NOPEC, Inc.

NOPEC ENERGIZED COMMUNITY GRANT

GRANT AGREEMENT

This Grant Agreement (the "Agreement") is made and entered into by and between NOPEC, Inc. ("NOPEC"), and City of Lakewood, Cuyahoga County, Ohio ("Grantee"; NOPEC and Grantee, the "Parties") regarding a grant by NOPEC 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.** NOPEC hereby grants a NOPEC Energized Community Grant ("NEC Grant") to Grantee in the amount calculated by NOPEC based on the number of natural gas and/or electric accounts served by NOPEC in Grantee in accordance with NOPEC Policy in the amount determined by NOPEC ("Funds"), for the purposes set forth in Grantee's Grant Application, as amended, and incorporated by reference into this Agreement for the Project(s) described on Schedule(s) to this Agreement.

2. **Use of Funds.** Grantee shall use the Funds granted by NOPEC for the Project(s) approved by NOPEC. 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. Funds not used in the year they are granted to Grantee may be escrowed and carried forward for up to two (2) years from NOPEC grant approval. If Grantee does not expend the Funds for the Project(s) approved by NOPEC within three (3) years of NOPEC's approval, 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, 2018, and shall expire on December 31, 2018, and shall be automatically renewed annually unless NOPEC 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). NOPEC reserves the right to claim/apply for such allowances if Grantee does not claim such allowances or this Agreement terminates. Grantee must notify NOPEC 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 NOPEC all of its records with respect to matters covered by this

7. Agreement, and for NOPEC 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 NOPEC and its consultant(s) in order to measure, verify and otherwise track savings from energy efficiency and for such other related uses as NOPEC shall require.

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

9. **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 NOPEC in writing. NOPEC, 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.

10. **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 NOPEC, 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.

11. **Termination.**

(a) If NOPEC 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, NOPEC, 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 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.

12. **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 NOPEC. Upon surrender of such material, Grantee shall receive Funds only as to a Project that had been approved for a NEC Grant by NOPEC 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

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:

Executive Assistant to the Mayor
~~Fiscal Officer (or other position)~~
Shannon Strachan
12650 Detroit Ave
Lakewood, Ohio 44107

(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 NOPEC.

(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. Grantee further represents and warrants to NOPEC that it has received all necessary approvals from Grantee's legislative authority for Grantee to accept the NEC Grant and enter into this Agreement.

(i) Determinations by NOPEC 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 NOPEC and its Committee, which shall be final, conclusive and binding upon Grantee.

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

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.

13. **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 NOPEC 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.

14. **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.

15. **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:

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

City of Lakewood, Ohio

By: _____

Its: Mayor

Date: May 9, 2018

NOPEC, INC.:

By: _____

Its: PRESIDENT

Date: 5/17/18

Approved As To Legal Form:

_____

Director of Law, City of Lakewood

[Signature page to NOPEC Energized Community Grant Agreement.]