

ORDINANCE NO. 1194

AN ORDINANCE OF THE MUNICIPALITY OF MONROEVILLE
AUTHORIZING COOPERATION BETWEEN THE MUNICIPALITY
OF MONROEVILLE AND THE GATEWAY SCHOOL DISTRICT,
ALLEGHENY COUNTY, PENNSYLVANIA BY PROVIDING FOR
THE EXECUTION AND DELIVERY OF AN INTERGOVERNMENTAL
COOPERATION AGREEMENT PERTAINING TO THE ACQUISITION
AND USE OF A JOINTLY-OWNED MUNICIPAL-SCHOOL COMPLEX

WHEREAS, Act No. 180 of July 12, 1972, (53 P.S. Sec. 481 et seq.) entitled, "An Act Relating to Intergovernmental Cooperation" authorizes two or more municipalities (a school district being defined by the Act as a municipality) to enter into joint agreements in the exercise or in the performance of their respective governmental functions, powers, or responsibilities; and

WHEREAS, pursuant to the aforesaid Act of the General Assembly, the Municipal Council of the Municipality of Monroeville desires to enter into a joint Agreement with the Gateway School District, Allegheny County, Pennsylvania to the end that there may be the joint acquisition, improvement and use of real estate for purposes which are common to and for the benefit of each municipality and the taxpayers and citizens thereof.

BE IT ORDAINED and ENACTED by the Municipality of Monroeville, in Council assembled as follows:

SECTION 1. The conditions of the Agreement authorized hereby are contained in the Intergovernmental Cooperation Agreement appended hereto and made a part hereof by reference.

SECTION 2. The duration of the Agreement shall be from the date of its execution and delivery for so long as the real estate authorized to be acquired shall be used for Municipal-School complex. For the purpose of this Section, the time for planning and developing a Municipal-School Complex shall be considered use of the subject real estate as a Municipal-School Complex. Should the real estate be sold pursuant to Section 4 of the annexed Intergovernmental Cooperation Agreement, the Agreement shall terminate upon delivery to the parties the proceeds of the sale. Should the subject real estate be improved and used and later be determined by the Municipality of Monroeville and the Board of School Directors of Gateway School District to be unnecessary for the purposes for which it was acquired and improved, this Agreement shall terminate upon the proper disposition of the real estate by the parties to the Intergovernmental Cooperation Agreement.

SECTION 3. The purpose and objectives of the Agreement are to provide for a jointly owned, operated and maintained public facility for the common benefit of the Municipality of Monroeville and the Gateway School District and for the benefit of the taxpayers and citizens of these municipalities. Because of the nature and timing of the project envisioned by this Agreement, future Intergovernmental Cooperation Ordinances may be required to be enacted in order to authorize appropriate supplements or amendments to the Intergovernmental Cooperation Agreement authorized by this Ordinance.

SECTION 4. The manner and extent of financing the Agreement will be by borrowing or borrowings as authorized by the Pennsylvania Local Government Unit Debt Act of July 12, 1972, No. 185, P.L. 781 as reenacted, amended and revised by Act No. 1978-52 and by such appropriations as may be made from time to time from current operating revenues. While the purchase price of the subject real estate is known presently (vis. \$700,000.00) the costs of future capital improvements and maintenance are not known and must be authorized by subsequent action of the Municipality of Monroeville.

SECTION 5. The preliminary organizational structure necessary to implement the Intergovernmental Cooperation Agreement authorized by this Ordinance, to-wit, the Intergovernmental Advisory Board and the steps required to be taken by the Municipal Council of the Municipality of Monroeville and the Board of School Directors are set forth in Annex A hereto. Future legislation required to further implement the Agreement as supplemented or amended will be enacted when, as and if required by the parties to the Agreement.

SECTION 6. The manner in which the subject real property shall be acquired and disposed of is set forth in Annex A hereto. The manner in which such real property shall be managed, and the manner in which other property, real or personal, shall be acquired, managed, maintained or disposed of shall be set forth in future supplements or amendments to the Intergovernmental Cooperation Agreement which supplements or amendments shall be authorized by an Ordinance or Ordinances yet to be enacted.

SECTION 7. This Ordinance shall take effect in accordance with provisions of the Home Rule Charter.

ORDAINED and ENACTED this 28th day of August, 1979.

