

PROGRAM ADMINISTRATION AGREEMENT

This EPAD PROGRAM ADMINISTRATION AGREEMENT ("Administration Agreement"), dated this 11th day of August, 2020, is entered into by and between the County of Kenton, Kentucky (the "County"), a political subdivision of the Commonwealth of Kentucky ("Commonwealth") and, Energize Kentucky, LLC ("Program Administrator"), a limited liability company duly organized under the laws of the Commonwealth.

WITNESSETH:

WHEREAS, Kentucky Revised Statutes Sections 65.205 through Section 65.209 ("Act"), authorizes local governmental units such as Kenton County to establish a program to advance the conservation and efficient use of energy and water resources within the local government's jurisdiction;

WHEREAS, Kenton County adopted Ordinance 950.89 ("EPAD Ordinance") establishing an Energy Project Assessment District ("EPAD") within its jurisdictional limits and a program ("EPAD Program") to facilitate the types of financings authorized under the Act;

WHEREAS, Kenton County desires to enter into this non-exclusive Administration Agreement with the Program Administrator funding, financing or refinancing of Energy Projects under the program may be obtained by owners or proposed owners of property within the EPAD at the lowest possible cost; and

WHEREAS, the Administration Agreement is authorized pursuant to the provisions KRS 65.206(2)(c) and the EPAD Ordinance.

NOW THEREFORE, in consideration of the premises stated and of the mutual covenants, representations and warranties herein contained, the parties hereto agree as follows:

ARTICLE I - DEFINITIONS

SECTION 1.1. DEFINITIONS. In addition to any words and terms defined elsewhere in this Administration Agreement or the Act, the following words and terms shall have the following meanings, unless the context or use clearly indicates that another meaning is intended.

"Administration Agreement" means this EPAD Program Administration Agreement by and between the County and the Program Administrator, as amended and supplemented from time to time in accordance with its terms.

"Program Administrator" means Energize Kentucky, LLC, a limited liability company duly organized and validly existing under the laws of the Commonwealth, or any successor thereto.

"County" means the County of Kenton, Kentucky.

"EPAD Program" means the Energy Project Assessment District Program established by County Ordinance 950.89.

"Financing Documents" means the Project 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.

"Owner" means the owner or proposed owner of an interest in a real property in the EPAD.

"EPAD Petition" means a petition of an Owner to participate in the EPAD Program as provided in the EPAD Ordinance.

"Project Financing Agreement" means a contractual agreement between the Owner, the Program Administrator, the County and an approved finance lender that provides for the financing of an Energy Project with the costs being repaid by a Program Assessment.

ARTICLE II - REPRESENTATIONS, WARRANTIES AND COVENANTS

SECTION 2.1. REPRESENTATIONS AND WARRANTIES BY THE COUNTY. The County represents and warrants, as follows:

(A) **Organization.** It is a duly organized and validly existing political subdivision under the laws of the Commonwealth.

(B) **Authority.** It has all the necessary power to authorize and consummate all the transactions contemplated by this Administration Agreement and any and all agreements relating thereto, and has duly authorized the execution and delivery of this Administration Agreement.

(C) **No Restrictions.** Neither the execution and delivery hereof, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is now a party or by which it is bound or constitutes a default under any of the foregoing.

SECTION 2.2. REPRESENTATIONS AND WARRANTIES BY THE PROGRAM ADMINISTRATOR. The Program Administrator represents and warrants, as follows:

(A) **Organization.** It is a limited liability company duly organized and validly existing under the laws of the Commonwealth.

(B) **Authority.** It has all the necessary power and authority to execute and deliver this Administration Agreement, to enter into and perform the transactions contemplated by this Administration Agreement, and to undertake and perform all the duties and obligations of the Program Administrator as set forth herein.

(C) **Approvals.** It has all necessary consents and approvals required for the execution, delivery and performance of this Administration Agreement.

(D) **No Restrictions.** Neither the execution and delivery hereof, nor the fulfillment of or compliance with the terms and conditions hereof, nor the consummation

of the transactions contemplated hereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which it is now a party or by which it is bound or constitutes a default under any of the foregoing.

ARTICLE III - DUTIES OF THE PROGRAM ADMINISTRATOR

SECTION 3.1. AGENT AND ATTORNEY-IN-FACT. The County and Program Administrator agree that Program Administrator shall serve as agent and attorney-in-fact for the purpose of performing the duties outlined in this Administration Agreement and the Program Administrator is hereby appointed a Program Administrator under the EPAD Ordinance.

