

Professional Services Agreement
Between Kentucky Municipal Energy Agency and nFront Consulting LLC

Dated: _____

This Professional Service Agreement ("Agreement") is by and between nFront Consulting LLC ("Consultant"), of 2465 Southern Hills Ct., Oviedo, Florida 32765 and the Kentucky Municipal Energy Agency ("Client" or "KyMEA"), with offices at c/o Rubin & Hayes, 450 South Third Street, Louisville, KY 40202. Herein, Consultant and Client individually are also referred to as a "Party," and collectively as "Parties."

Now, therefore in consideration of the promises herein and for other good and valuable consideration, the Parties agree as follows:

1. SERVICES TO BE PERFORMED - TASK ORDERS

Consultant shall provide consulting services to Client as more specifically authorized in Task Orders to be attached to and made a part of this Agreement. Each Task Order shall be sequentially numbered and shall contain information such as:

- a. The names of Clients members for whose benefit the services are to be performed
- b. A description of the scope of and schedule for the work;
- c. Period of performance of the Task Order
- d. Billing rates and estimated or maximum charges under the Task Order
- e. Any special payment terms
- f. Consultant point of contact
- g. Any other terms and conditions applicable to that particular Task Order

Each Task Order shall be dated and signed by both parties, and shall be governed by the terms of this Agreement.

2. INDEPENDENT CONTRACTOR

Consultant shall at all times be deemed to be an independent contractor. Nothing contained in this Agreement shall be construed as creating the relationship of employer and employee, agent or joint venture between Consultant and Client.

Consultant shall have full responsibility for and shall at all times retain control and responsibility for its employees, agents, methods, and operations. The employees or agents of Consultant shall not be considered employees of Client for any purpose, including but not limited to any applicable state or federal law on unemployment insurance, withholding taxes, industrial insurance, social security, or other industrial, labor, or discrimination law.

Consultant shall be solely responsible for any and all taxes imposed by any governmental body on the services performed by Consultant.

Consultant agrees not to discriminate against any employee or applicant on the grounds of race, creed, color, sex, sexual orientation, age, marital status, national origin, or handicap.

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Dated: _____

3. TERM

This Agreement shall commence on the date first signed below and continue in full force and effect until terminated in accordance with the terms of this Agreement.

4. PAYMENT

Consultant shall submit invoices at the end of each month for services performed during that month. Client shall remit payment for the undisputed portion of each invoice within thirty (30) days after receipt of invoice. Alternate payment terms may be specified in the individual Task Order(s).

Consultant is not obligated to incur expenses or make commitments in excess of the maximum budget specified by the Task Order, and Client is not obligated to compensate Consultant beyond the maximum budget specified by the Task Order.

If at any time the Consultant has reason to believe that labor charges and material costs that will accrue in performing an individual Task Order in the succeeding 30 days, when added to all other charges and costs previously accrued, will exceed the maximum budget specified by the Task Order, Consultant shall immediately notify Client in writing providing supporting rationale for the expected charges and costs and shall request in writing the Client's approval of an increase to the budget, as required. It is mutually agreed and understood that the above notification requirement applies to each increment of funds provided to Consultant for each task order under this Agreement.

5. ASSIGNMENT

This Agreement is binding upon and will inure to the benefit of the Client and Consultant, and their respective successors and assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party.

6. STANDARDS OF PERFORMANCE

Consultant shall perform its services with care, skill and diligence in accordance with the applicable professional standards currently recognized by consultants performing similar assignments.

Consultant shall comply with applicable federal, state and local laws, ordinances, and regulations governing health and safety of its assigned employees in performing its services.

In the event any of the items delivered or services performed under this Agreement fails to meet these standards, Consultant shall correct or revise any errors or deficiencies so identified promptly and without additional compensation.

Consultant services specifically exclude providing advice with respect to municipal financial products or issuance of municipal securities to the extent such services are required to be provided by a registered municipal advisor. For services related to these types of financial products or securities, Consultant recommends that Client obtain representation from and rely on the advice of an independent registered municipal advisor.

