RESOLUTION NO. 3200-15

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF WINDSOR APPROVING ASSOCIATE MEMBERSHIP OF THE TOWN OF WINDSOR IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY AND AUTHORIZING AND DIRECTING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING THERETO; CONSENTING TO INCLUSION OF PROPERTIES WITHIN THE INCORPORATED AREA OF THE TOWN OF WINDSOR IN THE COUNTY PROPERTY ASSESSED CLEAN ENERGY PROGRAM TO FINANCE DISTRIBUTED GENERATION RENEWABLE ENERGY SOURCES AND ENERGY AND WATER EFFICIENCY IMPROVEMENTS; AND APPROVING THE REPORT SETTING FORTH THE PARAMETERS OF THE REFERENCED PROGRAM AND CERTAIN MATTERS IN CONNECTION THEREWITH

WHEREAS, the Town of Windsor, California (the "Town"), is a municipal corporation, duly organized and existing under the Constitution and the laws of the State of California; and

WHEREAS, the Town, upon authorization of the Town 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 Town 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 Town 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 Town and the Authority is attached; and

WHEREAS, the Town is willing to become an Associate Member of the Authority subject to the provisions of the Associate Membership Agreement; and

WHEREAS, the California Enterprise Development Authority ("CEDA") has adopted the Figtree Property Assessed Clean Energy (PACE) and Job Creation Program (the "Program" or "Figtree PACE"), to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements (the "Improvements") through the levy of contractual assessments pursuant to Chapter 29 of Division 7 of the Streets & Highways Code ("Chapter 29"), and the issuance of improvement bonds or other evidences of indebtedness (the "Bonds")

under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 et seq.) (the "1915 Act") upon the security of the unpaid contractual assessments; and

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

WHEREAS, the Board of Supervisors (the "Board of Supervisors") of the County of Sonoma, 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 ("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 Town Council of the Town (the "Town Council") has reviewed the Report; and

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

WHEREAS, the Town desires to participate with the County in Figtree PACE, and provide for participation in Figtree PACE by property owners located within Town limits; and

WHEREAS, pursuant to Chapter 29, the Town desires to authorize 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 Town in connection with operation of the Figtree PACE, Figtree Energy Financing, the program administrator, has agreed to defend and indemnify the Town; and

WHEREAS, the Town 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.

NOW, THEREFORE, BE IT RESOLVED, that the Town Council of the Town of Windsor hereby finds, determines and declares as follows:

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

Section 2. The Associate Membership Agreement presented to the Town Council at this meeting and on file with the Town Clerk is hereby approved. The Mayor of the Town,

the Town Manager, the Town Clerk and other officials of the Town are each hereby authorized and directed, for and on behalf of the Town, 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 Town 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 Town is a municipal corporation in good standing.

Section 5. Public Benefits. On the date hereof, the Town 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 Town.

Section 6. Resolution of Intention. The Town 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.

Section 7. Boundaries. The Town Council hereby approves the inclusion in Figtree PACE all of the properties in the incorporated area within the Town, as the same may be amended through annexation from time to time; the acquisition, construction and installation within Town 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 constitutes the approval for and by the Town to participate in Figtree PACE. This Town 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.

Section 8. Appointment of CEDA. The Town 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

Town is not and will not be deemed to be an agent of Figtree or CEDA as a result of this Resolution.

Section 9. Program Report. The Town 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 Town 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 Town 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 Town Council acknowledges that Figtree has provided the Town with an indemnification agreement, as shown in Exhibit B attached hereto, for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents. The Town Council hereby authorizes the appropriate officials and staff of the Town to execute and deliver the Indemnification Agreement to Figtree.

Section 12. Town Contact Designation. The appropriate officials and staff of the Town 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 Town Manager from time to time, are hereby designated as the contact persons for CEDA in connection with Figtree PACE: Ned Thomas, Community Development Director, 707-838-5335, nthomas@townofwindsor.com . The Town Clerk is directed to provide a certified copy of this Resolution to Figtree Energy Financing.

Section 13. CEQA. The Town 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 Town 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 Town.

PASSED, APPROVED AND ADOPTED this 6th day of May 2015, by the following vote:

AYES:	**COUNCILMEMBERS FOPPOLI, FUDGE, MILLAN, SALMON AND MAYOR OKREPKIE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**NONE**

BRUCE OKREPKIE, MAYOR

ATTEST:

MARIA DE LA O, TOWN CLERK

Attachments:
Exhibit A - Associate Membership in the CEDA
Exhibit B - Indemnification Agreement

EXHIBIT A

ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

TOWN OF WINDSOR, CALIFORNIA

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this "Associate Membership Agreement"), dated as of _____ by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the "Authority") and the TOWN OF WINDSOR, CALIFORNIA, a municipal corporation, duly organized and existing under the laws of the State of California (the "Town");

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 Town desires to become an Associate Member of the Authority;

WHEREAS, Town Council of the Town of Windsor 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 Town 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 Town do hereby agree as follows:

Section 1. Associate Member Status. The Town 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 Town and the Authority, the Town shall be and remain an Associate Member of the Authority.