(SEAL)

ATTEST:

MUNICIPALITY OF MONROEVILLE

S/ Marshall W. Bond
Municipal Manager

S/ Michael P. Lynch
Mayor

Intergovernmental Cooperation
Agreement Pursuant to
"An Act Relating to Intergovernmental
Cooperation", Act of July 12, 1972
No. 180 (53 P.S. Sec. 481 et seq.)

THIS AGREEMENT

Dated as of the ____ day of _____, 1979 by and between the MUNICIPALITY OF MONROEVILLE, County of Allegheny, a Pennsylvania Home Rule Charter Municipality and GATEWAY SCHOOL DISTRICT, a School District of the Second Class created and existing under the laws of Pennsylvania,

W I T N E S S E T H :

Act No. 180 of 1972, authorizes two or more Pennsylvania municipalities (including school districts) to enter into joint agreements in the exercise or in the performance of their respective governmental functions, powers or responsibilities. To this end, the Act permits a municipality, by act of its governing body, to cooperate or agree in the exercise of any function, power or responsibility with, or delegate or transfer any function, power or responsibility to one or more other governmental units.

The respective governing bodies of the two parties to this Agreement have determined that it is in the best interests of each body to acquire jointly a certain tract of real estate situate on Moss Side Boulevard in the Municipality of Monroeville, which tract is owned by Peoples Natural Gas Company and is known as the "Radio Hill Property".

Once acquired, the real estate would be used by the parties to this Agreement for public purposes.

The principal objectives of this Agreement are to specify the manner in which the real estate is to be acquired; to establish the organizational structure necessary to implement the purposes of this Agreement and to establish a time schedule in which the purpose and objectives of the Agreement may be carried out.

Because of the nature and timing of the project envisioned by this Agreement, both parties hereto recognize and expect that future intergovernmental cooperation ordinances may be necessary to authorize appropriate supplements to this Agreement.

Intending to be legally bound hereby, the parties agree as follows:

1. The parties shall forthwith enter into an Agreement of Sale with The Peoples Natural Gas Company for the purchase of the "Radio Hill Property" real estate. The said Agreement of Sale shall be in the form set forth in Exhibit "A" which is attached to and made a part of this Agreement.

2. The parties shall take title to the subject real estate as tenants in common, each with an undivided one-half (1/2) interest in the entire parcel with the purchase price and all costs and expenses incident to the acquisition to be divided equally between the parties. The funding of this land acquisition shall be left to the discretion of the respective governing body and each shall bear its own expense in connection therewith.

3. The parties shall, by joint resolution, within sixty (60) days from the effective date of this Agreement create an Intergovernmental Advisory Board consisting of seven (7) members. Three (3) members of this Board shall be appointed by Council from among a group consisting of the members of Council and the Mayor of the Municipality and three (3) members of this Board shall be residents of the School District to be appointed by the Board of School Directors. The seventh member of the Board, who shall serve as chairperson thereof, shall be a person not unacceptable either to the Council or to the Mayor, or to the Board of School Directors and shall be appointed by the first six (6) appointed members of the Intergovernmental Advisory Board. The first six (6) appointed members shall serve at the pleasure of the body appointing them, and the chairperson shall serve for a term of five (5) years unless this position earlier shall be declared vacant by joint action of the parties hereto. The Municipal Manager of the Municipality of Monroeville and the District Superintendent of the Gateway School District each shall serve as an ex officio non-voting member of the Intergovernmental Advisory Board. The members shall serve without compensation other than reimbursement for travel and other actual expenses incurred in connection with meetings of the Board. No meeting of the Intergovernmental Advisory Board shall be conducted without the presence of the chairperson and at least two (2) persons appointed by the Council and two (2) persons appointed by the Board of School Directors. The Intergovernmental Advisory Board may request the Council and the Board of School Directors to provide for it such services (including the use of qualified consultants) as it deems necessary. The Intergovernmental Advisory Board shall, within twelve (12) months of its initial organization meeting prepare and submit to the parties hereto a written recommendation for the use of the Radio Hill Property as a Municipal-School complex.

