California Environmental Protection Agency
Air Resources Board

Québec

AGREEMENT

BETWEEN

THE CALIFORNIA AIR RESOURCES BOARD

AND

THE *GOUVERNEMENT DU QUÉBEC*

CONCERNING

THE HARMONIZATION AND INTEGRATION OF
CAP-AND-TRADE PROGRAMS
FOR REDUCING GREENHOUSE GAS EMISSIONS

THE CALIFORNIA AIR RESOURCES BOARD

represented by the Chairman of the California Air Resources Board, Mary Nichols,

AND

THE *GOUVERNEMENT DU QUÉBEC*

represented by the Minister of International Relations, La Francophonie and External Trade, Jean-François Lisée and the Minister of Sustainable Development, Environment, Wildlife and Parks, Yves-François Blanchet,

hereafter referred to as "the Parties".

WHEREAS the California Air Resources Board is a part of the California Environmental Protection Agency, an organization which reports directly to the Governor's Office in the Executive Branch of California State Government;

WHEREAS, in 2006, the State of California enacted Assembly Bill 32 (AB 32) titled "California Global Warming Solutions Act," requiring it to reduce its greenhouse gas emissions to its 1990 level by 2020 and to consult with other governments to facilitate the development of integrated and cost-effective regional, national and international greenhouse gas reduction programs;

WHEREAS, the *Gouvernement du Québec*, by Order in Council 1187-2009 of November 18, 2009, adopted a greenhouse gas emissions reduction target for 2020 of 20% below the 1990 level;

WHEREAS, California covered entities are required to report their greenhouse gas emissions under the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions (Title 17, California Code of Regulations, Sections 95100-95157);

WHEREAS, Québec emitters are required to report their greenhouse gas emissions in accordance with the Regulation respecting mandatory reporting of certain emissions of contaminants into the atmosphere (CQLR, chapter Q-2, r. 15);

WHEREAS, in October, 2011, the California Air Resources Board 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);

WHEREAS, in December, 2011, the *Gouvernement du Québec* adopted the Regulation respecting a cap-and-trade system for greenhouse gas emission allowances (CQLR, chapter Q-2, r. 46.1);

WHEREAS, the State of California and the *Gouvernement du Québec* are among the founding participants of Western Climate Initiative, Inc. (WCI, Inc.), a non-profit corporation incorporated in October 2011, providing administrative and technical services to its participants to support and facilitate the implementation of their cap-and-trade programs for reducing greenhouse gas emissions;

WHEREAS, the Parties share a common interest in working jointly and collaboratively toward the harmonization and integration of their mandatory greenhouse gas emissions reporting programs and of their cap-and-trade programs for reducing greenhouse gas emissions;

WHEREAS, the Parties recognize that the harmonization and integration of their mandatory greenhouse gas emissions reporting programs and their cap-and-trade programs are to be attained by means of regulations adopted by each Party;

WHEREAS, the Parties have developed constructive working relationships among their respective staff and officials, and have demonstrated the ability to harmonize their regulations and integrate their program operations, including by enabling staff to work jointly through workgroups to develop proposed harmonized approaches for consideration by each Party on topics including, but not limited to, mandatory reporting, issuance of compliance instruments, program scopes, compliance requirements, offset protocols, program registry, auction design and execution, auction platform, market regulations, invalidation of offset credits, enforcement, public disclosure of information, and information sharing among the Parties;

WHEREAS, the Parties further recognize that this Agreement is intended to facilitate continued consultation, using and building on existing working relationships, during the implementation and the operation of the Parties' respective programs and supporting the development of any proposed program changes, new offset protocols, and new program elements, with the objective of maintaining and developing harmonized and integrated approaches that may be considered by each Party;

WHEREAS, the Parties further recognize the importance of effective and timely public consultation regarding their respective program operations, program changes, new offset protocols, and new program elements;

WHEREAS, the Parties further recognize that the present Agreement does not, will not and cannot be interpreted to restrict, limit or otherwise prevail over each Party's sovereign right and authority to adopt, maintain, modify or repeal any of their respective program regulations;

