

RESOLUTION NO. 2721

A RESOLUTION OF THE CITY OF WILSONVILLE APPROVING A CHARGING STATION LICENSE AGREEMENT WITH PORTLAND GENERAL ELECTRIC FOR INSTALLATION OF ELECTRIC VEHICLE CHARGING STATIONS.

WHEREAS, the use of electric vehicles is anticipated to increase in the next five years; and

WHEREAS, Portland General Electric (PGE) is adding six new community charging hubs to their electric vehicle charging network; and

WHEREAS, the City of Wilsonville has a Council Goal to promote and make available numerous options for convenient sustainable choices; and

WHEREAS, both the City and PGE desire to construct an electric vehicle charging station within the City limits; and

WHEREAS, the Library parking lot meets the criteria of for an ideal site for a charging station; and

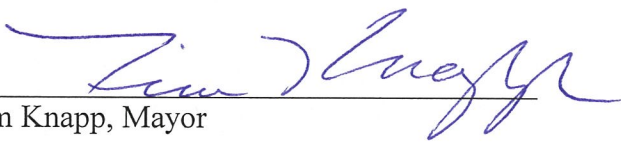
WHEREAS, the use of the Library parking lot is provided free of charge to PGE so that citizens will have more access to electric charging stations; and

WHEREAS, PGE does charge for the use of the stations; and

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The Wilsonville City Council hereby approves and authorizes the City Manager to execute on behalf of the City of Wilsonville the Charging Station License Agreement with Portland General Electric.
2. Term of the Agreement is for ten years and shall automatically renew on an annual basis for one-year periods.
3. This resolution becomes effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 24th day of January 2019, and filed with the Wilsonville City Recorder this date.



Tim Knapp, Mayor

ATTEST:


Kimberly Veliz, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Akervall	Yes
Councilor Stevens	Yes
Councilor Lehan	Excused
Councilor West	Yes

Exhibit:

- A. Charging Station License Agreement

CHARGING STATION LICENSE

This Charging Station License (“Agreement”), dated and effective as of the last date signed below (the “Effective Date”), is by and between **Portland General Electric Company**, an Oregon corporation (“PGE”), and the **City of Wilsonville**, a municipal corporation of the State of Oregon (“Owner”), the legal owner of real property located at 8200 SW Wilsonville Road, Wilsonville, OR 97070 (the “Property”). PGE and Owner are referred to herein collectively as the “Parties” and each individually as a “Party” to this Agreement.

WHEREAS, PGE and Owner desire PGE to install and maintain (6) number of electric vehicle charging stations and associated equipment/infrastructure (the “Charging Stations”) at the Property in a location agreed to by the Parties (the “Charging Station Area”). The Property and Charging Station Area are described in Exhibit A, attached hereto and incorporated herein.

NOW, THEREFORE, PGE and Owner, in consideration of the promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. CHARGING STATION INSTALLATIONS AND OWNERSHIP; PGE OBLIGATIONS.

- 1.1. Owner grants PGE, or its designated contractor, agent, or representative (“Representatives”), a limited license to construct, install, operate, inspect, repair, and maintain the Charging Stations at the Property in accordance with this Agreement and a limited license to use and occupy the Charging Station Area for the sole purpose of installing, operating, and maintaining the Charging Stations and related underground electrical service facilities. This license includes the right to make changes in grade, elevation, or contour of the land within the Charging Station Area, to pave, and to cut away and keep clear, prevent the construction or placement, remove, level, and/or dispose of all obstructions, structures, natural features, trees, vegetation and/or undergrowth, on, under, along, or above the Charging Station Area, which may endanger or interfere with the efficiency, safety, and/or convenient use or enjoyment of the Charging Stations. PGE will identify the precise location of the Charging Station Area and will provide Owner with plans and specifications of the installation for review and approval by Owner. PGE will also provide Owner with reasonable advance notice for the dates of installation, recognizing that the Property is a Public Library parking lot and accommodations are needed for Library patrons.
- 1.2. Owner grants to PGE or its Representatives a limited license to access the Property for Property survey, installation, operation, maintenance, repair, and management of the Charging Stations.
- 1.3. PGE (at PGE’s sole cost) shall obtain any and all necessary federal, state, or municipal licenses, permits, and/or approvals and appropriate easements for the installation and operation of the Charging Stations (the “Permissions”). Owner shall cooperate and provide reasonable assistance in obtaining all of such licenses, permits, and approvals. To the extent PGE is unable to obtain said Permissions within twelve (12) months of the Effective Date, or costs associated with the installation of the Charging Stations make the project commercially impractical or unreasonable, PGE may terminate this Agreement with ten (10) days’ written notice to Owner.

