

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____, 2018, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**GOVERNMENT**) and ENERGIZE KENTUCKY, LLC, 200 West 4th 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

If to the Administrator:

Energize Kentucky, LLC
200 West 4th 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

ADMINISTRATOR:

ENERGIZE KENTUCKY, LLC

ATTEST:

URBAN COUNTY COUNCIL CLERK

BY: _____
JERRY SCHMITS, CEO

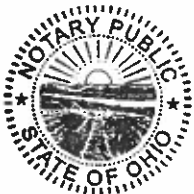
STATE OF OHIO

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 23rd 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