WHEREAS, pursuant to section 46.14 of the Environment Quality Act (CQLR, chapter Q-2), the Minister of Sustainable Development, Environment, Wildlife and Parks is required to enter into an agreement regarding the harmonization and integration of cap-and-trade system with a government other than that of Québec, with a department of such a government, with an international organization or with an agency of such a government or organization before the *Gouvernement du Québec* is authorized to adopt regulations giving effect to such an agreement;

WHEREAS, such an agreement must also comply with the Act respecting the *Ministère des Relations internationales* (CQLR, chapter M-25.1.1);

WHEREAS, on April 8, 2013, the Governor of the State of California, as required by California Government Code section 12894, found that the four requirements of Government Code section 12894(f) have been satisfied.

THE PARTIES AGREE TO THE FOLLOWING:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1

OBJECTIVES

The objective of this Agreement is for the Parties to work jointly and collaboratively toward the harmonization and integration of the Parties' mandatory greenhouse gas emissions reporting programs and cap-and-trade programs for reducing greenhouse gas emissions.

The intended outcome of the harmonization and integration is to enable each Party under its own legislative or regulatory authority to:

a) achieve the harmonization of its regulation for mandatory reporting of greenhouse gas emissions and regulation for the cap-and-trade program for reducing greenhouse gas emissions and that such regulations will be compatible between the Parties;

b) provide for the equivalence and interchangeability of compliance instruments issued by the Parties for the purpose of compliance with their respective cap-and-trade programs;

c) permit the transfer and exchange of compliance instruments between entities registered with the Parties' respective cap-and-trade programs using a common secure registry;

d) develop compatible market regulations that are applied and enforced for all participants in the Parties' respective cap-and-trade programs;

e) allow for planning and holding joint auctions of California emission allowances and Québec emission units;

f) enable the sharing of information to support effective analysis, operation, enforcement and supervision of the market for compliance instruments.

The Parties shall report to the public annually on the status of achieving these objectives.

ARTICLE 2

DEFINITIONS

For the purposes of this Agreement:

"**Auction**" means the process in which one Party sells a determined number of emission allowances or emission units by offering them up for bid, taking bids, and then distributing the emission allowances or emission units to winning bidders;

"**Auction platform**" means the auction system used to conduct auctions;

"**Compliance instruments**" means an instrument, such as a California emission allowance or Québec emission unit, an offset credit or an early reduction credit, issued by one of the Parties that can be used by a covered entity or an emitter to fulfill a compliance obligation and having a value corresponding to the emission of one metric ton of CO_2 equivalent greenhouse gas;

"**Covered entity**" or "**emitter**" means an entity with an obligation to surrender compliance instruments for its greenhouse gas emissions under the regulation for the applicable cap-and-trade program for reducing greenhouse gas emissions;

"**Greenhouse gas**" or "**GHG**" means carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulphur hexafluoride (SF_6) as well as nitrogen trifluoride (NF_3);

"**Offset protocol**" means a documented set of procedures and requirements to quantify ongoing GHG emission reductions or GHG removal enhancements achieved by an offset project and to calculate the project baseline;

"**Participant**" or "**voluntarily associated entities**" means a person or an entity, other than a covered entity or an emitter, who is registered in the program registry and participates in one of the respective cap-and-trade program for reducing greenhouse gas emissions;

"**Program**" means California's cap-and-trade program or Québec's cap-and-trade system for reducing greenhouse gas emissions, and either of the Parties' greenhouse gas emissions reporting programs;

"**Program registry**" means the data system in which covered entities, emitters, participants and voluntarily associated entities are registered, and in which compliance instruments are recorded and tracked;

"**Registered entity**" means a covered entity, an emitter, a participant or a voluntarily associated entity;

"**State, province or territory**" means the states of the United States of America and the provinces or territories of Canada.

CHAPTER II

HARMONIZATION AND INTEGRATION PROCESS

ARTICLE 3

CONSULTATION PROCESS

The Parties shall consult each other regularly and constructively to achieve the objectives of this harmonization and integration Agreement. Consultation shall build on existing working relationships and shall enable Parties' staff to work constructively through workgroups under the direction of the Parties' officials.

