

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
Agreement to Purchase Services

THIS AGREEMENT, made this 22nd day of December, 2010, is by and between the State of Maine, Department of Environmental Protection, hereinafter called "Department," and the Regional Greenhouse Gas Initiative, Inc. (RGGI, Inc.), located at 90 Church Street; New York, New York 10007, telephone number 212-417-4034, hereinafter called "Provider", for the period of January 1, 2011 to December 31, 2012.

The AdvantageME Vendor/Customer number of the Provider is VS 0000003520 .

WITNESSETH, that for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Department, the Provider hereby agrees with the Department to furnish all qualified personnel, facilities, materials and services and in consultation with the Department, to perform the services, study or projects described in Rider A, and under the terms of this Agreement. The following riders are hereby incorporated into this Agreement and made part of it by reference:

- Rider A - Specifications of Work to be Performed
- Rider B - Payment and Other Provisions
- Rider C - Exceptions to Rider B
- Rider D, E, and/or F - (At Department's Discretion)
- Rider G - Identification of Country in Which Contracted Work will be Performed

WITNESSETH, that this contract is consistent with Executive Order 17 FY 08/09 or a superseding Executive Order, and complies with its requirements.

IN WITNESS WHEREOF, the Department and the Provider, by their representatives duly authorized, have executed this agreement in 5 original copies.

DEPARTMENT OF ENVIRONMENTAL
PROTECTION, Bureau of Air Quality

By:

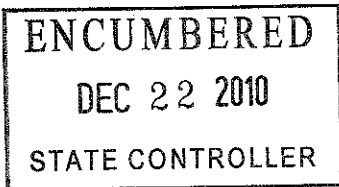
James P. Brooks
James P. Brooks, Director

and

Regional Greenhouse Gas Initiative, Inc.

By:

Shawn Ryan Treasurer RGGI, Inc.
Name and Title, Authorized Provider Officer



Total Agreement Amount: up to \$150,000

Approved: Betty M. Lamoreau
Chair, State Purchases Review Committee

DEC 22 2010

RIDER A
SPECIFICATIONS OF WORK TO BE PERFORMED

On July 12, 2007, RGGI, Inc. was incorporated in the State of Delaware as a non-profit corporation formed to serve as the sole regional organization for purposes of: (a) providing technical and scientific advisory services to the Signatory States in the development and implementation of a multi-state greenhouse gas control program, or its successor, under RGGI; (b) reducing air pollutants that contribute to climate change; and (c) performing other charitable or scientific functions related to the reduction of greenhouse gas emissions or the increase in carbon sequestration on behalf of the Signatory States.

The Department hereby contracts with RGGI, Inc. to administer and otherwise manage the Auction Program, the Tracking System, the Offset Program and, as contemplated by 38 M.R.S.A. § 580-A(20), for any and all services incidental or otherwise necessary to the aforementioned programs, or generally to the management of RGGI, pursuant to the terms of this Agreement.

In accordance with RGGI, Inc.'s Certificate of Incorporation, and in order to fulfill its obligations under this Agreement, RGGI, Inc. may enter into contracts with any person, firm, association, corporation or body politic. Any subcontract entered into by RGGI, Inc. for the purposes of fulfilling its obligations under this Agreement must be in writing and shall be consistent with and subject to the provisions of this Agreement. Subcontracts shall not relieve or discharge RGGI, Inc. from any duty, obligation, responsibility or liability arising under this Agreement. All subcontractors hired by RGGI, Inc. are subject to the Maine Terms and Conditions. RGGI, Inc. shall provide the Department with copies of all subcontracts. The Department shall also have access to any reports, financial records, prepared by the subcontractors for RGGI, Inc.

RGGI, Inc. shall operate and maintain the Tracking System, Auction Program and Offset Program in accordance with the *Scope of Services in Support of the Maine CO2 Budget Trading Program* attached hereto as Appendix A.

Reports:

By the 15th day of April, July, October and January, RGGI, Inc. shall provide the Department with a detailed report of the activities undertaken by RGGI, Inc. or its subcontractors to meet its responsibilities under this Agreement during the preceding calendar quarter including, without limitation: quarterly status reports on the Tracking System; Auction Program; Offset Program; Market Monitoring findings; and quarterly budget reports including any audit reports.

RIDER B
METHOD OF PAYMENT AND OTHER PROVISIONS

- 1. **AGREEMENT AMOUNT** \$ See Rider C
- 2. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

See to Rider C

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds. The Department will process approved payments within 30 days.

3. **BENEFITS AND DEDUCTIONS** If the Provider is an individual, the Provider understands and agrees that he/she is an independent contractor for whom no Federal or State Income Tax will be deducted by the Department, and for whom no retirement benefits, survivor benefit insurance, group life insurance, vacation and sick leave, and similar benefits available to State employees will accrue. The Provider further understands that annual information returns, as required by the Internal Revenue Code or State of Maine Income Tax Law, will be filed by the State Controller with the Internal Revenue Service and the State of Maine Bureau of Revenue Services, copies of which will be furnished to the Provider for his/her Income Tax records.

