

**AGREEMENT RELATING TO
CHARGING STATION**

(SMART GRID GRANT)

(CITY OF MADISON, HENRY VILAS ZOO)

This Agreement Relating to Charging Station (the "Agreement") is entered into as of the _____ day of _____, 2011, by and between Madison Gas and Electric Company, a Wisconsin corporation ("MGE"), and the City of Madison, Wisconsin, a Wisconsin municipal corporation ("Owner").

RECITALS

- A. Owner is the owner of certain land and improvements located at the Henry Vilas Zoo, Madison, Wisconsin (the "Property"). The legal description and tax parcel identification number of the Property are set forth on Exhibit A attached hereto.
- B. MGE desires to install, and after such installation own, operate, maintain, repair, remove, upgrade and reinstall a charging station and related facilities (the "Charging Station") on the Property. The major components of the Charging Station are more particularly described on Exhibit B attached hereto.
- C. Owner desires to accommodate MGE with regard to the Charging Station upon the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner and MGE agree as follows:

1. **Right to Install, Operate, Maintain, Repair, Remove, Upgrade, and Reinstall Charging Station.** During the term of this Agreement, MGE shall have the right to install, operate, maintain, repair, remove, upgrade, and/or reinstall the Charging Station on the Property (collectively, the "Activities") upon the terms and conditions set forth in this Agreement. The location of the Charging Station and the parking spaces to be served by the Charging Station is depicted in the description and diagram attached hereto as Exhibit C (the "Premises"). The Activities shall be performed by MGE (or on behalf of MGE), at MGE's expense. MGE may use the Charging Station to charge plug-in vehicles. Vehicles using the Charging Station may park on the Premises. MGE may install protective bollards on the Premises as shown on Exhibit C, to protect the Charging Station.

2. **Owner Cooperation.** Owner agrees that it will cooperate in good faith with MGE and its employees, agents, and consultants with regard to the Charging Station and the Activities. Owner will not charge MGE any fees or payments for the rights granted to MGE in this Agreement.

3. **Representations and Warranties.** Owner represents that: (a) it is the sole owner of the Property; and (b) there are no mortgagees, lienholders, judgment creditors or other holders of liens, encumbrances, or other interests in the Property, except those disclosed in advance to MGE and approved in writing by MGE. MGE shall have no obligation to approve of any such mortgage, lien, or other interest unless the holder of the mortgage, lien, or other interest has provided to MGE an executed, recordable disclaimer of interest in the Charging Station in a form acceptable to MGE.

4. **Ownership of Charging Station.** Owner and MGE agree that at all times during this Agreement, MGE shall be the sole and complete owner of the Charging Station and all components thereof.

5. **Duty to Notify.** Owner and MGE shall promptly report to each other any problems with the Charging Station or the Premises that come to either's attention. MGE shall have the right, upon reasonable advance notice to Owner, to perform any of the Activities; provided, however, that in performing the Activities, MGE shall use reasonable care to avoid undue interference or disruption to Owner, its employees and invitees to the Property.

6. **Non-Interference with Charging Station.** Owner shall provide prior notice to MGE of any intended modifications, repairs, or maintenance to the Property that could have the potential to adversely impact the Charging Station. Owner further agrees to coordinate any such modifications, repairs, or maintenance with MGE and to carry them out in a manner that will avoid damage to or undue interference with the Charging Station or the use of the Charging Station by vehicles. Owner shall keep the parking spaces to be served by the Charging Station, as depicted in the description and diagram attached hereto as Exhibit C, reasonably free of ice and snow.

7. **Removal of Charging Station.** Unless Owner purchases the Charging Station from MGE at its then depreciated value, within 90 days after the expiration or termination of this Agreement, MGE shall remove, or cause the removal of, the Charging Station (except any underground electric cable or conduit) and repair the portion of the Premises upon which it was located to match the condition of such portion at the time of installation, all at MGE's expense. MGE may leave in place, and shall not be required to remove, any underground electric cable or conduit used to service the Charging Station. If Owner purchases the Charging Station, MGE shall convey the Charging Station to Owner by bill of sale.

