

## PROFESSIONAL SERVICES AGREEMENT

**THIS IS AN AGREEMENT** made as of May 17, 2018, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**GOVERNMENT**) and ENERGIZE KENTUCKY, LLC, 200 West 4<sup>th</sup> Street, Suite 600, Cincinnati, Ohio 45202 (**ADMINISTRATOR**) for Energy Project Assessment District (EPAD) administration services as described in "Request for Proposal # 36-2017, Exhibit B. The services are to include the administration of the EPAD in accordance with Ordinance No. 24-2018. The services are hereinafter referred to as the **PROJECT**.

**GOVERNMENT** and **ADMINISTRATOR** in consideration of their mutual covenants herein agree in respect to the performance of the administration of the EPAD by **ADMINISTRATOR** and the payment for those services as set forth below.

### SECTION 1- DEFINITIONS

"Closing" means the date upon which a Financing Agreement is delivered and funded.

"EPAD Program" means the Energy Project Assessment District Program established by Ordinance No. 24-2018.

"Financing Agreement" means a Program Financing and Assessment Agreement entered into with Owners, Lenders, and other necessary parties.

"Financing Documents" means the Financing Agreement, and any such other financing agreements and/or the various attendant agreements entered into from time to time, that are issued or delivered in accordance with the EPAD Ordinance, a Project Authorizing Ordinance, or the Administration Agreement.

"Lender" means any organization that provides funding via the EPAD Program to Owners and their successors and assigns.

"Notice Address" means:

If to the Government:  
Department of Finance  
200 E. Main Street  
Lexington, Kentucky 40507  
Attn: Commissioner of Finance

APR 30 2018 AM 9:23

If to the Administrator:

Energize Kentucky, LLC  
200 West 4<sup>th</sup> Street, Suite 600  
Cincinnati, OH 45202  
Attn: Chris Jones

“Owner” means a person, corporation, limited liability company, partnership or other legal entity or any public agency that is an owner of property within the EPAD and seeking funds under the EPAD Program.

“Petitioners” means persons pursuing the development of an Energy Project.

“Project Authorizing Ordinance” means an Ordinance of the [Jurisdiction] approving an Energy Project for financing under a Financing Agreement.

## **SECTION 2 - BASIC SERVICES OF ADMINISTRATOR**

### **2.1. General**

**ADMINISTRATOR** shall perform the services required by the “Administrator of the EPAD Program” under Ordinance No. 24-2018, as well as the following services:

#### **2.1.1 Origination:**

- (a) The **ADMINISTRATOR** shall provide marketing and other information regarding technical aspects of the EPAD Program to Owners and Petitioners.
- (b) The **ADMINISTRATOR** shall assist in the application process to ensure that the needs of Petitioners are properly considered.
- (c) The **ADMINISTRATOR** shall assist in the coordination of the Financing Agreement process to ensure that the needs of Owners are properly considered and the steps required for the Financing Agreement occur in a timely manner, including coordination of the Financing Agreement process with the applicable Lender.
- (d) The **ADMINISTRATOR** shall assist in the holding of any public hearings that maybe required for the Financing Agreement and the publishing of notices of such hearings in accordance with legal requirements.
- (e) The **ADMINISTRATOR** shall assist in the coordination of the execution and delivery of Financing Documents to be executed by a Lender that are required for the funding of a transaction pursuant to a Financing Agreement.

**2.1.2 Servicing:**

(a) **ADMINISTRATOR** shall assist the Owners in communicating with the related Lender with respect to a Financing Agreement.

(b) The **ADMINISTRATOR** may assist with the collection of assessment payments, so long as the **ADMINISTRATOR** provides the Sheriff with a sworn statement providing the amount collected on behalf of each Owner during each applicable year, as well as any fee owed to the Sheriff as agreed to by the **ADMINISTRATOR** and the Sheriff and subject to the limitations in Exhibit A. Any assessment payments collected by the **ADMINISTRATOR** shall be considered distributed to the **GOVERNMENT** prior to being passed along to the Lender.

**2.1.3 Information.** The **ADMINISTRATOR** will respond to all reasonable requests for information from any Lender, paying agent, Petitioner and the **GOVERNMENT** regarding the EPAD Program. The **ADMINISTRATOR** will at all reasonable times make its books, records and papers relating to the EPAD Program available for inspection by the **GOVERNMENT**, any related Lender, any related Owner, and any Financing Agreement trustee at the **ADMINISTRATOR'S** regular place of business.

**2.1.4 Files.** The **ADMINISTRATOR** will retain copies of all the documents delivered at a Closing. The **ADMINISTRATOR** will establish and maintain such permanent files as are appropriate, including files applicable to each Financing Agreement. All such files will be kept at the **ADMINISTRATOR'S** regular place of business and will be available for inspection by **GOVERNMENT**, any related Owner, and any related Lender, and to any other person to the extent required under the Financing Documents or the laws of the Commonwealth, at such reasonable times and in such reasonable manner as the **GOVERNMENT** shall determine.

**2.1.5 Other Assistance.** The **ADMINISTRATOR** shall assist in resolving any disputes which may arise between or among any Owners and any Lender, shall file all written assessment notices in the real property records at the Fayette County Clerk's Office, and shall perform any other service required under Exhibit B that does not conflict with the requirements of Exhibit A.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: Ordinance No. 24-2018 (Exhibit "A"), Request for Proposal No. 36-2017 (Exhibit "B"), Certificates of Insurance (Exhibit "C"), and Administrator's Response dated September 28, 2017 (Exhibit "D").

To the extent of any conflict among the provisions of Exhibit A, these documents, and/or this Agreement, the provisions Exhibit A control, followed by this Agreement, followed by the provisions of Exhibit B.

## **2.2. Other Agreements**

After written authorization to proceed, **ADMINISTRATOR** shall:

**1.2.1.** Notify the **GOVERNMENT** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **GOVERNMENT** and the **ADMINISTRATOR**.

**1.2.2.** The **ADMINISTRATOR** **must perform all duties necessary to fully complete the services described in attached Exhibits A & B for the administration of the EPAD program.**

**1.2.3** Immediately notify **GOVERNMENT** of any delay in the delivery of its services, regardless of cause. Give written notice to **GOVERNMENT** within five (5) business days whenever **ADMINISTRATOR** observes or otherwise becomes aware of any development that affects the scope or timing of **ADMINISTRATOR'S** services.

**1.2.4** Prepare written reports concerning the EPAD Program to the **GOVERNMENT** in such detail and at such times as required under Ordinance. No. 24-2018 or by the call of the Chair of the Budget, Finance & Economic Development Committee.

**1.2.5** The **ADMINISTRATOR** shall not take any action, except as permitted under the terms of Exhibit A, this Agreement, the applicable Financing Documents, and any applicable supplements to such Financing Documents.

**1.2.6** When the consent, approval or other action of the **ADMINISTRATOR** is required pursuant to the terms of Financing Documents, the **ADMINISTRATOR** shall not unreasonably withhold such consent, approval or action.

## **SECTION 3 – GOVERNMENT'S RESPONSIBILITIES**

### **GOVERNMENT shall:**

- 3.1.** Provide criteria and information as to **GOVERNMENT'S** requirements for the **PROJECT**, including objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2.** Assist **ADMINISTRATOR** by placing at his disposal available information pertinent to the Project.
- 3.3.** Examine all studies, reports, memoranda, proposals and other documents presented by **ADMINISTRATOR**, and render its review comments or take legislative action pertaining thereto within a reasonable time so as not to delay the services of **ADMINISTRATOR**.

- 3.4. Designate in writing a person to act as **GOVERNMENT'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define **GOVERNMENT'S** policies and decisions with respect to all matters pertinent to **ADMINISTRATOR'S** services.
- 3.5. Give written notice to **ADMINISTRATOR** whenever **GOVERNMENT** observes or otherwise becomes aware of any development that affects the scope or timing of **ADMINISTRATOR'S** services.

#### **SECTION 4 - PERIOD OF SERVICES**

- 4.1. Work shall begin upon execution of this Agreement and continue through April 1, 2021, subject to the provisions of Sections 5.1 and 6.1. This period of service may be extended or otherwise altered with the mutual consent of the parties.

#### **SECTION 5 - PAYMENTS TO ADMINISTRATOR**

##### **5.1. Administration Fee**

5.1.1 In consideration for the services rendered by the **ADMINISTRATOR** under the terms of this Agreement, the **ADMINISTRATOR** shall be paid a fee at Closing by the Owner in an amount to which the **ADMINISTRATOR**, the **GOVERNMENT**, and related Owner may agree under each respective Project Authorizing Ordinance and Financing Agreement. The amount of the fee shall be subject to the provisions of Exhibit A, the applicable Project Authorizing Ordinance, Financing Documents, and the Act.

5.1.2 No fees entitled to be collected by the **ADMINISTRATOR** under this Agreement shall be paid by the **GOVERNMENT**.

#### **SECTION 6 - GENERAL CONSIDERATIONS**

##### **6.1. Termination**

6.1.1. **ADMINISTRATOR** may only terminate this Agreement due to **GOVERNMENT'S** material breach of the terms hereof which breach causes **ADMINISTRATOR** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **GOVERNMENT**.

6.1.2. The **GOVERNMENT** may terminate this Agreement for cause upon seven (7) business days written advance notice to the **ADMINISTRATOR**. The **GOVERNMENT** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the **ADMINISTRATOR**.

**6.2. Ownership and Reuse of Documents**

All documents, including raw data, reports, memoranda, and other materials prepared by the **ADMINISTRATOR** pursuant to this Agreement shall be delivered to and become the property of the **GOVERNMENT**. The **ADMINISTRATOR** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **GOVERNMENT**.

**6.3. Legal Responsibilities and Legal Relations**

**6.3.1.** The **ADMINISTRATOR** shall familiarize himself with and shall at all times comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.

**6.3.2.** In performing the services hereunder, the **ADMINISTRATOR** and its sub-administrators, employees, agents and representatives shall not be deemed or construed to be employees of **GOVERNMENT** in any manner whatsoever. Except as otherwise provided in this Agreement, the **ADMINISTRATOR** shall be acting as an independent contractor. The **ADMINISTRATOR** shall not hold itself out as, nor claim to be, an officer or employee of **GOVERNMENT** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **GOVERNMENT**. The **ADMINISTRATOR** shall be solely responsible for any claims for wages or compensation by **ADMINISTRATOR'S** employees, agents and representatives, including sub-administrators, and shall save and hold **GOVERNMENT** harmless therefrom.

**6.3.3.** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

**6.3.4** All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by first class mail, postage prepaid and addressed to the appropriate Notice Address. The **GOVERNMENT** and the **ADMINISTRATOR** may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

**6.3.5** To the extent permitted by law, the parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Administration Agreement.

#### **6.4. Successors and Assigns**

**6.4.1. ADMINISTRATOR** binds itself and his partners, successors, executors, assigns and legal representatives to this Agreement in respect to all covenants, agreements, and obligations of this Agreement. **ADMINISTRATOR** shall not assign any interest, obligation or benefit in this Agreement nor transfer any interest in the same, whether by assignment or novation, without prior written consent of **GOVERNMENT**.

**6.4.2.** The **ADMINISTRATOR** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value of the work, excluding legal costs. The **ADMINISTRATOR** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **ADMINISTRATOR** of any responsibility for compliance with the provisions of this

**6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **GOVERNMENT** and **ADMINISTRATOR**.

#### **6.5. Disputes**

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the **GOVERNMENT'S** Agent (Section 8.1.1) and the **ADMINISTRATOR**. In the absence of such an agreement, the dispute shall be submitted to the **GOVERNMENT'S** Commissioner, Department of Finance, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **ADMINISTRATOR** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **GOVERNMENT**.

#### **6.7. Security Clause**

The **ADMINISTRATOR** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **GOVERNMENT** without prior approval of the **GOVERNMENT** unless required by law

#### **6.8. Access to Records**

The **ADMINISTRATOR** and his sub-administrator/ sub-administrators shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the **GOVERNMENT**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **GOVERNMENT** to

disqualify the **ADMINISTRATOR** from consideration for future Professional Service Agreements.

#### **6.9. Required Risk Management Provisions**

The Risk Management Provisions of RFP No. 40-2015 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to **GOVERNMENT** as required therein.

### **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, the **ADMINISTRATOR** agrees as follows:

- 7.1. The **ADMINISTRATOR** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **ADMINISTRATOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **ADMINISTRATOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 7.2. The **ADMINISTRATOR** will, in all solicitations or advertisements for employees placed by or on behalf of the **ADMINISTRATOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

### **SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES**

- 8.1. This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **GOVERNMENT** and **ADMINISTRATOR** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.2. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **GOVERNMENT** or **ADMINISTRATOR**.
- 8.4 **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in



full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.

**8.5. NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement as of the day and year first above written.

**GOVERNMENT:**

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

BY:   
JIM GRAY, MAYOR

ATTEST:   
URBAN COUNTY COUNCIL CLERK

**ADMINISTRATOR:**

**ENERGIZE KENTUCKY, LLC**

BY:   
JERRY SCHMITS, CEO

STATE OF OHIO

COUNTY OF HAMILTON

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Jerry Schmits, as the duly authorized representative for and on behalf of Energize Kentucky, LLC on this the 23<sup>rd</sup> day of April, 2018.

