



**INTERLOCAL COOPERATIVE AGREEMENT
BETWEEN ENERGY NORTHWEST AND CITY OF BINGEN
LEASE AGREEMENT AND ELECTRIC VEHICLE CHARGING STATION MAINTENANCE**

As provided under Revised Code of Washington (RCW) 39.34.080, this Lease Agreement (the "Agreement") by and between the City of Bingen, a municipal corporation in the State of Washington, with its principal office located at 112 N. Ash Street, Bingen, Washington (hereinafter referred to as "Lessor"), 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 345 Hills St., Richland, WA 99352 (hereinafter referred to as "EN" or "Lessee").

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
LEASE CONTINGENCY AND OPTION**

- 1.1 Contingency. Lessor acknowledges this Lease is expressly contingent upon each of the following as determined by the Lessee:
- i. Award of Washington State Department of Commerce 2023 Clean Energy Fund Electrification of Transportation Systems Grant and/or other grants supporting this project to Lessee upon terms and in an amount the Lessee determines is sufficient for its Improvements on the Premises,
 - ii. Lessee obtaining all licenses, permits, easements and approvals necessary for installation and operation of its Improvements on the Premises,
 - iii. Lessee obtaining EN Executive Board approval, if applicable, and
 - iv. Lessee exercising the option in Article 1.2.
- 1.2 Option. Lessee shall have 90 days from the date Lessee receives the final engineering report or award of all necessary grant funding, whichever is later, to notify Lessor in writing if all the contingencies in Article 1.1 have been satisfied and if it intends to exercise the Option. The Parties agree that from the "Effective Date" of this Lease, the Lessor shall not encumber, lease, or attempt to lease the Premises to anyone else except Lessee.

**ARTICLE II
PURPOSE**

The purpose of this Agreement is to establish the respective roles of the parties in the lease of property owned by the City of Bingen located at 400 W. Steuben St., Bingen, Washington for the purpose of EN's lease of property hosting an Electric Vehicle Charging Station (EVCS) containing one Level 3 charging station and equipment.

**ARTICLE III
ADMINISTRATION/ROLES AND RESPONSIBILITIES**

- 3.1 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.
- 3.2 EN's representative shall be: Loreen C. Olds
- 3.3 City of Bingen representative shall be the Mayor or City Administrator: Catherine Kiewit, Mayor; Krista Loney, City Administrator
- 3.4 Energy Northwest will provide the written Pass-Through Grant application, Project Management, oversight, construction and commissioning of the EV chargers, follow through on grant requirements (maintain chargers for a five-year life cycle, all Commerce reporting requirements) and own and maintain the chargers.
- 3.5 City of Bingen shall sign the Round 2 Phase 2 required Pass-through Grant application and send via email to Commerce by May 15, 2023 and agree to execute a Commerce Contract if awarded the grant funding. The City of Bingen shall receive invoices from EN and submit to Commerce for reimbursement and upon payment of reimbursement, transfer all funds to EN within 30 days.

**ARTICLE IV
FUNDING, CONSTRUCTION AND MAINTENANCE**

- 4.1 The City of Bingen shall provide a portion of the property at 400 W. Steuben St., Bingen, Washington, Parcel 03113060020600 for the installation of one Level 3 charging station as identified in Exhibit C attached hereto and incorporated by reference.
- 4.2 The City of Bingen shall make a \$19,300.00 cash contribution within 30 days after EN is awarded grant funding for the project.
- 4.3 The City of Bingen shall not charge EN for the use of the space the charging station will be placed.
- 4.3 EN shall own the EVCS equipment and will charge the general public a fee for the use of the charging stations.
- 4.4 EN 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 V
DURATION AND RENEWAL OF AGREEMENT**

- 5.1 This Agreement shall become effective upon full execution hereof and shall expire five years from the date the stations become operable with the option to extend for another five-year term upon agreement of the parties via formal amendment.
- 5.2 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-installation condition.
- 5.3 The Parties agree that part of the consideration for entering into this Agreement is for the construction and maintenance of an EVCS financed in whole or in part by a grant from the Washington State Department of Commerce and/or other grants supporting this project with the commitment that the project operates for the expected life span of five years. In the event of City of Bingen's termination of this lease or failure to support the expected life span of the project remaining in the service territory of five years, the City of Bingen's agrees to reimburse EN any grant funding required to be reimbursed to grantor.