8. **Term/Extension.** The initial term of this Agreement shall be for 10 years, commencing upon the date of execution of this Agreement (the "Commencement Date"). At the expiration of the initial term and any extended terms of this Agreement, MGE shall have the option to do any of the following:

- a. Extend this Agreement for additional terms of 10 years (each, an "extended term") upon the same terms and conditions contained in this Agreement.
- b. Remove the Charging Station.
- c. Offer the Charging Station for sale to Owner at its then depreciated value and upon such terms and conditions as may be required by federal, state, or local law, federal grant requirements, or as MGE otherwise sees fit.

Notwithstanding any portion of this Section to the contrary, Owner shall have the right not to purchase the Charging Station from MGE. If Owner declines to purchase the Charging Station, then MGE shall retain the right to exercise either of the remaining options.

9. **Termination of Agreement.** This Agreement shall terminate upon the earliest to occur of the following: (a) the expiration of the initial term (or if extended, an extended term) of this Agreement; (b) by mutual agreement of MGE and Owner; (c) upon MGE's election to terminate this Agreement for any reason; (d) upon Owner's election to terminate this Agreement, following an Event of Default (as defined in Section 16) by MGE under this Agreement; or (e) upon MGE's election to terminate this Agreement following an Event of Default (as defined in Section 16) by Owner under this Agreement.

10. **Amendment.** This Agreement shall not be amended without the prior written consent of MGE and Owner.

11. **Assignment of Agreement / Sale of Property.** Neither party hereto shall be entitled to sell or assign all or any part of its interest in this Agreement or in the Charging Station without the written consent of the other, except as follows:

- a. If Owner wishes to sell the Property, Owner shall be entitled to do so, as long as Owner incorporates into any binding contract to sell the Property a provision that discloses the existence of this Agreement and obligates the purchaser to assume in writing all obligations of Owner under this Agreement or pay to have MGE remove it.
- b. MGE shall be permitted to assign its interest in the Charging Station and this Agreement without the written consent of Owner: to a subsidiary or an affiliate; or to an unrelated third party in connection with a merger, consolidation, or restructuring transaction. MGE shall provide Owner with written notice of the sale or assignment.

12. **Terms Run with the Land.** The terms and conditions of this Agreement shall run with the land and be binding on the parties and their heirs, successors, and assigns.

13. **Compliance with Laws.** MGE shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, and orders governing the Activities. This shall include, without limitation, any applicable rules, orders, or tariffs of the Public Service Commission of Wisconsin. Owner shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, and orders relating to the Property and the Premises.

14. **Taxes.** Owner shall pay the personal property and real property taxes, if any, pertaining to the Property. MGE shall pay any personal property tax pertaining to the Charging Station.

15. **Insurance and Liability for Damages.** MGE shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by Owner's Risk Manager: bodily injury, death and property damage of \$1,000,000 per occurrence. The policy or policies shall be primary and non-contributory, and shall name Owner as an additional insured. As evidence of this coverage,

MGE shall furnish to Owner a certificate of insurance on a form provided by Owner. MGE shall be responsible for the reasonable costs of any damage to Owner's real or personal property caused by the Charging Station or the Activities. Owner shall not be responsible for the acts of Owner, its officers, officials, and employees that damage the Charging Station, either negligently or intentionally.

16. **Default.** Any of the following events shall constitute an "Event of Default" under this Agreement:

- a. If a party shall become insolvent, or become the subject of any bankruptcy, insolvency, or similar proceeding, which has not been terminated, stayed, or dismissed within sixty (60) business days after it was commenced.
- b. If any material representation made under this Agreement shall have been materially false or misleading, when made.
- c. If a party shall default in the performance of any other obligation under this Agreement.

Notwithstanding the forgoing, any default in the performance under Section 16.c. of this Agreement shall not be deemed to constitute an "Event of Default" unless the party in default shall have failed to cure such default within thirty (30) days after receiving written notice from the other in accordance with the terms of this Agreement.

