

**VILLAGE YELLOW SPRINGS, OHIO
ORDINANCE #2005-26**

AN ORDINANCE TO AUTHORIZE AND DIRECT THE MUNICIPALITY TO EXECUTE A MUTUAL AID AGREEMENT WITH INTERSTATE AND INTRASTATE PARTICIPATING MUNICIPALITIES WITH MUNICIPAL ELECTRIC SYSTEMS, IN ORDER TO BE ABLE TO RECEIVE AND PROVIDE MUTUAL ASSISTANCE DURING TIMES OF EMERGENCIES THROUGH THE INTERCHANGE AND USE OF PERSONNEL AND EQUIPMENT, AND DECLARING AN EMERGENCY

WHEREAS, Section 735.051 of the Ohio Revised Code authorizes Ohio municipalities to enter into contracts in the case of real and present emergencies without formal bidding and advertising for work to be done and supplies to be purchased from municipal utilities, and;

WHEREAS, Section 715.02 of the Ohio Revised Code provides that two or more municipal corporations may enter into joint agreements relating to the operation of public utilities; and

WHEREAS, Sections 735.051 and 715.02, along with express and inherent authority granted by Articles XVIII of the Ohio Constitution to construct, operate and maintain utilities, provide the authority to for the Village of Yellow Springs, Ohio (herein “Municipality”) to execute a Mutual Aid Agreement with other interstate and intrastate municipalities; and

WHEREAS, American Municipal Power-Ohio, Inc. (herein “AMP-Ohio”) organizes and manages a Mutual Aid Program among its member municipalities wherein members experiencing an emergency in the provision of electricity to customers of the municipal electric system can request assistance from other participating member municipalities, both intrastate and interstate, to assist Municipality in expediting repairs to its electric system to restore electric service as soon as possible; and

WHEREAS, Municipality is a member of AMP-Ohio and operates a municipal electric system; and

WHEREAS, Municipality deems it prudent to enter into a Mutual Aid Agreement with AMP-Ohio and other participating member municipalities to participate in the AMP-Ohio Mutual Aid Program so that it can provide and receive aid and assistance in times of emergency; and

WHEREAS, a Mutual Aid Agreement to receive and provide assistance in times of emergency to preserve the public health, safety and welfare is a valid public purpose.

NOW, THEREFORE, THE COUNCIL OF THE VILLAGE OF YELLOW SPRINGS, OHIO HEREBY ORDAINS THAT:

SECTION 1. That the form of the Mutual Aid Agreement, substantially in the form attached hereto, is approved.

SECTION 2. That the Village Manager is authorized and directed to execute the Mutual Aid Agreement, substantially in the form of the mutual agreement attached hereto.

SECTION 3. That any and all competitive bidding requirements are hereby waived.

SECTION 4. That the Municipality agrees to reimburse any Signatory to the Mutual Aid Agreement all eligible costs for services provided to the Municipality in accordance with the terms and conditions of the Mutual Aid agreement in response to a request for aid from the Municipality.

SECTION 5: That this Ordinance is hereby declared to be an emergency measure providing for the immediate preservation of the public peace, health, safety and general welfare, and provided this Ordinance receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately and continuing thereafter upon its passage and approval by the Council; otherwise, it shall take effect and be in force from and continuing thereafter upon the earliest time allowed by law.

Jocelyn Hardman, President of Council

Passed:

Attest: _____
Deborah Benning, Clerk of Council

ROLL CALL:

Hardman _____ Hempfling _____
Rickenbach _____ Wintrow _____

MUTUAL AID AGREEMENT

This Mutual Aid Agreement is entered into this ___ day of ____, 2005 between the Village of Yellow Springs, Ohio American Municipal Power-Ohio, Inc., (herein “AMP-Ohio”) and other participating members of AMP-Ohio.

