



Energy Project Assessment District (EPAD)
PROGRAM MANUAL
for
Louisville, KY

Version 1.0
Revised March 2020

SUSTAIN *Louisville*



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Section 1: Executive Summary

In 2015, the Kentucky General Assembly enacted legislation [KRS 65.205 *et seq.*] authorizing local governments to establish Energy Project Assessment Districts (EPADs), which provide a new and innovative way for commercial, agricultural, industrial, and multi-family property owners to pay for energy efficiency upgrades, on-site renewable energy systems, and water conservation measures. Unlike traditional financing, EPAD financing can provide for 100% of an energy project's cost, and is repaid by participating property owners with a voluntary assessment administered by the Sheriff in the same manner as a property tax bill. EPADs, known nationally as Property Assessed Clean Energy or "PACE", have been authorized through legislation in more than 30 states.

Metro Council enacted EPAD legislation in 2016 in the Louisville Metro Code of Ordinances (LMCO) Chapter 165. The ordinance designated the entirety of Louisville Metro as an EPAD, and identified the Office of Advanced Planning and Sustainability as the coordinating and administrating agency for the EPAD Program.

Louisville Metro Government (LMG) recognizes the expansive benefits of energy efficiency improvements and renewable energy installations. Such projects stimulate economic growth, create jobs, increase profits and property values, alleviate urban heat and decrease the amount of pollutants impacting local air quality and global climate change.

Property owners who utilize EPAD financing are typically able to experience multiple benefits not available with traditional loans. EPAD financing may offer 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 and water projects to have immediate positive cash flows since some improvements, such as windows and elevators, have higher upfront costs and lower energy savings;
- EPAD assessments remain with the property, not the property owner, when sold or transferred;
- Underwriting for EPAD financing focuses on the positive equity in the property; and
- Because the EPAD assessment is the ONLY repayment obligation and is attached to the property itself and NOT the property owner, the property owner does not tie up other credit lines for essential operating expenses.

Through Louisville's EPAD Financing Program (Program), property owners develop a qualifying energy efficiency or renewable energy project in partnership with a contractor. The property owner completes an *Initial Eligibility Form* and arranges project financing with an authorized financial institution of their choice. The property owner applies to LMG to designate the loan repayment as a governmental special assessment. If approved, LMG, the property owner and property owner's lender will enter into a three party agreement to authorize the use of assessment financing. The Program is open to any licensed contractor and any lender that would like to participate. The Program is administered by the LMG Office of Advanced Planning and Sustainability. The Office of Advanced Planning and Sustainability may, at any point, engage a third party to assist with program administration.



Section 2: Program Manual Overview

This document serves as program guidance to property owners, lenders, contractors and all other interested parties. The program has been designed to fulfill the requirements set forth in the EPAD Act and LMCO Chapter 165. The document may be updated from time to time by the program administrator. The most recent version of the Program Manual is available on the [Office of Advanced Planning and Sustainability website](#).

Throughout the document, forms are *italicized*. A full list of forms required as part of the EPAD Program is provided in the [List of Forms and Documents](#).

A. Authorization

- 1) **Commonwealth of Kentucky Enabling Statutes** – Kentucky Revised Statutes Sections 65.206 – 65.209 (the “EPAD Act”) authorize consolidated local governments in Kentucky to establish a program to advance the conservation and efficient use of energy and water resources by allowing for energy projects to be financed by assessments imposed upon the real property being improved through the energy project. The program may be established by the adoption of a resolution or ordinance by the local governing body.

- 2) **Louisville Metro Government Authorizing Ordinance** – Louisville Metro Code of Ordinances Chapter 165 designates the entirety of Louisville Metro as an Energy Project Assessment District. A copy of LMCO Chapter 165 is attached hereto as Appendix A.

B. Definitions

“Special Assessment” is defined as a voluntarily-assumed annual assessment (i.e., loan payment) charged to the property owner. The assessment includes fees due as a result of participation in the EPAD Program. All fees are calculated from the original assessment amount for that term.

All other terms used in this Manual shall have the same definitions set forth in the EPAD Act and in LMCO Chapter 165.

Section 3: General Program Information and Eligibility

A. Administering Agency

The LMG Office of Advanced Planning and Sustainability (Office of Advanced Planning and Sustainability) is tasked with the coordination and administration of the Energy Project Assessment District (EPAD) program (Program), in conjunction with the Jefferson County Sheriff’s Office (Sheriff) and the Louisville Metro Office of Management and Budget (OMB). The Office of Advanced Planning and Sustainability may contract with a third-party entity to administer or aid in administering the EPAD program.

B. Eligible Properties

The Program is only available to those properties authorized by the EPAD Act and LMCO Chapter 165. This includes office, retail, industrial, agricultural, non-profits and multi-family residential units consisting of five (5) or more dwelling units. Commercial properties include for-profit businesses and



non-governmental, non-residential, tax-exempt properties such as privately-operated community centers and hospitals. Participating properties must be located within Louisville Metro. Condominiums or residential cooperatives must meet the conditions outlined in Section 3-B(1) Buildings with Multiple Parcel IDs.

- 1) Building with Multiple Parcel IDs** - Buildings with multiple Parcel IDs such as condominiums require additional documentation and underwriting protocol. The EPAD special assessment must be tied to a parcel ID number that has sufficient property value to underwrite the project. LMG will work with property owners on other solutions and will update this Program Manual accordingly. However, LMG reserves the right to deny buildings with multiple parcel ID numbers if any one parcel ID number cannot support the EPAD project.

C. Eligible Projects

An eligible energy efficiency, water efficiency or renewable energy improvement project must:

- Have a minimum cost of \$20,000. EPAD projects typically cannot exceed 35% of the property value. *EPAD lenders may have additional limits based on facility use or loan to value ratios.* For example, a commercial building with an assessed or appraised value of \$1,000,000 could do an EPAD project costing no more than \$350,000. Lenders may use assessed value for this determination.
- Have a useful life of at least five years. EPAD financing terms should not exceed the expected life of the proposed improvement as certified by the lender. For projects that include multiple improvements, the average weighted useful life of the new equipment must equal or exceed the term of the EPAD financing.
- Be permanently affixed to the real property or building.
- The property owner will leave the improvements with the property upon sale or transfer of title.
- Reduce energy or water usage, or generate renewable power for the property. If the property is vacant or underutilized at project inception, the energy savings of new equipment can be compared to the energy use of existing equipment using modeling simulations under a new building use or higher occupancy rates.

NOTE – there is no statutory requirement that the energy improvement generate more energy savings than the repayment amount.

Although the EPAD Act and LMCO Chapter 165 do not require demonstration of a certain Savings-to-Investment Ratio (SIR), it is encouraged that property owners seek energy projects with SIRs greater than 1.0 for the following reasons:

- EPAD lenders may look more favorably on projects that show positive cash flow over their useful life, and
- Mortgage lien holders may be more likely to provide consent to the imposition of the senior EPAD Assessment liens for projects that show positive cash flow.

- 1) Sample Eligible Energy Improvements** - Eligible energy improvements are those that are commercially available with proven performance. The Office of Advanced Planning and Sustainability will provide a final eligibility ruling if an energy improvement being proposed is



uncertain. When in doubt, it is best to consult with the Office of Advanced Planning and Sustainability on the eligibility of any specific measure as early as possible in the application process. Examples of eligible energy improvement projects include but are not limited to:

- Mechanical
 - Heating ventilation air conditioning (HVAC) upgrades
 - New automated building and HVAC controls
 - Variable speed drives (VSDs) on motors fans and pumps
 - High efficiency chillers, boilers and furnaces
 - Combined Heat and Power (CHP) systems
 - High efficiency hot water heating systems
 - Heat recovery and steam traps
 - Combustion and burner upgrades
 - Elevator and escalator upgrades
 - Building automation (energy management) systems
- Envelope
 - Roofing with insulation
 - Window and door replacements
 - Exterior Insulation Finishing System (EIFS) insulation
 - Green roof
- Lighting
 - High efficiency lighting such as LED lighting
 - Automated controls
 - Parking lot lights
- Renewable energy systems - EPAD can be used to finance renewable energy improvements provided the improvement is installed on the customer's side of the electric, gas, water or other energy meter. These include, but are not limited to:
 - Solar electric (photovoltaic)
 - Solar thermal
 - Geothermal including heating/cooling
 - Wind turbines
 - Heat recovery systems
- Water
 - Low or no flow fixtures
 - Other water conservation measures

