

AGREEMENT ON THE PROVISION OF FINANCIAL ASSISTANCE IN THE AMOUNT OF \$ 1,696,364 US TO FINANCE THE WESTERN CLIMATE INITIATIVE INC. OVER ITS FISCAL YEARS 2018 AND 2019

BETWEEN

THE MINISTRE DU DÉVELOPPEMENT DURABLE, DE L'ENVIRONNEMENT ET DE LA LUTTE CONTRE LES CHANGEMENTS CLIMATIQUES, for and on behalf of the Government of Québec, represented by M. Patrick Beauchesne, 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 M. Matthew Rodriguez, Chair of the Western Climate Initiative, Inc. Board of Directors, duly authorized under a resolution adopted by the Board of Directors on October 12, 2017,

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

Hereinafter collectively referred to as "the parties".

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 for the government that implement such as a system;

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 of the carbon market and stimulate innovation;

WHEREAS the Ontario government adopted the Climate Change Mitigation and Low-Carbon Economy Act, 2016 (SO 2016, Chapter 7) which provides for a target of reduction of greenhouse gas emissions for the year 2020 of 15% under the 1990 levels;

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

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

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

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

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

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

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

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

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

WHEREAS, according to the second paragraph of section 46.13 of the *Environment Quality Act* (CQRL, chapter Q-2), the Government may, by agreement, delegate all or part of the cap-and-trade system established by this subdivision or the administration of all or part of a regulation of the Government concerning that system to a person or a body.

WHEREAS, according to the third paragraph of this section, for any delegation made under this section, a notice stating, among other things, the name of the delegatee and the functions assigned to the delegatee must be published in the *Gazette officielle du Québec* and, if appropriate, in any other newspaper or publication;

WHEREAS, under section 185 of the Act respecting mainly the implementation of certain provisions of the Budget Speech of 20 November 2012 (2013, chapter 16), the Regulation respecting the delegation of management of certain parts of a cap-and-trade system for greenhouse gas emission allowances (chapter Q-2, r. 15.1) is deemed to be the notice required under this paragraph, by which the Government of Québec delegates to WCI, inc. the management of certain parts of said system;

WHEREAS, according to the Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions signed in Québec City on September 22, 2017 and in Los Angeles, on October 5, 2017 the government of the State of California, the Government of Ontario and the Government of Québec have stated their intention to link their cap-and-trade systems for greenhouse gas emission allowances;

WHEREAS, according to this Agreement, the **WCI, Inc.** participating jurisdictions of **WCI, Inc.** shall continue coordinating the administrative and technical support of their cap-and-trade system through the **WCI, Inc.**

WHEREAS, by Orders in council 606-2012 dated June 13, 2012, 539-2014 dated June 18, 2014 and 148-2016 dated March 9, 2016, the Government of Québec paid amounts to **WCI, inc.** for its fiscal years 2012 to 2017;

WHEREAS, by Order in council 135-2018 dated February 21, 2018, the Government of Québec is authorized to pay, during its fiscal years 2017-2018 and 2018-2019, financial assistance of a maximum amount of \$ 1,696,364 US to the **WCI, inc.** to help fund its operations for fiscal years 2018 and 2019, subject to the availability of sums to this effect in the Green Fund.

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 six hundred ninety-six thousand three hundred and sixty-four US dollars (**\$1,696,364 US**) in financial assistance to the **WCI, Inc.** non-profit corporation in order to contribute to the financing of its operations for its 2018 and 2019 fiscal years.

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

- Implementing a tracking system for monitoring all emissions allowances issued by the **Minister** and providing the services associated with using and operating the system, including but not limited to:
 - creating, hosting and ensuring the functioning of 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, and the monitoring of those sales as well as the calculation of their results, firstly, for certification by appropriate jurisdiction authorities, and secondly, the processing of sums owed to the **Minister**, for payment into the Green Fund in accordance with paragraph 5° of section 15.4 of the *Act Respecting the Ministère du Développement durable, de l'Environnement et des Parcs* (CQLR, chapter M-30.001), in payment of emission units sold;
- Conduct the monitoring of transactions of emission allowances and any other system-related operation in collaboration with Québec authorities.

Services provided by **WCI, Inc.** should provide for any linking of the Québec's cap-and-trade system with another state or province designated by the **Minister**.

2. TERMS OF DISBURSEMENT

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

- 1° in the first quarter of 2018 or at the latest within thirty (30) days following the date of the last signature of this agreement, the **Minister** agrees to pay a first instalment of eight hundred thirty thousand eight hundred seventy-two US dollars (**\$830,872 US**);
- 2° in the first quarter of 2019, the **Minister** agrees to pay the balance of Québec's contribution in the amount of eight hundred sixty-five thousand four hundred ninety-two US dollars (**\$865,492 US**).

The fiscal year of WCI, inc. starts on January 1st and ends on December 31st.

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 financially **WCI, inc.** by the payment in the maximum amount of one million six hundred ninety-six thousand three hundred and sixty-four US dollars (**\$1,696,364 US**).

3.2. WCI, Inc. undertakes to:

- 3.2.1 use the payment granted by this agreement solely for the purposes specified herein unless this amount is postponed, with the agreement of the **Minister**, on a financial year posterior than those aimed by the present agreement;
- 3.2.2 submit to the **Minister**, within one hundred fifty (150) days following the end of each fiscal year, a report containing a review of its activities and its audited financial statements;
- 3.2.3 upon request, provide the **Minister** with any document or information, in its possession or under its control, relevant to the execution of this agreement;
- 3.2.4 conserve all documents related to the execution of this agreement for a period of seven (7) years following its expiration, grant access to such documents to a representative of the **Minister** and allow such representative to take copies of them;
- 3.2.5 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 on the date when its purpose and the obligations provided for in this agreement have been met or on May 31, 2020 at the latest.

