

RESOLUTION NO. 87-2012

Offered by All of Council

A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A GRANT AGREEMENT WITH NOPEC AND DECLARING AN EMERGENCY

WHEREAS, the Village has been awarded \$50,000.00 in grant funds by the Northeast Ohio Public Energy Council (NOPEC) for projects that increase energy efficiency; and

WHEREAS, in order to receive the grant funds, the Village must enter into a Grant Agreement with NOPEC, as attached hereto as "Exhibit A", which among other terms requires the Village to be a member of NOPEC, and its utility aggregation program, until Year 2019.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Clerk be, and they hereby are, authorized and directed to enter into the Grant Agreement with NOPEC, as attached hereto as "Exhibit A", for a \$50,000.00 grant.

SECTION 2. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution 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 including Section 121.22 of the Ohio Revised Code.

SECTION 3. This Resolution is hereby declared to be an emergency measure necessary for the further purpose of authorizing execution of the Grant Agreement with NOPEC at the earliest possible time; wherefore, provided this Resolution receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect immediately upon its adoption and approval by the Mayor; otherwise it shall take effect and be in force at the earliest time provided by law.

PASSED: 12-4-12

Mich Wheel
President of Council

Bolivia Bashara
Mayor

ATTEST:

Dated: 12-4-12

Carolyn E Sullivan
Clerk of Council

Powering Our Communities

Grant Agreement

This Grant Agreement (the "Agreement") is made and entered into by and between the **NOPEC, Inc.** (hereinafter referred to as the "NOPEC"), and Village of Richfield, Ohio (hereinafter referred to as the "Grantee") as part of and in conjunction with the Grantee's membership agreement with NOPEC.

WHEREAS, Grantee has agreed to join as a member of NOPEC and remain a member pursuant to the NOPEC Electricity Program Agreement; and

WHEREAS, Grantee is interested in participating in the Powering Communities Grant; and

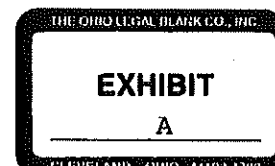
WHEREAS, NOPEC wishes to afford Grantee the opportunity to participate in the Powering Our Communities Grant.

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

1. Grant and Repayment of Funds. NOPEC hereby makes a conditional Powering Our Communities Grant to Grantee in the amount of Fifty Thousand Dollars (\$50,000.00) ("Funds"), as a condition and benefit of joining NOPEC. Funds provided to Grantee must be repaid within thirty (30) days after the expiration or termination of this Agreement unless all of the following terms and conditions are met:

- a) Grantee submits a resolution or other authorizing document to NOPEC outlining a proposed or actual use of the Funds in a manner consistent with the purposes and acceptable uses of the Powering Our Communities Grant; and
- b) Grantee provides suitable assurance to NOPEC of project completion; and
- c) Grantee complies with the additional terms and conditions of this Agreement; and
- d) NOPEC provides an Acknowledgment to Grantee, acknowledging Grantee's compliance with this Agreement and waiving the repayment requirement, subject to all other terms and conditions of this Agreement.

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 may use the Funds in any lawful manner. If Grantee does not expend the Funds in accordance with the terms, conditions and time period set forth in this Agreement, 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 therefrom 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 as of December 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 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 review Grantee's use of the Funds and identify other suitable projects that meet 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 use the Funds in a manner consistent with the Grant Guidelines, or 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) days 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 thirty (30) days after termination or suspension of this Agreement, Grantee shall: a) surrender all reports, documents, and other materials assembled and prepared pursuant to this Agreement which shall become the property of NOPEC; and b) repay all Funds to NOPEC in full.

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 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.

13. 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.

14. 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, and regardless of Grantee's compliance with the provisions in Paragraph 1 herein or issuance of an Acknowledgment by NOPEC. The Committee may, in addition to the Effects of Termination outlined in Paragraph 11 of this Agreement 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) is found to have used the Funds in a manner that is not consistent with Grant Guidelines; or
- b) withdraws from membership in the Northeast Ohio Public Energy Council or its electricity aggregation program; or
- c) withdraws participation of any of the Applicant's eligible electricity accounts from the Northeast Ohio Public Energy Council's electric aggregation program; or

d) 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:

31320 Solon Road, Suite 20
Solon, Ohio 44139

In case of Grantee, to:

4410 W. Streetsboro Road
Richfield, Ohio 44286

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:

NOPEC:

By its: _____

By its: _____

Date: _____

Date: _____