

2  
3  
4 CITY OF CUYAHOGA FALLS, OHIO5  
6 ORDINANCE NO. 49 - 20117  
8 AN ORDINANCE AUTHORIZING THE DIRECTOR OF  
9 PUBLIC SERVICE TO ENTER INTO A POWER SALES  
10 CONTRACT KNOWN AS THE AMP FREMONT ENERGY  
11 CENTER POWER SALES CONTRACT, WITH AMERICAN  
12 MUNICIPAL POWER, INC., AND DECLARING AN  
13 EMERGENCY.  
1415  
16 WHEREAS, the City of Cuyahoga Falls, Ohio ("City") owns and operates an electric  
17 utility system for the sale of electric power and associated energy for the benefit of its  
18 citizens and taxpayers; and  
1920 WHEREAS, in order to satisfy the electric power and energy requirements of its  
21 electric utility system, the City has heretofore purchased, power and energy from, or  
22 arranged by, American Municipal Power, Inc. (hereinafter "AMP"), of which the City is a  
23 Member; and  
2425 WHEREAS, on behalf of its Members, including the City, AMP endeavors to secure  
26 long-term sources of reliable, environmentally sound and reasonably priced electric  
27 capacity and energy for the same; and  
2829 WHEREAS, in furtherance of such purpose, AMP agrees and intends to finance,  
30 construct, operate and own up to a one hundred percent (100%), and in any case not  
31 less than an eighty percent (80%), undivided ownership interest, in the Fremont Energy  
32 Center having an expected net rated electric generating capacity of approximately seven  
33 hundred seven megawatts (707 MW), to be known collectively as the American  
34 Municipal Power Fremont Energy Center (as hereinafter defined, "AMP Fremont Energy  
35 Center"); and  
3637 WHEREAS, AMP has resolved to develop, including, as appropriate, the financing,  
38 acquisition, construction, ownership and operation of, and arrangements for the  
39 acquisition, financing, payment and prepayment of fuel for, its ownership interest in the  
40 AMP Fremont Energy Center (the "Project") as well as other arrangements related  
41 thereto, which AMP and, in certain cases, its participating Members (the "Participants"),  
42 deem necessary to enable AMP to fulfill its obligations to sell and transmit, or otherwise  
43 make available, electric capacity and energy to the Participants pursuant to the  
44 Fremont Energy Center Power Sales Contract (hereinafter "PSC"); and  
4546 WHEREAS, in order to obtain such sources of electric capacity and energy, the  
47 Participants are willing to pay AMP for their respective rights to such electric capacity  
48 and energy and transmission service at rates that are sufficient, but only sufficient, to  
49 enable AMP to (i) recover all costs and expenses incurred with respect to, and  
50 arrangements for the acquisition, financing, payment and prepayment of fuel for, the  
51 Project as set forth herein, all other Power Sales Contract Resources obtained by AMP to  
52 supplement the Project, and related service arrangements undertaken by AMP to enable  
53 it to fulfill its obligations hereunder, and (ii) recover any other expenditures or revenues  
54 authorized under the PSC; and  
55



56 WHEREAS, because the expected in service date of the Fremont Energy Center is on  
57 or about January 1, 2012, the City may need to have AMP rearrange the City's current  
58 power supply portfolio by selling certain already purchased power, principally for 2012  
59 through 2015, into the market ("re-sale") and finance the cost of such transaction  
60 pursuant to the PSC;

61  
62 NOW THEREFORE, BE IT ORDAINED by the Council of the City of Cuyahoga Falls,  
63 County of Summit, State of Ohio, that:

64  
65 Section 1. The Director of Public Service is hereby authorized to enter into a power  
66 sales contract to be known as the AMP Fremont Energy Center Power Sales Contract  
67 (PSC), with American Municipal Power, Inc., on the basis of its proposal dated March  
68 14, 2011.