WHEREAS, American Municipal Power-Ohio, Inc., (herein “AMP-Ohio”) organizes and coordinates a Mutual Aid Program for the benefit of its member municipalities, wherein individual member municipalities in need of assistance in the restoration of utility service to customers during times of extreme weather, acts of god, or other natural and manmade disasters or catastrophes (herein “Emergency”) can contact other participating members municipalities to request such aid; and

WHEREAS, the Council of the Village of Yellow Springs, Ohio, (herein “Signatory”]) enacted Ordinance #2005-26, which authorizes the participation in the AMP-Ohio Mutual Aid Program and execution of a Mutual Aid Agreement with AMP-Ohio, as Agent for the Participants, and other AMP-Ohio member municipalities, both intrastate and interstate, which have municipal electric systems; and

WHEREAS, legislative authorities of other AMP-Ohio member municipalities, both intrastate and interstate, have enacted, or are expected to enact, legislation authorizing the execution of a Mutual Aid Agreement with other intrastate and interstate AMP-Ohio member municipalities (herein “Participants”); and

WHEREAS, other Participants have executed, or are expected to execute, the Mutual Aid Agreement; and

WHEREAS, execution of the Mutual Aid Agreement will promote the public health, safety and welfare by providing a network of municipalities capable of providing assistance should the Signatory need such assistance in the event of an Emergency.

NOW THEREFORE, in exchange of mutual consideration, which AMP-Ohio, Signatory and other Participants acknowledge the sufficiency and receipt of, the Parties agree as follows:

Article I – AMP-Ohio Functions

1.1 AMP-Ohio, acting as Agent on behalf of the Participants, organizes and assists in the operation of the Mutual Aid Program to allow for the exchange of assistance between AMP-Ohio members during times of an Emergency. To facilitate the Mutual Aid Program, AMP-Ohio collects and organizes information identifying those members who are active participants in the Mutual Aid Program; maintains a list of each Signatory’s emergency contacts and any other information deemed necessary by AMP-Ohio’s Mutual Aid Committee and its Board of Trustees; maintains current information of the Mutual Aid Sector Coordinators; and distributes Mutual Aid Sector Coordinators and Participants’ information to the Signatory.

1.2 AMP-Ohio also assists in the functions of the AMP-Ohio Mutual Aid Committee. AMP-Ohio Mutual Aid Committee consist of individuals appointed by the Chairman of the AMP-Ohio Board of Trustees and the Mutual Aid Sector Coordinators. The purpose of the Mutual Aid Committee is to provide oversight of the Mutual Aid Program through the creation and implementation of policies and procedures for governing the operation of the Mutual Aid Program.

Article II – Signatory Responsibilities

2.1 The Signatory and other Participants shall provide AMP-Ohio with the name or names of employees that can be contacted by a requesting municipality seeking aid and any other information deemed necessary by AMP-Ohio to facilitate the Mutual Aid Program. At a minimum, the information provided shall include information as to how to contact the employee or employees of the Signatory that have responsibility and authority to respond to a request for aid, twenty-four (24) hours a day/seven (7) days a week. AMP-Ohio maintains a list of each Signatory’s contact information. It shall be the responsibility of each Signatory to provide AMP-Ohio with the most update and current contact information. Each Signatory shall be responsible for notifying AMP-Ohio of any changes, revisions or alterations to the Signatory’s contact information. AMP-Ohio shall distribute the each Signatory’s contact information to all Participants.

2.2 The Signatory and Participants shall be organized into sectors based upon the geographical locations of the Participants. The Participants shall appoint a Mutual Aid Sector Coordinator for each sector. The Mutual Aid Sector Coordinator shall be an employee of one of the Participants from the respective sector. The Mutual Aid Sector Coordinator shall be responsible for assisting a Requesting Municipality in obtaining the requested aid from other Participants as set forth below. The Mutual Aid Sector Coordinator shall be considered within the scope of his/her employment when providing the services set forth in this Agreement.

Article III – Requesting and Providing Aid

3.1. When a Signatory is experiencing an Emergency, the Signatory may request (herein “Requesting Municipality”) aid from other Participants in accordance with the terms and conditions of this Agreement. The determination of the existence of an Emergency shall be in the sole discretion of the Requesting Municipality.

3.2. In order to receive aid, the Requesting Municipality shall first contact the Mutual Aid Sector Coordinator for the Requesting Municipality’s respective sector. The Requesting Municipality shall provide the following information to the Mutual Aid Sector Coordinator:

- a. the nature of the Emergency;
- b. the type of aid being requested including estimates of the amount of manpower and equipment being requested
- c. an estimate of the length of time that such aid will be needed; and

- d. the sites where the aid is to be rendered along with a designated meeting place and designated contact person for the Requesting Municipality.

