

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 RESOLUTION NO. RES-15-0041

2
3 A RESOLUTION OF THE CITY COUNCIL OF THE
4 CITY OF LONG BEACH AUTHORIZING THE CITY TO
5 JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING
6 THE CALIFORNIA ENTERPRISE DEVELOPMENT
7 AUTHORITY TO CONDUCT CONTRACTUAL
8 ASSESSMENT PROCEEDINGS AND LEVY
9 CONTRACTUAL ASSESSMENTS WITHIN THE
10 JURISDICTION OF THE CITY OF LONG BEACH; AND
11 AUTHORIZING RELATED ACTIONS

12
13 WHEREAS, the California Enterprise Development Authority ("CEDA") is a
14 joint exercise of powers authority, comprised of cities and counties in the State of
15 California, including the City of Long Beach (the "City"); and

16 WHEREAS, CEDA has adopted the Figtree Property Assessed Clean
17 Energy (PACE) and Job Creation Program (the "Program" or "Figtree PACE"), to allow
18 the financing of certain renewable energy, energy efficiency and water efficiency
19 improvements (the "Improvements") through the levy of contractual assessments
20 pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and
21 the issuance of improvement bonds or other evidences of indebtedness (the "Bonds")
22 under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et
23 seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

24 WHEREAS, Chapter 29 provides that assessments may be levied under its
25 provisions only with the free and willing consent of the owner of each lot or parcel on
26 which an assessment is levied at the time the assessment is levied; and

27 WHEREAS, the City desires to allow the owners of certain types of
28 participating property ("Participating Parcel") within its jurisdiction ("Participating Property

1 Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment
2 proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the
3 Improvements; and

4 WHEREAS, CEDA will conduct assessment proceedings under Chapter 29
5 to establish an assessment district (the "District") and issue Bonds under the 1915 Act to
6 finance Improvements; and

7 WHEREAS, there has been presented to this meeting a proposed form of
8 Resolution of Intention to be adopted by CEDA in connection with such assessment
9 proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A; and

10 WHEREAS, said ROI sets forth the territory within which assessments may
11 be levied for Figtree PACE which territory shall be coterminous with the City's official
12 boundaries of record at the time of adoption of the ROI (the "Boundaries"); and

13 WHEREAS, pursuant to Chapter 29, the City authorizes CEDA to conduct
14 assessment proceedings, levy assessments, pursue remedies in the event of
15 delinquencies, and issue bonds or other forms of indebtedness to finance the
16 Improvements in connection with Figtree PACE; and

17 WHEREAS, to protect the City in connection with operation of the Figtree
18 PACE program, Figtree Energy Financing, the program administrator, has agreed to
19 defend and indemnify the City; and

20 WHEREAS, the City will not be responsible for the conduct of any
21 assessment proceedings, the levy of assessments, any required remedial action in the
22 case of delinquencies, the issuance, sale or administration of the bonds or other
23 indebtedness issued in connection with Figtree PACE;

24 NOW, THEREFORE, the City Council of the City of Long Beach resolves as
25 follows:

26 Section 1. Good Standing. The City is a municipal corporation and a
27 member of CEDA in good standing.

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1 Section 2. Public Benefits. On the date hereof, the City Council hereby
2 finds and determines that large multifamily and non-residential properties (“Participating
3 Parcel”) will benefit from the Program and issuance of Bonds by CEDA in connection with
4 Figtree PACE will provide significant public benefits, including without limitation, savings
5 in effective interest rates, bond preparation, bond underwriting and bond issuance costs
6 and reductions in effective user charges levied by water and electricity providers within
7 the boundaries of the City. Participating Parcel consists of commercial, industrial,
8 agriculture, and large multifamily properties containing five (5) or more units.

9 Section 3. Appointment of CEDA. The City hereby appoints CEDA as its
10 representative to (i) record the assessment against the Participating Parcels, (ii)
11 administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part
12 1 of Division 10 of the California Streets and Highways Code (commencing with Section
13 8500 et seq.) (the “Law”), (iii) prepare program guidelines for the operations of the
14 Program and (iv) proceed with any claims, proceedings or legal actions as shall be
15 necessary to collect past due assessments on the properties within the District in
16 accordance with the Law and Section 6509.6 of the California Government Code. The
17 City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this
18 Resolution.

