

# CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

## REGULAR MEETING \*\*\*TELECONFERENCE MEETING NOTICE and AGENDA\*\*\* LOCATIONS LISTED BELOW

10:30 A.M.

Thursday, March 17, 2016

Teleconference Phone Information

(712) 775-7031 - Conference Code: 895081223

### Call to Order and Roll Call Statement of Disclosure

### Action Items

1. Approve Minutes from the Regular Meeting on March 10, 2016.
2. Approve the amendment of the Program Administration Agreement between the Authority and Figtree Company, Inc.

### Public Comment Chair Report PACE Report Other Business Adjournment

Members of CEDA and members of the public may access this meeting at the following locations:

California Association for Local  
Economic Development  
(contact Gurbax Sahota  
or Helen Schaubmayer)  
550 Bercut Drive, Suite G  
Sacramento, CA 95811

City of Vista  
(contact Kevin Ham or  
Reception)  
200 Civic Center Dr.  
Vista, CA 92084

Economic Development Collaborative-  
Ventura County  
(contact Bruce Stenslie  
or Kelly Noble)  
1601 Carmen Drive, #215  
Camarillo, CA 93010

City of Santa Clarita  
(contact Jason Crawford or  
Marilyn Sourgose)  
23920 Valencia Blvd., Suite 100  
Santa Clarita, CA 91355

Fresno State  
(contact Mike Dozier or Reception)  
550 East Shaw Ave., Suite 230  
Fresno, CA 93710

Los Angeles EDC  
(contact Carrie Rogers or  
Linden Johnson)  
444 S. Flower St., 37<sup>th</sup> Floor  
Los Angeles, CA 90071

Southern California Edison,  
Economic Development Services  
(contact Mike Nuby by phone:  
626-812-7351)  
6040-B N. Irwindale Ave.  
Irwindale, CA 91702

This agenda can be obtained at [www.ceda.caed.org](http://www.ceda.caed.org). The California Enterprise Development Authority complies with the Americans with Disabilities Act (ADA) by ensuring that the facilities are accessible to persons with disabilities and by providing this notice and information in alternative formats when requested. If you need further assistance, you may contact us before the meeting at (916) 448-8252, ext. 16.

# CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

## MINUTES

### Regular Meeting

\*\*\*TELECONFERENCE MEETING \*\*\*

### CEDA BOARD OF DIRECTORS

Thursday, March 10, 2016

#### Teleconference Locations

California Association for Local  
Economic Development  
550 Bercut Drive, Suite G  
Sacramento, CA 95811

City of Santa Clarita  
23920 Valencia Blvd., Suite 100  
Santa Clarita, CA 91355

City of Vista  
200 Civic Center Dr.  
Vista, CA 92084

Fresno State  
550 East Shaw Ave., Suite 230  
Fresno, CA 93710

Economic Development Collaborative-  
Ventura County  
1601 Carmen Drive, #215  
Camarillo, CA 93010

Los Angeles EDC  
444 S. Flower St., 37th Floor  
Los Angeles, CA 90071

Southern California Edison,  
Economic Development Services  
6040-B N. Irwindale Ave.  
Irwindale, CA 91702

#### Call to Order

Gurbax Sahota Board Chair of the California Enterprise Development Authority, called the meeting to order at 10:32 am.

#### Roll Call

Members Present: Jason Crawford  
Mike Dozier  
Kevin Ham  
Mike Nuby  
Gurbax Sahota  
Bruce Stenslie

CALED Management/Staff

Present: Jillian Boyd  
Helen Schaubmayer

Public Present: Sam Balisy  
Mahesh Shah

#### Statement of Disclosure

None

#### Action Items

1. Approve Minutes from the Regular Meeting on February 25, 2016.

**Motion:** Board Member Kevin Ham made the motion to approve minutes from the regular meeting on February 25, 2016. Board Member Bruce Stenslie seconded the motion on the floor. The motion passed with the following roll call vote:

Jason Crawford	Aye
Mike Dozier	Aye
Kevin Ham	Aye
Mike Nuby	Aye
Gurbax Sahota	Aye
Bruce Stenslie	Aye

2. Approve Resolution 16-44 of the California Enterprise Development Authority Authorizing the Issuance and Sale Of California Enterprise Development Authority Variable Rate Revenue Bonds (Frank-Lin Distillers Products, Ltd. Project), Series 2016, for the Purpose of Refinancing Facilities for the Benefit of the LBM Partnership, LP, a California Limited Partnership, and/or a Related or Successor Entity; Providing the Terms and Conditions for the Sale and Issuance of Said Bonds and Other Matters Relating Thereto and Authorizing the Execution of Certain Documents Herein Specified.

**Motion:** Board Member Mike Dozier made the motion to approve Resolution 16-44. Board Member Jason Crawford seconded the motion on the floor. The motion passed with the following roll call vote:

Jason Crawford	Aye
Mike Dozier	Aye
Kevin Ham	Aye
Mike Nuby	Aye
Gurbax Sahota	Aye
Bruce Stenslie	Aye

**Discussion:** Helen briefed the Board on the the company. Frank-Lin, which opened its doors in 1966, has been a leader in the beverage alcohol field. Helen stated the company's facility is located in Fairfield and their original financing was in 2010 and with this deal they will go from a letter of credit mode to private placement mode for a variable rate bond issue. Sam Balisy mentioned Frank-Lin benefitted from the proceeds of the reallocated Recovery Zone Facility Bonds in 2010.

3. Approve Resolution 16-45 of the California Enterprise Development Authority Authorizing and Approving a Loan Agreement Pursuant to Which the California Enterprise Development Authority Will Make a Loan for the Purpose of Financing and Refinancing the Cost of Acquisition, Installation and Equipping of Certain Facilities for the Benefit of Horizon Christian Fellowship Rancho Santa Fe, Providing the Terms and Conditions for Such Loan Agreement and Other Matters Relating Thereto Herein Specified.

