

**RESOLUTION NO. \_\_\_\_\_**

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA APPROVING ASSOCIATE MEMBERSHIP BY THE CITY OF CHULA VISTA IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY AND AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING TO ASSOCIATE MEMBERSHIP OF THE CITY IN THE AUTHORITY; CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE INCORPORATED AREA OF THE CITY IN THE SAN DIEGO COUNTY PROPERTY ASSESSED CLEAN ENERGY (PACE) PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS, APPROVING THE REPORT SETTING FORTH THE PARAMETERS OF THE REFERENCED PROGRAM AND CERTAIN MATTERS IN CONNECTION THEREWITH, AND APPROVING AN INDEMNITY AGREEMENT WITH THE PROGRAM ADMINISTRATOR

**WHEREAS**, on June 6, 2015, the City Council approved Guidelines for implementation of the Property Assessed Clean Energy (PACE) Program per Resolution 2015-115 and this amendment follows these guidelines; and

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

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

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

**WHEREAS**, under the JPA Law and the Agreement, the Authority is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of

the Authority will not be the debts, liabilities or obligations of the City or the other members of the Authority; and

**WHEREAS**, the form of Associate Membership Agreement (the “Associate Membership Agreement”), as shown in Exhibit A, between the City and the Authority is attached; and

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

**WHEREAS**, 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 San Diego, 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 Chula Vista (the “City Council”) has reviewed the Report;

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

**WHEREAS**, the City of Chula Vista (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.

**WHEREAS**, the Authority established the Figtree Property Assessed Clean Energy and Job Creation Program (the "Figtree PACE Program").

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Chula Vista, hereby finds, determines and declares as follows:

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

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

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

**Section 4. Good Standing.** The City is a municipal corporation in good standing.

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

**Section 6. Resolution of Intention.** The City Council ratifies the resolution adopted by the CEDA Board of Directors on \_\_\_\_\_, 20\_\_\_ declaring the Board's

intention to order the implementation of a contractual assessment program to finance Improvements pursuant to the Act. To the maximum extent allowed by law, Authority shall defend, indemnify, protect and hold harmless the City, its elected and appointed officers, agents and employees, from and against any and all claims, demands, causes of action, costs, expenses, (including reasonable attorney's fees and actual costs), liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any alleged acts, omissions, negligence, or willful misconduct of Authority, its members, employees, officials, officers, agents, and contractors, arising out of or in connection with the Agreement or this Associate Membership Agreement, or the Figtree PACE Program. This indemnity provision does not include any claims, damages, liability, costs and expenses (including without limitations, attorneys fees) arising from the sole negligence, active negligence or willful misconduct of the City, its officers, employees. Also covered is liability arising from, connected with, caused by or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Authority, its members, employees, agents or officers, or any third party.

**Section 7. Boundaries.** The City Council hereby approves the inclusion in Figtree PACE all of the properties in the incorporated area within the City, as same may be amended through annexation from time to time, the acquisition, construction and installation within City limits of the energy and water efficiency measures set forth in the Report upon the request and agreement of the affected property owner, and the assumption of jurisdiction thereof by CEDA for the aforesaid purposes. The adoption of this Resolution by this City Council constitutes the approval by the City to participate in Figtree PACE. 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. The Authority agrees to comply with all state and local laws, and the City's PACE Guidelines, in its implementation and provision of the Figtree PACE Program in the City.

**Section 8. Appointment of CEDA.** The City of Chula Vista hereby appoints CEDA as its representative to (i) record the assessment against the Participating Parcels, (ii) administer the District in accordance with the Improvement Act of 1915 (Chapter 29 Part 1 of Division 10 of the California Streets and Highways Code (commencing with Section 8500 et seq.) (the "Law"), (iii) prepare program guidelines for the operations of the Program and (iv) proceed with any claims, proceedings or legal actions as shall be necessary to collect past due assessments on the properties within the District in accordance with the Law and Section 6509.6 of the California Government Code. The City is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution. No suit or arbitration shall be brought arising out of this Agreement, against City unless a claim has first been presented in writing and filed with City and acted upon by City in accordance with the procedures set forth in Chapter 1.34 of the Chula Vista

Municipal Code, as same may from time to time be amended, the provisions of which are incorporated by this reference as if fully set forth herein, and such policies and procedures used by City in the implementation of same. Upon request by City, the Authority shall meet and confer in good faith with City for the purpose of resolving any dispute over the terms of this Agreement.

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

**Section 10. Foreclosure.** The City Council hereby acknowledges that the Law permits foreclosure in the event that there is a default in the payment of assessments due on a property. The City Council hereby designates CEDA as its representative to proceed with collection and foreclosure of the liens on the defaulting properties within the District, including accelerated foreclosure pursuant to the Program Report.

**Section 11. Indemnification.** The City Council acknowledges that Figtree has provided the City with an indemnification agreement, as shown in Exhibit B, for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The City Council hereby authorizes the appropriate officials and staff of the City to execute and deliver the Indemnification Agreement to Figtree.

**Section 12. City Contact Designation.** The appropriate officials and staff of the City of Chula Vista are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Director of Public Works. The City Clerk is directed to provide a certified copy of this Resolution to Figtree Energy Financing.

**Section 13. CEQA.** The City Council hereby finds that adoption of this Resolution is not a "project" under the California Environmental Quality Act ("CEQA"), because the Resolution does not involve any commitment to a specific project which may result in a potentially significant physical impact on the environment, as contemplated by Title 14, California Code of Regulations, Section 15378(b)(4)).

**Section 14. Effective Date.** This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Figtree Energy Financing.

**Section 15. Costs.** Services related to the formation and administration of the assessment district will be provided by CEDA at no cost to the City.

Presented by

Approved as to form by

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Richard A. Hopkins  
Public Works Director

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Glen R. Googins  
City Attorney