19 Section 4. Assessment Proceedings. In connection with Figtree PACE,
20 the City hereby consents to the special assessment proceedings by CEDA pursuant to
21 Chapter 29 on any Participating Parcel within the Boundaries and the issuance of Bonds
22 under the 1915 Act, provided that:

23 A. Such proceedings are conducted pursuant to one or more
24 Resolutions of Intention in substantially the form of the ROI;

25 B. The Participating Property Owners, who shall be the legal
26 owners of such property, voluntarily execute a contract pursuant to Chapter
27 29 and comply with other applicable provisions of California law in order to
28 accomplish the valid levy of assessments; and

1 C. The City will not be responsible for the conduct of any
2 assessment proceedings, the levy of assessments, any required remedial
3 action in the case of delinquencies in such assessment payments, or the
4 issuance, sale or administration of the Bonds in connection with Figtree
5 PACE.

6 Section 5. Program Report. The City Council hereby acknowledges that
7 pursuant to the requirements of Chapter 29, CEDA has prepared and will update from
8 time to time the "Program Report" for Figtree PACE (the "Program Report") and
9 associated documents, and CEDA will undertake assessment proceedings and the
10 financing of Improvements as set forth in the Program Report.

11 Section 6. Foreclosure. The City Council hereby acknowledges that the
12 Law permits foreclosure in the event that there is a default in the payment of
13 assessments due on a property. The City Council hereby designates CEDA as its
14 representative to proceed with collection and foreclosure of the liens on the defaulting
15 properties within the District, including accelerated foreclosure pursuant to the Program
16 Report.

17 Section 7. Indemnification. The City Council acknowledges that Figtree
18 has provided the City with an indemnification agreement, as shown in Exhibit B, for
19 negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its
20 officers, employees, subcontractors and agents. The City Council hereby authorizes the
21 appropriate officials and staff of the City to execute and deliver the Indemnification
22 Agreement to Figtree.

23 Section 8. City Contact Designation. The appropriate officials and staff
24 of the City are hereby authorized and directed to make applications for Figtree PACE
25 available to all property owners who wish to finance Improvements. The following staff
26 persons, together with any other staff designated by the City Manager from time to time,
27 are hereby designated as the contact persons for CEDA in connection with Figtree
28 PACE: Larry Rich, Sustainability Coordinator, (562) 570-5839,

1 Larry.Rich@longbeach.gov.

2 Section 9. City Execution of Documents. The appropriate officials and
3 staff of the City are hereby authorized and directed to execute and deliver such closing
4 certificates, requisitions, agreements and related documents as are reasonably required
5 by CEDA in accordance with the Program Report to implement Figtree PACE for
6 Participating Property Owners.

7 Section 10. CEQA. The City Council hereby finds that adoption of this
8 Resolution is not a "project" under the California Environmental Quality Act ("CEQA"),
9 because the Resolution does not involve any commitment to a specific project which may
10 result in a potentially significant physical impact on the environment, as contemplated by
11 Title 14, California Code of Regulations, Section 15378(b)(4)).

12 Section 11. Services related to the formation and administration of the
13 assessment district will be provided by CEDA at no cost to the City.

14 Section 12. The City Clerk is hereby authorized and directed to transmit a
15 certified copy of this resolution to Figtree Energy Financing.

16 Section 13. This resolution shall take effect immediately upon its adoption
17 by the City Council, and the City Clerk shall certify the vote adopting this resolution.

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I hereby certify that the foregoing resolution was adopted by the City Council of the City of Long Beach at its meeting of April 7, 2015

by the following vote:

Ayes: Councilmembers: Gonzalez, Price, Mungo, Andrews,
Uranga, Austin, Richardson.

Noes: Councilmembers: None.

Absent: Councilmembers: Lowenthal.