- 1.4. PGE will bear all costs associated with the delivery, installation, maintenance, repair, and commissioning of the Charging Stations. All right, title, and interest in the Charging Stations shall at all times remain the sole property of PGE.
- 1.5. PGE will be solely responsible for all necessary repair and maintenance of the Charging Stations and any associated equipment and infrastructure (including underground equipment). In the event of any Charging Station failure, damage, or other problem requiring repair, replacement, adjustment, or maintenance to the Charging Station, Owner shall notify PGE or its Representative within twenty-four (24) hours of first becoming aware of such failure or problem.
- 1.6. PGE, Owner, and their respective Representatives make no representations or warranties and assume no liability regarding the quality, safety, design, sizing, installation, construction, reliability, functionality, efficiency, performance, operation, maintenance, or use, or other aspect, of any Charging Station installed pursuant to this Agreement and expressly disclaim any such representation or warranty. The Charging Stations will be clearly marked with the following language: "Equipment is owned and operated by PGE, for questions call xxx-xxx-xxxx" which will include a contact phone number for inquiries related to the Stations.
- 1.7. Neither PGE nor its Representatives shall be responsible for costs of correction of conditions already existing at the Property that fail to comply with applicable laws and regulations.
- 1.8. Owner acknowledges and agrees that PGE will provide no additional security at the Property or Charging Station Area. PGE accepts all risk of loss to property associated with the Charging Stations and hereby releases all claims against Owner for any loss or damage to the Charging Stations, except as provided in **Section 6** below.

2. OWNER OBLIGATIONS.

- 2.1. Owner shall take all reasonable measures to ensure that the Property shall be kept operational, clean, and in good repair. During the Term, Owner shall not unreasonably restrict or obstruct access to the Charging Stations as is necessary for (i) charging of an electric vehicle by any electric vehicle owner or operator twenty-four (24) hours a days and seven days a week, and (ii) inspection, maintenance, and repair of the Charging Stations by PGE and its Representatives.
- 2.2. Owner accepts all risk of loss associated with the Property, including the Charging Area. Owner hereby releases all claims and subrogation against PGE for any loss or damage to the Property and Charging Area, unless the loss or damage is caused by the willful misconduct of PGE or its Representatives.
- 2.3. Owner acknowledges that PGE will be collecting Charging Station usage data, including but not limited to charge event information, such as when a charge event occurs, energy transferred during the charge event, duration of the plug-in event, and duration of the charging period. Charging Station users will be charged for their use of the Charging Station.
- 2.4. Owner represents and warrants that:
 - 2.4.1. Owner is the legal owner of the Property and is authorized to enter into this Agreement and permit PGE to perform the Charging Station installation and maintenance services anticipated under this Agreement;

