

ORDINANCE No. 184805

*Grant a temporary, revocable permit to Portland State University for electric vehicle supply equipment services. (Ordinance).

The City of Portland ordains:

Section 1. The Council finds:

1. Oregon has been selected as an early test market for several electric cars. The state has been selected as one of five test markets for the rollout of the fully electric Nissan Leaf. Nissan has accepted 200,000 pre-orders in the five test markets. The first Leaf was delivered into Oregon in December 2010. The Chevy Volt was expected to be available in Oregon in July 2011. The release of these and a variety of other electric vehicles presents a unique opportunity to determine the role of charging infrastructure in public locations in the market adoption of these vehicles. The City of Portland supports the implementation of policies and programs to ensure the success of electric vehicles.
2. Portland State University (PSU) has partnered with Portland General Electric and the City of Portland to create a temporary pilot project on a one block area of SW Montgomery between SW Broadway and SW Sixth. This "Electric Avenue" will showcase a variety of electric vehicle supply equipment manufactured by multiple vendors. The site for the pilot project is surrounded by examples of sustainable transportation infrastructure, including bus, MAX, and Portland Streetcar stops, bicycle parking and support services, and car sharing vehicles.
3. Over the course of the pilot, the partners will investigate the challenges and opportunities associated with installation of multiple types and brands of charging stations in the right-of-way. Occupancy and electricity usage will be documented and studied. Conclusions drawn from the compiled data will help to inform longer-term decisions about pricing, partner roles, and the role of electric vehicle support equipment in the public right-of-way.
4. Given the short-term nature of the proposed pilot, PSU is not seeking permission for long-term operation of "Electric Avenue". At the end of the pilot project, PSU anticipates that the electric vehicle supply equipment will be returned to the respective manufacturing firms. Any long-term operation of charging stations in the area of PSU would be informed by the findings of the demonstration project, requiring a new, future agreement among the partners.
5. PSU has designed this project as an information-gathering and learning experience for all participants. The pilot project is not designed to generate revenue for PSU, the partners or participating vendors. As part of the demonstration, visitors who use the charging stations to power their electric vehicles will pay only standard parking rates with no premium for electricity. PSU will not charge fees of any kind for the use of the charging stations.
6. PSU has submitted a written request asking the City to issue a temporary, revocable permit allowing PSU to immediately begin construction in the right-of-way to install its electric vehicle supply equipment facilities to support this demonstration project and gather data on

the use of electric vehicles for future needs. PSU has accepted that any rights under a temporary, revocable permit will end upon the Permit's expiration. A copy of PSU's letter is attached to this Ordinance as Exhibit A and is hereby incorporated by reference.

7. Due to the short-term, research nature of the pilot project and the limited use of City Streets, standard City provisions including, but not limited to, Compensation and Auditing, Use of Network Capacity, Common User, and Street Vacation are not applicable. For this particular temporary, revocable permit, those standard provisions have been modified or deleted.

NOW, THEREFORE, the Council directs:

a. NATURE AND TERM OF GRANT.

1. Issuance.

A. The City of Portland (City), grants to Portland State University (PSU) a temporary, revocable permit to install, operate and maintain Electric Vehicle Supply Equipment (EVSE), with all necessary Facilities, in, under, and over the surface of SW Montgomery Street, between SW 6th and SW Broadway as shown in the map attached to this Permit as Exhibit B.

B. Throughout this Permit, the City of Portland, Oregon, shall be referred to as the "City," and Portland State University, shall be referred to as the "Grantee."

2. Duration of Permit. The term of this Permit, and all rights and obligations pertaining thereto, shall be effective for a period of 30 months, as measured from its effective date.
3. Effective Date. The effective date of this Permit shall be upon passage of the Permit by the City Council unless Grantee fails to file an unconditional written acceptance of this Permit in accordance with Section r herein, in which event this Permit shall be null and void. The passage date of this Permit is set forth on the last page of the original hereof, as stamped by the Council Clerk.
4. This Permit is temporary and revocable, and no expenditure of money, lapse of time, or event, occurrence or other act shall give PSU any rights, vested or otherwise, to occupy or use the City's streets, or shall operate as an estoppel against, or a waiver by, the City. Upon expiration of the term of this Permit, or its revocation by the City Council, the Grantee shall remove the EVSE and all related Facilities from the City Streets. Any such removal shall be approved by, and to the satisfaction of, the City Engineer.
5. Permit Not Exclusive. This Permit is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other rights to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder.
6. Charter and General Ordinances To Apply. To the extent authorized by law, this Permit

is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Permit, to the extent authorized by law. Nothing in this Permit shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

b. DEFINITIONS.

