

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: June 4, 2015

CAO File No. 0220-04985-0000

Council File No. 14-1697-S2

Council District: ALL

To: The Council

From: Miguel A. Santana, City Administrative Officer 

Reference: Seismic Retrofit Program

Subject: **FINANCING OPTIONS FOR THE SEISMIC RETROFIT PROGRAM**

SUMMARY

This Office was instructed by the Mayor and Council to report back on financing options in response to the Mayor's Proposed Seismic Retrofit Program (C.F. 14-1697-S2). Based on the motion and discussions held during Housing Committee at the time the motion was introduced, the focus of this report is on the feasibility of using the Property Assessed Clean Energy ("PACE") model as a financing mechanism for the Mayor's Proposed Seismic Retrofit Program.

BACKGROUND

"Resilience by Design" is a recent report commissioned by Mayor Garcetti and prepared by a team of technical experts that addresses the City's seismic vulnerabilities in the following areas: pre-1980 "soft-first-story" buildings; pre-1980 "non-ductile reinforced concrete" buildings; water system infrastructure; and, communications infrastructure. The Mayor's report makes multiple recommendations and suggests various incentives to move the City forward on a path towards resilience. Key recommendations pertinent to this staff report include:

- Mandatory seismic retrofits of all existing commercial and residential buildings of wood frame construction of four or more units;
- Mandatory seismic retrofits of concrete buildings designed in accordance with a building code prior to the 1976 Uniform Building Code; and,
- Provide access to private lending sources based on the PACE financing program for soft-first story retrofits.

The motion directs this Office to evaluate the services offered by Figtree Financing, CaliforniaFirst, and any other similar agency or entity which can be of assistance in providing financing to property owners who may be required by the City to retrofit their buildings for seismic safety purposes and to report with recommendations for participating in these services should the Council decide to proceed (C.F. 14-1697-S2).

Options

Various options to implement and finance a seismic retrofit program were considered, including: 1) a single-source, City-administered and financed PACE program; 2) a third-party administered and financed PACE program; and, 3) an open market PACE program administered and financed by various PACE providers under contract with various California Joint Powers Authorities. In order for the City to implement a City-administered PACE program, resources such as staff and funding would need to be committed, which would not be an optimal choice given the various competing demands on the City's limited resources. A third-party administered and financed PACE program would require a procurement process and the commitment of significant City resources, also not an optimal choice for the City at this time. The open-market PACE model offers a competitive financing mechanism that provides benefits for property owners and the City, with minimal resource impacts on the City.

PACE PROGRAM

Background

PACE allows for commercial and residential property owners to obtain financing for the acquisition and installation of energy-efficiency, water-conservation, and renewable energy improvements pursuant to the American Recovery and Reinvestment Act ("ARRA") and state legislation passed in 2008. Additional state legislation was passed in 2011 that added seismic retrofit improvements to the PACE program. Local jurisdictions can opt to develop and administer their own PACE program or join a Joint Powers Authority ("JPA") that is offering the PACE program to its member agencies. Property owners participating in PACE receive financing through the PACE provider and repay the investment as an assessment added to the property tax bill for up to 20 years. The assessment is therefore a lien that stays with the property, even if the property is subsequently sold, rather than a liability of the property owner, such as a personal loan. PACE financing institutions package the loans and issue bonds in accordance with program requirements. Property owners can select contractors from pre-approved lists and combine various improvements under one assessment. Preliminary research indicates the possibility of tax benefits from the inclusion of the assessment that includes principal and interest on a property tax bill, compared to the tax benefit of interest only with a mortgage.

Fannie Mae/Freddie Mac Issue

In 2010, the Federal Housing Finance Agency ("FHFA") which regulates government-sponsored residential mortgage buyers Fannie Mae and Freddie Mac and the Federal Home Loan Banks, issued a determination that PACE programs presented significant risks because of the first lien priority of PACE liens over existing mortgages and therefore prohibited Fannie Mae and Freddie Mac from purchasing residential mortgages secured by properties with an outstanding first lien priority PACE loan. The Office of the Comptroller ("OCC"), which oversees commercial mortgages, concurrently issued supervisory guidance nearly identical to the FHFA notice, and directed banks to take steps to mitigate exposures and protect collateral positions. PACE programs across the country were mostly suspended as a result.