4. The Council and the Board of School Directors shall act upon the plan recommended by the Intergovernmental Advisory Board no later than ninety (90) days after it is filed with the Secretary of each body. Should no joint action be taken upon the recommendation to approve a plan or no plan be approved by the Municipality and the School District for the use of the subject property within five (5) years after the report of the Intergovernmental Advisory Board is filed, the land shall be; (i) first, for a period of sixty (60) days, made available to the Municipality and the School District in order that each may have the opportunity to purchase the undivided one-half (1/2) interest of the other at the price of one-half of the total consideration paid to Peoples Natural Gas Company, plus interest at the legal rate from the date of the acquisition; or, after the period for this right of first refusal has expired, (ii) sold by public auction after all requirements of law of each of the parties to the Agreement are complied with. The terms and conditions of sale shall be as follows:

A. The public auction shall be conducted by the Solicitor of the Municipality and the Solicitor of the School District who shall determine when and where it shall be held.

B. The minimum acceptable bid shall be the purchase price of the real estate paid to Peoples Natural Gas Company plus interest at the legal rate until the time of the sale.

C. Ten (10%) per cent of the bid price must be paid in case or by certified check on the date of the sale, and payment of the purchase price in full must be made within thirty (30) days of the date of the public auction, time being of the essence. In the event of a default by the successful bidder, the property shall be resold under the same terms and conditions of the first sale. The 10% deposit shall be retained as liquidated damages. The successful bidder shall pay all Federal, State and Local documentary and deed transfer taxes.

D. All items of proration shall be prorated as of the date of the public auction.

E. The parcel shall be conveyed by deed of special warranty which deed is hereby authorized to be executed and delivered by the proper officers of the Municipality and the School District. Possession of the property shall be given at the time of the delivery of the deed.

F. The parcel shall be sold subject to limitations of use as provided by building and zoning limitations of the Municipality and excepting coal and mining rights as heretofore conveyed and subject to such building restrictions and other exceptions, reservations and restrictions as may appear of record or by an inspection of the premises

G. The proceeds of the sale as well as the costs and expenses thereof shall be divided equally between the Municipality and the School District.

5. This Agreement may be, from time to time, amended or supplemented by the parties in accordance with Act No. 180 of 1972.

6. This Agreement is executed and delivered for the Municipality of Monroeville pursuant to an Ordinance adopted by the Council of the Municipality of Monroeville at a meeting of Council held on the 28th day of August, 1979, and for the Gateway School District pursuant to an Ordinance adopted by its Board of School Directors at a meeting held on the _____ day of _____, 1979.

ATTEST:

MUNICIPALITY OF MONROEVILLE

S/ Marshall W. Bond
Municipal Manager

By S/ Michael P. Lynch
Mayor

APPROVED:

ATTEST:

GATEWAY SCHOOL DISTRICT

Secretary

President, Board of School Directors

AGREEMENT OF SALE

MADE this 19th day of September, 1979, by and between THE PEOPLES NATURAL GAS COMPANY, a Pennsylvania corporation with principal office in the City of Pittsburgh, Allegheny County, Pennsylvania, hereinafter called "Seller"; and MUNICIPALITY OF MONROEVILLE, a municipal corporation, and GATEWAY SCHOOL DISTRICT, a body corporate, both organized and existing under the laws of the Commonwealth of Pennsylvania and both situate within Allegheny County in said Commonwealth, hereinafter collectively called "Buyer";

WITNESSETH THAT; Seller and Buyer, intending to be legally bound, mutually covenant and agree as follows:

Seller shall, on the date hereinafter specified, by deed of special warranty, will and sufficiently grant and convey unto Municipality of Monroeville and Gateway School District as tenants in common, in fee simple, clear of all liens and encumbrances, except as hereinafter set forth, good and marketable title (and such as will be insurable by any responsible title insurance company at regular rates) to the following (hereinafter referred to as "Said Property"), viz:

ALL that certain piece of ground situate in Municipality of Monroeville (formerly Township of Patton), County of Allegheny and Commonwealth of Pennsylvania, bounded and described as follows, to-wit:

BEGINNING at a point on the westerly side of Moss Side Boulevard 60 feet in width, formerly known as Bethel Road, at line of land now or late of J. S. Cunningham; thence by said land of Cunningham North 67° 39' West 322.47 feet to a point; thence by same South 52° 23' West 62.6 feet to a point; thence by same North 65° 33' West 406 feet to land now or late of C. L. Kuehn; thence by land now or late of C. L. Kuehn and lands of M. W. Stark and lands of F. W. Stark North 20° 10' East 966.66 feet to land now or late of C. McIndoe; thence by said land now or late of C. M. McIndoe South 58° 11' East 194 feet to a point; thence by same South 84° 05' East 291.5 feet to a point; thence by same South 70° 47' East 146.65 feet to the said Moss Side Boulevard; thence by said Boulevard the following three courses and distances to the place of beginning: First: A line on a curve to the right having a radius of 1570 feet a distance of 220.78 feet; Second: A line running South 5° 57' 30" West 542.67 feet to a point; Third: A line on a curve to the right having a radius of 1098.1 feet a distance of 281.68 feet to the place of beginning.