4. **INDEPENDENT CAPACITY** In the performance of this Agreement, the parties hereto agree that the Provider, and any agents and employees of the Provider shall act in the capacity of an independent contractor and not as officers or employees or agents of the State.

5. **DEPARTMENT'S REPRESENTATIVE** The Agreement Administrator shall be the Department's representative during the period of this Agreement. He/she has authority to curtail services if necessary to ensure proper execution. He/she shall certify to the Department when payments under the Agreement are due and the amounts to be paid. He/she shall make decisions on all claims of the Provider, subject to the approval of the Commissioner of the Department.

6. **AGREEMENT ADMINISTRATOR** All progress reports, correspondence and related submissions from the Provider shall be submitted to:

Name: James P. Brooks
 Title: Director, Bureau of Air Quality
 Address: 17 State House Station
Augusta, Maine 04333

who is designated as the Agreement Administrator on behalf of the Department for this Agreement, except where specified otherwise in this Agreement.

7. **CHANGES IN THE WORK** The Department may order changes in the work, the Agreement Amount being adjusted accordingly. Any monetary adjustment or any substantive change in the work shall be in the form of an amendment, signed by both parties and approved by the State Purchases Review Committee. Said amendment must be effective prior to execution of the work.

8. **SUB-AGREEMENTS** Unless provided for in this Agreement, no arrangement shall be made by the Provider with any other party for furnishing any of the services herein contracted for without the consent and approval of the Agreement Administrator. Any sub-agreement hereunder entered into subsequent to the execution of this Agreement must be annotated "approved" by the Agreement Administrator before it is reimbursable hereunder. This provision will not be taken as requiring the approval of contracts of employment between the Provider and its employees assigned for services thereunder.

9. **SUBLETTING, ASSIGNMENT OR TRANSFER** The Provider shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion thereof, or of its right, title or interest therein, without written request to and written consent of the Agreement Administrator. No subcontracts or transfer of agreement shall in any case release the Provider of its liability under this Agreement.

10. **EQUAL EMPLOYMENT OPPORTUNITY** During the performance of this Agreement, the Provider agrees as follows:

a. The Provider shall not discriminate against any employee or applicant for employment relating to this Agreement because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Provider shall take affirmative action to ensure that applicants are employed and employees are treated during employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include but not be limited to the following: employment, upgrading, demotions, or transfers; recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Provider agrees to post in conspicuous places available to employees and applicants for employment notices setting forth the provisions of this nondiscrimination clause.

b. The Provider shall, in all solicitations or advertising for employees placed by or on behalf of the Provider relating to this Agreement, state that all qualified applicants shall receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

c. The Provider shall send to each labor union or representative of the workers with which it has a collective bargaining agreement, or other agreement or understanding, whereby it is furnished with labor for the performance of this Agreement a notice to be provided by the contracting agency, advising the said labor union or workers' representative of the Provider's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Provider shall inform the contracting Department's Equal Employment Opportunity Coordinator of any discrimination complaints brought to an external regulatory body (Maine Human Rights Commission, EEOC, Office of Civil Rights) against their agency by any individual as well as any lawsuit regarding alleged discriminatory practice.

e. The Provider shall comply with all aspects of the Americans with Disabilities Act (ADA) in employment and in the provision of service to include accessibility and reasonable accommodations for employees and clients.

f. Contractors and subcontractors with contracts in excess of \$50,000 shall also pursue in good faith affirmative action programs.

g. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

11. **EMPLOYMENT AND PERSONNEL** The Provider shall not engage any person in the employ of any State Department or Agency in a position that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. The Contractor shall not engage on a full-time, part-time or other basis during the period of this Agreement, any other personnel who are or have been at any time during the period of this Agreement in the employ of any State Department or Agency, except regularly retired employees, without the written consent of the State Purchases Review Committee. Further, the Provider shall not engage on this project on a full-time, part-time or other basis during the period of this Agreement any retired employee of the Department who has not been retired for at least one year, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

12. **STATE EMPLOYEES NOT TO BENEFIT** No individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly that would constitute a violation of 5 MRSA § 18 or 17 MRSA § 3104. No other individual employed by the State at the time this Agreement is executed or any time thereafter shall be admitted to any share or part of this Agreement or to any benefit that might arise therefrom directly or indirectly due to his employment by or financial interest in the Provider or any affiliate of the Provider, without the written consent of the State Purchases Review Committee. The Provider shall cause the foregoing provisions to be inserted in any subcontract for any work covered by this Agreement so that such provisions shall be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

13. **WARRANTY** The Provider warrants that it has not employed or contracted with any company or person, other than for assistance with the normal study and preparation of a proposal, to solicit or secure this Agreement and that it has not paid, or agreed to pay, any company or person, other than a bona fide employee working solely for the Provider, any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Department shall have the right to annul this Agreement without liability or, in its discretion to otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

