# INDEMNITY AND REIMBURSEMENT AGREEMENT

This Indemnity and Reimbursement Agreement ("Agreement") is made this ___ day of April 2018, by and among the County of Riverside, a California municipal corporation (hereinafter referred to as the "County"), and the Electric Ratepayers Alliance, a California Nonprofit Mutual Benefit Corporation and Renova Energy, a California Corporation (hereinafter referred to as "Proponents"). County and Proponents are individually referred to herein as a "party" and collectively as the "parties."

## RECITALS

This Agreement is made with respect to the following facts:

A. Pursuant to California Water Code Section 22123, Proponents have proposed a Riverside County Ordinance (hereinafter referred to as "Proposed Ordinance") relative to out-of-county irrigation districts selling electricity in the unincorporated territory of Riverside County. A true and correct copy of said Proposed Ordinance is attached hereto marked as Exhibit "A."

B. At least one out-of-county irrigation district selling electricity in the unincorporated territory of Riverside County has written the County stating that, in their opinion, California Water Code Section 22123 is inapplicable to the Proposed Ordinance, and therefore the Proposed Ordinance is invalid and may not be enforced. A copy of said correspondence is attached hereto marked as Exhibit "B."

C. As a condition of approval of the Proposed Ordinance, the County requires Proponents, and each of them, to defend and indemnify the County from any legal action or claim filed concerning the County's adoption of the Proposed Ordinance. In the event of any such legal challenges, it may be necessary for the County to incur costs in the defense of the lawsuits.

D. Proponents have agreed to indemnify, defend and hold the County harmless from any legal action that arises from County's adopting the Proposed Ordinance and to pay all costs and expenses related to the County's defense in the manner set forth in this Agreement. Proponents' reimbursement of County under this Agreement will ensure that the County has the necessary resources to diligently and efficiently defend the Proposed Ordinance.

## AGREEMENT

NOW, THEREFORE, in consideration of the following mutual promises and agreements, the parties agree as follows:

1. Incorporation of Recitals. The parties agree that the Recitals constitute the factual basis upon which the County and Proponents have entered into this Agreement. County and Proponents each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement as though fully set forth at length.



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2. Indemnification. To the fullest extent permitted by law, Proponents shall fully indemnify, defend (at Proponents' sole cost and expense and with legal counsel selected and approved jointly by County and Proponents), protect and hold harmless the County, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys from and against: any and all actual claims, demands, obligations, acts, causes of action, damages, costs, expenses, losses, judgments, fines penalties and liabilities, in law or in equity, to person or property, of every kind or nature whatsoever made or suffered by any person, because of claims relating to the County's adopting the Proposed Ordinance.

3. Duty to Defend. Proponents shall defend, at their own cost, expense and risk, any and all such aforesaid claims, demands, acts, causes of action, damages, costs, expenses, losses or liabilities of any kind that may be brought or instituted against the County, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys. If at any time one or more of the Parties believe that the continued defense of the Proposed Ordinance is undesirable or unlikely to succeed, then such Party or Parties may call a meeting of the Parties to discuss settlement of the claims, including withdrawal of the Proposed Ordinance, on terms acceptable to the Parties. A decision by the Parties to settle the claims will not waive or otherwise relieve Proponents of their obligations under this Agreement. Renova has previously engaged the law firm of Best Best & Krieger LLP ("BBK") to do an analysis of the legal basis and enforceability of the Proposed Ordinance. BBK represents the County on unrelated matters and the Proponents of the Proposed Ordinance have been represented in their discussions with the County by Reed and Davidson LLP, but in the event that a joint defense of any claims becomes necessary pursuant to the terms of this Agreement, Proponents believe that BBK would be best suited to defend the Parties against such claims, subject to agreement on any conflict waivers which may be necessary and a joint defense agreement between the Parties.