17. **Remedies.** Following an Event of Default (as defined in Section 16) the party not in default may exercise one or more of the following remedies:

- a. Terminate this Agreement and cause the removal of the Charging Station at the expense of the party in default.
- b. Cure the Event of Default and obtain reimbursement from the other party.
- c. Exercise any remedy available at law or in equity.

18. **MGE's Right to Show Charging Station.** MGE shall have the right to show the Charging Station to interested persons.

19. **MGE's Right to Erect Signs and Informational Displays.** MGE, at MGE's expense, shall have the right to erect and maintain informational signage to be located immediately adjacent to the Charging Station. The location of the signage is subject to the reasonable approval of Owner. The contents of the signage may, among other things, identify MGE as the owner of the Charging Station and provide information about the purpose and use of the Charging Station.

20. **Notices.** All notices required under this Agreement shall be in writing and shall be delivered to MGE and Owner as follows:

To MGE:

Madison Gas and Electric Company
133 South Blair Street
P.O. Box 1231
Madison, WI 53701-1231
Attention: Donald Peterson
608/252-4734 (Fax)

To Owner:

City of Madison
Office of Real Estate Services
Madison Municipal Building, Room 312
215 Martin Luther King, Jr. Blvd.
P.O. Box 2983
Madison, WI 53701-2983
Attention: Real Estate Manager
608/261-6126 (Fax)

Notices shall be deemed delivered upon receipt, if sent by facsimile or personally delivered and shall be deemed delivered two (2) business days after delivery into the United States first class mail, postage prepaid, addressed to the other party.

21. **Memorandum of Agreement.** Upon the execution of this Agreement, Owner and MGE shall execute a recordable form of memorandum of this Agreement, in the form attached hereto as Exhibit D. MGE may record the memorandum with the Dane County Register of Deeds at its sole cost.

22. **Responsibility for Acts.** MGE shall be liable to and hereby agrees to indemnify, defend and hold harmless Owner, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any claim or suit, or of liability imposed by law upon Owner or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, or caused by the negligent acts or omissions of MGE and/or its officials, officers, agents, employees, assigns, guests, invitees, contractors or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligent acts of Owner, its officers, officials, agents, and employees. Notwithstanding anything in this Agreement to the contrary, MGE shall not indemnify Owner against Owner's own sole negligence. MGE shall have the right to choose Owner's legal counsel required under this Section, subject to the approval of Owner which shall not be unreasonably withheld.

23. **Distribution Facilities Easement.** Owner grants MGE the right to install electric distribution facility equipment to serve the Charging Station in the Premises. In conjunction with the installation of the Charging Station and MGE's electric distribution facilities, Owner shall

F:\Atroot\Docs\dev\Assignments\Open\Electric Vehicle Charging Stations on City Property\Charging Station Agreement (Vilas Park).DOCX
0620111438

grant MGE a permanent easement consistent with the form attached hereto as Exhibit E. MGE shall prepare the legal description and diagram of the easement prior to execution and recording by Owner.

24. **Access over Property.** Owner grants and conveys to MGE and MGE's employees, agents, contractors, and consultants, reasonable access over the Property in order for MGE to have access to the Charging Station and to perform the Activities. Owner grants MGE the right to use Owner's electrical system to power the Charging Station. In the event that MGE uses Owner's electric system, MGE shall be responsible for the cost of electricity used to power the Charging Station.

25. **No Partnership.** None of the terms and provisions of this Agreement shall be deemed to create a partnership between MGE and Owner in their respective businesses or otherwise, nor shall any terms or provisions of this Agreement cause MGE or Owner to be considered joint venturers or members of any joint enterprise.

26. **Entire Agreement.** This Agreement contains the entire agreement between MGE and Owner with respect to the subject matter of this Agreement, and supersedes all previous negotiations, agreements, or understandings whether written or oral.

27. **Electronic/Facsimile Signatures.** The signature of a party transmitted by fax or the electronic signature of a party shall be considered an original signature for purposes of this Agreement.

