ORDINANCE NO. 2585

AN ORDINANCE of the City of Kent, Washington, authorizing an agreement for a signal system interconnect and a wire line crossing across the property and under the tracks of Oregon-Washington Railroad and Navigation Company and Union Pacific Railroad Company at milepost 167.27. (James Street pedestrian crossing).

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. The Mayor is authorized to execute the signal system interconnect and wireline crossing agreement with Oregon-Washington Railroad and Navigation Company and Union Pacific Railroad Company at milepost 167.27, said agreement to be substantially in the form attached hereto and incorporated herein by this reference as Appendix A.

Section 2. The authorization provided for in Section 1, above, is to provide for and facilitate the City of Kent's installation and operation of a pedestrian operated signal crossing at James Street and the Commons playfield.

Section 3. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 4. Effective Date. This ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law.

ISABEL HOGAN, MAYOR

ATTEST:

MARIE JENSEN, CITY CLERK
I hereby certify that this is a true copy of Ordinance No. 2585, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.
September 25, 1985

File: 312-2-4.61

City of Kent
220 South 4th Avenue
Kent, WA  98032

Agreement covering underground power line at
Kent, Washington (Main Line - Milepost 167.27)

Gentlemen:

The counterparts of the referenced agreement are attached. If the agreement is satisfactory, please arrange for execution and return both counterparts to Mr. Mike Murray of this office. We will have the agreement signed on behalf of the Railroad and return the City's fully executed copy to you. At that time you will be asked to contact the Railroad's local Roadmaster before entering the right of way to make the installation.

If you have questions, please contact Mr. Murray at (503) 249-2414.

Very truly yours,

[signature]
Keith T. Borman

MEM:e
(CON49/4a)
enc.
THIS AGREEMENT is made and entered into as of the day of _____, 19____, by and between OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY, an Oregon corporation, and its lessee, UNION PACIFIC RAILROAD COMPANY, a Utah corporation (hereinafter collectively called "Licensor"), and CITY OF KENT, a municipal corporation in the state of Washington (hereinafter called "Licensee").

The parties agree as follows:

(1) The Licensor grants to the Licensee the right to construct, maintain and operate an underground power line (hereinafter called "Wire Line") across the property and under the tracks of the Licensor's Main Line at Milepost 167.27, at or near Kent, in King County, Washington, in the location shown by yellow line on print dated July 18, 1985, attached hereto, marked Exhibit "A", and by this reference made a part hereof, and in accordance with the specifications set forth on Exhibit "A".

(2) The license and permission granted herein are subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit "B", bearing code number 34976, attached hereto and by this reference incorporated herein. In consideration of the license and permission granted herein, the Licensee shall and will do, keep, observe and perform each and all of said terms, provisions, conditions, limitations and covenants herein contained.

(3) This agreement shall be effective as of the date first herein written, and shall continue in full force and effect, subject to termination as provided in Exhibit "B".
IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed as of the day and year first hereinabove written.

OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY
UNION PACIFIC RAILROAD COMPANY

By ____________________________
General Manager

CITY OF KENT

Attest: (Seal)

By ____________________________
Title: ____________________________

Pursuant to Resolution No. 2585
Section 1. LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

(a) This license and permit is subject to the right and power of the Licensor to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, signal, communication or other wire lines, pipelines and other facilities upon, along or across any or all parts of the Licensor's property, all or any of which may be freely done at any time or times by the Licensor without liability to the Licensee or to any other party for compensation or damages.

(b) This license and permit is also subject to all outstanding superior rights (including those in favor of licensees, lessees of said property, and others) and the right of the Licensor to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 2. CONSTRUCTION, MAINTENANCE AND OPERATION.

(a) If the Wire Line or any part thereof is to be located above the top of the rails or communication and signal lines, including static wires, overhead clearance provided by the Wire Line shall be no less than that shown on the following "Wire Line Clearance Chart":