Professional Services Agreement
Between Kentucky Municipal Energy Agency and nFront Consulting LLC

Dated: _____

No other warranty or guarantee, expressed or implied, is made with respect to the services furnished under this Agreement and all implied warranties are disclaimed.

7. INFORMATION PROVIDED BY OTHERS

Consultant may from time to time request from the Client information necessary to perform the Scope of Services outlined in a Task Order. It is recognized that Consultant may rely on the accuracy of information provided by Client and its representatives in the performance of its services.

8. WORK PRODUCTS

All documents, analyses and other data, except as noted below, prepared by Consultant under this Agreement related to any Scope of Services engagement ("Work Products") are instruments of service and are and shall remain the property of the Consultant. Client is granted a perpetual, non-exclusive license to make and retain copies of all Work Products, provided, however, Clients' use shall be limited to the intended use for which the Work Products are provided under this Agreement. Consultant shall retain ownership of its intellectual property including the procedures, processes, internal resources, tools and other means used by Consultant to prepare the Work Products. Consultant may, at its sole discretion, copyright any of the Work Products, provided that copyrighting will not restrict Clients' right to retain or make copies of the Work Products for its information, reference and use as defined herein. Notwithstanding the foregoing, all documents, analyses and other data, procedures, processes, internal resources, tools and other means of Client disclosed to Consultant or incorporated by Consultant in any documents analysis or other data, or product of Consultant shall remain the property of Client and shall not be converted to property of the Consultant by virtue of its incorporation therein.

Except to the extent otherwise agreed in writing by the Parties, the Work Products shall not be changed or used for purposes other than those specifically identified in the Agreement and Task Order(s). Further, except as otherwise agreed in writing by the Parties, neither the Client nor the Consultant shall release the Work Products to a third party without the other Party's prior written consent. If the Client releases the Work Products to a third party without the Consultant's prior written consent, or changes or uses the Work Products other than as intended hereunder: (i) Client does so at its sole risk and discretion; (ii) Consultant shall not be liable for any claims or damages resulting from the change or use or connected with the release or any third party's use of the Work Products; and (iii) the Client shall indemnify, defend and hold the Consultant harmless from any and all claims or damages related to the change, use, release, or third-party use of the Work Products.

Notwithstanding the above limits on use and release of Work Products, upon mutual agreement of the Consultant and the Client as specifically described in a Task Order and execution of a separate licensing agreement, as required, the Client may retain ownership and copyrights to any products, devices and inventions which it specifically contracted the Consultant to prepare as a work for hire on its behalf.

Professional Services Agreement
Between Kentucky Municipal Energy Agency and nFront Consulting LLC

Dated: _____

9. TERMINATION

Either Party shall have the right to terminate this Agreement, or any Task Orders issued hereunder, with written notice specifying the effective date for termination. Within 24 hours after receipt of such notice, Consultant shall cease to perform work and incur expenses pursuant to this Agreement, unless otherwise agreed by the Parties.

If the Client terminates, the Client shall be responsible for work performed on any Task Order so terminated up to the effective date of termination based on the terms of that Task Order related to charges for services and expenses, but not to exceed the total value of the Task Order.

10. FORCE MAJEURE

If Consultant is delayed in performing its services due to strike, act of God, governmental action, accident or any other condition beyond its reasonable control, Consultant's obligation to perform the Scope of Services hereunder shall be excused without liability. Consultant agrees to resume performance of the Scope of Services as soon as practicable following cessation of such condition.

11. CONFIDENTIALITY

During the term of this Agreement, a Party or the Client may disclose or a Party may develop or create proprietary and confidential information or material concerning or related to processes, services, products or general business operations ("Information").

Such Information may include, but is not limited to, the discovery, invention, research, improvement, manufacture, or sale of products or services, or sales, costs, profits, pricing methods, organization, employee lists, service, software techniques, customer lists, processes, etc. Information shall not include any information which (a) is contained in a published document prior to the date of this Agreement; or (b) becomes publicly known through no wrongful act or failure to act on the part of the Party obtaining the Information; or (c) is known by the Party obtaining the Information without any proprietary restrictions at the time of receipt of such Information or becomes rightfully known without proprietary restriction from a source other than the Parties or the Client.