**Motion:** Board Member Kevin Ham made the motion to approve Resolution 16-45. Board Member Mike Dozier seconded the motion on the floor. The motion passed with the following roll call vote:

Jason Crawford	Aye
Mike Dozier	Aye
Kevin Ham	Aye
Mike Nuby	Aye

Gurbax Sahota	Aye
Bruce Stenslie	Aye

**Discussion:** Helen briefed the Board on the Horizon Christian Fellowship Rancho Santa Fe. The organization is a nonprofit religious corporation that operates Horizon Prep, a coed non-denominational college preparatory school located in Rancho Santa Fe. This deal would refinance the amount outstanding under the Master Loan Agreement dated November 2010 (new interest rate, 3.6 percent) and add an additional \$800,000 for the acquisition, construction, equipping and furnishing of Horizon Prep educational facilities under the terms of the 2010 loan, plus additional facility work.

4. Approve Resolution 16-46 Approving Associate Membership of the City of Benicia in the California Enterprise Development Authority and the Execution of Associate Membership Agreements Relating to said Associate Membership.
5. Approve Resolution 16-47 Approving Associate Membership of the Town of Colma in the California Enterprise Development Authority and the Execution of Associate Membership Agreements Relating to said Associate Membership.

**Motion:** Board Member Mike Dozier made the motion to approve Resolutions 16-46 – 16-47. Board Member Bruce Stenslie seconded the motion on the floor. The motion passed with the following roll call vote:

Jason Crawford	Aye
Mike Dozier	Aye
Kevin Ham	Aye
Mike Nuby	Aye
Gurbax Sahota	Aye
Bruce Stenslie	Aye

**Discussion:** Helen briefed the Board that both of these jurisdictions were brought to CEDA from Figtree Financing based on their intentions to join the PACE Program.

6. Approve Resolution 16-48 and Declaring Intention to Finance Installation of Distributed Generation Renewable Energy Sources, Energy Efficiency, and Water Efficiency Improvements in the City of Benicia.

**Motion:** Board Member Mike Nuby made the motion to approve Resolution 16-48. Board Member Jason Crawford seconded the motion on the floor. The motion passed with the following roll call vote:

Jason Crawford	Aye
Mike Dozier	Aye
Kevin Ham	Aye
Mike Nuby	Aye
Gurbax Sahota	Aye
Bruce Stenslie	Aye

**Discussion:** Helen briefed the Board this is the first step in a two-step process necessary for the implementation of the PACE Program in the participating member jurisdiction.

7. Approve \$5,000 to fund scholarships to defray the cost of attending the CALED Annual Conference for individuals from CEDA member jurisdictions who could not otherwise attend the CALED Annual Conference.

**Motion:** *Board Member Kevin Ham made the motion to approve \$5,000 to fund scholarships to defray the cost of attending the CALED Annual Conference. Board Member Mike Nuby seconded the motion on the floor. The motion passed with the following roll call vote:*

Jason Crawford	Aye
Mike Dozier	Aye
Kevin Ham	Aye
Mike Nuby	Aye
Gurbax Sahota	Aye
Bruce Stenslie	Aye

**Discussion:** Gurbax briefed the Board that the scholarships are a way to give back to economic development. The scholarship money will reimburse attendee's travel. Gurbax stated the amount will allow for ten scholarships.

**Public Comment**

**Chair Report**

Gurbax stated on March 15, 2016 she will attend a meeting with CIDFAC to discuss a more transparent review of the IDB approval process. Gurbax stated that next week there will be a CEDA call to discuss the amended program agreement with Figtree Financing. Mahesh briefed the board on company plans once the equity investment is complete plus the status of the commercial bond issuance pipeline. Helen briefed the Board on her attendance to PACE Nation in Denver. Helen reminded the Board to sign and mail in their annual Form 700.

**PACE Report**

**Other Business**

**Adjournment**

**Motion:** *Board Member Jason Crawford moved to adjourn the meeting. Board Member Mike Nuby seconded the motion. The motion passed unanimously by voice vote.*

Board Chair, Gurbax Sahota adjourned the meeting at 11:00 am.

## Staff Report

<b>Action Requested</b>	Approve the amendment of the Program Administration Agreement between the Authority and Figtree Company, Inc.
<b>Staff Discussion</b>	The revised Figtree/CEDA Program Administration Agreement addresses the following:  <ol style="list-style-type: none"><li>1. Changes to Term and Termination provisions.</li><li>2. Figtree reimbursement of certain CEDA staff payroll costs.</li><li>3. Strengthen confidentiality, intellectual property, data compilation and records maintenance provisions.</li><li>4. Adjusting Figtree Program revenues for the anticipated launch of a residential PACE product.</li></ol>
<b>Recommendation</b>	Staff recommends approving the amendment of the Program Administration Agreement between the Authority and Figtree Company, Inc.

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**PROGRAM ADMINISTRATION AGREEMENT**

by and between

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY,**  
as Authority

and

**FIGTREE COMPANY, INC.**

Dated as of [DATE]

## Table of Contents

	Page
Section 1. Services.....	1
Section 2. Cost of Services and Figtree Compensation.....	1
Section 3. Term and Termination of Agreement.....	2
Section 4. Indemnification .....	3
Section 5. Insurance.....	3
Section 6. Intellectual Property .....	3
Section 7. Default .....	3
Section 8. Notice .....	4
Section 9. Compliance With Law .....	4
Section 10. Nondiscrimination.....	4
Section 11. Figtree and Each Subcontractor Are Independent Contractors.....	5
Section 12. Severability .....	5
Section 13. Entire Agreement .....	5
Section 14. Amendment or Modification.....	5
Section 15. Governing Law; Venue.....	5
Section 16. Non-Waiver.....	6
Section 17. Assignment, Subcontracting and Outsourcing.....	6
Section 18. Representations of Parties.....	6
Section 19. Execution in Counterparts.....	6
Section 20. Effectiveness of Agreement; Successors and Assigns.....	6
Section 21. Conflicts of Interest .....	6
Section 22. Consequential Damages and Limitation of Liability.....	6
Section 23. Appointment of Bond Counsel and Underwriters .....	7
Section 24. Periodic Reporting on Progress, Strategy and Alignment .....	7
Section 25. Periodic Review of Fee Structure.....	7
Section 26. No Third Party Beneficiaries .....	7
EXHIBIT A	SCOPE OF SERVICES
EXHIBIT A-1	WILLDAN FINANCIAL SERVICES (SUBCONTRACTOR) SCOPE OF SERVICES
EXHIBIT B	FIGTREE PACE PROGRAM REVENUES
EXHIBIT C	INSURANCE REQUIREMENTS