Section 2. Restrictions and Rights of Associate Members. The Town 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 Town shall have any right to become an officer or director of the Authority by virtue of the Town being an Associate Member of the Authority.

Section 3. Effect of Prior Authority Actions. The Town 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 Town.

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 Town in all programs and other undertakings of the Authority.

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:

_____
Michelle Stephens, Asst. Secretary

TOWN OF WINDSOR, CALIFORNIA

By: _____, Mayor
Town Council

Attest:

_____
Town Clerk

EXHIBIT B

INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE TOWN OF WINDSOR AND
FIGTREE COMPANY, INC.

This Indemnification Agreement (the "Agreement") is entered into by and between the Town of Windsor, a municipal corporation or political subdivision, duly organized and existing under the laws of the State of California (the "Public Entity") and Figtree Company, Inc., a California corporation, the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program (the "Administrator"), which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (the "Authority").

RECITALS

WHEREAS, the Authority is a joint exercise of powers authority whose members include the Public Entity in addition to other cities and counties in the State of California; and

WHEREAS, the Authority established the Figtree Property Assessed Clean Energy and Job Creation Program (the "Figtree PACE Program") to allow the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently affixed to real property through the levy of assessments voluntarily agreed to by the participating property owners pursuant to Chapter 29 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of improvement bonds, or other forms of indebtedness, under the Improvement Bond Act of 1915 upon the security of the unpaid assessments; and

WHEREAS, the Authority has conducted or will conduct proceedings required by Chapter 29 with respect to the territory within the boundaries of the Public Entity; and

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

WHEREAS, the Public Entity will not be responsible for the formation, operation and administration of the Figtree PACE Program as well as the sale and issuance of any bonds or other forms of indebtedness in connection therewith, including the conducting of assessment proceedings, the levy and collection of assessments and any remedial action in the case of such assessment payments, and the offer, sale and administration of any bonds issued by the Authority on behalf of the Figtree PACE Program; and

WHEREAS, the Administrator is the administrator of the Figtree PACE Program and agrees to indemnify the Public Entity in connection with the operations of the Figtree PACE Program as set forth herein;

NOW, THERFORE, in consideration of the above premises and of the Public Entity's agreement to join the Figtree PACE Program, the parties agree as follows:

1. **Indemnification**. Figtree has provided the CEDA with an indemnification for negligence or malfeasance of any type as a result of the acts or omissions of Figtree, its officers, employees, subcontractors and agents, arising from or related to the Figtree PACE Program, the assessments, the assessment districts, the improvements or the financing and marketing thereof. Figtree agrees to defend, indemnify and hold harmless the Public Entity, its officers, elected or appointed officials, employees, agents and volunteers from and against any and all actions, suits, proceedings, claims, demands, losses, costs and expenses, including legal costs and attorneys' fees, for injury or damage due to negligence or malfeasance of any type claims as a result of the acts or omissions of Figtree, except for such loss or damage which was caused by the sole negligence or willful misconduct of the Public Entity. This indemnity shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as limitation upon the amount of indemnification to be provided by Figtree.

2. **Amendment/Interpretation of this Agreement.** This Agreement represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. This Agreement shall not be interpreted for or against any party by reason of the fact that such party may have drafted this Agreement or any of its provisions.

3. **Section Headings.** Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

4. **Waiver.** No waiver of any of the provisions of this Agreement shall be binding unless in the form of writing signed by the party against whom enforcement is sought, and no such waiver shall operate as a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. Except as specifically provided herein, no failure to exercise or any delay in exercising any right or remedy hereunder shall constitute a waiver thereof.

5. **Severability and Governing Law.** If any provision or portion thereof of this Agreement shall be held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California applicable to contracts made and to be performed in California.

6. **Notices.** All notices, demands and other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered by hand, against receipt, or mailed certified or registered mail and addressed as follows:

If to the Administrator

Figtree Company, Inc.
9915 Mira Mesa Blvd., Suite 130
San Diego, California 92131
Attn: Chief Executive Officer

If to the Public Entity:

_____
_____
_____
_____

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, which together shall constitute the same instrument.

8. **Effective Date.** This Agreement will be effective as of the date of the signature of Public Entity's representative as indicated below in the signature block.

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

APPROVED AS TO FORM:

_____
Robin Donoghue, Town Attorney
Town of Windsor

By_____
Name: Linda Kelly
Title: Town Manager, Town of Windsor

Date: _____

Figtree Company, Inc., a California corp.

By_____
Name: Mahesh Shah
Title: CEO

Date: _____