14. **ACCESS TO PUBLIC RECORDS** As a condition of accepting a contract for services under this section, a contractor must agree to treat all records, other than proprietary information, relating to personal services work performed under the contract as public records under the freedom of access laws to the same extent as if the work were performed directly by the department or agency. For the purposes of this subsection, "proprietary information" means information that is a trade secret or commercial or financial information, the disclosure of which would impair the competitive position of the contractor and would make available information not otherwise publicly available. Information relating to wages and benefits of the employees performing the personal services work under the contract and information concerning employee and contract oversight and accountability procedures and systems are not proprietary information. The Provider shall maintain all books, documents, payrolls, papers, accounting records and other evidence pertaining to this Agreement and make such materials available at its offices at all reasonable times during the period of this Agreement and for such subsequent period as specified under Maine Uniform Accounting and Auditing Practices for Community Agencies (MAAP) rules. The Provider shall allow inspection of pertinent documents by the Department or any authorized representative of the State of Maine or Federal Government, and shall furnish copies thereof, if requested. This subsection applies to contracts, contract extensions and contract amendments executed on or after October 1, 2009.

15. **TERMINATION** The performance of work under the Agreement may be terminated by the Department in whole, or in part, whenever for any reason the Agreement Administrator shall determine that such termination is in the best interest of the Department. Any such termination shall be effected by delivery to the Provider of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination becomes effective. The Agreement shall be equitably adjusted to compensate for such termination, and modified accordingly.

16. **GOVERNMENTAL REQUIREMENTS** The Provider warrants and represents that it will comply with all governmental ordinances, laws and regulations.

17. **GOVERNING LAW** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Provider consents to personal jurisdiction in the State of Maine.

18. **STATE HELD HARMLESS** The Provider agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims, costs, expenses, injuries, liabilities, losses and damages of every kind and description (hereinafter in this paragraph referred to as "claims") resulting from or arising out of the performance of this Agreement by the Provider, its employees, agents, or subcontractors. Claims to which this indemnification applies include, but without limitation, the following: (i) claims suffered or incurred by any contractor, subcontractor, materialman, laborer and any other person, firm, corporation or other legal entity (hereinafter in this paragraph referred to as "person") providing work, services, materials,

equipment or supplies in connection with the performance of this Agreement; (ii) claims arising out of a violation or infringement of any proprietary right, copyright, trademark, right of privacy or other right arising out of publication, translation, development, reproduction, delivery, use, or disposition of any data, information or other matter furnished or used in connection with this Agreement; (iii) Claims arising out of a libelous or other unlawful matter used or developed in connection with this Agreement; (iv) claims suffered or incurred by any person who may be otherwise injured or damaged in the performance of this Agreement; and (v) all legal costs and other expenses of defense against any asserted claims to which this indemnification applies. This indemnification does not extend to a claim that results solely and directly from (i) the Department's negligence or unlawful act, or (ii) action by the Provider taken in reasonable reliance upon an instruction or direction given by an authorized person acting on behalf of the Department in accordance with this Agreement.

19. **NOTICE OF CLAIMS** The Provider shall give the Contract Administrator immediate notice in writing of any legal action or suit filed related in any way to the Agreement or which may affect the performance of duties under the Agreement, and prompt notice of any claim made against the Provider by any subcontractor which may result in litigation related in any way to the Agreement or which may affect the performance of duties under the Agreement.

20. **APPROVAL** This Agreement must have the approval of the State Controller and the State Purchases Review Committee before it can be considered a valid, enforceable document.

21. **LIABILITY INSURANCE** The Provider shall keep in force a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Agreement with adequate liability coverage to protect itself and the Department from suits. Providers insured through a "risk retention group" insurer prior to July 1, 1991 may continue under that arrangement. Prior to or upon execution of this Agreement, the Provider shall furnish the Department with written or photocopied verification of the existence of such liability insurance policy.

22. **NON-APPROPRIATION** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

23. **SEVERABILITY** The invalidity or unenforceability of any particular provision or part thereof of this Agreement shall not affect the remainder of said provision or any other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

24. **INTEGRATION** All terms of this Agreement are to be interpreted in such a way as to be consistent at all times with the terms of Rider B (except for expressed exceptions to Rider B included in Rider C), followed in precedence by Rider A, and any remaining Riders in alphabetical order.

25. **FORCE MAJEURE** The Department may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The Department may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

26. **SET-OFF RIGHTS** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any monies due to the Provider under this Agreement up to any amounts due and owing to the State with regard to this Agreement, any other Agreement, any other Agreement with any State department or agency, including any Agreement for a term commencing prior to the term of this Agreement, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Controller.

27. **ENTIRE AGREEMENT** This document contains the entire Agreement of the parties, and neither party shall be bound by any statement or representation not contained herein. No waiver shall be deemed to have been made by any of the parties unless expressed in writing and signed by the waiving party. The parties expressly agree that they shall not assert in any action relating to the Agreement that any implied waiver occurred between the parties which is not expressed in writing. The failure of any party to insist in any one or more instances upon strict performance of any of the terms or provisions of the Agreement, or to exercise an option or election under the Agreement, shall not be construed as a waiver or relinquishment for the future of such terms, provisions, option or election, but the same shall continue in full force and effect, and no waiver by any party of any one or more of its rights or remedies under the Agreement shall be deemed to be a waiver of any prior or subsequent rights or remedy under the Agreement or at law.