28. **Nature of MGE's Business.** Owner knows MGE is engaged in the business of generating and transmitting gas and electric current and will warn its employees against the hazards incident in such operations. Neither Owner nor any of its employees, consultants, agents, subcontractors, or representatives shall touch, move, manipulate, or tamper with any wires, pipes, fixtures, machines, appliances, or equipment of MGE's without express permission from MGE's authorized representative.

29. **Non-Waiver.** The failure of MGE to insist upon or enforce in any instance strict performance by Owner of any of the terms of this Agreement or to exercise any rights herein conferred shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon any such terms or rights on any future occasion.

30. **Governing Law and Venue.** Interpretation of this Agreement and performance thereof will be determined by the laws of the State of Wisconsin. Any dispute arising under the terms of this Agreement will be filed in Dane County Circuit Court.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the year and date first set forth above.

MGE:
Madison Gas and Electric Company

Date

By _____
Donald D. Peterson, Executive Director
Energy Products and Services

OWNER:
City of Madison, Wisconsin

Date

By _____
Paul R. Soglin, Mayor

Date

By _____
Maribeth Witzel-Behl, City Clerk

Approved

Approved

City Finance Director

Eric Veum, Risk Manager

Approved as to Form:

Michael P. May, City Attorney

Execution of this Agreement by Owner is authorized by Resolution Enactment No. RES-_____, ID No._____, adopted by the Common Council of the City of Madison on _____, 2011

Attachments:

- Exhibit A – Description and Parcel Identification Number of the Property
- Exhibit B – Major Components of the Charging Station
- Exhibit C – Location of the Premises
- Exhibit D – Memorandum of Agreement
- Exhibit E – Permanent Easement Form

EXHIBIT A

**DESCRIPTION OF THE PROPERTY
AND PARCEL IDENTIFICATION NUMBER**

Parcel Identification Number: 070927100994

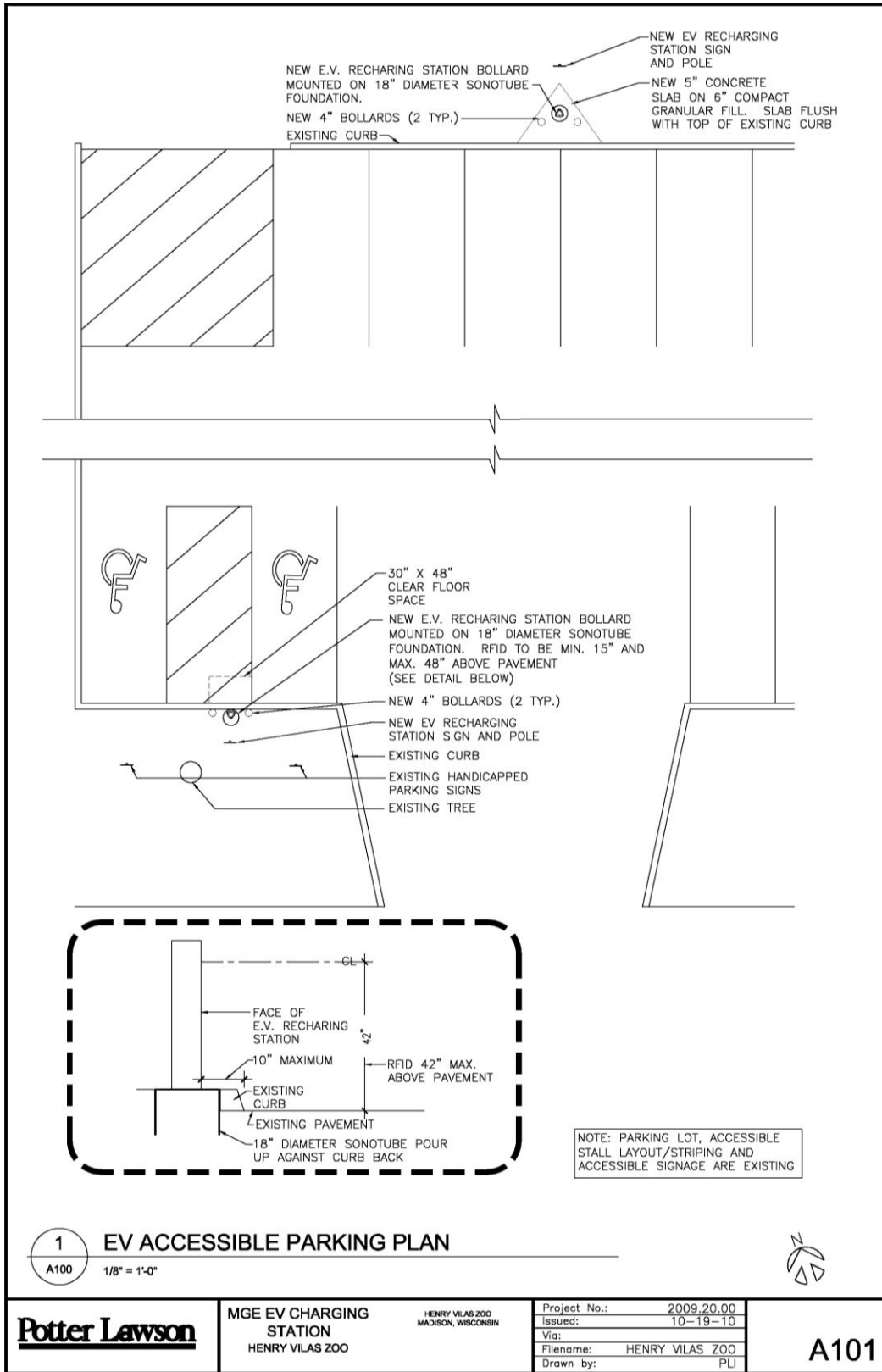
Description: Part of the NE $\frac{1}{4}$ of Section 27, T7N-R9E, City of Madison, Dane County, Wisconsin.

