

**Ordinance No.** 188561

Grant a franchise to Portland General Electric Company dba World Trade Center Properties for electric vehicle charging station services, for a period of five years. (Ordinance)

The City of Portland ordains:

- a. The City of Portland supports the implementation of policies and programs to ensure the success of electric vehicles.
- b. Grantee has installed electric charging stations to provide service to specific parking spaces located on SW Salmon Street in front of the World Trade Center building under a previously granted temporary, revocable permit. Ordinance No. 187254, passed July 15, 2015. Grantee will be documenting and evaluating charger use and electricity usage. Conclusions drawn from the compiled data will help to inform the City and Grantee as to longer-term decisions about whether and how to collect fees for charging electric vehicles and what technologies are available to address collection of fees for both parking and charging services. as well as the role of electric vehicle support equipment in the public right-of-way.
- c. The use of the right of way under this franchise is designed to provide information to inform City policy with regard to electric vehicle charging station services and not designed to generate significant revenue for Portland General Electric Company.

## **Section 1. NATURE AND TERM OF GRANT.**

### **1.1 Grant of Franchise.**

(A) The City of Portland, Oregon grants to Portland General Electric Company dba World Trade Center Properties, a company qualified to do business in the State of Oregon, and to its successors and assigns as approved by the City under Section 7, a franchise to install, operate and maintain Electric Vehicle Charging Facilities in, under and over the Streets as necessary to provide electric vehicle charging services. Grantee's Electric Vehicle Charging Facilities may be installed within the area generally located along SW Salmon Street, between SW Second and SW First Streets, as identified in blue (the "Blue Zone") on the map attached to this Franchise as Exhibit A, which is incorporated by reference. Grantee may seek to amend, alter or add to the Blue Zone by filing a map showing such proposed changes with the City's Office for Community Technology and the City Engineer. The City shall respond to Grantee by approving, modifying, or denying Grantee's request within 45 days of receiving Grantee's proposal. However, the total area within which Grantee's Electric Vehicle Charging Facilities may be located in City Streets shall not exceed 500 (Five hundred) square feet unless separately authorized by the City Council by ordinance amending this Franchise. Consistent with Section 6.2(B)(2) of this Franchise, Grantee shall file a map showing the final amendments, alterations or additions, as-built, with the City Engineer.

(B) Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the “City” and Portland General Electric Company dba World Trade Center Properties shall be referred to as “Grantee.”

(C) Grantee may construct, operate, repair and maintain Grantee’s Electric Vehicle Charging Facilities within the Streets in the manner and under the conditions set forth in this Franchise.

(D) Grantee may also during the Term of this Franchise maintain such parking spaces as are necessary for drivers of electric vehicles to make use of the Electric Vehicle Charging Facilities within the Blue Zone. Any permit required under Section 3.8, below, shall run concurrent with this Franchise. The permit will include a condition that the City will confer with Grantee before granting permission to third parties to encroach upon all or part of the parking spaces included within the Blue Zone.

1.2 Duration of Franchise. The term of this Franchise, and all the rights and obligations pertaining thereto, shall be five (5) years from the effective date of this Franchise, unless revoked sooner as provided herein.

1.3 Effective Date. The effective date of this Franchise shall be sixty (60) days after passage of the Franchise by the City Council, unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 11.9, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

1.4 Franchise Not Exclusive. This Franchise is not exclusive. The City expressly reserves the right to grant franchises, licenses, permits or other similar 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 under this Franchise except within the location described in Exhibit A and Section 1.1(A) of this Franchise.

1.5 Compliance with Laws. To the extent authorized by law, this Franchise 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 materially in conflict with 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), as the same now exist or hereafter are amended by the people of the City, are hereby incorporated by reference and made a part of this Franchise. Nothing in this Franchise 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.

1.6 Due to the limited scope and extent of Grantee’s proposed use of Streets under this Franchise, a number of the standard City provisions are not applicable, such as Tree Trimming, City Ducts in Connection with New Construction, and Common Duct Use. Accordingly, for this particular Franchise, those standard provisions have been modified or deleted. The City reserves

the right to re-evaluate the applicability of these provisions if the use of Streets is expanded beyond the area identified in Section 1.1(A)

## **Section 2. DEFINITIONS.**

2.1 Captions. Throughout this Franchise, captions are intended solely to facilitate reading and reference provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

2.2 Definitions. For the purpose of this Franchise, 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 Charging Facilities" or "EVCF" means electric vehicle charging stations owned or used by Grantee for the purpose of supplying electricity to vehicles fully or partially powered by electricity, and all necessary associated equipment, including all wires, cables, ducts, conduits, vaults, optical fiber or other tangible components, excluding ducts, conduits and vaults leased from another City franchisee.

(D) "Franchise" means this ordinance, as approved by the City Council and accepted by Grantee pursuant to Section 11.9.

(E) "Gross Revenues" means all amounts earned by Grantee, in whatever form and from all sources, derived from the operation of Grantee's Electric Vehicle Charging Facilities within the City as authorized by this Franchise, but shall not include Parking Revenue.