3.3. To the extent practical under the circumstances, such request shall be in writing and faxed to the Mutual Aid Sector Coordinator, otherwise, such information may be communicated by any means available. The Requesting Municipality shall follow up any oral request for aid, or otherwise confirm any request for aid, in writing as soon as reasonably practicable. The failure to follow up any oral request for aid with a written request shall not abrogate a Requesting Municipality's obligation to reimburse a Responding Municipality's costs incurred in providing such aid in accordance with the terms of this Agreement.

3.4. The Mutual Aid Sector Coordinator shall first contact Participants in the Requesting Municipality's sector to determine which Participants, if any, are capable of providing the Requesting Municipality with the requested aid. If no Participants in the respective sector are capable of providing the requested aid, then the Mutual Aid Sector Coordinator shall then contact other Mutual Aid Sector Coordinators in an effort to find other Participants who are capable of providing the requested aid to the Requesting Municipality.

3.5. In the event the Requesting Municipality is not successful in contacting the Mutual Aid Sector Coordinator for its respective sector, then the Requesting Municipality may contact a designated contact at AMP-Ohio. The Requesting Municipality shall provide the AMP-Ohio designated contact with the same information that the Requesting Municipality is to furnish to the Mutual Aid Sector Coordinator. AMP-Ohio then shall endeavor to contact various Participants in the Requesting Municipality's sector to determine which Participants, if any, are capable of providing the Requesting Municipality with the requested aid.

3.6. Upon receipt of a request for aid from a Mutual Aid Coordinator or AMP-Ohio, due to a corresponding request from a Requesting Municipality, a Participant shall, in its sole discretion, consistent with the proper operation and protection of its own electric generation, transmission and distribution system, determine whether it can spare the manpower and equipment to provide aid to the Requesting Municipality. A Participant providing mutual aid to a Requesting Municipality shall be known as a Responding Municipality.

3.7. The Signatory and Participants agree that the AMP-Ohio Mutual Aid Committee has the right to alter, amend, change or revise the procedures and/or protocols set forth above from time to time, as deemed necessary and appropriate by the AMP-Ohio Mutual Aid Committee, for the requesting and coordination of aid from other Participants. AMP-Ohio shall notify the Signatory and other Participants in writing whenever the AMP-Ohio Mutual Aid Committee alters, amends, changes or revises the procedures or protocols for requesting aid.

Article IV – Billing and Payment

4.1. The Requesting Municipality shall be obligated to provide, and the Responding Municipality shall be entitled to receive, reimbursement for the following expenses incurred by a Responding Municipality in the provision of requested aid:

- a. A charge for labor and equipment, which shall be established by a unanimous vote of AMP-Ohio's mutual aid committee. The current charge for labor and equipment provided by the Responding Municipality to a Requesting Municipality, approved by the AMP-Ohio Mutual Aid Committee, is equal to the total number of man-hours expended rendering aid (including travel time) by employees of the Responding Municipality multiplied by the actual labor rate of those employees being paid by the Responding Municipality while engaged in the response to the request for aid, then multiplied by two; and
- b. A materials and supplies charge equal to the actual cost of fuel, materials and supplies expended by the Responding Municipality rendering such aid, including fuel and expenses incurred in traveling to and from the site of the performance of such aid.

4.2 The Signatory and Participants agree that the AMP-Ohio Mutual Aid Committee has the right to alter, amend, change or revise the type and nature of expenses that are reimbursable and the formula for calculating reimbursable expenses set forth above from time to time, as deemed necessary and appropriate by the AMP-Ohio Mutual Aid Committee. AMP-Ohio shall notify the Signatory and other Participants in writing if the AMP-Ohio Mutual Aid Committee alters, amends, changes or revises the formula for reimbursement of labor and equipment expenses or materials and supplies expenses.

4.3 The format of the invoice from the Responding Municipality to the Requesting Municipality shall be in the format as set forth in Exhibit 1 attached hereto and incorporated by reference. The invoice shall show the labor rate for each employee who provided aid and the number of hours logged in providing aid. In addition, any materials and supplies billed shall be set out separately on the invoice. The Signatory and Participants agree that the AMP-Ohio Mutual Aid Committee shall have the right to revise or modify the form invoice from time to time as deemed necessary. AMP-Ohio shall notify the Signatory and other Participants in writing if the AMP-Ohio Mutual Aid Committee alters, amends, changes or revises the form of the invoice.

4.4. The Requesting Municipality shall promptly reimburse the Responding Municipality providing such aid within thirty (30) days of receipt of an invoice for the expenses set forth above from the Responding Municipality.