BEING the same tract of land conveyed to Seller by deed from Milic Wukich and Anna Wukich, his wife, by deed dated July 16, 1945 and recorded in Deed Book Vol. 2850, page 340.

EXCEPTING AND RESERVING therefrom the following tracts of land:

1. Those two certain tracts of land containing 0.197 acre and 0.255 acre, which were conveyed by the Peoples Natural Gas Company to the Pennsylvania Turnpike Commission by deed of release and quitclaim dated October 27, 1961 and recorded in Deed Book Vol. 3973, page 551.

2. All that certain tract of land containing 0.2578 acre, which was conveyed by The Peoples Natural Gas Company to Samuel R. Black and Twila Black, his wife, by deed dated May 26, 1960 and recorded in Deed Book Vol. 3859, page 533.
3. All that certain tract of land containing 0.705 acre, which was conveyed by The Peoples Natural Gas Company to Gateway Union School District by deed dated May 30, 1961 and recorded in Deed Book Vol. 3906, page 422.
4. All that certain tract of land containing 1.57 acre, which was conveyed by The Peoples Natural Gas Company to Gateway Union School District by deed dated April 2, 1964 and recorded in Deed Book Vol. 4222, page 306.
5. All those certain two tracts of land containing 0.234 acre and 0.95 acre, which were conveyed by The Peoples Natural Gas Company to Gateway School District by deed dated September 11, 1972 and recorded in Deed Book Vol. 5134, page 485.

SUBJECT to all restrictions, exceptions, reservations and other interests in said property which may appear in instruments of record.

ALSO SUBJECT to unrecorded right of way of Duquesne Light Company for existing poles upon the premises.

The conveyance will be made together with all and singular the buildings, improvements, easements and appurtenances whatsoever thereunto appertaining.

Buyer will purchase said property and pay therefor the sum of Seven Hundred Thousand and No/100 dollars (\$700,000.00), payable as follows: the sum of Seventy Thousand and No/100 dollars (\$70,000.00) hand money upon the signing hereof, receipt of which is hereby acknowledged, and the balance on the date of settlement.

Unless otherwise agreed, settlement shall be held on September 28, 1979, and unless at least ten (10) days before said date, Buyer gives written notice to Seller of a definite time within five (5) days of said date and a definite place in Allegheny County, Pennsylvania, for settlement, the same will be held on said date at 10 o'clock A.M.E.D.S.T. at the office of Seller, Two Gateway Center, Pittsburgh, Pennsylvania 15222.

Should performance hereunder not be completed by the date above provided for, either party shall thereupon have the right, upon written notice to the other party, to declare time to be of the essence of this agreement and to fix the date, time and place of final settlement. Such notice shall be given not less than fifteen (15) days prior to such date of final settlement. Each party shall complete performance hereunder strictly in accordance with the terms of such notice.

Formal tender of deed and of purchase price are hereby waived. Any notices between the parties hereto shall be in writing and may be served in the manner provided by law for the service of process in equity or may be mailed by certified or registered mail to either party at the respective addresses above set forth. If mailed, such notice shall be deemed effectively given as of the second business day after the date of posting.

Possession of said property shall be delivered to Buyer on the date of settlement.

In the event that possession of said described property is delivered to Buyer prior to delivery of deed or in the event that Seller remains in possession thereof after delivery of deed to Buyer and, in either case, the party in possession defaults in its performance hereunder, then and in any such event the defaulting party in possession does hereby authorize and empower any attorney of the Court of Common Pleas of the county in which said property is located to appear for it and confess judgment in an amicable action in ejectment against it and all persons claiming under it; and such defaulting party does hereby further agree that a Writ of Possession may forthwith issue and be duly executed so that on said judgment and execution, the party in possession may be ousted from such possession and the same delivered to the other party, hereby releasing all errors and waiving all appeals, exemptions and stays of execution or other process on such judgment and for the confession and entry of such judgment this agreement or a copy hereof, duly certified by affidavit, shall be sufficient warrant.

