISCAL YEARS 2012 AND 2013**

BETWEEN

THE MINISTRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT, DE LA FAUNE ET DES PARCS, Yves-François Blanchet, 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* (R.L.R.Q., chapter M-30.001), represented by Ms. Diane Jean, 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 Mr. Matthew Rodriguez, 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 1187-2009 on November 18, 2009, the Government of Québec adopted a greenhouse gas reduction target of 20% below the 1990 level for 2020;

WHEREAS in October, 2011, 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 by Order in council 1297-2011 dated 14 December 2011, the Government of Québec adopted the *Regulation respecting a cap-and-trade system for greenhouse gas emission allowances* (R.L.R.Q., chapter Q-2, r. 46.1);

WHEREAS by Order in council 1184-2012 dated 12 December 2012, the Government of Québec adopted the *Regulation to amend the Regulation respecting a cap-and-trade system for greenhouse gas emission allowances*;

WHEREAS the Government of the State of California and the Government of Québec are among the founding jurisdictions of the non-profit corporation WCI, Inc., incorporated 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 collaborative implementation of their respective cap-and-trade systems for greenhouse gas emission allowances;

WHEREAS WCI, Inc. is administered by a board of directors composed of two (2) Class A directors per participating jurisdiction;

WHEREAS the government of Québec, as a founding jurisdiction of WCI, Inc., has undertaken to participate in the financing of WCI, Inc. operations;

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

WHEREAS the Minister has already provided financial assistance in the amount of one hundred thousand US dollars (\$100,000 US) to WCI, Inc. to enable it to initiate its current operations at the beginning of the 2012 fiscal year;

WHEREAS the Minister has been authorized by Order in council 606-2012 of June 13, 2012 to provide a maximum of an additionnal \$1,548,749 US in financial assistance to the Western Climate Initiative, Inc. non-profit corporation for the purpose of contributing to the financing of its operations for the 2012 and 2013 fiscal years, subject to the availability of funds in the Green Fund;

WHEREAS according to the second paragraph of section 46.13 of the *Environment Quality Act* (R.L.R.Q., chapter Q-2), by Order in council 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, which delegates to WCI, Inc. the management of certain parts of the said system.

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 five hundred forty-eight thousand seven hundred forty-nine US dollars (**\$1,548,749 US**) in financial assistance to the Western Climate Initiative, Inc. non-profit corporation in order to contribute to the financing of its operations for its 2012 and 2013 fiscal years.

This contribution is in addition to the financial assistance of one hundred thousand US dollars (**\$100 000 US**) already paid to **WCI, Inc.** in order to enable it to initiate its current operations at the beginning of the 2012 fiscal year.

The mandate of **WCI, Inc.** includes three (3) 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 for certification by appropriate jurisdiction authorities, and the processing of sums owed to the Ministère du Développement durable, de l'Environnement et des Parcs, for payment into the Green Fund in accordance with section 46.16 of the Environment Quality Act (R.L.R.Q., 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**.

Opening a Canadian office:

WCI, Inc. shall open a Canadian office in Québec by the end of 2013.

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° within thirty (30) days following the last signature of this agreement, the **Minister** agrees to pay a first instalment of one million US dollars (**\$1,000,000 US**);
- 2° in the first quarter of 2013, the **Minister** agrees to pay the balance of Québec's contribution in the amount of five hundred forty-eight thousand seven hundred forty-nine US dollars (**\$548,749 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* (R.L.R.Q., 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 five hundred forty-eight thousand seven hundred forty-nine US dollars (**\$1,548,749 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;
- 3.2.2 reimburse to the **Minister**, upon the expiration of this agreement, any unencumbered portion of financial assistance granted;
- 3.2.3 immediately reimburse to the **Minister** any amount used for purposes other than those provided for in this agreement;
- 3.2.4 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;

- 3.2.5 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;
- 3.2.6 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;
- 3.2.7 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;
- 3.2.8 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 or no later than December 31, 2013.

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 that date 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 this purpose.

8. AUDIT

The financial transactions arising from fulfilling the purpose of this agreement are subject to audit by the Comptroller of Finance (*Act respecting the Ministère des Finances* (R.L.R.Q., 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 Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs 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* (R.L.R.Q., 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 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. Geneviève Moisan, Director 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. Patrick Cummins, 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, de la Faune et des Parcs

Ms. Geneviève Moisan

Director

Climate Change Office

675 René-Lévesque Boulevard East, 6th Floor, Box 31

Québec, Québec G1R 5V7

Telephone: (418) 521-3868, ext. 4358
Fax: (418) 643-4747

WCI, Inc.:

Western Climate Initiative, Inc.
Mr. Patrick Cummins
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:

Ministère du Développement durable, de l'Environnement, de la Faune et des Parcs

By: _____
Diane Jean, Deputy Minister
Ministère du Développement durable,
de l'Environnement, de la Faune et des
Parcs

18 Janvier 2013
Date

Quebec
Place

WCI, INC.

By: _____
Matthew Rodriguez, Chair, Board of
Directors
Western Climate Initiative, Inc.

December 27, 2012
Date

Sacramento, Ca
Place