EXHIBIT B

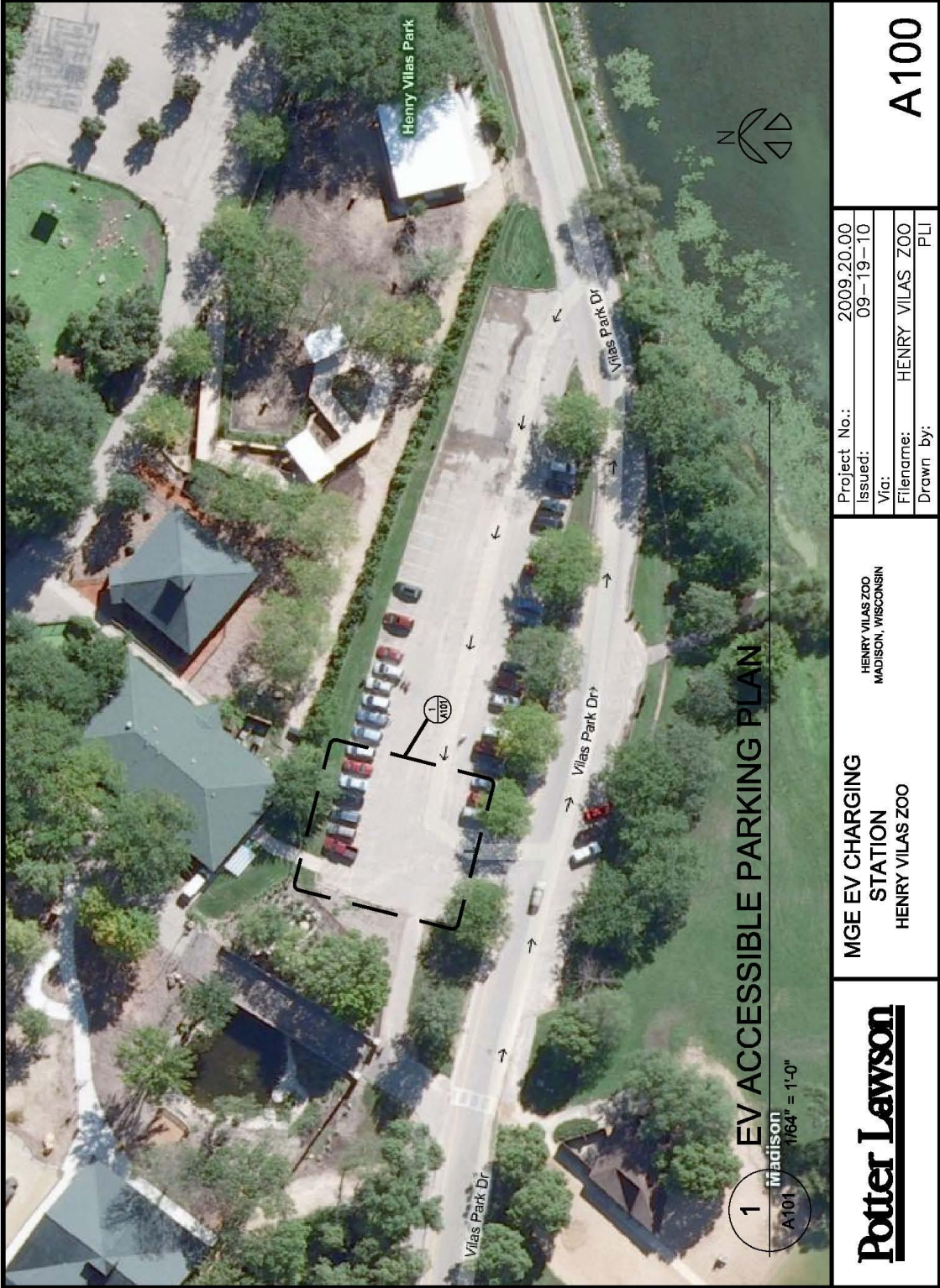
MAJOR COMPONENTS OF THE CHARGING STATION

- A. Charging Station
- B. Electric Service
- C. Disconnect Junction Box
- D. Parking Bollards
- E. Signage

EXHIBIT C – LOCATION OF PREMISES (1 OF 2)



**EXHIBIT C – LOCATION OF THE PREMISES
(2 OF 2)**



Project No.:	2009.20.00
Issued:	09-19-10
Via:	
Filename:	HENRY VILAS ZOO
Drawn by:	PLI

**MGE EV CHARGING
STATION
HENRY VILAS ZOO**

HENRY VILAS ZOO
MADISON, WISCONSIN

Potter Lawson

A100

EXHIBIT D

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Memorandum”) is entered into this _____ day of _____, 2011, by and between Madison Gas and Electric Company (“MGE”) and the City of Madison (“Owner”).

MGE and Owner state as follows:

1. MGE and Owner entered into an Agreement Relating to Charging Station, of even date herewith (“Agreement”).

2. The Agreement gives MGE the right to install, own, operate, maintain, repair, remove, upgrade and reinstall a charging station on Owner’s property described in Attachment A, attached hereto and incorporated herein.

3. The Agreement also grants and conveys access rights and an electric facility easement to MGE.

4. The Agreement runs with the land and is binding on MGE and Owner and their respective heirs, successors, and assigns.

5. Additional terms and conditions of the Agreement with respect to the charging station are set forth in the Agreement itself.

6. This Memorandum is intended to provide notice of the Agreement. This Memorandum is not intended to and does not amend the Agreement. In the event of a conflict between the terms and conditions of this Memorandum and the terms and conditions of the Agreement, the terms and conditions of the Agreement shall govern and prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Agreement as of the year and date first set forth above.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:

Christopher B. Hughes
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784

P.I.N.

MGE:
MADISON GAS AND ELECTRIC COMPANY

By _____
Donald D. Peterson, Executive Director -
Energy Products and Services

STATE OF WISCONSIN
COUNTY OF DANE

Personally came before me this _____ day of _____, 2011,
the above-named Donald D. Peterson, to me known to be the person who executed the foregoing
instrument and acknowledged the same.