## PROGRAM ADMINISTRATION AGREEMENT

**THIS PROGRAM ADMINISTRATION AGREEMENT** (this "Agreement") is made and entered into effective as of [DATE], by and between the **CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY** (the "Authority"), a California joint powers authority, and **FIGTREE COMPANY, INC.**, a California Corporation ("Figtree"). The Authority and Figtree are each referred to herein as a "Party" and, together, the "Parties". This Agreement supersedes in its entirety that certain Agreement for Professional Services, dated as of January 1, 2014 by and between the Authority and Figtree (the "Original Agreement"), which the Parties agree is terminated as of the effective date hereof. The Exhibits to this Agreement are incorporated herein by reference.

WHEREAS, the Parties desire to work together to establish the Program (as defined below) and to administer and operate the Program; and

WHEREAS, the Parties desire to set forth their respective rights, duties and obligations with respect to the Program and their roles related thereto.

NOW, THEREFORE, in consideration of the payments, covenants, conditions and agreements contained in this Agreement, the Parties agree as follows:

**Section 1. Services.** (a) The Authority hereby retains Figtree to implement its proprietary PACE program (the "Figtree Program" or the "Program") and provide the Program administration services for the Authority's approved Property Assessed Clean Energy ("PACE") jurisdictions. The specific services (the "Services") to be provided are set forth in the Scope of Services attached hereto as Exhibit A (the "Scope of Services"). Figtree hereby agrees to perform the Services in accordance with the terms of this Agreement.

(b) The Authority agrees to cooperate with Figtree in enhancing and promoting the Program as the Board of Directors of the Authority may from time to time deem reasonable and appropriate.

(c) Notwithstanding anything contained in this Agreement to the contrary, this Agreement relates solely to the provision of the Services in the State of California and not any other jurisdiction. The Authority agrees that it will not retain any other service provider other than Figtree to perform any of the Services with respect to any projects within the State of California eligible for financing under the Program. In the event that the Authority is contacted directly by a property owner seeking to obtain PACE-assessment financing for a project within the State of California eligible for financing under the Program, the Authority shall refer the property owner to Figtree for implementation of the project by Figtree in accordance with the Figtree Program and this Agreement. Nothing in this Agreement shall be deemed to preclude the Authority from financing individual projects proposed to the Authority independently of Figtree in a manner other than pursuant to the Program if the relevant property owner elects to pursue financing that is not based on a PACE voluntary assessment program. Figtree agrees that it will not be involved in any PACE financings with any joint powers authority or statewide issuer in California, other than the Authority, until the earlier of the termination of this Agreement or until such time as one party has given the other a notice of its intention to not renew this Agreement pursuant to Section 3(b) hereof.

## **Section 2. Cost of Services and Figtree Compensation.**

(a) Figtree will provide the Services at no cost to the Authority and its member agencies. Figtree and the Authority will earn fees from the Program as described in Exhibit B, and such fees, the exclusive purchase right set forth in Section 2(b) below and the rights to Carbon Credits set forth in Section 2(c) below will be Figtree's compensation for its provision of the Services. Figtree agrees to reimburse the Authority for payroll expenses of staff performing work related to the Figtree Program subject to: i) Figtree's approval of the specific staff assigned to this role (or an applicable portion of such person's time); and ii) the annualized payroll expense per staff person not exceeding \$75,000. Figtree will make the payroll reimbursement payments to the Authority on a monthly basis, and in advance, upon receipt of an invoice from the Authority detailing the reimbursable payroll expense for the prospective month.

(b) The Authority hereby grants Figtree the exclusive right to purchase all PACE Assessment Contracts, and all Bonds secured by PACE Assessment Contracts (together "Financing Instruments") issued by the Authority with respect to projects originated by Figtree under the Program at a purchase price equal to the principal amount of such Financing Instruments, and Figtree may assign such right to investors or other third parties, provided that any purchaser of the Financing Instruments meets the Authority's eligibility requirements. The Authority and Figtree, each acting solely in their own discretion, may mutually agree on a case-by-case basis to make exceptions to this exclusive purchase right in cases where the relevant property owner requests the right for itself, an affiliate, or a third-party buyer arranged by such property owner to purchase a Financing Instrument backed by a PACE assessment on its property.

(c) Where applicable, Figtree shall administer the accumulation and aggregation of the green attributes, carbon credits and GHG offsets ("Carbon Credits") that result from projects financed through the Program. Figtree shall coordinate the assignment of rights from property owners to Figtree. At the end of each calendar year, Figtree shall assign 50% of accumulated Carbon Credits to the Authority; provided that in connection with such assignment Figtree will provide no representations or warranties other than with respect to organization, authority and title to the Carbon Credits. The Authority shall have the right to sell, assign or transfer its portion of the Carbon Credits as it deems appropriate. If and when Figtree sells the Carbon Credits it owns, it shall provide the first right of refusal to businesses in California.

## **Section 3. Term and Termination of Agreement.**

(a) The term of this Agreement shall commence on the effective date hereof and shall remain in effect until December 31, 2021 (the "Initial Term"). The term of this Agreement shall renew automatically for successive five-year terms (the Initial Term, collectively with any applicable renewal terms, the "Term") through December 31, 2031, unless terminated in accordance with Sections 3(b) or (c) below.

