

**AGREEMENT
BETWEEN
FIGTREE COMPANY, INC.
AND
SOUTH BAY CITIES COUNCIL OF GOVERNMENTS
REGARDING PARTICIPATING IN THE FIGTREE PACE PROGRAM**

This agreement regarding participating in the FIGTREE PACE Program (“Agreement”) is made and entered into as of this of July 25, 2013 (“Effective Date”), by and between the Figtree Company, Inc. (“FIGTREE”) and South Bay Cities Council of Governments (“Participant”). FIGTREE and Participant are sometimes individually referred to as “Party” and collectively as “Parties.”

RECITALS

WHEREAS, FIGTREE is a California company that administers FIGTREE PACE program in partnership with California Enterprise Development Authority (CEDA), a joint exercise of powers authority, the members of which include numerous cities and counties in the State of California; and

WHEREAS, the FIGTREE PACE Program allows the financing of certain renewable energy, energy efficiency and water efficiency improvements that are permanently fixed to real property; and

WHEREAS, FIGTREE PACE Program is being made available to every city and county in California to encourage installation of distributed generation renewable energy sources and energy efficiency and water efficiency improvements for residential and commercial property owners; and

WHEREAS, Participant desires to inform its member agencies about the FIGTREE PACE Program and serve as a point of contact for the Program in the subregion. FIGTREE desires to receive Participant’s assistance in providing information about the FIGTREE PACE Program to Participant’s member agencies and in serving as a point of ongoing contact for the Program in the future; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings, terms, and conditions related to partnering with the FIGTREE PACE Program.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties hereby agree, as follows:

TERMS

1. FIGTREE.

1.1 FIGTREE shall pay Participant fees (“Fees”) equal to 0.02% (Two basis points) of the Par amount of the Bonds issued to fund the installation of renewable energy, energy efficiency and water efficiency improvements for which assessment contracts are entered into after the Effective Date by Participant’s member agencies within Participant’s jurisdiction pursuant to the FIGTREE PACE Program.

1.2 FIGTREE shall make the payments required herein to Participant upon the issuance of the bonds.

2. Participant.

2.1 Participant will, at Participant’s first regular meeting held after the Effective Date, begin providing information and facilitating meetings to its member agencies for the FIGTREE PACE Program, which includes doing each of the following:

(a) Participant will inform each eligible city and county member agency about the procedures for participating in the FIGTREE PACE Program, which include adopting a Resolution joining CEDA as an associate member, a Resolution joining the FIGTREE PACE Program, and executing the supporting agreements, in substantially the same form as attached hereto as Exhibit “A”.

(b) Participant will inform each of its member agencies of the benefits available from participating in the FIGTREE PACE Program, including but not limited to informing each member that (i) the FIGTREE PACE Program is an economic development program available at no cost to participating cities and counties; (ii) the FIGTREE PACE Program finances improvements which decrease energy or water consumption or create clean renewable energy; and (iii) the FIGTREE PACE Program helps create local jobs, save money, and lower greenhouse gas emissions.

(c) Participant will inform each of its member agencies of the Fee that is available to Participant from the FIGTREE PACE Program based on the par amount of the bonds issued to finance the improvements within Participant’s jurisdiction.

2.2 Participant will serve as the main point of contact for the subregion within Participant’s jurisdiction and, as such, will coordinate with Participant’s member agencies on behalf of FIGTREE, as needed, to facilitate the efficient coordination of the FIGTREE PACE Program. Participant will fully cooperate with FIGTREE, and shall take additional acts or sign additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement, including but not limited to assisting with introductions to Participant’s member agencies.

2.3 Participant will obtain and provide a copy of each member agency’s Resolution of Participation in the FIGTREE PACE Program.

2.4 Participant will arrange for presentations regarding the FIGTREE PACE Program at committee meetings.

2.5 Participant will regularly provide information about the FIGTREE PACE Program in its newsletters, which will include but not be limited to providing a description of the FIGTREE PACE Program, other contact information for the FIGTREE PACE Program, and any additional reference sources that are necessary to provide readers with information for participating in the FIGTREE PACE Program.

2.6 Participant will place a regular reminder of the FIGTREE PACE Program in its correspondence and a conspicuous and recognizable link to the FIGTREE PACE Program website on the main page of Participant's website, if any.

3. Term. The term of this agreement shall begin on the Effective Date and terminate five (5) years thereafter.

4. Governing Law and Venue. This Agreement shall be governed by and construed with the laws of the State of California. Venue shall be in Sacramento County.

5. Attorneys Fees. If either of the Parties commences an action against the other party arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorneys' fees and costs of suit.

6. Amendment. This Agreement may be amended in writing by mutual agreement of the Parties.

7. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior negotiations, agreements or understandings.

8. Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

9. Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

10. Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

11. No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

12. Notices. All payments, notices hereunder and communications regarding interpretation of the terms of this Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed, as follows:

If to Participant: South Bay Cities Council of Governments
20285 Western Avenue, Suite 100
Torrance, California 90501
Telephone: 310-371-7222
Facsimile: 310-437-8977

If to FIGTREE: FIGTREE Company, Inc.
9915 Mira Mesa Blvd., Ste 130
San Diego, CA 92131
Telephone: (877) 577-7373
Facsimile: (858) 863-0108

13. Waiver. No waiver of any breach of a provision in this Agreement shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

[SIGNATURES ON FOLLOWING PAGE]

SIGNATURE PAGE TO
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be effective as of the day first above written.

FIGTREE COMPANY, INC.

SOUTH BAY CITIES COUNCIL OF GOVERNMENTS

By: _____
Mahesh Shah
CEO

By: _____
Dan Medina
Chair

APPROVED AS TO FORM

By: _____
Michael Jenkins
SBCCOG Counsel