(1) "Gross Revenues" shall include amounts earned during any period, regardless of whether:

(a) The amounts are paid in cash, in trade or by means of some other benefit to Grantee;

(b) The goods or services with which the revenue is associated are provided at cost or the revenue amount can be matched against an equivalent expenditure;

(c) The amounts are characterized, separately identified or accounted as being for goods or services, or fees to be paid to government agencies; or,

(d) The amounts are initially recorded by the Grantee.

(2) "Gross Revenues" shall not be net of:

- (a) Any operating expense;
- (b) Any accrual, including, without limitation, any accrual for commissions; or,
- (c) Any other expenditure, regardless of whether such expense, accrual or expenditure reflects a cash payment.

(F) "Minimum Annual Franchise Fee" shall mean \$3,000 per year.

(G) "Parking Revenue" shall mean the revenue received by Grantee in lieu of the parking fees that would otherwise be received by the City for the 2 electric vehicle parking spaces on SW Salmon Street that are no longer separately metered by the City, which will be set at \$7,261.00 per year during the first year of this Franchise, and will be adjusted in subsequent years through the annual parking permit process.

(H) "Person" means any natural person, and any individual, sole proprietorship, partnership, association, corporation, cooperative, limited liability company, municipal corporation or other form of organization authorized to do business in the State of Oregon.

(I) "Streets" means the surface of and the space above and below any public street, road, alley or highway within the City, used or intended to be used by the general public, to the extent the City has the right to allow Grantee to use them.

(J) "Year" or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

### **Section 3. COMPENSATION.**

3.1 Amount of Compensation. As compensation for the benefits and privileges under this Franchise, and in consideration of permission to use the Streets, Grantee shall pay as a franchise fee to the City through the duration of this Franchise, an amount equal to the greater of the Minimum Annual Franchise Fee or five percent (5%) of Grantee's Gross Revenues.

3.2 Payment of Franchise Fee Compensation.

(A) Grantee's Minimum Annual Franchise Fee payable under Section 3.1 of this Franchise shall be paid to the City 45 days after the effective date of this Franchise, and will cover and be applicable to the full calendar year in which the payment is made. Subsequent annual payments of the Grantee's Minimum Annual Franchise Fee thereafter shall be due on or before February 15<sup>th</sup> of each year, and shall cover and be applicable to the previous calendar year.

(B) Any Gross Revenue based Franchise fee payments to the City under Section 3.1, for amounts in excess of the Minimum Annual Franchise fee for any year during the term of this Franchise Agreement, shall be computed based on Grantee's Gross Revenues from the previous calendar year. Such payment shall be due no later than February 15<sup>th</sup> of each year and shall be applicable to the full calendar year for which the payment is made.

(C) Franchise fee payments not received by the City by the due date shall be assessed interest equal to the rate of one percent (1%) per month, compounded monthly. Interest shall be due on the entire late payment from the date on which the payment was due until the date on which the City receives the payment.

(D) Grantee shall set up electronic fund transfer within sixty (60) days of the franchise effective date to submit payments to the City by Automated Clearing House (ACH) payment receipts. The City may approve any written requests from Grantee for waivers from the ACH requirement.

### 3.3 Reports.

Payments pursuant to Section 3.2(B) shall be accompanied by a written report to the City, containing an accurate statement in summarized form, as well as in detail, of Grantee's Gross Revenues and the computation of the payment amount, verified by an officer or other authorized representative of Grantee, setting forth its Gross Revenues according to their accounting subdivisions, and any deductions claimed for the period upon which the payment is computed. Grantee shall submit annual gross revenue reports for each calendar year, even if the payment amount for any calendar year is zero.

Grantee shall also track and submit reports, on a quarterly basis. The reports shall include information documenting:

- Charging history
  - Average length of charge
  - Average kWh of charge use
  - Number of charge events
- Typical charging use patterns (Time of day and monthly use pattern)
- Complaints and mitigation

In addition, Grantee shall submit detailed usage data, as agreed upon in a separate Non-Disclosure Agreement (NDA), substantially similar to Exhibit B and incorporated by reference. This NDA shall be reviewed on an annual basis as needed, and may be updated to reflect changes in data reporting capabilities.

3.4 Cost of Pre-franchising and Publication. Grantee shall pay the costs of publication of this Franchise and any amendments thereto, if such publication is required by the City Charter.

3.5 Acceptance of Payment and Recomputation. Acceptance of payment pursuant to Section 3 shall not be construed as an accord that the amount paid is, in fact, the correct amount,

nor as a release of any claim the City may have for further or additional sums payable. All amounts paid under Section 3 shall be subject to review by the City, provided that only payments which occurred during a period of thirty-six (36) months prior to the date the City notifies Grantee of its intent to perform a review as provided in Section 3.6 shall be subject to such review. Grantee agrees to pay the City for:

(A) Interest on any underpayment of an amount due under Section 3 that is disclosed as the result of a review, such interest to be calculated at the interest rate pursuant to Section 3.2(C).

