

EXHIBIT B

PACE PROGRAM AGREEMENT BY AND BETWEEN CITY OF SANTA ROSA AND FIGTREE COMPANY, INC.

This PACE Program Agreement (the “Agreement”) is entered into by and between the City of Santa Rosa a municipal corporation (“City”) and Figtree Company Inc, a California corporation, (the “Administrator”), the administrator of the Figtree Program, 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 Program (“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 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, on June 6th, 2017, the City Council of the City of Santa Rosa adopted a resolution authorizing the City to join the Authority in order to allow the PACE Program to operate within the City of Santa Rosa, authorizing the Authority, through the Administrator, to accept applications from eligible property owners, conduct assessment proceedings and levy assessments within the territory of the City and authorizing related actions; and

WHEREAS, the Authority is solely responsible for the formation, operation and administration of the PACE Program as well as the sale and issuance of any bonds in connection therewith, including the conduct 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 PACE Program; and

WHEREAS, the Administrator has been admitted to the PACE Marketplace by the Sonoma County Board of Supervisors and pursuant to a Collaborative Services Agreement between Authority and Sonoma County, the Administrator will adhere to the terms and conditions of such agreement (“Collaborative Services Agreement”); and

WHEREAS, Administrator is the administrator of the PACE Program and in exchange for the authorization to operate the PACE Program in Santa Rosa agrees to operate the PACE Program in compliance with all applicable laws and other requirements and to indemnify the City and provide insurance and add the City as an additional insured on its insurance policy or policies in connection with the operations of the PACE Program as set forth herein; and

NOW, THEREFORE, in consideration of the above premises and of the City’s agreement to join the PACE Program, the parties agree as follows:

1. Program Compliance. With respect to any operation of the PACE Program in the City of Santa Rosa, the Administrator hereby agrees to comply with (i) the terms and conditions of the Collaborative Services Agreement; (ii) all applicable federal, state and local laws and regulations; and (iii) any requirements and consumer protection policies of Authority and those contained in the PACE Nation Consumer Protection Policies and the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) California Code of Regulations, each as may be amended from time to time. In the event of any conflict among the applicable policies, the most restrictive shall control.

2. Agreement to Indemnify. The Administrator 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 claims, damages, losses, expenses, fines, penalties, judgments, demands and defense costs (including, without limitation, actual, direct, out-of-pocket costs and expenses and amounts paid in compromise or settlement and reasonable outside legal fees arising from litigation of every nature or liability of any kind or nature including civil, criminal, administrative or investigative) arising out of or in connection with the PACE Program and any failure of Administrator to comply with section 1 above, except such loss or damage which was caused by the sole, active negligence or willful misconduct of the City. The Administrator will conduct all defenses at its sole cost and expense and the City shall reasonably approve selection of the Administrator's counsel. This indemnity shall apply to all claims and liability regardless of whether any insurance policies of the Administrator, its affiliates or any other parties are applicable thereto. The policy limits of any insurance of the Administrator, its affiliates or other parties are not a limitation upon the obligation of the Administrator including without limitation the amount of indemnification to be provided by the Administrator.

3. Data and Documentation. At the Administrator's sole cost and expense, the Administrator shall maintain data and documentation for all its PACE Program loans made within the City of Santa Rosa consistent with the requirements of the Collaborative Services Agreement and shall make this information available to the City upon request and upon termination of operation of the PACE Program within the City as set forth below.

4. Termination. Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, City or Administrator shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days' written notice to the other Party.

Termination for Cause. Notwithstanding any other provision of this Agreement, should the Administrator fail to uphold any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, City may

immediately terminate this Agreement by giving Administrator written notice of such termination, stating the reason for termination.

Delivery of Data and Documentation upon Termination. In the event of termination, Administrator, within 14 days following the date of termination, shall deliver to City all raw data and information in an editable electronic format as outlined in the Collaborative Services Agreement.

Authority to Terminate. The City Council has the authority to terminate this Agreement on behalf of the City. In addition, the City Manager, in consultation with City Attorney, shall have the authority to terminate this Agreement on behalf of the City.

5. Insurance. The Administrator agrees that, at no cost or expense to the City, at all times during the operation of the PACE Program, to maintain the insurance coverage set forth in Attachment One to this Agreement.

6. Amendment/Interpretation of this Agreement. This Agreement, including all Attachments hereto, 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.

7. Assignment. Administrator shall not assign any rights or duties under this Agreement to a third party without the express prior written consent of City, in City's sole and absolute discretion; provided that Administrator may assign this Agreement upon Administrator's merger or the sale of all or substantially all of its equity or assets as long as (i) Administrator provides prompt written notice to City of such assignment and (ii) any assignee executes an assumption agreement, assuming all obligations hereunder, in favor of City. Administrator shall be liable for the acts and omissions of any person serving as a subcontractor or sub-consultant of Administrator's duties under the PACE Program..

8. 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.

9. Waiver. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a 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.

10. 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.

