ORDINANCE NO. 3401

AN ORDINANCE of the City Council of the City of Kent, Washington, regarding franchise termination and the expiration of all related property rights held by the Union Pacific Railroad Company, a Utah corporation, its successors and assigns, for the right, privilege and authority to construct, maintain and operate a railroad spur track upon and across South 196th Street in the City of Kent, King County, Washington.

WHEREAS, pursuant to the terms of a franchise ordinance of the City of Kent (Ordinance 2309), passed on September 8, 1981, the Union Pacific Railroad Company, a Utah Corporation ("UPRR") constructed, maintained and operated a railroad spur track at common grade upon and across South 196th Street in the City of Kent, the centerline of said street in the North 1/2 of Section 2, Township 22 North, Range 4 East, W.M., located in King County, Washington; and

WHEREAS, Ordinance 2309, by the terms of its Section 10, was effective as a franchise grant to UPRR for ten years; and

WHEREAS, on or about October 13, 1991, the franchise granted in Ordinance 2309 expired by the terms of Section 10 of that Ordinance; and

WHEREAS, all property and usage rights granted UPRR as a result of the City's grant of the franchise created by Ordinance 2309 extinguished on the franchise termination date, which occurred on or about October 13, 1991; and
WHEREAS, on December 9, 1997, the City passed its Ordinance No. 3380, which extended a new franchise to UPRR for ten years, subject to acceptance of that ordinance's terms by UPRR within thirty days of passage; and

WHEREAS, UPRR did not accept the franchise offered by Ordinance No. 3380, therefore voiding that Ordinance before it came into effect; and

WHEREAS, because UPRR did not accept the franchise offered by Ordinance No. 3380, any property or usage rights offered to UPRR by virtue of that franchise are also void and of no force or effect. NOW, THEREFORE,

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

SECTION 1. The foregoing recitals are incorporated into this Ordinance as if fully set forth herein.

SECTION 2. Ordinance 2309, by the terms of its Section 10, was effective as a franchise grant to UPRR for ten years. On or about October 13, 1991, the franchise granted in Ordinance 2309 expired by the terms of Section 10 of that ordinance. All property and usage rights granted UPRR as a result of the City's grant of the franchise created by Ordinance 2309 extinguished on the franchise termination date, which occurred on or about October 13, 1991.

SECTION 3. Ordinance 3380, which the City Council passed on December 9, 1997, was not accepted by UPRR, as required by the terms of that ordinance. Accordingly, that franchise ordinance never took effect and is void. However, should any issue exist as to the continuing applicability or existence of that ordinance, the City Council clarifies that its Ordinance 3380 is deemed REPEALED.
SECTION 4. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

SECTION 5. This ordinance shall take effect and be in force five (5) days from its date of passage and publication as provided by law.

JIM WHITE, MAYOR

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED: 21 day of April, 1998.

APPROVED: 22 day of April, 1998.

PUBLISHED: 24 day of April, 1998.
I hereby certify that this is a true copy of Ordinance No. 3401, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK

(SEAL)
A strip of land 60.0 feet in width, situate in South 196th Street in the North Half (N1/2) of Section 2, Township 22 North, Range 4 East of the Willamette Meridian, City of Kent, King County, State of Washington, said strip of land being all of that land lying between lines concentric with and 30.0 feet on each side of the following described centerline, and said centerline prolonged:

Commencing at the southeast corner of Lot 11, Block 6, as shown on the plat of Southcenter Corporate Park, recorded under File No. 8003140871 in the records of said County; thence along the south line of said Lot 11, North 88 degrees 59 minutes 42 seconds West, 14.59 feet to the TRUE POINT OF BEGINNING, said point being on a non-tangent curve concave southeasterly, from which point a radial line bears South 67 degrees 11 minutes 09 seconds East, 459.28 feet; thence southwesterly along said curve through a central angle of 7 degrees 52 minutes 13 seconds, 63.09 feet to the terminus of said centerline.
ORDINANCE NO. 3380

AN ORDINANCE of the City Council of the City of Kent, Washington, granting to the Union Pacific Railroad Company, a Utah corporation, its successors and assigns, the right, privilege and authority to construct, maintain and operate a railroad spur track upon and across South 196th Street in the City of Kent, King County, Washington.