(b) After the Initial Term, either Party may notify the other of its intent to terminate this Agreement upon notice of at least 2 years and 3 month prior to the proposed date of termination. In such event, this Agreement will terminate at the date designated therefore in such notice and the Transition Period (as defined below) will commence 2 years prior to the termination of the then-current Term.

(c) This Agreement may be terminated by the Authority (i) upon the occurrence and during the continuance of an Event of Default by Figtree as provided in Section 7 hereof, (ii) a breach by Figtree of a written policy of the Authority that has a material detrimental effect on the Authority; provided that Figtree had received prior written notice of such policy or (iii) any fraudulent, unlawful, grossly negligent, dishonest or willful misconduct engaged in by Figtree. This Agreement may be terminated by Figtree upon the occurrence and during the continuance of an Event of Default by the Authority as provided in Section 7.

(d) Following notice of termination of this Agreement, the Parties will use commercially reasonable efforts to effect a smooth termination of the Program or transition to another program administrator in a professional manner during a transition period (the "Transition Period") of 180 days following the date of the notice of termination.

(e) A termination of this Agreement under any circumstances shall not affect any obligation to pay or entitlement to receive any amounts in accordance with this Agreement, any Master Assignment Agreements and related Supplemental Assignment Agreements, (together, the "Assignment Agreements") or any Master Indenture and related Supplemental Indentures (together, the "Indentures"), including Cost of Issuance Fees, Management Fees and Cost Recovery Fees (as such Fees are further described in Exhibit B) (i) owing by either Party to the other or (ii) owing to Figtree from administrative charges as contemplated by Exhibit B, the entitlement to which arose prior to the effective date of such termination, including, for the avoidance of doubt, all Program Fees to which Figtree is entitled pursuant to Exhibit B with respect to Financing Instruments issued prior to the effective date of termination, including during any applicable Transition Period.

(f) The provisions of Sections 3 and 4 shall survive expiration or termination of this Agreement.

**Section 4. Indemnification.** Figtree shall defend, indemnify and hold harmless the Authority, its officers, employees, representatives, and agents (each an "Indemnified Party") from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, to which any Indemnified Party may become subject under any law (including federal or state securities laws) or at common law or otherwise, arising out of this Agreement, the Program, the Assessments, the Assessment Districts, the Improvements or the financing and marketing thereof, except to the extent due to malfeasance or bad faith by the Authority. This Section shall survive the termination of this Agreement.

**Section 5. Insurance.** Figtree shall maintain insurance as set forth in Exhibit C to this Agreement throughout the term of this Agreement.

**Section 6. Confidentiality, Intellectual Property, Data Compilation and Records Maintenance.**

a) *Confidentiality.* Except as otherwise set forth in this Agreement, all ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other documents and data provided by either Party to the other Party (including any copies or manuscripts of such information produced by a Party pursuant to this Agreement) or otherwise including any financial structure and financing approach in connection with the performance of this Agreement shall be held confidential by the other Party. Nothing furnished to either Party which is otherwise known

to the receiving Party prior to such disclosure or is generally known, or has become known, to the related industry, and nothing that is subject to the California Public Records Act, shall be deemed confidential. Notwithstanding the above, any documents prepared for the Figtree Program that are intended to be provided to the public shall not be subject to the limitations of this Section.

b) Intellectual Property. The Authority expressly acknowledges and agrees that any and all computer software, and all source code thereof, trademarks and marketing collateral used or developed by Figtree ("Proprietary Property") in performing the Services is proprietary and Figtree, or its licensors, shall at all times exclusively own all rights, title, and interest in such Proprietary Property, including all intellectual property rights contained therein. However, such computer software shall be made available to the Authority at no cost to the extent necessary to manage the Program or examine, review or audit Program records and documents. Figtree shall not obtain any rights to trademarks, copyrights or other intellectual property of the Authority or CalEd. Figtree shall not use the Authority's name or insignia in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of the Authority.

c) Data Compilation. The Authority acknowledges and agrees that Figtree, or its licensors, will have spent substantial time and effort in collection and compiling data and information (the "Data Compilations") in connection with the Services and that such Data Compilations may be used by Figtree (or such licensors) for their own purposes, including, without limitation, sale or distribution to third parties; provided, however, that Figtree will not, and shall ensure that its licensors will (i) not, sell or distribute any of the Authority's confidential information that may be contained in such Data Compilations, unless such confidential information is used only on an aggregated and anonymous basis and (ii) comply with all applicable law in connection with such disclosure.

d) Records Maintenance. Figtree shall maintain complete and accurate records, consistent with its records retention policy, but in no event for less than three years after repayment in full of any project financed under the Figtree Program. All such records shall be clearly identifiable. Figtree shall, at reasonable times and upon reasonable notice, allow a representative of the Authority and/or its agent during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Figtree shall, at reasonable times and upon reasonable notice, allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. At the expiration or termination of this Agreement, Figtree shall provide the Authority a full, complete and correct copy of all record maintained by Figtree in connection with the Program in such format as may be reasonably requested by the Authority.

## **Section 7. Default.**

(a) An event of default (an "Event of Default") under this Agreement shall mean, with respect to either Party, the material failure or delay by such Party to perform any material term of this Agreement; provided, however, that if the Party that is otherwise claimed to be in default by the other Party commences to cure, correct or remedy the alleged default within 30 calendar days after receipt of written notice specifying such default and completes such cure, correction or remedy within 60 calendar days after receipt of such written notice, such Party shall not be deemed to be in default hereunder.

(b) Delay in giving a written notice contemplated by Section 7(a) above shall not constitute a waiver of any default nor shall it change the time of default; provided, however, that the other Party shall have no right to exercise any remedy for an Event of Default hereunder without delivering the written default notice, as specified herein.