11. 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:

City Representative:

Gloria Hurtado, Deputy City Manager
City of Santa Rosa
100 Santa Rosa Ave, Room 3
Santa Rosa Ca, 95404
(707) 543-3021

Administrator Representative:

Peter S. Grabell
SVP, Commercial PACE
DIVIDEND SOLAR / FIGTREE
FINANCING
9330 Scranton Road, Suite 600
San Diego, CA 92121
Direct 858-223-0138

12. 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.

13. Authority; Signatures Required for Corporations. Administrator hereby represents and warrants to City that it is (a) a duly organized and validly existing corporation, formed and in good standing under the laws of the State of California, (b) has the power and authority and the legal right to conduct the business in which it is currently engaged, and (c) has all requisite power and authority and the legal right to consummate the transactions contemplated in this Agreement. Administrator hereby further represents and warrants that this Agreement has been duly authorized, and when executed by the signatory or signatories listed below, shall constitute a valid agreement binding on Administrator in accordance with the terms hereof.

If this Agreement is entered into by a corporation, it shall be signed by two corporate officers, one from each of the following two groups: a) the chairman of the board, president or any vice-president; b) the secretary, any assistant secretary, chief financial officer, or any assistant treasurer. The title of the corporate officer shall be listed under the signature.

14. Effective Date. This Agreement will be effective as of the date of the signature of City's representative as indicated below in the City's signature block.

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

ADMINISTRATOR
Name of Firm: Figtree Company, Inc.

CITY OF SANTA ROSA
a Municipal Corporation

TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation
- Limited Liability Company
- Other (please specify) _____

By: _____

Print
Name: _____

Title: _____

Signatures of Authorized Persons:

APPROVED AS TO FORM:

By: _____

Print Name: _____

Title: _____

By: _____

Print Name: _____

Title: _____

Office of the City Attorney

ATTEST:

City Clerk

Attachments:

Attachment One - Insurance Requirements

**ATTACHMENT ONE
INSURANCE REQUIREMENTS FOR
INDEMNIFICATION AGREEMENT
BY AND BETWEEN CITY OF SANTA ROSA AND ADMINISTRATOR**

A. Insurance Policies: Administrator shall, at all times during the terms of this Agreement, maintain and keep in full force and effect, the following policies of insurance with minimum coverage as indicated below and issued by insurers with AM Best ratings of no less than A-:VI or otherwise acceptable to the City.

Insurance	Minimum Coverage Limits	Additional Coverage Requirements
1. Commercial general liability	\$ 1 million per occurrence \$ 2 million aggregate	Coverage must be at least as broad as ISO CG 00 01 and must include completed operations coverage. If insurance applies separately to a project/location, aggregate may be equal to per occurrence amount. Coverage may be met by a combination of primary and umbrella or excess insurance but umbrella and excess shall provide coverage at least as broad as specified for underlying coverage. Coverage shall not exclude subsidence.
2. Business auto coverage	\$ 1 million	ISO Form Number CA 00 01 covering any auto (Code 1), or if Administrator has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$ 1 million per accident for bodily injury and property damage.
3. Professional liability (E&O)	\$ 1 million per claim \$ 1 million aggregate	Administrator shall provide on a policy form appropriate to profession. If on a claims made basis, Insurance must show coverage date prior to start of work and it must be maintained for three years after completion of work.
4. Workers' compensation and employer's liability	\$ 1 million	As required by the State of California, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$ 1 million per accident for bodily injury or disease.

B. Endorsements:

1. All policies shall provide or be endorsed to provide that coverage shall not be canceled, except after prior written notice has been provided to the City in accordance with the policy provisions.
2. Liability, umbrella and excess policies shall provide or be endorsed to provide the following:
 - a. For any claims related to this project, Administrator's insurance coverage

shall be primary and any insurance or self-insurance maintained by City shall be excess of the Administrator's insurance and shall not contribute with it; and,

- b. **The City of Santa Rosa, its officers, agents, employees and volunteers are to be covered as additional insureds on the CGL policy.** General liability coverage can be provided in the form of an endorsement to Administrator's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used.

C. Verification of Coverage and Certificates of Insurance: Administrator shall furnish City with original certificates and endorsements effecting coverage required above. Certificates and endorsements shall make reference to policy numbers. All certificates and endorsements are to be received and approved by the City before work commences and must be in effect for the duration of the Agreement. The City reserves the right to require complete copies of all required policies and endorsements.

D. Other Insurance Provisions:

1. No policy required by this Agreement shall prohibit Administrator from waiving any right of recovery prior to loss. Administrator hereby waives such right with regard to the indemnitees.
2. All insurance coverage amounts provided by Administrator and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement limits the application of such insurance coverage. Defense costs must be paid in addition to coverage amounts.
3. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either Administrator or City. Self-insured retentions above \$10,000 must be approved by City. At City's option, Administrator may be required to provide financial guarantees.
4. Sole Proprietors must provide a representation of their Workers' Compensation Insurance exempt status.
5. City reserves the right to modify these insurance requirements while this Agreement is in effect, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.