WHEREAS, pursuant to the terms of a franchise ordinance of the City of Kent (Ordinance 2309), passed on September 8, 1981, the Union Pacific Railroad Company, a Utah Corporation ("UPRR") constructed, maintained and operated a railroad spur track at common grade upon and across South 196th Street in the City of Kent, the centerline of said street in the North 1/2 of Section 2, Township 22 North, Range 4 East, W.M., located in King County, Washington; and

WHEREAS, Ordinance 2309, by the terms of its Section 10, was effective as a franchise grant to UPRR for ten years; and

WHEREAS, on or about October 13, 1991, the franchise granted in Ordinance 2309 expired by the terms of Section 10 of that Ordinance; and

WHEREAS, UPRR is currently operating the subject spur crossing without a franchise; and

WHEREAS, a separation of grade of said crossing is neither practicable or justified; NOW, THEREFORE,
THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES
HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The foregoing recitals are incorporated into this Ordinance
as if fully set forth herein.

SECTION 2. The City of Kent, Washington, ("City") grants to the Union
Pacific Railroad Company, a Utah Corporation, its successors and assigns ("UPRR"),
subject to all conditions contained in this Ordinance, the franchise and privilege of
maintaining and operating one railroad spur track at common grade upon and across South
196th Street in the City of Kent, Washington, at the location described in Exhibit A,
provided that the maintenance and operation of this track shall be performed in a manner
consistent with the terms and conditions of this franchise ordinance and satisfactory to the
City's Public Works Director and any other applicable authority.

SECTION 3. UPRR shall maintain and operate this track at common grade
with South 196th Street. If the City determines that the public use and necessity require
that the configuration and/or grade of South 196th Street be changed in location, width,
elevation, super elevation, or any other aspect, then UPRR shall alter its track and crossing
to conform with the changed configuration and/or grade. The City's Public Works Director
must approve the design of any alteration to this track and crossing before UPRR
commences construction. The City shall use its best efforts to provide reasonable notice
to UPRR of its decision to change South 196th Street. UPRR shall coordinate construction
of the planned alterations to its track and crossing with the City so as not to delay the City's
plans for the street. In any event, UPRR shall complete its spur track work no later than
the date the City completes its work on South 196th Street, unless the City gives its written
approval to UPRR extending the time for the spur work.
SECTION 4. UPRR, at no cost to the City, shall maintain, operate and alter this track and crossing across South 196th Street as this street now exists or as the street may change, alter or modify in any manner during the term of this franchise, if the City requires the change. However, this franchise shall not prevent UPRR from charging any other party to which UPRR may have granted or assigned an interest in this track, crossing or franchise all or a portion of the cost of maintaining, operating or altering this track and crossing.

SECTION 5. UPRR, at its sole expense, shall replace the existing crossing pad with a crossing pad of a type and design approved by the City's Public Works Director across the entire right-of-way, including sidewalks, when requested by the City. UPRR shall install signalized gate arms at the crossing upon the City's request. UPRR shall install the crossing pad or gate arms within six (6) months from the date it receives notification from the City to make these changes; however, if these changes are subject to prior authorization from the Washington Utilities and Transportation Commission ("WUTC"), then this six (6) month time period shall apply from the date of WUTC authorization or approval.

UPRR's failure to install these items within this six (6) month period shall immediately terminate this franchise ordinance, with no notice required, and UPRR, its customers, agents and assigns, shall immediately lose all right and authority to use this crossing. Accordingly, the City may, at its sole option, restrict, block, close or remove the track and crossing.

