

ORDINANCE NO. 1229

AN ORDINANCE AUTHORIZING AND DIRECTING PARTICIPATION BY THE CITY OF FORT MORGAN, COLORADO, IN THE AMENDED AND RESTATED INTERLOCAL AGREEMENT WITH THE NATIONAL PUBLIC GAS AGENCY, AND AUTHORIZING AND DIRECTING THE EXECUTION OF SAID AGREEMENT

WHEREAS, the City of Fort Morgan, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, the City Council (the "Council") has authority pursuant to the Home Rule Charter and C.R.S. §31-16-101, et seq. to adopt and enforce all ordinances; and

WHEREAS, pursuant to that authority, the City wishes to become a member of the National Public Gas Agency ("NPGA") and recognizes the value of such membership to the City and its citizens and its customers; and

WHEREAS, the Council therefore desires to execute the attached Amended and Restated Interlocal Agreement regarding membership in the NPGA.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF FORT MORGAN, COLORADO, as follows:

SECTION 1. The City Council hereby finds and declares it to be in the public interest and in the interest of the customers of the City's gas utility that the City of Fort Morgan enter into an Amended and Restated Interlocal Agreement relating, among other things, to natural gas acquisition and supply, with the National Public Gas Agency (the "NPGA"), a nonprofit body politic and corporate of the State of Nebraska, as authorized by and in accordance with Section 18 of Article XV of the Constitution of the State of Nebraska and the Interlocal Cooperation Act of the State of Nebraska, §§ 13-801 et seq., R.R.S. Nebraska, 1943, as amended.

SECTION 2. The formation of the NPGA, and the participation by the City therein, is hereby approved.

SECTION 3. It is hereby ordered and directed that the City of Fort Morgan, Colorado, acting through its Mayor, execute the Interlocal Agreement, a copy of said agreement being attached hereto and made a part hereof.

SECTION 4. The City of Fort Morgan City Council does hereby adopt and approve each of the objectives, terms and conditions set forth in the Interlocal Agreement.

SECTION 5. The City of Fort Morgan City Council does hereby agree that the City will accept delivery of full legal and unencumbered title to the assets, if any, of the Agency, upon the dissolution thereof in accordance with the terms of the Interlocal Agreement.

SECTION 6. This ordinance shall be in full force and take effect after its passage, approval and publication as provided by law.

SECTION 7. If any section, provision, paragraph, clause or phrase of this Ordinance is held, or decided to be unconstitutional, invalid or enforceable for any reason, such decision shall not affect the constitutionality, validity or enforceability of the remaining portions of this Ordinance.

SECTION 8. All other ordinances or portions thereof inconsistent or conflicting with this Ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

SECTION 9. The City Council finds that this Ordinance is necessary for the immediate preservation of the public peace, health and safety of the residents of the City.

**INTRODUCED, READ, ADOPTED ON FIRST READING AND ORDERED
PUBLISHED** on the 21st day of May, 2019.



THE CITY COUNCIL OF THE CITY OF FORT
MORGAN, COLORADO


By: Ronald Shaver
Mayor

Attest:


John Brennan
City Clerk

PASSED, APPROVED AND ADOPTED ON FINAL READING AND ORDERED
PUBLISHED this 4th day of June 2019.

THE CITY COUNCIL OF THE CITY OF
FORT MORGAN, COLORADO

[SEAL]



By: Ronald Shaver
Mayor

Attest:

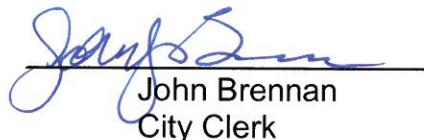


John Brennan
City Clerk

STATE OF COLORADO)
COUNTY OF MORGAN)ss.
CITY OF FORT MORGAN)

CERTIFICATE

I, John Brennan, the duly appointed, qualified Clerk of the City of Fort Morgan, Colorado, do hereby certify that the foregoing **Ordinance No. 1229** was, as a proposed Ordinance, duly and legally presented to the City Council of the City of Fort Morgan, Colorado, on the 21st day of May 2019. Said ordinance, as proposed, was duly read at length at said meeting, and thereafter the same was, on the 24th day of May, 2019, published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado. Said proposed ordinance was again taken up and read a second time, duly and legally, passed, approved and adopted at a regular meeting of the City Council held on the 4th day of June 2019. Within five (5) days after its final passage, said **Ordinance No. 1229** was published in *The Fort Morgan Times*, a daily newspaper of general circulation published and printed in the City of Fort Morgan, Morgan County, Colorado.



John Brennan
City Clerk

**NATIONAL PUBLIC GAS AGENCY
AMENDED AND RESTATED INTERLOCAL AGREEMENT**

THIS INTERLOCAL AGREEMENT (this "Agreement") is made and entered into as of this 11th day of May, 2011 by and between the undersigned Cities, Villages or other public agencies which execute this Agreement, hereinafter called the "Members."

