

BILL NO. 3093

ORDINANCE NO. _____

AN ORDINANCE APPROVING A WIRELINE CROSSING AGREEMENT BETWEEN THE UNION PACIFIC RAILROAD COMPANY AND THE CITY OF BRANSON, AND AUTHORIZING THE MAYOR TO ENTER INTO THE AGREEMENT PERTAINING TO A WIRELINE CROSSING AT MAIN STREET IN BRANSON, MISSOURI

WHEREAS, Union Pacific Railroad Company has tendered to the City of Branson an agreement (Folder No. 02301-86) covering a wireline crossing at Branson, Taney County, Missouri; and

WHEREAS, the Board of Aldermen of the City of Branson has said proposed agreement before it and has given it careful review and consideration; and

WHEREAS, it is considered that the best interests of the City of Branson will be subserved by the acceptance of said agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF BRANSON, MISSOURI, AS FOLLOWS:

Section 1: The terms of the agreement submitted by the Union Pacific Railroad Company as aforesaid be, and the same are hereby, accepted on behalf of the City of Branson.

Section 2: The Mayor of the City of Branson is hereby authorized, empowered and directed to execute said agreement on behalf of the City and that the Branson City Clerk is hereby authorized and directed to attest said agreement and to attach to each duplicate original of said agreement a certified copy of this ordinance.

Section 3: This ordinance shall be in full force and effect upon and after its passage and approval.

Read, this first time on this ____ day of _____, 2005.

Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this ____ day of _____, 2005.

Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa K Westfall
City Clerk



Joseph L. Johnson
City Attorney

WIRELINE CROSSING AGREEMENT

Mile Post: 447.37, Carthage (Missouri & Northern Arkansas Railroad) Branch
Location: Branson, Taney County, Missouri

THIS AGREEMENT is made and entered into as of _____, 2005, by and between UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, (hereinafter the "Licensor") and CITY OF BRANSON, to be addressed at 110 W. Maddux, Branson, Missouri 65616 (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:

Article I. LICENSE FEE

Upon execution of this Agreement, the Licensee shall pay to the Licensor a one-time License Fee of Seventeen Thousand Four Hundred Forty-Three Dollars (\$17,443.00).

Article II. LICENSOR GRANTS RIGHT.

In consideration of the covenants and agreements herein contained to be by the Licensee kept, observed and performed, the Licensor hereby grants to the Licensee the right to construct and thereafter, during the term hereof, to maintain and operate

One 12.4kV distribution wireline crossing only

(hereinafter the "Wireline") in the location shown and in conformity with the dimensions and specifications indicated on the attached print dated January 25, 2005, marked Exhibit "A". Under no circumstances shall Licensee modify the use of the Wireline for a purpose other than the above-mentioned, and said Wireline shall not be used for any other use, whether such use is currently technologically possible, or whether such use may come into existence during the life of this Agreement.

Article III. CONSTRUCTION, MAINTENANCE AND OPERATION.

The grant of right herein made to the Licensee is subject to each and all of the terms, provisions, conditions, limitations and covenants set forth herein and in Exhibit B, hereto attached.

Article IV. IF WORK IS TO BE PERFORMED BY CONTRACTOR.

If a contractor is to do any of the work performed on the Wireline (including initial construction and subsequent relocation or substantial maintenance and repair work), then the Licensee shall require its contractor to execute the Licensor's form Contractor's Right of Entry Agreement. Licensee acknowledges receipt of a copy of the Contractors Right of Entry

Agreement and understands its terms, provisions, and requirements, and will inform its contractor of the need to execute the Agreement. Under no circumstances will Licensee's contractor be allowed onto Licensor's premises without first executing the Contractor's Right of Entry Agreement.

Article V. INSURANCE

A. The Licensee, at its expense, shall obtain the insurance described in Exhibit B-I, hereto attached. The Licensee will also provide to the Licensor a Certificate of Insurance, identifying Folder No. 02301-86, issued by its insurance carrier confirming the existence of such insurance and that the policy or policies contain the following endorsement:

UNION PACIFIC RAILROAD COMPANY is named as an additional insured with respect to all liabilities arising out of the existence, use or any work performed on or associated with the 'Wireline' located on Railroad right-of-way at Mile Post 447.37, on the Carthage (MISSOURI & NORTHERN ARKANSAS RAILROAD) Subdivision/Branch at or near Branson, Taney County, Missouri.

B. If the Licensee named in this Agreement is a public entity subject to any applicable statutory tort laws, the limits of insurance described in Exhibit B-I shall be the limits the Licensee then has in effect or which is required by applicable current or subsequent law, whichever is greater, a portion of which may be self-insured with the consent and approval of the Licensor

C. All insurance correspondence shall be directed to:

Constance R. Alvis
Folder No. 02301-86
Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street STOP 1690
Omaha, NE 68179-1690

Article VI. TERM.

This Agreement shall take effect as of the date first herein written and shall continue in full force and effect until terminated as herein provided.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY

CITY OF BRANSON

By: _____
Manager - Contracts

By: _____
Title: Louis E. Schaefer, Mayor

Approved as to Form:

Joseph L. Johnson, City Attorney