69  
70 Section 2. The Director of Public Service is hereby authorized to acquire on behalf  
71 of the City, as a Participant, as defined in the PSC, Power Sales Contract Resources  
72 ("PSCR Share"), as defined in the PSC, without competitive bidding, from AMP and to  
73 execute and deliver any and all documents necessary to become a Participant in the  
74 AMP Fremont Energy Center Project pursuant to the conditions set forth in the PSC and  
75 to carry out the City's obligations thereunder.

76  
77 Section 3. The Director of Public Service is hereby authorized and to arrange for  
78 the re-sale, by AMP, of any excess power and energy currently under contract with AMP  
79 as the Director of Public Service deems in the best interests of the City, the proceeds of  
80 which shall be applied to defray the costs incurred by the City under the PSC, including  
81 retirement of the obligations under which such power and energy were purchased on  
82 behalf of the City by AMP.

83  
84 Section 4. It is further acknowledged and understood that because the Participants  
85 will finalize the precise PSCR Share to be acquired by each Participant electing to enter  
86 into the PSC after all such Participants execute and deliver the PSC, the Director of  
87 Public Service, in connection with the execution and delivery of the PSC, is authorized  
88 to determine and acquire the City's PSCR Share (not taking into account the Step-Up as  
89 defined in the PSC), of up to a nominal amount of 26,256 kilowatts, after consultation  
90 with AMP and the other Participants regarding the PSCR Share available pursuant to  
91 said PSC, such PSCR Share to be set forth in Appendix A of the PSC, such  
92 determination as to such PSCR Share being conclusively evidenced by the adoption of  
93 Appendix A to the PSC, as authorized therein.

94  
95 Section 5. The Director of Public Service or her designee is hereby appointed as the  
96 City's representative for any meetings or determinations of the Participants or the  
97 Participants Committee pursuant to the PSC and is authorized to vote the City's PSCR  
98 Share with regard to any determinations regarding the AMP Fremont Energy Center  
99 project as set forth in the PSC.

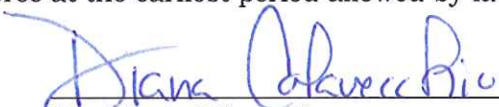
100  
101 Section 6. Any other ordinances and resolutions or portions of ordinances and  
102 resolutions inconsistent herewith are hereby repealed, but any ordinances and  
103 resolutions or portions of ordinances and resolutions not inconsistent herewith and  
104 which have not previously been repealed are hereby ratified and confirmed.

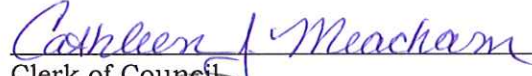
105  
106 Section 7. It is found and determined that all formal actions of this Council  
107 concerning and relating to the passage of this ordinance were taken in an open meeting  
108 of this Council and that all deliberations of this Council and of any committees that  
109 resulted in those formal actions were in meetings open to the public, in compliance with  
110 all legal requirements including Chapter 107 of the Codified Ordinances.

111  
112 Section 8. If any section, subsection, paragraph, clause or provision or any part  
113 thereof of this ordinance shall be finally adjudicated by a court of competent  
114 jurisdiction to be invalid, the remainder of this ordinance shall be unaffected by such  
115 adjudication and all the remaining provisions of this ordinance shall remain in full force  
116 and effect as though such section, subsection, paragraph, clause or provision or any  
117 part thereof so adjudicated to be invalid had not, to the extent of such invalidity, been  
118 included herein.

119  
120 Section 9. This ordinance is hereby declared to be an emergency measure necessary  
121 for the preservation of the public peace, health, safety, convenience and welfare of the  
122 City of Cuyahoga Falls and the inhabitants thereof, and provided it receives the  
123 affirmative vote of two-thirds of the members elected or appointed to Council, it shall  
124 take effect and be in force immediately upon its passage and approval by the Mayor;  
125 otherwise it shall take effect and be in force at the earliest period allowed by law.

126  
127  
128 Passed: 5-23-11

  
President of Council

130  
131  
132   
Clerk of Council

133  
134  
135  
136 Approved: 5/24/11

  
Mayor

137  
138  
139 5/9/11

140 O:\2011ords\Fremont Power Sales Contract