1. Captions. Throughout this Permit, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Permit. The captions shall not affect the meaning and interpretation of this Permit.
2. Definitions. For the purpose of this Permit, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.
 - A. "City" means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.
 - B. "City Council" means the Council of the City of Portland.
 - C. "Electric Vehicle Supply Equipment" (or EVSE) means electric vehicle charging stations and all necessary Facilities required to service electric vehicle charging stations, including all wires, cables, ducts, conduits, vaults, optical fiber and other necessary Facilities owned or used by the Grantee for the purpose of providing electricity to vehicles fully or partially powered by electricity and located in, under and above City Streets, excluding ducts, conduits and vaults leased from another City Licensee.
 - D. "Facility" means any tangible component of the Electric Vehicle Supply Equipment.
 - E. "Hazardous Substances" has the meaning given by ORS 465.200 (2009).
 - F. "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Streets including, if appropriate, the City itself.
 - G. "Permit" means this Ordinance, as approved by the City Council and accepted by Grantee, according to the terms of Section r.

- H. "Person" means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- I. "Streets" means the surface of, and the space above and below, the public streets, roads, alleys or highways, described in Section a.1.A, used or intended to be used by the general public to the extent the City has the right to allow the Grantee to use them.
- J. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Permit.
- c. COMPENSATION AND AUDITING. Grantee has assured the City that the pilot project is limited to research and educational purposes and that no revenues will be generated by use of the EVSEs. In reliance upon Grantee's declarations, and the public benefit purposes underlying the pilot project, there will be no compensation charged under this Permit for Grantee's use of the Streets of the City.
- d. GENERAL FINANCIAL AND INSURANCE PROVISIONS.
1. Insurance.
- A. Grantee shall maintain public liability and property damage insurance that protects Grantee and the City from the claims referred to in Section e. The insurance shall provide coverage at all times of not less than \$1,133,300 combined single limit for bodily injury liability and property damage liability per occurrence with an annual aggregate limit of not less than \$3,000,000. The limits of the insurance shall be subject to any changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of the Permit. The insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. Grantee agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, for the duration of this Permit. Grantee shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Section. The insurance policy shall contain a provision stating that the insurer shall provide thirty (30) days prior written notice to the City of its intent to non-renew, cancel, or make a material adverse change in coverage. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section during the term of this Permit, Grantee shall provide a replacement policy. Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The certificate of insurance shall be reviewed

and approved as to form by the City Attorney. Any failure by Grantee to maintain or provide coverage in the amount and nature as required under this Section d.1.A shall be cause for revocation of this Permit under Section n.

- B. With the adoption of SB 242 by the Oregon Legislature in the 2011 Session, Grantee will have the option of either purchasing insurance, operating a self-insurance program or otherwise arranging for equivalent coverage of any nature, on or after July 1, 2012. In light of these statutory changes the parties agree that Grantee may comply with the requirements of Section d.1.A by providing the City with either proof of obtaining insurance, operating self-insurance or arranging for equivalent coverage, in at least the amounts and nature specified in Subsection d.1.A. The adequacy of the amount and scope of coverage provided by Grantee shall be subject to the City Attorney's review and approval. So long as Grantee participates in Oregon's self-insurance program as an agency of the State, the adequacy of such self-insurance shall be presumed adequate for purposes of the City Attorney's review and approval.