2) Ineligible Energy Improvements – Ineligible energy improvements include but are not limited to:

- Energy improvements, in any combination, that do not result in utility cost savings;
- Measures that are not permanent in nature or fixed to the subject property or building (i.e., wheeled commercial kitchen appliances or mobile industrial equipment);
- Health and safety improvements not directly related to or otherwise incorporated in the Energy improvement.
- Measures that save energy solely due to operational or behavioral changes



- Any measure that does not result in energy savings or renewable energy production
- Any measure that cannot be explained in terms of industry-standard engineering or scientific principles
- Compact fluorescent, screw-in lamps
- Plug load devices
- Power correction, power conditioning
- Refrigerant charge (AC/Split Systems/Heat Pumps)

D. Eligible Property Owners

The person or persons possessing the most recent fee title of an eligible property as shown by the records of the Jefferson County Clerk (Clerk's Office). To be eligible to participate in the Program, an eligible property owner must, at a minimum:

- Agree to participate in annual surveys and EPAD program evaluations, which will include giving the program administrator access to the project property's utility bill usage information through the use of the U.S. EPA's ENERGY STAR [Portfolio Manager website](#).
- Obtain the written affirmative acknowledgment of all existing mortgage lien holders, if any, of participation in the EPAD Program (See Mortgagor Consent in Section 5: Financing).
- Certify they (and its corporate parent if the property owner is a single-purpose entity) are solvent and that no proceedings are pending or threatened in which the property owner (or the corporate parent, as applicable) may be adjudicated as bankrupt, become the debtor in a bankruptcy proceeding, be discharged from all of the property owner's (or corporate parent's, as applicable) debts or obligations, be granted an extension of time to pay the property owner's (and the corporate parent's, as applicable) debts or be subjected to a reorganization or readjustment of the property owner's (and the corporate parent's, as applicable) debts.
- Certify that the property owner (or any corporate parent if the property owner is a single-purpose entity) has not filed for or been subject to bankruptcy protection in the past three (3) years.
- Be current in the payment of all obligations secured by the secured property, including property taxes, assessments and tax liens and have had no delinquencies within the past three (3) years or since taking title to the subject property if it has been less than three years.
- Have no involuntary liens, defaults or judgments applicable to the subject property.
- Certify that it is not party to any litigation or administrative proceeding of any nature in which the property owner has been served, and that no such litigation or administrative proceeding is pending or threatened that, if successful, would materially adversely affect the property owner's ability to operate its business or pay the contractual assessment when due, or which challenges or questions the validity or enforceability of the *EPAD Program Financing Agreement* or any other documents executed by property owner in connection with the Program.

Properties that are currently appealing a property tax assessment will be reviewed, and eligibility for the Program will be determined on a case-by-case basis.



E. EPAD on New or “Gut Rehab” Construction

Unlike retrofits to existing properties, where the savings from energy and water efficiency improvements can be demonstrated by reference to pre-improvement baseline consumption data, new construction exhibits no baseline against which to measure improvements. Therefore, the baseline for a new construction EPAD project is the building energy code in effect at the time the *Formal Program Application* is submitted. Then, the estimated energy savings for any new improvements is compared to that baseline (i.e., What is the expected savings above and beyond the existing new construction energy code baseline?).

Section 4: Application and Program Process Flow

Applying to participate in the EPAD Program is completed through two steps – showing interest and applying. The following information should be submitted to the Office of Advanced Planning and Sustainability:

Note – all forms are available at <https://louisvilleky.gov/government/sustainability/epad-program>.

A. Show Interest

Submit an *Initial Eligibility Form*. This form ensures that the property owner fully understands the Program requirements prior to developing a project and filling out a *Formal Program Application*. A list of all property owners of record should be submitted with the *Initial Eligibility Form*. It is recommended, but not required, that an energy audit be completed in advance of submitting an *Initial Eligibility Form*.

The Office of Advanced Planning and Sustainability will acknowledge receipt of the *Initial Eligibility Form* and will evaluate the proposal to determine if the property owner is eligible to apply for the Program. Approval will be dependent upon a review of documentation required in the *Formal Program Application* and compliance with Program requirements.

**Please note that the *Initial Eligibility Form* is not required if a contractor and lender have been selected, an agreed upon project scope is finalized, and if mortgage lien holder consent has been obtained (or if the property does not have an existing mortgage).

B. Apply

A completed *Formal Program Application*, along with supporting documentation, should be submitted to the Office of Advanced Planning and Sustainability for preliminary approval. Supporting documentation includes:

- A Legal Description of the Property – This document is in reference to the real property being improved and should include a deed book and page number, the parcel ID number, market value of the property, and the names and addresses of all owners of record;
- A copy of the draft Energy Savings Performance Contract if such contract is part of the EPAD project;
- Energy Project Summary - This document must include:
 - The property’s baseline energy and water usage conditions (for new construction, the existing new construction energy code baseline);



- A savings analysis detail documenting the energy and water savings, maintenance savings and operations savings projected to be achieved as a result of the energy project;
 - For renewable energy installations, energy production estimates;
 - Energy improvement proposals/bids;
 - Expected life of the improvement(s); and
 - A proposed time schedule for undertaking the completed project, including an estimated project completion date (note – the property owner must notify the Office of Advanced Planning and Sustainability if an extension of the energy project timeline is required);
- List of Contractors - A list of all engaged contractors, engineers, architects and equipment vendors and their contact information;
 - Written Project Estimate – A signed bid from a licensed, qualified commercial contractor for an Eligible Project;
 - Project budget which outlines all sources of funding, including utility rebates or other incentive program participation, for each qualifying improvement;
 - A copy of the most recent property appraisal or similar statement of value;
 - The results of a full title search to identify existing mortgage loans for the property and contact information for the mortgage company or companies;
 - An executed Mortgage Lien Holder Consent to Special Assessment, acknowledging written consent from the existing mortgage lien holder(s) on the eligible property for the proposed Financing Agreement and for treating the payments under the Financing Agreement as special assessments applied to the eligible property pursuant to this Program.
 - One – three photographs of each building included in the project; and
 - A signed copy of the Eligibility Certification.

1) Mortgagor Consent - As required by the EPAD Act and LMCO Chapter 165, each lender holding a mortgage lien in the real property of record must execute a *Mortgage Lien Holder Consent to Special Assessment*. In addition, it is considered best practice for property owners to advise any other lenders of their intention to use EPAD financing in order to make certain that the property owner's use of EPAD will not violate the terms and conditions of any other active loans or credit facilities.

2) Program Fees - LMG has the following fees for EPAD projects:

- LMG will collect an application fee to cover the cost of reviewing the *Formal Program Application*. The application fee is \$500 or 1% of the cost of the project, whichever is less. The fee will be due at the time the *Formal Program Application* is submitted to the Office of Advanced Planning and Sustainability and is non-refundable. Although subject to change, the price of the application fee statutorily cannot exceed 1% of the cost of the project.
- Any costs associated with closing, including recording fees, will be due at the time of closing.
- An administrative fee in the amount \$200 or 1% of the annual loan payment, whichever is less will be delivered to LMG. This fee will be collected as part of the annual special assessment.



- The Sheriff will collect an annual commission in the amount of 1% of the annual loan payment. This fee will be collected as part of the annual special assessment.

For example, the property owner of a project costing \$40,000 would pay an application fee of \$400 (1% of the cost of the project). After obtaining a 4% interest rate on a \$40,000 loan with a 25 year term, the property owner will pay an annual assessment of \$2,560.48 plus the 1% administrative fee (\$25.60) and the 1% Sheriff's fee (\$25.60), for a total amount due each year of \$2,611.69.

Note – financing can be structured in various ways that may affect the annual total amount due. Please check with your lender to confirm cost estimations.

C. Obtain Louisville Metro Government Approval

LMG will review and approve the project if it meets the Program terms.

D. Complete the Financing Agreement with Louisville Metro Government and Lender

The property owner, the property owner's lender and LMG will close the financing. Loan closing requires standard bank loan documents, plus the *EPAD Program Financing Agreement* (Tri-party agreement between LMG, property owner(s) and EPAD lender) as attached hereto as Appendix B.