(B) A penalty of five percent (5%) of the underpayment shall be due within forty-five (45) days of written notice from the City, if the City's review discloses that Grantee has paid ninety percent (90%) or less of the principal amount owing for the period under review.

### 3.6 Authority to Conduct Financial Reviews.

(A) The City and its agents and representatives shall have authority to arrange for and conduct reviews of any payments under this Franchise, upon no less than thirty (30) days prior written notice to Grantee, and during normal business hours at reasonable locations in the City or the Portland metropolitan area designated by Grantee. The City's thirty (30) day notice shall provide Grantee with a preliminary list of financial documentation requested by the City for review. The City may determine the scope of review in each instance. All amounts paid by Grantee shall be subject to review by the City, provided that such review be initiated within thirty-six (36) months from the date payment was due. City requests for reviews shall be in writing. If Grantee has not provided copies of all information reasonably within the scope of the review to the City within 30 days from the date of the written request, Grantee shall provide access within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice. If the City requests in writing that Grantee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Grantee fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the thirty-six (36) month period shall be extended by one day for each day or part thereof beyond 30 days that Grantee fails to provide, or fails to cause to be provided, such requested information.

(B) Grantee agrees to reimburse the City for the reasonable costs of such review if the review discloses that Grantee has paid ninety percent (90%) or less of the fees owing under Section 3 of this Franchise for the period at issue.

(C) Subject to the requirement set forth in Section 3.6, Grantee shall reimburse the City within forty-five (45) days of receipt of an invoice from the City showing such costs were actually incurred and were directly related to the review.

3.7 Grantee Dispute of Review. Grantee shall have the ability to dispute any determination of underpayment by the City within thirty (30) days of receipt of written notice from the City related to the review. If Grantee disputes the City's determination of any underpayment under this Franchise, Grantee shall place the disputed amount in an escrow account at a financial institution acceptable to the City with instructions agreed to by the City until final resolution.

3.8 Liability for Licenses and Taxes/Permit Required. Payment of the franchise fee and other financial obligations under this Franchise shall not exempt Grantee from the payment of any license, fee, tax or charge on the business, occupation, property or income of Grantee that may lawfully be imposed by the City, except as may otherwise be provided in the ordinance or ordinances imposing such other license fee, tax or charge. In addition, Grantee shall obtain and maintain a valid annual parking permit on file with the City's Bureau of Transportation regarding the parking spaces in the Streets adjacent to and specifically related to the operation of Electric Vehicle Charging Facilities within the Blue Zone under this Franchise, which shall contain terms and conditions consistent with this Franchise.

#### **Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS.**

4.1 Grantee shall maintain in full force and effect, at its own cost and expense, continuously during this Franchise, insurance and other forms of financial guarantees in accordance with applicable Portland City Code and administrative regulations.

4.2 Insurance. Until the time when such implementing administrative regulations are effective, Grantee shall maintain insurance in accordance with the following insurance coverage:

(A) (1) Commercial General Liability Insurance in the amount of two million dollars (\$2,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of Grantee's ECVF, and the conduct of Grantee's business in the City to the extent authorized by this Franchise.

(2) Automobile Liability Insurance in the amount of one million dollars (\$1,000,000) combined single limit for bodily injury and property damage coverage.

(3) Workers' Compensation Insurance meeting all legal requirements of the State of Oregon.

(4) Employers' Liability Insurance in the following amounts:

(a) Bodily Injury by Accident: one hundred thousand dollars (\$100,000); and

(b) Bodily Injury by Disease: one hundred thousand dollars (\$100,000) employee limit; five hundred thousand dollars (\$500,000) policy limit.

(5) The limits of the insurance as provided in this Section 4.2 shall be subject to any changes as to the maximum limits imposed on municipalities of the State of Oregon during the term of this Franchise.

(B) The City shall be designated as an additional insured under each of the insurance policies required in this Section 4.2 by endorsement on the policies. The insurance shall be without prejudice to coverage otherwise existing.

(C) Grantee shall not cancel any required insurance policy, nor shall Grantee allow the required insurance to lapse, without obtaining alternative insurance in conformance with this Franchise. For any of the insurance policies identifying the City as an additional insured, as provided under this Section 4.2, Grantee shall notify the City within thirty (30) days of any notice of non-renewal, cancellation or any change in coverage materially adverse to the City. Notices will be provided in accordance with the applicable policies. If the insurance is canceled or materially altered so as to be out of compliance with the requirements of this Section 4.2 during the term of this Franchise, Grantee shall provide a replacement policy.

(D) Each of the required insurance policies shall be with insurers authorized or permitted to do business in the State of Oregon, with an A-: VII or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition or an equivalent rating entity.

(E) Grantee shall provide the City, within fifteen (15) days of the Effective Date of this Franchise, written evidence of insurance certifying the coverage required, which evidence shall be subject to the approval of the City Attorney's Office as to whether the insurance provided is consistent with the requirements of this Section 4.2. Failure to maintain adequate insurance as required under this Section 4.2 shall be deemed sufficient cause for revocation of this Franchise.