**ARTICLE VI
OWNERSHIP**

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

**ARTICLE VII
LEASE PAYMENT**

On an annual basis, beginning one year from the date the EVCS are operational, and each year thereafter, EN shall pay the City of Bingen 50 percent of the annual net revenue received from public use of the charging station, after all maintenance, network fees, and utility electricity costs are paid. A detailed revenue report and calculation upon which the lease payment is based shall accompany the payment.

**ARTICLE VIII
PERFORMANCE OF AGREEMENT**

- 8.1 STANDARD OF CARE. EN 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 EN 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.

- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.
- 8.6 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 or 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 .
- 8.7 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.
- 8.8 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.

8.9 **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.

Lessor: CITY OF BINGEN
Catherine Kiewit
PO Box 607
Bingen, WA 98605
(509) 493-2122, Ext. 105
mayor@bingenwashington.org

Lessee: ENERGY NORTHWEST
Attention: Loreen Olds
P.O. Box 968, Mail Drop 1035
Richland, WA 99354
(509) 372-5765
lcolds@energy-northwest.com

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 IX INDEMNIFICATION

City of Bingen shall indemnify EN, its officers, agents, and employees, from and against any claim, action, judgment, damages, losses and expenses, arising from City of Bingen 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 City of Bingen, its officers, agents, or employees, the City of Bingen 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. EN shall indemnify City of Bingen, its officers, agents, and employees, from and against any claim, action, judgment, damages, losses and expenses, arising from EN 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 EN its officers, agents, or employees, EN'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 X DISPUTES

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 Klickitat 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 XI
TERMINATION**

Any party hereto may terminate this Agreement upon 60 days' notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the other party. 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 XII
GENERAL PROVISIONS**

- 12.1 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.
- 12.2 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.
- 12.3 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.
- 12.4 NONSOLICITATION OF EMPLOYEES. During and for one year after the term of this Agreement, the City of Bingen will not solicit the employment of, or employ EN's personnel, without EN's prior written consent. Similarly, EN shall not solicit the employment of, or employ the City of Bingen's personnel, without the City of Bingen's prior written consent.
- 12.5 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 the City of Bingen and EN respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the parties hereto.

- 12.6 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 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 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.

- 12.7 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.

- 12.8 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.

- 12.9 RESIDUALS. Nothing in this Agreement or elsewhere will prohibit or limit EN'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. EN and City of Bingen shall each have the right to use all data collected or generated under this Agreement.

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

No independent special budget or funds are anticipated, nor shall be created without the prior written agreement of the parties. This Agreement does not contemplate the acquiring, holding, or disposing of real or personal property except as provided.

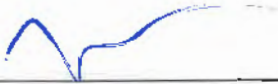
The administrators shall, in compliance with RCW 39.34, upon execution of this Agreement, file copies of the Agreement with their respective county auditors or, alternatively, post an electronic copy of the Agreement on the Parties' websites.

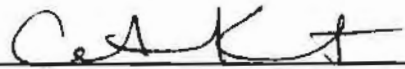
12.11 EVIDENCE OF AUTHORITY. Upon execution of this Agreement, EN shall provide City of Bingen and City of Bingen shall provide EN with a copy of the resolution, ordinance, or other authority to execute this Agreement pursuant to RCW 39.34.030(2) and said documents shall be attached hereto and incorporated herein as Exhibit A (Energy Northwest) and Exhibit B (City of Bingen).

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

CITY OF BINGEN

By:  _____

By:  _____

Name: Loreen C. Olds

Name: Catherine Kiewit

Title: Procurement Specialist II

Title: Mayor

Date: March 13, 2023

Date: March 3, 2023

ENERGY NORTHWEST - NOTARY FOR CORPORATION

STATE OF Washington

COUNTY OF Benton

I, the undersigned, a Notary Public do hereby certify that on this 13 day of March 2023 before me personally appeared Loren Olds to me, known to be Contracting Officer of Energy Northwest, 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.