2. Faithful Performance Bond.

- A. Upon the effective date of this Permit, the Grantee shall furnish proof of the posting of a faithful performance bond or irrevocable letter of credit or other form of guaranty running to the City, with good and sufficient surety approved by the City, in the penal sum of One Hundred Thousand dollars (\$100,000), conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Permit. Grantee shall pay all premiums or other costs associated with maintaining any such guaranty, and shall keep the same in full force and effect at all times throughout the like of this Permit, including, if necessary, the time required for removal of all of Grantee's EVSE installed in the City's Streets. The guaranty shall be conditioned that it shall not be terminated or otherwise allowed to expire without thirty (30) days' prior written notice first being given to the City Auditor. The adequacy of the guaranty shall be reviewed and approved as to form by the City Attorney as to its adequacy under the requirements of this Section. Any failure by Grantee to maintain or provide coverage as required under this Subsection shall be cause for revocation of this Permit under Section n.
- B. During the term of this Permit, Grantee shall file with the City Auditor a duplicate copy of the bond or irrevocable letter of credit along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond or irrevocable letter of credit under Section d.2.A if a bona fide, good faith dispute exists between the City and the Grantee.
- C. With the adoption of SB 242 by the Oregon Legislature in the 2011 Session, Grantee will have the option of either purchasing insurance, operating a self-insurance program or otherwise arranging for equivalent coverage of any nature, on and after July 1, 2012. In light of these statutory changes the parties agree that Grantee may comply with the requirements of Subsection d.2.A by providing the City with either proof of posting a guaranty, operating self-insurance or arranging for equivalent

coverage, in at least the amounts and nature specified in Subsection d.2.A. The adequacy of the amount and scope of coverage provided by Grantee shall be subject to the City Attorney's review and approval. So long as Grantee participates in Oregon's self-insurance program as an agency of the State, such self-insurance shall be presumed adequate for purposes of the City Attorney's review and approval under this Subsection.

3. Construction Bond.

- A. During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond, irrevocable letter of credit or other equivalent form of guaranty, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of \$100,000. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section f. Grantee shall pay all premiums or other costs associated with maintaining any such guaranty, and shall keep the same in full force and effect at all times during the construction work. The guaranty shall be conditioned that it may be terminated upon final approval of Grantee's construction work in or under the Streets by the City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the City agrees to sign all documents necessary to release the guaranty in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the City Auditor documentation of the guaranty, along with written evidence of the required premiums. The guaranty shall be subject to the reasonable approval of the City Attorney as to its adequacy under the requirements of this Section. Any failure by Grantee to maintain or provide coverage as required under this Subsection shall be cause for revocation of this Permit under Section n.
- B. With the adoption of SB 242 by the Oregon Legislature in the 2011 Session, Grantee will have the option of either purchasing insurance, operating a self-insurance program or otherwise arranging for equivalent coverage of any nature, on and after July 1, 2012. In light of these statutory changes the parties agree that Grantee may comply with the requirements of Subsection d.3.A by providing the City with either proof of posting a guaranty, operating self-insurance or arranging for equivalent coverage, in at least the amounts and nature specified in Subsection d.3.A. The adequacy of the amount and scope of coverage provided by Grantee shall be subject to the City Attorney's review and approval. So long as Grantee participates in the State's self-insurance program as an agency of the State such self-insurance shall be presumed to be approved by the City Attorney.

e. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS.

1. Indemnification

- A. To the extent permitted under Article XI, Section 7 of the Oregon Constitution, and

subject to the limitations of the Oregon Tort Claims Act, Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Permit, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Facilities in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

- B. To the extent permitted under Article XI, Section 7 of the Oregon Constitution, and subject to the limitations of the Oregon Tort Claims Act, Grantee also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities in the Streets in a timely manner in accordance with a relocation schedule furnished to Grantee by the City Engineer, unless Grantee's failure arises directly from the City's negligence or willful misconduct.
- C. Indemnification – Hazardous Substances. To the extent permitted under Article XI, Section 7 of the Oregon Constitution, and subject to the limitations of the Oregon Tort Claims Act, Grantee agrees to forever indemnify the City, its officers, agents, and employees, from and against any claims, costs, and expenses of any kind, whether direct or indirect, pursuant to any state or federal law, statute, regulation, or order, for the removal or remediation of any leaks, spills, contamination, or residues of Hazardous Substances, directly attributable to Grantee's EVSE in the Streets.

f. CONSTRUCTION AND RELOCATION.

1. Construction.

- A. Subject to applicable regulations of the City, Grantee may perform all necessary construction to install, operate, and maintain its EVSE. All of Grantee's construction and maintenance of EVSE within Streets pursuant to this Permit shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all Bureau of Transportation permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any Facilities within City Streets. Grantee shall pay all applicable fees due for Bureau of Transportation permits.
- B. Maps. As the Grantee's construction in the Streets is completed, Grantee shall provide the City with maps showing the location of its installed Facilities in the

Streets, as built. Such as-built maps shall be in a form acceptable to the City Engineer.