Consultant and any of its directors, officers, employees, contractors, and agents will not, during or subsequent to the term of this Agreement, directly or indirectly disclose, communicate or divulge to any person or entity, or use for the benefit of any person or entity, any information regarding the Client or the internal operations of the Client, which may be collected, accessed, generated, or analyzed in the course of this project, unless the written consent of the Client is first obtained; provided that the Parties may disclose, communicate, or divulge such information to other consultants that have been retained by the Client to provide services with respect to the Task Order at issue. Consultant acknowledges that the Consultant's work may be subject to the attorney work product privilege.

Consultant agrees that its access to any information whose use is governed by confidentiality or other agreements entered into by Client with a third party will be subject to such agreements, and that Consultant will comply with all such applicable agreements.

Professional Services Agreement
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The parties will only use the Information in order to perform the services specified in the Task Order(s) and no further use of the Information, in whole or in part, will be made. This Paragraph shall survive the termination or cancellation of this Agreement.

12. LITIGATION EXPENSES

Client will be responsible for payment of all expenses and costs associated with Consultant's compliance with a subpoena or Client request to produce documents, data or testimony relating to any proceeding pertaining to Client's project or to the work Consultant performed for Client, excluding any litigation or proceeding between Client and Consultant. These costs will include hourly charges for persons involved in responding to a subpoena or Client request, travel and reproduction expenses, advice and participation of counsel in responding to a subpoena and other request and other reasonable expenses. Consultant will endeavor to confer with Client prior to responding to any subpoena or request covered by this paragraph.

13. ALLOCATION OF RISK

In no event shall Client be liable to Consultant for any consequential, indirect, exemplary, special, incidental or punitive damages including, without limitation, lost profits, even if such damages are foreseeable or the damaged Party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy. In no event shall Clients' liability to Consultant exceed the total amount due for services rendered and expenses incurred under the applicable Task Order under which the liability arose.

In no event shall Consultant be liable to Client for any consequential, indirect, exemplary, special, incidental or punitive damages including, without limitation, lost profits, even if such damages are foreseeable or the damaged Party has been advised of the possibility of such damages and regardless of whether any such damages are deemed to result from the failure or inadequacy of any exclusive or other remedy. In no event shall Consultant's total liability to Client exceed the total amount actually paid to Consultant for services rendered under the applicable Task Order under which the liability arose or \$100,000 of insurance proceeds, whichever is greater.

14. COST RECORDS AND ACCOUNTING

Consultant shall maintain such accounts, books and other appropriate records for all costs and expenses incurred in performing services under any Task Order and shall make such accounts, books and records available to Client as may be reasonably required to verify time and charges incurred and related expenses for services performed.

15. EQUITABLE RELIEF

The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, it is agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of the United States or any state having jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

Professional Services Agreement
Between Kentucky Municipal Energy Agency and nFront Consulting LLC

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16. INSURANCE

Unless otherwise specified in a Task Order, Consultant shall procure at its expense and maintain for the duration of this Agreement, the insurance policies required below with financially responsible insurance companies, and with policy limits not less than those indicated below.

Workers' Compensation: If applicable, Workers' Compensation coverage to apply for all employees for statutory limits and shall include employer's liability with a limit of \$100,000 each accident, \$500,000 disease policy limits, \$100,000 disease limit each employee. ("All States" endorsement is required where applicable).

Commercial General Liability: Coverage for third party bodily injury and property damage, personal injury, products and completed operations, contractual liability, and independent contractors' liability with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Client, its officers and employees, shall be named as Additional Insured and a waiver of subrogation shall be provided in favor of Client.

Business Automobile Liability: Coverage for use of all owned, non-owned, and hired vehicles with limits of not less than \$1,000,000 per occurrence combined single limit for bodily injury and property damage liability. Client, its officers and employees shall be named as Additional Insured and a waiver of subrogation shall be provided in favor of Client.

