

ORDINANCE NO. 11 - 2020

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE GRANT AGREEMENT(S) WITH THE NORTHEAST OHIO PUBLIC ENERGY COUNCIL FOR THE 2020 ENERGIZED COMMUNITY GRANT PROGRAM; AND DECLARING AN EMERGENCY.

WHEREAS, the Northeast Ohio Public Energy Council (NOPEC) has established an Energized Community Grant Program which provides funds to communities to assist them in implementing energy savings or energy infrastructure measures; and

WHEREAS, Madison Village, being a member NOPEC community, is eligible for one or more grants, as provided in the grant program guidelines; and

WHEREAS, the Council opines and finds that participation in the grant program is in furtherance of the public good and welfare, it now therefore provides authorization to the Mayor to execute such agreements in furtherance of participation in the grant program.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF MADISON, COUNTY OF LAKE AND STATE OF OHIO:

SECTION 1. The Village hereby agrees to participate in and to accept such of the NOPEC Energized Community Grant Program's grants for the year 2020 as it may be eligible to receive.

SECTION 2. The Mayor is authorized to execute such grant agreement(s) substantially in conformity with the model grant agreement attached hereto as may be required by NOPEC for grant program participation.

SECTION 3. The Administrator is hereby authorized to act on behalf of the Village as grant coordinator and that NOPEC may rely on the Administrator for purposes of program communications, authorizations, compliance, and for all other contractual purposes.

SECTION 4. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings

open to the public, in compliance with all legal requirements, including § 121.22 of the Ohio Revised Code.

SECTION 5. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and welfare of the residents of the Village of Madison, and for the further reason that its immediate adoption is necessary in order for the Village to qualify for and participate in the grant program and to avoid the potential loss of funds; wherefore, this Ordinance shall take effect and be in force immediately upon its passage.



Mark V. Vest
President of Council

PASSED: March 9, 2020

Attested:



Kristie M. Crockett, Fiscal Officer / Clerk of Council

Approved:



Sam Britton, Jr., Mayor

3/9/2020
Date

01/03/2020

NOPEC 2020 ENERGIZED COMMUNITY

GRANT AGREEMENT

This Grant Agreement (the "Agreement") is made and entered into by and between NOPEC, Inc. ("Grantor"), and Madison Village, Lake County, Ohio ("Grantee"; "Grantor" and "Grantee," the "Parties") regarding a grant by Grantor to Grantee to be used primarily for energy efficiency or energy infrastructure projects in accordance with NOPEC Energized Community Grant criteria, guidelines and requirements ("NOPEC Policy").

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, the Parties hereby agree as follows:

1. **Grant of Funds.** Grantor hereby grants a NOPEC Energized Community Grant ("NEC Grant") to Grantee in the amount calculated by Grantor based on the number of natural gas and/or electric accounts served by Grantor in Grantee in accordance with NOPEC Policy in the amount determined by Grantor ("Funds"), for the purposes set forth in Grantee's Grant Application, as amended, and incorporated by reference into this Agreement.

2. **Use of Funds.** Grantee shall use the Funds granted by Grantor for the Project(s) approved by Grantor. Funds shall be paid in accordance with NOPEC Policy. NEC Grant disbursements shall be accompanied by a completed Disbursement Request Form with the expenditures supported by contracts, invoices, vouchers, and other data as appropriate as supporting documents. All disbursements for an approved 2020 NEC grant project must be requested by December 10, 2021. If Grantee does not request disbursements for the Project(s) approved by Grantor on or before such date, Grantee shall forfeit any unused Funds for the NOPEC 2020 Grant year. For NEC Grants in subsequent years, subject to NOPEC Policy in effect at the time, all disbursements for an approved project must be requested no later than December 10th of the year following the original grant year, or Grantee shall forfeit any unused funds.

3. **Accounting of Funds.** Grantee shall keep all Funds and make all disbursements and expenditures consistent with the manner in which all public funds are kept by Grantee in accordance with applicable law.

4. **Term.** The Parties agree that this Agreement shall begin on January 1, 2020, and shall expire on December 31, 2020, and shall be automatically renewed annually unless Grantor discontinues the NEC Grant program for any subsequent year or Grantee is no longer a NOPEC member in good standing, as defined herein.

5. **Renewable Energy Credits.** Grantee shall be entitled to claim Renewable Energy Credits, carbon credits, or NOx allowances and/or allowances arising under other trading programs that may be established in the future for the Project(s). Grantor reserves the right to claim/apply for such allowances if Grantee does not claim such allowances or this Agreement terminates. Grantee must notify Grantor if Grantee does not wish to trade or sell any such credits or assets.

6. **Records, Access and Maintenance.** Grantee shall establish and maintain all records associated with the Funds in accordance with the Ohio Public Records Act and shall

promptly make available to Grantor all of its records with respect to matters covered by this Agreement, and for Grantor to audit, examine and make copies from such records. Grantee agrees to share and release all of its utility and other data with NOPEC, Inc. and Grantor and its consultant(s) in order to measure, verify and otherwise track savings from energy efficiency and for such other related uses as Grantor shall require.

7. Property and Equipment Purchases. All items purchased by Grantee from the Funds granted herein are and shall remain the property of Grantee.

8. Inability to Perform. In the event that Grantee does not or cannot complete the Project(s) or perform its obligations under this Agreement, Grantee shall immediately notify Grantor in writing. Grantor, with the approval of the Committee formed to award NEC Grants (the "Committee"), and Grantee shall jointly identify Project amendments or suitable Project(s) that meet NOPEC Policy.