E. Release of Funds

The property owner will draw funds for the project directly from the lender according to terms set forth in the EPAD Program Financing Agreement. No later than April 1st of each year, the EPAD lender will certify to the Office of Advanced Planning and Sustainability the amount of the loan payment to be collected from the property.

F. Pay Special Assessment

The voluntarily-assumed EPAD special assessment will be issued in July of each year and shall be due 60 days after the billing date, until the loan is fully repaid. The property owner must make this payment to the Sheriff. Failure to pay the annual assessment may result in additional charges and penalties as defined in Section 11: Penalties for Unpaid Assessments of this manual and LMCO Chapter 165.

G. Reporting

The EPAD Act and LMCO Chapter 165 require regular reporting to the Office of Advanced Planning and Sustainability. Information on these reporting requirements, as well as on additional best practices, is included in Section 12: Post-Financial Closing.



Section 5: Financing

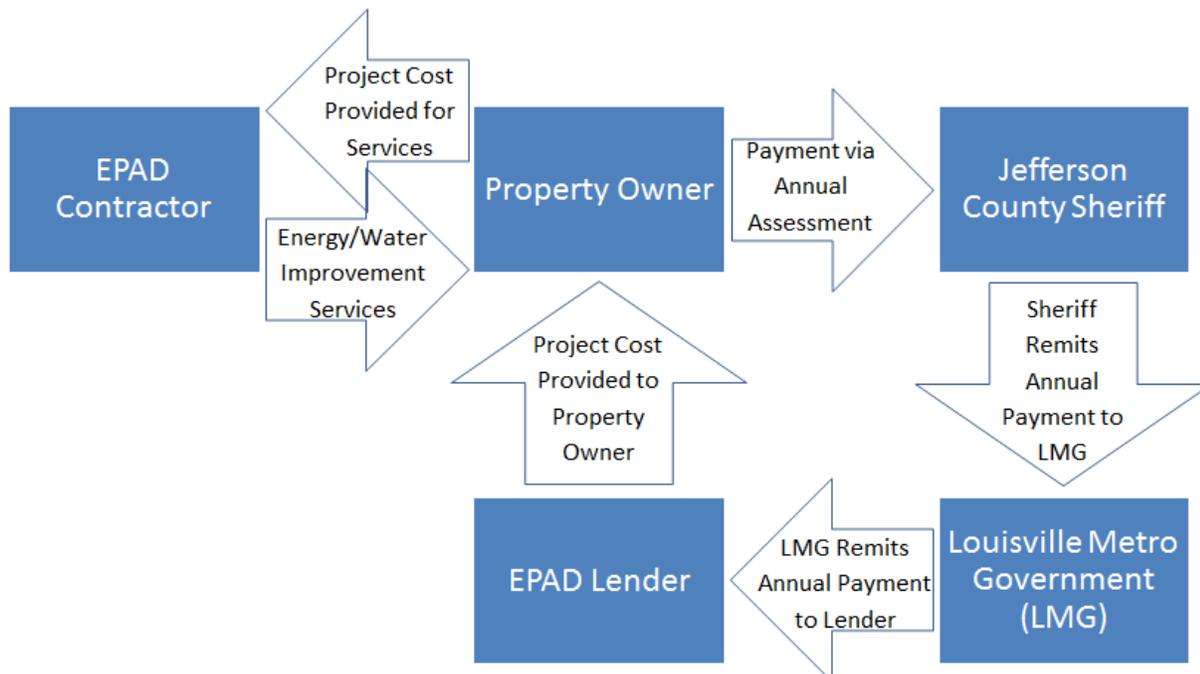


Figure 1. Relationships of Parties in EPAD Transaction

A. Financing Structure

Participating property owners should understand the following important features of EPAD financing:

- The principal amount, as agreed upon between the Property Owner and the property owner's lender, will be equal to all project costs that the property owner may choose to finance through the Program, which may include costs associated with implementing the project such as permits, audit expenses, closing fees and capitalized interest. For a full list of eligible expenses, see Section 5-G: Other Eligible Expenses. (Note – closing fees will be due at the closing even if such fees are incorporated into the Program financing).
- The rate of interest on the financing will be established by the project's lender.
- Depending on when the project's EPAD financial closing occurs, it may not be possible to issue the special assessment until the following year's cycle. In this case, the interest payments that the property owner would have paid in the first year are capitalized into the principal amount.
- There will be administrative fees charged to each successful energy project. In conformity with the EPAD Act, administrative fees cannot exceed the actual cost of the administrative services performed by the local EPAD Program.
- Interest on a project begins accruing the day after the EPAD financial closing.



B. Financing Term

In accordance with the EPAD Act and LMCO Chapter 165, the maximum term of the loan cannot exceed the useful life of the energy improvement. In cases where multiple energy improvements comprise the energy project, the weighted average of the useful lives will be considered by the Office of Advanced Planning and Sustainability and EPAD lender. For example, an EPAD Project consists of:

Improvement Project	Improvement Project Cost	Useful Life (years)	\$ x Useful Life
Project A	\$20,000	15	300,000
Project B	\$10,000	25	250,000
Project C	\$15,000	30	450,000
Projects Combined	\$45,000	22.2	\$1,000,000

In this example, the maximum financing term cannot exceed 22.2 years, which is calculated by dividing the total of the fourth column (\$ x Useful Life) by the total of the second column (improvement project cost).

C. Security

EPAD funding is secured by a special assessment levied by LMG and constitutes 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 the EPAD Act until it is paid. The EPAD assessment lien has the same priority status as a lien for any other state or local ad valorem tax upon the property.

D. Underwriting Standards

Underwriting requirements for EPAD financing will be provided by each EPAD lender. At no point is LMG representing or warranting that a lender will use this information to underwrite a loan. Property Owners seeking to obtain financing from a lender should consult with such lender to determine their underwriting guidelines.

While LMG makes no representations or warranties, the following are common underwriting guidelines used by national EPAD lenders for existing properties and may be used when reviewing an EPAD Project:

- Total property-related debt (including mortgage debt, EPAD financing and any other obligations secured by the property) is not to exceed 90 percent of the property's value. This value may be established by either:
 - The assessed value of the property, or
 - The appraised value as supported by a recent appraisal.
- In either case, the property's value may include the enhanced value of the property resulting from the installation of the energy improvements being financed with the EPAD assessment.
- The property owner has been current on its property tax and assessment payments with respect to the property for at least three (3) years.
- The property owner must not have any involuntary liens, defaults, or judgments applicable to the subject property. A property owner may be able to participate if it can be demonstrated that there is an acceptable reason for the lien, default, or judgment and provide supporting documentation.



- The property owner or their affiliated companies have not been a debtor in a bankruptcy proceeding during the past seven years and the property proposed to be subject to the contractual assessment must not currently be an asset in a bankruptcy proceeding.
- The cash flow generated by the property during the past 12 months exceeds 1.25 times the sum of the amount of the annual assessment plus any interest expense associated with any mortgage debt for the past 12 months.

NOTE – As of 2016, there are no industry standards for EPAD underwriting of new construction or “gut rehab”; therefore, each energy project would be considered by EPAD lenders on a case by case basis.

E. Interest Rate and Financing Fees

The applicable interest rate and closing fees will be negotiated between the EPAD lender and property owner/applicant. There will be additional administrative fees charged by LMG that will be added to the energy project’s financial closing statement and to the annual assessment. These fees are listed in Section 4-B(2): Program Fees.

F. Other Eligible Expenses

Subject to acceptance and approval by the lender, project related expenses incurred as a result of participating in EPAD financing may be capitalized. These costs may include:

- Energy/water audit costs;
- Renewable energy feasibility study costs;
- Engineering and design expenses, including energy modeling for new construction;
- Construction and installation costs, including labor and equipment;
- Commissioning and retro-commissioning costs;
- Prepaid operation and maintenance expenses including measurement and verification costs incurred;
- Costs of an extended labor and equipment warranty covering the full finance term for equipment financed;
- Any capital provider-assessed fees and required prepaid interest;
- Application and permit fees; and
- Other project-related expenses approved by the Office of Advanced Planning and Sustainability and allowed under the EPAD Act and local legislation.

G. Transfer and Resale of the Subject Property

If the property is sold or transferred prior to the end of the agreed-upon EPAD assessment term, the new owner will assume the EPAD assessment obligation. Ownership of any authorized energy improvements on the subject property will transfer to the new owner at the close of the real estate sale. Authorized energy improvements financed through the Program may not be removed from the property until the EPAD assessment has been fully repaid. Program participants agree to make all legally required disclosures about the existence of an EPAD assessment lien on the property in connection with any sale or transfer.