Real estate taxes, water and sewer charges shall be prorated as of date of settlement. Realty Transfer taxes shall be paid by Seller and Buyer equally.

If when neither the legal title nor the possession of the said described property has been transferred to Buyer, all or a material part thereof is destroyed without the fault of Buyer or is taken by eminent domain. Seller cannot enforce this contract and Buyer shall, at its option, thereupon be entitled to recover the hand money and all monies paid on account of the purchase price.

Buyer hereby agrees to place adequate fire and casualty insurance on said property to protect Buyer's interest therein as of the effective date of this agreement.

Seller shall be responsible for cost of deed preparation and all matters of title clearance.

It is hereby understood between the parties hereto that the property has been inspected by Buyer or its agent and that the same is being purchased solely in reliance upon such inspection, and that there are no representations or warranties.

In the event of default by Buyer, Seller may, at Seller's option, elect to:

(a) Retain the hand money and all monies paid on account of the purchase price as liquidated damages, in which event this Agreement shall become null and void and both parties shall thereupon be released of all further liability hereunder. It is hereby agreed that, without resale, Seller's damages will be difficult of ascertainment and that the hand money and all monies paid on account of the purchase price constitute a reasonable liquidation thereof and not a penalty.

In lieu thereof, however, Seller may elect either or both of the following remedies:

(b) Apply the hand money and all monies paid on account of the purchase price towards the purchase price and proceed with an action for specific performance;

(c) Apply said monies towards Seller's loss on the resale of said property and proceed with an action at law for all damages sustained by Seller;

Provided, however, that no such election of (b) or (c) shall be final or exclusive until full satisfaction shall have been received.

In the event of default by Seller, Buyer may, at Buyer's sole option, elect to:

(a) Waive any claim for loss of bargain, in which event Seller hereby agrees to repay to Buyer the hand money and all monies paid on account and, in addition, reimburse Buyer for all direct, out-of-pocket costs and expenses (i.e., title examination, survey and attorney's fees) and to this end Seller does hereby authorize and empower any attorney of the Court of Common Pleas of the County in which said property is located to appear for Seller and, with or without declaration filed, confess judgment against Seller and in favor of Buyer as of any term for said hand money and other monies and for said direct, out-of-pocket costs and expenses including an attorney's commission of 5% (but not less than \$200.00) together with costs of suit, hereby releasing all errors and waiving all appeals, exemptions and stays of execution or other process on such judgment and for the confession and entry of such judgment this agreement or a copy thereof, duly certified by affidavit, shall be sufficient warrant.

In lieu thereof, however, Buyer may elect either or both of the following remedies:

(b) An action for specific performance;

(c) An action at law for damages including loss of bargain (if allowable);

Provided, however, that no such election of (b) and (c) shall be final or exclusive until full satisfaction shall have been received.

This agreement constitutes the entire contract between the parties hereto and there are no other understandings, oral or written, relating to the subject matter hereof. The Agreement may not be changed, modified or amended, in whole or in part, except in writing, signed by all parties.

Buyer will not record this Agreement except after first obtaining the prior written consent of Seller endorsed hereon or attached hereto. Any attempted recording of this Agreement without such consent shall constitute a default hereunder on the part of the Buyer.

This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors and assigns.

NOTICE--THIS DOCUMENT MAY NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT [This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended, and is not intended as notice of unrecorded instruments, if any.]

The deed shall contain the notice as above set forth and shall also contain, and Buyer shall sign, the notice specified in the Bituminous Mine Subsidence and Land Conservation Act of 1966.

WITNESS the due execution and ensembling of these presents as of the day and year first above written.

ATTEST:

THE PEOPLES NATURAL GAS COMPANY

S/ John J. Mullally
Secretary

By S/ R. C. Swagler
Senior Vice President

ATTEST:

MUNICIPALITY OF MONROEVILLE

S/ Marshall W. Bond
Municipal Manager

By S/ Michael P. Lynch
Mayor

ATTEST:

GATEWAY SCHOOL DISTRICT

S/ Marjorie W. Brown
Secretary

By S/ Marshall H. Palley
President