The procedural requirements of each Party shall be respected, including appropriate and effective openness and transparency of each Party's public consultations.

The topics of the collaboration and the joint work shall include, but are not limited to, those of the articles in this chapter.

ARTICLE 4

REGULATORY HARMONIZATION

The Parties shall continue to examine their respective regulation for mandatory reporting of greenhouse gas emissions and for the cap-and-trade program for reducing greenhouse gas emissions in order to promote continued harmonization and integration of the Parties' programs.

In the case where a difference between certain elements of the Parties' programs is identified, the Parties shall determine if such elements need to be harmonized for the proper functioning and integration of the programs. If so determined, the Parties shall consult each other regarding a harmonized approach.

Either Party, or the Parties together, may consider making changes to their respective programs, including changes or additions to emissions reporting regulation, cap-and-trade program regulation, and program related operating procedures. To support the objective of harmonization and integration of the programs, any proposed changes or additions to those programs shall be discussed between the Parties. The Parties acknowledge that sufficient time is required to enable effective public review and comment prior to adoption. The Parties shall consult regarding changes that may affect the harmonization and integration process or have other impacts on either Party. Each Party's public process for making program changes must be respected.

In the event that program conditions arise that indicate a need for rapid or emergency program changes or other actions by one or both Parties, the Parties shall work to harmonize such changes to maintain regulatory harmonization and to resolve the conditions.

ARTICLE 5

OFFSET PROTOCOLS

In order to achieve harmonization and integration of the Parties' cap and trade programs for reducing greenhouse gas emissions, the offset protocols in each of the Parties' program regulation require that all offset emission reductions and enhanced sequestration achieve the essential qualities of being real, additional, quantifiable, permanent, verifiable, and enforceable.

Either Party, or the Parties together, may consider making changes to their respective offset protocols, adding additional offset protocols, or changing procedures for issuing offset credits. To support the objective of maintaining the harmonization and integration of the programs, any proposed changes or additions shall be discussed between the Parties. The Parties acknowledge that sufficient time is required to enable effective public review and comment prior to adoption. The Parties shall consult regarding changes or additions that may affect the harmonization and integration process or have other impacts on either Party. Each Party's public process for making program changes must be respected.

ARTICLE 6

MUTUAL RECOGNITION OF COMPLIANCE INSTRUMENTS

In order to achieve harmonization and integration of the Parties' cap and trade programs for reducing greenhouse gas emissions, mutual recognition of the Parties' compliance instruments shall occur as provided for under their respective cap-and-trade program regulations.

If a Party determines that a compliance instrument that it has issued should not have been issued or must be voided, it shall notify the other Party. Each Party recognizes and respects the authority of the other Party to take actions to recover or void compliance instruments that have been surrendered or that are held by registered entities in their respective cap-and-trade programs.

ARTICLE 7

TRADE OF COMPLIANCE INSTRUMENTS

In order to achieve harmonization and integration of the Parties' cap and trade programs for reducing greenhouse gas emissions, trading of compliance instruments among registered entities in the Parties' respective programs shall occur as provided for under their respective cap-and-trade program regulations.

The Parties shall keep each other informed of any investigation, pertaining to but not limited to acts or omissions on the part of any of its registered entities or other persons authorized to act under the programs and any violation, penalty or fine, or decision rendered with respect to those acts or omissions.

ARTICLE 8

JOINT AUCTIONS

In order to achieve harmonization and integration of the Parties' cap and trade programs for reducing greenhouse gas emissions, the auctioning of emission allowances and emission units by the Parties' respective programs shall occur jointly and in accordance with the harmonized procedures developed by the Parties, as provided for under their respective cap-and-trade program regulations.

ARTICLE 9

COMMON PROGRAM REGISTRY AND AUCTION PLATFORMS

The Parties shall work together to develop and use common electronic platforms in order to ensure program compatibility, integrity, and integration, including but not limited to a program registry platform and an auction platform.

The common program registry and auction platforms shall be available in English and French and allow for recording and performing transactions in Canadian and US dollars. The program registry and auction platforms shall conform to the requirements of the Parties' respective program regulations and operating procedures.