This issue was litigated and in 2013, the Ninth Circuit Court of Appeals found in favor of the FHFA and vacated a lower court injunction and order requiring the FHFA to create rules regarding

residential PACE. In response to these concerns, the State of California implemented a loss reserve program for residential PACE in 2013 to make whole first mortgage lenders who suffer losses caused by a PACE lien during a foreclosure. This program is in its early stages and it is unclear if this will provide sufficient risk mitigation for first lien mortgage holders. Most PACE providers are attempting to address the first lien priority issue by requiring the applicant to obtain the consent of the first lien mortgage holder. While the lien issue has more directly impacted residential PACE, it is also a concern for commercial PACE to the extent that existing commercial contracts may include language regarding default in the event that the lien becomes subordinated to another loan against the property.

Joint Powers Authorities

Many jurisdictions have implemented or are in the process of implementing residential and/or commercial PACE programs, a process which has been delayed due to the first lien concern raised by FHFA, but is now gaining momentum across California. Several JPAs have implemented PACE programs: California Statewide Communities Development Authority ("CSCDA"), California Enterprise Development Authority ("CEDA"), Western Riverside Council of Governments ("WRCOG"). Los Angeles County has contracted with PACE providers to administer its own PACE program for residential and commercial properties. However, the County PACE program for commercial properties does not include seismic retrofits as eligible projects. The various PACE programs have gone through the court validation process and several are reviewing the need to complete or are in the process of completing the validation process again due to the addition of seismic retrofits as a PACE-eligible improvement and/or the inclusion of additional jurisdictions.

Opt-In to PACE

The City is already a participating agency in LA County's PACE program, however seismic retrofit projects are not currently eligible for PACE financing through their program at this time. CSCDA has contracted with AllianceNRG and Renewable Funding (CaliforniaFIRST) to administer their Open PACE program which includes seismic retrofits as eligible projects. The City is a member of CSCDA and would need to adopt a resolution to opt-in to their PACE program, known as Open PACE. CEDA has contracted with Figtree Company Inc. ("Figtree") to administer its PACE program which also includes seismic retrofits as eligible projects. The City is not a member of CEDA and would need to adopt a resolution to join CEDA and opt-in to their PACE program and execute a member agreement. In addition, Figtree, has a separate indemnification resolution which would also need to be executed. At this time, opting in to PACE programs by other JPAs, such as WRCOG has not been further researched as the current focus of the Mayor's seismic retrofit program is on commercial properties and the WRCOG program is primarily focused on residential properties. However, other options can be explored further as additional providers become available or when the City's seismic retrofit program expands the property base covered by ordinance.

BENEFITS FOR PROPERTY OWNERS

Benefits for property owners include:

- Competition: Property owners can shop for the best price and service from a variety of PACE providers as well as traditional financing methods and select the best option.
- Eligibility: Provides another option for financing seismic and renewable improvements, given challenging economic conditions where financing choices may be limited.
- Payment obligation stays with the property: Under Chapter 29 of the Streets and Highways Code, a voluntary contractual assessment stays with the property upon transfer of ownership. Most private loans are due upon sale of the property. Certain mortgage providers will, however, require the assessment be paid at the time the property is refinanced or sold.
- Prepayment option: Property owner can chose to pay off the assessment at any time, subject to applicable prepayment penalties.

CITY BENEFITS

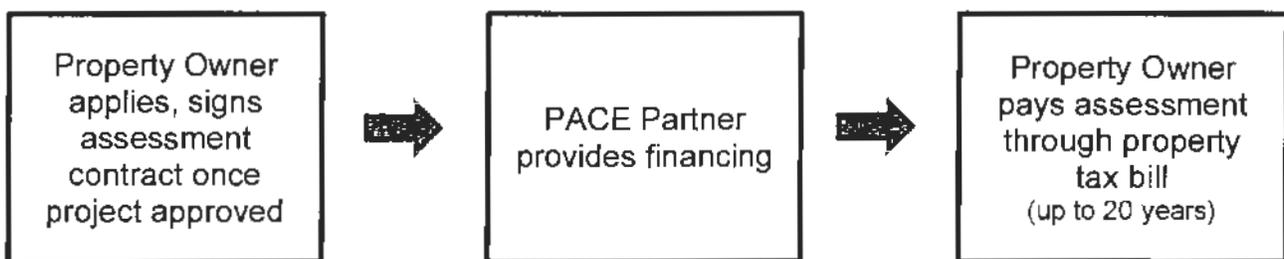
- Minimal City Liability and Indemnification: Program applications and assessment contracts by AllianceNRG, Renewable Funding and Figtree were reviewed. The assessment contract is between the property owner and the JPA, therefore the City's liability exposure is minimal. The assessment contracts or associated program handbooks include language notifying the applicant that the PACE lien will have first priority over existing and future liens against the property and that applicants should review existing loan agreements to determine if PACE financing would constitute an event of default. All three program administrators require written lender acknowledgement for mortgaged properties. All three assessment contracts also include indemnification language protecting the JPA, PACE provider and local agency from losses resulting from participating in the PACE program.
- Program Reporting: The various PACE providers report regularly to their respective JPAs and have indicated that information regarding the City's participation in PACE can also be made available directly to the City.
- Minimal City Expenditures: It is anticipated that City expenditures associated with the PACE aspect of the seismic retrofit program would be minimal and primarily related to adding information about the program to the City's website and similar miscellaneous tasks. Administrative fees are included in the assessment to reimburse the JPAs for their costs in managing the contracts with the PACE administrators.