H. Leverage with Other Incentives

EPAD financing may be leveraged with other state and federal incentive programs such as tax credits, accelerated depreciation and utility rebates. It is in the property owner's best interest to apply for all federal, state, local and utility incentives that are available for all of the energy improvements within their energy project. Consult with your financial advisor to obtain more information.

Section 6: EPAD Lenders

The LMG EPAD Program uses an open source funding model. Any lender is eligible to offer EPAD financing to property owners for energy projects.

EPAD lenders may be any financial institution willing and able to participate in the program. LMG reserves the right to bar lenders from participating in EPAD projects if they are found to be in violation of Program goals or for any other valid reason LMG finds the lender to be in violation of industry best practices.

EPAD lenders work directly with the selected contractors to underwrite developing energy project scopes before submitting an *Initial Eligibility Form* and/or *Formal Program Application* to the Office of Advanced Planning and Sustainability. EPAD lenders may also assist the selected contractors and/or property owners with the *Initial Eligibility Form* and/or *Formal Program Application* completion and submittal. The selected EPAD lender should provide a final *EPAD Assessment Schedule* to the Office of Advanced Planning and Sustainability after the *Formal Program Application* approval and in advance of the Financial Closing.

Section 7: Participating Contractors

The LMG EPAD Program uses an open market contractor model. Any qualified contractor is eligible to provide energy or water improvement services. A contractor can include individuals or companies performing installations and other work associated with the energy project as well as those individuals or companies performing commissioning or other forms of energy project verification. Examples of contractors include mechanical contractors, energy services companies or "ESCOs", insulation companies, window/door companies, architects/engineer (A/E) firms, etc.

Contractors participating in an EPAD Project must obtain all necessary permits that are required by law to complete the proposed/approved scope of work for an energy project. LMG reserves the right to bar contractors from participating in EPAD projects if they are found to be in violation of Program goals or for any other valid reason LMG finds the contractor to be in violation of industry best practices.

Property owners who desire to change contractors after a project has been approved must obtain pre-approval of the change with LMG and the EPAD lender. LMG and or the lender may withhold disbursement if a non-approved contractor is used on the project.



Section 8: Metro Government Approval

The Office of Advanced Planning and Sustainability and OMB will review *Formal Program Applications*. The Office of Advanced Planning and Sustainability and OMB may approve, subject to conditions, any completed *Formal Program Application* that meets the Office of Advanced Planning and Sustainability's eligibility criteria for approval as an eligible project. All approvals of an eligible project shall be conditioned upon:

- A completed *Formal Program Application* with all supporting documentation;
- The eligibility of the property owner, lender and contractor to participate in the Program;
- The compliance of the proposed project with the requirements outlined in the Program Manual;
- The acceptance of the property owner to pay lender fees established by the EPAD lenders;
- Receipt of any existing mortgage lien holder consent documents; and
- The signing of a written agreement among LMG, property owner and the selected lender with minimum terms set forth in the *EPAD Program Financing Agreement*, included as Appendix B.

Section 9: Financial Closing

Once the energy project has been approved by the Office of Advanced Planning and Sustainability and OMB, the financial closing can be scheduled and the following documents will need to be finalized:

- Final agreement between the EPAD contractor and property owner(s)
- Financing commitment between EPAD lender and the property owner(s)
- The EPAD Project assessment schedule for loan repayment
- *EPAD Program Financing Agreement*

Additional documentation may be required by the EPAD lender. Once the contracts are executed, the funding can be disbursed for the approved energy project.

Section 10: Recording of the Written Agreement

Participation in the Program for an approved qualifying project shall be effective upon the recording of the *EPAD Program Financing Agreement* (Agreement) in the real property records of the Jefferson County Clerk's Office. The Office of Advanced Planning and Sustainability will record the Agreement, as required by LMCO Chapter 165.

Section 11: Penalties for Unpaid Assessments

Any unpaid assessment will bear interest at the rate of one percent (1%) per month on the total amount due. The annual assessment payment amount will be due within 60 days of the billing date. A five percent (5%) penalty will be added to the total amount due after the 60 day period. The penalty will



increase to ten percent (10%) of the total amount due the following month if not paid. If unpaid four months from the billing date, the unpaid bills will be transferred from the Sheriff to the Jefferson County Attorney's Office for collection. The Jefferson County Attorney's Office shall receive a fee of twenty percent (20%) of the unpaid annual assessment amount for their collection dues.

The assessment, including administration fees, commission amounts and collection fees, 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 section until paid. This lien will have the same priority status as a lien for any other state or local ad valorem tax upon the property. The Jefferson County Attorney's Office is authorized to pursue collection actions for unpaid assessments in the same manner as unpaid property taxes.

EPAD assessments do not accelerate. In the event the mortgage holder forecloses on the property for any reason, only the amount of the assessment plus any interest, fees, and penalties currently due and/or in arrears would become due. In the event of a property sale, EPAD assessments remain with the land and transfer to the new property owner, unless the EPAD loan has been paid in full.

Section 12: Post-Financial Closing

Once final approval for the energy project has been provided by LMG, the property owner has until the approved project completion deadline to complete installation of improvements on the property listed in the *Formal Program Application*. The property owner must use the contractor approved within the EPAD review.

A. Change Orders

All change orders on a project must be pre-approved with LMG through the Office of Advanced Planning and Sustainability. The contractor shall provide documentation of a change in project scope, cost, timeline, contractor, major energy and operations savings estimates, and terms to the energy saving performance contract (if applicable).

B. Quality Assurance and Installation Verification

The Office of Advanced Planning and Sustainability, through the use of a third party, reserves the right to conduct onsite inspections and/or request verification of installations to ensure that proper equipment/systems were installed per the EPAD financing agreement. Annual program fees may be adjusted to accommodate any additional inspections or requested verifications.

C. Energy Project Completion Certificate

Upon satisfactory completion of the EPAD Project, the property owner and the contractor shall sign the *Energy Project Completion Certificate*. The Certificate should be submitted along with a minimum of three (3) photos of the completed project to the Office of Advanced Planning and Sustainability within 30 days of project completion.

D. Post-Completion Commissioning

The Office of Advanced Planning and Sustainability may require post-completion commissioning to be performed by either a third party, or the party performing the original installation of the funded



improvements. The purpose of the commissioning is to verify that the systems have been completed in accordance with the contract documents, and that the systems are performing as expected of such an installation.

E. Utility Data Sharing Requirements

Participating property owners will be required to track utility usage of the impacted building(s) using the U.S. EPA's ENERGY STAR [Portfolio Manager](#). Portfolio Manager is a free website that facilitates energy usage tracking. The building's Portfolio Manager entry shall be shared with the Office of Advanced Planning and Sustainability's Portfolio Manager account in advance of the financial closing. Exceptions for newly constructed buildings can be made on a case by case basis.

More information on Portfolio Manager is available at <https://www.energystar.gov/buildings/facility-owners-and-managers/existing-buildings/use-portfolio-manager>.

F. Best practices

The following best practices are encouraged but not required as part of the Louisville EPAD Program.

- 1) **Energy and Water Audits** – There is no specific requirement for the performance of an energy audit, water audit or renewable energy feasibility analysis. However, the Office of Advanced Planning and Sustainability encourages all EPAD Program participations to conduct industry accepted energy/water audits such as ASHRAE or EPA's Water Sense standards before and after the Energy improvement installation.
- 2) **Renewable Energy Feasibility Study** – Renewable energy feasibility studies provide technology and financing recommendations that a property owner or project developer should pursue. Ultimately, the feasibility study needs to provide enough information for the property owner or project developer and design team to make informed decisions about the types of technologies to include in the final project design.

The feasibility study should be performed by a renewable energy expert with detailed knowledge of the renewable energy systems under consideration, including technical and design issues, resource assessment, relevant policies and incentives, utility tariffs and interconnections issues, etc.

- 3) **Retro-Commissioning** – Retro-commissioning is not required in EPAD, but it can be a valuable energy savings technique. Through retro-commissioning, the improvement undergoes a process to confirm that it is performing to the manufacturer's specifications, thereby ensuring the project is attaining projected energy efficiency benefits. Retro-commissioning can be prearranged to occur on intervals as recommended by qualified contractors, and can be included in the overall EPAD funding request.

