



**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN ENERGY NORTHWEST AND TOWN OF NACHES, WASHINGTON FOR LEASE
AGREEMENT**

As provided under RCW Title 39, Chapter 39.34, this Agreement for Professional Services (the "Agreement") is by and between Town of Naches, Washington, a municipal corporation in the State of Washington, with its principal office located at 29 E. Second Street, Naches, WA 98937 (hereinafter referred to as "Naches"), and Energy Northwest, a municipal corporation and joint operating agency of the State of Washington and doing business by and through its Business Development Fund, with its principal office located at 3000 George Washington Way, Richland, WA 99352 (hereinafter referred to as "Energy Northwest" or "EN").

WHEREAS, Naches finds that Energy Northwest is willing to perform certain work hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, Naches finds that Energy Northwest is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Naches business; and

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

**ARTICLE I
PURPOSE**

1.1 The purpose of this Agreement is to establish the respective roles of the parties in the lease of property owned by Naches located at the Naches Train Depot parking lot, Naches, WA 98937, for the purpose of EN's installation of one DC Fast charger and one Level 2 electric vehicle charging station.

**ARTICLE II
ADMINISTRATION**

2.1 The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

2.2 Energy Northwest's representative shall be: **Sherri Schwartz**.

2.3 Naches' representative shall be **Jeff Ranger**.

**ARTICLE III
FUNDING, CONSTRUCTION AND MAINTENANCE**

3.1 Naches shall provide a portion of the property at the Naches Train Depot parking lot, adjacent

to the parking area as well as two parking spaces plus ADA hatching for the installation of a Level 3 DC Fast Charging Station and a Level 2 Electric Vehicle Chargers, as identified in Exhibit C attached hereto and incorporated by reference.

- 3.2 EN shall be responsible for all funding for the project, which shall be submitted to Pacific Power for reimbursement to up to \$50,000 of the costs to install the project.
- 3.3 EN will own the electric vehicle charging station equipment and will charge the general public a fee for the use of the charging stations.
- 3.4 EN and/or its assigns shall be responsible to maintain the charging stations after they have been placed into service, including the repair and replacement of the charging stations when needed.

ARTICLE IV DURATION AND RENEWAL OF AGREEMENT

- 4.1 This Agreement shall become effective upon full execution hereof and shall expire on August 31, 2030 with the option to extend for another ten-year term upon agreement of the parties via formal amendment.
- 4.2 Upon termination of this Agreement, and if the Agreement is not extended, EN will remove the charging stations and return the space to its pre-charging station form, or transfer ownership of the charging stations to Naches for a price agreed upon by both parties at that time.
- 4.3 The Parties agree that part of the consideration for entering into this Agreement is for the construction and maintenance of an electric vehicle charging station that was financed in whole or in part by a grant from Pacific Power with the commitment that the Project operates for the expected life span of 10 years. In the event of Naches' termination of this lease or failure to support the expected life span of the Project remaining in the service territory of Pacific Power, Naches agrees to reimburse Energy Northwest the prorated amount due on the life span of the Project. In no event shall Naches' reimbursement obligation under this section be an amount greater than \$50,000.

ARTICLE V OWNERSHIP

- 5.1 Nothing in this Agreement is intended to modify or impede Naches's ownership of the property upon which the charging stations will be located. EN shall retain full ownership of the charging stations and associated infrastructure to serve the charging station during the term of this Agreement. Once installation is complete and approved by Naches, EN will allow the general public reasonable access to the charging stations.

ARTICLE VI LEASE PAYMENT

- 6.1 On an annual basis, beginning one year from the date the charging stations are operational, EN shall pay Naches 5% of the annual net revenues received from public use of the charging stations. A detailed revenue report and calculation upon which the lease payment is based

shall accompany the payment.