- PACE for Green Projects and Seismic Retrofits: Although the motion directing this report specifically addressed PACE financing for seismic retrofit projects, taking action to opt in to the various PACE programs would enable residents to access PACE financing for all authorized improvements, such as energy efficiency, water efficiency and solar installations, in addition to seismic retrofit improvements.

PACE PROCESS

For property owners interested in PACE financing for eligible projects, the general process is summarized as follows:

- Application: Property owner submits application for eligible improvements.
- Review and Approval: PACE provider reviews application and confirms property meets underwriting criteria and other PACE program requirements.
- Reservation: If the application is approved, a notice to proceed is issued to the property owner.
- Installation: Approved project is completed by a pre-qualified contractor.
- Financing: Property owner submits a completion certificate upon completion of the project, a lien is placed on the property, a bond is issued and payment is released to the payment designee.
- Repayment: Property owner repays the loan as an assessment included on their property tax bill.



There may be slight differences in program requirements and processes depending on the PACE administrator. Property owners will need to carefully review and evaluate these requirements when determining whether to proceed with PACE financing.

Summary of Recommendations

This Office recommends the adoption of the resolutions and actions necessary to join CEDA and opt in to the PACE programs offered by CEDA and CSCDA for the purpose of providing financing options for commercial seismic retrofits. In addition, it is recommended that the City execute the member agreement with CEDA and the Indemnification Agreement proposed by Figtree.

These recommendations are in compliance with the City's Financial Policies.

RECOMMENDATIONS

That the City Council, subject to approval of the Mayor:

1. ADOPT the attached Resolution of the City of Los Angeles Approving Associate Membership by the City in the California Enterprise Development Authority; Authorizing and Directing the Execution of an Associate Membership Agreement Relating to Associate Membership of the City in the Authority; Authorizing the City to Join the Figtree PACE Program; Authorizing the California Enterprise Development Authority to Conduct Contractual Assessment Proceedings and Levy Contractual Assessments within the Territory of the City of Los Angeles;
2. ADOPT the attached Resolution of the City of Los Angeles Consenting to the Inclusion of Properties within the Territory of the City in the CSCDA Open Pace Programs; Authorizing the California Statewide Communities Development Authority to Accept Applications from Property Owners, Conduct Contractual Assessments Proceedings and Levy Contractual Assessments within the Territory of the City of Los Angeles;
3. EXECUTE the Associate Membership Agreement with the California Enterprise Development Authority;
4. EXECUTE the Indemnification Agreement by and Between the City of Los Angeles and Figtree Company, Inc.; and
5. AUTHORIZE the City Administrative Officer to make technical adjustments as necessary to implement the intent of the Mayor and Council actions.

FISCAL IMPACT STATEMENT

There is no fiscal impact to the City from the recommendations contained in this report. The financing costs for seismic retrofits contemplated by this program will be borne by the property owners and not the City.

DEBT IMPACT STATEMENT

There is no debt impact to the City from the recommendations contained in this report. The financing costs for seismic retrofits contemplated by this program will be borne by the property owner and not the City.