(F) In the alternative to providing written evidence of insurance to the City certifying financial assurance as required under Subsections 4.2(A) through (E), Grantee may provide the City with an annual statement regarding its self-insurance, certifying financial assurances in lieu of providing insurance. Grantee's statement of self-insurance shall provide at least the same amount and scope of coverage for Grantee and the City, its officers, agents and employees, as otherwise required under Section 4.2. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 4.2(F), any failure by Grantee to maintain adequate self-insurance shall be sufficient cause for the City to declare a revocation of this Franchise under and subject to Section 8.

#### 4.3 Faithful Performance Bond.

(A) Grantee shall maintain in full force and effect, at its own cost and expense, continuously during this Franchise, a faithful performance bond running to the City, with good and sufficient surety approved by the City, in accordance with applicable Portland City Code and administrative regulations. Until the time when such administrative regulations are effective, and upon the effective date of this Franchise, Grantee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of not less than \$100,000, conditioned that Grantee shall well and truly observe, fulfill and perform each term and condition of the Franchise. Such bond shall be maintained by Grantee throughout the term of this Franchise.

(B) Grantee shall pay all premiums charged for the bond, and unless the City Council specifically directs otherwise, shall keep the bond in full force and effect at all times throughout the term of the Franchise, including the later of either:

(1) The remaining term of this Franchise; or

(2) If required by the City, the removal of all Grantee's System installed in the City's Streets.

(C) The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City. The bond is subject to review and approval by the City Attorney as to its adequacy under the requirements of this Section 4.3. During the term of the Franchise, Grantee shall file with the City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights against the performance bond under Section 4.3 if a bona fide, good faith dispute exists between the City and Grantee.

(D) (1) Subject to the City's prior approval, Grantee may provide an irrevocable letter of credit or equivalent form of financial assurance in lieu of a faithful performance bond. The alternative form of financial assurance shall give the City substantially the same rights and guarantees provided by a faithful performance bond.

(2) In the alternative to posting a performance bond as required under Subsections 4.3(A), Grantee may provide the City with an annual statement regarding its self-insurance, certifying financial assurances in lieu of providing a performance bond. Grantee's statement of self-insurance shall provide at least the same amount and scope of coverage of a performance bond for protection of the City, its officers, agents and employees, as otherwise required under Section 4.3(A). The adequacy of Grantee's self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 4.3(D)(2), any failure by Grantee to maintain adequate self-insurance shall be sufficient cause for the City to declare a revocation of this Franchise under and subject to Section 8.

## **Section 5. COVENANT TO INDEMNIFY AND HOLD CITY HARMLESS.**

5.1 Indemnification – General. Grantee shall indemnify, defend and hold harmless the City, its officers, agents and employees, from any claims, damages, costs or expenses, including but not limited to reasonable attorney fees, arising from any personal injury or property damage arising out of or by reason of: (1) any construction, excavation, operation maintenance, reconstruction or any other act done under this Franchise, by or for Grantee, its agents or employees, or (2) any neglect or omission of Grantee to keep its Electric Vehicle Charging Facilities in a reasonably safe condition. Grantee's indemnification obligation shall not extend to liability to the extent caused by the negligence or willful misconduct of the City or its officers, agents, boards or employees or any other third party. The City shall notify Grantee in writing as soon as reasonably practical after receiving written notice of any third-party action or other claim against it. Grantee shall have the sole and absolute right, upon written notice to the City, to defend the claim with counsel of its own choosing. No settlement or compromise of any such claim will be made by Grantee without the prior written approval of the City, which approval shall not be unreasonably withheld, delayed or conditioned. Grantee and its agents, contractors,

officers and employees shall consult and cooperate with the City while conducting its defense of the City, and the City shall fully cooperate with Grantee.

5.2 Indemnification – Relocation. Grantee shall indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting from Grantee’s failure to remove, adjust or relocate any of its Electric Vehicle Charging Facilities in the Streets in a timely manner in accordance with a relocation schedule consistent with the City Code, furnished to Grantee by the City’s duly authorized agent in writing, unless (a) Grantee’s failure arises from the City’s or the City’s contractor’s negligence or willful misconduct; or (b) Grantee notifies the City that it will remove the EVCF in accordance with Section 6.5, below.

5.3 Indemnification – Hazardous Substances. 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, or 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 Electric Vehicle Charging Facilities in the Streets. For purposes of this Section 5.3, “Hazardous Substances” shall have the meaning given by ORS 465.200(16) (2013).

## **Section 6. GENERAL STREET USE AND CONSTRUCTION.**

6.1 In General. Grantee shall construct its Electric Vehicle Charging Facilities in accordance with applicable City regulations and ordinances. The City shall perform its obligations with regard to construction of the Electric Vehicle Charging Facilities in accordance with applicable ordinances and regulations and the City’s processes and practices generally made available to all third parties.