Professional Liability: Coverage for damages caused by any acts, errors and omissions arising out of Consultant's performance of professional services with limits of not less than \$1,000,000 per claim, \$2,000,000 annual aggregate.

The required insurance coverages above shall be primary and non-contributing with respect to any other insurance that may be maintained by Client, and notwithstanding any provision contained herein, Consultant and its employees, agents, representatives, consultants, subcontractors, and suppliers are not insured by Client and are not covered under any policy of insurance that Client has obtained or has in place.

Any self-insured retentions, deductibles and exclusions in coverage in the policies required under this Article shall be assumed by, for the account of, and at the sole risk of Consultant or the subcontractor which provides the insurance and to the extent applicable shall be paid by Consultant or such subcontractor. In no event shall the liability of Consultant or any subcontractor be limited to the extent of any insurance or the minimum limits required herein.

Prior to commencement of any work, and within 15 days of any policy renewal that occurs while any work is on-going under this Agreement, Consultant shall provide Client certificates of insurance evidencing the insurance policies above, including evidence of additional insured status and waivers of subrogation where required. Client reserves the right to refuse to accept policies from companies with an A.M. Best Rating of less than A- or a Size Category of less than Class VII. Consultant, or its insurers, shall provide 30 days advance written notice to Client in the event of cancellation or material modification of any policy. Failure of Client to demand such certificates or to identify any deficiency in the insurance provided shall not be construed as or deemed to be a waiver of Consultant's, or its subcontractor's obligations to maintain the above insurance coverages.

Professional Services Agreement
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17. ENTIRE AGREEMENT

This Agreement and all Task Orders issued hereunder contain the entire Agreement between the parties with respect to the matters covered herein. This Agreement cannot be modified except in writing signed by both parties.

18. SEVERABILITY

If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be illegal or otherwise unenforceable, that finding shall not invalidate the whole of this Agreement, but only such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreement of the parties herein set forth.

19. WAIVER

The failure of any party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement. To be in force and enforceable, any waiver must be in writing and must be signed by both parties.

20. NOTICES

All notices and other communications hereunder shall be in writing and shall be deemed to be given if delivered personally, by facsimile transmission, emailed with a read receipt obtained, or mailed by registered or certified mail (return receipt requested), postage prepaid, or deposited for overnight delivery with a reputable overnight delivery service, such as Federal Express, to the parties at the following addresses or current emails of current lead contacts at each organization (or at such other address for the party as shall be specified by like notices; provided that notices of a change of address shall be effective only upon receipt thereof)

To Client:

Chairman
Kentucky Municipal Energy Agency
c/o Rubin & Hayes
450 South Third Street
Louisville, Kentucky 40202

To Consultant:

nFront Consulting LLC
2465 Southern Hills Ct
Oviedo, FL 32765
JohnPainter@nFrontConsulting.com

Professional Services Agreement
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Dated: _____

21. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

22. DISPUTE RESOLUTION

The Parties, upon mutual agreement, may refer any controversy, claim or dispute (“Dispute”) arising out of or relating to this Agreement to be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.

Before commencing any such arbitration or other legal action, the Parties agree to enter into negotiations to resolve the Dispute. If the Parties are unable to resolve the Dispute by good faith negotiation and agree to arbitration, the arbitration shall take place in Kentucky. The arbitrator shall be bound to follow the provisions of this Agreement in resolving the Dispute and may not award punitive damages or any damages excluded by this Agreement. In such event, the decision of the arbitrator shall be final and binding on the Parties, and any award of the arbitrator may be entered or enforced in any court of competent jurisdiction. If the Parties do not agree to arbitration of the Dispute, either Party may pursue any claims and remedies (including the remedy of specific performance) allowed at law or in equity.

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Between Kentucky Municipal Energy Agency and nFront Consulting LLC

Dated: _____

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the day and year indicated below.