RIDER C
EXCEPTIONS TO RIDER B

Section 2 of Rider B is stricken and replaced with the following language in Section 1 of this Rider:

1. **INVOICES AND PAYMENTS** The Department will pay the Provider as follows:

The Department's payment obligation under this Agreement is expressly contingent on its realization of sufficient revenue from the sale of allowances under RGGI, as further described below. Specifically, the Department's payment obligation under this Agreement is delimited by its expenditure authority as set forth in 38 M.R.S.A. § 10008(6). In no event shall the Department's annual payment obligation exceed five percent (5%) of the total revenue it realizes from the sale of allowances under RGGI during that calendar year. Payments under this Agreement, subject to the limitations set forth in this Section and otherwise described in this Rider B, will begin during the 2011 calendar year, and will consist of two annual payment to be made by December 31 of each year. The amount of payment for 2013 and subsequent calendar years will be addressed in amendments to this Agreement.

Payments are subject to the Provider's compliance with all items set forth in this Agreement and subject to the availability of funds.

Section 8 of Rider B is stricken.

2. **SUB-AGREEMENTS** Section 8 of Rider B is stricken.

Sections 3 and 4 of this Rider are added as an addendum to this contract.

3. **INTELLECTUAL PROPERTY** With respect to any software computer programs, intellectual property and/or source codes developed under this contract, by RGGI, Inc. or any subcontractors thereunder, each Signatory State shall be entitled to worldwide, irrevocable, non-exclusive, license to use any such software computer programs, intellectual property and/or source codes without limitation and including all inventions, patent applications derived from such inventions developed under this agreement.

As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), works of authorship, trade secrets, techniques, know-how, ideas, concepts, and algorithms.

4. **SIGNATORY STATE TERMINATION** If at any time Maine is no longer a Signatory State of RGGI, Inc., then the Agreement may be terminated by RGGI, Inc.

RIDER D

Not Required: For use at Department's Discretion

RIDER E

Not Required: For use at Department's Discretion

RIDER F

Not Required: For use at Department's Discretion

RIDER G
IDENTIFICATION OF COUNTRY
IN WHICH CONTRACTED WORK WILL BE PERFORMED

Please identify the country in which the services purchased through this contract will be performed:

United States. Please identify state: CT, DE, MA, MD, ME, NH, NJ, NY, RI, and VT

Other. Please identify country: _____

Notification of Changes to the Information

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**Appendix A
(To Rider A)**

Scope of Services in Support of Implementation of the Maine CO₂ Budget Trading Program

Regional Greenhouse Gas Initiative, Inc. ("RGGI, Inc.") will provide program implementation and program development services, as outlined in this scope of services, to the Department of Environmental Protection to support the State of Maine participation in the Regional Greenhouse Gas Initiative (RGGI) and the implementation of regulations for the Maine CO₂ Budget Trading Program. RGGI, Inc., a non-profit organization incorporated in the State of Delaware, was formed expressly to provide technical implementation and program development support services to signatories of the RGGI Memorandum of Understanding (the "participating states"), signed December 20, 2005, as amended.

Overview

RGGI, Inc. will provide services to support implementation of the Maine CO₂ Budget Trading Program in the following five areas:

- I. Operation of a regional CO₂ emissions and allowance tracking system, for use by the Department in administering the CO₂ Budget Trading Program in coordination with the counterpart programs in other participating states;
- II. Operation of a regional CO₂ allowance auction process and platform, for use by the Department in administering the CO₂ Budget Trading Program in coordination with the counterpart programs in other participating states;
- III. Market monitoring services for monitoring of both CO₂ allowance auction conduct and outcomes and monitoring of the secondary CO₂ allowance market;
- IV. Technical assistance in the review of offset project consistency applications and offset project monitoring and verification reports; technical assistance in the review of applications for accreditation of independent offset project verifiers; and
- V. Provision of program development support on an as-requested basis, including but not limited to evaluation of additional offset categories; the development of technical and administrative recommendations related to specific CO₂ Budget Trading Program elements, for evaluation and consideration by the Department; electricity system modeling and macroeconomic analysis.

I. Emissions and Allowance Tracking System Services and Platform

RGGI, Inc. shall provide services to support emissions and allowance tracking system implementation for the CO₂ Budget Trading Program. In any area where services involve the provision of specific deliverables, all deliverables will be presented to the Department in draft form for review and approval by the Department.

I-A. Tracking System Requirements

RGGI, Inc. shall provide an emissions and allowance tracking system software platform (Tracking System) that meets the following requirements necessary to support implementation of the CO₂ Budget Trading Program (“program”).

Tracking System Data Requirements

RGGI, Inc. shall develop the Tracking System to support the emissions and allowance tracking and compliance aspects of the program as well as the offsets component of the program. The Tracking System shall also be able to track CO₂ allowance prices, as reported, applicable price triggers, and appropriate offsets limits. RGGI, Inc. shall provide similar functionality of the U.S. EPA's Emissions and Allowance Tracking System as a starting point for defining necessary system requirements. These requirements shall include, but not be limited to, functionality, security, reports, public access, and user interface.