My commission expires: 06/14/2019

  
NOTARY PUBLIC



JENNIFER CORRY  
Notary Public, State of Ohio  
My Comm. Expires June 14, 2019

# EXHIBIT A

ORDINANCE NO. 24-2018

AN ORDINANCE ESTABLISHING AN ENERGY PROJECT ASSESSMENT DISTRICT PROGRAM (EPAD) PURSUANT TO KRS 65.205 TO 65.209 TO SUPPORT PRIVATE SECTOR ENERGY PROJECTS; DESIGNATING THE EPAD DISTRICT BOUNDARIES; DETERMINING THAT ADMINISTRATION OF THE PROGRAM MAY BE BY CONTRACT WITH A THIRD-PARTY; DESIGNATING THE FAYETTE COUNTY SHERIFF AS COLLECTOR OF THE ASSESSMENT; SETTING ELIGIBLE IMPROVEMENT PROJECTS; AND CREATING THE PROCEDURES FOR ELIGIBLE PROPERTY OWNERS LOCATED IN THE EPAD AREA TO PARTICIPATE IN THE EPAD PROGRAM.

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WHEREAS, KRS Sections 65.205 through 65.209 (the "EPAD Act") authorizes local governments in Kentucky, including Urban County governments, to establish a program to advance the conservation and efficient use of energy and water resources by allowing for private sector energy projects to be paid through assessments imposed upon real property being improved through the energy project;

WHEREAS, to establish an Energy Project Assessment District ("EPAD") Program, an ordinance or resolution shall be adopted providing the terms and conditions of the Program, including the designation of the EPAD, a description of the EPAD boundaries, and the procedure for eligible property owners located in the EPAD area to petition the Lexington-Fayette Urban County Government for participation in the program;

WHEREAS, nothing contained herein shall require public-funding of such private sector energy projects; and

WHEREAS, the Urban County Council determines it to be in the best interest of the citizens of Lexington-Fayette Urban County Council to establish an EPAD pursuant to the EPAD Act to enable eligible property owners to finance energy saving improvements to their properties in Lexington-Fayette County.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 – That there is hereby established an Energy Project Assessment District (EPAD) Program pursuant to KRS 65.205 to 65.209 to advance the conservation and efficient use of energy and water resources within Lexington-Fayette County by allowing for private sector energy projects to be paid through assessments imposed upon real property being improved through the energy project.

Section 2 – That Lexington-Fayette Urban County Government intends to use said assessments to support private sector energy projects.

Section 3 – That the entirety of Lexington-Fayette County is hereby designated as an EPAD.

Section 4 – As used in this Ordinance:

“Eligible Property Owner” shall mean the owner of real property that excludes residential property consisting of fewer than five (5) units.

“Administrator of the EPAD program” shall mean the Lexington-Fayette Urban County Government’s Department of Finance and/or any third-party entity the Lexington-Fayette Urban County Government contracts with to administer the program.

All other terms used in this ordinance shall have the same meaning as given to those terms set forth in KRS 65.205.

Section 5 – That to qualify for the EPAD program, an Energy Project shall meet the following requirements:

(A) The property on which the Energy Project is constructed or installed shall be located in Fayette County, but shall not include residential property consisting of fewer than five (5) units;

(B) The Energy Project shall have a minimum cost of \$20,000;

(C) The Energy Project shall be permanently affixed to the real property or building and shall be transferred with the real property upon transfer of title; and

(D) The Energy Project shall constitute an “Energy Improvement” as defined in KRS 65.205.

Section 6 – That the Lexington-Fayette Urban County Government may contract with a third-party entity to administer all or part of the EPAD program.

Section 7 – The Administrator of the EPAD program shall:

(A) Develop and publish policies and procedures for promoting and implementing the EPAD program that are consistent with the requirements of this Ordinance;

(B) Develop and publish a petition consistent with this Ordinance;

(C) Charge a one-time petition fee as further provided in Section 10 of this Ordinance;

(D) Develop an annual reporting format for the oversight and monitoring of the effectiveness of the EPAD program in meeting energy efficiency goals and financial requirements and report findings at least annually to the Urban County Council. The reporting requirements shall be included in the contracts for Eligible Property Owners;

(E) Provide a list of program participants and annual assessment payment amounts to the Fayette County Sheriff's Office (the "Sheriff") annually by no later than January 31 of each year. The Sheriff may require additional information as is necessary for billing and collecting the EPAD assessment;

(F) Once a petition is approved, provide the written agreement for that Energy Project, which must be signed by all property owners and the lender of the financing of the funds for that project, to the Urban County Council for approval and signature by the Mayor, and record notice of the assessment in the real property records of the Fayette County Clerk's Office, which shall include the amount of the assessment, the legal description of the real property, the name of each owner of record of the real property, and a reference to the statutory assessment lien provided by KRS 65.205 to 65.209 and this Ordinance; and

(G) Charge an annual fee based upon the actual costs incurred in administering the particular Energy Project in relation to the overall program.

Section 8 – The annual fee to be charged the owner(s) for administering the EPAD program shall be based on the actual costs incurred but shall not exceed 1% of the total amount of the annual assessment. The commission to be paid to the Sheriff for the collection of the assessment shall be based on actual costs incurred but shall not exceed 1% of the total amount of the annual assessment. Any fee and commission shall be collected concurrently with the annual property assessment and paid to the Sheriff.

Section 9 – That upon receipt of the assessment, administrative fee, and commission amount, the Sheriff shall remit those funds not attributable to the Sheriff by

this Ordinance to the Lexington-Fayette Urban County Government or as otherwise agreed to by the Government.

Section 10 – That the EPAD petition process shall be as follows:

(A) The petition shall include a legal description of the real property being improved, including a deed book and page number, the parcel ID number, and the names and addresses of all owners of record and include a non-refundable petition fee in the amount of \$500.

(B) The petition submittal shall also include the following:

(1) A general description of the proposed Energy Project, including the property's baseline energy and water usage conditions and the energy and water savings projected to be achieved as a result of the energy project, expected life of the improvement(s), and a proposed time schedule for undertaking and completing the project;

(2) Written consent of the holder of each existing mortgage lien on the property stating that the lien holder does not object to the imposition of the statutory EPAD assessment lien;

(3) The estimated payment terms of the program financing agreement, including the total amount financed and annual assessment payment;

(4) The petition shall include a certification by the property owner(s) and its members, affiliates, shareholders, and/or all other related persons or entities as the Administrator of the EPAD program deems appropriate, of the following:

a. That they are solvent and that no proceedings are pending or threatened in which the property owner (or such other person or entity) may be adjudicated as bankrupt, becoming the debtor in a bankruptcy proceeding, be discharged from all of the property owner's debt's or obligations, be granted an extension of time to pay the property owner's debts or be subjected to a reorganization or readjustment of the property owner's debts;

b. That they have not filed for or been subject to bankruptcy protection in the past three years;

c. That they are current in the payment of all obligations secured by the real property upon which the Energy Project will be located, including property taxes, assessments, and tax liens and have had no delinquencies within the past three years or since acquiring title to the subject property if it has been less than three years;

d. That they have no involuntary liens, defaults, or judgments applicable to the subject property; and

e. That they are not party to any litigation related to the property for which petition is being made.

(C) The Administrator of the EPAD program is authorized to require the petitioner to submit a current title examination, opinion letter, or other documentation to verify compliance with the requirements set out in this Ordinance.

(D) The Eligible Property Owner shall agree to participate in annual surveys and EPAD program evaluations as requested by the Administrator of the EPAD program or the Lexington-Fayette Urban County Government.

(E) The property owner shall be in compliance with any and all other applicable state and local orders, requirements, laws, and regulations.

(F) In addition to the above petition requirements, the Administrator of the EPAD program is authorized to require additional information to certify that the petitioner qualifies for the EPAD program in accordance with the EPAD Act.

Section 11 – The procedures for approved projects shall be as follows:

(A) The Administrator of the EPAD program shall review the petition to determine whether the petitioner qualifies for the program. If the Administrator of the EPAD program determines that the petitioner qualifies, he or she shall forward the contract, including the signatures of all property owners and financiers, to the Lexington-Fayette Urban County Government in order to enter into an agreement with the property owner accepting the Energy Project pursuant to the terms and conditions as established by this Ordinance and the Administrator of the EPAD program, which may include a surety bond or other guarantee if deemed appropriate. The written contract shall set forth the total amount of the assessment, the interest rate established for the assessment, and the annual amount

of the assessment. The contract will also designate the licensed contractor that will construct and install the Energy Project.

(B) Once the petition is approved and a contract is executed, the Lexington-Fayette Urban County Government shall impose an assessment upon the property, and it or the Administrator of the EPAD program shall file a written notice of the assessment in the real property records of the Fayette County Clerk's Office indicating the amount of the assessment, the legal description of the real property, the name of each owner of record of the real property, and a reference to the statutory assessment lien provided by KRS 65.205 to 65.209.

(C) Upon recording of the written notice of the assessment, the Sheriff shall collect the assessments annually, including any applicable administration fee and commission amount and is authorized to prepare and issue a bill for the annual assessment payment amount for the relevant property. Any unpaid assessment shall bear the same penalty as general state and local ad valorem taxes.

(D) The assessment, including administration fees and commission amounts, together with any interest and penalties, shall constitute a first and prior lien against the real property on which the assessment is imposed from the date on which the notice of assessment is recorded pursuant to this Ordinance until paid. This lien shall have the same priority status as a lien for any other state or local ad valorem tax upon the property. The Fayette County Attorney's Office is authorized to pursue collection actions for unpaid assessments in the same manner as unpaid property taxes.

(E) Neither the Lexington-Fayette Urban County Government, the Administrator of the EPAD program, the Sheriff, or the Fayette County Attorney's Office nor their officers, officials, or officers shall have any liability to any persons or entities for uncollected EPAD assessments and unpaid EPAD debt.

Section 12 – That Lexington-Fayette Urban County Government may amend or change the terms and conditions of the EPAD program. However, any amendment or change in the terms or conditions shall not retroactively affect the terms and conditions of

an existing EPAD program participant, unless such participant consents in writing to the new terms and conditions.

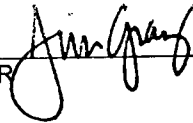
Section 13 – This Ordinance does not obligate the Lexington-Fayette Urban County Government to issue financing related to any Energy Project and any fees provided in this Ordinance are exclusive of any costs that may be related to the issuance of such financing.

Section 14 – That if any provision of this Ordinance as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

Section 15 – That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: April 12, 2018

MAYOR



ATTEST:



CLERK OF URBAN COUNTY COUNCIL

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PUBLISHED: April 26, 2018-1t





## Lexington-Fayette Urban County Government Request for Proposal

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The Lexington-Fayette Urban County Government hereby requests proposals for **RFP #36-2017 Energy Project Assessment District** to be provided in accordance with terms, conditions and specifications established herein.

Sealed proposals will be received in the Division of Central Purchasing, Room 338, Government Center, 200 East Main Street, Lexington, KY, 40507, until **2:00 PM**, prevailing local time, on **September 28, 2017**.

Proposals received after the date and time set for opening proposals will not be considered for award of a contract and will be returned unopened to the Proposer. It is the sole responsibility of the Proposer to assure that his/her proposal is received by the Division of Central Purchasing before the date and time set for opening proposals.

Proposals must be sealed in an envelope and the envelope prominently marked:

### **RFP #36-2017 Energy Project Assessment District**

If mailed, the envelope must be addressed to:

Todd Slatin - Purchasing Director  
Lexington-Fayette Urban County Government  
Room 338, Government Center  
200 East Main Street  
Lexington, KY 40507

Additional copies of this Request For Proposals are available from the Division of Central Purchasing, Room 338 Government Center, 200 East Main Street, Lexington, KY 40507, (859)-258-3320, at no charge.

Proposals, once submitted, may not be withdrawn for a period of sixty (60) calendar days.

**The Proposer must submit one (1) master (hardcopy), (1) electronic version in PDF format on a flash drive or CD and six (6) duplicates (hardcopies) of their proposal for evaluation purposes.**

The Lexington-Fayette Urban County Government reserves the right to reject any or all proposals, and to waive technicalities and informalities when such waiver is determined by the Lexington-Fayette Urban County Government to be in its best interest.

Signature of this proposal by the Proposer constitutes acceptance by the Proposer of terms, conditions and requirements set forth herein.

Minor exceptions may not eliminate the proposal. Any exceptions to the specifications established herein shall be listed in detail on a separate sheet and attached hereto. The Lexington-Fayette Urban County Government shall determine whether any exception is minor.

The Lexington-Fayette Urban County Government encourages the participation of minority- and women-owned businesses in Lexington-Fayette Urban County Government contracts. This proposal is subject to Affirmative Action requirements attached hereto.

