

## **RESOLUTION NO. 4072-2018**

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

**WHEREAS**, the City of Fort Bragg, 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 "CEDA") 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, CEDA is a public entity separate and apart from the parties to the Agreement and the debts, liabilities and obligations of CEDA will not be the debts, liabilities or obligations of the City or the other members of the Authority; and

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

**WHEREAS**, the City is willing to become an Associate Member of CEDA 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, seismic retrofits, electric vehicle charging infrastructure, and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness (the "Bonds") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

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

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

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

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

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

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

**WHEREAS**, to protect the City in connection with operation of the Figtree PACE program, Figtree Company, Inc., the program administrator, has agreed to defend and indemnify the City; and

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

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Fort Bragg, 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 and in good standing.

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

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

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

- (1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI;
- (2) The Participating Property Owners, who shall be the legal owners of such property, voluntarily execute a contract pursuant to Chapter 29 and comply with other applicable provisions of California law in order to accomplish the valid levy of assessments; and
- (3) The City will not be responsible for the conduct of any assessment proceedings, the levy of assessments, any required remedial action in the case of delinquencies in such assessment payments, or the issuance, sale or administration of the Bonds in connection with Figtree PACE.

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

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

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

**Section 11. City Contact Designation.** The appropriate officials and staff of the City are hereby authorized and directed to make applications for Figtree PACE available to all property owners who wish to finance Improvements. The following staff persons, together with any other staff designated by the City Manager from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: [MARIE JONES, COMMUNITY DEVELOPMENT DIRECTOR, (707) 961-1807, mjones@fortbragg.com].

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

**Section 13. Effective Date.** This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified

copy of this resolution to Figtree Company, Inc.

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

The above and foregoing Resolution was introduced by Councilmember Turner, seconded by Councilmember Lee, and passed and adopted at a regular meeting of the City Council of the City of Fort Bragg held on the 12th day of March, 2018, by the following vote:

**AYES:** Councilmembers Cimolino, Lee, Norvell, Turner and Mayor Peters.  
**NOES:** None.  
**ABSENT:** None.  
**ABSTAIN:** None.  
**RECUSED:** None.



**LINDY PETERS**  
Mayor

**ATTEST:**

for   
June Lemos, CMC  
City Clerk

**ASSOCIATE MEMBERSHIP AGREEMENT**

**by and between the**

**CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY**

**and the**

**CITY OF FORT BRAGG, CALIFORNIA**

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this "Associate Membership Agreement"), dated as of March 12, 2018 by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Authority") and the CITY OF FORT BRAGG, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the "City");

**WITNESSETH:**

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

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

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

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

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

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

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

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

**EXHIBIT A**

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

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

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

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

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

[Signatures on following page]

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

**CALIFORNIA ENTERPRISE  
DEVELOPMENT AUTHORITY**

By: \_\_\_\_\_  
Gurbax Sahota, Chair  
Board of Directors

Attest:

\_\_\_\_\_  
Helen Schaubmayer, Asst. Secretary

**CITY OF FORT BRAGG, CALIFORNIA**

By: \_\_\_\_\_  
Lindy Peters, Mayor  
City Council

Attest:

\_\_\_\_\_  
June Lemos, CMC  
City Clerk



**INDEMNIFICATION AGREEMENT**  
**BY AND BETWEEN**  
**THE CITY OF FORT BRAGG AND**  
**FIGTREE COMPANY, INC.**

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

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

**WHEREAS**, the City 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 City 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 City'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 City, 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 City. 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.  
9330 Scranton Road, Suite 600  
San Diego, California 92121  
Attn: Chief Executive Officer

If to the City:

City of Fort Bragg  
416 N. Franklin Street  
Fort Bragg, CA 95437  
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 City's representative as indicated below in the signature block.

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

City of Fort Bragg

By \_\_\_\_\_

Name: Lindy Peters

Title: Mayor

Date: \_\_\_\_\_

Figtree Company, Inc., a California corp.

By \_\_\_\_\_

Name: Peter Grabell

Title: Senior Vice President

Date: \_\_\_\_\_