Questions regarding this document may be submitted to sustainability@louisvilleky.gov or by calling 502-574-6285.

Appendix A: Louisville Metro Code of Ordinances Chapter 165 - EPAD Ordinance

ORDINANCE NO. 057, SERIES 2016

AN ORDINANCE CREATING A NEW CHAPTER 165 OF THE LOUISVILLE METRO CODE OF ORDINANCES TO ESTABLISH AN ENERGY PROJECT ASSESSMENT DISTRICT PROGRAM PURSUANT TO KRS 65.205 – 65.209.

SPONSORED BY: Councilmembers Bill Hollander, Rick Blackwell, Cindi Fowler, Vicki Aubrey Welch, David Tandy, Dan Johnson, Angela Leet

WHEREAS, KRS Sections 65.205 – 65.209 (the “EPAD Act”) authorizes local governments in Kentucky to establish a program to advance the conservation and efficient use of energy and water resources by allowing for energy projects to be financed by assessments imposed upon the 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 the property owners located in the EPAD area to petition Louisville Metro Government for participation in the program; and

WHEREAS, the Council determines it to be in the best interest of the citizens of Louisville Metro to establish an EPAD pursuant to the EPAD Act to enable certain property owners to finance energy saving improvements to their properties in Louisville Metro;

BE IT ORDAINED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: A new chapter 165 of the Louisville Metro Code of Ordinances is hereby enacted as follows:

§ 165.01 Program Established.

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 Louisville Metro by allowing for energy projects to be financed through assessments imposed upon the real property being improved through the energy project. Louisville/Jefferson County Metro Government (“Louisville Metro Government”) intends to use said assessments to support private sector energy projects.

§ 165.02 Definitions.

For this ordinance, the following terms shall apply. All other terms used in this chapter shall have the same meaning as given to those terms set forth in KRS Section 65.205.

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

“*Office of Sustainability*” shall mean the Louisville Metro Office of Sustainability or such other successor agency;

“*Office of Management and Budget*” shall mean the Louisville Metro Office of Management and Budget or such other successor agency.

§ 165.03 Designation of EPAD Program Area.

The entirety of Louisville Metro is hereby designated as an EPAD.

§ 165.04 Administration of EPAD Program.

(A) The Office of Sustainability shall coordinate and administer the EPAD program.

In its role as administrator, the Office of Sustainability shall:

- (1) Develop and publish policies and procedures for promoting and implementing the EPAD program.
- (2) Develop and publish an application and fee based on the actual cost of reviewing the application, including the costs of any third party administrator that aids in administering the program, which fee shall not exceed one percent (1%) of total amount of the project. The application fee shall be due at the time the application is submitted and is non-refundable.
- (3) 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. The reporting requirements shall be included in the contracts for the Eligible Property Owners.
- (4) Provide a list of program participants and annual assessment payment amounts to the Jefferson County Sheriff's Office (the "Sheriff") annually no later than January 31 of each year. The Sheriff may require additional information as is necessary for billing and collecting the EPAD assessment.
- (5) Once an application is approved, record written notice of the assessment in the real property records of the Jefferson County Clerk's

Office, which includes 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 – 65.209 and this Chapter.

(B) The Office of Sustainability may hire program staff, or contract with a third-party entity to administer or aid in administering the EPAD program.

§ 165.05 Administration Fees and Sheriff Commission

In addition to the non-refundable application fee, an annual administration fee not to exceed one percent (1%) of the total amount of the annual assessment shall be paid to Louisville Metro Government and an annual commission not to exceed one percent (1%) of the total amount of the annual assessment shall be paid to the Sheriff for his billing and collection duties. These annual fees and commission shall be collected concurrently with the annual property assessment and paid to the Sheriff. Upon receipt of the assessment, administrative fee, and commission amounts, the Sheriff shall remit funds less the Sheriff's commission amount to the Office of Management and Budget.

§ 165.06 Eligible Improvement Projects.

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 Louisville Metro, 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 have a useful life of at least five years, and the financing terms shall not exceed the expected useful life of the proposed improvement. For projects that include multiple improvements, the average weighted useful life shall be used as the measurement.
- (D) 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.
- (E) The Energy Project shall reduce energy or water usage or generate renewable power for the property.

§ 165.07 EPAD Application Process.

- (A) The application 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.
- (B) The application 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) A signed bid for the project from the licensed, qualified contractor who will construct and install the improvements;
 - (3) 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; and

(4) The payment terms of the program financing agreement, including the total amount financed and annual assessment payment.

(5) The application shall include a certification by the property owner(s), and its members, affiliates, shareholders, and/or all other related persons or entities as the Office of Sustainability 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 debts 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 secured property, 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 application is being made.

(C) Louisville Metro Government may require the applicant to submit a current title examination, opinion letter, or other documentation to verify compliance with the requirements set out in § 165.07(C)(5).

(D) The property owner shall agree to participate in annual surveys and EPAD program evaluations as requested by the Office of Sustainability.

(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 application requirements, the Office of Sustainability may require additional information to certify that the applicant qualifies for the EPAD program in accordance with the EPAD Act.

(G) The Director of the Office of Sustainability may waive any of the requirements of this Section that the Director determines to be appropriate in his or her sole discretion.

§ 165.08 Procedures for Approved Projects.

(A) The Office of Sustainability and the Office of Management and Budget shall review the applications to determine whether or not the applicant qualifies for the EPAD program. If both the Office of Sustainability and the Office of Management and Budget approve the application, the Office of Sustainability

will enter into a contract with the property owner accepting the Energy Project pursuant to terms and conditions as established by Louisville Metro Government, which may include a surety bond or other guarantee if deemed appropriate by Louisville Metro Government. The written contract shall set forth the total amount of the assessment, the term of the assessment, the interest rate established for the assessment, and the annual amount of the assessment. The contract may also designate the qualified contractor that will construct and install the Energy Project.

(B) Once the application is approved and a contract is executed, the Office of Sustainability shall impose an assessment upon the property and file a written notice of the assessment in the real property records of the Jefferson 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 – 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 interest at the rate of one percent (1%) per month on the total amount due. The annual assessment payment amount will be due within sixty (60) days of the billing date. A five per cent (5%) penalty will be added to the total amount due after the sixty (60) day period. The penalty

will increase to ten percent (10%) of the total amount due the following month if not paid. If unpaid after four months from the billing date the unpaid bills will be transferred from the Sheriff to the Jefferson County Attorney's Office for collection. The Jefferson County Attorney's Office shall receive a fee of twenty (20%) of the unpaid annual assessment amount for their collection duties.

(D) The assessment, including administration fees, commission amounts and collection fees, 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 section 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 Jefferson County Attorney's Office is authorized to pursue collection actions for unpaid assessments in the same manner as unpaid property taxes.

(E) Neither Louisville Metro Government, the Sheriff or the Jefferson 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.

§ 165.09 Amendments to EPAD Program.

Louisville Metro Government may, from time to time, 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.

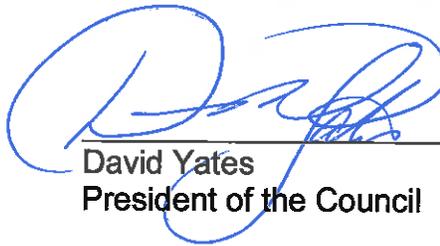
§ 165.10 Severability.

If any provision of this Chapter 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.

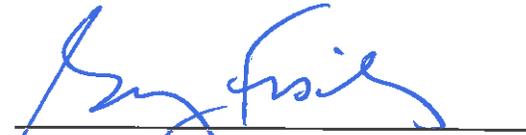
Section II: This Ordinance shall take effect upon passage and approval.



H. Stephen Ott
Metro Council Clerk



David Yates
President of the Council



Greg Fischer
Mayor

4/29/16
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: Sarah J. Martini

**LOUISVILLE METRO COUNCIL
READ AND PASSED**
April 28, 2016



Appendix B

Louisville Energy Project Assessment District (EPAD) EPAD PROGRAM FINANCING AGREEMENT

This EPAD Program Financing Agreement (“Agreement”), is made and entered into this ____ day of _____, 20__ by and among (i) Louisville/Jefferson County Metro Government, a Kentucky consolidated local government, by and through its Office of Advanced Planning and Sustainability (“Louisville Metro”), [property owner] (“Property Owner” or “Borrower”), and [lender] (“Lender”), and is made a part of that certain [loan document] dated as of _____ by and between Property Owner and Lender, such [loan document] hereafter referred to as the “Loan Agreement.”