MAS:BC:SMB:091500169

Attachments:

- Attachment A – Resolution for CEDA
- Attachment B – Resolution for CSCDA
- Attachment C – Membership Agreement for CEDA
- Attachment D – Indemnification Agreement with Figtree

ATTACHMENT A

Resolution of the City of Los Angeles Approving Associate Membership by the City in the California Enterprise Development Authority; Authorizing and Directing the Execution of an Associate Membership Agreement Relating to Associate Membership of the City in the Authority; Authorizing the City to Join the Figtree PACE Program; Authorizing the California Enterprise Development Authority to Conduct Contractual Assessment Proceedings and Levy Contractual Assessments within the Territory of the City of Los Angeles

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES, CALIFORNIA, APPROVING ASSOCIATE MEMBERSHIP BY THE CITY IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY; AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF THE CITY IN THE AUTHORITY; AUTHORIZING THE CITY TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF LOS ANGELES; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the City of Los Angeles, California (the "City"), a municipal corporation, duly organized and existing under the Constitution and the laws of the State of California; and

WHEREAS, the City, upon authorization of the City Council, may pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, commencing with Section 6500 (the "JPA Law") enter into a joint exercise of powers agreement with one or more other public agencies pursuant to which such contracting parties may jointly exercise any power common to them; and

WHEREAS, the City and other public agencies wish to jointly participate in economic development financing programs for the benefit of businesses and nonprofit entities within their jurisdictions offered by membership in the California Enterprise Development Authority (the "Authority") pursuant to an associate membership agreement and Joint Exercise of Powers Agreement Relating to the California Enterprise Development Authority (the "Agreement"); and

WHEREAS, under the JPA Law and the Agreement, the Authority is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of the Authority will not be the debts, liabilities or obligations of the City or the other members of the Authority; and

WHEREAS, the form of Associate Membership Agreement (the "Associate Membership Agreement") between the City and the Authority is attached; and

WHEREAS, the City is willing to become an Associate Member of the Authority subject to the provisions of the Associate Membership Agreement.

WHEREAS, the California Enterprise Development Authority ("CEDA") is a joint exercise of powers authority, comprised of cities and counties in the State of California, including the City of Los Angeles (the "City"); and

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

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

WHEREAS, the City desires to allow the owners of property ("Participating Parcel") within its jurisdiction ("Participating Property Owners") to participate in Figtree PACE, and to allow CEDA to conduct assessment proceedings under Chapter 29 and to issue Bonds under the 1915 Act to finance the Improvements; and

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Los Angeles, hereby finds, determines and declares as follows:

Section 1. The City Council hereby specifically finds and declares that the actions authorized hereby constitute public affairs of the City. The City Council further finds that the statements, findings and determinations of the City set forth in the preambles above are true and correct.

Section 2. The Associate Membership Agreement presented to this meeting and on file with the City Clerk is hereby approved. The Mayor of the City, the City Manager, the City Clerk and other officials of the City are each hereby authorized and directed, for and on behalf of the City, to execute and deliver the Associate Membership Agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 3. The officers and officials of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents which they may deem necessary or advisable in order to consummate, carry out, give effect to and comply with the terms and intent of this resolution and the Associate Membership Agreement. All such actions heretofore taken by such officers and officials are hereby confirmed, ratified and approved.

Section 4. Good Standing. The City is either a municipal corporation or other public body and a member of CEDA in good standing.

Section 5. Public Benefits. On the date hereof, the City Council hereby finds and determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE will provide significant public benefits, including without limitation, savings in effective interest rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective user charges levied by water and electricity providers within the boundaries of the City.

Section 6. Appointment of CEDA. The City hereby appoints CEDA as its representative to (i) record the assessment against the Participating Parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law"), (iii) prepare program guidelines for the operations of the Program and (iv) proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the California Government Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution.

Section 7. Assessment Proceedings. In connection with Figtree PACE, the City hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the Boundaries and the issuance of Bonds under the 1915 Act, provided that:

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;
- (2) The Participating Property Owners, who shall be the legal owners of such property, voluntarily execute a contract pursuant to Chapter 29 and comply with other

applicable provisions of California law in order to accomplish the valid levy of assessments; and

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

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

Section 9. Foreclosure. The City Council hereby acknowledges that the Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. The City Council hereby designates CEDA as its representative to proceed with collection and foreclosure of the liens on the defaulting properties within the District, including accelerated foreclosure pursuant to the Program Report.

Section 10. Indemnification. The City Council acknowledges that Figtree has provided the City with an indemnification agreement, as shown in Exhibit B, for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby authorizes the appropriate officials and staff of the City to execute and deliver the Indemnification Agreement to Figtree.

