

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RIVERSIDE, CALIFORNIA, AUTHORIZING THE CITY OF RIVERSIDE TO JOIN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY ("CEDA") TO CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE CITY OF RIVERSIDE; AND AUTHORIZING RELATED ACTIONS.

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

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

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

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

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

14 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Riverside,
15 California, as follows:

16 Section 1. Good Standing. The City is either a municipal corporation or other public
17 body and a member of CEDA in good standing.

18 Section 2. Public Benefits. On the date hereof, the City Council hereby finds and
19 determines that the Program and issuance of Bonds by CEDA in connection with Figtree PACE
20 will provide significant public benefits, including without limitation, savings in effective interest
21 rates, bond preparation, bond underwriting and bond issuance costs and reductions in effective
22 user charges levied by water and electricity providers within the boundaries of the City.

23 Section 3. Appointment of CEDA. The City hereby appoints CEDA as its
24 representative to (i) record the assessment against the Participating Parcels, (ii) administer the
25 District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the
26 California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law"), (iii)
27 prepare program guidelines for the operations of the Program and (iv) proceed with any claims,
28 proceedings or legal actions as shall be necessary to collect past due assessments on the properties

1 within the District in accordance with the Law and Section 6509.6 of the California Government
2 Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this
3 Resolution.

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

7 (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention
8 in substantially the form of the ROI;

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

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

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

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

25 Section 7. Indemnification. The City Council acknowledges that Figtree has provided
26 the City with an indemnification agreement, as shown in Exhibit B, for negligence or malfeasance
27 of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors
28 and agents. The City Council hereby authorizes the appropriate officials and staff of the City to

1 City Clerk of the City of Riverside

2 I, Colleen J. Nicol, City Clerk of the City of Riverside, California, hereby certify that the
3 foregoing resolution was duly and regularly adopted at a meeting of the City Council on the _____
4 day of _____, 2016, by the following vote, to wit:

5 Ayes:

6 Noes:

7 Absent:

8 Abstain:

9 IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the
10 City of Riverside, California, this _____ day of _____, 2016.

11
12 _____
13 COLLEEN J. NICOL
14 City Clerk of the City of Riverside
15

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EXHIBIT A

RESOLUTION NO.

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 RIVERSIDE.

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 Associate Membership Agreement between CEDA and the City of Riverside (the “City”), dated as of August 2010 (the “Agreement”); 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 City of Riverside (the “City”) located in the County of Riverside (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

1 Improvements to residential, commercial, industrial, or other real property, are
2 necessary to address the issue of global climate change and the reduction of
3 greenhouse gas emissions in the City.

4 (c) The upfront cost of making residential, commercial, industrial, or other real
5 property more energy and water efficient, along with the fact that most commercial
6 loans for that purpose are due on the sale of the property, prevents many property
7 owners from installing Authorized Improvements.

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

12 Section 2. Determination of Public Interest. The Board of Directors hereby determines
13 that (a) it would be convenient, advantageous, and in the public interest to designate an area, which
14 shall encompass the entire geographic territory within the boundaries of the City, within which
15 CEDA and property owners within the City may enter into contractual assessments to finance the
16 installation of Authorized Improvements pursuant to Chapter 29 and (b) it is in the public interest
17 for CEDA to finance the installation of Authorized Improvements in the City pursuant to Chapter
18 29.

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

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

25 Section 5. Proposed Financing Arrangements. Under Chapter 29, CEDA may issue bonds,
26 notes or other forms of indebtedness (the "Bonds") pursuant to Chapter 29 that are payable by
27 contractual assessments. Division 10 (commencing with Section 8500) of the Streets & Highways
28 Code of the State (the "Improvement Bond Act of 1915") shall apply to any indebtedness issued

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

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

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

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

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

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

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

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

- 26 a) A map showing the boundaries of the territory within which contractual
27 assessments are proposed to be offered, as set forth in Section 4 hereof.
28 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

1 shall be collected in the same manner and at the same time as the general taxes of the County on
2 real property are payable, and subject to the same penalties and remedies and lien priorities in the
3 event of delinquency and default.

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

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

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

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

17 PASSED AND ADOPTED ____ day of _____, 2016.

18
19 CALIFORNIA ENTERPRISE DEVELOPMENT
20 AUTHORITY

21 By: _____
22 Gurbax Sahota, Chair

23
24 ATTEST:

25 _____
26 Helen Schaubmayer, Assistant Secretary
27
28

EXHIBIT B
INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE CITY OF RIVERSIDE AND
FIGTREE COMPANY, INC.

This Indemnification Agreement (the “Agreement”) is entered into by and between the CITY OF RIVERSIDE, a charter city and municipal corporation, 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 of Riverside
3900 Main Street, 7th Floor
Riverside, CA 92522
Attn: City 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.

CITY OF RIVERSIDE, a California
charter city and municipal corporation

FIGTREE COMPANY, INC., a California
corporation

By: _____
City Manager

By: _____
Manesh Shah, CEO

Date: _____

Date: _____

Attest:

City Clerk

APPROVED AS TO FORM:

By: _____
Assistant Attorney Attorney