<table>
<thead>
<tr>
<th>Voltage (to ground)</th>
<th>Minimum Clearance Required Above Top of Rail</th>
<th>Minimum Clearance Required Above Communication and Signal Lines Including Static Wires</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Main Line</td>
<td>Spur Lines</td>
</tr>
<tr>
<td>0 to 750</td>
<td>35.0'</td>
<td>27.0'</td>
</tr>
<tr>
<td>0 to 8,700</td>
<td>36.0'</td>
<td>28.0'</td>
</tr>
<tr>
<td>750 to 15,000</td>
<td>38.0'</td>
<td>30.0'</td>
</tr>
<tr>
<td>8,700 to 50,000</td>
<td>38.0'</td>
<td>30.0'</td>
</tr>
<tr>
<td>15,000 to 50,000</td>
<td>38.0'</td>
<td>30.0'</td>
</tr>
<tr>
<td>50,000</td>
<td>39.0'</td>
<td>31.0'</td>
</tr>
<tr>
<td>80,000</td>
<td>40.0'</td>
<td>32.0'</td>
</tr>
<tr>
<td>110,000</td>
<td>41.0'</td>
<td>33.0'</td>
</tr>
<tr>
<td>140,000</td>
<td>42.0'</td>
<td>34.0'</td>
</tr>
<tr>
<td>170,000</td>
<td>43.0'</td>
<td>35.0'</td>
</tr>
<tr>
<td>200,000</td>
<td>44.0'</td>
<td>36.0'</td>
</tr>
<tr>
<td>230,000</td>
<td>45.0'</td>
<td>37.0'</td>
</tr>
<tr>
<td>260,000</td>
<td>46.0'</td>
<td>38.0'</td>
</tr>
<tr>
<td>290,000</td>
<td>47.0'</td>
<td>39.0'</td>
</tr>
<tr>
<td>320,000</td>
<td>48.0'</td>
<td>40.0'</td>
</tr>
</tbody>
</table>

Formula: .4" increase for every 1,000 volts in excess of 50 KV.

(4" increase for every 10,000 volts in excess of 50 KV.)

* Includes all tracks operated as main tracks, sidings and other adjacent auxiliary trackage.

Office of Chief Engineer
Omaha, Nebraska - March 10, 1976
unless approved by the Licensor's Chief Engineer. If Exhibit "A" provides for a 
clearance less than the clearance required by said attached chart, a copy of the Chief 
Engineer's letter approving said lesser clearance shall be attached hereto and made a part 
of this agreement. For a voltage not listed on the chart, the minimum overhead clearance 
shall be determined by the formula at bottom of the chart. The horizontal clearance for 
structures supporting the Wire Line shall be as approved by Licensor's Chief Engineer, but 
no less than fifteen (15) feet from center line of main tracks and at least ten (10) feet 
from center line of siding and yard tracks. Otherwise, the Wire Line shall be constructed, 
operated, maintained, repaired, renewed, modified and/or reconstructed by the Licensee in 
strict conformity with the Specifications as subsequently amended. In the event such Specifications conflict in any respect with the 
requirements of any federal, state or municipal law or regulation, such requirements shall 
govern on all points of conflict, but in all other respects the Specifications shall apply.

(b) All work performed on property of the Licensor in connection with the 
construction, maintenance, repair, renewal, modification or reconstruction of the Wire 
Line shall be done under the supervision and to the satisfaction of the Licensor.

(c) If the Wire Line be an existing one not conforming in its construction 
to the above provisions of this Section 2, the Licensee shall, within ninety (90) days 
after the date hereof, reconstruct it so as to conform therewith.

(d) The Wire Line shall be constructed, maintained and operated by the Licensee 
in such manner as not to be or constitute a hazard to aviation. With respect to the Wire 
Line, the Licensee, without expense to the Licensor, will comply with all requirements 
of law and of public authority, whether federal, state or local, including, but not limited 
to, aviation authorities.

(e) In the operation of the Wire Line, the Licensee shall not transmit electric 
current at a difference of potential in excess of the voltage indicated on Exhibit "A". 
If the voltage indicated is in excess of 600 volts, and the Wire Line is, or is to be, 
buried at any location on the property of the Licensor outside track ballast sections 
or roadbed, the Licensee shall bury, at a depth of one (1) foot beneath the surface of 
the ground directly above the Wire Line, a six (6) inch wide warning tape bearing the 
warning, "Danger - High Voltage", or equivalent wording.

Section 3. COST. The entire cost of the construction, operation, maintenance, 
repair and renewal, and any and all modification, revision, relocation or reconstruction 
of the Wire Line, including any expense incurred by the Licensor for supervision or in-
spection or otherwise in connection therewith, shall be borne solely by the Licensee.

Section 4. NOTICE OF COMMENCEMENT OF WORK. The Licensee shall notify the 
Licensor at least ten (10) days in advance of the commencement of any work in connection 
with the construction, reconstruction, relocation or modification of, or addition to, the 
Wire Line. All such work shall be prosecuted diligently to completion.

Section 5. RELOCATION OR REMOVAL OF WIRE LINE.

