

AGREEMENT RELATING TO CHARGING STATION (Yahara Hills Golf Course)

This Agreement Relating to Charging Station (the “Agreement”) is entered into as of the last signature date set forth below (“Effective Date”), by and between Madison Gas and Electric Company, a Wisconsin corporation (“MGE”), and the City of Madison, a Wisconsin municipal corporation (“City”) (individually, “Party,” and collectively, “Parties”).

RECITALS

- A. City is the owner of certain land and improvements located at 7051 Millpond Rd, Madison, Wisconsin, which land is known as the Yahara Hills Golf Course (the “Property”).
- B. MGE desires to install, and after such installation own, operate, maintain, repair, remove, upgrade, and/or reinstall ____ () charging station(s) containing a total of ____ () ports and related facilities (the “Charging Station(s)”) on the Property.
- C. City desires to accommodate MGE with regard to the Charging Station(s) 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, City and MGE agree as follows:

- 1. **Recitals.** The recitals are incorporated herein and made a part of this Agreement.
- 2. **Right to Install, Operate, Maintain, Repair, Remove, Upgrade, and Reinstall Charging Station(s).** During the term of this Agreement, MGE has the right to, and shall install, operate, maintain, repair, remove, upgrade, and/or reinstall the Charging Station(s), as well as any electric distribution facility equipment needed to serve the Charging Station(s), on the Property (collectively, the “Activities”) upon the terms and conditions set forth in this Agreement. The location of the Charging Station(s) and the parking spaces to be served by the Charging Station(s) are depicted in the description and diagram attached hereto as Exhibit A (the “Premises”). The Activities shall be performed by MGE (or on behalf of MGE) at MGE’s expense. MGE may install protective bollards to protect the Charging Station(s).
- 3. **Access Over Property.** City grants and conveys to MGE and MGE’s employees, agents, contractors, and consultants, reasonable access over the Property and to the electric distribution facility equipment in order for MGE to have access to the Charging Station(s) and to perform the Activities.
- 4. **City Cooperation.** City agrees that it will cooperate in good faith with MGE and its employees, agents, and consultants with regard to the Charging Station(s) and the Activities. City agrees to mark all private underground facilities in the trench route for any electric facility

distribution equipment installed by MGE to serve the Charging Station(s). MGE is not responsible for damage to unmarked private underground facilities in the trench route. City will not charge MGE any fees or payments for the rights granted to MGE in this Agreement.

5. **Design of Charging Stations.** MGE will collaborate with City to ensure placement and construction of Charging Stations ensure public safety and do not create undue maintenance and upkeep burdens. If deemed necessary, safety lighting will be installed and maintained at MGE expense.

6. **City's Representations and Warranties.** City represents that (a) it is the sole owner of the Property and (b) the terms of this Agreement are not in violation of any mortgage or other agreement to which City is a party.

7. **Ownership of Charging Station(s).** City and MGE agree that at all times during this Agreement, MGE shall be the sole and complete owner of the Charging Station(s) and all components thereof. City and its successors and assigns shall have no right, title, or interest in the Charging Station(s) or any component thereof. The Parties intend that the Charging Station(s) remains at all times personal property and not a fixture under applicable law, even if the Charging Station(s) or any part thereof is affixed or attached to real property or any improvements.

8. **City's Premise Responsibilities for area Surrounding Charging Stations.** City will be responsible for parking striping and will perform ongoing maintenance and upkeep of areas of pavement and parking lot surrounding Premises, including mowing, tree pruning, trash collection, etc. Snow removal will be performed consistent with existing service levels during normal working hours and days.

9. **MGE Premises Responsibilities for Charging Stations.** MGE is responsible for all maintenance and repair of Charging Stations. Charging Stations must be kept in neat and orderly fashion, including any cables neatly stored when not in use. MGE may contract or arrange for snow removal services of driveway, premise and area surrounding charging stations to achieve higher service standard than can be provided by City.

10. **Storage.** No storage of materials or equipment is permitted at or around Charging Stations without express permission from the City's Parks Division.