Kentucky Municipal Energy Agency

Signature: _____

Name: _____

Title: _____

Date: _____

nFront Consulting LLC

Signature: _____

Name: _____

Title: Executive Consultant

Signature: _____

Name: _____

Title: Manager nFront Consulting LLC

Date: _____

**Task Order #1 Under the
Professional Services Agreement
Dated _____**

Between Kentucky Municipal Energy Agency and nFront Consulting LLC

TASK ORDER 1: POWER SUPPLY

GENERAL

The Scope of Services conducted under this **Task Order #1** will be established by mutual agreement between the Kentucky Municipal Energy Agency (“Client”) and nFront Consulting LLC (“Consultant” or “nFront Consulting”), collectively the Parties, and will be conducted under the provisions of the above referenced Professional Services Agreement (“Agreement”) dated _____.

This project is to provide the assistance necessary for KyMEA to identify and implement power supply resources to serve the load of its members commencing on May 1, 2019.

The work provided for by this Task Order 1 is to be conducted as directed by the Client and its legal advisors from time to time.

SCOPE OF SERVICES:

nFront Consulting shall perform the following services as more specifically directed from time-to-time by the Client. nFront Consulting shall work in coordination and cooperation with KyMEA’s other consultants and legal advisors to perform the following:

1. Evaluation of responses provided under the ongoing KyMEA power supply RFP process;
2. Qualitatively and quantitatively analyzing and comparing potential power supply resources as proposed by various power suppliers and alternative portfolios of power supply resources;
3. Assisting with the negotiation and development of contracts between KyMEA and power suppliers and between KyMEA and its Members;
4. Assisting with transmission service analyses and filings;
5. Assisting with regulatory filings and proceedings;
6. Assisting with financing related matters;
7. Assisting with presentation to various stakeholders;
8. Preparing for and meeting with the Client, its team of consultants and legal advisors, and representatives of its members in person or through electronic means; and
9. Preparing plans, budgets, and analyses regarding projected total wholesale costs, rate levels, and rate structures.

Work Products provided under this Task Order are intended for use solely by the Client for the purposes stated herein.

**Task Order #1 Under the
Professional Services Agreement
Dated _____**

Between Kentucky Municipal Energy Agency and nFront Consulting LLC

ADDITIONAL SERVICES

At the written request of the Client, and to the extent not provided for in this Task Order, the Consultant will perform additional work consistent with the provisions outlined in the Professional Services Agreement. Changes or modifications to the Scope of Services included in this Task Order will be authorized by mutual agreement between the Parties including those affirmed by email correspondence between authorized representatives of the Parties.

SCHEDULE FOR COMPLETION

The Parties will mutually agree upon the Schedule for Completion of services performed pursuant to this Task Order.

COMPENSATION:

Fee for Services

Services under this Task Order are to be provided on a time and materials basis. Compensation for services performed will be billed based on actual time worked at an hourly rate of \$245.00 per hour for executive consultants of nFront Consulting. Time of other nFront Consulting personnel shall be charged at the Consultant's standard billing rates in effect at the time the services are rendered.

Fees for services provided and expenses under this Task Order will not exceed applicable budget authorizations.

Any future request for a change in hourly fees for services will be provided to the Client for their consideration and approval no later than 30 days prior to the requested date the change in hourly fees for services would take effect. Any request for a change will be made no more frequently than an annual basis and no earlier than December 2016.

Out of Pocket Expense

Client shall reimburse Consultant for all out-of-pocket expenses incurred by the Consultant during the prosecution of this Task Order in an amount equal to the actual cost thereof.

**Task Order #1 Under the
Professional Services Agreement
Dated _____**

Between Kentucky Municipal Energy Agency and nFront Consulting LLC

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the day and year indicated above.

Kentucky Municipal Energy Agency

By: _____

Name: _____

Its: _____

Date: _____

nFront Consulting LLC

By: _____

Name: _____

Its: Manager, nFront Consulting LLC

Date: _____

By: _____

Name: _____

Its: Manager, nFront Consulting LLC

Date: _____