SECTION 6. UPRR shall not store railroad cars within or upon the City's South 196th Street right of way, nor shall UPRR stop cars within this right of way for switching operations, nor shall UPRR use this track or crossing in any manner that unreasonably interferes with travel within the City's right of way. Moreover, UPRR shall not allow railroad traffic to utilize this track and crossing from 6:00 a.m. to 9:00 a.m. and...
3:00 p.m. to 6:00 p.m. daily. However, the City's Public Works Director is authorized to shorten or remove these time restrictions, either permanently or temporarily, if he or she determines, in his or her sole discretion, that modification of these time restrictions would not impair the public health, safety and welfare.

**SECTION 7.** The City maintains the same control over South 196th Street within this franchise area as it has over other public streets within the City's jurisdiction. This franchise shall not restrict the rights of the City or other franchise holders in the City to enter upon South 196th Street within this franchise area for the purpose of locating, relocating, constructing, maintaining, repairing, or removing any public works, utilities, or facilities under or over this track and crossing, but this work shall not unnecessarily interfere with the movements of railroad traffic over this track and crossing.

**SECTION 8.** The City may require signalization, gates, sawbucks, signs, or other traffic flow control, warning or protective devices or measures to protect the public health and safety. UPRR shall construct, operate and maintain these requirements at no cost to the City. Further, UPRR will construct or install these requirements promptly, but in any event within one year from the date the City issues its requirements; however, if approval of these requirements is subject to prior authorization from the WUTC, then this one year time period shall apply from the date of WUTC authorization or approval.

**SECTION 9.** UPRR shall defend, indemnify and hold the City, its officer, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this franchise ordinance, but only to the extent of UPRR's negligence or comparative fault. This indemnification includes liability for crossing design, signalization design, and/or maintenance, and road maintenance within the crossing area. It also includes any failure or omission on the part of UPRR to perform any action required by this franchise.
The City's inspection or acceptance of any of UPRR's work when completed shall not be grounds to avoid any of these covenants of indemnification.

No act, inspection, approval or omission by the City shall affect UPRR's obligation to fully defend, indemnify and hold harmless the City, its officials, officers, employees, agents and volunteers.

The provisions of this section shall survive the expiration or termination of this franchise ordinance.

SECTION 10. Nothing granted in this franchise shall release UPRR from obtaining all permits or other authorizations required by the City to maintain, operate, repair or alter the track and crossing or to do any of the work contemplated by this franchise ordinance.

SECTION 11. If the City finds that UPRR has failed to comply with any term or condition of this franchise, as determined by the City, UPRR's failure to comply shall constitute a breach of this franchise. In the event of UPRR's breach, the City may revoke this franchise after giving UPRR 30 days prior written notice. This notice shall also state the grounds for revocation. Once revoked, UPRR, its customers, agents and assigns, shall immediately lose all right and authority to use this crossing, and the City may, at its sole option, restrict, block, close or remove the crossing.

SECTION 12. If the spur crossing that is the subject of this franchise has not been in use for one (1) year or longer, this franchise shall automatically be revoked. Once revoked, UPRR, its customers, agents and assigns, shall immediately lose all right and authority to use this crossing, and the City may, at its sole option, restrict, block, close or remove the crossing.
SECTION 13. The franchise privileges granted in this ordinance shall be effective for ten (10) years from and after the effective date of this ordinance.

SECTION 14. UPRR shall have no right to receive any award in condemnation, whether direct or inverse, as a result of this franchise.

SECTION 15. UPRR shall pay all the City’s reasonable municipal costs, expenses, or liabilities incurred by the City because of this franchise.

SECTION 16. The failure of the City to insist upon strict performance of any of the terms and rights contained herein, or to exercise any option herein conferred in one or more instances, shall not be construed to be a waiver or relinquishment of those terms and rights and they shall remain in full force and effect.

SECTION 17. In any claim or lawsuit for damages arising from either party's performance of this franchise ordinance, each party shall be responsible for payment of its own legal costs and attorney's fees incurred in defending or bringing that claim or lawsuit; however, nothing in this subsection shall limit the City's right to indemnification under Section 9 of this franchise ordinance.