(a) The license herein granted is subject to the needs and requirements of the 
Licensee in the operation, improvement and use of its property. If, in the judgment 
of the Licensee, it shall at any time become necessary, for reasons of safety or for its 
own needs and requirements, or otherwise, to repair or change the location, elevation 
or method of construction of the Wire Line, such repairs or changes will be made promptly 
by the Licensee, at the sole cost and expense of the Licensee, within ten (10) days after 
receipt by the Licensee of written request from the Licensor, and in such manner as the 
Licensor shall direct.

(b) All the terms, conditions and stipulations herein expressed with reference 
to the Wire Line on said property in the location hereinafter described shall, so far 
as the Wire Line remains on the property, apply to the Wire Line as modified, changed 
 or relocated within the contemplation of this section.

Section 6. INTERFERENCE. In the operation and maintenance of the Wire Line, 
the Licensee shall take all suitable precaution to prevent any interference (by induction, 
leakage of electricity, or otherwise) with the operation of the signal, communication 
lines or other installations or facilities of the Licensor or of its tenants; and if, at any time the operation or maintenance of the Wire Line causes interference with the 
operation of said signal, communication lines or other installations or facilities, as 
now existing or which may hereafter be provided by the Licensor and/or its tenants, the 
Licensee shall, at the sole expense of the Licensee, immediately take such action as may 
be necessary to eliminate such interference.
Section 7. CLAIMS AND LIENS FOR LABOR AND MATERIAL AND TAXES. The Licensee shall fully pay for all materials joined or affixed to and labor performed upon said property of the Licensor in connection with the construction, maintenance, repair, renewal or reconstruction of the Wire Line, and shall not permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against said property for any work done or materials furnished thereon at the instance or request or on behalf of the Licensee; and the Licensee shall indemnify and hold harmless the Licensor against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished.

Section 8. LIABILITY. The Licensee shall indemnify and hold harmless the Licensor and other companies which use the property of the Licensor, their officers, agents and employees, against and from any and all loss, damage, claims, demands, actions, causes of action, costs and expenses whatsoever growing out of injury to or death of persons whosoever or loss or destruction of or damage to property whatsoever, or growing out of interference with the proper operation of signal, communication lines or other installations or facilities of the Licensor or of its tenants, when any such injury, death, loss, destruction, damage or interference, however caused (except directly and solely by the negligence of the Licensor and such other companies, their officers, agents and employees), results from or in connection with the carrying on of any work contemplated by this agreement or the presence, operation or use of the Wire Line or from electric current conducted thereon or escaping therefrom.

Section 9. TERMINATION. This agreement may be terminated at any time by either party by giving or mailing written notice to the other party, on any date in such notice stated, not less, however, than thirty (30) days subsequent to the date on which such notice shall be given. Termination of this agreement shall not operate to relieve, release or discharge the Licensee from any debt, duty or obligation which shall have attached or accrued hereunder prior to such termination. The termination of this agreement by either party shall not entitle the Licensee to the refund of all or any part of the consideration paid in advance, nor shall it entitle the Licensee to reimbursement for any action taken or expense incurred pursuant to this agreement or under the license hereby granted.

Section 10. REMOVAL OF WIRE LINE UPON TERMINATION OF AGREEMENT. Within fifteen (15) days after the termination of this agreement howsoever, the Licensee shall, at the sole expense of the Licensee, remove the Wire Line from said property and restore said property to as good condition as it was in before the Wire Line was originally constructed, all under the supervision and to the satisfaction of the Licensor; and if the Licensee fails so to do, the Licensor may perform the work of removal and restoration at the expense of the Licensee. The Licensee shall not be liable to the Licensee for any damage sustained by the Licensee as a result of the removal of the Wire Line by the Licensor as in this section provided, nor shall such action prejudice or impair any right of action for damages or otherwise that the Licensor may, at the time of such removal, have against the Licensee.

Section 11. WAIVER OF BREACH. The waiver by the Licensor of the breach of any condition, covenant or agreement herein contained, to be kept and performed by the Licensee, shall not impair the right of the Licensor to avail itself of any subsequent breach thereof.

Section 12. LICENSEE NOT TO ASSIGN. The Licensee shall not assign this agreement, in whole or in part, or any rights herein granted, without the written consent of the Licensor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this agreement or any of the rights herein granted, whether voluntary, by operation of law or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Licensor, shall terminate this agreement. Subject thereto, this agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs (if any), successors and assigns.