5. RESPONSIBILITIES

WCI, Inc. shall be responsible for any damages caused by it, its employees, agents, representatives or subcontractors during or in connection with this agreement, including damages resulting from a breach of any engagement undertaken by WCI, Inc. during or in connection with this agreement

WCI, Inc. undertakes to indemnify and hold harmless the **Minister**, her representatives and the Government of Québec against any recourse, appeal, claim, demand, lawsuit or other procedure initiated by any person that may result from executing 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° she believes there is a situation that, for reasons of public interest, casts doubt on the purpose for which the agreement is reached;

3° **WCI, Inc.** fails to meet any of the terms, conditions and obligations under this agreement;

4° **WCI, Inc.** ceases its activities in any way whatsoever, including as a result of its bankruptcy or of 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.

Such notification is equivalent to a formal notice.

The **Minister** shall on the date of the notification cease all payment of amounts, except those due for expenses incurred and paid by **WCI, Inc.**, in relation to services covered by this agreement prior to the date of receipt 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 by **WCI, Inc.**, without compensation or indemnity for any cause or reason whatsoever.

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

7. **ASSIGNMENT**

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

8. **AUDIT**

The payment of the amount as well as any other transactions made under the execution of this agreement may be audited by the **Minister** or by any other person or body of the Gouvernement of Québec in the performance of his or her duties or the tasks entrusted to him or her.

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 executing 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 authorization from the **Minister's** representative prior to the conclusion of any subcontract related to the execution of its mandate. The **Minister** reserves the right to refuse any subcontract without the need to provide a rationale for her decision.

When its mandate involves the participation of subcontractors, the mandate's completion and resulting obligations shall remain the responsibility of **WCI, Inc** which undertakes that any subcontractor will comply with all the obligations and conditions imposed to **WCI, inc** by this agreement.

12. INDEPENDENCE OF PARTIES

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

13. LINGUISTIC OBLIGATIONS

All services, communications and documents produced by **WCI, Inc.** from executing this agreement must be available:

- a) in French and of a quality deemed satisfactory by the Minister;
- b) in the same time as their English version.

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

14. PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

14.1 Definitions:

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

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

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

- 14.2.1 Inform its staff of the rules under the Act Respecting Access as well as 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 14.2.13;
- 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 Upon request by the **Minister**, destroy, at its own expense, personal and confidential information in accordance with such instructions as may be given by the **Minister** or her representatives and send to the **Minister**, within sixty (60) days after the request, a certificate confirming the destruction of personal and confidential information, signed by an authorized person that she will have designated for this purpose;
- 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 Comply with the information security objectives and requirements defined by the **Minister**;
- 14.2.12 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.
- 14.2.13 When the execution of its mandate is entrusted to a subcontractor and involves providing personal and confidential information by **WCI, Inc.** to the subcontractor or the collection of personal and confidential information by the subcontractor:
 - submit to the **Minister** for approval the list of personal and confidential information provided to the subcontractor;
 - sign a contract with the subcontractor stipulating the same obligations as those specified in these provisions;
 - require the subcontractor to undertake not to keep any document containing personal or confidential information,

regardless of the medium, once the subcontract has terminated, and to hand over any such documents to **WCI, Inc.** within sixty (60) days after the contract's end;

14.2.14 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. However, the parties may agree among themselves of any other means, such as delivery by hand, courier or registered mail, always indicating on the envelope the words "personal and confidential";

14.3 The **Minister** may, subsequent to the signing of this agreement, 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, partners 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. If such a situation occurs, **WCI, Inc.** must immediately inform the **Minister** who may, at her discretion, either 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.

The parties designate the judicial district of Québec as the jurisdiction with territorial competency to hear any claim arising from a dispute concerning the execution or interpretation of this agreement.

19. SURVIVAL OF OBLIGATIONS

Notwithstanding the full and complete execution of this agreement, its expiration for any reason or its termination, all the provisions contained in this agreement which, by their nature, apply beyond the end of this agreement, including paragraph 3.2.4 of section 3, section 5 and paragraph 14.4 of section 14, remain in force.

20. REPRESENTATIVES OF THE PARTIES

For the purposes of the application of this agreement, including any approvals that are required, the **Minister** designates **Ms. France Delisle, Director General of the Direction générale de la réglementation carbone et des données d'émission** to represent her. If a replacement becomes necessary, the **Minister** shall immediately notify **WCI, Inc.**

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

21. COMMUNICATION

Any notice, instruction, recommendation or document required under this agreement, to be valid and binding on the parties, must be given by a means to prove receipt at a specific time at the addresses indicated below:

The **Minister**:

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

Ms. France Delisle

Director General

Direction générale de la réglementation carbone et des données d'émission

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

Québec, Québec G1R 5V7

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

Fax: (418) 646-0001

WCI, Inc.:

Western Climate Initiative, Inc.

Mr. Greg Tamblyn

Executive Director

980 Ninth Street, Suite 1600

Sacramento, California 95814

USA

Telephone: (916) 449-9966

22. FINAL CLAUSE

Each payment is conditional on the availability of sums to that effect in the Green Fund, in accordance with the applicable provisions of the *Financial Administration Act* (CQLR, chapter A-6.001).

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

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

By: _____

M. Patrick Beauchesne, Deputy Minister
Ministère du Développement durable,
de l'Environnement et de la Lutte contre
les changements climatiques

Date

Place

WESTERN CLIMATE INITIATIVE, INC.

By: _____

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

Date

Place