11. **Duty to Notify.** City and MGE shall promptly report to each other any problems or functional issues with the Charging Station(s) or the Premises that come to either's attention. MGE shall have the right, upon reasonable advance notice to City, 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 City, its employees, and invitees to the Property. City shall not remove the Charging Station(s) without MGE's prior written consent. MGE will provide contact information on each Charging Station in the event users encounter issues or have questions.

12. **Non-Interference with Charging Station(s).** City covenants for itself and its employees, agents, invitees, successors, and assigns that it shall neither do nor permit to be done any of the

Activities without MGE's prior written consent or any action that would tend to damage, impair, debilitate, shorten the useful life of, or otherwise work to the detriment of the Charging Station(s). The foregoing covenant shall require City, without limitation, to 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(s). City 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(s) or the use of the Charging Station(s) by vehicles. MGE recognizes that City may need to temporarily restrict access to the Premises and the parking lot to repave the surface, which temporary closure shall not be contrary to this provision. Such temporary closure shall be only as long as necessary for the repaving work. In the event any damage is caused to the Charging Station(s) during the term of this Agreement for any reason, City agrees to immediately notify MGE of such damage. City shall keep the Premises reasonably free of ice and snow, consistent with Sections 8 and 9 above.

13. **Use of the Charging Station(s).** MGE and the general public may use the Charging Station(s) to charge plug-in electric vehicles. Vehicles using the Charging Station(s) may park on the Premises. MGE may charge a fee for use of Charging Stations, pursuant to local, state and federal laws. For Level 2 Charging Stations, additional "After Fees" may not be charged for use less than 5 hours to accommodate a standard 18-hole round of golf.

14. **Term/Extension.** The initial term of this Agreement shall be for ten (10) years ("Initial Term"), commencing upon the Effective Date. Upon the expiration of the Initial Term, this Agreement shall automatically renew for successive one- (1) year terms ("Renewal Term") and upon the same terms and conditions, unless either Party provides written notice to the other Party at least ninety (90) days before the expiration of the Initial Term or any Renewal Term of its desire to terminate this Agreement.

15. **Removal of Charging Station(s).** MGE shall remove, or cause the removal of, the Charging Station(s) within ninety (90) days of the termination of the Agreement and repair the portions of the Premises upon which they were located to reasonably match the condition of such portions at the time of installation, unless City has purchased the Charging Station(s) from MGE pursuant to mutually-agreed written terms. MGE may leave in place, and shall not be required to remove, any underground electric cable or conduit used to service the Charging Station(s).

16. **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, a Renewal Term) if either Party has provided notice of its desire to terminate the Agreement under Section 14 above, (b) by mutual agreement of MGE and City, (c) upon MGE's election to terminate this Agreement for safety reasons or by order of any regulatory body, (d) upon City's election to terminate this Agreement following an Event of Default (as defined in Section 24) by MGE under this Agreement, or (e) upon MGE's election to terminate this Agreement following an Event of Default (as defined in Section 24) by City under this Agreement or MGE's receipt of notice of a proceeding under Section 24.b.

17. **DISCLAIMER.** The Charging Station(s) is provided on an "As Is" basis. MGE expressly disclaims all warranties of any kind, whether express or implied, including but not limited to, the implied warranties of merchantability, fitness for a particular purpose, and non-

infringement. MGE makes no warranty that the Charging Station(s) will operate uninterrupted or error free.

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

19. **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(s) without the prior written consent of the other except as follows:

- a. If City wishes to sell the Property, City shall be entitled to do so as long as City incorporates into a binding contract to sell the Property a provision that discloses the existence of this Agreement and includes an assignment of this Agreement which obligates the purchaser to assume in writing all obligations of City under this Agreement or pay to have MGE remove the Charging Station(s). City shall provide MGE with thirty (30) days' advance written notice of the sale of the Property and assignment and assumption of this Agreement by the purchaser.
- b. MGE shall be permitted to assign its interest in the Charging Station(s) and this Agreement, without the written consent of City, to a subsidiary or an affiliate or to an unrelated third party in connection with a merger, consolidation, or restructuring transaction. MGE shall provide City with written notice of the sale or assignment.