Section 11. City Contact Designation. The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Administrative Officer from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Natalie R. Brill, Chief of Debt Management, (213) 473-7526, Natalie.Brill@lacity.org.

Section 12. CEQA. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

Section 13. Effective Date. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Figtree Energy Financing.

Section 14. Costs. Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

PASSED and ADOPTED by the Council of the City of Los Angeles this ____ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM

MICHAEL N. FEUER, City Attorney

By: _____
Assistant City Attorney

I certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting on _____, 2015

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

C.F. _____

EXHIBIT A

CEDA Resolution of Intention

RESOLUTION OF THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY DECLARING INTENTION TO FINANCE INSTALLATION OF DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES, ENERGY EFFICIENCY, SEISMIC RETROFITS, ELECTRIC VEHICLE CHARGING INFRASTRUCTURE, AND WATER EFFICIENCY IMPROVEMENTS IN THE CITY OF LOS ANGELES

WHEREAS, the California Enterprise Development Authority (“CEDA”) is a joint powers authority authorized and existing pursuant to 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, by and 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, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements that are permanently fixed to real property (“Authorized Improvements”); and

WHEREAS, CEDA has obtained authorization from the County of Los Angeles (the “County”) to enter into contractual assessments for the financing of the installation of Authorized Improvements in the County; and

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

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 County.
- (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 County.

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 County, within which CEDA and property owners within the County 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 County 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 County including unincorporated territory within County Boundaries. A property owner located within a City within the County may enter into contractual assessments with CEDA only after such City has adopted a resolution to authorize participation in the PACE Program.

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 are 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 the 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 the Board of Directors 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 County to all water and electric providers within the boundaries of the County 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.
- (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.

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: _____

ATTEST:

EXHIBIT B
Indemnification Agreement

INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE CITY OF LOS ANGELES AND
FIGTREE COMPANY, INC.

This Indemnification Agreement (the "Agreement") is entered into by and between the City of Los Angeles, a municipal corporation or political subdivision, duly organized and existing under the laws of the State of California (the "Public Entity") 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 Public Entity 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 Public Entity; and

WHEREAS, the legislative body of the Public Entity adopted or will adopt a resolution authorizing the Public Entity to join the Figtree PACE Program; and

WHEREAS, the Public Entity will not be responsible for the formation, operation and administration of the Figtree PACE Program as well as the sale and issuance of any bonds or other forms of indebtedness in connection therewith, including the conducting 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 Figtree PACE Program; and

WHEREAS, the Administrator is the administrator of the Figtree PACE Program and agrees to indemnify the Public Entity in connection with the operations of the Figtree PACE Program as set forth herein;

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

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

2. **Amendment/Interpretation of this Agreement.** This Agreement 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.

3. **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.

4. **Waiver.** No waiver of any of the provisions of this Agreement shall be binding unless in the form of 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.

5. **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.

6. **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

Figtree Company, Inc.
9915 Mira Mesa Blvd., Suite 130
San Diego, California 92131
Attn: Chief Executive Officer

If to the Public Entity:

City Administrative Officer
200 N. Main St., Room 1500
Los Angeles, CA 90012
Attention: Debt Manager

7. **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.

8. **Effective Date.** This Agreement will be effective as of the date of the signature of Public Entity's representative as indicated below in the signature block.

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

Figtree Company, Inc., a California corp.

By _____

Name: Mahesh Shah

Title: CEO

CITY OF LOS ANGELES, CALIFORNIA

By: _____
Eric Garcetti, Mayor

ATTEST: HOLLY L. WOLCOTT, CITY CLERK

By: _____
Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, CITY ATTORNEY

By: _____
Assistant City Attorney

ATTACHMENT B

Resolution of the City of Los Angeles Consenting to the Inclusion of Properties within the Territory of the City in the CSCDA Open Pace Programs; Authorizing the California Statewide Communities Development Authority to Accept Applications from Property Owners, Conduct Contractual Assessments Proceedings and Levy Contractual Assessments within the Territory of the City of Los Angeles

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LOS ANGELES
CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE TERRITORY
OF THE CITY IN THE CSCDA OPEN PACE PROGRAMS; AUTHORIZING THE
CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO
ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT
CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL
ASSESSMENTS WITHIN THE TERRITORY OF THE CITY; AND AUTHORIZING
RELATED ACTIONS**