***Please do not contact any LFUCG staff member or any other person involved in the selection process other than the designated contact person(s) regarding the project contemplated under this RFP while this RFP is open and a selection has not been finalized. Any attempt to do so may result in disqualification of the firm's submittal for consideration.***

### **Laws and Regulations**

All applicable state laws, ordinances and resolutions (including but not limited to Section 2-33 (Discrimination due to sexual orientation or gender identity) and Chapter 13 (Licenses and Regulations) of the Lexington-Fayette Urban County Government Code of Ordinances, and Resolution No. 484-17 (Minority, Women, and Veteran-Owned Businesses)) and the regulations of all authorities having jurisdiction over the project shall apply to the contract, and shall be deemed to be incorporated herein by reference.

### **Equal Employment Opportunity**

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from itself and each of its subcontracting agents. This

program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

### **Kentucky Equal Employment Opportunity Act**

The Kentucky Equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any "county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin;
- (2) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;
- (3) The contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section; and
- (4) The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses."

The Act further provides:

"KRS 45.610. Hiring minorities -- Information required

- (1) For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetables.
- (2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit

access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.

**KRS 45.620. Action against contractor -- Hiring of minority contractor or subcontractor**

(1) If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.

(2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.

(3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

**KRS 45.630 Termination of existing employee not required, when**

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that employee was employed prior to the date of the contract.

**KRS 45.640 Minimum skills**

Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job."

It is recommended that all of the provisions above quoted be included as special conditions in each contract. In the case of a contract

exceeding \$250,000, the contractor is required to furnish evidence that his workforce in Kentucky is representative of the available workforce in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

### **LFUCG Non-Appropriation Clause**

Contractor acknowledges that the LFUCG is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of the LFUCG's obligations under this contract, then this contract shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the LFUCG shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

In the event of a change in the LFUCG's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the LFUCG's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to the LFUCG upon written notice to Contractor of such limitation or change in the LFUCG's legal authority.

### **Contention Process**

Vendors who respond to this invitation have the right to file a notice of contention associated with the RFP process or to file a notice of appeal of the recommendation made by the Director of Central Purchasing resulting from this invitation.

Notice of contention with the RFP process must be filed within 3 business days of the bid/proposal opening by (1) sending a written notice, including sufficient documentation to support contention, to the Director of the Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his/her contention with the RFP process. After consulting with the Commissioner of Finance the Chief Administrative Officer and reviewing the documentation and/or hearing the vendor, the Director of Central Purchasing shall promptly respond in writing findings as to the compliance with RFP processes. If, based on this review, a RFP process irregularity is deemed to have occurred the Director of Central Purchasing will consult with the Commissioner of Finance, the Chief Administrative Officer and the Department of Law as to the appropriate remedy.

Notice of appeal of a RFP recommendation must be filed within 3 business days of the RFP recommendation by (1) sending a written notice, including sufficient documentation

to support appeal, to the Director, Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his appeal. After reviewing the documentation and/or hearing the vendor and consulting with the Commissioner of Finance and the Chief Administrative Officer, the Director of Central Purchasing shall in writing, affirm or withdraw the recommendation.

**SELECTION CRITERIA:**

See complete criteria in Scope of Work section below.

Proposals shall contain the appropriate information necessary to evaluate based on these criteria. A committee composed of government employees as well as representatives of relevant user groups will evaluate the proposals.

**Questions shall be addressed to:**

Todd Slatin, Director  
Division of Central Purchasing  
[tslatin@lexingtonky.gov](mailto:tslatin@lexingtonky.gov)

## Affirmative Action Plan

All vendors must submit as a part of the proposal package the following items to the Urban County Government:

1. Affirmative Action Plan for his/her firm;
2. Current Work Force Analysis Form;

Failure to submit these items as required may result in disqualification of the submitter from award of the contract. All submissions should be directed to:

Director, Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, 3rd Floor  
Lexington, Kentucky 40507

All questions regarding this proposal must be directed to the Division of Central Purchasing, (859)-258-3320.

## AFFIDAVIT

Comes the Affiant, \_\_\_\_\_, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is \_\_\_\_\_ and he/she is the individual submitting the proposal or is the authorized representative of \_\_\_\_\_, the entity submitting the proposal (hereinafter referred to as "Proposer").

2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.

3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.

4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.

5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.

6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

**Continued on next page**



7. Proposer acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

\_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was subscribed, sworn to and acknowledged before me by \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 2017.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

## EQUAL OPPORTUNITY AGREEMENT

### The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

*The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability.*

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

*The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.*

\*\*\*\*\*

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

### Bidders

*I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.*

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Business

**WORKFORCE ANALYSIS FORM**

Name of Organization: \_\_\_\_\_

Categories	Total	White (Not Hispanic or Latino)		Hispanic or Latino		Black or African-American (Not Hispanic or Latino)		Native Hawaiian and Other Pacific Islander (Not Hispanic or Latino)		Asian (Not Hispanic or Latino)		American Indian or Alaskan Native (not Hispanic or Latino)		Two or more races (Not Hispanic or Latino)		Total	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Administrators																	
Professionals																	
Superintendents																	
Supervisors																	
Foremen																	
Technicians																	
Protective Service																	
Para-Professionals																	
Office/Clerical																	
Skilled Craft																	
Service/Maintenance																	
<b>Total:</b>																	

Prepared by: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

(Name and Title)

Revised 2015-Dec-15

**DIRECTOR, DIVISION OF CENTRAL PURCHASING  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
200 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40507**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL  
EMPLOYMENT OPPORTUNITIES AND DBE CONTRACT PARTICIPATION**

Notice of requirement for Affirmative Action to ensure Equal Employment Opportunities and Disadvantaged Business Enterprises (DBE) Contract participation. Disadvantaged Business Enterprises (DBE) consists of Minority-Owned Business Enterprises (MBE) and Woman-Owned Business Enterprises (WBE).

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this Contract be subcontracted to Disadvantaged Business Enterprises, which is made up of MBEs and WBEs. The goal for the utilization of Disadvantaged Business Enterprises as subcontractors is a recommended goal. Contractor(s) who fail to meet such goal will be expected to provide written explanations to the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goal, and the extent to which they are successful in accomplishing the recommended goal will be a consideration in the procurement process. Depending on the funding source, other DBE goals may apply.

For assistance in locating Disadvantaged Business Enterprises Subcontractors contact:

**Sherita Miller, Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, 3rd Floor, Room 338  
Lexington, Kentucky 40507  
smiller@lexingtonky.gov**

**Lexington-Fayette Urban County Government**  
**MWDBE PARTICIPATION GOALS**

A. GENERAL

- 1) The LFUCG request all potential contractors to make a concerted effort to include Minority-Owned (MBE), Woman-Owned (WBE), Disadvantaged (DBE) Business Enterprises and Veteran-Owned Businesses as subcontractors or suppliers in their bids.
- 2) Toward that end, the LFUCG has established 10% of total procurement costs as a Goal for participation of Minority-Owned, Woman-Owned and Disadvantaged Businesses on this contract.
- 3) **It is therefore a request of each Bidder to include in its bid, the same goal (10%) for MWDBE participation and other requirements as outlined in this section.**
- 4) The LFUCG has also established a 3% of total procurement costs as a Goal for participation for of Veteran-Owned Businesses.
- 5) **It is therefore a request of each Bidder to include in its bid, the same goal (3%) for Veteran-Owned participation and other requirements as outlined in this section.**

B. PROCEDURES

- 1) The successful bidder will be required to report to the LFUCG, the dollar amounts of all payments submitted to Minority-Owned or Woman-Owned subcontractors and suppliers for work done or materials purchased for this contract. (See Subcontractor Monthly Payment Report)
- 2) Replacement of a Minority-Owned or Woman-Owned subcontractor or supplier listed in the original submittal must be requested in writing and must be accompanied by documentation of Good Faith Efforts to replace the subcontractor / supplier with another MWDBE Firm; this is subject to approval by the LFUCG. (See LFUCG MWDBE Substitution Form)
- 3) For assistance in identifying qualified, certified businesses to solicit for potential contracting opportunities, bidders may contact:
  - a) The Lexington-Fayette Urban County Government, Division of Central Purchasing (859-258-3320)
- 4) The LFUCG will make every effort to notify interested MWDBE and Veteran-Owned subcontractors and suppliers of each Bid Package, including information on the scope of work, the pre-bid meeting time and location, the bid date, and all other pertinent information regarding the project.

### C. DEFINITIONS

- 1) A Minority-Owned Business Enterprise (MBE) is defined as a business which is certified as being at least 51% owned and operated by persons of African American, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native Heritage.
- 2) A Woman-Owned Business Enterprise (WBE) is defined as a business which is certified as being at least 51% owned and operated by one or more Non-Minority Females.
- 3) A Disadvantaged Business (DBE) is defined as a business which is certified as being at least 51% owned and operated by a person(s) that are economically and socially disadvantaged.
- 4) A Veteran-Owned Business is defined as a business which is certified as being at least 51% owned and operated by a veteran and/or a service disabled veteran.
- 5) Good Faith Efforts are efforts that, given all relevant circumstances, a bidder or proposer actively and aggressively seeking to meet the goals, can reasonably be expected to make. In evaluating good faith efforts made toward achieving the goals, whether the bidder or proposer has performed the efforts outlined in the Obligations of Bidder for Good Faith Efforts outlined in this document will be considered, along with any other relevant factors.

### D. OBLIGATION OF BIDDER FOR GOOD FAITH EFFORTS

- 1) **The bidder shall make a Good Faith Effort to achieve the Participation Goal for MWDBE subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the bidder; however, bidders not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.**
- 2) Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 3) The Form of Proposal includes a section entitled "MWDBE Participation Form". The applicable information must be completed and submitted as outlined below.
- 4) **Failure to submit this information as requested may be cause for rejection of bid.**

### E. DOCUMENTATION REQUIRED FOR GOOD FAITH EFFORTS

- 1) Bidders reaching the Goal are required to submit only the MWDBE Participation Form." The form must be fully completed including names

and telephone number of participating MWDBE firm(s); type of work to be performed; estimated value of the contract and value expressed as a percentage of the total Lump Sum Bid Price. The form must be signed and dated, and is to be submitted with the bid.

- 2) Bidders not reaching the Goal must submit the “MWDBE Participation Form”, the “Quote Summary Form” and a written statement documenting their Good Faith Effort to do so. If bid includes no MWDBE participation, bidder shall enter “None” on the subcontractor / supplier form). In addition, the bidder must submit written proof of their Good Faith Efforts to meet the Participation Goal:
  - a. Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms to participate.
  - b. Included documentation of advertising in the above publications with the bidders good faith efforts package
  - c. Attended LFUCG Central Purchasing Economic Inclusion Outreach event
  - d. Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs of subcontracting opportunities
  - e. Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms
  - f. Requested a list of MWDBE subcontractors or suppliers from LFUCG Economic Engine and showed evidence of contacting the companies on the list(s).
  - g. Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms to work on this project. Those contacted and their responses should be a part of the bidder’s good faith efforts documentation.
  - h. Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.
  - i. Followed up initial solicitations by contacting MWDBEs to determine their level of interest.

j. Provided the interested MWDBE firm with adequate and timely information about the plans, specifications, and requirements of the contract.

k. Selected portions of the work to be performed by MWDBE firms in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE participation, even when the prime contractor may otherwise perform these work items with its own workforce

l. Negotiated in good faith with interested MWDBE firms not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

m. Included documentation of quotations received from interested MWDBE firms which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.

n. Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE goals.

o. Made an effort to offer assistance to or refer interested MWDBE firms to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal

p. Made efforts to expand the search for MWBE firms beyond the usual geographic boundaries.

q. Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE participation.

Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement. Documentation of Good Faith Efforts are to be submitted with the Bid, if the participation Goal is not met.





## MINORITY BUSINESS ENTERPRISE PROGRAM

Sherita Miller, MPA  
Minority Business Enterprise Liaison  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507  
[smiller@lexingtonky.gov](mailto:smiller@lexingtonky.gov)  
859-258-3323

OUR MISSION: The mission of the Minority Business Enterprise Program is to facilitate the full participation of minority and women owned businesses in the procurement process and to promote economic inclusion as a business imperative essential to the long term economic viability of Lexington-Fayette Urban County Government.