SECTION 3.2. GENERAL DUTIES OF THE PROGRAM ADMINISTRATOR. In addition to other duties to be performed by the Program Administrator that may be set forth in a Project Financing Agreement, the Program Administrator shall have the following specific duties:

(A) Origination. The Program Administrator shall complete the following tasks as part of the submission of Petitions for participation in the EPAD Program::

(i) The Program Administrator shall provide marketing and other information regarding technical aspects of the EPAD Program to Owners and third parties.

(ii) The Program Administrator shall assist in the application process to ensure that the needs of parties involved are properly considered.

(iii) The Program Administrator shall assist in the coordination of the Project Financing Agreement process to ensure that the needs of all parties to the EPAD Project are properly considered and the steps required to execute the Project Financing Agreement occur in a timely manner, including coordination and approval of the Project Financing Agreement process with all applicable parties.

(iv) For each Petition ready for approval by County, the Program Administrator shall present the Petition and supporting documentation to include forms of the Financing Documents along with a recommendation as to approval by the Fiscal Court through appropriate resolution or order.

(v) The Program Administrator shall assist in the holding of any public hearings that maybe required for the Project Financing Agreement and publish notices of such hearings in accordance with legal requirements.

(vi) The Program Administrator shall assist in the coordination of the execution and delivery of Project Financing Agreement by all applicable parties.

(B) Servicing of Project Financing Agreements. The Program Administrator shall complete the following tasks as part of services of Project Financing Agreements as part of the EPAD Program:

(i) The Program Administrator shall perform all obligations and duties of the County in accordance with the Project Financing Agreements, as agent and attorney-in-fact for the County.

(ii) The Program Administrator shall assist Owners participating in the EPAD Program in communicating with the related Lender with respect to a Project Financing Agreement.

(iii) The Program Administrator shall assist with the collection of assessment payments in the manner provided in each Project Financing Agreement.

(iv) The Program Administrator shall upon completion of all contractual terms of the Project Financing Agreement by the parties, provide a reconciliation statement and notice to County along with all other documents necessary to complete the terms of the Project Financing Agreement.

(C) Information. The Program Administrator will respond to all reasonable requests for information from any Lender, paying agent, Owner and the County regarding the EPAD Program. The Program Administrator will at all reasonable times make its books, records and papers relating to the EPAD Program available for inspection by the County, any related Lender, any related Owner, and any Project Financing Agreement's trustee at the Program Administrator's regular place of business.

(D) Files. The Program Administrator will retain copies of all the documents delivered pursuant to the requirements of a Financing Agreement. The Program 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 Program Administrator's regular place of business and will be available for inspection by County, 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 Program Administrator shall determine.

(E) Disputes Between Owner and Lender. The Program Administrator shall assist in resolving any disputes which may arise between or among any Owners and any Lender.

(F) Consents and Approvals by the Program Administrator. When the consent, approval or other action of the Program Administrator is required pursuant to the terms of this Administration Agreement or Project Financing Agreement, the Program Administrator shall not unreasonably withhold or delay such consent, approval or action.

SECTION 3.3. REPORTS BY THE PROGRAM ADMINISTRATOR. The Program Administrator shall prepare written reports concerning the EPAD Program in such detail and at such times as may be reasonably requested by the County.

ARTICLE IV - ADMINISTRATION FEE

SECTION 4.1. ADMINISTRATION FEE. In consideration for the services rendered by the Program Administrator under the terms of this Administration Agreement, the Program Administrator shall, subject to the provisions of the Kentucky Revised Statutes, EPAD Ordinance and Project Financing Agreement, be paid a fee in an amount to which the County and related Owner may agree under each respective Project Financing Agreement.

ARTICLE IV - PROGRAM ADMINISTRATOR'S LIABILITY

SECTION 4.1. LIABILITY OF THE PROGRAM ADMINISTRATOR. Neither the Program Administrator nor any director, officer, employee or agent of the Program Administrator shall have any liability, except as expressly provided in this Administration Agreement, to the County or the parties to any Financing Agreements for any action taken or for refraining from any action in good faith pursuant to this Administration Agreement, other than for loss, liability or expense incurred by reason of gross negligence or willful misconduct of the Program Administrator or any of its directors, officers, employees or agents.

ARTICLE V - DURATION OF AGREEMENT

SECTION 5.1. DURATION OF AGREEMENT. This Administration Agreement shall be effective as of the date set forth at the beginning of this Administration Agreement and shall continue unless terminated sooner as provided in Section 6.1.