WITNESSETH:

WHEREAS, the General Assembly enacted KRS Sections 65.205 – 65.209 (the “Act”) authorizing consolidated local governments in Kentucky to establish a program to advance the conservation and efficient use of energy and water resources by allowing for energy projects to be financed by assessments imposed upon the real property being improved;

WHEREAS, Louisville Metro created an Energy Project Assessment District (“EPAD”) and authorized the establishment of an EPAD Program when the Legislative Council of Louisville/Jefferson County Metro Government (“Metro Council”) enacted Chapter 165 of the Louisville Metro Code of Ordinances (“Ordinance”);

WHEREAS, Metro Council designated the entire jurisdictional boundaries of Louisville Metro (“Louisville”) as an EPAD;

WHEREAS, the EPAD Program allows for eligible Property Owners to apply to Louisville Metro to participate in the EPAD Program;

WHEREAS, upon qualifying for the EPAD Program, an eligible Property Owner must enter into an Agreement with Louisville Metro and the Lender;

WHEREAS, the Property Owner is the owner of certain real property located at [address] in Louisville (“Property”), further described in Exhibit A attached hereto and incorporated herein by reference;

WHEREAS, the Property Owner wants to implement an energy efficiency, water conservation, and/or renewable energy improvement project on the Property (“Project”) and has applied to Louisville Metro for inclusion in the EPAD Program;

WHEREAS, as certified in the Formal Program Application (“Application”) attached hereto as Exhibit B and incorporated herein by reference, the Property Owner meets all of the eligibility requirements and has obtained prior written consent from all persons or entities, if any, that currently hold mortgage liens on the Property to subordinate their liens to the Loan Agreement and Note;



WHEREAS, Louisville Metro approved Property Owner's Application for inclusion in the EPAD Program and, as such, Lender has agreed to make a loan to Property Owner in the amount of \$ _____ [loan amount] ("Loan"), as evidenced by the Loan Agreement, Note and other Related Documents, to be used to finance the Project; and

WHEREAS, Louisville Metro has agreed to levy special assessments in order to pay down the Loan and wishes to memorialize this arrangement by entering into this Agreement;

NOW, THEREFORE, for and in consideration of the making of the Loan, Louisville Metro's approval of the Project and the financing and collection arrangements between Lender, Property Owner and Louisville Metro, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, LENDER, PROPERTY OWNER and LOUISVILLE METRO agree as follows:

The above recitals are true and correct and are incorporated herein, in their entirety, by this reference.

1. Defined Terms. The following capitalized terms used in this Agreement shall have the meanings defined or referenced below, in the Recitals above, in the Act, or in the Ordinance:

"Annual Assessment" means the amount that is due in a particular year as more fully described in Section 5 hereof.

"Assessment Certification" shall have the meaning set forth in Section 5(d) hereof.

"County Clerk" means the Jefferson County Clerk's Office.

"Disbursement Amount" shall have the meaning set forth in Section 6(a) hereof.

"EPAD Assessment" means the aggregate amount of all Annual Assessments, which Annual Assessments shall be levied by Louisville Metro pursuant to KRS 65.207.

"EPAD Program Manual" means the Energy Project Assessment District ("EPAD") Program Manual published by the Office of Sustainability, as updated from time to time.

"Foreclosure Proceeds" means the proceeds resulting from the disposition of the Property by Louisville Metro in an *in rem* tax foreclosure.

"Installment Payment" means the annual amount of the Loan due in a particular year as more fully described in Section 2 hereof.

"Liabilities" shall have the meaning set forth in Section 13(c) hereof.

"Loan" shall have the meaning set forth in the Recitals above.



“Loan Amount” means the outstanding amount of all principal under the Note, accrued but unpaid interest and any applicable penalties, costs, fees, charges, late payment charges, default interest rate charges, prepayment premiums or administrative expenses related to the Loan.

“Loan Agreement” shall have the meaning set forth in the Preamble above.

“Maximum Disbursement Amount” shall have the meaning set forth in Section 6(a) hereof.

“Note” shall have the meaning given such term in the Loan Agreement.

“Office of Advanced Planning and Sustainability Annual Administrative Fee” means the annual amount charged by the Office of Advanced Planning and Sustainability to administer the Program, which shall be the lesser of \$200 or 1% of the Installment Payment as set forth in Section 15 hereof.

“Property” shall have the meaning set forth in the Recitals above.

“Related Document(s)” shall mean any instrument, agreement or document executed in connection with the Loan by either the Borrower, the Lender or both.

“Sheriff” means the Jefferson County Sheriff.

“Sheriff’s Commission” means the commission charged by the Jefferson County Sheriff to collect the Annual Assessment and shall equal 1% of the Installment Payment.

“Tax Year” means the period from January 1 through the following December 31.

2. Installment Payments. The Loan Amount shall be payable in Installment Payments, based on an [Loan term such as: eighteen (18) year] amortization schedule. The Loan shall bear interest, including default interest, at the rates set forth in the Note and payments shall be due under the Note and the Loan Agreement as more fully described therein and in Section 5 of this Agreement, ending upon payment in full of the Loan Amount and all other charges, fees, commissions, penalties, expenses and other amounts due under this Agreement, the Loan Agreement and the Note. The amounts of the Installment Payments are based on a Loan Amount of [Numerical Loan Amount]. The Loan shall be fully amortized over the [number] year term of the Loan, and shall be repaid pursuant to the terms set forth in this Agreement, the Loan Agreement, the Note and all other Related Documents or instruments. In the event the Loan proceeds have not been fully disbursed by January 1 of the first year of the Loan term, then the Installment Payment for the initial tax year shall be adjusted to reflect the actual principal amount disbursed by such date to Borrower and the amortization schedule shall be adjusted accordingly.

3. Consent to EPAD Assessment.

(a) By entering into this Agreement, Louisville Metro hereby agrees to enforce the EPAD Assessment and levy and impose the Annual Assessments in the same manner as the property tax bill of the Property as provided in the Ordinance and in Section 5 below. Upon execution of



this Agreement, Louisville Metro will cause the EPAD Assessment and Annual Assessments to be recorded in the office of the County Clerk against the Property, as more particularly described in the Ordinance.

(b) Property Owner hereby agrees and acknowledges that the Property is subject to the EPAD Assessment and consents to the levy of the Annual Assessments. Property Owner further agrees and acknowledges that Annual Assessments of the EPAD Assessment are a lien on the Property as provided in the Act and the Ordinance and failure to pay the EPAD Assessment may result in foreclosure of the Property in accordance with the terms of the Ordinance and this Agreement.

4. Term. This Agreement shall remain in full force and in effect until the Loan Amount and all other charges, fees, commissions, penalties, expenses and other amounts due under this Agreement, the Loan Agreement and the Note have been paid in full.

5. Annual Assessments.

(a) During the term of this Agreement, the Annual Assessments will be issued separately from, but in the same manner as, the property tax bill for the Property and collected as more particularly described below.

(b) The Annual Assessment shall equal the sum of the Installment Payment, the Sheriff's Commission, and the Office of Sustainability's Annual Administrative fee. Louisville Metro shall calculate the Annual Assessments and shall, by January 31st, inform the Sheriff of the Annual Assessment of the Property for each year of the term of this Agreement.

(c) The estimated amount of the initial Annual Assessment is set forth in **Exhibit C** attached hereto and incorporated herein by reference. That estimate is based on the assumptions set forth in Exhibit C, including the assumption that the Maximum Disbursement Amount has been disbursed to Borrower. In the event the Loan proceeds have not been fully disbursed to Borrower by January 1 of the first year of the Loan term, then the Annual Assessment for the initial tax year shall be adjusted to reflect the actual principal amount disbursed by such date to Borrower. Louisville Metro shall cause the actual amount of the initial Annual Assessment to be issued to the Property, in accordance with (d) below. The parties anticipate that some or all of the Loan proceeds will be disbursed prior to January 1, 20__, so that the 20__ assessment for the Property shall include the actual amount of the initial Annual Assessment **(which may be an amount less than future Annual Assessments)**.