6.2 Permits.

(A) Grantee may perform all construction necessary for the operation and maintenance of its Electric Vehicle Charging Facilities. All construction and maintenance of such EVCF within the Streets shall, regardless of who performs the construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for construction, maintenance or installation of any such EVCF, and for excavation and laying of any EVCF within the Streets. Grantee shall pay all applicable fees due for such permits.

(B) Maps.

(1) In accordance with Section 10-209(C) of the Portland City Charter, Grantee shall provide the City Engineer through the permitting process an initial construction schedule for work in the Streets and the estimated total cost of such work when submitting permit applications.

(2) As Grantee undertakes and completes the incremental construction of its Electric Vehicle Charging Facilities, Grantee shall provide updated “as-built” maps to the City

Engineer showing the location of Grantee's installed EVCF in the Streets. Such "as-built" maps shall be on a scale of three thousand five hundred feet (3,500') per inch or whatever scale the City and Grantee agree upon. Grantee's "as-built" maps shall be provided in an electronic format (such as pdf or a successor format) acceptable to the City and Grantee. The level of detail in maps provided by Grantee shall be limited to that which is needed for the City's administration of the Streets in order to protect Grantee's confidential business information and the security of Grantee's Electric Vehicle Charging Facilities.

6.3 Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law, ORS Chapter 757 (2013), and the related rules and administrative regulations promulgated thereunder in OAR Chapter 952.

6.4 Restoration of Streets. Grantee's responsibility for maintaining repairs to any Street surface areas 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.

6.5 Relocation. Grantee shall relocate its EVCF within the Streets when public convenience requires such change, in compliance with the requirements of applicable Portland City Code and administrative regulations, 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). However, should the City require Grantee to relocate its EVCF or any part of the EVCF outside of the Blue Zone, Grantee shall have the option to remove the EVCF or part of the EVCF instead of relocating it outside of the Blue Zone. If Grantee chooses to remove all of the EVCF in response to the relocation order, the City may terminate this Franchise following Grantee's completion of the removal of the EVCF.

6.6 Reservation of City Street Rights. Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street; 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 not to injure or prevent the unrestricted use and operation of Grantee's Electric Vehicle Charging Facilities under this Franchise. However, if any portion of Grantee's Electric Vehicle Charging Facilities 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 applicable regulations of the City.

6.7 Street Vacation. Upon receipt of any request for vacation of any Street or portion thereof used by Grantee, the City shall provide Grantee with the standard notice provided for street vacations. If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street area or Grantee secures such right from the third party that will have title to the area in which Grantee has its Electric Vehicle Charging Facilities, Grantee shall, without expense to the City, remove its Electric Vehicle Charging Facilities from such Street, restore, repair or reconstruct the Street area where such removal has occurred, and place the Street area in such condition as may be required consistent with City Code, which shall be no

worse than the condition of such Street immediately prior to removal. In the event of failure, neglect or refusal of Grantee, after sixty (60) days' notice by the City Engineer, to restore, repair, or reconstruct such Street, the City may do such work or cause it to be done, and the cost thereof, as found and declared by City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City shall make reasonable efforts to assist Grantee in identifying potential available alternative locations within the Streets, or, if requested by Grantee, will cooperate with Grantee's efforts to secure an alternate location in the vacated Street area from the third party that shall have ownership after vacation.

6.8 **Discontinuing Use of Electric Vehicle Charging Facilities.** If Grantee decides to discontinue use of the EVCFs within all or a portion of the Streets and does not intend to use those EVCF again in the future, unless Section 7 applies, the City may direct Grantee to remove the EVCF or may permit the EVCF to be left in place as abandoned, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its EVCF in place, upon written consent of the City, the ownership of EVCF in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding Grantee's request that all or any part of the EVCF remain in place, the City Engineer may require Grantee to remove such EVCF from the street area or modify the EVCF that remains in place in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require Grantee to perform a combination of modification and removal of the EVCF. Grantee shall complete such removal or modification in accordance with a reasonable schedule set by the City Engineer. Until such time as Grantee removes or modifies the EVCF as directed by the City Engineer, or until the rights to and responsibility for the EVCF are accepted by another Person having authority to construct and maintain such EVCF, Grantee shall be responsible for all necessary repairs and relocations of the EVCF, as well as restoration of the Street, in the same manner and degree as if the EVCF were in active use, and Grantee shall retain all liability for such EVCF.

6.9 **Acknowledgement of City Policy.** Use of the EVCF located within the Streets shall be limited to the purposes of parking, electric vehicle charging and collecting data related to the use of the EVCF. In accordance with this use limitation, information displayed on the EVCF shall be related solely to ownership, operation and use of the EVCF. Grantee shall contractually require vendors of the EVCF 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.

#### **Section 7. CITY'S CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE OF FRANCHISE.**

If Grantee fails to provide written notice to the City within sixty (60) days of any Transfer of this Franchise and unless the City Council consents to such Transfer, this Franchise shall automatically expire without any action by the City. For purposes of this Section 7, "Transfer" means any sale, lease, mortgage, assignment, merger or other form of transfer of this Franchise or of the rights and privileges granted or authorized by this Franchise.