RECITALS:

1. By authority of Section 18 of Article XV of the Constitution of the State of Nebraska and the Interlocal Cooperation Act of the State of Nebraska, §§ 13-801 et seq., R.R.S. Nebraska, 1997, as amended (the "Act"), any two or more public agencies may enter into interlocal agreements with one another for joint or cooperative action of any power or powers, privileges or authority exercised or capable of exercise individually by such public agencies, and create a joint entity in furtherance of such joint or cooperative action with such powers, including bond-issuing powers, as such an interlocal agreement shall specify.

2. Each Member has the authority, among other things, to negotiate for the purchase, transportation or sale of natural gas and natural gas reserves, or any combination thereof, with any entity engaged in the purchase, transportation or sale of natural gas, whether public or private, located within or without the State of Nebraska.

3. As authorized by Nebraska law, the Members own and operate certain distribution systems for the distribution and sale of natural gas or have other municipal requirements for a natural gas supply and for such operations desire to assure themselves of a reliable and economical supply of natural gas.

4. The Members deem it to be in the best interest of the public to coordinate the operation of existing natural gas distribution and transportation facilities and the mutual acquisition of stable and economic natural gas supplies.

5. The Members desire to study and evaluate on a continuing basis the benefits that may result to the Members and their residents from the coordination of natural gas resources and facilities as described above.

6. The Members desire to enter into an interlocal agreement pursuant to which the Members, among other objectives, will cooperate to assure reliable and economical supplies of natural gas to meet their respective local requirements.

7. The Members desire pursuant to such interlocal agreement to create a joint entity to exercise public powers and to act on behalf of the Members for the purposes set forth in such interlocal agreement.

In consideration of the agreements herein contained, the Members do hereby mutually agree as follows:

ARTICLE I

OBJECTIVES AND PURPOSES; CREATION OF NATIONAL PUBLIC GAS AGENCY

Section 1.01. The objectives and purposes of this Agreement are to carry out those public powers, duties and obligations of the governing bodies of the Members relating to the acquisition, management, distribution and sale of natural gas, through joint planning, central dispatching, cooperation in environmental and regulatory matters and coordinated construction, operation and maintenance of natural gas distribution or transportation facilities owned or controlled by the Members, transportation facilities owned or controlled by other entities and through more effective coordination with other natural gas utilities throughout the country, natural gas purchasers and natural gas producers and sellers:

- (a) To provide the means for a reliable natural gas supply for Members in conformance with optimum standards of reliability.
- (b) To provide the means for efficient and effective use of natural gas distribution and transportation facilities.
- (c) To attain maximum practicable economy to the Members consistent with - high standards of reliability and to provide for equitable sharing of the resulting benefits and costs.
- (d) To provide for such other general utility or related infrastructure projects as the Members determine to purchase, own, lease or finance.
- (e) To conduct any other Board-approved activities authorized under the Act.

Section 1.02. In furtherance of such objectives and purposes, (i) the Members hereby create a joint entity under the Act to be known as the "National Public Gas Agency," being a separate, nonprofit public body corporate and politic of the State of Nebraska ("NPGA"), and successor to the Nebraska Public Gas Agency which shall be constituted and administered by a board of directors (the "Board of Directors"); and (ii) the Members hereby delegate to NPGA those powers as are hereinafter provided by this Agreement. The Members shall have the right to create a class or classes of non-voting affiliates that are Public Agencies.

ARTICLE II

DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

"Member" shall mean a public agency that purchases all of its natural gas requirements from NPGA for a term specified by the Board of Directors and/or a public agency that is elected to membership by the Board of Directors as provided in the Bylaws. A Member shall be a full or associate member in good standing of Nebraska Municipal Power Pool.

"NPGA" shall mean the National Public Gas Agency, a nonprofit joint entity created by this Agreement pursuant to and in accordance with the Act.

"Public Agency" shall mean a government agency as defined in the Act.

ARTICLE III

TERM OF AGREEMENT

Section 3.01. This Agreement shall initially become effective and binding upon its execution by at least two Members, and shall become effective and binding as to each additional Member, as provided by Section 3.02 hereof.

Section 3.02. After the initial effective date, any public agency (within the meaning of the Act) may become a Member by obtaining approval of the Board of Directors and executing this Agreement.

Section 3.03. Any Member may terminate its participation by giving three years' written notice to the Board of Directors, which will then send written notice to all other Members notifying them of the termination. The Board of Directors may terminate this Agreement and dissolve NPGA on three years' written notice to all Members. Upon the termination of this Agreement and the entire dissolution of NPGA, each Member, at the time of such dissolution shall receive a distribution of the assets, if any, of NPGA as provided by a vesting formula set forth in the Bylaws.

(a) The Board of Directors may terminate, expel or suspend a Member in the manner set forth in the Bylaws.