Michelle Duggan

NOTARY PUBLIC in and for the

State of Washington

residing at Richland, WA

My commission expires on 11-10-25

1.



CITY OF BINGEN - NOTARY FOR MUNICIPAL CORPORATION

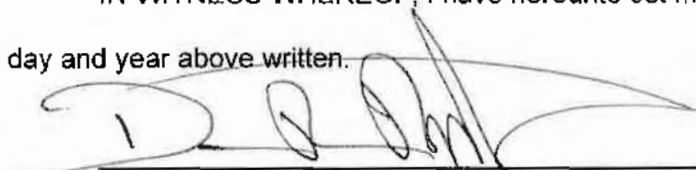
STATE OF Washington

COUNTY OF Klickitat

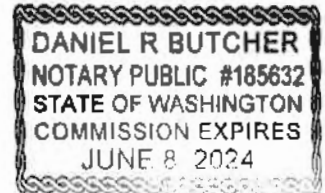
I, the undersigned, a Notary Public do hereby certify that on this 3rd day of March, 2023 before me personally appeared CATHERINE KIEWIT to me, known to be MAYOR of BINGEN, the

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.



DANIEL R BUTCHER
NOTARY PUBLIC in and for the



State of Washington

residing at SKAMANIA COUNTY

My commission expires on 06/08/2024

EXHIBIT A
ENERGY NORTHWEST EVIDENCE OF AUTHORITY

EXECUTIVE BOARD

RESOLUTION NO. 2001

**A RESOLUTION AUTHORIZING ENERGY NORTHWEST
TO EXECUTE FUTURE LEASES FOR ELECTRIC VEHICLE
CHARGING STATION**

WHEREAS, the Chief Executive Officer reports that Energy Northwest intends to install electric vehicle charging stations constructed, financed and maintained by Energy Northwest ("Charging Stations") along highway corridors throughout the Pacific Northwest pursuant to its Strategic Plan; and

WHEREAS, the Chief Executive Officer further reports that to Install Charging Stations, Energy Northwest will need to enter into numerous long-term (up to 20 years), low-dollar (up to \$15,000) land leases with public and private entities; and

WHEREAS, Energy Northwest has the right and authority pursuant to Revised Code of Washington Section 43.52.300(1), to transmit, deliver, exchange or sell electric energy and to enter into contracts for any such purpose, including the right and authority to lease property pursuant to Revised Code of Washington Sections 43.52.360(2) and 43.52.391; and

WHEREAS, Energy Northwest has the authority to enter into an Interlocal Agreement for the lease of property with public on such terms and conditions as may be mutually agreed upon by the proper authorities of the public entities pursuant to Revised Code of Washington Section 39.33.010; and

Based on the evaluation, analysis and recommendations of the Chief Executive Officer and his staff, the Executive Board, having reviewed the foregoing, finds that the aforementioned types of lease of property for installation of electric vehicle charging stations are in the best interests of Energy Northwest and the ratepayers of the Pacific Northwest.

NOW, THEREFORE, IT IS RESOLVED that:

The Chief Financial Officer of Energy Northwest, or his designee, is authorized to execute on behalf of Energy Northwest, by and through its Business Development Fund, future lease agreements which meet the following criteria:

1. Are solely for the purpose of installation of electric vehicle charging stations; e.g., infrastructure, equipment, and parking stalls;
2. Will result in an aggregate lease that does not exceed twenty (20) years;
3. Whose aggregate lease amount does not exceed \$15,000; and
4. Have received all necessary approvals of the Lessor.

ADOPTED by the Executive Board of Energy Northwest this 24th day of March, 2020.

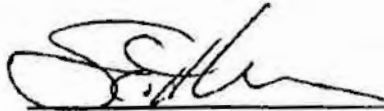
Chair

ATTEST:

APPROVED AS TO FORM
AND LEGALITY:



Secretary



Counsel

EXHIBIT B
CITY OF BINGEN EVIDENCE OF AUTHORITY

EXHIBIT C
LOCATION INFORMATION
400 W Steuben St., Bingen, WA

LEGAL DESCRIPTION:
Lot 6-10 BLK 2 SUKSDORF SECOND TO BINGEN NESE 30-3-11