**Section 8. Notice.** All notices given hereunder shall be in writing. Notices shall be presented in person or by certified or registered United States Mail, return receipt requested, postage prepaid or by overnight delivery by a nationally recognized delivery service to the addresses set forth below. Notice presented by United States Mail shall be deemed effective on the third business day following the deposit of such Notice with the United States Postal Service. This Section 8 shall not prevent the Parties hereto from giving notice by personal service or telephonically verified electronic mail, which shall be deemed effective upon actual receipt of such personal service or telephonic verification. Either Party may change their address for receipt of written notice by notifying the other Party in writing of a new address for delivering notice to such Party:

to Figtree:                      Figtree Company, Inc.  
Suite 130  
9915 Mira Mesa Boulevard  
San Diego, CA 92131  
Attention: Mahesh Shah, CEO  
[Email: mshah@figtreefinancing.com](mailto:mshah@figtreefinancing.com)

to Authority:                    California Enterprise Development Authority  
Suite G  
550 Bercut Drive  
Sacramento, CA 95814  
Attention: Chair of the Board  
[Email: gsahota@caled.org](mailto:gsahota@caled.org)

**Section 9. Compliance With Law.** Figtree shall comply with all local, state, and federal laws, including, but not limited to, environmental acts, rules and regulations applicable to the work to be performed by Figtree under this Agreement. Figtree shall maintain all necessary licenses and registrations for the lawful performance of the work required of Figtree under this Agreement.

**Section 10. Nondiscrimination.** Figtree shall not discriminate against any person on the basis of race, color, creed, religion, natural origin, ancestry, sex, marital status or physical handicap in the performance of the Scope of Services of this Agreement. Without limitation, Figtree hereby certifies that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, marital status of national origin. Further, Figtree shall promote affirmative action in its hiring practices and employee policies for minorities and other designated classes in accordance with federal, state and local laws. Such action shall include, but not be limited to, the following: recruitment and recruitment advertising, employment, upgrading and promotion. In addition, Figtree shall not exclude from participation under this Agreement any employee or applicant for employment on the basis of age, handicap or religion in compliance with State and federal laws.

**Section 11. Figtree and Each Subcontractor Are Independent Contractors.** Figtree shall at all times during the performance of any work described in the Scope of Services be

deemed to be an independent contractor. Neither Figtree nor any of its subcontractors shall at any time or in any manner represent that it or any of its employees are employees of the Authority or any member agency of the Authority. The Authority shall not be requested or ordered to assume any liability or expense for the direct payment of any salary, wage or benefit to any person employed by Figtree or its subcontractors to perform any item of work described in the Scope of Services. Under no circumstances shall the Authority be deemed to be an employer, partner, joint venturer, agent or principal of Figtree or any of Figtree's employees. Neither Figtree, nor any of Figtree's employees, shall be entitled to any benefits from or on behalf of the Authority, including without limitation worker's compensation, disability, unemployment, or paid time off Figtree shall be responsible for providing, at Figtree's expense, and in Figtree's own name, unemployment, disability, worker's compensation and other insurance covering Figtree and its employees, as well as all licenses and permits necessary for conducting the services under this Agreement.

**Section 12. Severability.** Each and every section of this Agreement shall be construed as a separate and independent covenant and agreement. If any term or provision of this Agreement or the application thereof to certain circumstances shall be declared invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 13. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties. This Agreement supersedes all prior negotiation, discussions and agreements between the Parties concerning the subject matters covered herein, including without limitation the Original Agreement. The Parties intend this Agreement to be the final expression of their agreement with respect to the subjects covered herein and a complete and exclusive statement of such terms.

**Section 14. Amendment or Modification.** This Agreement may only be modified or amended by written instrument duly approved and executed by each of the Parties. Any such modification or amendment shall be valid, binding and legally enforceable only if in written form and executed by each of the Parties, following all necessary approvals and authorizations for such execution.

**Section 15. Governing Law; Venue.** This Agreement shall be governed by the laws of the State of California. Any legal action arising from or related to this Agreement shall be brought in the Superior Court of the State of California in and for the County of Sacramento.

**Section 16. Non-Waiver.** Failure of either Party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the same provision or any remaining provisions of this Agreement.

**Section 17. Assignment, Subcontracting and Outsourcing.** This Agreement may not be assigned by Figtree without the prior written consent of the Authority in its sole and complete discretion. Figtree may not subcontract or outsource to any third party all or a portion of the Services without the prior reasonable written consent of the Authority, provided that Figtree shall remain primarily responsible for any work performed pursuant to any subcontract. The Outsourcing Agreement described in Exhibit A-1 is approved by the Authority.

**Section 18. Representations of Parties.** Each Party has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each Party executing this Agreement represents and warrants that the individuals who have signed this Agreement on its behalf are duly authorized to execute this Agreement.

**Section 19. Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which will constitute an original.

**Section 20. Effectiveness of Agreement; Successors and Assigns.** This Agreement shall not be binding on the Parties until signed by an authorized representative of Figtree, approved by the Authority's Board of Directors and executed by the Chair of the Board of Directors of the Authority or his designee. This Agreement shall be binding on the successors and assigns of the Parties.

**Section 21. Conflicts of Interest.** During the Term, Figtree shall disclose to the Authority the existence of any financial or personal interest in the Authority or any of the Authority's directors, officers or employees of Figtree or any Figtree director, stockholder, officer, employee, representative or subcontractor, including such persons' immediate family members (spouse and children, including adult children). Any such potential or actual conflict of interest shall be evaluated by the Authority in accordance with its conflicts of interest policy then in effect. As used herein, personal interests are interests or relationships that may appear to affect independent, unbiased judgment when participating in the decision making process on behalf of the Authority, where such decisions could materially benefit an individual's convictions or beliefs rather than the stated mission and best interests of the Authority. As used herein, financial interests are if a person has, directly or indirectly, through business, investment, or family, (a) an ownership or investment interest (more than 5%) in any entity with which the Authority has a transaction or arrangement, (b) a compensation arrangement with the Authority or with any entity or individual with which the Authority has a transaction or arrangement, or (c) a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Authority is negotiating a transaction or arrangement.