ARTICLE VII PERFORMANCE OF AGREEMENT

- 7.1 STANDARD OF CARE. Energy Northwest warrants that services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed. THIS SECTION SETS FORTH THE ONLY WARRANTIES PROVIDED BY ENERGY NORTHWEST CONCERNING THE SERVICES AND RELATED WORK PRODUCT. THIS WARRANTY IS MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR OTHERWISE.
- 7.2 COMPLIANCE WITH ALL LAWS. Each party shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the performance of this Agreement, including without limitation, all those pertaining to wages and hours, confidentiality, disabilities, and discrimination.
- 7.3 MAINTENANCE AND AUDIT OF RECORDS. Each party shall maintain books, records, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review, and audit by either party or its designee, and the Washington State Auditor's Office. Each party shall retain all such books, records documents, and other material for the applicable retention period under federal and Washington law.
- 7.4 ON-SITE INSPECTIONS. Either party or its designee may evaluate the performance of this Agreement through on-site inspection to determine whether performance is in compliance with the standards set forth in this Agreement and in compliance with federal, state, and local laws, rules, regulations, and ordinances.
- 7.5 TREATMENT OF ASSETS AND PROPERTY. No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of pursuant to this Agreement.
- 7.6 IMPROPER INFLUENCE. Each party agrees, warrants, and represents that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will be offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.
- 7.7 CONFLICT OF INTEREST. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.
- 7.8 ASSIGNMENT AND SUBCONTRACTING. No portion of this Agreement may be assigned or subcontracted to any other individual, firm, or entity without the express and prior written approval of both parties authorized representatives.
- 7.9 NOTICE. All notices or other communications hereunder shall be in writing and shall be

deemed given when delivered to the address specified below or such other address as may be specified in a written notice in accordance with this Section.

If to Energy Northwest:

Energy Northwest
Attn: Sherri Schwartz, M/D 1040
P. O. Box 968
Richland, WA 99352-0968
Telephone: (509) 372-5072
Fax: (509) 377-4357
Email: slschwartz@energy-northwest.com

If to Naches:

Town of Naches, Washington
Attn: Jeff Ranger
29 E. Second Street
Naches, WA 98937
Office Phone: (509)
Email:

Any party may, by notice given in accordance with this Section to the other parties, designate another address or person or entity for receipt of notices hereunder.

ARTICLE VIII INDEMNIFICATION

8.1 Naches shall indemnify Energy Northwest, its officers, agents, and employees, from and against any claim, action, judgment, damages, losses and expenses, arising from Energy Northwest providing equipment or services under this Agreement; provided, to the extent the claim, action, judgment, damages, losses and expenses are caused by intentional acts of or by the concurrent negligence of Energy Northwest, its officers, agents, or employees, Naches's indemnification obligation hereunder shall be limited to its proportionate share of liability as agreed to by the parties to this Agreement or determined by a court of competent jurisdiction.

Energy Northwest shall indemnify Naches, its officers, agents, and employees, from and against any claim, action, judgment, damages, losses and expenses, arising from Naches providing equipment or services under this Agreement; provided, to the extent the claim, action, judgment, damages, losses and expenses are caused by intentional acts of or by the concurrent negligence of Naches, its officers, agents, or employees, Energy Northwest's indemnification obligation hereunder shall be limited to its proportionate share of liability as agreed to by the parties to this Agreement or determined by a court of competent jurisdiction.

ARTICLE IX DISPUTES

9.1 In the event of a dispute regarding the enforcement, breach or interpretation of this Agreement, the parties shall first meet in a good faith effort to resolve such dispute. In the event the dispute cannot be resolved by agreement of the parties, said dispute shall be

resolved by arbitration pursuant to RCW 7.04A, as amended, with all parties waiving the right of a jury trial upon de novo review. Venue shall be placed in Grant County, Washington, the laws of the State of Washington shall apply, and each party shall pay its own attorney fees and related costs. Arbitration costs incurred mutually, including but not limited to the cost of an arbitrator, shall be equally shared between the parties.

ARTICLE X TERMINATION

10.1 Any party hereto may terminate this Agreement upon sixty (60) days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other party in accordance with Section 7.9. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

ARTICLE XI GENERAL PROVISIONS

11.1 CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS. The Agreement may be changed, modified, amended or waived only by written agreement signed by the parties' authorized representatives and adopted by resolution of each party's legislative authority. Any waiver of a term or condition of this Agreement shall apply only to the specific act, occurrence or omission and shall not constitute a waiver as to any other term or condition or future act, occurrence or omission. Waiver or breach of any term or condition of this Agreement shall not be considered a waiver of any prior or subsequent breach.