WHEREAS, the California Statewide Communities Development Authority (the “Authority”) is a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California, including the City of Los Angeles (the “City”); and

WHEREAS, the Authority is implementing Property Assessed Clean Energy (PACE) programs, which it has designated CSCDA Open PACE, consisting of CSCDA Open PACE programs each administered by a separate program administrator (collectively with any successors, assigns, replacements or additions, the “Programs”), to allow the financing or refinancing of renewable energy, energy efficiency, water efficiency and seismic strengthening improvements, electric vehicle charging infrastructure and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the “Improvements”) through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code (“Chapter 29”) within counties and cities throughout the State of California that consent to the inclusion of properties within their respective territories in the Programs and the issuance of bonds from time to time; and

WHEREAS, the program administrators currently active in administering Programs are the AllianceNRG Program (presently consisting of Deutsche Bank Securities Inc., CounterPointe Energy Solutions LLC and Leidos Engineering, LLC) and Renewable Funding LLC, and the Authority will notify the City in advance of any additions or changes; and

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

WHEREAS, the City desires to allow the owners of property (“Participating Property Owners”) within its territory to participate in the Programs and to allow the Authority to conduct assessment proceedings under Chapter 29 within its territory and to issue bonds to finance or refinance Improvements; and

WHEREAS, the territory within which assessments may be levied for the Programs shall include all of the territory within the City’s official boundaries; and

WHEREAS, the Authority will conduct all assessment proceedings under Chapter 29 for the Programs and issue any bonds issued in connection with the Programs; and

WHEREAS, the City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Los Angeles as follows:

Section 1. This City Council hereby finds and declares that properties in the territory of the City will benefit from the availability of the Programs within the territory of the City and, pursuant thereto, the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 and the issuance of bonds to finance or refinance Improvements.

Section 2. In connection with the Programs, the City hereby consents to the conduct of special assessment proceedings by the Authority pursuant to Chapter 29 on any property within the territory of the City and the issuance of bonds to finance or refinance Improvements; provided, that

(1) The Participating Property Owners, who shall be the legal owners of such property, execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and

(2) The City will not be responsible for the conduct of any assessment proceedings; the levy of assessments; any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds issued in connection with the Programs.

Section 3. The appropriate officials and staff of the City are hereby authorized and directed to make applications for the Programs available to all property owners who wish to finance or refinance Improvements; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The following staff persons, together with any other staff persons chosen by the City Administrative Officer of the City from time to time, are hereby designated as the contact persons for the Authority in connection with the Programs: Assistant City Administrative Officer or Chief of Debt Management.

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such certificates, requisitions, agreements and related documents as are reasonably required by the Authority to implement the Programs.

Section 5. The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act, because the Resolution does not involve any commitment to a specific project which may result in a potentially significant

physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4).

Section 6. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority at: Secretary of the Board, California Statewide Communities Development Authority, 1400 K Street, Sacramento, CA 95814.

PASSED and ADOPTED by the Council of the City of Los Angeles this ___ day of _____, 2012, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED AS TO FORM

MICHAEL N. FEUER, City Attorney

By: _____
Assistant City Attorney

I certify that the foregoing Resolution was adopted by the Council of the City of Los Angeles at its meeting on _____, 2015

HOLLY L. WOLCOTT, City Clerk

By: _____
Deputy City Clerk

C.F. _____

ATTACHMENT C

Membership Agreement with the California Enterprise Development Authority

ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

CITY OF LOS ANGELES, CALIFORNIA

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this "Associate Membership Agreement"), dated as of _____ by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Authority") and the CITY OF LOS ANGELES, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the "City");

WITNESSETH:

WHEREAS, the Cities of Selma, Lancaster and Eureka (individually, a "Member" and collectively, the "Members"), have entered into a Joint Powers Agreement, dated as of June 1, 2006 (the "Agreement"), establishing the Authority and prescribing its purposes and powers; and

WHEREAS, the Agreement designates the Executive Committee of the Board of Directors and the President of the California Association for Local Economic Development as the initial Board of Directors of the Authority; and

WHEREAS, the Authority has been formed for the purpose, among others, to assist for profit and nonprofit corporations and other entities to obtain financing for projects and purposes serving the public interest; and

WHEREAS, the Agreement permits any other local agency in the State of California to join the Authority as an associate member (an "Associate Member"); and