9. Dispute Resolution. In the event Grantee desires clarification or explanation of, or disagrees with, any matter concerning the Agreement, or the interpretation or application of any and all federal or state statutes, rules, regulations, laws or ordinances, the matter must be submitted in writing to Grantor, which shall convene the Committee to review and decide the matter. All decisions of the Committee shall be final and binding upon Grantee, and non-appealable.

10. Termination.

(a) If Grantor determines that Grantee has failed to perform any requirements of this Agreement, or if Grantee is in default under any provision of this Agreement, or upon just cause, as shall be determined by the Committee, Grantor, upon approval by the Committee, may terminate the Agreement at any time after providing Grantee with written notice and a period of at least thirty (30) days to cure any and all defaults under this Agreement. During such thirty day cure period, Grantee shall incur only those obligations or expenditures which are necessary to enable Grantee to continue to achieve compliance with the terms of this Agreement.

(b) This Agreement shall automatically terminate if Grantee is not a NOPEC member in good standing. A NOPEC member in good standing means a Northeast Ohio Public Energy Council ("NOPEC" or "Northeast Ohio Public Energy Council") member whose residents are receiving service from Northeast Ohio Public Energy Council's natural gas or electric aggregation program and which has not provided written notice to withdraw from such Northeast Ohio Public Energy Council's natural gas or electric aggregation program.

11. Effects of Termination.

(a) Within sixty (60) days after termination of this Agreement, Grantee shall surrender all reports, data, documents, and other materials assembled and prepared pursuant to this Agreement which shall become the property of Grantor. Upon surrender of such material, Grantee shall receive Funds only as to a Project that had been approved for a NEC Grant by Grantor prior to such termination.

(b) The Committee also may withhold final installment payment of the Funds or require Grantee to return all or any part of the Funds awarded if Grantee is found to have violated the provisions of this Agreement. Notwithstanding any other provision in this Agreement, if Grantee either withdraws from membership in the Northeast Ohio Public Energy Council or from its electric or natural gas aggregation program(s), Grantee shall no longer be eligible for any NEC Grants. The provisions of this paragraph are in addition to the termination provisions of this Agreement and to any payments required under the Northeast Ohio Public Energy Council Bylaws and the Northeast Ohio Public Energy Council of Governments Agreement with its member communities in connection with any such withdrawal.

12. **Liability.** Grantee shall maintain, or cause any vendors or subcontractors to maintain, all required liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property caused by the negligent acts or omissions, or negligent conduct of the Grantee. To the extent permitted by law, in connection with activities conducted in connection with this Agreement, Grantee agrees to defend Grantor and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any liability of any nature whatsoever from Grantee to NOPEC, Inc. or the Northeast Ohio Public Energy Council.

13. **Compliance with Laws.** Grantee agrees to comply with all applicable federal, state, and local laws in the performance of the Project. Grantee is solely responsible for payments of all unemployment compensation, insurance premiums, workers' compensation premiums, all income tax deductions, social security deductions, and any and all other taxes or payroll deductions required for all employees engaged by Grantee on the performance of the work authorized by this Agreement.

14. **Miscellaneous.**

(a) **Governing Law.** The laws of the State of Ohio shall govern this Agreement. All actions regarding this Agreement shall be venued in a court of competent subject matter jurisdiction in Cuyahoga County, Ohio.

(b) **Entire Agreement.** This Agreement and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the Parties with respect to the subject matter hereof.

(c) **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

(d) **Notices.** All notices, consents, demands, requests and other communications which may, or are required to be, given hereunder shall be in writing and delivered to the addresses set forth hereunder or to such other address as the other party hereto may designate from time to time:

In case of NOPEC, to:

Charles W. Keiper, II
President
NOPEC, Inc.
31360 Solon Road
Suite 33
Solon, OH 44139

In case of Grantee, to:

Title: Village Administrator
Name: Walter Bailey
126 W. Main St.
Michigan, Ohio 44057

(e) Amendments or Modifications. Either party may at any time during the term of this Agreement request amendments or modifications. Requests for amendment or modification of this Agreement shall be in writing and shall specify the requested changes and justification therefor. The Parties shall review the request for modification in terms of the Project and NOPEC Policy. Should the Parties consent to modification of the Agreement, then an amendment shall be drawn, approved, and executed in the same manner as the original Agreement.

(f) Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

(g) Assignment. Neither this Agreement nor any rights, duties or obligations described herein, shall be assigned or subcontracted by Grantee without the prior express written consent of Grantor.

(h) Authority. The undersigned represents and warrants to the other that each has all the necessary legal power and authority to enter into this Agreement.

(i) Determinations by Grantor Final. All determinations as to eligibility of any project for an award of any NEC Grant, and the amount and payment schedule of a NEC Grant, will be made by Grantor and its Committee, which shall be final, conclusive and binding upon Grantee.

(j) Designation of Grantee Representative. Grantee hereby designates its [Fiscal Officer or other position] to take all actions with respect to the NEC Grant and this Agreement as may be required and Grantor shall be entitled to rely on the authority of such designated representative of Grantee in connection with this Agreement.

(k) **Marketing Consent.** Grantee hereby authorizes NOPEC, Inc. and Grantor to use information about Grantee's grant(s) and project(s) in any marketing they may conduct, and agrees to cooperate with Grantor in connection with such marketing.

[Signature Page to Follow.]

IN WITNESS WHEREOF, the Parties hereto have executed this Grant Agreement on the last date set forth below.

GRANTEE:

Village of Madison, Ohio

Individual Authorized by Grantee's
Legislation

By: 

Title: Mayor

Date: 3/19/2020

NOPEC, INC.:

By: _____

Title: _____

Date: _____

[Signature page to NOPEC 2020 Energized Community Grant Agreement.]