CHAPTER III

OPERATION OF THE AGREEMENT

ARTICLE 10

SUPERVISION AND ENFORCEMENT

The Parties shall work cooperatively to prevent fraud, abuse and market manipulation and to ensure the reliability of the joint auction and their respective program. The Parties shall work cooperatively in applying the rules, laws and regulations governing the supervision of all transactions carried out among registered entities of each of the Parties and of any auction or reserve sale.

The Parties shall facilitate, in accordance with the privacy legislation applicable in each of their territories and the provisions of article 14 hereunder, the sharing of information to support each Party's effective analysis, supervision and enforcement of the applicable laws and regulations.

ARTICLE 11

COORDINATED ADMINISTRATIVE AND TECHNICAL SUPPORT

The Parties shall continue coordinating administrative and technical support through the WCI, Inc., which was created to perform such tasks for one or both of the Parties as applicable.

If one of the Parties wishes to consider approaches other than WCI, Inc. for coordinating administrative and technical support, it shall consult the other Party with the objective of developing jointly a harmonized approach.

If one of the Parties wishes to contract the services of a third party for technical or administrative support, or services of another nature required for the development or the operation of common program registry and auction platforms, it shall consult the other Party with the objective of developing jointly a harmonized approach.

ARTICLE 12

CONSULTATION COMMITTEE

To facilitate the harmonization and integration process of the programs and the operation of the Agreement, the Parties shall create a Consultation Committee composed of one representative from each of the Parties. This Consultation Committee shall meet as needed to ensure timely and effective consultation in support of the objectives of this Agreement.

The California Air Resources Board designates as its Consultation Committee representative the Executive Officer of the Air Resources Board.

The *Gouvernement du Québec* designates as its Consultation Committee representative the Assistant Deputy Minister for Climate Change, Air and Water at the *Ministère du Développement Durable, de l'Environnement, de la Faune et des Parcs*.

The Consultation Committee shall:

a) monitor the implementation of all measures that are required for the effective harmonization and integration of the Parties' greenhouse gas emissions reporting programs and cap-and-trade programs for reducing greenhouse gas emissions;

b) report the results of the Agreement annually to the Parties in light of the objectives that have been set out and recommend measures to improve the harmonization and integration of the Parties' greenhouse gas emissions reporting programs and cap-and-trade programs for reducing greenhouse gas emissions; and

c) address any other issues at the request of the Parties.

The Consultation Committee shall receive and review updates from the Parties on each area of activity as needed under this Agreement in a timely manner. If the Consultation Committee identifies or becomes aware of differences between the Parties regarding how to maintain the harmonization and integration of their programs, the Consultation Committee shall undertake to resolve the differences in accordance with Article 18.

CHAPTER IV

MISCELLANEOUS PROVISIONS

ARTICLE 13

JURISDICTION

This Agreement does not modify any existing laws and regulations, nor may any of its provisions be interpreted as amending any agreement or provision of an agreement entered into or to be entered into by either Party.

ARTICLE 14

CONFIDENTIALITY OF INFORMATION

To support and enhance the supervision and enforcement of the Parties' respective program regulations, the Parties shall jointly arrange to share information collected and developed under their respective programs. Nothing in this Agreement requires a Party to breach confidentiality obligations or requirements prohibiting disclosure to which it is bound under its own laws, nor compromise the security with which information is held, nor disclose confidential information such as commercially sensitive or personal information.

When information is shared between the Parties, each Party shall undertake to protect the information they provide and receive, in accordance with the privacy legislation applicable in each of their jurisdictions, and take all necessary measures to such end, particularly with respect to their mode of communication, control, management and destruction. Shared information is to be used solely to the purpose of the objectives of this Agreement.

If confidential information must be communicated by a Party to a non-Party to this Agreement under a law or following a court order, it shall notify the other Party as soon as possible.

ARTICLE 15

PUBLIC ANNOUNCEMENT

The Parties shall keep each other informed in advance of any public announcement related to the mandatory reporting of greenhouse gas emissions and the cap-and-trade programs for reducing greenhouse gas emissions.