Robnam Davis for Larry H. Cabrera
City Clerk

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EXHIBIT "A"
CEDA Resolution of Intention

RESOLUTION NO. _____

RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY AND WATER EFFICIENCY IMPROVEMENTS IN THE CITY OF LONG BEACH

WHEREAS, the California Enterprise Development Authority (“CEDA”) is a joint powers authority organized and existing pursuant to the Joint Powers Act (Government Code Section 6500 et seq.) and that certain Joint Exercise of Powers Agreement (the “Agreement”) dated as of June 1, 2006, among the cities of Eureka, Lancaster and Selma; and

WHEREAS, CEDA is authorized under the Agreement and Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California and in accordance with Chapter 29 of Part 3 of Division 7 of the Streets & Highways Code of the State of California (“Chapter 29”) to authorize assessments to finance the installation of distributed generation renewable energy sources, energy efficiency and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

WHEREAS, CEDA has obtained authorization from the City of Long Beach (the “City”) located in the County of Los Angeles (the “County”) to conduct assessment proceedings and to enter into contractual assessments to finance the installation of Authorized Improvements within the jurisdictional boundaries of the City pursuant to Chapter 29; and

WHEREAS, CEDA desires to declare its intention to establish a Figtree PACE program (“Figtree PACE”) in the City, pursuant to which CEDA, subject to certain conditions set forth below, would enter into contractual assessments to finance the installation of Authorized Improvements in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY, AS FOLLOWS:

Section 1. Findings. The Board of Directors hereby finds and determines the following:

- (a) The above recitals are true and correct and are incorporated herein by this reference.
- (b) Energy and water conservation efforts, including the promotion of Authorized Improvements to residential, commercial, industrial, or other real property, are necessary to address the issue of global climate change and the reduction of greenhouse gas emissions in the City.
- (c) The upfront cost of making residential, commercial, industrial, or other real property more energy and water efficient, along with the fact that most commercial loans for that purpose are due on the sale of the property, prevents many property owners from installing Authorized Improvements.

- (d) A public purpose will be served by establishing a contractual assessment program, to be known as Figtree PACE, pursuant to which CEDA will finance the installation of Authorized Improvements to residential, commercial, industrial, or other real property in the City.

Section 2. Determination of Public Interest. The Board of Directors hereby determines that (a) it would be convenient, advantageous, and in the public interest to designate an area, which shall encompass the entire geographic territory within the boundaries of the City, within which CEDA and property owners within the City may enter into contractual assessments to finance the installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest for CEDA to finance the installation of Authorized Improvements in the City pursuant to Chapter 29.

Section 3. Identification of Authorized Improvements. CEDA hereby declares its intention to make contractual assessment financing available to property owners to finance installation of Authorized Improvements, including but not limited to those improvements detailed in the Report described in Section 8 hereof (the "Report"), as that Report may be amended from time to time.

Section 4. Identification of Boundaries. Contractual assessments may be entered into by property owners located within the entire geographic territory of the City.

Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds, notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued pursuant to Chapter 29, insofar as the Improvement Bond Act of 1915 is not in conflict with Chapter 29. The creditworthiness of a property owner to participate in the financing of Authorized Improvements will be based on the criteria developed by Figtree Energy Financing (the "Program Administrator") upon consultation with Figtree PACE Program underwriters or other financial representatives, CEDA general counsel and bond counsel, and as shall be approved by the Board of Directors of CEDA. In connection with indebtedness issued under the Improvement Bond Act of 1915 that is payable from contractual assessments, serial and/or term improvement bonds or other indebtedness shall be issued in such series and shall mature in such principal amounts and at such times (not to exceed 20 years from the second day of September next following their date), and at such rate or rates of interest (not to exceed the maximum rate permitted by applicable law) as shall be determined by Board of Directors at the time of the issuance and sale of the indebtedness. The provisions of Part 11.1 of the Improvement Bond Act of 1915 shall apply to the calling of the bonds. It is the intention of CEDA to create a special reserve fund for the bonds under Part 16 of the Improvement Bond Act of 1915. Neither CEDA, nor any of its members participating in the Figtree PACE Program, shall advance available surplus funds from its treasury to cure any deficiency in the redemption fund to be created with respect to the indebtedness; provided, however, that this determination shall not prevent CEDA or any of its members from, in their sole discretion, so advancing funds. The Bonds may be refunded under Division 11.5 of the California Streets and Highways Code or other applicable laws permitting refunding, upon the conditions specified by and upon determination of CEDA.