**Section 22. Consequential Damages and Limitation of Liability.** The Authority and Figtree agree that in no event will either be liable to the other under this Agreement for any special damages, loss of revenue, loss of profit, operating costs or business interruption losses, regardless of cause, including breach of contract, negligence, strict liability or otherwise. The limitations and exclusions of liability set forth in this Section 22 shall apply regardless of fault, breach of contract, tort, strict liability or otherwise of Figtree and the Authority, their employees, directors, officers, stockholders, agent, representatives or subcontractors.

**Section 23. Appointment of Bond Counsel and Underwriters.** Figtree has organized a team of professionals including bond counsel, structuring counsel, investment banking advisors and an underwriter to facilitate a standardized, efficient and scalable financing product. Figtree may from time to time evaluate and modify the team members to maintain commercial viability of the Program. Figtree shall submit its evaluation and recommendation of Figtree's team members to the Authority for the Authority's reasonable approval and the Authority agrees to approve or reject said recommendation within 30 days of Figtree's request for approval.

**Section 24. Periodic Reporting on Progress, Strategy and Alignment.** During the term of this Agreement, appropriate representatives of Figtree and the Authority will meet in

person or by telephone, as mutually agreed by the parties from time to time, at least once per month to review the progress with member agencies, the amount of financings under Figtree's Program, strategic plans, marketing programs, partnership opportunities and other matters relevant to the success of the joint initiatives described herein. Failure to meet during one month shall not constitute a default hereunder as long as each party sets a time and date to meet that is mutually agreeable.

**Section 25. Periodic Review of Fee Structure.** The parties agree to review the fees paid hereunder annually during the month of December for the term of this Agreement. The Parties agree to negotiate increases or decreases in fees hereunder in good faith based upon current market rates and to amend or cause to be amended the Indenture to give effect to any such increases or decreases. It is expected that fees hereunder shall not increase or decrease more than 10% per year.

**Section 26. No Third Party Beneficiaries.** Except as set forth in Section 4 with respect to the Indemnified Parties, there are no intended third party beneficiaries of any right or obligation assumed by the Parties.

[Remainder of page intentionally left blank]



**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the date set forth above.

**CALIFORNIA ENTERPRISE  
DEVELOPMENT AUTHORITY**

**FIGTREE COMPANY, INC.**

## EXHIBIT A

### SCOPE OF SERVICES

#### Section 1. Services Performed by Figtree.

(a) ***PACE Assessment District Formation.*** Figtree shall conduct the PACE program outreach efforts of educating, promoting and corresponding with cities and counties (each, a "Public Entity") in California to assist in their participation in the Figtree PACE program. Figtree shall work with the Authority and the Bond Counsel to prepare the necessary documents, resolutions and reports required for the formation of the PACE assessment district consistent with, and the continued compliance of the Program with, California Streets and Highways Code beginning with Sections 5898.10 (originally approved under Assembly Bill 811). The aforementioned documents shall be as follows:

- (i) the Figtree PACE Program Report updated from time to time;
- (ii) the resolutions for a Public Entity authorizing the implementation of the Figtree PACE Program in its jurisdiction;
- (iii) the utility notices;
- (iv) the Authority resolutions of intention for district formation and for public hearing;
- (v) voluntary assessment contracts;
- (vi) assessment district liens;
- (vii) applicable disclosure related to the PACE financings; and
- (viii) published notices in the appropriate newspapers of general circulation;

(b) ***Property Owner and Contractor Services.*** Figtree shall provide the following customer service, administrative and closing services to eligible property owners and contractors to effect implementation and furtherance of the Program. Such property owner and contractor services shall be:

- (i) Presence on the Internet to provide up-to-date program materials and information including an electronic form of application for PACE financing for a property owner, an electronic form of application for participation in the Program as a registered contractor, disclosures and frequently asked questions;
- (ii) A database of registered contractors accessible through the Internet;
- (iii) An Internet-accessible estimating tool to calculate the approximate cost of PACE financing;

- (iv) Processing of property owners' applications for PACE financing and approval or denial of applications based on eligibility requirements;
- (v) Assisting property owners in obtaining written acknowledgment of existing mortgage lenders to the levying of commercial PACE assessments;
- (vi) Closing of PACE financing and recording the PACE liens;
- (vii) Making requisitions to a paying agent or trustee to disburse improvement funds per Assignment Agreements or Indentures, where applicable;
- (viii) Processing contractor application pursuant to the Program guidelines
- (ix) Develop and maintain quality control system to ensure contractors are accurately representing the terms of the Program to property owners;
- (x) Ensure compliance with any applicable consumer protection rules, laws and industry standards or regulations; and
- (xi) Live customer support with a toll-free phone number for property owner and contractor inquiries available at least during normal business hours.

(c) ***Bond Administration Services.*** Figtree shall provide bond administration services to the Authority and has contracted with Willdan Financial Services ("Willdan") to provide certain of these services as a subcontractor. If Willdan can no longer provide these services, Figtree shall be responsible for performing the services or finding a comparable replacement. Figtree shall indemnify the Authority in accordance with and as contemplated by Section 4 of the Agreement with respect to these services. The bond administration services shall be:

- (i) Maintain a database of the parcels that have received Figtree PACE Financing along with the relevant data for each parcel;
- (ii) Establish and maintain amortization schedules for each parcel;
- (iii) Request the placement of the annual assessment levy on the Secured County Property Tax Roll through the County Auditor-Controller;
- (iv) Review county records on each January 31<sup>st</sup> and May 31<sup>st</sup> to determine delinquency;
- (v) Begin delinquency control process including the commencement of the foreclosure of defaulting properties; and
- (vi) Provide live customer service support with a toll-free phone number to field inquiries from property owners and other interested parties.

The complete Scope of Services and Fees for services agreed upon between Figtree and Willdan are provided in Exhibit A-I (attached hereto).