4. Satisfaction of Judgment. With respect to any claims, demands, acts, causes of action, damages, costs, expenses, settlements, losses or liabilities which Proponents have indemnified the County against and which the County has tendered to Proponents for defense, Proponents shall pay and satisfy any judgment, award, settlement or decree that may be rendered or agreed against the County, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys, arising out of any final, non-appealable judicial or administrative action.

5. Obligation Not Restricted. Proponents' obligation to indemnify the County, its elected officials, directors, board members, officers, employees, contractors, volunteers, agents, and attorneys, shall not be restricted to insurance proceeds, if any, received by the County as a result of any claims made in connection with the adoption of the Proposed Ordinance.

6. Proponents" Reimbursement of Costs and Expenditures. Proponents shall reimburse the County for one hundred percent (100%) of the actual costs and expenditures incurred by the County relative to its legal counsel and consultant services, as well as County staff time and costs ("Incurred Costs"). The Incurred Costs shall include, but not be limited to, all work performed due to any litigation or threatened litigation surrounding, and incurred subsequent to, the adoption of the Proposed Ordinance. All costs related to litigation of the adoption of the Proposed Ordinance shall also include, but not be limited to, any costs associated with settlement of the litigation.



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7. Attorneys' Fees and Costs. If any legal action or other proceeding is brought by one of the parties to this Agreement for the enforcement or defense of this Agreement, or because of any alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

8. Authority to Enter Agreement. Each party warrants that the individuals who have signed this Agreement on its behalf have the legal power, right, and authority to enter into this Agreement and bind each such respective party.

9. Entire Agreement. This written document contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior oral or written statements or agreements between the parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the parties.

10. Notices. All notices required or necessary under this Agreement shall be given in writing to the addresses set forth below their signatures. All notices shall be delivered by personal delivery, overnight courier, or by US certified mail, return receipt requested, and shall be considered effective upon receipt (or upon the date any addressee refuses delivery). Notices may be delivered by facsimile or by electronic mail providing the recipient acknowledges receipt of said notice.

11. Waiver. No waiver of any default hereunder shall constitute a waiver of any other breach or default, whether of the same or of any other covenant or condition. No waiver given by either party shall give the other party any contractual right by custom, estoppel or otherwise which is in conflict with any written provision of this Agreement.

12. No Assignment. Neither party may assign and/or transfer any interest in this Agreement without the prior written consent of the other party hereto. The provisions of the Agreement shall, subject to such limits on assignment, apply to and bind the heirs, successors, executors, administrators, and assigns of all parties to this Agreement.

13. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

14. Captions. The captions of the various articles and paragraphs of this Agreement are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement or any part or parts of this Agreement.

15. **JOINT AND SEVERAL. THE OBLIGATIONS COLLECTIVELY IMPOSED ON THE PROPONENTS UNDER THIS AGREEMENT SHALL BE JOINT AND SEVERAL AS TO EACH PROPONET.**

16. Partial Invalidity. If a court or arbitrator of competent jurisdiction holds any Agreement clause to be invalid or unenforceable in whole or in part for any reason, the validity and enforceability of the remaining clauses or portions of them, shall not be affected.



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17. Termination Agreement. Unless extended by the Parties, this Agreement shall terminate Thirty Six (36) months after adoption of the Ordinance.

**SIGNATURES ON FOLLOWING PAGES**

**IN WITNESS WHEREOF**, this Agreement has been executed by the parties as of the date first written above.

**COUNTY OF RIVERSIDE**

By: _____

Board Chairman

Notice Address:

County Administrative Officer

ATTEST:

By: _____

CLERK OF THE BOARD

Copy To:

APPROVED AS TO FORM:

6/5/18

Assistant County Counsel

County Counsel

**PROPONENT ELECTRIC RATEPAYERS ALLIANCE**

By: _____

Its: Chairman and CEO

Name: Vincent Battaglia

Notice Address:

75-181 Mediterranean Ave., Palm Desert, CA 92211

Attn: Vincent Battaglia

Phone: 760-568-3413

**PROPONENT RENOVA ENERGY**

By: _____

Its: Chairman and CEO

Name: Vincent Battaglia



6/5/2018