20. **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. City shall comply with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, and orders relating to the Property and the Premises.

21. **Taxes.** City 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(s).

22. **Responsibility for Acts/Limitation of Liability.** Each party shall be responsible for its own acts, errors, or omissions and for the acts, errors, or omissions of its employees, officers, officials, agents, boards, committees, and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions, including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors, or omissions of its employees, officers, officials, agents, boards, committees, and commissions. In no event will either Party, its affiliates, subsidiaries, or respective directors, officers, employees, or agents be liable for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to these terms and conditions arising out of the acts, errors, or omissions of the other Party or those of the other Party's employees, agents, boards, commissions, agencies, officers, and representatives. It is not the intent of either party to waive, limit, or otherwise modify the protections and limitations of liability found in Wis. Stat. § 893.80 or any other protections

available to the parties by law. This paragraph shall survive the termination or expiration of this Agreement.

23. **Insurance.** MGE shall carry, and shall require its installation contractors to carry, commercially reasonable amounts of liability insurance during the installation or reinstallation of the Charging Station(s). MGE shall be responsible for carrying liability insurance coverage upon the Charging Station(s), and City shall be responsible for carrying commercially reasonable amounts of commercial general liability insurance and property damage insurance for the location of the Property and upon the other improvements upon the Property. MGE shall be responsible for the reasonable costs of any damage to City's real or personal property caused by the Charging Station(s) or the Activities.

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

- a. If either 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 City shall become the subject of any proceeding to foreclose any interest in the Property or improvements thereon. City shall provide MGE written notice of any such proceeding as soon as practicable but in no case more than sixty (60) days after it is commenced.
- c. If any material representation made under this Agreement shall have been materially false or misleading when made.
- d. If either Party shall default in the performance of any other obligation under this Agreement.

Notwithstanding the forgoing, any default in the performance under Section 24.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.

25. **Remedies.** Following an Event of Default (as defined in Section 24), 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(s) 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.

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

27. MGE's Right to Erect Signs, Pavement Markings 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(s). The location of the signage is subject to the reasonable approval of City. The contents of the signage may, among other things, identify MGE as the owner of the Charging Station(s) and provide information about the purpose and use of the Charging Station(s) and must be approved by Parks Superintendent or designee. All signs, displays, markings must be in compliance with Madison General Ordinance requirements.

28. City's Right to Erect Signs and Informational Displays. City, at City's expense, shall have the right to erect and maintain informational signage to be located adjacent to the Charging Station(s) in a way and location that does not block or interfere with MGE's signage pursuant to Section 27 above. The contents of the signage may encourage or limit parking for electronic vehicles only in the spaces designated at the Charging Station(s).

29. Notices. All notices required under this Agreement shall be in writing and shall be delivered to MGE and City as follows:

To MGE:

Rob Crain
Madison Gas and Electric Company
PO Box 1231
Madison WI 53701-1231
Email: rcrain@mge.com

To City:

Eric Knepp
Madison Parks Superintendent
330 E. Lakeside Street
Madison, WI 53715
parks@cityofmadison.com

Notices shall be deemed delivered upon receipt if sent by facsimile or email 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.

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

31. 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 unless and until terminated as provided herein.

32. No Partnership. None of the terms and provisions of this Agreement shall be deemed to

create a partnership between MGE and City in their respective businesses or otherwise, nor shall any terms or provisions of this Agreement cause MGE or City to be considered joint venturers or members of any joint enterprise.

33. **Non-Discrimination.** In the performance of the services under this Agreement, MGE agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin, or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. MGE further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity, or national origin.

34. **Entire Agreement.** This Agreement contains the entire agreement between MGE and City with respect to the subject matter of this Agreement and supersedes all previous negotiations, agreements, or understandings whether written or oral. This Agreement is binding on each Party's permitted successors and assigns.