- 2.4.2. The execution, delivery, and performance of this Agreement will not conflict with any agreement or require any written consent or approval of any other person or corporation; and
- 2.4.3. The Charging Stations will remain free of all levies, liens, and encumbrances will not be collateralized, and no security interest will be granted therein.
- 3. PUBLICITY.** Each Party shall, at its option, have the right to publicly advertise the availability of the Charging Stations, including in print and on the website. Each Party shall further, at its option, have the right to install appropriate signage at the Property and Charging Station Area; provided that any and all such signage shall be approved by the other Party prior to use by such Party.
- 4. TERM.**
- 4.1. This Agreement shall commence on the Effective Date and continue for ten (10) years (the "Initial Term"). This Agreement shall automatically renew on an annual basis for one-year periods (each such renewal a "Renewal Term") after the Initial Term and each Renewal Term unless either Party provides notice of its intent not to renew at least ninety (90) days prior to the expiration of the Term. The Initial Term and all Renewal Terms are, collectively, the "Term."
- 4.2. Either Party may terminate this Agreement, effective thirty (30) days after giving written notice of intent to terminate, upon the occurrence of a material breach of this Agreement, provided that such breach continues for thirty (30) days after notice of such breach.
- 4.3. Upon termination of this Agreement, PGE will remove the Charging Station from the Property, at PGE's expense, within ninety (90) days of termination, provided that PGE shall not be required to remove and may abandon underground equipment, underground cabling, or underground conduit associated with the Charging Station, as shown on the as-builts. PGE will provide Owner a complete set of as-built plans showing the underground elements that are to be abandoned. Upon termination of this Agreement, PGE shall restore the Charging Station Area to as nearly as practicable its condition immediately preceding PGE's entry, excepting normal wear and tear and changes in the condition caused by use thereof.
- 4.4. Owner shall not dispose of, remove, or move the Charging Stations from their place of installation prior to the conclusion of this Agreement without the prior written consent of PGE, except in the event of an emergency or after sixty (60) days from Owner's notice to PGE to respond to a material breach of this Agreement and PGE has failed to cure, or after ninety (90) days from expiration of this Agreement.
- 5. NO REPRESENTATIONS OR WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE CHARGING STATION AND ALL SERVICES HEREUNDER ARE PROVIDED "AS IS" BY PGE AND ITS REPRESENTATIVES WITHOUT ANY WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR POTENTIAL SAVINGS, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN, USE OF THE PROPERTY IS PROVIDED AS A PUBLIC SERVICE, WITHOUT CHARGE, AND IS PROVIDED IN "AS IS" CONDITION BY OWNER WITHOUT ANY WARRANTY OF ANY KIND, WHETHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW.

OWNER ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY CONDITION OR DEFECT ASSOCIATED WITH THE PROPERTY TO PGE WITH RESPECT TO ITS USABILITY FOR THE LOCATION OF THE CHARGING STATIONS AND ASSUMES NO MAINTENANCE OR SECURITY RESPONSIBILITIES FOR THE CHARGING STATION.

6. **MAINTENANCE AND DAMAGE.** PGE is responsible for maintaining the Charging Stations and Owner shall have no responsibility for the Charging Stations, except as provided herein. Owner is responsible for maintaining the parking lot where the Charging Stations are located and PGE shall have no responsibility for maintaining the parking lot, except as provided herein. Subject to the Limitation of Liability in Section 7, PGE will be responsible to Owner for any damage PGE causes to the Property. Subject to the Limitation of Liability in Section 7, Owner will be responsible to PGE for any damage Owner causes to the Charging Stations.
7. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY, ITS PARENT, OFFICERS, DIRECTORS, PARTNERS, SHAREHOLDERS, EMPLOYEES OR AFFILIATES, OR ANY REPRESENTATIVES THEREOF, BE LIABLE TO THE OTHER PARTY FOR SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, DAMAGES OR CLAIMS IN THE NATURE OF LOST REVENUE, INCOME, OR PROFITS, LOSS OF USE, OR COST OF CAPITAL, IRRESPECTIVE OF WHETHER SUCH DAMAGES ARE REASONABLY FORESEEABLE AND IRRESPECTIVE OF WHETHER SUCH CLAIMS ARE BASED UPON NEGLIGENCE, STRICT LIABILITY CONTRACT, OPERATION OF LAW, OR OTHERWISE.
8. **ASSIGNMENT.** This Agreement shall be binding upon the Parties together with their successors and permitted assigns. In the event of a sale of the Property, this Agreement will automatically transfer to and will be binding on the new Property owner. Owner will promptly notify PGE in writing of any such changes occurring during the Term, including any updates to Owner address(es) or contact information set forth in this Agreement.
9. **INSURANCE.**
 - 9.1. Prior to commencement of the Term, PGE shall provide to Owner proof of, and continuously maintain during the Term, comprehensive commercial general liability insurance, written on the current ISO occurrence form (or a substitute form providing equivalent coverage), and must cover claims for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of the Property, Charging Stations, or adjoining areas or ways, or from any other cause, with a minimum combined single limit of two millions dollars (\$2,000,000) to cover any claim or liability which may result from any obligation of PGE pursuant to or in any way associated with this Agreement. In addition, PGE and its Representatives shall maintain workers' compensation insurance in compliance with the laws of the State of Oregon.
 - 9.2. Prior to commencement of the Term, Owner shall provide to PGE proof of, and continuously maintain during the Term, comprehensive commercial general liability insurance, written on the current ISO occurrence form (or a substitute form providing equivalent coverage), and must cover claims for personal injury, death, or property damage arising from the use, occupancy, disuse, or condition of the Property, or adjoining areas or ways, or from any other cause, with a minimum combined single limit of two million dollars (\$2,000,000) to cover any claim or liability which may result from any obligation of Owner pursuant to or in any way associated with this