Any announcement concerning the harmonization or integration of the Parties' programs shall be prepared and, if possible, made public jointly.

CHAPTER V

FINAL PROVISIONS

ARTICLE 16

WITHDRAWAL PROCEDURE

A Party may withdraw from this Agreement by giving 12 months prior written notice to the other Party. A Party that withdraws from this Agreement shall endeavor to provide notification of withdrawal at least 12 months prior to the end of a compliance period so that withdrawal would be effective at the end of a compliance period.

Withdrawal from this Agreement does not end a Party's obligations under article 14 regarding confidentiality of information which continue to remain in effect.

ARTICLE 17

AMENDMENTS AND THIRD PARTIES

Any amendment to this Agreement shall be in writing and requires the unanimous consent of the Parties.

When so agreed, and subsequently approved in accordance with the requisite legal procedures of each Party, the amendment shall constitute an integral part of this Agreement beginning on the date of its coming into force.

Recognizing that the Parties welcome effective, timely, and meaningful action to reduce GHG emissions by states, provinces and territories, this Agreement may be amended to include additional parties that have adopted programs that are harmonized with each of the Parties' programs. For such purposes, the requisite legal and regulatory procedures of each Party shall be respected.

ARTICLE 18

RESOLUTION OF DIFFERENCES

The Parties shall consult each other constructively to resolve differences that may arise regarding how to achieve the objective of harmonizing and integrating their greenhouse gas emissions reporting programs and cap-and-trade programs for reducing greenhouse gas emissions.

The Parties shall resolve differences by using and building on established working relationships, including enabling staff to work jointly through workgroups to develop proposed harmonized and integrated approaches for consideration by each Party. If approaches for resolving differences that are acceptable to the Parties cannot be developed in a timely manner through staff workgroups, the Parties shall constructively engage through the Consultation Committee, and if needed with additional officials of the Parties, or their

designees. The Parties endeavor to resolve differences in a timely manner, so that the harmonization and integration of the programs can be maintained.

ARTICLE 19

COMMUNICATIONS

The Parties agree to communicate on matters regarding this Agreement in writing and hand delivered or transmitted by telegram, fax, e-mail, messenger, courier or registered mail to the address of the Party concerned as indicated below.

For the California Air Resources Board:

Executive Officer
California Air Resources Board
1001 I Street
Sacramento, California 95814
Phone: (916) 322-7077
Fax: (916) 323-1045

For the *Gouvernement du Québec*:

Director
Bureau des changements climatiques
Ministère du Développement durable, de l'Environnement,
de la Faune et des Parcs
675 René-Lévesque Blvd. East, 6th Floor, Box 31
Québec (Québec) G1R 5V7
Phone: 418 521-3868
Fax: 418 646-4920

Notice of any change of address of one of the Parties or representative identified in this Article must be given to the other Party.

ARTICLE 20

COMING INTO FORCE AND DURATION OF THE AGREEMENT

Each of the Parties shall notify the other once the internal procedure required for the Agreement's entry into force has been completed.

The Agreement shall enter into full force and effect on the first day of the month following the date of receipt of notification from the last of the Parties informing the other Party that the legally required measures have been completed.

The Agreement is concluded for an indefinite period of time as of the date of its entry into force. It shall be terminated pursuant to unanimous consent of the Parties given in writing to such effect. Termination of the Agreement shall be effective 12 months following such consent.

Termination of this Agreement does not end a Party's obligations under article 14 regarding confidentiality of information which continue to remain in effect.

Done in duplicate, in the English and French languages, both versions being equally authentic.

FOR THE CALIFORNIA AIR RESOURCES BOARD

At Sacramento, California, on September 25, 2013

Mary Nichols

Chairman of the California Air Resources Board

FOR THE *GOUVERNEMENT DU QUÉBEC*

At Montréal, on 27/9/13

Jean-François Lisée
Minister of International Relations, La Francophonie and External Trade

At Montréal, on 27/9/2013

Yves-François Blanchet

Minister of Sustainable Development, Environment, Wildlife and Parks