To that end the city council adopted and implemented resolution 167-91—Disadvantaged Business Enterprise (DBE) 10% Goal Plan in July of 1991. The resolution states in part (a full copy is available in Central Purchasing):

*“A Resolution supporting adoption of the administrative plan for a ten percent (10%) Minimum goal for disadvantaged business enterprise participation in Lexington-Fayette Urban County Government construction and professional services contracts; Providing that as part of their bids on LFUCG construction contracts, general Contractors shall make a good faith effort to award at least ten percent (10%) of All subcontracts to disadvantaged business enterprises; providing that divisions of LFUCG shall make a good faith effort to award at least ten percent of their Professional services and other contracts to disadvantaged business enterprises...”*

A Disadvantaged Business Enterprise is defined as a business that has been certified as being at least 51% owned, operated and managed by a U.S. Citizen of the following groups:

- African-American
- Hispanic-American
- Asian/Pacific Islander
- Native American/Native Alaskan
- Non-Minority Female
- Economically and Socially Disadvantaged

In addition, to that end the city council also adopted and implemented resolution 167-91—Veteran-owned Businesses, 3% Goal Plan in July of 2015. The resolution states in part (a full copy is available in Central Purchasing):

*“A resolution adopting a three percent (3%) minimum goal for certified veteran-owned small businesses and service disabled veteran-owned businesses for certain of those Lexington-Fayette Urban County contracts related to construction for professional services, and authorizing the Division of Purchasing to adopt and implement guidelines and/or policies consistent with the provisions and intent of this resolution by no later than July 1, 2015.”*

We have compiled the list below to help you locate certified MBE, WBE and DBE certified businesses. Below is a listing of contacts for LFUCG Certified MWDBEs in Economic Engine (<https://lfucg.economicengine.com>)

<b>Business</b>	<b>Contact</b>	<b>Email Address</b>	<b>Phone</b>
<b>LFUCG</b>	Sherita Miller	<a href="mailto:smiller@lexingtonky.gov">smiller@lexingtonky.gov</a>	859-258-3323
<b>Commerce Lexington – Minority Business Development</b>	Tyrone Tyra	<a href="mailto:ttyra@commercelexington.com">ttyra@commercelexington.com</a>	859-226-1625
<b>Tri-State Minority Supplier Diversity Council</b>	Sonya Brown	<a href="mailto:sbrown@tsmsdc.com">sbrown@tsmsdc.com</a>	502-625-0137
<b>Small Business Development Council</b>	Dee Dee Harbut UK SBDC	<a href="mailto:dharbut@uky.edu">dharbut@uky.edu</a>	859-257-7668
	Shiric Mack	<a href="mailto:smack3@email.uky.edu">smack3@email.uky.edu</a>	859-257-7666
<b>Community Ventures Corporation</b>	James Coles	<a href="mailto:jcoles@cycky.org">jcoles@cycky.org</a>	859-231-0054
<b>KY Department of Transportation</b>	Melvin Bynes	<a href="mailto:Melvin.bynes2@ky.gov">Melvin.bynes2@ky.gov</a>	502-564-3601
	Shella Eagle	<a href="mailto:Shella.Eagle@ky.gov">Shella.Eagle@ky.gov</a>	502-564-3601
<b>Ohio River Valley Women’s Business Council (WBENC)</b>	Rea Waldon	<a href="mailto:rwaldon@gcul.org">rwaldon@gcul.org</a>	513-487-6534
<b>Kentucky MWBE Certification Program</b>	Yvette Smith, Kentucky Finance Cabinet	<a href="mailto:Yvette.Smith@ky.gov">Yvette.Smith@ky.gov</a>	502-564-8099
<b>National Women Business Owner’s Council (NWBOC)</b>	Janet Harris-Lange	<a href="mailto:janet@nwboc.org">janet@nwboc.org</a>	800-675-5066
<b>Small Business Administration</b>	Robert Coffey	<a href="mailto:robertcoffey@sba.gov">robertcoffey@sba.gov</a>	502-582-5971
<b>LaVoz de Kentucky</b>	Andres Cruz	<a href="mailto:lavozydeky@yahoo.com">lavozydeky@yahoo.com</a>	859-621-2106
<b>The Key News Journal</b>	Patrice Muhammad	<a href="mailto:paatricem@keynewsjournal.com">paatricem@keynewsjournal.com</a>	859-373-9428



**LFUCG MWDBE PARTICIPATION FORM**

**Bid/RFP/Quote Reference #** \_\_\_\_\_

The MWDBE subcontractors listed have agreed to participate on this Bid/RFP/Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately.

<b>MWDBE Company, Name, Address, Phone, Email</b>	<b>Work to be Performed</b>	<b>Total Dollar Value of the Work</b>	<b>% Value of Total Contract</b>
1.			
2.			
3.			
4.			

The undersigned company representative submits the above list of MWDBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company Representative**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**



**LFUCG MWDBE SUBSTITUTION FORM**  
**Bid/RFP/Quote Reference # \_\_\_\_\_**

The substituted MWDBE subcontractors listed below have agreed to participate on this Bid/RFP/Quote. These substitutions were made prior to or after the job was in progress. These substitutions were made for reasons stated below and are now being submitted to Central Purchasing for approval. By the authorized signature of a representative of our company, we understand that this information will be entered into our file for this project.

SUBSTITUTED MWDBE Company Name, Address, Phone, Email	MWDBE Formally Contracted/ Name, Address, Phone, Email	Work to Be Performed	Reason for the Substitution	Total Dollar Value of the Work	% Value of Total Contract
1.					
2.					
3.					
4.					

The undersigned acknowledges that any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company Representative**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**



**MWDBE QUOTE SUMMARY FORM**

Bid/RFP/Quote Reference # \_\_\_\_\_

The undersigned acknowledges that the minority subcontractors listed on this form did submit a quote to participate on this project.

Company Name	Contact Person
Address/Phone/Email	Bid Package / Bid Date

MWDBE Company Address	Contact Person	Contact Information (work phone, Email, cell)	Date Contacted	Services to be performed	Method of Communication (email, phone meeting, ad, event etc)	Total dollars \$\$ Do Not Leave Blank (Attach Documentation)	MBE * AA HA AS NA Female	Veteran

(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/ NA= Native American)

The undersigned acknowledges that all information is accurate. Any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



## LFUCG SUBCONTRACTOR MONTHLY PAYMENT REPORT

The LFUCG has a 10% goal plan adopted by city council to increase the participation of minority and women owned businesses in the procurement process. In order to measure that goal LFUCG will track spending with MWDBE vendors on a monthly basis. By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentation may result in termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims. Please submit this form monthly to the Division of Central Purchasing/ 200 East Main Street / Room 338 / Lexington, KY 40507.

**Bid/RFP/Quote #** \_\_\_\_\_

**Total Contract Amount Awarded to Prime Contractor for this Project** \_\_\_\_\_

<b>Project Name/ Contract #</b>	<b>Work Period/ From:</b> _____ <b>To:</b> _____
<b>Company Name:</b>	<b>Address:</b>
<b>Federal Tax ID:</b>	<b>Contact Person:</b>

Subcontractor Vendor ID (name, address, phone, email)	Description of Work	Total Subcontract Amount	% of Total Contract Awarded to Prime for this Project	Total Amount Paid for this Period	Purchase Order number for subcontractor work (please attach PO)	Scheduled Project Start Date	Scheduled Project End Date

By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentations may result in the termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company Representative**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

**LFUCG STATEMENT OF GOOD FAITH EFFORTS**

**Bid/RFP/Quote #** \_\_\_\_\_

By the signature below of an authorized company representative, we certify that we have utilized the following Good Faith Efforts to obtain the maximum participation by MWDBE business enterprises on the project and can supply the appropriate documentation.

\_\_\_\_\_ Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms to participate.

\_\_\_\_\_ Included documentation of advertising in the above publications with the bidders good faith efforts package

\_\_\_\_\_ Attended LFUCG Central Purchasing Economic Inclusion Outreach event

\_\_\_\_\_ Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs of subcontracting opportunities

\_\_\_\_\_ Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms

\_\_\_\_\_ Requested a list of MWDBE subcontractors or suppliers from LFUCG Economic Engine and showed evidence of contacting the companies on the list(s).

\_\_\_\_\_ Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms to work on this project. Those contacted and their responses should be a part of the bidder's good faith efforts documentation.

\_\_\_\_\_ Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.

- \_\_\_\_\_ Followed up initial solicitations by contacting MWDBEs to determine their level of interest.
  
- \_\_\_\_\_ Provided the interested MWBDE firm with adequate and timely information about the plans, specifications, and requirements of the contract.
  
- \_\_\_\_\_ Selected portions of the work to be performed by MWDBE firms in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE participation, even when the prime contractor may otherwise perform these work items with its own workforce
  
- \_\_\_\_\_ Negotiated in good faith with interested MWDBE firms not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.
  
- \_\_\_\_\_ Included documentation of quotations received from interested MWDBE firms which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.
  
- \_\_\_\_\_ Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE goals.
  
- \_\_\_\_\_ Made an effort to offer assistance to or refer interested MWDBE firms to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal
  
- \_\_\_\_\_ Made efforts to expand the search for MWDBE firms beyond the usual geographic boundaries.



\_\_\_\_\_ Other - any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE participation.

Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement. Documentation of Good Faith Efforts are to be submitted with the Bid, if the participation Goal is not met.

The undersigned acknowledges that all information is accurate. Any misrepresentations may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company Representative**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

## GENERAL PROVISIONS

1. Each Respondent shall comply with all Federal, State & Local regulations concerning this type of service or good.

The Respondent agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. The Respondent also agrees to notify the LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. The Respondent agrees to indemnify, defend and hold the LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

2. Failure to submit ALL forms and information required in this RFP may be grounds for disqualification.
3. Addenda: All addenda, if any, shall be considered in making the proposal, and such addenda shall be made a part of this RFP. Before submitting a proposal, it is incumbent upon each proposer to be informed as to whether any addenda have been issued, and the failure to cover in the bid any such addenda may result in disqualification of that proposal.
4. Proposal Reservations: LFUCG reserves the right to reject any or all proposals, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by a Respondent in the preparation of proposals.
6. Changes/Alterations: Respondent may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by LFUCG prior to the scheduled closing time for receipt of proposals, will be accepted. The proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of proposal".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from a Respondent.
8. Bribery Clause: By his/her signature on the bid, Respondent certifies that no employee of his/hers, any affiliate or Subcontractor, has bribed or attempted

to bribe an officer or employee of the LFUCG.

9. Additional Information: While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. Ambiguity, Conflict or other Errors in RFP: If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. Agreement to Bid Terms: In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. Cancellation: If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

#### A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.

- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
- (a) Failure to perform the contract according to its terms, conditions and specifications;
  - (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
  - (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
  - (d) Failure to diligently advance the work under a contract for construction services;
  - (e) The filing of a bankruptcy petition by or against the contractor; or
  - (f) Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

#### B. At Will Termination

Notwithstanding the above provisions, the LFUCG may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

13. **Assignment of Contract:** The contractor shall not assign or subcontract any portion of the Contract without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
14. **No Waiver:** No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
15. **Authority to do Business:** The Respondent must be a duly organized and

authorized to do business under the laws of Kentucky. Respondent must be in good standing and have full legal capacity to provide the services specified under this Contract. The Respondent must have all necessary right and lawful authority to enter into this Contract for the full term hereof and that proper corporate or other action has been duly taken authorizing the Respondent to enter into this Contract. The Respondent will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of the Respondent.

16. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
17. **Ability to Meet Obligations:** Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. Contractor [or Vendor or Vendor's Employees] will not appropriate or make use of the Lexington-Fayette Urban County Government (LFUCG) name or any of its trade or service marks or property (including but not limited to any logo or seal), in any promotion, endorsement, advertisement, testimonial or similar use without the prior written consent of the government. If such consent is granted LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. Contractor agrees that it shall cease and desist from any unauthorized use immediately upon being notified by LFUCG.

20. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Firm Submitting Proposal: \_\_\_\_\_

Complete Address: \_\_\_\_\_  
Street City Zip

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email address: \_\_\_\_\_

**RISK MANAGEMENT PROVISIONS  
INSURANCE AND INDEMNIFICATION**

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**INDEMNIFICATION AND HOLD HARMLESS PROVISION**

- (1) It is understood and agreed by the parties that Consultant hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Consultant or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "Consultant") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- (2) Consultant shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Consultant's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Consultant; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.
- (3) Notwithstanding, the foregoing, with respect to any professional services performed by Consultant hereunder (and to the fullest extent permitted by law), Consultant shall indemnify, save, hold harmless and defend LFUCG from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Consultant in the performance of this agreement.
- (4) In the event LFUCG is alleged to be liable based upon the above, Consultant shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.



- (5) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- (6) LFUCG is a political subdivision of the Commonwealth of Kentucky. CONSULTANT acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the CONSULTANT in any manner.

**FINANCIAL RESPONSIBILITY**

CONSULTANT understands and agrees that it shall, prior to final acceptance of its proposal and the commencement of any work or services, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

**INSURANCE REQUIREMENTS**

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

**Required Insurance Coverage**

CONSULTANT shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by CONSULTANT. The cost of such insurance shall be included in any bid:

<b><u>Coverage</u></b>	<b><u>Limits</u></b>
General Liability million aggregate (Insurance Services Office Form CG 00 01) limit	\$1 million per occurrence, \$2 or \$2 million combined single limit
Commercial Automobile Liability per occurrence (Insurance Services Office Form CA 0001)	combined single, \$1 million
Professional Liability million aggregate	\$1 million per occurrence, \$2
Worker's Compensation	Statutory

Employer's Liability

\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement and a Products Liability endorsement unless they are deemed not to apply by LFUCG.
- d. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions) for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by LFUCG.
- e. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, CONSULTANT shall notify LFUCG and obtain similar insurance that is commercially available and acceptable to LFUCG.
- f. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- g. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

#### Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

#### Deductibles and Self-Insured Programs

**IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE.**

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of CONSULTANT's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If CONSULTANT satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, CONSULTANT agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.
- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

**Safety and Loss Control**

CONSULTANT shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

**Verification of Coverage**

CONSULTANT agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

**Right to Review, Audit and Inspect**

CONSULTANT understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

**DEFAULT**

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging CONSULTANT for any such insurance premiums purchased, or suspending or terminating the work.

