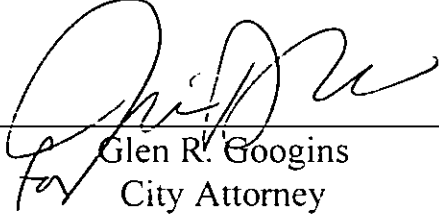


THE ATTACHED AGREEMENT HAS BEEN REVIEWED
AND APPROVED AS TO FORM BY THE CITY
ATTORNEY'S OFFICE AND WILL BE
FORMALLY SIGNED UPON APPROVAL BY
THE CITY COUNCIL



for Glen R. Googins
City Attorney

Dated: 8/6/15

INDEMNIFICATION AND INSURANCE AGREEMENT
BETWEEN
THE CITY OF CHULA VISTA AND
RENOVATE AMERICA, INC.

**INDEMNIFICATION AND INSURANCE AGREEMENT
BY AND BETWEEN
CITY OF CHULA VISTA
AND
RENOVATE AMERICA, INC**

This Indemnification and Insurance Agreement (the "Agreement") is entered into by and between the City of Chula Vista a municipal corporation ("City") and

Renovate America, Inc., a Delaware corporation (the "Administrator"), the administrator of the WRCOG HERO Program, which is a program of the Western Riverside Council of Governments, a California joint exercise of powers authority (the "Authority").

RECITALS

WHEREAS, the Authority is a joint exercise of powers authority whose members of which include the City in addition to other cities and counties in the State of California; and

WHEREAS, the Authority established the WRCOG HERO Program ("PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

WHEREAS, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the City; and

WHEREAS, on _____, the City Council of the City of Chula Vista adopted a resolution authorizing the City to join the PACE Program, authorizing the Authority to accept applications from eligible property owners, conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

WHEREAS, the Authority is solely responsible for the formation, operation and administration of the PACE Program as well as the sale and issuance of any bonds in connection therewith, including the conduct of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the PACE Program; and

WHEREAS, the Administrator is the administrator of the PACE Program and agrees to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the PACE Program as set forth herein; and

NOW, THEREFORE, in consideration of the above premises and of the City's agreement to join the PACE Program, the parties agree as follows:

1. Agreement to Indemnify. The Administrator agrees to defend, indemnify and hold harmless the City, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the PACE Program, except such loss or damage which was caused by the sole negligence or willful misconduct of the City, and including but not limited to any obligations that the City undertakes pursuant to any agreement with the Authority. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

2. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the PACE Program, to maintain the insurance coverage set forth in Exhibit A to this Agreement.

3. Compliance with Laws. The Administrator shall carry out its obligations under this Agreement in a manner that is consistent with state and local law, and the City's PACE Program Guidelines, as such may be amended from time-to-time.

4. Amendment/Interpretation of this Agreement. . This Agreement, including all Exhibits attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

5. Section Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

6. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

7. Severability and Governing Law. If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the

fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

8. Notices. All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator

Renovate America, Inc.
15073 Avenue of Science #200
San Diego, CA 92128
Attention: Scott D. McKinlay

If to the City:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Director of Public Works

With a copy to:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Administrative Services Manager

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

10. Effective Date. This Agreement will be effective as of the date of the signature of City's representative as indicated below in the City's signature block.

11. Administrative Claims Requirements and Procedures. No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista Municipal Code, as same

may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by a party to this Agreement, the parties shall meet and confer in good faith for the purpose of resolving any dispute over the terms of this Agreement.

IN WITNESS HEREOF, the parties hereto duly executed this Agreement as of the date below.

CITY OF CHULA VISTA

Mary Casillas Salas, Mayor

Attest:

Donna Norris, City Clerk

APPROVED AS TO FORM:

Glen R. Googins, City Attorney

“Administrator”

Renovate America INC

By

Name:  Scott D. McKinlay

Title: Executive Vice President

Date: August 5, 2015

EXHIBIT A
INSURANCE

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The coverage provided by Insurance Services Office Commercial General Liability coverage ("occurrence") Form Number CG 0001; and
2. The coverage provided by Insurance Services Office Form Number CA 0001 covering Automobile Liability. Coverage shall be included for all owned, non-owned and hired automobiles; and
3. Workers' Compensation insurance as required by the California Labor Code and Employers Liability insurance; and
4. Professional Liability Errors & Omissions for all professional services.

There shall be no endorsement reducing the scope of coverage required above unless approved by the City's Risk Manager.

B. Minimum Limits of Insurance

Administrator shall maintain limits no less than:

1. Commercial General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit; and
2. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage; and
3. Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the California Labor Code and Employers Liability limits of \$1,000,000 per accident; and
4. Professional Liability Errors & Omissions \$1,000,000 per occurrence/ \$2,000,000 aggregate limit.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions of \$150,000 or more must be declared to, and approved by City's Risk Manager. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, employees, agents and contractors; or Administrator shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in an amount specified by the City's Risk Manager.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. Commercial General Liability and Automobile Liability Coverages
 - a. City of Chula Vista, its officers, employees, agents and contractors are to be covered as additional insureds as respects: Liability arising out of activities performed by or on behalf of, Administrator; products and completed operations of Administrator; premises owned, leased or used by Administrator; and automobiles owned, leased, hired or borrowed by Administrator. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, employees, agents and contractors.
 - b. Administrator's insurance coverage shall be primary insurance as respects City, its officers, employees, agents and contractors. Any insurance or self-insurance maintained by City, its officers, employees, agents or contractors shall be excess of Administrator's insurance and shall not contribute with it.
 - c. Any failure to comply with reporting provisions of the policies by Administrator shall not affect coverage provided City, its officers, employees, agents, or contractors.
 - d. Coverage shall state that Administrator's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
 - e. Coverage shall contain a waiver of subrogation in favor of the City, its officers, employees, agents and contractors.
2. Workers' Compensation and Employers' Liability

Coverage shall contain waiver of subrogation in favor of City of Chula Vista, its officers, employees, agents and contractors.

3. All Coverages

Administrator shall not be suspend, void, cancel, or reduce the limits in its insurance policy required by this AGREEMENT except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for nonpayment of premium.

E. Acceptability of Insurers

Insurance is to be placed with insurers acceptable to City's Risk Manager.

F. Verification of Coverage

Administrator shall furnish City with certificates of insurance and with original endorsements affecting coverage required by this AGREEMENT. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Proof of insurance shall be either emailed in pdf format to: _____ at _____, or mailed to the following postal address or any subsequent address as may be directed in writing by the City Manager:

City of Chula Vista
276 Fourth Avenue
Chula Vista, CA 91910
Attn: Risk Manager

G. Subcontractors

Administrator shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.