35. **Counterparts and Electronic Signatures.** This Agreement and any document executed in connection herewith may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute the same document. Signatures on this Agreement may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Agreement may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Agreement may be delivered by facsimile or email and upon receipt will be deemed original and binding upon the Parties hereto, whether or not a hard copy is also delivered. Copies of this Agreement, fully executed, shall be as valid as an original.

36. **Nature of MGE's Business.** City acknowledges that MGE is engaged in the business of generating and distributing electricity and purchasing and distributing natural gas and will warn its employees against the hazards incident in such operations. Neither City 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.

37. **Non-Waiver.** The failure of MGE to insist upon or enforce in any instance strict performance by City 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.

38. **Survival.** The terms and conditions of this Agreement which by their nature require performance by either Party after the termination of the Agreement including, but not limited to, limitations of liability, indemnification provisions, governing law, and any other provisions or partial provisions which by their nature would reasonably extend beyond termination of the Agreement shall be and remain enforceable after such termination or expiration of the

Agreement for any reason whatsoever.

39. **Governing Law and Venue.** Interpretation and enforcement of this Agreement shall be in accordance with the laws of the State of Wisconsin. The Parties agree that the proper and exclusive venue to resolve any dispute arising out of or in any way related to this Agreement shall be the Circuit Court for Dane County, Wisconsin. The Parties agree to submit to the jurisdiction of the courts of the State of Wisconsin with regard to any litigation resulting from such dispute and waive any objection to such jurisdiction.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized agents.

MADISON GAS AND ELECTRIC COMPANY

Date

By: _____

Name: Rob Crain
Director Customer Experience and Energy
Title: Services

CITY OF MADISON

Satya Rhodes-Conway, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Countersigned:

David P. Schmiedicke, Finance Director

Date

Approved as to form:

Michael Haas, City Attorney

Date

Execution of this _____ Amendment by the City is authorized by Resolution Enactment No. RES-__-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 202__, and the Board of Parks Commissioners approval granted on _____, 202__.

Attachments:

Exhibit A - Location of the Charging Station(s)

Exhibit B - Memorandum of Agreement

EXHIBIT A

LOCATION OF THE CHARGING STATION(S)

DRAFT

DRAFT

EXHIBIT C
Memorandum of Agreement

This Memorandum of Agreement (“Memorandum”) is entered into this ____ day of _____ 20____, by and between Madison Gas and Electric Company (“MGE”) and _____ (“City”).

MGE and City state as follows:

1. MGE and City entered into an Agreement Relating to Charging Stations, of even date herewith (“Agreement”).
2. The Agreement gives MGE the right to install, own, operate, maintain, repair, remove, upgrade, and reinstall one or more charging stations on City’s property described in Exhibit A attached hereto and incorporated herein.
3. The Agreement also grants and conveys access rights and various other rights and protections to MGE.
4. Additional terms and conditions of the Agreement are set forth in the Agreement itself.
5. The entire Agreement runs with the land and is binding on MGE and Owner and their respective heirs, successors, and assigns unless terminated as provided in the Agreement.
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.

THIS SPACE RESERVED FOR
RECORDING DATA

RETURN TO:
Betsy Winterhack
Madison Gas and Electric Company
PO Box 1231
Madison WI 53701-1231
P.I.N.

This Instrument Drafted By:
Elisabeth E. Winterhack
Madison Gas and Electric Company

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

Madison Gas and Electric Company

By: _____
Name: Deborah L. Branson
Title: Manager Electrification

State of Wisconsin
County of Dane

Personally came before me this ____ day of _____ 20____, the above-named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, Dane County, Wisconsin

Name: _____ (Please print)

My commission expires on _____

CITY OF MADISON

By: _____
Name: _____
Title: _____

State of _____
County of _____

Personally came before me this ____ day of _____ 20____, the above-named _____, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of _____

Name: _____ (Please print)

My commission expires on _____

EXHIBIT A TO MEMORANDUM OF AGREEMENT
LEGAL DESCRIPTION AND PARCEL IDENTIFICATION NUMBER

Parcel Identification Number:

DRAFT