WHEREAS, the City desires to become an Associate Member of the Authority;

WHEREAS, City Council of the City has adopted a resolution approving the Associate Membership Agreement and the execution and delivery thereof;

WHEREAS, the Board of Directors of the Authority has determined that the City should become an Associate Member of the Authority;

NOW, THEREFORE, in consideration of the above premises and of the mutual promises herein contained, the Authority and the City do hereby agree as follows:

Section 1. Associate Member Status. The City is hereby made an Associate Member of the Authority for all purposes of the Agreement and the Bylaws of the Authority, the provisions of which are hereby incorporated herein by reference. From and after the date of execution and delivery of this Associate Membership Agreement by the City and the Authority, the City shall be and remain an Associate Member of the Authority.

Section 2. Restrictions and Rights of Associate Members. The City shall not have the right, as an Associate Member of the Authority, to vote on any action taken by the Board of Directors or by the Voting Members of the Authority. In addition, no officer, employee or representative of the City shall have any right to become an officer or director of the Authority by virtue of the City being an Associate Member of the Authority.

Section 3. Effect of Prior Authority Actions. The City hereby agrees to be subject to and bound by all actions previously taken by the Members and the Board of Directors of the Authority to the same extent as the Members of the Authority are subject to and bound by such actions.

Section 4. No Obligations of Associate Members. The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of the City.

Section 5. Execution of the Agreement. Execution of this Associate Membership Agreement and the Agreement shall satisfy the requirements of the Agreement and Article XII of the Bylaws of the Authority for participation by the City in all programs and other undertakings of the Authority.

Section 6. Counterparts. This Agreement may be signed in several counterparts, each of which shall be regarded as an original and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Associate Membership Agreement to be executed and attested by their proper officers thereunto duly authorized, on the day and year first set forth above.

**CALIFORNIA ENTERPRISE
DEVELOPMENT AUTHORITY**

By: _____
Gurbax Sahota, Chair
Board of Directors

Attest:

Michelle Stephens, Asst. Secretary

CITY OF LOS ANGELES, CALIFORNIA

By: _____
Eric Garcetti, Mayor

ATTEST: HOLLY L. WOLCOTT, CITY CLERK

By: _____
Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, CITY ATTORNEY

By: _____
Assistant City Attorney

Date: _____

CONTRACT NO. _____

ATTACHMENT D

Indemnification Agreement between City of Los Angeles and Figtree Company,
Inc.

INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE CITY OF LOS ANGELES AND
FIGTREE COMPANY, INC.

This Indemnification Agreement (the "Agreement") is entered into by and between the City of Los Angeles, a municipal corporation or political subdivision, duly organized and existing under the laws of the State of California (the "Public Entity") 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 Public Entity 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 Public Entity; and

WHEREAS, the legislative body of the Public Entity adopted or will adopt a resolution authorizing the Public Entity to join the Figtree PACE Program; and

WHEREAS, the Public Entity will not be responsible for the formation, operation and administration of the Figtree PACE Program as well as the sale and issuance of any bonds or other forms of indebtedness in connection therewith, including the conducting 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 Figtree PACE Program; and

WHEREAS, the Administrator is the administrator of the Figtree PACE Program and agrees to indemnify the Public Entity in connection with the operations of the Figtree PACE Program as set forth herein;

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

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

2. **Amendment/Interpretation of this Agreement.** This Agreement 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.

3. **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.

4. **Waiver.** No waiver of any of the provisions of this Agreement shall be binding unless in the form of 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.

5. **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.

6. **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

Figtree Company, Inc.
9915 Mira Mesa Blvd., Suite 130
San Diego, California 92131
Attn: Chief Executive Officer

If to the Public Entity:

City Administrative Officer
200 N. Main St., Room 1500
Los Angeles, CA 90012
Attention: Debt Manager

7. **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.

8. **Effective Date.** This Agreement will be effective as of the date of the signature of Public Entity's representative as indicated below in the signature block.

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

Figtree Company, Inc., a California corp.

By _____

Name: Mahesh Shah

Title: CEO

CITY OF LOS ANGELES, CALIFORNIA

By: _____
Eric Garcetti, Mayor

ATTEST: HOLLY L. WOLCOTT, CITY CLERK

By: _____
Deputy City Clerk

Date: _____

APPROVED AS TO FORM:

MICHAEL N. FEUER, CITY ATTORNEY

By: _____
Assistant City Attorney