CO₂ Emissions Data

Tracking System CO₂ emissions data reporting shall utilize the U.S. EPA Emissions Collection and Monitoring Plan System (ECMPS) and the U.S. EPA Clean Air Market Division Business System (CAMD CBS) emissions reporting and tracking platforms, respectively, to the extent practicable. To the extent necessary, any subcontractors engaged by RGGI, Inc. shall have strong working knowledge of 40 CFR Part 75 and the U.S. EPA's emissions data systems to ensure that the program implementation strategy takes into account the timeliness, data processing requirements, and data availability limitations associated with U.S. EPA's emissions reporting, tracking, analysis, and data storage procedures.

Tracking System Deployment

The Tracking System shall include a data model, user interface, and functionality to support emissions inventory management, CO₂ allowance trading, compliance and program analysis, and user security. RGGI Inc. shall also coordinate the operation of the Tracking System with the administration of a regional CO₂ allowance auction. RGGI, Inc. shall: (1) work with any independent third party hired by the Department to verify the Tracking System software is functioning properly, including potential redress; (2) if directed by the Department, to publicly post appropriate information about the Tracking System; and (3) to work with the Department to use ongoing experience to continuously improve the Tracking System.

As part of Tracking System deployment, RGGI, Inc. shall provide system documentation, user manuals, and other training tools, and update such materials on a regular basis as appropriate.

Tracking System Hosting

To support the web application and database in a secure environment, RGGI, Inc. shall contract with a third party vendor to maintain dedicated hosting for the database. Hosting requirements shall include all appropriate security requirements for Application Service Providers (ASPs). Prior to executing any subcontract, RGGI, Inc. shall provide all relevant information relating to capability, cost, and subcontract terms for the recommended ASP and two alternatives, to the Department's Project Manager for approval. The successful subcontracted ASP will have acceptable plans, to be reviewed by both the Department and RGGI, Inc., for loss or disaster recovery and business continuance.

Emissions Data Processing

In order to use the emissions data reported to U.S. EPA under 40 CFR Part 75 for purposes of determining program compliance, RGGI, Inc. shall maintain a process and supporting data management tools and software that allows for transfer of emissions data from CAMD CBS to the Tracking System. The procedures relating to this task area shall include any necessary coordination or agreement with U.S. EPA regarding use and access to emissions data. To the extent possible, RGGI, Inc. shall use existing emissions management routines to accomplish this objective.

Offsets Module

RGGI, Inc. shall provide a Tracking System software platform that includes an offsets module to track and maintain CO₂ allowances awarded for approved offset projects. RGGI, Inc. shall coordinate with the appropriate representatives of the Department to support administration of the offsets component of the program to ensure that the offsets applications and submittal materials used by the Department align with the capabilities and needs of the Tracking System.

The offsets module shall have the functionality to track and monitor offset project status details, such as the status of consistency applications and monitoring and verification submittals. This shall include capability to upload and manage application documents in the Tracking System, as well as provide for public access to project application and submittal materials and documentation supporting such applications and submittals.

Tracking System Reports

The Tracking System software provided by RGGI, Inc. shall include a reports module to provide system users with reports of system data. These shall include, but may not be limited to: account allowance transfer reports, account holdings reports, CO₂ emissions reports, offsets reports, and source compliance summary reports.

I-B. Tracking System Operation

RGGI, Inc. shall provide ongoing implementation support for the program and operational support for the Tracking System, including the following tasks.

CO₂ Allowance Management

RGGI, Inc. shall provide implementation support for all program activities relating to emissions source management, CO₂ allowance allocations to compliance and general accounts, and CO₂ allowance transfers for both general and compliance accounts. This shall include the activity necessary to support the assignment of allowances to appropriate accounts following the successful completion of all CO₂ allowance auctions, as well as the population of user accounts after approval of offset projects and award of CO₂ offset allowances.

Emissions Data Management and Analysis

RGGI, Inc. shall perform all data management and quality assurance tasks necessary to ensure the availability of annual CO₂ emissions data from all affected emission units. RGGI, Inc. shall prepare and send communications to industry relating to the interim, draft, and final emissions values. RGGI, Inc. shall work with the Department to identify and resolve any issues relating to the submission of emissions data, and the accuracy and completeness of the data. To the extent requested by the Department, RGGI, Inc. shall contact industry representatives directly to resolve any outstanding issues. RGGI, Inc. shall document all issues, their resolution, and all contacts with industry representatives.

Reconciliation (True-up)

RGGI, Inc. shall assist the Department with periodic compliance assessment for the program, as specified under program regulations. RGGI, Inc. shall support data entry of compliance certifications required by the program and the identification of CO₂ allowances to be deducted during the compliance process. This assessment shall factor in appropriate offsets limits as a function of a source's reported emissions. These limits will be adjusted appropriately to address the price trigger mechanisms in the program regulations. The Tracking System shall provide for the preparation of draft and final compliance reports and provision of information to the Department's staff contacts regarding possible non-compliance.

