

GRANT AGREEMENT

City of North Royalton 3
NOPEC, Inc.

This Grant Agreement (the "Agreement") is made and entered into by and between the **NOPEC, Inc.** (hereinafter referred to as the "NOPEC"), and the City of North Royalton, Ohio (hereinafter referred to as the "Grantee"), to fund the replacement of four existing air cooled condensing units and one packaged rooftop unit.

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 Powering Our Communities Grant, funded by First Energy Solutions Corp. to Grantee in the amount of sixty thousand dollars (\$60,000.00) for the purposes set forth in the "Grant Application" and any amendments or additions thereto, which are incorporated into this agreement as if fully restated herein.

Funds shall be paid on the following schedule:

Distribution 1: \$60,000.00	Date: Nov / upon agreement signature and project commencement
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2. Use of Funds. Grantee shall use the Funds granted pursuant to this Agreement and any and all interest income for obligations incurred in the performance of the Agreement and the expenditures shall be supported by contracts, invoices, vouchers, and other data as appropriate, evidencing the costs incurred. Grantee shall use the Funds only as specified in the Grant Application, as may have been amended by the Parties prior to award. If Grantee does not expend the Funds in accordance with the terms, conditions and time period set forth in this Agreement or if the total amount of the Funds and any and all interest income exceeds the eligible costs of the Project, Grantee shall return the amounts improperly expended or not expended to NOPEC within thirty (30) days after the expiration or termination of this Agreement.

Grantee shall not engage in any activity on behalf of NOPEC, nor take any action, that jeopardizes NOPEC's status as a nonprofit organization under section 501(c) (3) of the Internal Revenue Code.

3. Accounting of Funds. The Funds and any and all interest income there from shall be deposited and maintained in a separate account upon the books and records of Grantee. Grantee shall keep all Grant funds and make all disbursements and expenditures consistent with the manner in which all public funds are kept by Grantee.

4. Term. The parties agree that this Agreement shall begin on July 1, 2010 and shall expire on December 31, 2019 unless the term of this Agreement or NOPEC's Master Agreement with First

Energy Solutions Corp. is modified or terminated or the Agreement is terminated in accordance with the provisions of this Agreement.

5. Renewable Energy Credits. The Grantee may 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. NOPEC reserves the right to apply for such allowances if the Grantee does not claim such allowances. The 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. Grantee shall promptly make available to NOPEC all of its records with respect to matters covered by this Agreement including, but not limited to, fiscal records, records of personnel, and conditions of employment and shall permit NOPEC to audit, examine and make copies from such records.

7. Property and Equipment Purchases. All items purchased by Grantee from the Funds granted herein are and shall remain the property of Grantee unless Grantee defaults in the performance of the terms and conditions of this Agreement. If Grantee defaults in the performance of the terms and conditions of this Agreement, all property and equipment purchased by Grantee with any funds herein granted shall revert to NOPEC, at NOPEC's sole option.

8. Inability to Perform. In the event that Grantee cannot complete the Project or meet any or all of the obligations placed upon it by the terms of this Agreement, Grantee shall immediately notify NOPEC in writing. NOPEC, with the approval of the Committee formed to award Grant Funds (the "Committee"), and Grantee shall jointly identify Project amendments or another suitable Projects that meets the Grant Guidelines.

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 NOPEC, which shall convene the Committee to review and decide the matter. If the dispute cannot be resolved, and/or Grantee has failed to comply with the terms and conditions of this Agreement, then procedures for suspension and/or termination may be instituted as provided for under this Agreement.

10. Termination. If it appears to NOPEC that Grantee has failed to perform satisfactorily any requirements of this Agreement, or if Grantee is in violation of any provision of this Agreement, or upon just cause, NOPEC may, upon approval by the Committee terminate the Agreement after providing Grantee with written notice and a period of at least thirty (30) to cure any and all defaults under this Agreement. During the thirty day cure period, Grantee shall incur only those obligations or expenditures which are necessary to enable Grantee to continue its operation and achieve compliance with the Agreement terms.

11. Effects of Termination. Within sixty (60) days after termination or suspension of this Agreement, Grantee shall surrender all reports, 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 compensation for all activities satisfactorily performed prior to the effective date of termination or suspension. If possible and appropriate, and with the approval and cooperation of Grantee, NOPEC and the Committee may complete any outstanding Project after

termination.

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 the activities of this Agreement. Grantee agrees to defend NOPEC, the Committee and First Energy Solutions Corp. 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, the Committee or First Energy Solutions Inc.

14. Adherence to State and Federal Laws, Regulations. Grantee agrees to comply with all applicable federal, state, and local laws in the performance of the Project. Grantee accepts full responsibility 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.

12. Termination after Project Completion. NOPEC and the Committee reserve the right to terminate this Agreement at any time during the Term of this Agreement, for good cause shown, even if the Project has been fully completed. The Committee may, in addition to the Effects of Termination outlined in Paragraph 11 of this Agreement, withhold final installment payment of the Funds or require a Grantee to return all or any part of the Funds awarded if a Grantee is found to have violated the provisions of this Agreement. Notwithstanding any other provision in this Agreement, a Grantee that either:

- a) withdraws from membership in the Northeast Ohio Public Energy Council or its electricity aggregation program; or
- b) withdraws participation of any of the Applicant's eligible electricity accounts from the Northeast Ohio Public Energy Council's electric aggregation program, or
- c) Enters into an agreement with an electricity generation supplier other than through the Northeast Ohio Public Energy Council's electricity aggregation program for any of the Applicant's eligible electricity accounts prior to the expiration of the Term, shall return the entire amount of the Grant Funds to NOPEC as liquidated damages for a breach of this Agreement. Return of Grant Funds under this section is in addition to any other payments required under the Northeast Ohio Public Energy Council Bylaws and the Northeast Ohio Public Energy Council of Governments Agreement with its member communities.

15. Miscellaneous.

a) **Governing Law.** The laws of the State of Ohio shall govern this Agreement. All actions regarding this Agreement shall be forumed and 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:

Leigh Herington
President
NOPEC Inc.

In case of Grantee, to:

Mayor Robert Stefanik
City of North Royalton

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 the justification of such changes. The parties shall review the request for modification in terms of the regulations and goals relating to the Project. 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 warrant that each has all the necessary legal power and authority to enter into this Agreement.

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

GRANTEE:

Robert A. Stefanik

By its: _____

Date: _____

NOPEC:

Leigh Herington

By its: PRESIDENT

Date: 11/16/10