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## **Energy Project Assessment District - Request for Proposal**

### **Background**

Legislation passed in 2015 by the Kentucky General Assembly authorizes local governments to establish Energy Project Assessment Districts (EPADs). EPADs provide a new, innovative, and proven way for commercial, agricultural, industrial, non-profit and multi-family property owners to pay for the following building infrastructure improvements:

- Energy efficiency upgrades
- On-site renewable energy systems
- Water conservation measures

EPAD financing can provide for 100% of an energy project's cost, and is repaid by participating property owners with a voluntary assessment on the property tax bill over a term equal to or less than the estimated useful life of the improvements up to 30 years.

Property owners who take advantage of EPAD financing are able to experience multiple benefits not available with traditional loans. Historically, financing energy projects has been plagued by short repayment periods, high or variable interest rates, stringent credit requirements that don't account for savings from improved energy efficiency, and lack of equity. EPAD financing offers the following unique benefits to the property owner:

- Requires NO down payment
- Provides fixed payments with low interest rates
- Extended repayment terms of up to 30 years allow most energy projects to have immediate positive cash flows since some improvements, such as windows and elevators, have higher upfront costs and lower energy savings. However, it is not recommended to finance measures beyond their expected useful life.
- EPAD assessments remain with the property, not the business, when sold or transferred
- Underwriting for EPAD financing focuses on the positive equity in the property
- Because the EPAD assessment is the ONLY repayment obligation and is attached to the property tax record and NOT the business, the business owner doesn't tie up other credit lines for essential operating expenses

Energy projects financed with EPAD do NOT require a subsidy or incentive from the local government sponsoring the EPAD.

## **Scope of Work**

The Lexington-Fayette Urban County Government (LFUCG) is seeking a qualified entity to administer a county-wide EPAD program. The selected entity will be responsible for all aspects of the program including but not limited to:

1. Marketing and outreach to property owners
2. Marketing and outreach to contractors
3. Facilitating the application process
4. Establishing relationships with qualified EPAD lenders
5. Facilitating the financial closing process
6. Energy project management (installation, progress payments, contractor management)
7. Quality assurance and installation verification
8. Commissioning (as needed)
9. Placing assessments on the tax record
10. Collecting the assessments
11. Remitting the collected assessment to the lender

In addition to the administration functions of the program, the selected entity will be responsible for assisting the LFUCG in the creation of the state required EPAD Ordinance.

Additional information about the program and the requirements can be found in the attachments "Kentucky EPAD Overview.pdf" and "KY EPAD Handbook 2016-09-01.pdf"

Interested parties are encouraged to partner with other entities if they cannot provide all the services listed above.

## **Submittal Requirements**

Submittals should include the following information:

1. Overview/background of submitting entity(s), identify lead entity if applicable
2. Narrative outlining relevant experience of the entity
3. A list of key personnel, including experience information for the people who will be operating and managing the program
4. Minimum of three relevant references, including name and contact information
5. Overview of how your entity will manage the program, including timeline for implementation and capacity to perform the work
6. A detailed listing of all fees that will be charged to the LFUCG or program participants

## **Evaluation**

Proposals will be evaluated on the following criteria:

1. Specialized experience and technical competence of the entity with the type of service required – 25 points
2. Capacity of the entity to perform the work – 15 points
3. Past record and performance on contracts with the Urban County Government or other governmental agencies and private industry with respect to such factors as control of cost, quality of work and ability to meet schedules – 15 points
4. Familiarity with the details of the project – 20 points
5. Degree of local employment – 5 points
6. Estimated cost of services – 20 points

The highest scoring entities may be asked to attend an interview/presentation meeting before a final selection will be made.





Exhibit D



**Lexington-Fayette  
Urban County Government  
Request for Proposal**

RFP #36-2017 Energy Project Assessment District

**Submitted by:**

Greater Cincinnati Energy Alliance

DBA Energize Kentucky



## AFFIDAVIT

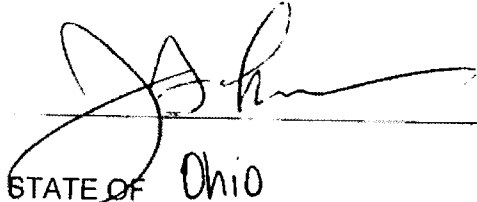
Comes the Affiant, Jerry Schmits, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is Jerry Schmits and he/she is the individual submitting the proposal or is the authorized representative of Greater Cincinnati Energy Alliance DBA Energize Kentucky, LLC, the entity submitting the proposal (hereinafter referred to as "Proposer").
2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.
3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.
4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.
5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.
6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

**Continued on next page**

7. Proposer acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

  
STATE OF Ohio

COUNTY OF Hamilton

The foregoing instrument was subscribed, sworn to and acknowledged before me by Jerry Schmits on this the 27<sup>th</sup> day of September, 2017.

My Commission expires. 06-14-2019

  
NOTARY PUBLIC, STATE AT LARGE



JENNIFER CORRY  
Notary Public, State of Ohio  
My Comm. Expires June 14, 2019

1	EOA
2	AA
3	MWBE
4	GENERAL PROVISIONS
5	SUBMITTING FIRM
6	EPAA RFP
7	ADDITIONAL INFORMATION
8	_____
9	_____
10	_____

## EQUAL OPPORTUNITY AGREEMENT

### The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin
- Executive Order No 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No 11375 to prohibit discrimination on the basis of sex
- Section 503 of the Rehabilitation Act of 1973 states

*The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability*

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts
- Section 206(A) of Executive Order 12086 Consolidation of Contract Compliance Functions for Equal Employment Opportunity states

*The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated*

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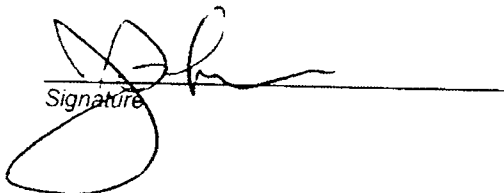
The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

### Bidders

*I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.*

Signature



Greater Cincinnati Energy Alliance DBA  
Energize Kentucky, LLC  
Name of Business

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**Equal Opportunity Employer (EOA)**

GCEA is an Equal Opportunity Employer. This means that we will extend equal opportunity to all individuals without regard for race, religion, sex, national origin, age, disability, or veteran status. This policy affirms GCEA's commitment to the principles of fair employment and the elimination of all existing vestiges of discriminatory practices.

In order to provide equal employment and advancement opportunities to all individuals, employment decisions at GCEA are based on merit, qualifications, and abilities. GCEA does not base such employment decisions on race, religion, sex, national origin, age, disability, or veteran status. GCEA will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in undue hardship.

This Equal Employment Opportunity policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training.

Employees with questions or concerns about discrimination in the workplace are encouraged to bring these issues to the attention of Executive Director. Employees may raise concerns and make reports without fear of reprisal. GCEA employees found to be engaging in unlawful discrimination will be subject to disciplinary action, up to and including termination of employment.

GCEA is compliant with all applicable Affirmative Action regulations.

**WORKFORCE ANALYSIS FORM**

Name of Organization: Greater Cincinnati Energy Alliance DBA Energize Kentucky, LLC

Categories	Total	White (Not Hispanic or Latino)		Hispanic or Latino		Black or African-American (Not Hispanic or Latino)		Native Hawaiian and Other Pacific Islander (Not Hispanic or Latino)		Asian (Not Hispanic or Latino)		American Indian or Alaskan Native (not Hispanic or Latino)		Two or more races (Not Hispanic or Latino)		Total	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Administrators						1										1	
Professionals		4	1													4	1
Superintendents																	
Supervisors																	
Foremen																	
Technicians																	
Protective Service																	
Para-Professionals																	
Office/Clerical			1				1										2
Skilled Craft																	
Service/Maintenance																	
<b>Total:</b>		4	2			1	1									5	3

Prepared by: Jerry Schmits President & CEO  
 (Name and Title)

Date: 9 / 28 / 2017

Revised 2015-Dec-15

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**Affirmative Action Plan**

GCEA values diversity in each of its standard business practices, such as hiring and the selection of subcontractors. Because GCEA employs less than twenty-five (25) staff members at any given time, the organization is typically exempt from maintaining an official Affirmative Action Plan. But despite this exemption, GCEA's business practices embody the principles and ideals of Affirmative Action. Examples of this are evident in both the racial and gender make-up of our staff, and the MWDBE ownership status of the contractors with whom our organization has engaged since our inception in 2009.

The nature of the PACE administration function is such that GCEA does not expect to use third-party contractors or subcontract any of the direct PACE program administration functions. In the areas of marketing and outreach/education, GCEA provides PACE administration services to municipalities across the Commonwealth and has developed regional marketing plans for promoting the program statewide. Our firm is contracted with Robeson Marketing Design, a WBE (woman-owned business entity), to manage these efforts, both for our PACE Administration services and for our other service lines.



**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**Statement of Good Faith Efforts**

GCEA currently serves as the named PACE program administrator for four (4) municipalities within the Commonwealth of Kentucky and continues to work with several other prospective local governments in forming EPAD Programs. To support and promote these services throughout the Commonwealth, GCEA has invested extensively in marketing collateral, the development of EPAD program guidelines, website design, and other marketing initiatives. While GCEA fully intends to perform 100% of the PACE administration functions for the Lexington-Fayette Urban County Government using existing (internal) staff members, the organization outsources the management of its marketing and design functions to Robeson Design Marketing, LLC—a woman-owned business entity. As a forward-looking statement, Robeson Design Marketing has been notified by GCEA of its intention to extend its contract for managed marketing services again in FY 2018.

And while the nature of the PACE Administration service fees typically varies in value (dollar amount), the structure of the contract with Robeson Design Marketing impacts all the GCEA PACE Administration clients. Therefore, it is impossible to state an exact percentage of any fees paid to this contractor that can be directly attributed to the Lexington-Fayette Urban County Government's PACE Administration contract with GCEA. Based on these factors, Robeson Design Marketing will not be required to provide a separate proposal for work specific to this RFP response.

In preparation for the development of this RFP submission, Robeson Design Marketing has been notified by GCEA that future marketing initiatives within the Commonwealth of Kentucky may involve activities such as local workshops, outreach to local contractors and developers, IP targeting / digital marketing, and broadcast marketing in the Central Kentucky / Lexington market.

Additionally, GCEA realizes the workforce development opportunities with labor-intensive energy efficiency and renewable energy installations. Therefore, education and outreach will be a focused effort to ensure all sectors of the workforce can maximize their participation on PACE financed building improvements.



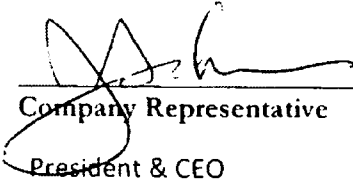
**LFUCG MWDBE PARTICIPATION FORM**  
 Bid/RFP/Quote Reference # 36-2017 (EPAD)

The MWDBE subcontractors listed have agreed to participate on this Bid/RFP Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately.

MWDBE Company, Name, Address, Phone, Email	Work to be Performed	Total Dollar Value of the Work	% Value of Total Contract
1. NONE			
2.			
3.			
4.			

The undersigned company representative submits the above list of MWDBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Energize Kentucky, LLC  
 Company  
9/28/2017  
 Date

  
 \_\_\_\_\_  
 Company Representative  
President & CEO  
 Title



**MWDBE QUOTE SUMMARY FORM**

Bid/RFP/Quote Reference # 36-2017 (EPAD)

The undersigned acknowledges that the minority subcontractors listed on this form did submit a quote to participate on this project.

Company Name <b>Energize Kentucky, LLC</b>	Contact Person <b>Chris Jones</b>
Address/Phone/Email <b>cjones@kypace.org; 859-746-5310 x 1</b>	Bid Package / Bid Date <b>Submission date: 9/28/2017</b>

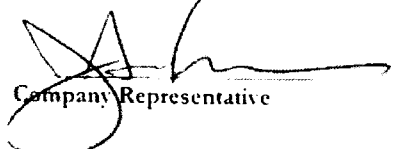
MWDBE Company Address	Contact Person	Contact Information (work phone, Email, cell)	Date Contacted	Services to be performed	Method of Communication (email, phone meeting, ad, event etc)	Total dollars \$\$ Do Not Leave Blank (Attach Documentation)	MBE * AA HA AS NA Female	Veteran
None								

(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/ NA= Native American)

The undersigned acknowledges that all information is accurate. Any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Energize Kentucky, LLC  
Company

9 / 28 / 2017  
Date

  
Company Representative  
President & CEO  
Title

**LFUCG STATEMENT OF GOOD FAITH EFFORTS**

**Bid/RFP/Quote # 36-2017 (EPAD)**

By the signature below of an authorized company representative, we certify that we have utilized the following Good Faith Efforts to obtain the maximum participation by MWDBE business enterprises on the project and can supply the appropriate documentation.