Notary public State of Wisconsin
Name: _____ (Please print)
My Commission: _____

OWNER:
CITY OF MADISON

By _____
Paul R. Soglin, Mayor

By _____
Maribeth Witzel-Behl, City Clerk

STATE OF WISCONSIN
COUNTY OF DANE

Personally came before me this _____ day of _____, 2011,
the above-named Paul R. Soglin and Maribeth Witzel-Behl, to me known to be the persons who
executed the foregoing instrument and acknowledged the same.

Notary public State of _____
Name: _____ (Please print)
My Commission: _____

This instrument was drafted by
Christopher B. Hughes
Stafford Rosenbaum LLP
P.O. Box 1784
Madison, WI 53701-1784
608.256.0226

ATTACHMENT A TO MEMORANDUM OF AGREEMENT

LEGAL DESCRIPTION AND PARCEL IDENTIFICATION NUMBER

Parcel Identification Number: 070927100994

Description: Part of the NE $\frac{1}{4}$ of Section 27, T7N-R9E, City of Madison, Dane County, Wisconsin.

EXHIBIT E

PERMANENT EASEMENT FORM

Document No.

RIGHT-OF-WAY GRANT
UNDERGROUND ELECTRIC

The undersigned, herein called Grantor, in consideration of One Dollar (\$1.00) and other valuable considerations, paid to Grantor by MADISON GAS AND ELECTRIC COMPANY, a Wisconsin corporation, Grantee, receipt of which is hereby acknowledged, does hereby grant, convey, and warrant unto said Grantee, its successors, and assigns, the perpetual right and easement to construct, maintain, and operate manholes, conduits, cables, pedestals, transformers, and other appurtenances necessary for the transmission and distribution of electrical current and Grantee's communication signals upon, under, across, and through the following described land located in Dane County, Wisconsin:

A strip of land, six (6) feet in width, located in part of the NE¼ of Section 27, T7N-R9E, City of Madison, Dane County, Wisconsin, the centerline of said strip being more particularly described as follows:

The right-of-way shall be located 3 feet on the right side and 3 feet on the left side of the centerline of Grantee's facilities as constructed. The facilities will be located approximately as set forth in the drawing attached hereto as Exhibit "A" and dated January 18, 2011.

THIS SPACE RESERVED FOR RECORDING DATA

Return To:
Rights-of-Way Department
Madison Gas and Electric Co.
P.O. Box 1231
Madison, WI 53701-1231

PIN _____

MGE Easement No. _____

TOGETHER with the right to enter upon said land for the above purposes, including repairing or removing the same, and the right to trim or remove such trees and brush as may now or hereafter interfere with or endanger said facilities. The Grantee shall not have the right to erect any fence or other structures unless otherwise specifically provided for herein. The Grantor shall have the right to use and enjoy the surface of the right-of-way conveyed hereby, but shall not interfere with the use of same by Grantee for purposes hereinabove granted. The Grantor shall not build, create, or construct any buildings or other structures, plant trees, inundate, or change the grade of said right-of-way, nor permit others to do so without the express written consent of the Grantee.

This Agreement is binding upon heirs, administrators, executors, and assigns of Grantor.

WITNESS, the hand and seal of the Grantor(s) this _____ day of _____ 20____.