- C. Grantee may make excavations in the Streets for any Facility needed for the maintenance or extension or removal of the Grantee's EVSE, subject to obtaining Bureau of Transportation permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any Licensees or bureaus of the City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.
 - D. In the event that emergency repairs are necessary for Grantee's Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate Bureau of Transportation permits the next business day following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.
2. Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law (ORS 757.542 to 757.562 and 757.993 (2009)) and the rules and regulations promulgated thereunder.
 3. Relocation. The City shall have the right to require Grantee to change the location of its Facilities within the Streets when the public convenience requires such change, and the expense thereof shall be paid by Grantee (however, payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). Except as to materials or design requirements for bridge maintenance or seismic upgrading, if in ordering relocation, the City imposes additional specifications regarding materials or design for Grantee's Facilities, the additional marginal increase shall not be considered relocation costs that are Grantee's responsibility. The City Engineer shall have unlimited discretion in determining the reasonable relocation schedule, based upon the City Engineer's consideration of the total circumstances of the project schedule. If after receiving the City Engineer's relocation schedule, Grantee identifies in writing that the work associated with relocating Grantee's Facilities will be of such size or scope that Grantee believes that it is probable that Grantee will not be able to complete the work within the schedule, Grantee may request a meeting with the City Engineer to discuss whether modification of the relocation schedule, alternate construction methods, or alternate locations are reasonably possible given other project constraints. The City Engineer, working with City bureaus, will consider Grantee's safety, reliability, and cost concerns while considering potential effects on project schedules, project budget, and any other relevant matters. However, the City Engineer will retain full authority and discretion to make any final decisions regarding any modifications to the relocation schedule, based upon the City Engineer's consideration of the total circumstances of the project schedule. The City shall provide Grantee with the standard notice given under the circumstances to Licensees. Should Grantee fail to remove or relocate any such Facilities by the date established by the City Engineer's schedule, the City may cause and/or effect

such removal or relocation by qualified workers and the expense thereof shall be paid by Grantee, including all direct, indirect, and/or consequential costs and expenses incurred by the City due to Grantee's delay (however, payment by Grantee shall in no way limit Grantee's right, if any, to seek reimbursement for such costs from any third party). If the City requires Grantee to relocate its Facilities located within the Streets, the City will make a reasonable effort to provide Grantee with an alternate location for its Facilities within the Streets, or if an alternate location is unavailable, will make the City's project management personnel available to meet with affected property owners and explain City project needs in support of Grantee's efforts to secure an alternate location on private property.

4. Grantee shall install and maintain its EVSE in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or other facilities that may have been laid in the Streets by or under the City's authority.

g. RESTORATION OF STREETS.

1. Whenever Grantee disturbs the surface of any unimproved Street for any purpose, Grantee shall promptly restore the street to at least its prior condition to the satisfaction of the City Engineer. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer, in accordance with standards developed and adopted by the City Engineer.
2. If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration of the Street and its surface within the area affected by the excavation. Grantee shall obtain all permits for construction work, from the City Engineer's office, prior to the start of any construction. The City may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Section g shall be done in strict compliance with all applicable rules, regulations and ordinances of the City. Grantee's responsibility for maintaining repairs to any surfaces disturbed by Grantee's work shall end upon the occurrence of either a reconstruction of the Street in an approved manner by the City (curb to curb) or upon subsequent work at the same location by any other Person franchised, permitted, licensed or otherwise granted authority by the City, whichever occurs first.

- h. RESERVATION OF CITY STREET RIGHTS. Nothing in this Permit shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street or laying down, repairing or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as

to not obstruct, injure or prevent the unrestricted use and operation of Grantee's EVSE of the Grantee under this Permit. However, if any of the Grantee's EVSE interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct Grantee to relocate as provided in Section f.3.