Agreement. In addition, Owner shall maintain workers' compensation insurance in compliance with the laws of the State of Oregon.

- 10. NOTICE.** All notices required under this Agreement shall be deemed properly served if hand delivered (including by reputable overnight courier) or sent by certified mail, return receipt requested, or overnight express mail delivery with signed receipt of delivery, to the last address previously furnished by the Parties hereto. Until hereafter changed by the Parties by notice in writing, notices shall be sent to the Parties at the addresses set forth below:

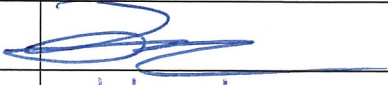
PGE:	Portland General Electric Company 121 SW Salmon St, 1WTC13 Portland, OR 97204 Attention: Legal Department
Owner:	City of Wilsonville 29799 SW Town Center Loop E Wilsonville, OR 97070 Attention: Legal Department

If sent by certified mail, the notice shall be deemed received three (3) days after the date such notice is deposited in a post office of the United States Postal Service, postage prepaid, return receipt requested, certified mail. If delivered by hand, the notice shall be deemed received as of the date of delivery or refusal of delivery. If delivered by overnight mail, notice will be deemed received on the next business day (Monday through Friday, excluding holidays observed by the Postal Service).

- 11. MISCELLANEOUS.** This Agreement, including all attachments, constitutes the entire agreement between Owner and PGE and may only be amended in writing signed by each of the Parties. If any of its provisions shall be held invalid or unenforceable, this Agreement shall be construed as if not containing those provisions and the rights and obligations of the Parties hereto shall be construed and enforced accordingly. Each Party shall be responsible for its Representatives' compliance with this Agreement. The failure to enforce any terms of this Agreement will not constitute a waiver. The provisions of this Agreement regarding Indemnification and Limitation of Liability will survive the termination or expiration of this Agreement.
- 12. FORCE MAJEURE.** The Parties to this Agreement shall be excused from any failure or delay in the performance of their obligations if such obligations are prevented from being fulfilled due to Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure, shall give notice and the full particulars of such Force Majeure to the other Party, in writing or by telephone, as soon as reasonably possible after the occurrence of the cause relied upon. A "Force Majeure" shall include any act, event, or occurrence beyond the Party's reasonable control, which the Party, despite its best efforts, is unable to prevent, avoid, overcome, delay, or mitigate, including but not limited to: floods, epidemics, earthquakes, quarantine, blockade, war, insurrection or civil strife, or terrorism.
- 13. GOVERNING LAW; ACTIONS.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Oregon, excluding any conflicts of laws principles that would result in this Agreement being interpreted in accordance with any different law. Venue for any lawsuit

arising out of or in connection with this Agreement shall be exclusively in the Clackamas County Circuit Court or federal courts of the State of Oregon. This Agreement is intended for the benefit of the Parties herein only and does not grant any rights to any third parties unless otherwise specifically stated herein.