CEDA hereby authorizes the Program Administrator, upon consultation with CEDA general counsel, bond counsel and the Figtree PACE underwriter, to commence preparation of documents and take necessary steps to prepare for the issuance of bonds, notes or other forms of indebtedness as authorized by Chapter 29.

In connection with the issuance of bonds payable from contractual assessments, CEDA expects to obligate itself, through a covenant with the owners of the bonds, to exercise its foreclosure rights with respect to delinquent contractual assessment installments under specified circumstances.

Section 6. Public Hearing. Pursuant to the Act, CEDA hereby orders that a public hearing be held before CEDA Board (the "Board"), at 550 Bercut Drive, Suite G, Sacramento, CA 95811, on _____, _____, at _____ A., for the purposes of allowing interested persons to object to, or inquire about, the proposed Figtree PACE Program. The public hearing may be continued from time to time as determined by the Board for a time not exceeding a total of 180 days.

At the time of the hearing, the Report described in Section 8 hereof shall be summarized, and the Board shall afford all persons who are present an opportunity to comment upon, object to, or present evidence with regard to the proposed Figtree PACE Program, the extent of the area proposed to be included within the boundaries of the assessment district, the terms and conditions of the draft assessment contract described in Section 8 hereof (the "Contract"), or the proposed financing provisions. Following the public hearing, CEDA may adopt a resolution confirming the Report (the "Resolution Confirming Report") or may direct the Report's modification in any respect, or may abandon the proceedings.

The Board hereby orders the publication of a notice of public hearing once a week for two successive weeks. Two publications in a newspaper published once a week or more often, with at least five days intervening between the respective publication dates not counting such publication dates, are sufficient. The period of notice will commence upon the first day of publication and terminate at the end of the fourteenth day. The first publication shall occur not later than 20 days before the date of the public hearing.

Section 7. Notice to Water and Electric Providers. Pursuant to Section 5898.24 of the Streets & Highways Code, written notice of the proposed contractual assessment program within the City to all water and electric providers within the boundaries of the City has been provided.

Section 8. Report. The Board hereby directs the Program Administrator to prepare the Report and file said Report with the Board at or before the time of the public hearing described in Section 6 hereof containing all of the following:

- a) A map showing the boundaries of the territory within which contractual assessments are proposed to be offered, as set forth in Section 4 hereof.
- b) A draft contractual assessment contract (the "Contract") specifying the terms and conditions of the agreement between CEDA and a property owner within the City.
- c) A statement of CEDA's policies concerning contractual assessments including all of the following:

- (1) Identification of types of Authorized Improvements that may be financed through the use of contractual assessments.
 - (2) Identification of the CEDA official authorized to enter into contractual assessments on behalf of CEDA.
 - (3) A maximum aggregate dollar amount of contractual assessments.
 - (4) A method for setting requests from property owners for financing through contractual assessments in priority order in the event that requests appear likely to exceed the authorization amount.
- d) A plan for raising a capital amount required to pay for work performed in connection with contractual assessments. The plan may include the sale of a bond or bonds or other financing relationship pursuant to Section 5898.28 of Chapter 29. The plan (i) shall include a statement of, or method for determining, the interest rate and time period during which contracting property owners would pay any assessment, (ii) shall provide for any reserve fund or funds, and (iii) shall provide for the apportionment of all or any portion of the costs incidental to financing, administration and collection of the contractual assessment program among the consenting property owners and CEDA.
- e) A report on the results of the discussions with the County Auditor-Controller described in Section 10 hereof, concerning the additional fees, if any, that will be charged to CEDA for inclusion of the proposed contractual assessments on the general property tax roll of the County, and a plan for financing the payment of those fees.