4.5. Each Signatory agrees that AMP-Ohio, the Mutual Aid Sector Coordinator, and the Municipality employing the Mutual Aid Sector Coordinator shall not be liable for any costs incurred by a Requesting Municipality or Responding Municipality arising out of the provision of any aid requested pursuant to this Agreement.

Article V – Miscellaneous

5.1. Any loss or damage to equipment of the Responding Municipality incurred while rendering such aid, or traveling to or from the site of such aid, which is not due to a negligent act or omission of the Responding Municipality or its employees, shall be paid by the Requesting Municipality in an amount equal to the actual cost not covered by any applicable insurance.

5.2. All personnel of the Responding Municipality to a request for aid shall be deemed acting within the scope of their employment, at all times while engaged in such aid or traveling to or from the site of such aid, to the extent as if those employees were engaged in their normal duties.

5.3. Under no circumstances shall AMP-Ohio, the Mutual Aid Sector Coordinator, the Mutual Aid Sector Coordinator's employer, or the Responding Municipality, or such Responding Municipality's employees, be liable to the Requesting Municipality, its inhabitants, or others, for any damages arising in any way as a result of the rendering of such aid or the failure to respond to such call for aid.

5.4. Under no circumstances shall AMP-Ohio, the Mutual Aid Sector Coordinator, the Mutual Aid Sector Coordinator's employer, or the Responding Municipality be liable to the Requesting Municipality for any damages arising in any way as a result of responding to such call for aid. Each Signatory agrees to indemnify and hold AMP-Ohio and the Mutual Aid Sector Coordinator harmless, for any damages incurred, under any theory of liability, due to any act or omission of AMP-Ohio or the Mutual Aid Sector Coordinator in the administration of the Mutual Aid Program. Each Signatory agrees to waive and release any claims that it may have against AMP-Ohio and the Mutual Aid Coordinator arising out of the receipt or provision of aid, or lack of same, pursuant to this Agreement.

5.5. The municipal official designated by each Requesting Municipality and Responding Municipality (herein "Respective Designated Municipal Official") shall have managerial authority over the equipment or personnel engaged in rendering the requested aid.

5.6. This Agreement shall be effective upon its execution by the parties and shall remain in full force and effect for one (1) year thereafter. This Agreement shall automatically renew for successive one (1) year terms. A Signatory may cease participation in the Mutual Aid Program by giving AMP-Ohio at least thirty (30) days notice of termination. Upon receipt of notice of termination, AMP-Ohio will notify all other Participants in writing of Signatory's withdrawal from the Mutual Aid Program. Signatory shall be liable to any Responding Municipalities for any aid rendered by the Responding Municipality up through date of termination.

5.7. The Agreement shall be governed by Ohio law.

5.8. Notices – Any notices required to be given to any Signatory pursuant to this Agreement sent via prepaid U.S. certified mail shall be deemed received by the

receiving Party on the date signed for as received on the certified mail card. Any notice sent via prepaid U.S. regular mail, by personal service, facsimile, or courier or like service shall be deemed received when received by the receiving Party.

Any notices given or required to be given hereunder to AMP-Ohio shall be sent to the following address:

AMERICAN MUNICIPAL POWER - OHIO, INC.
Attn: Vice President of Technical Services
2600 Airport Drive
Columbus, Ohio 43219

Any notices given or required to be given hereunder to the Signatory shall be sent to Signatory 's contact address provided pursuant to Article II, paragraph 2.

Said addresses shall be updated by the respective Parties by written notice transmitted in accordance with the provisions of this paragraph to the other Party as necessary. This notice provision shall not apply to communications necessary pursuant to Article III of this Agreement.

5.9. The Participants may execute this Mutual Aid Agreement in one or more counterparts, with each counterpart being deemed an original Agreement, and with all counterparts being considered one Agreement. This Agreement may only be amended by written agreement of all Participants.

IN WITNESS WHEREOF, the authorized representative of the Signatory has duly executed this Agreement in writing this __ day of _____, 2005

VILLAGE OF YELLOW SPRINGS, OHIO

APPROVED AS TO FORM

Phil Hawkey,
Interim Village Manager

John C. Chambers
Village Solicitor

AMERICAN MUNICIPAL POWER – OHIO, INC.

APPROVED AS TO FORM

Marc S. Gerken, P.E.
President, AMP-Ohio

John W. Bentine
AMP-Ohio General Counsel