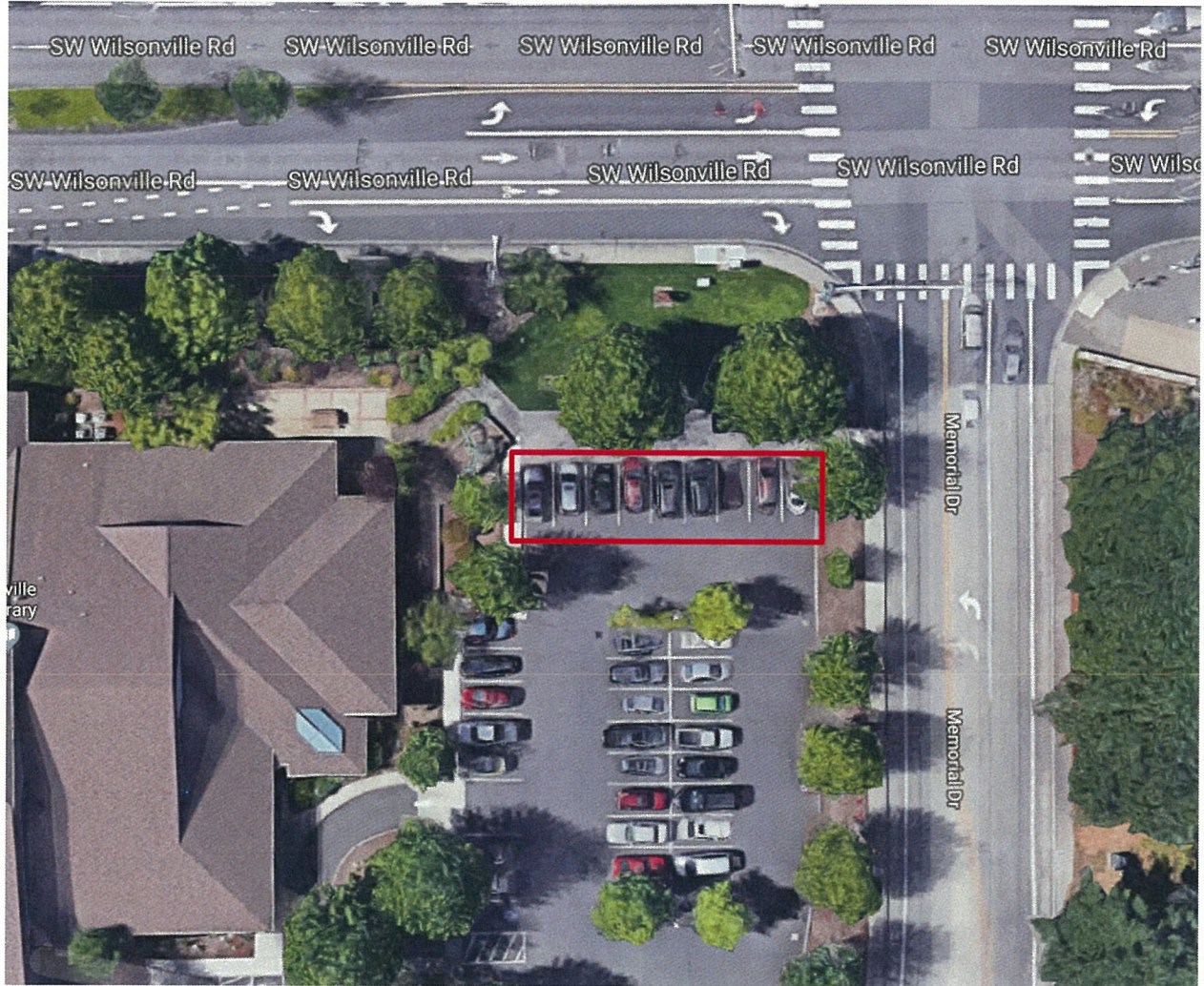
IN WITNESS WHEREOF, and intending to be legally bound, the Parties have duly executed this Agreement by their authorized representatives as of the Effective Date.

Owner:	City of Wilsonville
Signature:	
Date:	1/25/19

PGE:	Portland General Electric Company
Signature:	
Date:	