11.2 ASSIGNMENT. Neither party may assign its rights or delegate its duties under this Agreement, whether by assignment, further subcontract or other means. Any such attempted assignment or delegation shall be void and shall constitute a material breach of this Agreement.

11.3 SEVERABILITY. In the event any term or condition of this Agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or application of this Agreement which can be given effect without the invalid term, condition or application. To this end the terms and conditions of this Agreement are declared severable.

11.4 NONSOLICITATION OF EMPLOYEES. During and for one (1) year after the term of this Agreement, Naches will not solicit the employment of, or employ Energy Northwest's personnel, without Energy Northwest's prior written consent. Similarly, Energy Northwest will not solicit the employment of, or employ Naches's personnel, without Naches's prior written consent.

11.5 ENTIRE AGREEMENT; SURVIVAL. This Agreement, including any Exhibits, states the entire Agreement between the parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the parties respecting the subject matter hereof, and supersedes any and all prior understandings, representations, warranties, agreements or contracts (whether oral or written) between Naches and Energy Northwest respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing

executed by the parties hereto.

- 11.6 PUBLIC DISCLOSURE. Both Parties are public entities and subject to the provisions of RCW 42.56. This Agreement and all materials made available under or as a consequence of this Agreement shall be public record as defined in RCW 42.56. Any specific part or material that is claimed to be "proprietary" and/or "confidential" information must be clearly identified as such.

If a Party receives a public disclosure request from a third party for information marked as "proprietary" or "confidential," that Party will notify the other Party within five (5) business days of such request. The Parties will discuss the appropriate action to be taken, including release of the requested information, seeking a protective order, or other action prior to any release of information. A Party wishing to protect the requested information may, within ten (10) business days of receiving notice of the request, seek a protective order at its sole expense. The other Party agrees to cooperate in such action. If, as a result of any such judicial proceeding, a court or regulatory authority should order the disclosure of information or documents, both Parties agree to be bound by such order. Neither Party shall be liable for any inadvertent public disclosure of information despite the exercise of reasonable care.

- 11.7 SECTION HEADINGS. Title and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

- 11.8 REPRESENTATIONS; COUNTERPARTS. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder.

- 11.9 RESIDUALS. Nothing in this Agreement or elsewhere will prohibit or limit Energy Northwest's ownership and use of ideas, concepts, know-how, methods, models, data, techniques, skill knowledge and experience that were used, developed or gained in connection with this Agreement. Energy Northwest and Naches shall each have the right to use all data collected or generated under this Agreement.

- 11.10 INTERLOCAL COOPERATION ACT PROVISIONS. All Energy Northwest personnel utilized in the fulfillment of this Agreement shall be solely within the supervision, direction and control of Energy Northwest and shall not be construed as "loan servants" or employees of Naches.

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement.

The administrators shall, in compliance with RCW 39.34, upon execution of this Agreement, file copies of the Agreement with their respective county auditors or, alternatively, post an electronic copy of the Agreement on the Parties' websites.

- 11.11 EVIDENCE OF AUTHORITY. Upon execution of this Agreement, Energy Northwest shall provide Naches and Naches shall provide Energy Northwest with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2), and

said documents shall be attached hereto and incorporated herein as Exhibit A (Energy Northwest) and Exhibit B (Naches).

IN WITNESS WHEREOF said parties have caused this Agreement to be signed by the duly authorized officials on the day and year first written above.

ENERGY NORTHWEST	TOWN OF NACHES, WASHINGTON
Name: Sherri Schwartz	Name:
Title: Procurement Specialist III	Title:
Date:	Date:

ENERGY NORTHWEST - NOTARY FOR CORPORATION

STATE OF _____)

COUNTY OF _____) ss.

I, the undersigned, a Notary Public do hereby certify that on this ____ day of _____ before me personally appeared _____ to me, known to be _____ of _____.

the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year above written.

NOTARY PUBLIC in and for the

State

of _____

residing

at _____

My commission expires

on _____

NACHES - NOTARY FOR CORPORATION

STATE OF _____)

COUNTY OF _____).ss.

I, the undersigned, a Notary Public do hereby certify that on this ____ day of _____ before me personally appeared _____ to me, known to be _____ of Bechtel National, Inc. the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed thereto is the corporate seal of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year above written.