\_\_\_\_\_ Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms to participate.

\_\_\_\_\_ Included documentation of advertising in the above publications with the bidders good faith efforts package

\_\_\_\_\_ Attended LFUCG Central Purchasing Economic Inclusion Outreach event

\_\_\_\_\_ Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs of subcontracting opportunities

\_\_\_\_\_ Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms

\_\_\_\_\_ Requested a list of MWDBE subcontractors or suppliers from LFUCG Economic Engine and showed evidence of contacting the companies on the list(s).

\_\_\_\_\_ Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms to work on this project. Those contacted and their responses should be a part of the bidder's good faith efforts documentation.

\_\_\_\_\_ Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.

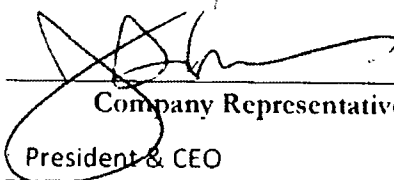
- \_\_\_\_\_ Followed up initial solicitations by contacting MWDBEs to determine their level of interest.
  
- \_\_\_\_\_ Provided the interested MWDBE firm with adequate and timely information about the plans, specifications, and requirements of the contract.
  
- \_\_\_\_\_ Selected portions of the work to be performed by MWDBE firms in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE participation, even when the prime contractor may otherwise perform these work items with its own workforce
  
- \_\_\_\_\_ Negotiated in good faith with interested MWDBE firms not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.
  
- \_\_\_\_\_ Included documentation of quotations received from interested MWDBE firms which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.
  
- \_\_\_\_\_ Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE goals.
  
- \_\_\_\_\_ Made an effort to offer assistance to or refer interested MWDBE firms to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal
  
- \_\_\_\_\_ Made efforts to expand the search for MWDBE firms beyond the usual geographic boundaries.

x \_\_\_\_\_ Other - any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE participation.

Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement. Documentation of Good Faith Efforts are to be submitted with the Bid, if the participation Goal is not met.

The undersigned acknowledges that all information is accurate. Any misrepresentations may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

\_\_\_\_\_  
Energize Kentucky, LLC  
**Company**  
\_\_\_\_\_  
9 / 28 / 2017  
**Date**

  
\_\_\_\_\_  
**Company Representative**  
\_\_\_\_\_  
President & CEO  
**Title**

## GENERAL PROVISIONS

1. Each Respondent shall comply with all Federal, State & Local regulations concerning this type of service or good.  
  
The Respondent agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, *29 U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338. The Respondent also agrees to notify the LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. The Respondent agrees to indemnify, defend and hold the LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.
2. Failure to submit ALL forms and information required in this RFP may be grounds for disqualification.
3. Addenda: All addenda, if any, shall be considered in making the proposal, and such addenda shall be made a part of this RFP. Before submitting a proposal, it is incumbent upon each proposer to be informed as to whether any addenda have been issued, and the failure to cover in the bid any such addenda may result in disqualification of that proposal.
4. Proposal Reservations: LFUCG reserves the right to reject any or all proposals, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by a Respondent in the preparation of proposals.
6. Changes/Alterations: Respondent may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by LFUCG prior to the scheduled closing time for receipt of proposals, will be accepted. The proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of proposal".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from a Respondent.
8. Bribery Clause: By his/her signature on the bid, Respondent certifies that no employee of his/hers, any affiliate or Subcontractor, has bribed or attempted

to bribe an officer or employee of the LFUCG.

9. **Additional Information:** While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. **Ambiguity, Conflict or other Errors in RFP:** If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. **Agreement to Bid Terms:** In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. **Cancellation:** If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

#### A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.



- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
  - (a) Failure to perform the contract according to its terms, conditions and specifications;
  - (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
  - (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
  - (d) Failure to diligently advance the work under a contract for construction services;
  - (e) The filing of a bankruptcy petition by or against the contractor; or
  - (f) Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

#### B. At Will Termination

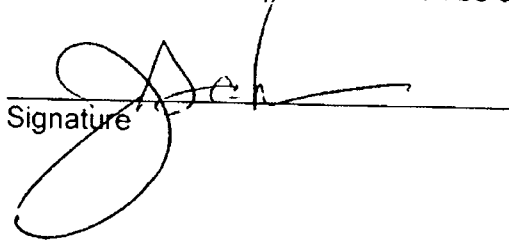
Notwithstanding the above provisions, the LFUCG may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

13. **Assignment of Contract:** The contractor shall not assign or subcontract any portion of the Contract without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
14. **No Waiver:** No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
15. **Authority to do Business:** The Respondent must be a duly organized and

authorized to do business under the laws of Kentucky. Respondent must be in good standing and have full legal capacity to provide the services specified under this Contract. The Respondent must have all necessary right and lawful authority to enter into this Contract for the full term hereof and that proper corporate or other action has been duly taken authorizing the Respondent to enter into this Contract. The Respondent will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of the Respondent.

16. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
17. **Ability to Meet Obligations:** Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. Contractor [or Vendor or Vendor's Employees] will not appropriate or make use of the Lexington-Fayette Urban County Government (LFUCG) name or any of its trade or service marks or property (including but not limited to any logo or seal), in any promotion, endorsement, advertisement, testimonial or similar use without the prior written consent of the government. If such consent is granted LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. Contractor agrees that it shall cease and desist from any unauthorized use immediately upon being notified by LFUCG.

20. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

  
Signature

9 / 28 / 2017  
Date

Firm Submitting Proposal: Greater Cincinnati Energy Alliance  
DBA Energize Kentucky, LLC

Complete Address: 200 W. 4th St., #600 Cincinnati, OH 45202  
Street City Zip

Contact Name: Chris Jones Title: Director, PACE Financing

Telephone Number: 859-746-5310 Fax Number: \_\_\_\_\_  
ext 1

Email address: cjones@kypace.org

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**Overview / background of submitting entity**

The Greater Cincinnati Energy Alliance ("GCEA") is a nonprofit organization focused on facilitating investment in energy efficiency and renewable energy projects for residential and commercial buildings. In 2010, GCEA was one of just 25 organizations nationwide awarded a competitive Better Buildings Neighborhood Program (BBNP) grant from the U.S. Department of Energy. The grant allowed the Energy Alliance to rapidly expand its offerings to local residents, commercial building owners and to develop an array of programs to generate energy savings.

With a strong history of administering quality programs, GCEA has become the region's leading organization for the promotion and implementation of energy efficiency investments. GCEA's resources facilitate investments in energy efficiency and renewable energy projects as economic development tools for local communities. In recognition of its work, the Energy Alliance has been honored with the following awards:

- 2011 Nonprofit of the Year Award from Green Energy Ohio
- 2012 Green Business Award for Education/Outreach from the Business Courier
- 2013 Nonprofit of the Year Award from the Cincinnati USA Regional Chamber
- 2015 Green Business Award for Product/Service from the Business Courier

The organization has successfully utilized \$18.8MM in federal, county and local government grant contracts to grow its regional reach through the US Department of Energy's Better Buildings Neighborhood Program (DOE BBNP) and the Energy Efficiency & Conservation Block Grant programs (EECBG). With EECBG grant funds, GCEA integrated its Home Performance with ENERGY STAR (HPwES) program in Northern Kentucky with the statewide HPwES program sponsored by Kentucky Home Performance (KHP). KHP was funded with State Energy Program (SEP) grants that was overseen by the Kentucky Department of Energy Development & Independence. Today, this ground-breaking collaboration remains as one of the few examples of HPwES integration in the country.

DOE BBNP funds also enabled GCEA to invest over \$1MM in the development of PACE / EPAD markets in Southwest Ohio and throughout Kentucky, where it operates as Energize Kentucky, LLC.

In 2015, GCEA was awarded a contract by the Kentucky Department for Energy Development & Independence under award number 16000000749-140316 - Energy Project Assessment District (EPAD) Initiative. In addition to several educational/outreach events throughout the Commonwealth, the primary deliverable of the EPAD contract was the "EPAD Handbook for Local Governments". The Department for Local Governments distributed the EPAD Handbook via their communication channels.

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

Additionally, GCEA has successfully managed a total of \$773,531 in contracts with the City of Cincinnati since 2013. The funds were used to implement a variety of energy efficiency and renewable energy programs for residential and commercial property owners within the city. These include an energy efficiency incentive program, a renewable energy incentive program, the Solarize Cincy program that uses group purchasing to reduce the costs of solar, and contractor training programs to promote PACE financing.

Since the organization's inception, the GCEA has overseen the completion of over 3,500 residential and commercial energy assessments and 2,073 energy efficiency upgrades. These projects have provided the Cincinnati/NKY metro area with the following benefits:

- \$44 million in local investment
- \$1.8 million in annual energy savings
- 400,000 labor hours created
- 10.4 million kWh saved annually
- 12,500 tons of CO2 offset annually
- \$1.4 million lent through residential financing program

Client#: 675109

COMMECON11

ACORD

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
7/21/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> USI Insurance Services LLC 312 Elm Street, 24th Floor Cincinnati, OH 45202 513 852-6300	<b>CONTACT NAME:</b> Mary J Kremer CLCS CISR CRIS <b>PHONE (A/C, No, Ext):</b> 513 852-6386 <b>FAX (A/C, No):</b> 610-537-9672 <b>E-MAIL ADDRESS:</b> mary.kremer@usi.com													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Selective Ins Co of SC</td> <td>19259</td> </tr> <tr> <td>INSURER B: Selective Ins Co of Southeast</td> <td></td> </tr> <tr> <td>INSURER C: Navigators Insurance Company</td> <td>42307</td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A: Selective Ins Co of SC	19259	INSURER B: Selective Ins Co of Southeast		INSURER C: Navigators Insurance Company	42307	INSURER D:		INSURER E:		INSURER F:
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INSURER D:														
INSURER E:														
INSURER F:														
<b>INSURED</b> Greater Cincinnati Energy Alliance 200 West Fourth Street Suite 600 Cincinnati OH 45202														

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADOL SUBR	POLICY EFF	POLICY EXP	LIMITS	
NR		NR	(MM/DD/YYYY)	(MM/DD/YYYY)		
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GENTL AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		S1934627	01/04/2017	01/04/2018	EACH OCCURRENCE    \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence)    \$100,000 MED EXP (Any one person)    \$5,000 PERSONAL & ADV INJURY    \$1,000,000 GENERAL AGGREGATE    \$2,000,000 PRODUCTS - COMPROP AGG    \$2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS		S1934627	01/04/2017	01/04/2018	COMBINED SINGLE LIMIT (Ea accident)    \$1,000,000 BODILY INJURY (Per person)    \$ BODILY INJURY (Per accident)    \$ PROPERTY DAMAGE (Per accident)    \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$0		S1934627	01/04/2017	01/04/2018	EACH OCCURRENCE    \$1,000,000 AGGREGATE    \$1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	WC7975361	01/04/2017	01/04/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT    \$1,000,000 E.L. DISEASE - EA EMPLOYEE    \$1,000,000 E.L. DISEASE - POLICY LIMIT    \$1,000,000
C	Errors and Omissions		CE16MPL6955351C	01/04/2017	01/04/2018	Limit: \$1,000,000 Deductible: \$5,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

**CERTIFICATE HOLDER**      **CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

HORIZED REPRESENTATIVE

*Thomas W. Chisum*

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**EPAD SCOPE OF WORK**

**Relevant PACE/EPAD Program Administration experience**

Beginning in 2013, GCEA developed a business plan to provide Program Administration services to local governments in the Cincinnati, Ohio metro area. In 2014, the City of Cincinnati selected GCEA as the Program Administrator. Since that time, GCEA has facilitated the establishment of over 10 local government PACE/EPAD districts in the Cincinnati metro area, including an innovative multi-jurisdictional PACE district in Ohio. As of September 2017, the total value of GCEA-administered PACE-financed energy projects is nearly \$20MM. In addition, there is approximately \$15MM of energy projects that have currently committed to PACE financing in GCEA-administered PACE/EPAD districts thus ranking us as a top tier PACE program in the United States.

Because PACE financing is still a relatively new industry, GCEA feels that it is essential to be very active in national PACE trade associations so that they can “keep their finger on the pulse” of best practices and the latest issues at the national level that may affect local or regional PACE/EPAD activities. Therefore, GCEA has been a very active participant with PACE Nation, the leading PACE trade association in the United States. For example, GCEA is a member of PACE Nation’s Leadership Council and individual Program Administration “working groups”. In addition, GCEA is frequently asked to be an expert speaker on monthly PACE Nation national conference calls as well as being presenters at PACE Nation’s annual national conference.