#### **Section 8. FRANCHISE VIOLATIONS AND REMEDIES.**

## 8.1 Remedies for Franchise Violations.

(A) In addition to any rights set out elsewhere in this Franchise, or such other rights as it may possess, the City reserves the right at its discretion to apply any of the following remedies, alone or in combination, in the event Grantee violates any material provision of this Franchise, including but not limited to payment of franchise fees, submitting timely and accurate reports, providing timely access to records, and maintaining all insurance and performance bonds as required under this Franchise.

(1) Impose liquidated damages as provided in Section 8.1(C);

(2) Recover specific damages from all or any part of the security provided pursuant to this Franchise, including without limitation any performance bond, letter of credit or other security, provided, however, the assessment shall be for such amount as the City reasonably determines is necessary to remedy the violation;

(3) Commence litigation seeking recovery of monetary damages or specific performance of this Franchise, as such remedy may be available;

(4) Suspend Grantee's Franchise rights related to the violation, until Grantee corrects or otherwise remedies the violation;

(5) Reduce the duration of the term of this Franchise on such basis as is reasonable; or

(6) Revoke this Franchise.

(B) (1) Grantee shall not be relieved of its obligations to comply promptly with this Franchise by reason of any failure of the City to enforce prompt compliance. The City's failure to enforce shall not constitute a waiver of any term, condition or obligation imposed upon Grantee under this Franchise; nor a waiver of rights by the City or acquiescence in Grantee's conduct. A specific waiver of a particular term, condition or obligation imposed upon Grantee under this Franchise shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation. The acts or omissions of affiliates are not beyond Grantee's control, and the knowledge of affiliates shall be imputed to Grantee.

(2) Subject to applicable law, the remedies provided for in this Franchise are cumulative and not exclusive; the exercise of one remedy shall not prevent the exercise of another remedy, or the exercise of any available rights of the City at law or equity.

### (C) Liquidated Damages.

(1) The City and Grantee recognize that delays, expense and unique difficulties would be involved in establishing actual losses suffered by the City and the public as a result of Grantee's violation of certain material provisions of this Franchise. In the circumstances

identified in this Section 8.1(C)(1), where proof of specific, actual damages would not be feasible, the City and Grantee agree that the City may require Grantee to pay liquidated damages to the City. The parties agree that such amounts are a reasonable estimate by the parties of the harm (including increased costs of administration and other damages difficult to measure) the City and the public would suffer in the event of Grantee's breach of such provisions of this Franchise. City and Grantee agree that the Franchise provisions to which such liquidated damages would apply are:

- (a) Failure to send reports, maps, or other requested information or data as required by Sections 3 and 6;
- (b) Failure to respond to financial review requests as required by Section 3.6;
- (c) Failure to provide or maintain insurance or bonds as required by Section 4; and
- (d) Failure to comply with Section 7 in connection with any transfer as defined in Section 7.

(2) Subject to Grantee's right to notice and the opportunity to cure as provided in Section 8.2, if the City determines that Grantee has violated any of the provisions listed in Section 8.1(C)(1), above, the City may assess liquidated damages of \$1,000, on a per violation basis.

(3) The liquidated damage amounts are stated in 2016 dollars and shall be adjusted each year for any increase in the amount of change in the Consumer Price Index for urban wage earners and clerical workers for the Portland, Oregon metropolitan region for the prior year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of labor and as published in such Bureau of Labor Statistics' Detailed Report (CPI). The adjustment will be calculated by multiplying the base liquidated damages amount by the ratio of 1) the average CPI for January through June of the current Year, to 2) the average CPI for January through June of the prior Year.

(4) The assessment and recovery of liquidated damages will not constitute a waiver by the City of any other right or remedy it may have under the Franchise or applicable law.

(5) Each violation of the provisions listed in Section 8.1(C)(1), above, shall be considered a separate violation for which separate liquidated damages may be imposed. Thereafter, if Grantee has not cured or commenced to cure the alleged breach to the satisfaction of the City, the City may pursue any other remedies available under this Franchise or applicable law.

(D) In determining which of the remedies available under this Franchise is appropriate, the City may consider, among other things: (1) the nature and extent of the violation; (2) whether Grantee has had a history of similar violations; (3) the Persons burdened by the violation and the

cost of remedying the violation; (4) the nature of the remedy required in order to prevent further such violations; and (5) such other factors as the City may deem appropriate.

(E) The City may shorten the term of this Franchise or revoke this Franchise in the manner described in Section 8.1(A)(5) and (6) upon the occurrence of any of the following acts or events:

(1) Any failure to comply with the requirements of Section 4 of this Franchise, including but not limited to, any failure to provide uninterrupted insurance or performance bonds;

(2) Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City; or

(3) Grantee fails to obtain and maintain any permit required by any federal or state regulatory body in order to own and operate the EVCF.

