

Folder No. 2304-96  
**RIGHT OF ENTRY AGREEMENT**

**THIS AGREEMENT** is made and entered into as of February \_\_, 2005, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad"), and **THE CITY OF JONESBORO, ARKANSAS**, an Arkansas municipal corporation, to be addressed at Post Office Box 1845, Jonesboro, AR 72403; Attn: \_\_\_\_\_ [870-\_\_\_\_-\_\_\_\_; fax: 870-\_\_\_\_-\_\_\_\_] (hereinafter the "Licensee").

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

Article I. **DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

Article II. **RIGHT GRANTED; PURPOSE.**

A. The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property between Mile Post 123.4 and Mile Post 124.3, Jonesboro Subdivision, within the city limits of Licensee, for the purpose of removing vegetation and debris in the drainage ditches located thereon. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein, or designated by the Railroad Representative named in Article IV.

B. Licensee has requested the right to enter Railroad's right-of-way for the purpose stated above in order to provide improved storm drainage to the public and Railroad, recognizing such benefits to the public, has agreed to grant Licensee's request.

Article III. **TERMS AND CONDITIONS CONTAINED IN EXHIBIT A.**

The terms and conditions contained in Exhibit A, hereto attached, are hereby made a part of this Agreement.

Article IV. **ALL EXPENSES TO BE BORNE BY LICENSEE;  
RAILROAD REPRESENTATIVE.**

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee, or any costs or expenses incurred by the Railroad relating to this Agreement. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the local Manager of Track Maintenance of the Railroad, Mr. Gregory Kreifels (870-540-0982), or his authorized representative (hereinafter the Railroad Representative).

Article V. **TERM; TERMINATION.**

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and continue until terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

**Article VI. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.**

Fiber optic cable systems may be buried on the Railroad's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Prior to beginning any work, the Licensee shall telephone the Railroad at **1-800-336-9193** (a 24-hour number) to determine if fiber optic cable is buried anywhere on the property set forth herein. If it is, the Licensee shall also comply with and be subject to the provisions contained in Section 6 of Exhibit A.

**Article VII. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM.**

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Arkansas. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the state of Arkansas only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

**Article VIII. LICENSE FEE**

In recognition of the public benefits to be derived herefrom, Railroad hereby waives any fee in connection herewith. Flagging charges will be billed separately, if incurred.

**Article IX. RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES.**

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit A. All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefor. The rate of pay per hour for each flagman will be the prevailing hourly rate in effect for an eight-hour day for the class of men used during regularly assigned hours and overtime in accordance with Labor Agreements and Schedules in effect at the time the work is performed.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the

wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight-hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least ten (10) days in advance of commencing work, with the Railroad Manager of Track Maintenance.

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

**UNION PACIFIC RAILROAD COMPANY**  
*Federal Taxpayer I.D. #94-6001323*

By: \_\_\_\_\_  
Title: \_\_\_\_\_

*(Pursuant to ordinance, resolution, or other evidence of proper authority to execute this instrument, a copy of which shall be attached to the Railroad's original counterpart of this document.)*

DEED BOOK 690 PAGE 277 - 279  
DATE 02/02/2005  
TIME 03:28:22 PM  
RECORDED IN  
OFFICIAL RECORDS OF  
CRAIGHEAD COUNTY  
ANN HUDSON  
CIRCUIT CLERK  
*M. A. Hudson*, D.C.  
RECEIPT# 131368