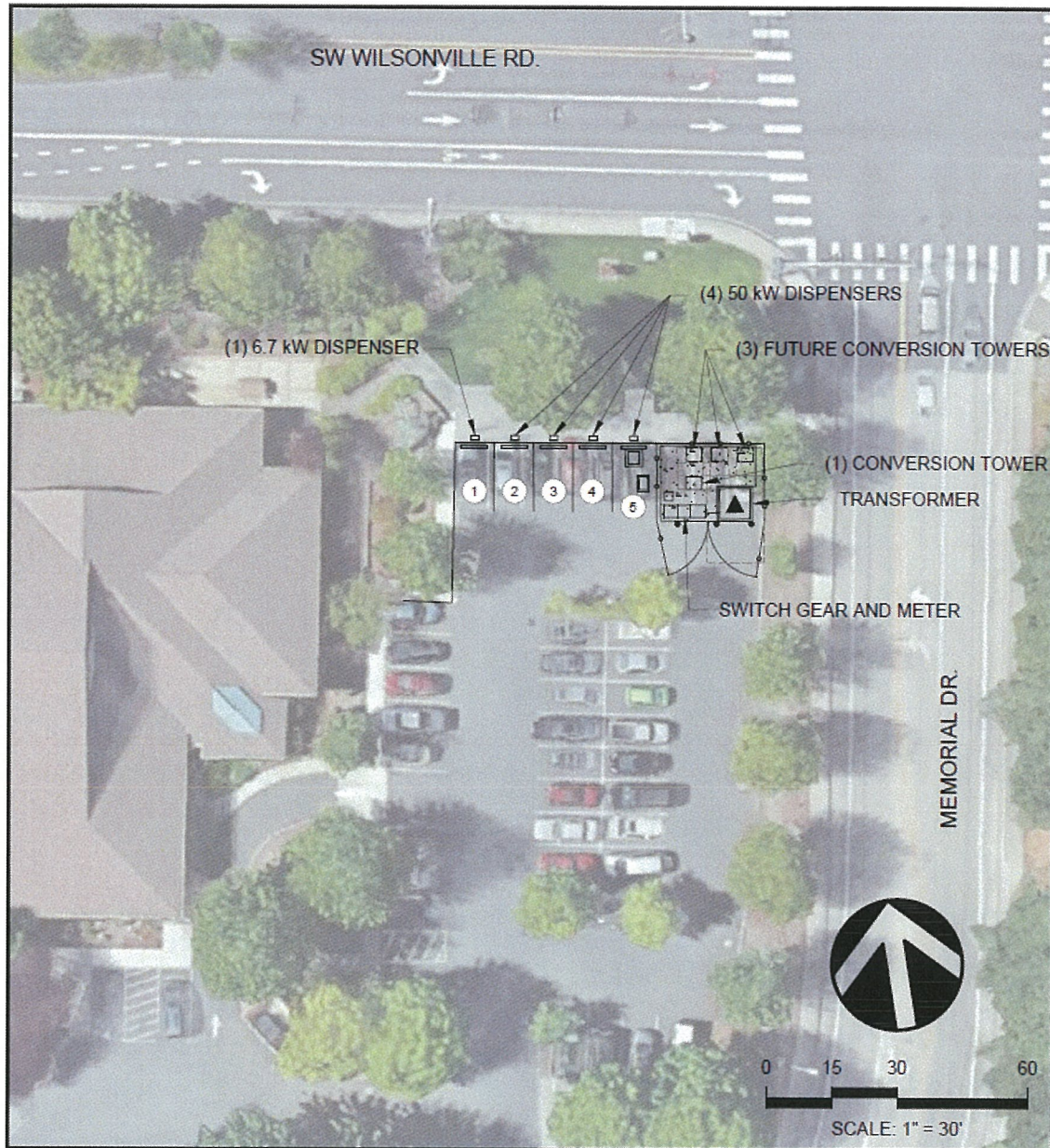
EXHIBIT A – PROPERTY AND CHARGING STATION AREA

Exhibit A1 – Community Charging Hub Location



PGE proposes locating the Electric Avenue community charging hub in the northeast corner of the parking lot. The nine existing parking stalls in this area would be converted to six stalls (five conventional, one ADA compliant) capable of charging electric vehicles.

Exhibit A2- Preliminary Site Design




**DAVID EVANS
AND ASSOCIATES INC.**
 2100 SW River Parkway
 Portland Oregon 97201
 Phone: 503.223.6663
DESIGN STUDIO
Empowering Active Places

PORTLAND GENERAL ELECTRIC
EV CHARGING STATIONS

WILSONVILLE
PRELIMINARY SITE PLAN

DATE: 10/16/2018
DESIGN: SRJ
DRAWN: ACSN

SHEET NO.
EX01

PROJECT NO. TRIA00000018

The preliminary design shown above is for illustrative purposes only and does not reflect PGE's desire to include an ADA compliant parking stall and locate supporting infrastructure (conversion towers, transformer, switchgear, and meter) further to the west.