Any contract entered into by Figtree with respect to Bond Administration Services, including, but not limited to contracts with Willdan and any indenture trustee with respect to the financings of the Program, shall be assignable to the Authority or its assignee upon the termination or expiration of this Agreement.

## EXHIBIT A-1

### WILLDAN FINANCIAL SERVICES (SUBCONTRACTOR) SCOPE OF SERVICES

#### Section 1. Basic Assessment District Services.

Figtree and Willdan Financial Services ("Willdan") have entered into an outsourcing agreement (the "Outsourcing Agreement") pursuant to which Willdan provides bond administration and other related assessment district services to the Authority, its member agencies and other Figtree customers for an agreed upon fee (see Section 2).

Under the Outsourcing Agreement, Willdan will perform the following basic services:

(a) Maintain a database of the parcels within each program, which will include the APN, ownership information, original lien/loan amount, annual assessment amount, and all other relevant data;

(b) Establish and maintain amortization schedules for each of the parcels through the term of the lien/loan;

(c) Submit the annual assessment levy on or before August 10 of each year, or such other date specified by the subject county to the Auditor-Controller for inclusion on the consolidated property tax bills;

(d) Review county records to determine which parcels are delinquent in the payment of taxes after each installment. Willdan will prepare a delinquency report and will send reminder letters to delinquent property owners;

(e) Provide a toll-free number to field inquiries from City/the Authority staff, property owners, and other interested parties regarding assessment proceedings and annual installments; and

(0) Perform Bond Fund Analysis on an annual basis on or before June 30. Moreover, this analysis will be conducted prior to payment of the bond debt service, which determines required fund transfers that satisfy the principal and interest requirements, as well as determine excess funds available for credits against current assessments and/or for early bond retirement. In this regard, Willdan Financial Services will update and track bond fund balances by obtaining statements from fiscal agents on all existing funds. Additionally, review the bond trust Indenture to verify that improvement, reserve, and redemption fund structures are in compliance by providing the following recommendations:

- Recommendations for fund transfers (if necessary) to achieve compliance with the Indenture;
- Recommendations for funds required for upcoming debt service payment;
- Recommendations for the use of excess reserve funds (if applicable);
- Recommendations for bond calls (if required), such as in the case of a payoff of bond lien by a property owner; and
- Recommendation for Collection Fund disbursements.

**Section 2. Fee for Basic Services.**

For commercial/industrial/multi-family projects, Willdan proposes a fee of 0.5% (half a percent) of each parcel's annual assessment per fiscal year (subject to a minimum annual per parcel charge of \$30 and a maximum annual per parcel charge of \$120).

For residential projects, Willdan proposes a fee of \$10 per parcel.

Willdan's annual fees shall be payable from Figtree's portion of the Cost Recovery Fee (as defined in Section (c) of Exhibit B).

**Section 3. Additional Services.**

Figtree may request Willdan to perform the following additional services for an additional fee to be negotiated by the parties:

(a) Preparation of prepayment calculations as requested. Following each prepayment, Willdan will prepare the appropriate bond call documents for the trustee and prepare and record the notice of cancellation with the appropriate county;

(b) Preparation of the required program documents, including the engineer's report (or other similar document), assessment agreements, and other related items;

(c) Review of the assessment documentation for each parcel;

(d) Recording of the assessment agreements with the appropriate county Recorder's Office;

(e) Attend meetings and provide consulting services and advice to existing clients and/or potential clients; and

(f) Coordinate foreclosure action proceedings as needed.

## EXHIBIT B

### FIGTREE PACE PROGRAM REVENUES

Figtree will derive direct revenues under the Program from the following three fee sources (the "Program Fees"): (i) cost of issuance fees at the time of each project's origination; (ii) management fees included in the annual assessment; and (iii) annual cost recovery fees paid from separate administrative charge collected in connection with the assessments underlying the Financing Instruments. Figtree will use the Program Fees to pay for the program development, marketing, and operating costs including legal, trustee, bond-counsel, bond administration costs, underwriter fees, investment banking fees, Authority fees and overhead and profit.

The Program Fees shall be determined by the Authority and Figtree for each Financing Instrument issued for each PACE financing. The following Program Fees shall be deemed to be initial guidelines for the Program; provided, however, the Authority and Figtree may agree to modify the Program Fees for any financing. The Chair of the Authority shall have the authority to modify the Program Fees approved in this Agreement for any financing on behalf of the Authority.

**(a) Figtree PACE Cost of Issuance Fee** (the "Cost of Issuance Fee"). The Cost of Issuance Fee shall be payable by the property owner concurrently with the closing of the Financing Instrument which first gives rise to the PACE financing (the "Originating Financing Instrument" and in all cases in this Agreement a "Financing Instrument").

1) Commercial PACE Program: The Cost of Issuance Fee will be an amount not to exceed 4.00% of the total principal amount of the property owner's PACE financing, but may be reduced to no less than 2.00% at the election of Figtree as a result of negotiations with the relevant property owner, based on Figtree's good faith evaluation of the size, complexity and credit quality of the particular project.

2) Residential PACE Program: The Cost of Issuance Fee will be an amount not to exceed 7.00% of the total principal amount of the property owner's PACE financing, but may be reduced to no less than 2.00% at the election of Figtree based on good faith evaluation of competing financing products in the marketplace.