User Technical Support

RGGI, Inc. shall provide technical support to industry, the Department, and public users of the Tracking System. RGGI, Inc. shall record all technical support requests, inquiries, or other occurrences in a log that identifies the nature of the request or events, requestor, respondent, response provided, date(s) and time(s) of response, and amount of chargeable time expended on the request and response. Records shall be provided on a periodic basis, or on demand, to the Department's Project Manager.

As necessary, RGGI, Inc. shall provide assessments and recommendations relating to performance of the system based on the technical support levels that were provided and user feedback. In the course of provision of technical support, RGGI, Inc. shall not be responsible for

interpretation of the Department's regulations, and/or interpretation of actions taken by the Department in enforcement of those regulations.

System and Database Support

RGGI, Inc. shall be responsible for all aspects of system maintenance and database support and management. This shall include database initialization and setup, ongoing database quality assurance activities, management of all user accounts and security, coordination and monitoring of the Application Service Provider support activities, database security, application performance, and all other tasks required to ensure high system availability and performance. RGGI, Inc. shall provide reports to the Department's Project Manager on all routine activities and on any events or technical issues that will affect the operation or performance of the system. RGGI, Inc. shall oversee all data backup and audit procedures to ensure the ongoing integrity of the data.

II. CO₂ Allowance Auction Services and Platform

RGGI, Inc. shall implement and administer a process and platform for the auctioning of CO₂ allowances to support implementation of the auction component of the CO₂ Budget Trading Program ("program"). RGGI, Inc. shall provide services in three general areas: pre-auction, auction implementation, and post-auction. In any area where services are requested, all deliverables will be presented to the Department in draft form for review and approval by the Department. Services shall provide for CO₂ allowance auctions to be held quarterly (four auction cycles per calendar year).

II-A. Pre-Auction Services

Consultation

RGGI, Inc. shall work with Department staff to modify existing auction administrative procedures, as necessary to improve administration of quarterly auctions, and to develop new auction procedures as appropriate.

Auction Notices

RGGI, Inc., in consultation with the Department, shall create documents and associated information necessary to inform auction participants about all relevant details of the auction process and requirements for each auction event. Each auction notice shall provide a specific description of the auction format that will be used, the quantities of CO₂ allowances to be auctioned, all applicable participation requirements, and the process for administering the auction. Such information shall be made available on a website created, maintained, and hosted by RGGI, Inc. specifically dedicated to RGGI auctions. RGGI, Inc. shall prepare for, host, and facilitate at least one conference call for prospective auction participants prior to each auction, as well as receive and respond to written questions submitted by conference call participants.

Participant Qualification and Bidder Approval

RGGI, Inc., in consultation with the Department, shall assist in the development of all qualification application materials and documents, and shall manage, under the direction of the Department, the application process, including receiving and reviewing each qualification application to determine completeness and accuracy of the information submitted. RGGI, Inc. shall also provide for an application resubmission process to remediate qualification applications and related submittals. RGGI, Inc. shall be responsible for collecting and managing all auction surety payments and/or escrow accounts on behalf of the Department. RGGI, Inc., in consultation with the Department, shall be responsible for notifying bidders of their qualification status and auction-specific participation status and maintaining a database of all qualified parties and bidders approved to participate in each auction.

RGGI, Inc. shall administer a process for the provision of financial security by qualified parties prior to each auction. This process shall include a process for review of the negotiability of provided financial security to eliminate the possibility of financial default by approved auction bidders.

Auction Documentation and Training

To prepare for each auction event, RGGI, Inc. shall create and distribute auction materials, such as participation instructions, final auction procedures and manuals, as well as the distribution of user codes and passwords to qualified auction participants. In addition, RGGI, Inc. shall be responsible for training auction participants in the use of the auction software platform.

II-B. Auction Implementation Services

Auction Platform

RGGI, Inc. shall provide and administer, on behalf of the Department, a secure online auction platform capable of accommodating an auction in the following formats:

- A sealed bid, uniform-price auction
- An ascending price, multiple-round auction

Furthermore, the online auction platform shall be capable of managing CO₂ allowance purchase limits based on specifications provided by the Department, and simultaneous auctions of current year and future year vintage CO₂ allowances. Such platform shall be capable of tracking bidding activity and auction results, and must provide for audit-level documentation of such activity and results, in accordance with auction monitoring protocols established by RGGI, Inc. in consultation with the Department.

II-C. Post-Auction Services

RGGI, Inc. shall, on behalf of the Department, arrange for and facilitate the transfer of funds from successful auction bidders to an account designated by the Department, and arrange for the return of financial security to bidders, if applicable, based on the amount of financial security posted and the amount of payment due for successful bids. RGGI, Inc. shall also be responsible for coordinating the operation of the Tracking System for the transfer of CO₂ allowances awarded for each auction, at the direction of the Department, to the Tracking System compliance or general accounts of winning bidders. RGGI, Inc. shall be required to: (1) work with any independent third party hired by the Department to verify the results of the auction, including potential redress; (2) if directed by the Department, to post appropriate information about auction results; and (3) to work with the Department to use ongoing auction experience to continuously improve subsequent auctions.