Section 9. Nature of Assessments. Assessments levied pursuant to Chapter 29, and the interest and any penalties thereon, will constitute a lien against the lots and parcels of land on which they are made, until they are paid. Unless otherwise directed by CEDA, the assessments shall be collected in the same manner and at the same time as the general taxes of the County on real property are payable, and subject to the same penalties and remedies and lien priorities in the event of delinquency and default.

Section 10. Consultations with County Auditor-Controller. CEDA hereby directs the Program Administrator to enter into discussions with the County Auditor-Controller in order to reach agreement on what additional fees, if any, will be charged to CEDA for incorporating the proposed contractual assessments into the assessments of the general taxes of the County on real property.

Section 11. Preparation of Current Roll of Assessment. Pursuant to Section 5898.24(c), CEDA hereby designates the Program Administrator as the responsible party for annually preparing the current roll of assessment obligations by assessor's parcel number on property subject to a voluntary contractual assessment.

Section 12. Procedures for Responding to Inquiries. The Program Administrator shall establish procedures to promptly respond to inquiries concerning current and future estimated liability for a voluntary contractual assessment.

Section 13. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED this _____ day of _____, 201_.

CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY

By: _____
Gurbax Sahota, Chair

ATTEST:

Larry Cope, Secretary

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EXHIBIT "B"
Indemnification Agreement

OFFICE OF THE CITY ATTORNEY
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INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE CITY OF LONG BEACH AND
FIGTREE COMPANY, INC.

This Indemnification Agreement (the "Agreement") is entered into by and between the CITY OF LONG BEACH, a municipal corporation, duly organized and existing under the laws of the State of California (the "City") and FIGTREE COMPANY, INC., a California corporation, the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program (the "Administrator"), which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the "Authority").

RECITALS

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

WHEREAS, the Authority established the Figtree Property Assessed Clean Energy and Job Creation Program (the "Figtree 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, or other forms of indebtedness, 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, the legislative body of the City adopted or will adopt a resolution authorizing the City to join the Figtree PACE Program; and

1 WHEREAS, the City will not be responsible for the formation, operation and
2 administration of the Figtree PACE Program as well as the sale and issuance of any bonds
3 or other forms of indebtedness in connection therewith, including the conducting of
4 assessment proceedings, the levy and collection of assessments and any remedial action
5 in the case of such assessment payments, and the offer, sale and administration of any
6 bonds issued by the Authority on behalf of the Figtree PACE Program; and

7 WHEREAS, the Administrator is the administrator of the Figtree PACE
8 Program and agrees to indemnify the City in connection with the operations of the Figtree
9 PACE Program as set forth herein;

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

12 1. Indemnification. Figtree has provided the CEDA with an
13 indemnification for negligence or malfeasance of any type as a result of the acts or
14 omissions of Figtree, its officers, employees, subcontractors and agents, arising from or
15 related to the Figtree PACE Program, the assessments, the assessment districts, the
16 improvements or the financing and marketing thereof. Figtree agrees to defend, indemnify
17 and hold harmless the City, its officers, elected or appointed officials, employees, agents
18 and volunteers from and against any and all actions, suits, proceedings, claims, demands,
19 losses, costs and expenses, including legal costs and attorneys' fees, for injury or damage
20 due to negligence or malfeasance of any type claims as a result of the acts or omissions
21 of Figtree, except for such loss or damage which was caused by the sole negligence or
22 willful misconduct of the City. This indemnity shall apply to all claims and liability regardless
23 of whether any insurance policies are applicable. The policy limits do not act as limitation
24 upon the amount of indemnification to be provided by Figtree.

25 2. Amendment/Interpretation of this Agreement. This Agreement
26 represents the entire understanding of the parties as to those matters contained herein. No
27 prior oral or written understanding shall be of any force or effect with respect to those
28 matters covered hereunder. No supplement, modification or amendment of this Agreement