Depending on the nature of the Originating Financing Instrument, the Cost of Issuance Fee shall be collected by the Assignment Agreement paying agent and deposited in the Cost of Issuance Account under the Assignment Agreement; or collected by the Indenture trustee and deposited in the Cost of Issuance Fund under the Indenture (together, the "Cost of Issuance Deposit Accounts"). Figtree will prepare a requisition for signature by the Authority for all disbursement of funds from the Cost of Issuance Deposit Accounts for the purpose of paying Financing Instrument closing costs such as trustee fees, underwriter or placement agent fees, bond counsel fees, the California Debt and Investment Advisory Commission fee, the Authority issuance fees (described below), and other incidental fees and costs (collectively, "Closing Costs"). The sum of the Cost of Issuance Fee less the Closing Costs for a Financing Instrument will be payable to Figtree as part of its compensation for the Services. Part of the Services to be provided by Figtree is to arrange for the performance of the services that give rise to such Closing Costs. Closing Costs to be paid from the Cost of Issuance Fee will not be incurred by the Authority without the prior consent of Figtree. The Authority agrees that, during the Term, it shall not modify any

Indenture with respect to the application of the Cost of Issuance Fee without the prior written consent of Figtree.

The Authority shall be paid an issuance fee from the Cost of Issuance Fee collected at the time of each Originating Financing Instrument issuance in an amount equal to 0.30% of the principal amount of the Originating Financing Instrument at the time of each issuance.

**(b) Program Management Fee** (the "Management Fee"). A Management Fee not in excess of 1.00% per annum of the outstanding principal amount of the Financing Instrument related to projects originated by Figtree shall be payable to Figtree, to the extent collected from each property owner and received by an Indenture trustee, on each March 2<sup>nd</sup> and September 2<sup>nd</sup> (or other dates as specified in an Indenture) following the collection of the assessment installments by the Indenture trustee. The Management Fee is fully earned by Figtree for each property financed upon the closing of the financing with respect to such property and shall be disbursed to Figtree by the Indenture trustee over the term of the financing. The Management Fee applicable to projects originated by Figtree shall continue to be payable to Figtree, to the extent collected from the property owner and received by the trustee, following termination of this Agreement. Figtree will have the full legal right to the Management Fee which can be pledged, capitalized, assigned or transferred at the discretion of Figtree, subject to the Authority's offset rights as set forth in subsection (d) below.

**(c) Annual Cost Recovery Fee** (the "Cost Recovery Fee"). The Cost Recovery Fee is a fee charged to a property owner annually for the term of the PACE financing.

1. Commercial PACE Program: The Cost Recovery Fee is calculated in the amount of 3.00% of the annual PACE assessment. In no event shall the Cost Recovery Fee exceed 5.00% of the annual PACE assessment or the maximum amount permitted by law. The Cost Recovery Fee may be reduced to no less than 1.00% at the election of Figtree as a result of negotiations with the relevant property owner, based on Figtree's good faith evaluation of the size, complexity and credit quality of the particular project, and so long as the Cost Recovery Fee is sufficient to pay the Minimum Program Annual Fees (as defined below).

2. Residential PACE Program: The Cost Recovery Fee is calculated in the amount of \$35 per parcel per annum.

The Cost Recovery Fee is collected by an Indenture trustee along with the semi-annual assessment installments and, will be apportioned to the Parties as follows:

First, to the Authority a fee in the amount of: i) 0.75% of the annual PACE assessment collected with respect to the Commercial PACE Program; and ii) \$5.00 per parcel per annum with respect to the Residential PACE Program.

Second, the remainder to Figtree to pay for the Trustee and Willdan annual fees, and any other annual fees which are due under the program for services contracted for or arranged by Figtree ("Third Party Contractor"). The annual fees of the Authority, the Trustee, Willdan and any other Third Party Contractor are hereby defined as the "Minimum Program Annual Fees").



The Cost Recovery Fee will be disbursed to the Authority and Figtree by an Indenture trustee on each March 2nd and September 2nd (or other dates as specified in an Indenture) over the term of the assessment. Notwithstanding the foregoing, to the extent that the Cost Recovery Fee received by the Authority in any calendar year is less than \$10,000, Figtree shall deposit with the Authority no later than January 15 of the subsequent year the difference between the Cost Recovery Fee received by the Authority in such calendar year and \$10,000.

**(d) Extraordinary Expenses.** Extraordinary expenses incurred by the Authority, either directly or indirectly, with respect to the Program or the Financing Instruments applicable to projects originated by Figtree shall be payable by Figtree upon invoice by the Authority. If any Extraordinary Expenses are not paid within 60 days of invoice, the Authority may deduct, or instruct the Indenture trustee to deduct, such amounts from any Management Fee collected under any Financing Instrument.

## EXHIBIT C

### INSURANCE REQUIREMENTS

Figtree shall maintain insurance policies issued by an insurance company or companies authorized to do business in the State of California and that maintain during the term of the policy a "General Policyholders Rating" of at least "A+," as set forth in the then most current edition of "*Bests Insurance Guide*," as follows:

(a) ***Commercial General Liability Insurance.*** Figtree and each of its subcontractors shall maintain comprehensive commercial general liability insurance providing coverage for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than \$1,000,000 per occurrence.

(b) ***Automobile Insurance.*** Figtree and each of its subcontractors shall maintain comprehensive automobile liability insurance of not less than \$100,000.00 combined single limit per occurrence for each vehicle leased or owned by Figtree or its subcontractors and used in performing work under this Agreement.

(c) ***Workers' Compensation Insurance.*** Figtree and each of its subcontractors shall maintain workers' compensation insurance with statutory limits and Employer's liability insurance with limits of not less than \$1,000,000 for all workers under Figtree's and/or subcontractor's employment performing work under this Agreement.

(d) ***Professional Liability (Errors and Omissions) Coverage.*** Figtree and each of its subcontractors shall maintain an insurance policy covering liability for errors and omissions of Figtree in performing the Scope of Services of this Agreement in an amount of not less than \$1,000,000.00.

Concurrent with the execution of this Agreement and prior to the commencement of any work by Figtree, Figtree shall deliver to the Authority copies of policies or certificates evidencing the existence of the insurance coverage required herein, which coverage shall remain **in** full force and effect continuously throughout the term of this Agreement. Each policy of insurance that Figtree purchases in satisfaction of the insurance requirements of this Agreement shall name the Authority as an additional insured and shall provide that the policy may not be cancelled, terminated or modified, except upon 30 days' prior written notice to the Authority.