RGGI, Inc. shall administer a bank account for holding financial security from bidders as agent for the State. RGGI, Inc. shall impose access security controls on such account to the satisfaction of the Department. RGGI, Inc. shall transfer the proceeds from the sale of CO₂ allowances at auction to an account to be designated by the Department using an ACH transaction no later than one business day following the transfer of CO₂ allowances to winning bidders.

III. Market Monitoring

RGGI, Inc. shall provide market monitoring services in three general areas: monitoring and auditing of CO₂ allowance auctions, monitoring of relevant secondary CO₂ allowance market activity, and provision of consultative services addressing market monitoring.

III-A. Monitoring and Auditing of CO₂ Allowance Auctions

RGGI, Inc. shall provide professional monitoring of all CO₂ allowance auctions, some of which may involve a subset of the participating states and may or may not include CO₂ allowances submitted for auction by the Department. RGGI, Inc. shall develop data collection methods, metrics, and analytic techniques for monitoring CO₂ allowance auction performance and thresholds for identifying any collusion, market power, and/or market manipulation that may have a material impact on the efficiency and competitive performance of CO₂ allowance auctions.

III-B. Monitoring of Secondary Market Behavior

RGGI, Inc. shall monitor all relevant publicly available data (available through both public and private sources) and indicators of market behavior in the secondary CO₂ allowance markets and related financial derivatives markets that may be expected to significantly impact the performance of CO₂ allowance auctions and the secondary CO₂ allowance market.

III-C. Consultative Services

RGGI, Inc. shall provide expert advice to the Department regarding how any aspects of the CO₂ allowance auction process should be altered in order to improve the performance and efficiency of the auctions and ensure the functioning of a fair and competitive CO₂ allowance market. Such services may also include review and analysis of the functioning of CO₂ allowance auctions and the secondary CO₂ allowance market to support policy analysis by the Department.

IV. Offset Project Application Technical Review Services

RGGI, Inc. shall provide technical services to support the Department's review of offset project consistency applications and monitoring and verification report submittals, as well as applications for accreditation from prospective independent offset project verifiers. RGGI, Inc. shall also facilitate a process that provides for coordinated application and submittal review across the participating states.

V. Program Evaluation and Development Support

RGGI, Inc. shall provide program evaluation and development support services to the Department on an as-requested basis to facilitate Department consideration of modifications and/or expansion of the CO₂ Budget Trading Program. Such services may include but are not limited to:

- Evaluation of program implementation and identification of areas for potential improvement
- Electricity simulation modeling and macroeconomic analysis
- Evaluation of program design options
- Evaluation of program implementation options
- Evaluation of additional eligible offset categories

VI. Budget

The not-to-exceed budget for the services and deliverables specified in I. through V. above shall be \$150,000, which includes the Department's contribution to support services that may be provided jointly to the Department and agencies in other participating states. The Department shall provide such funds to RGGI, Inc., in accordance with the contract Payment Schedule, upon execution of the contract.

VII. Project Term

The project term is for the period beginning upon execution of a contract between the Department and RGGI, Inc. and December 31, 2012. The project term may be extended through a contract amendment.

VIII. Project Reporting

RGGI, Inc. shall designate a Project Manager, who shall be the primary point of contact with the Department related to the scope of services specified herein. The Project Manager shall be responsible for monitoring and ensuring progress for all tasks and subtasks, and for ensuring timely delivery of all deliverables outlined in the scope of services. The RGGI, Inc. Project Manager shall be responsible for all project reporting to the Department.

RGGI, Inc. shall submit biannual progress reports every six months to the Department during the project term. These progress reports shall outline the status of progress in providing the deliverables specified in the scope of services, including identification of all completed/not completed work during the preceding six-month period for every major task identified in the scope of services. These progress reports shall also note any problems encountered by RGGI, Inc. in the course of providing services specified herein and their actual or proposed resolution. At the end of the project term, RGGI, Inc. shall prepare and submit a draft final report that provides a description and summary of all major work tasks and submitted deliverables. The draft final report shall be revised within 60 days to address all Department comments, and RGGI, Inc. shall submit a final report addressing all such comments.

In any area where deliverables will be provided, such deliverables shall be presented to the Department in draft form for review and approval by the Department.

Division of Purchases' Sole Source Authorization Form

Form Instructions: This form must accompany contracts being proposed for approval that are not the direct result of a competitive RFP or a subsequent renewal that was anticipated in the RFP. If the proposed contract is the direct result of a competitive RFP or an anticipated renewal, please complete the Competitive Award Authorization Form.