SECTION 18. No waiver, alteration, or modification of any of the provisions of this franchise ordinance shall be binding unless in writing and signed by a duly authorized representative of the City and UPRR.

SECTION 19. Any assignment of this agreement by UPRR without the written consent of the City shall be void.

SECTION 20. If any one or more sections, subsections, or sentences of this ordinance are held to be unconstitutional or invalid, such decision shall not affect the
validity of the remaining portion of this ordinance and the same shall remain in full force and effect.

**SECTION 21.** UPRR shall, within thirty (30) days from the date of passage of this ordinance, file with the City Clerk its acceptance of the terms, provisions and conditions of this franchise.

**SECTION 22.** This ordinance shall take effect and be in force five (5) days from the time of its final approval and passage as provided by law.

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

PASSED: 9 day of December, 1997.

APPROVED: 9 day of December, 1997.

PUBLISHED: 12 day of December, 1997.

I hereby certify that this is a true copy of Ordinance No. 3380, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER (SEAL)

BRENDA JACOBER, CITY CLERK
A strip of land 60.0 feet in width, situate in South 196th Street in the North Half (N1/2) of Section 2, Township 22 North, Range 4 East of the Willamette Meridian, City of Kent, King County, State of Washington, said strip of land being all of that land lying between lines concentric with and 30.0 feet on each side of the following described centerline, and said centerline prolonged:

Commencing at the southeast corner of Lot 11, Block 6, as shown on the plat of Southcenter Corporate Park, recorded under File No. 8003140871 in the records of said County; thence along the south line of said Lot 11, North 88 degrees 59 minutes 42 seconds West, 14.59 feet to the TRUE POINT OF BEGINNING, said point being on a non-tangent curve concave southeasterly, from which point a radial line bears South 67 degrees 11 minutes 09 seconds East, 459.28 feet; thence southwesterly along said curve through a central angle of 7 degrees 52 minutes 13 seconds, 63.09 feet to the terminus of said centerline.
AN ORDINANCE of the City of Kent, Washington, granting to Oregon-Washington Railroad & Navigation Company and its lessee, Union Pacific Railroad Company, their successors and assigns, the right, privilege and authority to construct, maintain and operate a railroad lead track upon and across South 196th Street in the City of Kent, King County, Washington.

WHEREAS the Union Pacific Railroad Company has petitioned City of Kent for franchise to construct, maintain and operate a railroad lead track at common grade upon and across South 196th Street in the City of Kent in Section 2, Township 22 Range 4 E.M., located in King County, Washington, and

WHEREAS a separation of grade of said crossing is neither practicable nor justified, and

WHEREAS Union Pacific Railroad Company has filed with the City of Kent acceptable plans for said crossing, and said plans have been approved;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DO HEREBY ORDAIN AS FOLLOWS:

Section 1. The City of Kent, hereinafter called "the City" does hereby grant to the Oregon-Washington Railroad & Navigation Company and its lessee, Union Pacific Railroad Company, their successors and assigns, hereinafter called "the Grantee", the franchise and privilege of constructing, maintaining and operating a railroad lead track at common grade upon and
Commencing at the southeast corner of Lot 11, Block 6, as shown on the plat of Southcenter Corporate Park, recorded under File No. 8003140871 in the records of said County; thence along the south line of said Lot 11, North 88 degrees 59 minutes 42 seconds West, 14.59 feet to the TRUE POINT OF BEGINNING, said point being on a non-tangent curve concave southeasterly, from which point a radial line bears South 67 degrees 11 minutes 09 seconds East, 459.28 feet; thence southwesterly along said curve through a central angle of 7 degrees 52 minutes 13 seconds, 63.09 feet to the terminus of said centerline.

provided that the construction of said track at common grade on and across said street shall be completed in a manner satisfactory to the Kent City Engineer and any other applicable authority.