In 2014, GCEA was a lead organizer of a small non-profit working group (EPAD Council) that facilitated the ultimate passage of the EPAD Act of 2015 (EPAD Act). Since the EPAD Act became law in June 2015, GCEA has accomplished the following within the Commonwealth:

- Assisted the City of Covington with developing the Commonwealth’s first EPAD that funded an actual energy project,
- Facilitated multiple EPAD creations with local governments,
- Authored the “EPAD Handbook for Local Governments” as part of a contract awarded by the Commonwealth of Kentucky’s Department for Energy Development & Independence (DEDI),
- Facilitated the Commonwealth’s first two new construction EPAD projects in the City of Covington (Kenton County) and City of Hillview (Bullitt County).
- Currently, GCEA is in active discussions with more than 10 local governments throughout the state relating to active energy projects that have applied for PACE financing with GCEA.
- GCEA is an active member with the Kentucky League of Cities (KLC) including being an exhibitor at the annual conference in addition to being a table host during the popular “Cracker Barrel” session during the Expo day where we will be leading the discussion on implementing EPADs.



**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

-Last, GCEA is actively working with a large "big box" national retailer who wishes to utilize PACE financing for over 20 of their locations throughout the Commonwealth with the potential to include over 100 additional locations within the Commonwealth, including Fayette County.

Since 2015, GCEA has fielded numerous calls pertaining to interest in participating in a Lexington-Fayette Urban County Government (LFUCG) EPAD. The interested parties include commercial property owners, property management companies, contractors, product suppliers, product distributors, PACE/EPAD capital lenders and existing mortgage lenders such as Central Bank and BB&T. GCEA has met individually with approximately 15 of the above referenced entities. Currently, GCEA has received imminent interest from no less than 5 Fayette County property owners who wish to submit PACE/EPAD Applications for over \$10MM in total as soon as possible. Additionally, GCEA believes that the 2018 potential is in excess of \$30MM of funded projects.

**Key Personnel**

Jerry Schmits, President & CEO – Jerry is a career energy & environmental management professional accomplished in growth-phase business ventures with significant achievements in business development, sales leadership and product marketing. He became President & CEO of the Energy Alliance in December 2016. Jerry's professional experience spans 20 years in the energy efficiency industry and he will oversee overall direction of the program.

Chris Jones, Director of PACE Financing - Chris has been with the Energy Alliance since 2010 serving in various management roles. Chris has over 16 years of working in the environmental consulting and energy efficiency fields. He has a BS in Environmental Sciences from the University of Kentucky. Chris will be responsible for directly managing all aspects of the LFUCG EPAD Program.

Stephanie Hatfield, PACE Business Development Manager – Joined the Energy Alliance in 2017 with over 10 years of sales experience. Stephanie will provide marketing and educational outreach coordination along with inquiry phone calls.

Rob McCracken, Director of Operations – Joined the Energy Alliance in 2011 and is responsible for overseeing the organization's program reporting systems including its customized PACE/EPAD administrative software and Energize Kentucky website.

Michael Davis, Director of Finance – Joined the Energy Alliance in June 2014 with over twenty years of experience leading the accounting functions of various business operations. He has experience in reducing costs and increasing margins while maintaining internal controls. He holds a B.A. in Accounting from Transylvania University and a Master of Science in Organizational Leadership from Union Institute. Michael will be responsible for the program budget, accounting, and program expenditures for the program.

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**Relevant References**

Roger Peterman (Lead counsel for all EPAD-related legal documentation with Energize Kentucky)  
Office Managing Partner  
Dinsmore & Shohl LLP  
859-431-7290

Lee Colten (Contact for Kentucky state grants including the EPAD Handbook project)  
Assistant Director  
Kentucky Department for Energy Development & Independence  
502-782-6924

Ross Patten (Contact for City of Covington EPAD program activities)  
Economic Development Specialist  
City of Covington, Department of Development  
859-292-2144

Mayor Jim Eadens (Contact for City of Hillview EPAD program activities)  
City of Hillview (Bullitt County)  
502-957-5280

**Program Administration Implementation Overview**

Because GCEA has an existing and established EPAD Program Administration program in the Commonwealth operating as Energize Kentucky, the actual implementation of a LFUCG EPAD will be seamless and immediate. The following major areas are what is required for a successful EPAD program:

-Program Design: As previously stated, Energize Kentucky currently operates as existing Program Administrator for several local governments and has consulted with many organizations around the United States who have asked for advice regarding program design considerations. Therefore, we would be able to review with LFUCG officials the existing program design but then review any additional considerations as mentioned in the "EPAD Handbook for Local Governments" that we authored. Additionally, Energize Kentucky, in partnership with their legal counsel Dinsmore, has templated EPAD Ordinances or Resolutions that will be recommended for adoption. TIMING: Immediately.

-Marketing: As with any service, marketing is essential to success. However, because PACE/EPAD is still a relatively new and emerging market, it is critical that a sustained marketing and educational outreach program be implemented in a collaborative manner. As such, GCEA has extensive experience in this area with knowledge of the most effective methods to reach the target audience of property owners and commercial contractors. Examples include: "PACE 101" seminars, active networking with commercial real estate organizations, and collaboration with other local organizations such as Building Owners and Managers Association (BOMA), Bluegrass Greensource, US Green Building Council, etc.

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

Also, Energize Kentucky has a recently updated website that rivals the best PACE Program websites in the United States. TIMING: Immediately although there have already been several local meetings with property management and contracting companies.

-Contractor Registration: As Program Administrator, Energize Kentucky requires both contractors and capital lenders to complete an application to become officially registered as a participating company. Once registered, each company will be required to provide updated licenses and insurances while offering PACE financing in the LCUFG EPAD program. TIMING: Immediately but multiple companies that service LFUCG already are registered with the Energize Kentucky program.

-Contractor Training: Because contractors are the “backbone” to a successful energy efficiency program and they directly interact with property owners, it is critical that they have the necessary training to effectively communicate what PACE financing is and how the EPAD process works. Energize Kentucky will provide regularly contractor training sessions that will include seminars, webinars, trade association presentations and individual company meetings. In addition, marketing materials will be provided to contractors for use in their marketing processes.

-Application Process: Based on extensive experience, the coordination of this process is the most critical to achieving actual PACE funding results. The “one point” of coordination has proven invaluable not only for GCEA, but for other Program Administrators around the country. TIMING: Immediately.

Energize Kentucky has a proven application process:

- 1) Initial Eligibility Form: assists in determining if a property owner is a good fit for PACE financing based on market underwriting conditions. As an example, Energize Kentucky works with several PACE capital lenders but only a few will actually lend on “special purpose” properties such as a sports club or car wash.
- 2) Application: GCEA performs initial underwriting and then coordinates PACE capital lenders with the property owner. Once the property owner has agreed to financing terms with the PACE capital lender, then the formal legislative approvals need to be coordinated.
- 3) Mortgage Lender “consent”: A significant and necessary coordination step by the EPAD Program Administrator is to obtain the “consent” of the existing mortgage lender. As such, the Program Administrator must maintain positive relationships with the local and regional mortgage industry to facilitate the required “consent”. We have accomplished this with recent approvals from Central Bank, Stockyards Bank and BB&T.

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

-LFUCG EPAD Assessment Approval: Energize Kentucky already has an existing process, including legal documents, for local government approvals for an eligible EPAD energy project. TIMING: Immediately.

-EPAD Closings: Energize Kentucky already has an existing system in place for PACE/EPAD funding closings. Energize Kentucky, in collaboration with each EPAD capital lender, oversees the disbursement of payments to registered contractors already pre-approved for the eligible energy project. TIMING: Immediately.

-Energy Project Quality Assurance/Verification: Energize Kentucky already has an existing system in place for this step in the EPAD process and would continue to utilize the same in conjunction with the EPAD Capital Lenders.

-EPAD Assessment Servicing (Billing/Collection/Remittance): Energize Kentucky has three (3) separate options that can be utilized but each has a very distinct process and system that needs implementation. First, an Energize Kentucky common servicing agent (i.e., US Bank) would directly bill, collect and remit the EPAD Assessment payment to the EPAD Capital Lender. Second, each EPAD Capital Lender could be permitted to have their own servicing agent. Last, the County Sheriff could add the EPAD Special Assessment to the property's existing tax bill and would collect and remit to the EPAD Capital Lender. Our recommendation would be to use the common servicing agent method for simplicity but this could be discussed if Energize Kentucky is awarded the contract. TIMING: 30-60 days for setup.

NOTE: THERE HAS BEEN PREVIOUS MISINTERPRETATION (INCLUDING IN THE EPAD HANDBOOK FOR LOCAL GOVERNMENTS) REGARDING THE COLLECTION/SERVICING FEES THAT CAN BE RECEIVED PER THE EPAD ACT OF 2015. FOR CLARIFICATION, OUR LEGAL PARTNER DINSMORE HAS PROVIDED AN OPINION THAT THE EPAD ACT OF 2015 IS CLEAR IN THAT THE ENTITY WHO BILLS/COLLECTS/REMITTS THE EPAD ASSESSMENT CAN DO SO AT THEIR "ACTUAL COSTS" AND NOT A PERCENTAGE OF THE ENERGY PROJECT.

-Reporting: Energize Kentucky has developed and successfully utilizes software specifically for PACE/EPAD administration that can provide regularly reports to LFUCG with respect to marketing activities, energy savings, greenhouse gas emissions avoided, etc. TIMING: Immediately.

Energize Kentucky is adequately staffed to perform all the necessary functions as listed above. In addition, due to the increased demand for PACE financing in the Central Kentucky region, we are in the process of hiring an additional PACE/EPAD staff member for Q1 2018.

**RFP #36-2017 Energy Project Assessment District**  
**Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**List of Fees**

LFUCG: Energize Kentucky will not require an initial or on-going fee to administrate the LFUCG EPAD program.

Program Participant/Property Owner: **All fees associated with an EPAD Energy Project are paid by the property owner** from one-time closing fees and annual servicing fees. NOTE: each commercial energy project is different and thus requires different levels of effort by the Program Administrator and Legal Counsel; for example, a new construction energy project is much more in depth than a \$200,000 lighting retrofit for an existing office building. Below is the typical fee structure for EPAD energy projects (a detailed example is included in the Additional Information section of this RFP):

**EPAD Energy Project Closing Fees**

Program Administrator:	1-3% of Energy Project Amount (minimum=\$7,500)
EPAD Capital Lender:	1-3% of Energy Project Amount (minimums vary)
Legal Fee:	\$5,000-25,000 (variable per Energy Project)
Due Diligence Fee:	\$1,000-5,000 (variable per Energy Project)
Assessment Servicing:	\$500-900/annual fee

NOTE: As stated in the body of this proposal, there are 3 options for the EPAD Assessment Servicing and each will have a slightly different fee per current market conditions.

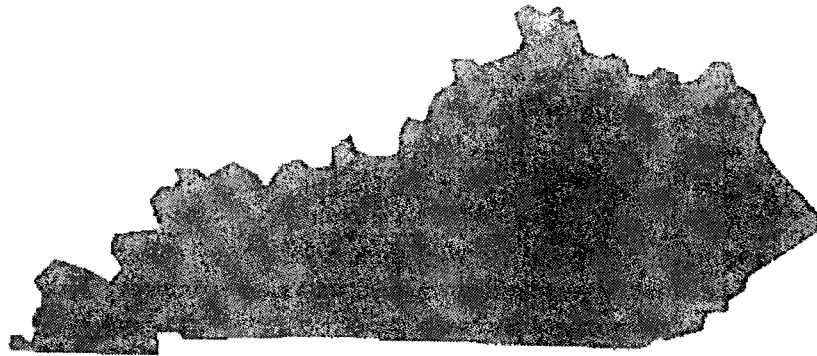
**Summary Statement**

Based on our knowledge, experience, and continued success with advancing PACE financing with EPADs throughout Kentucky, we feel we are uniquely qualified to be the Program Administrator for the LFUCG EPAD. We are excited to start and grow PACE financing in Fayette County!

**RFP #36-2017 Energy Project Assessment District  
Submitted by: Greater Cincinnati Energy Alliance dba Energize Kentucky**

**Additional Information**

- EPAD Handbook (cover page, introduction and table of contents)
- Brochure
- Case study
- PR-NKY Chamber article 2016
- PR-NKY Tribune article 2017 (Riverhaus)
- PR-Lane article 2017 (Riverhaus)
- EPAD Energy Project Closing Fee Example



# EPAD IN KENTUCKY

## Energy Project Assessment Districts Commonwealth of Kentucky

A handbook for local governments in the Commonwealth of Kentucky to  
create uniform, user-friendly and sustainable EPAD programs.

Created in partnership by:



## **Responsible parties to this document**

The material within this document is based upon work supported by the Commonwealth of Kentucky's Department for Energy Development & Independence (DEDI) under award number 16000000749-140316 - Energy Project Assessment District (EPAD) Initiative. This document was prepared under contract awarded to the Greater Cincinnati Energy Alliance (Energy Alliance).

## **History of EPAD**

EPAD financing was first implemented as a pilot program in 2007 by a local government outside of the Commonwealth of Kentucky. Since that time, over 30 states have passed legislation enabling EPAD financing. In 2015, the Commonwealth of Kentucky enacted EPAD financing via HB 100. EPAD is a public-private partnership; while the funding is provided by private lenders, the EPAD assessments are legally authorized by the state legislation but implemented by local governments.

