



RESOLUTION NO. _____

RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF EL DORADO APPROVING ASSOCIATE MEMBERSHIP BY THE COUNTY OF EL DORADO IN THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY AND AUTHORIZING THE EXECUTION OF AN ASSOCIATE MEMBERSHIP AGREEMENT RELATING THERETO; CONSENTING TO THE INCLUSION OF PROPERTIES WITHIN THE UNINCORPORATED TERRITORY OF THE COUNTY IN THE FIGTREE PACE PROGRAM; AUTHORIZING THE CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT CONTRACTUAL ASSESSMENT PROCEEDINGS AND LEVY CONTRACTUAL ASSESSMENTS WITHIN THE TERRITORY OF THE COUNTY OF EL DORADO; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the County of El Dorado, California (the “County”), is a political subdivision, duly organized and existing under the Constitution and the laws of the State of California; and

WHEREAS, the County, upon authorization of the Board of Supervisors, 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 County and other public agencies are offered membership in the California Enterprise Development Authority (“CEDA” or 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 County 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 County and the Authority is attached; and

WHEREAS, the County is willing to become an Associate Member of the Authority, to enable the County to participate in the Authority’s programs, 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, wildfire safety improvements, electric vehicle charging infrastructure, water efficiency improvements and such other improvements, infrastructure or other work as may be authorized by law from time to time (collectively, the "Improvements") through the levy of voluntary 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 County desires to allow the owners of property within its jurisdiction ("Participating Property Owners") to voluntarily 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 all assessment proceedings in accordance with Chapter 29 to establish an assessment district (the “District”) and issue Bonds in accordance with the 1915 Act to finance Improvements; and

WHEREAS, the territory within which assessments may be levied for the Program shall include all of the unincorporated territory within the County’s official boundaries; and

WHEREAS, to protect the County in connection with operation of the Figtree PACE program, Dividend Finance, LLC, the program administrator, has agreed to defend and indemnify the County; and

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

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of El Dorado as follows:

Section 1. Membership. The Board of Supervisors hereby approves the Associate Membership Agreement and authorizes the execution thereof by the Chair of the Board.

Section 2. Assessment Proceedings. In connection with Figtree PACE, the County hereby consents to the special assessment proceedings by CEDA pursuant to Chapter 29 on any property within the unincorporated territory of the County and the issuance of Bonds under the 1915 Act, on the following conditions:

- (1) CEDA and any and all program administrators are in strict compliance with all applicable consumer protection laws, rules and regulations and all laws, rules and regulations applicable to PACE programs, assessment contracts and Improvements.
- (2) The Participating Property Owners, who shall be the legal owners of such property, freely and willingly execute a contract that is in strict compliance with all requirements of Chapter 29 and all other laws, rules and regulations that are applicable to Figtree PACE in order to accomplish the valid levy of assessments; and
- (3) The County is not responsible, under any circumstances, 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, administration, repayment or guarantee of Bonds or other indebtedness in connection with Figtree PACE and Improvements.
- (4) The County is not and will not be deemed to be an agent of Dividend or CEDA as a result of this Resolution.

Section 5. Indemnification. The Board of Supervisors acknowledges that Dividend has provided the County 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 Dividend, its officers, employees, subcontractors and agents. The Board of Supervisors hereby authorizes the the Chair of the Board of Supervisors to execute the Indemnification Agreement with Dividend. In the event there is a change in program administrator, CEDA will notify County, in writing, 30 days in advance of the effective date for the change and shall, at the same time, present the County with a new indemnification agreement with the new program administrator for review and execution.

Section 6. Authorization. The Chief Administrative Officer is hereby authorized to execute all documents which are necessary to carry out the intent of this resolution.

Section 7. CEQA. The Board of Supervisors 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 8. Withdrawal. The County may withdraw from the Program upon six (6) months written notice to the Authority. The County's withdrawal from the Program shall not affect the validity of any voluntary assessment contract entered into prior to the date of such withdrawal or entered into after the date of such withdrawal so long as the application for such voluntary assessment contract was submitted to and approved by the Authority prior to the date of the County's notice of withdrawal.

Section 9. Debts, Liabilities, and Obligations: The debts, liabilities and obligations of CEDA and any program administrator shall not be the debts, liabilities and obligations of the County.

Section 10. Costs. The formation and administration of the assessment district will be at the sole cost and expense of CEDA.