(d) No later than January 1 in each year during the term of this Agreement, Lender shall confirm and certify to Louisville Metro the amount of the Installment Payment that will be due in the following year for the Property and the then outstanding Loan Amount (the "Assessment Certification"). The Assessment Certification shall be in form substantially similar to **Exhibit D**, which is attached hereto and incorporated herein by reference. Upon receipt of the Assessment



Certification, Louisville Metro shall cause the appropriate Annual Assessment to be calculated and issued to the Sheriff, in accordance with section (b) above.

(e) Property Owner hereby agrees to pay the Annual Assessment bill for the Property during the term of this Agreement in a timely fashion and in any event no later than sixty (60) days from the billing date as set forth in Section 7(a) hereof. Property Owner agrees that all property tax bills in addition to the Annual Assessment, will be timely paid so as to avoid any default or delinquency in such payment.

(f) In the event Property Owner fails to pay all or part of any Annual Assessment when due, the parties hereto acknowledge and agree that (i) late payment charges and default interest on the unpaid amounts of the Installment Payment shall accrue in favor of Lender as set forth in the Note, (ii) such late payment charges and default interest shall be added to the EPAD Assessments and shall be included as part of the Annual Assessments due thereafter unless and until all such accrued and unpaid default interest is paid in full, and (iii) such default interest shall be in addition to any and all penalties and interest that may be imposed by or accrue in favor of Louisville Metro as a result of Property Owner's failure to pay real estate or other property taxes or other assessments on the Property. In addition, Annual Assessments shall continue to be issued in July of each year notwithstanding Property Owner's failure to pay all or part of any past Annual Assessment, such that Louisville Metro shall continue to levy Annual Assessments, including default interest to be paid to Lender, until either the Loan Amount, including all accrued and unpaid interest, is paid in full or either Louisville Metro or Lender has acquired title to the Property pursuant to Section 8 or Section 9 of this Agreement.

(g) Property Owner hereby acknowledges and agrees that failure to pay any Annual Assessment of the EPAD Assessments, like failure to pay any property taxes pertaining to the Property, will result in penalties and interest accruing in favor of Louisville Metro. In addition, Louisville Metro and Lender may have the right to initiate a foreclosure action on the Property as a result of any delinquent Annual Assessments of the EPAD Assessments, as set forth in Sections 8 and 9 below, as Louisville Metro's or Lender's sole remedy for failure to pay the EPAD Assessments, except as otherwise expressly provided in the Note. Neither Louisville Metro nor Lender waive in any respect any right each of them may have to seek personal liability for any other liens of any kind or nature due to either of them by Property Owner.

6. Adjustments and Prepayment.

(a) Subject to the terms and conditions in the Loan Agreement, Lender agrees to disburse to Property Owner an amount equal to the actual cost of the Project (the "Disbursement Amount"); provided the Disbursement Amount shall not exceed [Written Loan Amount] [(\$ Numerical Loan Amount)] (the "Maximum Disbursement Amount"). If the Disbursement Amount is less than the Loan Amount, Lender shall recalculate the Installment Payment amounts based on the remaining amortization term and so notify Louisville Metro. If any payments have been made in excess of the amount disbursed, Louisville Metro may make an



appropriate refund by crediting the refund amount against the next Annual Assessment of the EPAD Assessments.

(b) Property Owner may prepay the Loan in full, but not in part, by paying the outstanding principal amount of the Loan together with all accrued and unpaid interest, penalties, fees and other charges, plus any prepayment premium due Lender, all as more fully set forth in the Loan Agreement and the Note. Lender shall certify to Property Owner and Louisville Metro the aggregate amount due on the Loan, including principal, interest, and fees and any prepayment premium, within thirty (30) days of receipt of a written request therefor from Property Owner.

(c) Without the prior written consent of Lender, which consent may be given or withheld in Lender's sole reasonable discretion, the Loan may not be prepaid in part and, if such consent is given, any such partial prepayment must be made in strict compliance with the terms and conditions set forth in such written consent, which terms and conditions may include a prepayment penalty. Any partial prepayment in violation of this provision will not be accepted by Lender.

7. Collection of Annual Assessments; Payments to Lender.

(a) Sheriff shall collect the Annual Assessments, including assessing penalties and charging interest, in accordance with the Ordinance. Upon receiving an Annual Assessment from Louisville Metro, Sheriff shall prepare the bill and mail such bill to the Property Owner by July 31st. Property Owner shall pay the Annual Assessment amount to Sheriff within sixty (60) days of the billing date in accordance with the Ordinance. Failure to pay Sheriff the Annual Assessment within such time frame shall result in the accrual of penalties as detailed in the Ordinance.

(b) Sheriff agrees to separately account for any Annual Assessment payments collected or otherwise received for the Property. Sheriff shall remit the collected Annual Assessment less the Sheriff's Commission to Louisville Metro in accordance with the Ordinance as in effect on the date of this Agreement.

(c) Upon receipt of the Annual Assessment less the Sheriff's Commission, Louisville Metro shall remit to Lender, or its heirs, successors or assigns, the Installment Payment amount.

8. Delinquent Annual Assessment; In Rem Foreclosure. If Property Owner becomes delinquent in the payment of an Annual Assessment, upon filing with the County Clerk, the real property tax claim shall become a Certificate of Delinquency ("Certificate") and owned by Jefferson County/Louisville Metro who shall transfer the Certificate to the Jefferson County Attorney's Office for collection. The Jefferson County Attorney's Office shall receive a fee of 20% of the unpaid annual assessment amount for their collection duties which shall be added to the amount of the Certificate. Any time after the passage of one (1) year and before the passage of eleven (11) years following the date when the taxes became delinquent, any action to collect any amount due on a Certificate may be brought at any time. Louisville



Metro Government may begin foreclosure or collection actions pursuant to statutory provisions and requirements. Jefferson County/Louisville Metro, shall have in addition to the remedies already provided, the right to distrain and sell any property owned by the delinquent taxpayer, including that on which the lien attached due to the delinquent taxes. Any property while owned by a delinquent taxpayer shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation. The covenants contained in this Agreement, including, without limitation, this Section 8, shall be covenants running with the Property, and for as long as any principal of, and interest on, the Loan is outstanding and secured, at least in part by the EPAD assessment, the covenants contained in this Agreement, including without limitation, this Section 8, shall be binding upon the Property, the Property Owner and every future owner of the Property. Nothing in this Agreement shall be deemed to affect or impair the right of Lender to enforce its EPAD Agreement, Lien, Note and Related Documents against Borrower, including without limitation the right of Lender to foreclose on its collateral or to purchase the Certificate of Delinquency. KRS Chapter 134; Louisville Metro Code of Ordinances § 165.

9. Louisville Metro Representations regarding Loan and Loan Documents. Louisville Metro hereby represents to Lender and to Property Owner that (i) it is and will be duly authorized under all applicable laws to execute this Agreement, (ii) this Agreement is and will be the valid and legally enforceable obligation of Louisville Metro, enforceable in accordance with its terms except to the extent that enforcement thereof may be subject to bankruptcy and other similar laws affecting creditors' rights generally, and (iii) this Agreement and the dollar amount and all other terms and conditions of the Loan as set forth herein, the Loan Agreement, the Note, and all other Related Documents and instruments are in compliance with the provisions of the Act and the Ordinance. Louisville Metro shall at all times, to the extent permitted by law, defend, preserve and protect the EPAD Assessments created by this Agreement and all the rights of Lender hereunder against all claims and demands of all other persons whomsoever.

10. Other Obligations Payable from EPAD Assessments. Louisville Metro will not issue or incur any obligations payable from the proceeds of the EPAD Assessments nor voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge upon the EPAD Assessments or the Annual Assessments, except for administrative fees and commissions as provided in this Agreement and the fees, commissions, penalties, costs and other charges payable for the collection of delinquent Annual Assessments provided in the Ordinance.

11. Re-L Levy of Annual Assessment. If Louisville Metro omits to make, assess or collect any Annual Assessment when it is required by this Agreement or by the Ordinance to have done so, then Louisville Metro shall take all necessary steps to cause a new Annual Assessment (equal in amount to those not assessed, levied or collected plus interest and penalties, if any, thereon) to be levied against the Property in addition to that Annual Assessment otherwise to be levied or assessed against the Property.

12. No Guaranty by Louisville Metro of Repayment of Loan. Louisville Metro does not assume any responsibility for or guarantee in any manner whatsoever, in whole or in part, the repayment of the Loan between Property Owner and Lender or the payment of the EPAD Assessment or any Annual



Assessment. In no event shall Louisville Metro ever be required to expend its own funds directly or indirectly on the Project.

