

VILLAGE OF YELLOW SPRINGS, OHIO

ORDINANCE NO. 2007-18

TO APPROVE THE FORM AND

AUTHORIZE THE EXECUTION OF A POWER SALES CONTRACT WITH

AMERICAN MUNICIPAL POWER – OHIO, INC. AND

TAKING OTHER ACTIONS IN CONNECTION THEREWITH

WHEREAS, the Village of Yellow Springs, Ohio (“hereinafter Municipality”) owns and operates an electric utility system for the sale of electric power and associated energy for the benefit of its citizens and taxpayers; and

WHEREAS, in order to satisfy the electric power and energy requirements of its electric utility system, Municipality has heretofore purchased, or desires to do so in the future, economical and reliable power and energy from, or arranged by, American Municipal Power – Ohio, Inc. (hereinafter “AMP-Ohio”), of which Municipality is a Member; and

WHEREAS, Municipality, acting individually and, along with other municipalities which own and operate electric utility systems, jointly, endeavors to arrange for reliable, reasonably priced supplies of electric power and energy for ultimate delivery to its customers; and

WHEREAS, it is efficient and economical to act jointly in such regard; and

WHEREAS, AMP-Ohio is an Ohio nonprofit corporation, organized to own and operate facilities, or to provide otherwise, for the generation, transmission or distribution of electric power and energy, or any combination thereof, and to furnish technical services on a cooperative, nonprofit basis, for the mutual benefit of its Members, such Members, including Municipality,

being political subdivisions that operate municipal electric utility systems in Ohio, Michigan, Pennsylvania, Virginia and West Virginia; and

WHEREAS, certain of the Members, including the Municipality (“Participants”), have determined they require additional, very long-term sources of reliable, environmentally sound and reasonably priced base load electric power and energy and have requested that AMP-Ohio arrange for the same, and have supported through the Developmental Agreement with AMP-Ohio, the developmental effort to plan and permit a coal-fired, steam and electric generating facility having a maximum net rated electric generating capacity of approximately one thousand megawatts (1,000 MW), to be known as the American Municipal Power Generating Station (hereinafter “AMPGS”) and now have the right, but not the obligation to execute an agreement to authorize AMP-Ohio to finance and construct the AMPGS; and

WHEREAS, prior to the adoption of this Ordinance, AMP-Ohio has (i) kept the Municipality informed regarding the developmental process and efforts undertaken by AMP-Ohio; (ii) provided the Municipality with a study prepared by R. W. Beck, Inc. that demonstrates that the Participant can beneficially utilize the share of power and energy available from the AMPGS authorized below, as well as a Project Feasibility Report also prepared by R. W. Beck, Inc.; and, (iii) afforded representatives of the Municipality the opportunity to ask such questions, review such data and reports, conduct such inspections and otherwise perform such investigations with respect to planning and proposed engineering, acquisition, construction and operation of the AMPGS and the terms and conditions of the Power Sales Contract (hereinafter “PSC”) authorized below as the Municipality deems necessary or appropriate in connection herewith; and

WHEREAS, after consideration of the potential risks and benefits of the AMPGS and the PSC authorized below, the Municipality has determined it is reasonable and in its best interests to proceed as authorized herein and hereby requests and authorizes AMP-Ohio to finance, construct

and operate, and own up to a one hundred percent (100%) ownership interest in the AMPGS on behalf of the Municipality and the other Participants in accordance with the PSC authorized below.

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

SECTION 1. That the Power Sales Contract (hereinafter “PSC”) between Municipality and AMP-Ohio, substantially in the form on file with the Clerk including Appendices thereto is approved, and the Village Manager of Municipality is hereby authorized to execute and deliver such PSC, with such changes as the Village Manager may approve as neither inconsistent with this Ordinance nor materially detrimental to the Municipality, his or her execution of the PSC to be conclusive evidence of such approval.

SECTION 2. That the Village Manager is hereby authorized to acquire, as a Participant, as defined in the PSC, Power Sales Contract Resources (hereinafter “PSCR Share”), as defined in the PSC, without bid, from AMP-Ohio and to execute and deliver any and all documents necessary to become a Participant in the AMPGS project pursuant to the conditions set forth herein and in the PSC and to carry out its obligations thereunder.

SECTION 3. That it is further acknowledged and understood that because the Participants will finalize the precise PSCR Share to be acquired by each Participant electing to enter into the PSC after all such Participants execute and deliver the PSC, the Village Manager in connection with the execution and delivery of the PSC, is authorized and directed to determine and acquire Municipality’s PSCR Share, of up to a nominal amount of 3169 kilowatts, after consultation with AMP-Ohio and the other Participants regarding the PSCR Share available pursuant to said PSC, such PSCR Share to be set forth in Appendix A of the PSC, such determination as to such PSCR Share being conclusively evidenced by the adoption of Appendix A to the PSC, as authorized therein.

SECTION 4. That the Village Manager of this Municipality, as a part of such officer's official duties, is hereby appointed as Municipality's representative for any meetings or determinations of the Participants or the Participants Committee pursuant to the PSC and is authorized and directed, acting for, in the name of and on behalf of this Municipality, to vote Municipality's PSCR Share with regard to any determinations regarding the AMPGS project as set forth in the PSC.

SECTION 5. That the Village Manager may appoint, in writing from time to time as necessary, another representative of the Municipality as his or her alternate to carry out the duties set forth in Section 4 hereof.

SECTION 6. That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were taken in an open meeting of this Council and that all deliberations of this Council and of any committees that resulted in those formal actions were in meetings open to the public, in compliance with all legal requirements.

SECTION 7. If any section, subsection, paragraph, clause or provision or any part thereof of this Ordinance shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Ordinance shall be unaffected by such adjudication and all the remaining provisions of this Ordinance shall remain in full force and effect as though such section, subsection, paragraph, clause or provision or any part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been included herein.

SECTION 8. That this Ordinance shall take effect at the earliest date allowed by law.

Karen Wintrow, Vice President of Council

Passed:

Attest: _____
Deborah Benning, Clerk of Council

ROLL CALL:

Karen Wintrow _____

Bruce Rickenbach _____

Judith Hempfling _____

Kathryn Chase _____

Kathryn Van der Heiden