Contract Administrator:	Department of Environmental Protection	Office/Division/Program	Bureau of Air Quality
Agreement Amount: \$	Up to \$150,000	CT Number:	
Start Date:	January 1, 2011	End Date:	Dec. 31, 2012
Vendor/Provider/ Company Name and Address:	RGGI, Inc. 90 Church Street New York, New York 10007		
Phone:	212-417-4034	VC Number:	VS 0000003520
Type of Service:	Provides technical and program implementation for the RGGI multi-state greenhouse gas regulatory program; of which, Maine is a participant. Specifically the service includes running the quarterly auctions, maintaining the allowance database accounts, providing market monitor services, and providing technical assistance with offset allowance development/review and for other issues associated with the implementation of RGGI programs.		
1. Specific Problem or Need			
<ul style="list-style-type: none"> a. Identify and fully describe the specific problem, requirement, or need that the contract is intended to address and which makes the services necessary. b. Explain how the department determined that the services are critical or essential to agency responsibilities or operations and/or whether the services are mandated by Maine statute. 			
<p>Maine implements a regional greenhouse gas regulatory program in unison with 9 other northeastern states. Maine coordinates the implementation of its program through RGGI, Inc., a not for profit established by states to help each jurisdiction implement their individual programs. Many of the services required by the RGGI program are highly specialized and can result in duplicate services when administered individually by each of the participatory states. RGGI, Inc. provides those services such as operating the auctions, and allowance account databases to all states at a fraction of the cost when compared to each state independently running their own programs; thereby saving the state both time, money, and improving consistency.</p> <p>Maine's RGGI program was established in 2007 with the passage of legislative bill, "An Act to Establish the Regional Greenhouse Gas Initiative of 2007" (LD 1851, 123rd Maine State Legislature).</p>			
2. Availability of other Public Resources. Explain how the agency concluded that:			
<ul style="list-style-type: none"> a. Sufficient staffing or expertise is not available within the department and not just within a departmental division to perform the service, and that b. Other governmental resources (local, state, or federal agencies) external to the department are not available to perform the service more efficiently or more cost effectively than the requested sole source. 			
<p>Administering the components of a cap and trade program which require financial market sophistication, extensive knowledge of federal security and trading, and financial accounting of financial securities, cannot be duplicated within the Department or in other governmental agencies.</p>			
3. Uniqueness: The supplies or services required are unique to a specific contractor.			
<ul style="list-style-type: none"> a. If the contractor has a unique capability, it is insufficient to simply say that the contractor is unique. b. Describe the unique qualifications, abilities, or expertise of the contractor and the necessity of those particular unique factors to meet the department's needs. c. If the contractor has unique equipment or facilities or he has proprietary data, fully explain, including the necessity of these particular unique assets to the Department. 			

Division of Purchases' Sole Source Authorization Form

RGGI, Inc. was established to provide regional technical services to those states that participate in the coordinated state greenhouse gas regulatory program. This was done to avoid duplication of similar service work in each individual state, to reduce the overall cost of administering a CO2 allowance program for each state, including Maine, and to enhance consistency.

4. Timeframe: Time is of the essence and only one known source can meet the Department's needs within the required timeframe.

- a. Provide the date by which the supplies or services must be delivered.
- b. Indicate how that date was determined and its significance.
- c. Indicate the impact of delay beyond that date in terms of program schedules, milestones, etc.
- d. State how long it would take another contractor to acquire the capability to perform (learning period), how much it would cost another contractor to get up to speed, and if appropriate, what it would cost the Department in terms of dollars and man-hours to get another contractor up to speed. State the basis for the above estimates.

- a. The start date of the contract is January 1, 2011. Within the contract, there are several terms that require quarterly reporting.
- b. Since revenue is brought in after each quarterly auction, its important that we receive updated reports on a quarterly basis or more frequent.
- c. The RGGI program is embarking on its third year. To date, it has brought in \$23 million in revenue to the state though the sale of allowances through quarterly auctions. Maine could lose potential revenue if the auctions are unable to occur.
- d. Although I don't have exact figures, if we did our own auctions, the cost would be similar to the cost of the regional auctions for all states combined which is roughly \$400 K per year. To administer the applications and financial review would be 2 ES IV positions which is roughly \$200k per year. The market monitor fee would be similar to the regional market monitor fee which is roughly \$172K per year. The allowance account tracking would be roughly about \$100K per year (one senior program staff and money for database development and maintenance). There are other costs, but the point is that in order to maintain or provide these services, it's the nearly the same cost whether it is for one state alone or 10 states together. Maine receives a great deal of services at a fraction of the costs by participating in the regional organization...We estimate the RGGI, Inc contract will be \$75K per year for the next two years. The basis of my estimates came from RGGI, Inc. expenses, and my estimates of state personnel costs for the positions mentioned above.

5. Cost: Since competition was not used as the means for this procurement, explain how the department concluded that the costs, fees, or rates negotiated are fair and reasonable. Make either a comparison with similar contracts, use the results of a market survey, or describe another means calculated to make such a determination.

See answer to #4 above.

6. State what is being done to foster future competition.

Division of Purchases' Sole Source Authorization Form

Since RGGI, Inc. is already established, we have not sought out additional competitive bids with the services RGGI, Inc. provides, but instead we are monitoring and fostering competitive bids and contracts with RGGI, Inc.'s subcontractors, and we monitor/oversee the expenses of RGGI, Inc. to maintain good services at the lowest cost. Maine serves on the Executive Committee which oversees the day to day operations of RGGI, Inc.

Signature:

James P. Brooks

Date:

December 22, 2010

Limits on Sole Source Justification:

1. Incumbency does not justify sole source.
2. Administrative delay or lack of advanced planning does not create an urgency or time frame requirement that justifies sole source.