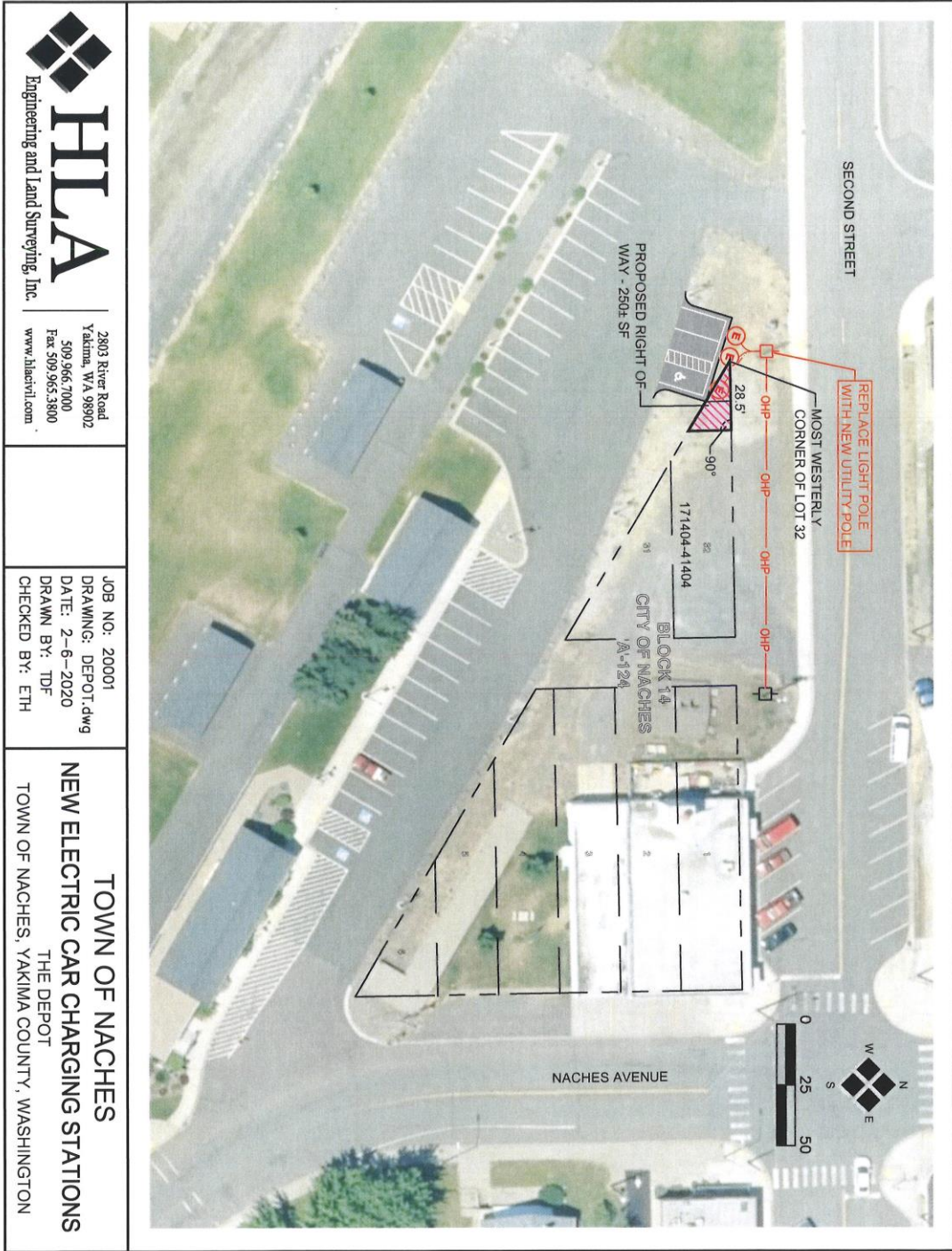
NOTARY PUBLIC in and for the
State
of _____
residing
at _____
My commission expires
on _____

EXHIBIT A
ENERGY NORTHWEST EVIDENCE OF AUTHORITY

EXHIBIT B

NACHES EVIDENCE OF AUTHORITY

EXHIBIT C



HLA
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