(F) In addition to its other rights and remedies as set forth in this Franchise, and subject to applicable bankruptcy laws, the City shall have the right to revoke this Franchise after the appointment of a receiver or trustee to take over and conduct 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 perform all obligations, until such time as this Franchise is either rejected or assumed by Grantee, its receiver or trustee.

## 8.2 Notice and Opportunity to Cure.

(A) The City shall give Grantee thirty (30) days prior written notice of its intent to exercise any of its rights under Section 8.1, identifying the reasons for such action.

(B) If Grantee removes or otherwise cures to the satisfaction of the City the asserted violation constituting the stated reason within the thirty (30) day notice period, or if cure is not reasonably possible within the thirty (30) day period and Grantee initiates good faith efforts satisfactory to the City within the thirty (30) day period to cure the asserted violation constituting the stated reason and the efforts continue in good faith, the City shall not exercise its rights under Section 8.1.

(C) If Grantee fails to remove or otherwise cure the asserted violation constituting the stated reason within the thirty (30) day notice period, or if Grantee does not undertake and continue efforts satisfactory to the City to remedy the stated reason, then the City may exercise any or all of the remedies available under Section 8.1 or such other rights as the City may possess.

8.3 Removal of Electric Vehicle Charging Facilities. If the City has revoked this Franchise as provided in Section 8.1, or if this Franchise has expired without being renewed or extended, or in the event of the City's purchase, lease-purchase, condemnation, acquisition, taking over or holding of plant and equipment, all of Grantee's rights under this Franchise shall immediately

cease and be divested. Thereafter, except as provided in this Section, or as otherwise provided by ordinance, Grantee shall at its own expense remove its EVCF from the Streets and restore the Streets to the standards provided in applicable regulations of the City. In the event of a failure by Grantee to properly perform such work, then the City may perform the work and collect the cost thereof from Grantee.

#### **Section 9. RENEGOTIATION.**

In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or Grantee expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and Grantee may mutually agree to renegotiate the terms of this Franchise. 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 ninety (90) days to conduct and complete the renegotiation. If both parties agree to renegotiations under Section 9, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

#### **Section 10. EXPIRATION.**

Upon the expiration of this Franchise, the City shall have the right, at its election, to: (1) renew or extend Grantee's Franchise; (2) allow the Franchise to expire without further action; or (3) take such further action as the City deems appropriate. Until such time as the City exercises its rights under this Section 10, Grantee's rights and responsibilities within the City shall be controlled by the terms of this Franchise.

#### **Section 11. MISCELLANEOUS PROVISIONS.**

11.1 Severability. If any section, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected, unless the City Council determines such section, provision or clause was material to the City's agreement to issue a franchise to Grantee. All provisions concerning indemnity shall survive the revocation of this Franchise for any cause. Expiration or revocation of this Franchise shall not extinguish, prejudice or limit either party's right to enforce this Franchise with respect to any default or defect in performance that has not been corrected.

11.2 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 Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise 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 Franchise by reason of such failure or neglect. Services furnished by Grantee under this Franchise shall be rendered using commercially reasonable methods consistent with industry standards.

11.3 Force Majeure.

(A) For the purposes of Section 11.3, the term “Force Majeure” shall mean Acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of 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 Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, Grantee shall give the City notice of such Force Majeure as soon as reasonably possible, describing the same in reasonable detail, and Grantee’s obligations under this Franchise, 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 Franchise.

11.4 Choice of Forum. Any litigation between the City and Grantee arising under or regarding this Franchise 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, Portland.

11.5 Choice of Law. This Franchise 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 law of a different state.

11.6 Notice.

(A) Any notice provided for under this Franchise 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); (3) sent by facsimile transmission, with the original to follow by regular mail; or (4) sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by facsimile or by electronic mail, service will be deemed effective at the beginning of the next working day. Notices shall be addressed as follows, or to such other address as the receiving party specifies in writing:

If to the City:

Office for Community Technology  
City of Portland, Oregon  
111 SW Columbia Street, Suite 600  
Portland, Oregon 97201  
Email: [ComTech@portlandoregon.gov](mailto:ComTech@portlandoregon.gov)

With a copy to:

City Attorney’s Office

City of Portland  
1221 SW 4th Avenue, Room 430  
Portland, Oregon 97204

If to Grantee:

World Trade Center Properties  
Attn: General Manager  
121 SW Salmon Street, Suite  
Portland, Oregon 97204  
Email: [Facilities@pgn.com](mailto:Facilities@pgn.com)

(B) In accordance with City Code, the Office for Community Technology (“OCT”), within the Revenue Division, Bureau of Revenue and Financial Services (or such other City bureau as the Council may designate) is responsible for supervising and coordinating franchising in the City, for monitoring the performance of all franchisees for franchise compliance, overseeing franchise and utility audits and revenues in coordination with other City offices and for performing all other necessary work relating to City franchises. As the designated City representatives for franchise responsibilities, OCT may give any notices from the City under this Franchise.