13. Property Owner Responsibility; Indemnification.

(a) Property Owner acknowledges that Louisville Metro has established the Program solely for the purpose of facilitating loans arranged by eligible Property Owners located in Louisville for the purpose of making energy-efficient renovations by treating principal and interest repayments, fees and other charges for these loans as assessments administered through a bill separate from, but in the same manner as, a tax bill for such properties. The Program is a collection program only. Neither Louisville Metro nor Lender nor any of their respective officers, officials, agents, employees, attorneys or representatives are responsible for selection, management or supervision of the Project or the Project's performance and, further, will have no liability to Property Owner for any matters related to the Project and its performance. Any issues related to performance of the Project should be discussed with chosen contractors or installers, and the manufacturer or distributor of the Project.

(b) Property Owner acknowledges that, pursuant to the Ordinance, the Project shall be permanently affixed to the Property and shall be transferred with the Property upon sale or transfer of title.

(c) To the extent permitted by law, Property Owner shall indemnify, defend, protect and hold harmless Louisville Metro, Lender, and any and all officers, officials, agents, employees, attorneys and representatives of Louisville Metro and Lender (collectively, the "Louisville Metro Parties") from and against all losses, liabilities, claims, damages, penalties, fines, forfeitures, costs and expenses (including all reasonable out-of-pocket litigation costs and reasonable attorneys' fees) and any demands of any nature whatsoever related directly or indirectly to, or arising out of or in connection with, any bodily injury or death or property damage occurring in or upon the Property through any cause whatsoever the presence of Hazardous Substances (hereinafter defined) on the Property or arising out of any circumstance that results in a material, adverse devaluation of the Property as the result of any act or omission of the Property Owner (collectively, the "Liabilities"), regardless of whether such Liabilities shall accrue or are discovered before or after the disbursement of the Loan Amount or any portion thereof. "Hazardous Substance" means any substance, whether solid, liquid or gaseous which is listed, defined or regulated as a "hazardous substance", "hazardous waste" or "solid waste", or otherwise classified as hazardous or toxic, in or pursuant to any Environmental Law (hereinafter defined); or which causes or poses a threat to cause a contamination on the Property or any adjacent property or a hazard to the environment or to the health or safety of persons on the Property. "Environmental Law" means any federal, state, county or municipal statute, ordinance, regulation, rule, order, judgment, permit or decree or common law, now or hereafter in effect, relating to pollution or protection of human health, safety or the environment (including but not limited to ambient air, surface water, ground water, land surface or subsurface strata), or relating to waste disposal, or relating to worker safety, emissions,



discharges, releases or threatened releases of Hazardous Substances or other environmental matters.

(d) The indemnity obligations described in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Agreement.

14. Lender to Notify Louisville Metro of Transfer of Assignment. Lender shall send notice to Louisville Metro Government immediately upon the transfer or assignment of the Loan to any heirs, successors or assignees.

15. Waiver of Claims.

(a) For and in consideration of Louisville Metro's and Lender's execution and delivery of this Agreement, Property Owner, for itself and for its assignees or successors-in-interest to the Property and for any one claiming by, through or under Property Owner, hereby waives the right to recover from Louisville Metro and Lender, and fully and irrevocably releases Louisville Metro and Lender from any and all claims, obligations, liabilities, causes of action or damages including attorneys' fees and court costs, that Property Owner may now have or hereafter acquire against any of Louisville Metro and Lender, and accruing from or related to (i) this Agreement, (ii) the disbursement of the Loan Amount, (iii) the levy and collection of the Annual Assessments, (iv) the imposition of the lien of the EPAD Assessments, (v) the performance of the Project, (vi) the Project, (vii) any damage to or diminution in value of the Property that may result from construction or installation of the Project, (viii) any injury or death that may result from the construction or installation of the Project, (ix) the selection of manufacturer(s), dealer(s), supplier(s), contractor(s) and/or installer(s), and their action or inaction with respect to the Project, (x) the merchantability and fitness for any particular purpose, use or application of the Project, (xi) the amount of energy savings resulting from the Project, (xii) the workmanship of any third parties, and (xiii) any other matter with respect to the Program (the "Waived Claims"). This release includes claims, obligations, liabilities, causes of action and damages of which Property Owner is not presently aware or which Property Owner does not suspect to exist which, if known by Property Owner, would materially affect Property Owner's release of Louisville Metro. Notwithstanding the foregoing, Property Owner's release under this Section shall not extend to Waived Claims arising from Louisville Metro's or Lender's intentional default, fraud or willful misconduct.

(b) The waivers and releases by Property Owner contained in this Section shall survive the disbursement of the Loan Amount or any portion thereof, the payment of the Loan Amount in full, the transfer or sale of the Property by Property Owner and the termination of this Agreement.

16. Administrative Fees. The Annual Assessments shall include an Office of Advanced Planning and Sustainability Annual Administrative Fee to be collected by Louisville Metro in the amount of 1% of the



Annual Assessment or two hundred dollars (\$200), whichever is less. This fee shall be included, on an annual basis, in the Annual Assessments to be set forth on Assessment Certification attached hereto as **Exhibit D** attached hereto and incorporated herein by reference.

17. Notices. All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by registered or certified mail, return receipt requested, postage prepaid; or (c) sent to the parties at their respective addresses indicated herein by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to Property Owner, to: [Property Owner name] [Address] (with a copy to) [Attorney Name] [Attorney Address] or to such other person or address as Property Owner shall furnish to Lender and Louisville Metro in writing.

(b) If to Lender, to: [Lender name, address, and contact] (with a copy to) [Attorney Name] [Attorney Address] or to such other person or address as Lender shall furnish to Property Owner and Louisville Metro in writing.

(c) If to Louisville Metro, to: Louisville Metro Office of Sustainability, 527 W. Jefferson St., Louisville, KY 40202 Attention: [redacted] (with a copy to) Jefferson County Attorney's Office, 531 Court Pl., Ste. 900, Louisville, KY 40202 or to such other person or address as Louisville Metro shall furnish to Property Owner and Lender in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); if sent by registered or certified mail, such communication shall be deemed delivered upon actual receipt (or refusal to accept delivery); and if sent by overnight courier pursuant to this Section, such communication shall be deemed delivered upon receipt. Any party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

18. Supremacy. In the event of any conflict, inconsistency or ambiguity between the provisions of this Agreement and the provisions of the Loan Agreement, the provisions of this Agreement shall control.

19. Application Compliance. In applying for the Loan, Property Owner represents and warrants that it has fully complied with the loan application process as set forth in the EPAD Program Manual.

20. Compliance with Laws. Lender and Property Owner hereby agree to comply with all applicable federal, state and local laws, including lending and disclosure requirements and the provisions of the Ordinance.

21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed a single agreement.



22. Entire Agreement; Amendment. This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.

23. Severability. If any one or more of the provisions of this Agreement shall be found to be invalid, illegal or unenforceable in any respect or to any extent, such finding shall not affect the validity, legality or enforceability of the remaining provisions of this Agreement.

24. Transferability. Lender and Louisville Metro agree that this Agreement shall run with the land and that upon any transfer of the Property, "Property Owner" shall become the transferee and the transferor shall be released from any obligation or liability hereunder.

25. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

26. Headings. The headings and captions of the sections in this Agreement are incorporated only for reference and are not to be read or construed into this Agreement.

27. Authority. The parties, by execution of this Agreement, do hereby warrant and represent that they are qualified to do business in the Commonwealth of Kentucky, and have full right, power and authority to enter into this Agreement.

28. Successors. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

29. Errors and Omissions. The undersigned parties agree that if requested by either Lender or Louisville Metro, in their respective sole reasonable discretion, it/they will fully cooperate and adjust for clerical errors on any or all documents, agreements and instruments related to the Project and/or the Loan as deemed necessary. Further, the undersigned parties will comply with all such requests within thirty (30) days of same being made.



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers and officials thereunto duly authorized as of the date first written above.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

By: _____
Jeff O'Brien
Director, Develop Louisville

Approved as to Form and Legality:

Michael J. O'Connell
Jefferson County Attorney

By: _____

LENDER: [LENDER]

By: _____

Name: _____

Title: _____

PROPERTY OWNER: [PROPERTY OWNER]

By: _____