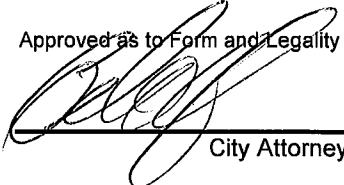


FILED
OFFICE OF THE CITY CLERK
OAKLAND

Approved as to Form and Legality



City Attorney

285 JUL 16 AM 8:31
OAKLAND CITY COUNCIL

RESOLUTION NO. 85762 C.M.S.

RESOLUTION AUTHORIZING THE CITY OF OAKLAND JOINING THE FIGTREE PACE PROGRAM FOR ALAMEDA COUNTY, AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (CEDA) TO ADMINISTER THE PACE PROGRAM IN THE CITY, AND AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE NECESSARY AGREEMENTS TO SUPPORT THE LAUNCH OF THE FIGTREE PACE PROGRAM

WHEREAS, the California Enterprise Development Authority (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 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 Board of Supervisors (the "Board of Supervisors") of the County of Alameda, a political subdivision of the State of California (the "County"), has adopted Figtree PACE pursuant to the Act; and

WHEREAS, the parameters of Figtree PACE are set forth in the Program Report and such Report has been prepared pursuant to Section 5898.22 of the Act and approved by the CEDA Board of Directors; and

WHEREAS, the City Council of the City of Oakland (the "City Council") has reviewed the Report;

WHEREAS, the 1915 Act authorizes CEDA to enter into contractual assessments with property owners located within incorporated cities in the County of Alameda upon the approval of the legislative body of the related city to participate in Figtree PACE; and

WHEREAS, the City of Oakland (the "City") desires to participate with the County in Figtree PACE, and provide for participation in Figtree PACE by property owners located within City limits; and

WHEREAS, pursuant to Chapter 29, the City authorizes CEDA to 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, Figtree Energy Financing, the program administrator, has agreed to defend and indemnify the City; and

WHEREAS, the City will not be responsible for 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; and

WHEREAS, 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; and

WHEREAS, the 1915 Act permits foreclosure in the event that there is a default in the payment of assessments due on a property; and

WHEREAS, the City is a municipal corporation in good standing; and

WHEREAS, 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; therefore, be it:

RESOLVED, the City Council hereby agrees to participate in the Figtree PACE program, and approves the inclusion in Figtree PACE all of the properties in the incorporated area within the City, the acquisition, construction and installation within City limits of the energy and water efficiency measures upon the request and agreement of the affected property owner, and the assumption of jurisdiction thereof by CEDA for the aforesaid purposes. This City Council further authorizes CEDA to set the terms of, and implement, Figtree PACE and take each and every action necessary or desirable for financing the Improvements, including the levying, collecting and enforcement of the contractual assessments to finance the Improvements and the issuance of bonds, notes or other forms of indebtedness secured by such contractual assessments as authorized by Chapter 29; and be it

FURTHER RESOLVED, 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.)), (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; and be it

FURTHER RESOLVED, the City Council hereby authorizes the City Administrator or her designee to execute the Indemnification Agreement to Figtree; and be it

FURTHER RESOLVED, this Resolution does not constitute a project under the California Environmental Quality Act; and be it:

FURTHER RESOLVED, the City Administrator or her designee is hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements.

SEP 08 2015

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, CAMPBELL WASHINGTON, GALLO, GUILLEN, KALB, KAPLAN, ~~REID~~, and PRESIDENT GIBSON MCELHANEY - 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Reid - 1

ATTEST: _____



LaTonda Simmons

City Clerk and Clerk of the Council
of the City of Oakland, California

EXHIBIT A
INDEMNIFICATION AGREEMENT

This Indemnification Agreement (the "Agreement") is entered into by and between the City of Oakland, California, 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; therefore, 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 Oakland
One Frank H. Ogawa Plaza
Oakland, CA 94612
Attn: City Clerk

- 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.

APPROVED AS TO FORM:

Public Entity Attorney
Public Entity Name

City of Oakland

By _____

Name: _____

Title: _____

Date: _____

Figtree Company, Inc., a California corp.

By

Name: Mahesh Shah

Title: CEO

Date: _____