- i. MAINTENANCE OF FACILITIES. Grantee shall provide and put in use any measure reasonably necessary to control Grantee's Facilities to prevent injury to the City's property or property belonging to any Person within the City. Notwithstanding the foregoing, it shall not be a breach of this Section i if such injury is not reasonable foreseeable by Grantee. Grantee, solely at its own expense, shall repair, renew, change and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its EVSE in a manner that requires any customer, except the City or any entity franchised, permitted or licensed by the City, to install cables, ducts, conduits, or other facilities, in, under or over the City's Streets.
- j. DISCONTINUED USE OF FACILITIES. Prior to the expiration of this Permit, Grantee shall discontinue use of its EVSE. Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefore. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require the Grantee to remove the Facility from the street area or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time as Grantee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another Person having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.
- k. ACKNOWLEDGEMENT OF CITY POLICY. Use of the EVSEs located within the Streets shall be limited to the purposes of parking, electric vehicle charging and collecting data related to the use of the EVSE. In accordance with this use limitation, information displayed on the EVSE shall be related solely to operation and use of the EVSE. Grantee shall contractually require vendors to comply with this limitation and with all applicable City ordinances, laws and policies, including but not limited to, restrictions upon advertising within the Streets.
- l. HAZARDOUS SUBSTANCES.

1. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's EVSE in the City Streets.
 2. Grantee shall maintain and inspect its EVSE located in the City Streets. If Grantee discovers any Hazardous Substances in the course of Grantee's work on its Facilities in the Streets, Grantee shall provide a written report of the discovery to the City within two (2) business days. Grantee shall immediately proceed to remove and remediate, in accordance with, and only to the extent required by all applicable local, state, and federal laws, any Hazardous Substances in the Streets directly attributable to or caused by Grantee's Facilities or the acts or omissions of Grantee. Nothing in this Permit transfers or is intended to transfer any liability to the City for removal or remediation of any such Hazardous Substances in the Streets.
 3. Construction, Modification, or Removal of Facilities. In the course of construction, modification, or removal of any of its Facilities in the Streets, to the extent necessary to safely proceed with such work, Grantee shall remove and remediate Hazardous Substances encountered in the course of its activities in accordance with, and only to the extent required by, all applicable state and federal laws, statutes, regulations, and orders. Grantee may use reasonable business efforts to recover its costs for such removal and disposal from all legally responsible third parties.
- m. ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE. Grantee shall not assign, sell, lease, or otherwise transfer this Permit or any of Grantee's EVSE located in the Streets by authority of this Permit without the express prior consent of the City as established by ordinance.
- n. REVOCATION AND REMEDIES.
1. Revocation. In addition to any other rights set out elsewhere in this Permit, the City reserves the right to revoke the Permit, and all of Grantee's rights arising thereunder, in the event that:
 - A. The Grantee violates any material provision of the Permit;
 - (1) For purposes of this Section, the following are material provisions of this Permit, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Permit:
 - (A) Any failure by Grantee to maintain the liability insurance required under this Permit;
 - (B) Any failure by Grantee to maintain the performance bond required under this Permit;
 - (C) Any failure by Grantee to otherwise fully comply with the requirements of Section d through Section n.

- B. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;
 - C. There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its EVSE within the City;
 - D. The Grantee's construction schedule is delayed for over 18 months and such delay has not been caused by the actions or omissions of the City, or Force Majeure; or,
 - E. In addition to its other rights and remedies as set forth in this Permit, the City shall have the right to revoke this Permit after the appointment of a receiver or trustee to take over and conduct the Grantee's business, or the initiation of receivership, reorganization, insolvency or other similar action or proceeding, unless Grantee, its receiver or trustee timely and fully performs all obligations, until such time as this Permit is either rejected or assumed by Grantee, its receiver or trustee. Grantee acknowledges such conditions are commercially reasonable.
2. Additional Remedies. In addition to any rights set out elsewhere in this Permit, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:
- A. Impose a financial penalty of up to \$1,000.00 per Permit violation; or,
 - B. Suspend the Grantee's Permit rights, until the Grantee corrects or otherwise remedies the violation.
 - C. Revocation. The City Council may revoke this Permit in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the Permit. The City shall exercise its revocation rights under this subsection consistent with the terms of Section n.
3. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.
4. Notice and Opportunity to Cure. The City shall give Grantee thirty (30) day's prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if the Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated

reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights under this Section if a bona fide, good faith dispute exists between the City and the Grantee.