Section 3.04. In the event a Member fails to perform its obligations pursuant to this Agreement, the Board of Directors shall give written notice to such Member specifying such failure to perform and establishing a reasonable period that the Member shall have to fulfill its obligations pursuant to this Agreement. If the Member's failure to perform its obligations is continuing, the Board of Directors may immediately terminate such Member's participation in this Agreement. Any Member terminated by the Board of Directors shall continue to fulfill its contractual obligations (including, without limitation, any obligations with respect to outstanding bonded debt of NPGA) pursuant to any natural gas or other project transaction under a separate contract with NPGA until the completion of such natural gas or other project transaction in accordance with its terms. The process set forth in this Section 3.04 regarding termination for failure to perform obligations pursuant to this Agreement is separate and distinct from the right of the Board of Directors to terminate, expel or suspend a Member as provided in Section 3.03(a) above.

Section 3.05. Termination of participation in this Agreement or termination of this Agreement by the Board of Directors shall not impair, amend or change any previous contracts or agreements. Such contracts and agreements shall continue in full force, including all rates, terms, obligations and conditions, until the expiration of such contracts and agreements in accordance with their respective terms, or unless sooner released by the Board of Directors.

Section 3.06. Subject to earlier termination as aforesaid, this Agreement shall terminate on January 1, 2099. This Agreement shall survive a transition of the form of government of a Member from one form to another.

ARTICLE IV

BOARD OF DIRECTORS

Section 4.01. The affairs of NPGA shall be conducted by a Board of Directors consisting of a representative designated by each Member signing the agreement.

Section 4.02. Each Member shall designate by resolution a Director and Alternate Director, each of whom shall hold office until a successor shall be designated or until his or her earlier resignation.

Section 4.03. The Board of Directors shall hold an annual meeting at such time and place as the Board of Directors shall designate and shall hold meetings at other times as provided in the Bylaws.

Section 4.04. The Board of Directors shall annually adopt and thereafter monitor a budget of revenues and expenditures.

Section 4.05. Subject to Article III, Section 3.03(a), each Member of the Board of Directors shall have the right to cast one vote. There shall be no weighted voting.

Section 4.06. No action of the Board of Directors shall be taken unless 50% or more of the Members are represented at the meeting. Unless provided otherwise in the Bylaws, upon a majority affirmative vote of the representatives present, such action shall be effective immediately.

Section 4.07. The Board of Directors shall have the authority to appoint and hire an Executive Director.

ARTICLE V

POWERS

Section 5.01. NPGA shall have all the powers to carry out the objectives and purposes stated in this Agreement on behalf of the Members as any individual Member would have on its own behalf.

Section 5.02. NPGA shall have the power (a) to sue and be sued, (b) to have a seal and alter the same at pleasure or to dispense with the necessity thereof, (c) to make and execute contracts and other instruments necessary or convenient to the exercise of its powers, and (d) from time to time, to make, amend and repeal bylaws, rules and regulations not inconsistent with the Act and this Agreement and to carry out and effectuate its powers, objectives and purposes.

Section 5.03. NPGA, acting through its Board of Directors, shall have such other powers as are permitted to it under the Act which are necessary and proper for the achievement by NPGA of its stated objectives and purposes as set forth in this Agreement, including but without limitation, the power to approve the issuance by NPGA of its revenue bonds in accordance with and subject to the limitations and restrictions of the Act and pursuant thereto, and to apply the proceeds of such revenue bonds to the financing of the stated objectives and purposes of this Agreement, including, without limitation, the acquisition of natural gas supplies and related infrastructure projects.

ARTICLE VI

NO ASSIGNMENT

No Member shall assign this Agreement.

ARTICLE VII

AMENDMENTS

Section 7.01. Any Member may propose an amendment to this Agreement by filing such proposed amendment with the chairperson of the Board of Directors, who shall immediately forward

copies thereof to the Members, provided that no amendment shall, directly or indirectly, affect or impair any contracts or agreements of the Agency agreed upon in writing prior to the effective date of such amendment, including, in particular, but without limitation, any contracts relating to the Agency's bonds or other debt financings. Each Member shall forward its vote to the chairperson of the Board of Directors, and said vote must be received by the chairperson within 60 days after the date of filing.

Section 7.02. In voting on any amendment, each Member shall have one vote. If two-thirds of the Members approve the amendment, as evidenced by resolution of the governing body of each Member, such amendment will become effective 30 days after approval by the Members, subject to the restriction set out in Section 7.01. Abstentions shall be counted as negative votes.

Execution. Separate copies of this Agreement are executed by the Members with the understanding that, as and when each of the Members has executed a copy, all of the Members shall be bound to the same extent and purpose as if all such Members had simultaneously joined in the execution of a single master copy.

IN WITNESS WHEREOF, each of the Members has caused this Amended and Restated Interlocal Agreement to be executed by its duly authorized officer as of the day and year shown below.

CITY OF FORT MORGAN, COLORADO, NATURAL GAS DEPARTMENT AND SYSTEM ENTERPRISE

By Ronald Shaver

Title Chairman of the Board

Date 6/7/2019

Attest:

By Sonya Brown

Secretary

