

**ORDINANCE 2021-23
INTRODUCED BY: NEWELL**

4313

**AN ORDINANCE
AUTHORIZING THE MAYOR TO TAKE ALL ACTIONS
NECESSARY TO ACCEPT NORTHEAST OHIO PUBLIC
ENERGY COUNCIL (NOPEC) 2021 ENERGIZED
COMMUNITY GRANT FUNDS AND DECLARING AN
EMERGENCY**

WHEREAS, the Village of Chagrin Falls, Ohio (the “GRANTEE”) is a member of the Northeast Ohio Public Energy Council (“NOPEC”) and is eligible for one or more NOPEC Energized Community Grants for 2021 (“NEC Grant(s)”) as provided for in the NEC Grant Program guidelines; and

WHEREAS, the GRANTEE has previously entered into a Grant Agreement with NOPEC, Inc. on October 28, 2020 to receive one or more NEC Grant(s).

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE
VILLAGE OF CHAGRIN FALLS, CUYAHOGA COUNTY, STATE OF OHIO:**

Section 1. This Council of the Village of Chagrin Falls finds and determines that it is in the best interest of the GRANTEE to accept the NEC Grant(s) for 2021, and authorizes the Mayor to accept the NEC Grant(s) funds.

Section 2. That actions of this Council concerning and relating to the passage of this legislation were adopted in lawful meetings of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in compliance with all legal requirements, including Chapter 114 of the Codified Ordinances of the Village of Chagrin Falls.

Section 3. That in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls, public notice of this Ordinance shall be given by posting a copy thereof for not less than fifteen (15) days in the Village Hall.

Section 4. This Ordinance is hereby declared to be an emergency measure immediately necessary for the preservation of the public peace, health and safety of the inhabitants of the Village and for the further reason that it is necessary for this Ordinance to go into immediate effect in order to be able to obtain the NEC Grant(s) as soon as possible; wherefore, provided it receives the affirmative vote of at least two-thirds (2/3) of all members

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elected to Council, this Ordinance shall be in full force and effect from and immediately upon its passage and approval by the Mayor, otherwise it shall take effect and be in force after the earliest period allowed by law.

PASSED: May 24, 2021

Erinn W Grube

Erinn Grube, Council President

Submitted to the Mayor for
his approval on this

25th day of May, 2021

Approved by the Mayor
May 25

_____, 2021

William A. Tomko

Mayor William Tomko

I hereby certify that Ordinance No. 2021-23 was duly enacted on the 24th day of May, 2021, by the Council of the Village of Chagrin Falls and posted in accordance with Section 113.01 of the Codified Ordinances of the Village of Chagrin Falls.

David B. Bloom

David Bloom, Clerk of Council

01/03/2020

Original NOPEC Energized Community Grant Agreement (passed in 2020)

> Automatically renews therefore is in effect for 2021.

> Current ordinance 2021-23 is to accept the 2021 grant award under this program.

> We do not need a new grant agreement as the one passed last year is still in effect.

> NOPEC requires just an ordinance to be passed each year to accept the grant funds covered under the original agreement.

NOPEC 2020 ENERGIZED COMMUNITY

GRANT AGREEMENT

This Grant Agreement (the “Agreement”) is made and entered into by and between NOPEC, Inc. (“Grantor”), and Village of Chagrin Falls, Cuyahoga 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: Chief Administrative Officer
Name: Robert Jamieson
21 W. Washington Street
Chagrin Falls, Ohio 44022

(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:

NOPEC, INC.:

Village of Chagrin Falls, Ohio

Individual Authorized by Grantee's
Legislation

By: *William A. Tomko*

By: _____

Title: Mayor

Title: _____

Date: 10/13/2020

Date: _____

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