

ORDINANCE No. 185409

Amend boundaries of Portland State University franchise and amend franchise for insurance requirements (Ordinance; amend Ordinance No. 177529)

The City of Portland ordains:

Section 1. The Council finds:

1. In June 2003, the City Council granted a franchise to Portland State University (PSU) for period of 10 years. The franchise ordinance became effective August 2, 2003. Ordinance Number 177529.
2. PSU's franchise allows it to operate a telecommunications and electrical system using the public streets within a specified boundary. The franchise designated the system's operating area as being within the then existing campus boundary, generally described as SW Market to the north, SW 4<sup>th</sup> Avenue to the east and Interstate 405 as it curves around the south and west. This area is commonly known as the University District.
3. One June 11, 2008, the City Council approved an amendment to PSU's franchise to expand PSU's boundaries to encompass an area generally bounded by SW Market Street to the north, SW 3<sup>rd</sup> Avenue to the east, and Interstate 405 as it curves around the south and west of the campus back to SW Market Street. Ordinance Number 181925.
4. On September 9, 2009, the City Council approved an amendment to PSU's franchise to revise PSU's franchise boundaries to address campus growth and amend the franchise to include University District heating and cooling services. The amendment expanded PSU's franchise boundaries to an area generally described as extending from the intersection of SW 1st Ave. and SW Columbia St., south on SW 1st to SW Lincoln, west on SW Lincoln to the SW 2nd Pedestrian Walkway, south on the SW 2nd Pedestrian Walkway to end, southerly along the CX zoning boundary line to I-405, south across I-405 to the intersection of SW 3rd and SW Caruthers, then northwesterly from SW Caruthers to SW 6th, SW 6th to SW Broadway/I-405 offramp, SW Broadway/I-405 offramp to SW Lincoln, SW Lincoln to SW Park, SW Park to SW Clifton, SW Clifton and the lot line between lots 1500 and 1600 to SW Cardinel, SW Cardinel to SW College, SW College to SW 13th, SW 13th to SW Hall, SW Hall to SW 14th, SW 14th to SW Columbia, east on SW Columbia to SW 1st Ave. Ordinance Number 183168.
5. Since the amendment was approved in 2009, PSU has acquired or is using properties outside the campus boundary, including the SW Moody area on the waterfront where the Collaborative Life Sciences Building Complex will be constructed as a joint venture between Oregon Health & Sciences University (OHSU) and the Oregon University System, as primarily represented by PSU.

6. In order for PSU to use the public streets to serve the SW Moody area properties and those included in its long term University District expansion plans, the franchise must be further amended to encompass these additional properties.
7. The Oregon Legislature adopted SB 242 in its 2011 Session, under which PSU will have additional options available to obtain appropriate insurance coverage. The franchise must be amended to reflect these changes.
8. The Office for Community Technology recommends that the Council amend the franchise to revise the franchise boundaries to encompass these additional properties and to amend PSU's insurance requirements.

NOW, THEREFORE, the Council directs:

- a. Section 1.1(A) of Portland State University's franchise is amended to read as follows:

Portland State University ("PSU" or "Grantee"), is located in downtown Portland and currently occupies an area generally described as extending from the intersection of SW 1st Ave. and SW Columbia St., south on SW 1st to SW Market, east on SW Market to SW Harbor Drive, south on SW Harbor Drive to SW Moody, southeast on SW Moody to SW Gibbs, west on SW Gibbs to end, across the SW Gibbs Street Pedestrian Bridge which is currently under construction to end, continuing west on SW Gibbs to SW Kelly, north on SW Kelly to SW Arthur, west on SW Arthur to SW Caruthers/SW 3<sup>rd</sup>, then west on SW Caruthers to SW 6<sup>th</sup>, northwest on SW 6<sup>th</sup> to SW Broadway/I-405 offramp, SW Broadway/I-405 offramp to SW Lincoln, SW Lincoln to SW Park, SW Park to SW Clifton, SW Clifton and the lot line between lots 1500 and 1600 to SW Cardinel, SW Cardinel to SW College, SW College to SW 13th, SW 13th to SW Hall, SW Hall to SW 14th, SW 14th to SW Columbia, east on SW Columbia to SW 1st Ave.

- b. The last sentence of Section 1.1(C)(1) is amended to read:

However, the total length of Grantee's combined Telecommunications, Electrical, and District Heating and Cooling Systems in City Streets shall not exceed 20,000 linear trench feet unless separately authorized by the City Council by ordinance.

- c. Exhibit A to Ordinance No. 177529 is hereby amended to reflect the revisions to the franchise boundary change. A revised Exhibit A, reflecting the new boundaries, is attached to this ordinance.
- d. Section 4 is amended to read:

4.1 Insurance.

(A) Grantee shall maintain public liability and property damage insurance that protects Grantee and the City from the claims referred to in Section 5. 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 Franchise. 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 Franchise. 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 Franchise, 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 4.1(A) shall be cause for revocation of this Franchise under Section 16.

(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 4.1(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 4.1(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.

#### 4.2 Faithful Performance Bond.

(A) Upon the effective date of this Franchise, 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 Franchise. 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 Franchise, including, if necessary, the time required for removal of all of Grantee's Telecommunications, Electrical, or District Heating and Cooling System 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 Franchise under Section 16.

(B) During the term of this Franchise, 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 4.2(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 4.2(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 4.2(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.

#### 4.3 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 6. 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 Franchise under Section 16.

(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 4.3(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 4.3(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. All other terms and conditions of Ordinance No. 177529, as amended by Ordinance 183168, shall remain the same without modification.
- f. On or before thirty (30) days after this ordinance becomes effective, Portland State University shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by a duly authorized representative, meeting the approval of the City Attorney. Any failure on the part of Portland State University to file such written acceptance within such time shall be deemed an abandonment and rejection of this ordinance, 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 contained in this ordinance.

Passed by the Council:

JUN 13 2012

**LaVonne Griffin-Valade**  
Auditor of the City of Portland

By:

*Susan Parsons*

Deputy

Commissioner Dan Saltzman  
Prepared by: JLi/BWalters  
May 23, 2012

185409

Agenda No. **185409**  
**ORDINANCE NO.**  
 Title

for

Amend boundaries of Portland State University franchise, and amend franchise regarding insurance requirements (Ordinance; amend Ordinance No. 177529).

INTRODUCED BY Commissioner/Auditor: <b>Commissioner Dan Saltzman</b>	CLERK USE: DATE FILED <u>JUN 01 2012</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman <i>Dan Saltzman</i> Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland  By: <u><i>[Signature]</i></u> Deputy
BUREAU APPROVAL Bureau: OCT Bureau Head: David Olson <i>[Signature]</i>	ACTION TAKEN: <b>JUN 06 2012 PASSED TO SECOND READING JUN 13 2012 9:30 A.M.</b>
Prepared by: Melvin Riddick Date Prepared: May 23, 2012	
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date <b>June 6, 2012</b>	
City Attorney Approval <i>Benjamin Walters</i>	

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

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