- o. RENEGOTIATION. In the event that any provision of this Permit becomes invalid or unenforceable and the City Council or the Grantee expressly finds that such provision constituted a consideration material to entering into this Permit, the City and the Grantee may mutually agree to renegotiate the terms of this Permit. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the offer to renegotiate, the parties shall have 90 days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.
- p. EXPIRATION. Upon the expiration of this Permit, the City may, within one year from the expiration of the prior Permit, grant a permit or franchise to any other Person for use of the EVSE. Grantee shall otherwise be responsible for all costs associated with removal of the EVSE facilities and restoration of the Streets.
- q. MISCELLANEOUS
 - 1. Compliance With Laws.
 - A. Both Grantee and the City shall comply with all applicable federal and state laws.
 - B. Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.
 - 2. Severability. If any Section, provision or clause of this Permit is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or published regulations, the remainder of this Permit shall not be affected.
 - 3. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Permit in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Permit by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Permit by reason of such failure or neglect.
 - 4. Force Majeure.
 - A. For purposes of this Section q.4, the term Force Majeure shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts or terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, or other similar events which are not reasonably within the control of the parties hereto.

- B. If the Grantee is wholly or partially unable to carry out its obligations under this Permit as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Permit, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Permit.
5. Choice of Venue and Law. Any litigation between the City and the Grantee arising under or regarding this Permit shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon. This Permit shall be governed by and construed in accordance with the laws of the State of Oregon, even if Oregon's choice of law rules would otherwise require application of the laws of a different state.
6. Notice. Any notice provided for under this Permit shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:
- A. If to the City: Office of Cable Communications and Franchise Management
City of Portland, Oregon
1120 SW 5th Avenue, Room 1305
Portland, Oregon 97204
FAX (503) 823-5370
- With a copy to: City Attorney's Office
City of Portland
Room 430, City Hall
1221 SW 4th Avenue
Portland, Oregon 97204
FAX (503) 823-3089
- B. If to the Grantee: Portland State University
Office of Purchasing & Contracting
Attn: Karen Preston, Manager
P.O. Box 751-PUR
Portland, OR 97207-0751
FAX: (503) 725-5591

And Portland State University
Finance and Administration

Attn: Mark Gregory
P.O. Box 751-FADM
Portland, OR 97207
FAX: (503) 725-5908

- C. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).
7. Public Records. All information and records submitted to the City are subject to disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. If Grantee reasonably believes that any information or records it submits to the City may be exempt from disclosure under the Oregon Public Records Law, Grantee must identify such information with particularity and include the following statement:
- “This data is exempt from disclosure under the Oregon Public Records Law pursuant to ORS 192, and is not to be disclosed except in accordance with the Oregon Public Records Law, ORS 192.410 through 192.505.”
- If Grantee fails to identify with particularity the portions of such information that Grantee believes are exempt from disclosure, and the basis for its conclusion that the identified information is exempt from disclosure, Grantee is deemed to waive any future claim regarding non-disclosure of that information.
- r. WRITTEN ACCEPTANCE. On or before fifteen days after this Ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.
- s. OTHER AUTHORITY SUPERSEDED. Upon effectiveness of this Permit, any and all authority to operate previously granted to Grantee by the City shall be superseded by this Permit.

184805

Section 2. The Council declares that an emergency exists because the general public welfare will be served by PSU being authorized to immediately begin construction of the "Electric Avenue", to allow it to begin operation without delay and introduce further competition into the marketplace for electric vehicle charging stations; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by Council: **AUG 10 2011**

LaVonne Griffin-Valade
Auditor of the City of Portland

By: *Gayla Jennings*

Deputy

Prepared by: Commissioner Dan Saltzman
JLi/BEWalters
July 29, 2011

Agenda No. **ORDINANCE NO. 184805**

Title

*Grant a Temporary, Revocable Permit to Portland State University for electric vehicle supply equipment services and establish terms and conditions. (Ordinance).

<p>INTRODUCED BY Commissioner/Auditor: Commissioner Dan Saltzman</p>	<p>CLERK USE: DATE FILED <u>AUG 05 2011</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman <i>Dan Saltzman</i></p> <p>Position 4/Safety - Leonard</p>	<p>LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>Susan Pearson</i> Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau: OCCFM Bureau Head: David C. Olson <i>David C. Olson</i></p> <p>Prepared by: J.Li Date Prepared: August 1, 2011</p> <p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date August 10, 2011</p> <p>City Attorney Approval <i>Benjamin Walters</i></p>	
<p>ACTION TAKEN:</p>	

AGENDA

TIME CERTAIN
Start time: _____

Total amount of time needed: _____
(for presentation, testimony and discussion)

CONSENT

REGULAR
Total amount of time needed: 10 minutes
(for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	_____	_____