_____ (SEAL)

STATE OF WISCONSIN)ss

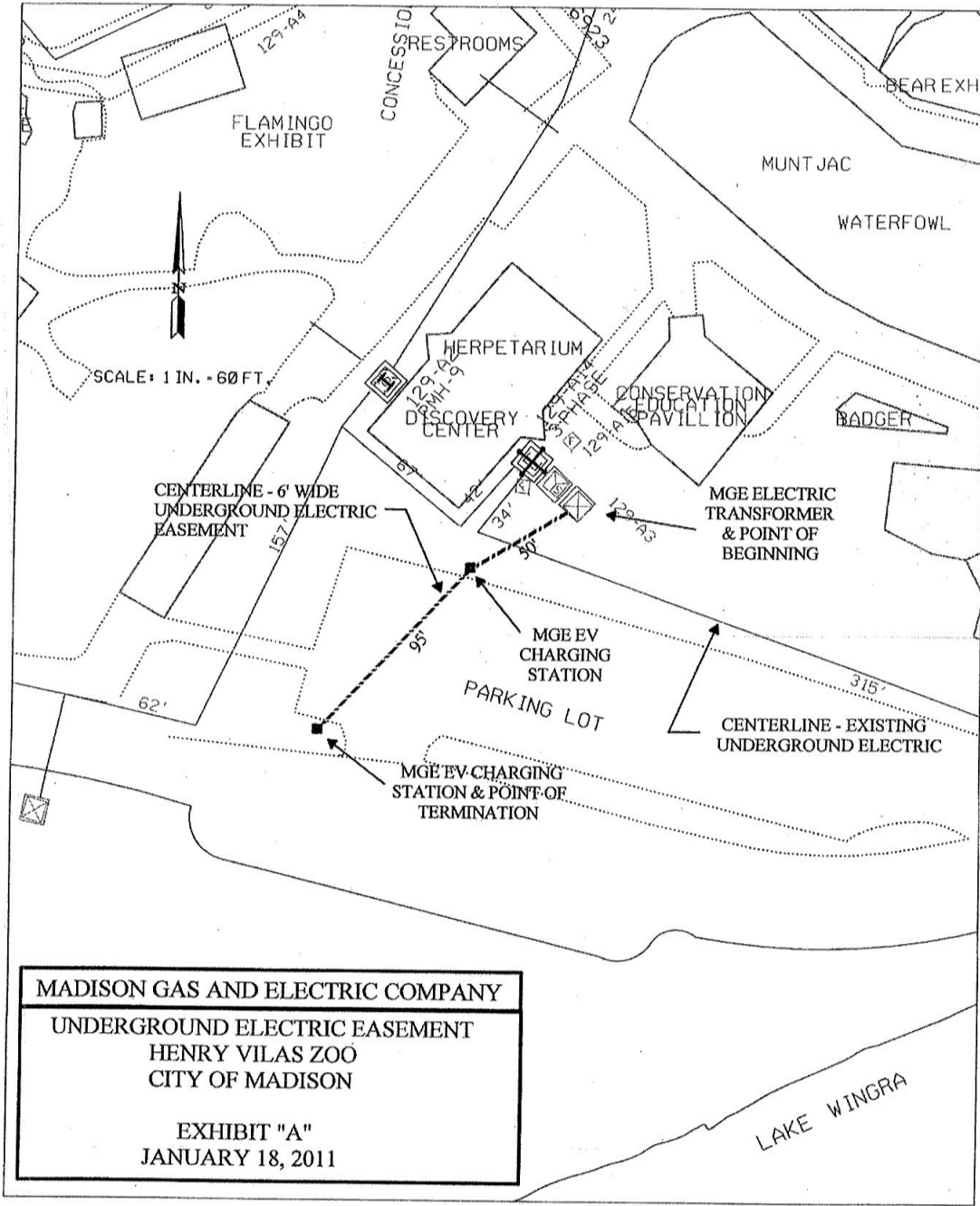
COUNTY OF _____) ACKNOWLEDGMENT

Personally came before me this _____ day of _____ 20____ the above-named _____

to me known (or satisfactorily proven) to be the person(s) who executed the foregoing instrument and acknowledged the same.

This instrument drafted by
Madison Gas and Electric Company
Drafter: Lawrence D. Foreman

Notary Public
State of Wisconsin
My commission expires _____



MADISON GAS AND ELECTRIC COMPANY
 UNDERGROUND ELECTRIC EASEMENT
 HENRY VILAS ZOO
 CITY OF MADISON

EXHIBIT "A"
 JANUARY 18, 2011