ARTICLE VI - TERMINATION

SECTION 6.1. TERMINATION. This Administration Agreement may be terminated, subject to any limitations set forth in a Project Financing Agreement, by either party with thirty (30) days written notice to the other party only upon the happening of any one or more of the following events:

(A) Failure by the Program Administrator to duly observe and perform any covenant, condition or agreement in this Administration Agreement to be observed or performed by the Program Administrator which has a material adverse impact on the EPAD Program, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to the Program Administrator by the County.

(B) A decree or order of any court or agency or supervisory authority having jurisdiction of the premises for the appointment of a conservator or receiver or liquidator in any insolvency, re-adjustment of debt, marshalling of assets and liabilities or similar proceedings, or for the winding up or liquidation of its affairs, has been entered against the Program Administrator, and such decree or order shall have remained in force, undischarged or unstayed for a period of sixty (60) days.

(C) The Program Administrator admits in writing its inability to pay its debts generally as they become due, files a petition in bankruptcy under the United States Bankruptcy Code or takes advantage of any applicable insolvency or reorganization statute, makes an assignment for the benefit of its creditors or voluntarily suspends payment of its obligations.

(D) Any representation made in or omitted from this Administration Agreement by the Program Administrator is incorrect or misleading in any material respect.

SECTION 6.2. PERFORMANCE OF AGREEMENTS AFTER TERMINATION NOTICE. In addition to or in lieu of giving written notice to terminate the Administration Agreement, the County may take whatever other action at law or in equity may appear necessary or desirable to enforce the performance of any obligation, agreement or covenant of the Program Administrator under this Administration Agreement.

ARTICLE VII - MISCELLANEOUS PROVISIONS

SECTION 7.1. GOVERNING LAW JURISDICTION AND VENUE. This Administration Agreement shall be construed under the laws of the Commonwealth. Each party agrees to personal jurisdiction in any action brought in any state court, within the County having subject matter jurisdiction over the matters arising under this Administration Agreement. Any suit, action or proceeding arising out of or relating to this Administration Agreement shall only be instituted in the County. Each party waives any objection which it may have now or hereafter as to the venue of such action or proceeding and irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

SECTION 7.2. NON EXCLUSIVITY. This Administration Agreement is non-exclusive and County retains the right to perform the acts of Program Administrator for any Petition for participation in the Program or employ other third parties to administer any Petition for participation in the Program.

SECTION 7.3. SEVERABILITY. In the event that any one or more of the provisions of this Administration Agreement, or any part of a provision, shall be judicially determined to be contrary to law or otherwise invalid or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Administration Agreement; and such provision or part of a provision shall be reformed so that it would be legal, valid and enforceable or this Administration Agreement shall be reformed, interpreted and construed as if such provision or part of a provision had never been included in this Administration Agreement.

SECTION 7.4. NOTICES. All notices, certificates or communications shall be sufficiently given and shall be deemed given when delivered or mailed by first class mail, postage prepaid and addressed to the respective parties of this Administration Agreement as addressed below:

If to the County:

County of Kenton, Kentucky
1840 Simon Kenton Way
Covington, KY 41011
Attn: County Administrator

If to the Program Administrator:

Energize Kentucky, LLC
200 West 4th Street, Suite 600
Cincinnati, OH 45202
Attn: _____

SECTION 7.5. FURTHER ASSURANCES AND CORRECTIVE INSTRUMENTS. 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.

SECTION 7.6. ASSIGNMENT. This Agreement may not be assigned by either party. This Agreement is only for the benefit of the parties and the enforcement of it is limited to the parties. No provision of this Agreement shall be interpreted or construed to provide any benefit or right to anybody else, directly, indirectly, or otherwise.

SECTION 7.7. WAIVER. No consent to or waiver by any of the parties of any breach or default of any provision of this Administration Agreement, whether express or implied, shall constitute or be interpreted as a consent to, waiver of or excuse any subsequent breach or default of the same or any other provision of this Administration Agreement.

SECTION 7.8. AMBIGUITIES. Each party and its counsel have participated fully in the review and revision of this Administration Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Administration Agreement. The language in this Administration Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

SECTION 7.9. CAPTIONS AND HEADINGS. The captions and headings of the paragraphs and sub-paragraphs of this Administration Agreement have been inserted for convenience of reference only and shall in no way affect the interpretation of any of the terms and provisions of this Administration Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement:

Energize Kentucky, LLC

Kenton County Fiscal Court

BY: _____

BY: _____

Its: _____

Kenton County Judge/Executive

Date: _____

Dated: _____