Section 11. Effective Date. This Resolution shall take effect immediately upon its adoption and execution. The County Clerk is hereby authorized and directed to transmit a certified copy of this resolution to Dividend Finance, LLC.

PASSED AND ADOPTED this _____ day of _____, 20__ by the following vote, to wit:

AYES: Board Members _____

NOES: Board Members _____

ABSENT: Board Members _____

ABSTAIN: Board Members _____

Chair, Board of Supervisors

ATTEST:

Clerk of the Board

Approved as to Form:

County Counsel

EXHIBIT A

CEDA Associate Membership Agreement

ASSOCIATE MEMBERSHIP AGREEMENT

by and between the

CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY

and the

COUNTY OF EL DORADO, CALIFORNIA

THIS ASSOCIATE MEMBERSHIP AGREEMENT (this “Associate Membership Agreement”), dated as of _____ by and between CALIFORNIA ENTERPRISE DEVELOPMENT AUTHORITY (the “Authority”) and the COUNTY OF EL DORADO, CALIFORNIA, a political subdivision, duly organized and existing under the laws of the State of California (the “County”);

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 County desires to become an Associate Member of the Authority; and

WHEREAS, Board of Supervisors of the County has adopted a resolution approving the Associate Membership Agreement and the execution and delivery thereof; and

WHEREAS, the Board of Directors of the Authority has determined that the County 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 County do hereby agree as follows:

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

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

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

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 County in all programs and other undertakings of the Authority.

Section 6. Amendment/Interpretation of the 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.

Section 7. Contract Administrator. The County Officer or employee with responsibility for administering this Agreement is Shawne Corley, Assistant Chief Administrative Officer, or successor.

Section 8. 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 Authority

California Enterprise Development Authority
2150 River Plaza Drive, Suite 275
Sacramento, CA 95833
Attn. Gurbax Sahota, Chair, Board of Directors

If to the Public Entity

El Dorado County
Chief Administrative Office
330 Fair Lane, Placerville, CA 95667
Attn: Shawne Corley

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

COUNTY OF EL DORADO, CALIFORNIA

By: _____
Chair, Board of Supervisors

Attest:

Clerk of the Board of Supervisors

EXHIBIT B
Indemnification Agreement

INDEMNIFICATION AGREEMENT
BY AND BETWEEN
THE COUNTY OF EL DORADO AND
DIVIDEND FINANCE, LLC

This Indemnification Agreement (the “Agreement”) is entered into by and between the County of El Dorado, a political subdivision, duly organized and existing under the laws of the State of California (the “Public Entity”) and Dividend Finance, LLC, a California corporation, the administrator of the Figtree Property Assessed Clean Energy and Job Creation Program (the “Program Administrator”), which is a program of the California Enterprise Development Authority, a California joint exercise of powers authority (“CEDA” or 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 renewable energy, energy efficiency, seismic retrofits, wildfire safety improvements, electric vehicle charging infrastructure, water efficiency improvements and such other improvements, infrastructure or other work as may be authorized by law from time to time 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 Public Entity will not be responsible for the offer, sale, administration, repayment or guarantee of any bonds issued by the Authority on behalf of the Figtree PACE Program; and

WHEREAS, the Program 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. Program Administrator has provided CEDA with an indemnification for negligence or malfeasance of any type as a result of the acts or omissions of Program Administrator, 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. Program Administrator 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 as a result of the acts or omissions of Program Administrator, 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 Program Administrator.

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.

6. Venue. Any dispute resolution action arising out of this Agreement, including,

but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

7. **Contract Administrator.** The County Officer or employee with responsibility for administering this Agreement is Shawne Corley, Assistant Chief Administrative Officer, or successor.

8. **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 Program Administrator	Dividend Finance, LLC 9330 Scranton Road, Suite 600 San Diego, California 92121 Attn: Chief Executive Officer
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If to the Public Entity	El Dorado County Chief Administrative Office 330 Fair Lane, Placerville, CA 95667 Attn: Shawne Corley
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9. **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.

10. **Authorized Signatures.** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

11. **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.

County of El Dorado

By _____

Name: Sue Novasel

Title: Chair, Board of Supervisors

Date: _____

Dividend Finance, LLC, a California corp.

By _____

Name: Peter S. Grabell

Title: Senior Vice President

Date: _____

By _____

Name: _____

Title: Secretary/Assistant Secretary/Chief Financial Officer/Assistant Treasurer

Date: _____