## **How to use this document**

This document is designed as a "Handbook" or "how to guide" for local governments implementing EPADs. It is organized by party role, including the local government's role as the EPAD Administrator. As such, some of the activities described will not necessarily be in chronological order. Furthermore, because the state EPAD law has few specific program and project requirements, each local government will have many decisions to make as they set up local programs. Throughout the Handbook there are topics to consider and recommendations that can be accepted or made more stringent. For example, the Handbook provides recommendations on contractor participation requirements, but a local government may decide to have more stringent requirements. The community is encouraged to document these decisions in a program policy document.

## **Contact information**

This document was authored in June 2016. Supporting documents and related industry links are located on the DEDI website at [www.energy.ky.gov](http://www.energy.ky.gov)

Should you have questions about this material or to receive assistance regarding EPADs, please contact:

Kentucky Department for Local Governments  
1024 Capital Center Drive, Suite 340  
Frankfort, KY 40601  
502.573-2382  
[www.kydlgweb.ky.gov](http://www.kydlgweb.ky.gov)

Kentucky Department for Energy Development & Independence  
300 Sower Boulevard  
Frankfort, KY 40601  
502-564-7192



# Commonwealth of Kentucky

## Energy Project Assessment Districts (EPADs)

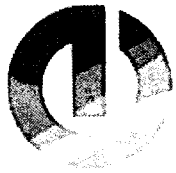
### Handbook for Local Governments

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# ENERGIZE KENTUCKY

# PACE FINANCING

## Efficient Financing for Building Efficiency



### What is PACE Financing?

PACE is a simple and effective way to finance energy efficiency and renewable energy building improvements. PACE can pay for qualifying improvements for almost any type of property including commercial, retail, industrial, nonprofit, and multi-family.

Property owners across the United States are using PACE because it saves them money and makes their buildings more valuable. PACE provides financing for 100% of an energy project's cost and is repaid for up to 25 years with a voluntary special assessment added to the property's tax bill.

### Why PACE Financing?

**No Down Payment**

PACE covers 100% of the hard and soft costs of an energy project eliminating the need for up-front capital.

**No Personal Guarantee**

PACE financing is "guaranteed" by the Special Assessment added to the property's tax bill, therefore, no personal or business guarantees are needed.

**Off Balance Sheet Treatment**

Because PACE financing is solely repaid via a Special Assessment added to the property's tax bill, "off balance sheet treatment" is recommended by some accountants because the repayment "runs with the land" and not the business.

**Fixed Rate / Fixed Payment**

PACE financing rates and terms are fixed for the life of the PACE loan.

**15-25 Year Term**

Repayment terms can be extended to match the useful life of the eligible improvement.

**Triple Net Lease Pass-through**

Because repayment of PACE funding is via a Special Assessment on the property's tax bill and is technically an increase in property taxes, the property owner can seamlessly share the PACE-financed improvement costs (and energy savings) with the tenant under some lease structures such as "triple nets".

### PACE Benefits for the Property Owner

No Down Payment  
No Personal Guarantee  
+ Off Balance Sheet Treatment

**Preserved Credit  
Lines & Freed Up  
Capital Budgets**

Energy Savings  
Low Fixed Payment  
+ Extended Term

**Increased  
Cash Flow  
& NOI**

Energy Savings  
Low Fixed Payment  
+ Triple Net Pass Through

**ZERO Net Cost  
to Property  
Owner**



# ENERGIZE KENTUCKY PACE FINANCING



## AT A GLANCE

Energy Project Financing

PROJECT TOTAL: \$750,000

TERM: 20 years

### Energy Project Partners

**PACE DISTRICT:**

City of Covington

**PACE LENDER:**

Inland Green Capital, LLC

**CONTRACTOR:**

National Energy Control

### Improvements:

**SOLAR PANELS**

**LED LIGHTING**

**ELEVATOR MODERNIZATION**

**HEATING & COOLING**

## ABOUT THE ENERGY PROJECT

Ivy Knoll Senior Retirement Community, located in the City of Covington, is the first project in Kentucky to use an Energy Project Assessment District (EPAD) to access PACE financing. Ivy Knoll found PACE financing to be the perfect funding solution to make significant building improvements to systems that were outdated or extremely energy inefficient. Using PACE financing, Ivy Knoll management was able to select improvements that had the highest energy savings but also came with higher upfront costs.

"PACE allowed us to make many of the energy related improvements that we might have otherwise deferred," said Ray Schneider, the owner of Ivy Knoll. "We were able to improve the comfort and convenience for residents and reduce the building's energy footprint."

"We are excited to bring PACE financing to Kentucky," said Chris Jones of Energize Kentucky. "This is a big step forward. Property owners can now finance energy saving improvements with no down payment using a special assessment added to the property's tax bill."

## WHY PACE FINANCING?

- No Down Payment
- No Personal Guarantee
- + Off Balance Sheet Treatment

**Preserved Credit Lines & Freed Up Capital Budgets**

## ABOUT ENERGIZE KENTUCKY:

ENERGIZE KENTUCKY is a program administrator that works with property owners to secure PACE financing for qualified energy projects. It coordinates efforts with local governments and connects property owners with the private PACE capital providers and contractors to ensure the successful funding and installation of energy projects.

**KYPACE.org**

**CHRIS JONES**

Director of PACE Financing

859.746.5310 x1

cjones@kypace.org

# Covington First To Approve PACE Financing

By: Chris Jones, Client Relations Director, Greater Cincinnati Energy Alliance

*PACE financing allows private commercial property owners to repay the funds for an eligible energy project via a voluntary special improvement assessment on the property tax bill.*

For the first time in the Commonwealth of Kentucky, a local government (City of Covington) has authorized a private property owner (Ivy Knoll Senior Living Community) to use PACE financing for an energy project, according to the Greater Cincinnati Energy Alliance.

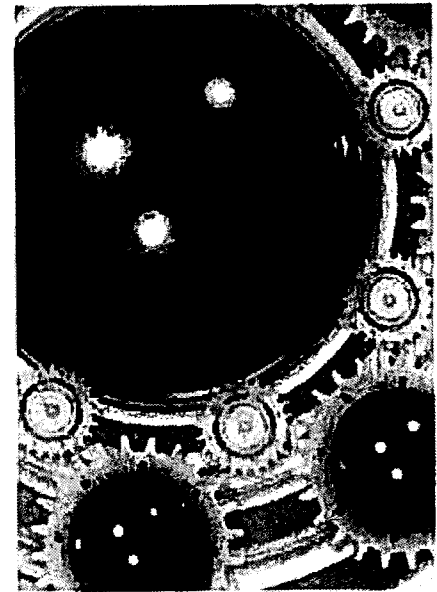
In March 2015, the Kentucky General Assembly passed legislation that was signed into law by Gov. Steve Beshear. The legislation, House Bill 100, authorizes local governments to establish Energy Project Assessment Districts (EPADs), which then allows property owners to use PACE financing to fund energy efficiency upgrades, on-site renewable energy projects and water conservation measures. Energy projects financed with PACE do not require subsidy or incentive from the local government sponsoring the EPAD.

PACE financing allows private commercial property owners to repay the funds for an eligible energy project via a voluntary special improvement assessment on the property tax bill. The assessment amount remains fixed for a term of up to 20 years. The special assessment stays with the property when sold or transferred.

The City of Covington worked closely with the Greater Cincinnati Energy Alliance to develop the EPAD which allowed the Ivy Knoll Senior Living Community to take advantage of PACE financing.

Ivy Knoll found PACE financing to be a perfect funding solution to make significant building improvements of

systems that were outdated or extremely energy inefficient. Through these energy upgrades, Ivy Knoll will be able to improve the comfort and convenience for their senior residents while also reducing the building's energy footprint. Through PACE financing, the Ivy Knoll owners were able to select improvements that had the highest energy savings but also came with the higher upfront costs for the 7-story, all-electric building. The \$750,000 project includes the following building improvements:



## Solar Panels

The largest electricity-generating system that is privately-owned in Northern Kentucky will produce over 64,000 kilowatt hours annually,

## LED Lighting

Estimated electricity savings in excess of \$12,000 annually,

## Elevator Modernization

Energy efficient technology by Murphy Elevator Company

## Heating & Cooling

High efficiency room units with automated controls that allow the building manager to remotely turn off units in vacant rooms

★

# NORTHERN KENTUCKY TRIBUNE



- **Voices**

[Home Government](#) Development in Covington First new construction project in Kentucky to use PACE financing

## Development in Covington first new construction project in Kentucky to use PACE financing

Aug 22nd, 2017

A new residential and commercial development in Covington's Mainstrasse neighborhood will be the first new construction project in Kentucky to use an Energy Project Assessment District (EPAD) to finance energy-efficiency improvements.

The River Haus project is being built by Flaherty & Collins Properties at the southwest corner of Fifth and Main Streets. In 2015, the Kentucky General Assembly passed legislation that allowed local governments to establish EPAD districts to finance energy-efficiency improvements on commercial, industrial, and multi-family properties. These districts allow Property Assessed Clean Energy (PACE) financing to pay for the improvements.

Shortly after the EPAD law was enacted in 2015, the City of Covington became the first city in the state to create the special taxing district as a financing tool. It also became the first to utilize it, when it authorized \$750,000 in energy-efficiency improvements to the Ivy Knoll Senior Retirement Community building on Highland Avenue in the city's Peaselsburg neighborhood.

While property owners in Covington and other Kentucky cities have used PACE to finance energy improvements in existing structures, the Flaherty & Collins "RiverHaus" project in Covington is the first new-construction project in state to utilize this financing tool, said Chris Jones, director of Energize Kentucky, the PACE-financing program that the nonprofit Greater Cincinnati Energy Alliance operates in Kentucky.

"We are excited to plow new ground for PACE financing in Kentucky by participating in this exciting new construction development in Covington," Jones said. "PACE allows commercial property owners to finance energy-saving improvements with no down payment and the sole repayment is a voluntary special assessment that is added to the property's tax bill."

PACE financing will allow Flaherty & Collins to incorporate more than \$4 in million energy improvements and upgrades — such as energy-efficient windows, LED lighting, heating and cooling systems, programmable thermostats, and insulation upgrades for the wall and roofing systems — into the Riverhaus project, Jones said.

Deron Kintner, lead project developer for Flaherty & Collins, said "PACE financing is a great fit for us, as we always build our projects in a high quality and environmentally friendly, efficient manner.

The RiverHaus is a high-end, residential development that includes 187 one- and two-bedroom units, a 314-space parking garage, and retail commercial space on the ground floor. Demolition of the existing building on the site — the former First Federal Savings & Loan building — is expected to start soon and construction of the new project is expected to start this fall.

Energize Kentucky is operated by the Greater Cincinnati Energy Alliance, a nonprofit organization whose mission is to promote energy efficiency in Kentucky and Ohio. For more information about Energize Kentucky and its Ohio counterpart, Ohio PACE, contact Chris Jones at [chris@greaterenergy.org](mailto:chris@greaterenergy.org) or 513-621-4232.  
*Greater Cincinnati Energy Alliance*

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# Covington development is first new construction project in state to use PACE financing for energy-efficiency improvements

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**Energize Kentucky works with developer, city to finance \$4 million in energy improvements at “Riverhaus” project in Mainstrasse**



COVINGTON, Ky. (Aug. 22, 2017) — A new residential and commercial development project being built by Flaherty & Collins Properties at the southwest corner of Fifth and Main Streets in Covington's Mainstrasse neighborhood will be the first new construction project in Kentucky to use an Energy Project Assessment District (EPAD) to finance energy-efficiency improvements.

In 2015, the Kentucky General Assembly passed legislation that allowed local governments to establish EPAD districts to finance energy-efficiency improvements on commercial, industrial, and multi-family



**EPAD Energy Project Closing Fee Example**

**Office Building #1 & #2 (HVAC Controls & LED lighting)**

**Amount Financed: \$284,094**

NOTE: Central Bank provided "Lender Consent" for PACE transaction

	PACE Lender #1	PACE Lender #2	PACE Lender #3
<b>Annual PACE Assessment Fixed Payment (est.)</b>	\$ 39,191.18	\$ 41,252.00	\$ 44,246.68
<b>Term</b>	10	10	10
<b>Rate</b>	5.20%	6.63%	7.00%
<b>Capitalized Interest</b>	\$ 11,079.00	\$ 13,910.00	\$ 15,478.00
<b>Total Closing Fees</b>	\$ 25,280.00	\$ 21,520.00	\$ 29,540.00
Program Administration Fee	\$ 8,520.00	\$ 8,520.00	\$ 8,520.00
Legal Transaction Fee	\$ 9,000.00	\$ 9,000.00	\$ 9,000.00
PACE Lender Origination Fee	\$ 4,260.00	\$ 500.00	\$ 8,520.00
PACE Lender Closing Fees: Appraisal, title search, etc. (est.)	\$ 3,500.00	\$ 3,500.00	\$ 3,500.00

NOTE: Annual Servicing Fee not included in Closing Costs