Section 2. The Grantee shall pay the entire cost and expense of constructing and maintaining said track across said street as it now exists or as it may be changed from time to time, as prescribed by the City; provided, however, that nothing contained herein shall prevent the Grantee from charging any other railroad company, or companies to which Grantee may grant or assign an interest in said track, or the franchise hereby granted, a portion of the cost and expense of constructing and maintaining said track.

Section 3. The grantee shall pay the entire cost and expense of constructing, installing and maintaining advance warning signs and any crossing and protective devices required or authorized by applicable public authorities; provided, however, that nothing contained herein shall prevent the Grantee from charging any other railroad company, or companies, to which Grantee may grant or assign an interest in said track or the franchise hereby granted, a portion of the cost and expense of constructing and maintaining said advance warning signs and crossing protective devices.
Section 4. Said track shall be laid and maintained at common grade with said Street as said grade now exists, or as said grade may be hereafter changed by the City, and the Grantee shall plank, using either prefabricated hardwood, asphalt with metal guardrails, or rubber panels, the travel portion of said Street between the rails and for one foot on each side thereof and shall maintain said planking in good repair as determined by the City Public Works Director. All prefabricated planking shall meet with City approval.

Section 5. The Grantee shall not store cars within or upon said Street nor shall said Grantee stop cars on said Street for switching operations, and further, said Grantee shall not use said track in such a manner as to unreasonably interfere with travel upon and along said Street, and shall have personnel available to direct traffic during the use of the crossing. Permission for Grantee to conduct switching operations on said lead track across said street during the hours of 6:00 a.m. - 9:00 a.m. and 3:00 p.m. to 6:00 p.m. on weekdays, may be withdrawn upon determination by the City Public Works Director that such switching operations are causing significant adverse effect on traffic flow on city streets, and then only after 30 days' written notice. Failure to curtail switching operations during the stated time period after said notice will result in the invalidation and termination of this Franchise."

Section 6. The franchise hereby granted shall not be taken to restrict the rights of the City to enter upon that portion of said Street where said track is located for the purpose of locating, relocating, constructing, maintaining, repairing, or removing any public works, utilities, or facilities under or over said track. All such work shall be done, if possible, in such a manner as not to obstruct, injure or prevent free use and operation of said railroad track by the Grantees, and shall meet the Grantees'
Section 8. The grades on all crossings referred to in this franchise shall be according to the standards established by the City of Kent.

Section 9. Prior to exercising the franchise privileges granted herein, the Grantee shall obtain any permits necessary to operate said lead track from applicable public authorities.

Section 10. The franchise privileges granted herein shall be effective for ten (10) years from and after the final passage of this Ordinance.

Section 11. This Ordinance shall not take effect until it is passed upon during a regular Council meeting subsequent to its introduction at a previous regular Council meeting; once it has received the favorable votes of a majority of the members of the Kent City Council it shall thereafter take effect five (5) days after its passage, approval and publication as provided by law.

ATTEST:

ISABEL HOGAN, MAYOR

APPROVED AS TO FORM:

DONALD E. MIRK, CITY ATTORNEY
Introduced the 17th day of August, 1981.
PASSED the ___ day of ___, 1981.
APPROVED the ___ day of ___, 1981.
PUBLISHED the ___ day of ___, 1981.

I hereby certify that this is a true copy of Ordinance No. 2309, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

[Signature]
MARIE JENSEN, CMC
CITY CLERK
ORDINANCE NO. 3401

Grantor(s): City of Kent

Grantee(s): Union Pacific Railway Company

Legal Description: (abbreviated) N1/2, §2, TWP 22N, R4E

Additional Legal is on page 5 of document(s).

Assessor’s Property Tax Parcel/Account Number(s): N/A

Note: This ordinance affects City of Kent Ordinance No. 2309, recorded under Auditor’s No. 8109240634 and also affects Ordinance No. 3380, which has been submitted for recording, copies of both ordinances are attached.

THIS DOCUMENT CONTAINS THIS COVERSHEET AND 5 ADDITIONAL PAGES.