#### 11.7 Public Records.

(A) Grantee acknowledges that information submitted by Grantee to the City may be open to public inspection under the Oregon Public Records Law. Grantee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

(B) Grantee may identify information submitted to the City as confidential, if Grantee reasonably believes such information is qualified for an exemption recognized under the Oregon Public Records Law. Grantee shall prominently mark each page, or portion thereof, for which it is claiming confidentiality as “Confidential” prior to submitting such information to the City. When submitting such information to the City, Grantee shall submit documentation to the City that specifically identifies the applicable exemption under the Oregon Public Records Law (for example, but not limited to, ORS 192.501(2), (5), (22), (23) (2015)), and providing an initial identification of the basis for Grantee’s belief that the information is exempt from public inspection. The City shall take reasonable steps to keep the identified information confidential, acting consistently with the Oregon Public Records Law.

(C) Within five (5) working days of receiving a public records request to inspect any information identified by Grantee as confidential, the City shall provide Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may disclose any of the requested confidential information. After reviewing Grantee’s written response, the City shall determine whether any identifiable exemptions are applicable. If the City determines that it will be necessary to reveal the information consistent with the Oregon Public Records Law, the City shall promptly notify Grantee, and do so at least five (5) working days prior to the information being released. The City shall retain discretion to determine whether to release the requested

information in response to any public records request, consistent with the Oregon Public Records Law. Nothing in this Section 11.7 affects Grantee's right to seek legal relief to prevent or remedy the City's release of Grantee's confidential information to the public.

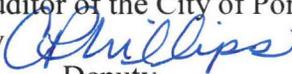
11.8 Franchise Amendment. The City has negotiated this Franchise in good faith, in light of statutory provisions then in place, and in reliance upon the information provided by Grantee regarding the scope of its authority to offer services associated with its Electric Vehicle Charging Facilities. In the event that Grantee offers or receives authority to offer services outside the scope of this Franchise that utilize Grantee's EVCF in the Streets, Grantee shall immediately notify the City. Within ninety (90) days of receiving such notice, the City may elect, without limitation, to enter into negotiations with Grantee to revise or amend this Franchise, or to extend separate authority to Grantee for such services to reflect such changed circumstances, or may proceed with early revocation of this Franchise. The parties will negotiate in good faith to reach mutual agreement on the lawful means to provide the necessary authority for Grantee to provide such services using Streets.

11.9 Voluntary Termination. Grantee may voluntarily terminate this Franchise with no less than sixty (60) days prior written notice to the City. If the Agreement is terminated as provided in this paragraph, Grantee shall comply with the requirements of Section 6.8 regarding discontinuing use of ECSF.

11.10 Written Acceptance. On or before the thirtieth day after this Franchise becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this Franchise, executed by 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 Franchise shall thereupon be null and void. Such acceptance shall be unqualified (subject to Grantee's Reservation of Rights, if any) and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Franchise.

11.11 Other Authority Superseded. Upon effectiveness of this Franchise, any and all authority to operate previously granted by the City to Grantee to install, operate and maintain Electric Vehicle Charging Facilities in, under and over the Streets is superseded by this Franchise.

Passed by the Council: **AUG 24 2017**  
 Mayor Ted Wheeler  
 Prepared by JLi/BWalters  
 Date Prepared: April 4, 2017

**Mary Hull Caballero**  
 Auditor of the City of Portland  
 By   
 Deputy

Agenda No. **ORDINANCE NO. 188561**

Title

Grant a franchise to Portland General Electric Company dba World Trade Center Properties for electric vehicle charging station services, for a period of five years. (Ordinance)

<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Mayor Wheeler</b>	CLERK USE: DATE FILED <u>JUL 11 2017</u>
<b>COMMISSIONER APPROVAL</b>	Mary Hull Caballero Auditor of the City of Portland
Mayor—Finance & Administration - Wheeler <i>KOD</i>	
Position 1/Utilities - Fritz	
Position 2/Works - Fish	
Position 3/Affairs - Saltzman	
Position 4/Safety - Eudaly	By: <u><i>Susan Parsons</i></u> Deputy
<b>BUREAU APPROVAL</b>	<b>ACTION TAKEN:</b>
Bureau: OMF/BRFS, Revenue CAO: Tom Rinehart <i>KLR for TR</i> CFO, Bureau Head: Kenneth L. Rust <i>KLR</i> Division Head: Thomas W. Lannom <i>Thomas</i>	<b>JUL 20 2017 PASSED TO SECOND READING AUG 23 2017 9:30 A.M.</b>
Prepared by: Melvin Riddick Date Prepared: 6/27/17	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
<b>City Auditor Office Approval:</b>	
<b>City Attorney Approval:</b> <i>Benjamin Walters</i>	
Council Meeting Date <b>July 19, 2017</b>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____ <b>Total amount of time needed:</b> _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input checked="" type="checkbox"/>
<b>REGULAR</b> <input type="checkbox"/> <b>Total amount of time needed: 5</b> (for presentation, testimony and discussion)

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