

BILL NO. 3052

ORDINANCE NO. _____

AN ORDINANCE APPROVING A SUPPLEMENTAL AGREEMENT WITH THE MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION FOR HIGHWAY/RAIL CROSSING SIGNAL AND/OR SURFACE IMPROVEMENTS FOR THE MAIN STREET RAILROAD CROSSING IMPROVEMENT PROJECT

WHEREAS, the Missouri Highways and Transportation Commission is funding improvements to the Main Street railroad crossing signal improvements; and

WHEREAS, the City of Branson is constructing improvements to the crossing surface in conjunction with the crossing signal improvements; and

WHEREAS, the Missouri Highways and Transportation Commission has requested that the City of Branson enter into a supplemental agreement pertaining to the Main Street crossing signal improvements.

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

Section 1: The Board of Aldermen hereby authorizes the Mayor to execute a supplement agreement with Missouri Highways and Transportation Commission in substantially the form attached as Exhibit "A" for the Main Street railroad crossing signal improvements.

Section 2: 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.

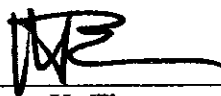
Read, this second time, passed and truly agreed to by the Board of Aldermen of City of Branson, Missouri this ____ day of _____, 2005.

Louis E. Schaefer, Mayor

ATTEST:

APPROVED AS TO FORM:

Lisa K Westfall
City Clerk



Matthew K. Thompson
Assistant City Attorney

CCO Form: RR9
Approved: 04/04 (BDG)
Revised:
Modified:

Main Street
In Branson
Taney County
Crossing No. 435 028U
Job No. RRP-000S(196)

**MISSOURI HIGHWAYS AND TRANSPORTATION COMMISSION
SUPPLEMENTAL AGREEMENT FOR HIGHWAY/RAIL CROSSING SIGNAL
AND/OR SURFACE IMPROVEMENTS**

THIS AGREEMENT is entered into by the Missouri Highways and Transportation Commission (hereinafter, "Commission"), the Missouri & Northern Arkansas Railroad Company (hereinafter, "Railroad"), and the City of Branson (hereinafter, "Agency"), pursuant to the terms of a Master Signal Agreement between the Railroad and Commission executed by the Railroad on April 29, 1993, and by the Commission on May 20, 1993, (hereinafter, "Master Agreement").

WITNESSETH:

WHEREAS, the preparation and submittal to the Commission a plan and cost estimate for the work (hereinafter, "preliminary engineering design") as described during the diagnostic review and in accordance with the provision of the Master Agreement appears to be warranted at an existing grade crossing in Branson, Missouri, where Main Street intersects Railroad's tracks at a point known as DOT # 435 028U; and

WHEREAS, the parties agree that this preliminary engineering design for the installation shall be in substantial compliance with the *Manual on Uniform Traffic Control Devices* (MUTCD), and will enhance safety to both highway and railroad traffic at said grade crossing.

NOW, THEREFORE, in consideration of these premises and of the mutual covenants herein contained, the parties agree as follows:

(1) **PURPOSE:** The purpose of this Agreement is to provide for, and is limited to, funding for the preliminary engineering design at this roadway-railroad crossing.

(2) **SCOPE OF WORK:** The Railroad will prepare the preliminary engineering design for the work as described during the diagnostic review and in accordance with the provisions of the Master Agreement.

(3) **FUNDING:** The Commission will reimburse the Railroad for one hundred percent (100%) of the preliminary engineering design cost.

(4) COST OF PROJECT: The cost of the project shall be the total monies expended by the Railroad to complete the preliminary engineering design.

(5) CHANGE ORDERS: If any change is made in the original plan and extent of the work, reimbursement to the Railroad shall be limited to costs covered by a change order having approval of the Commission PRIOR to the performance of the work.

(6) PAYMENT PROVISIONS: Upon receipt of the Railroad's final statement of costs and after a review of the statement in relation to the work performed, the Commission will reimburse the Railroad for one hundred percent (100%) of the Commission's obligation which is one hundred percent (100%) of the total project preliminary engineering design cost. If audit reveals that the Railroad has been overpaid, the Railroad will immediately refund to the Commission such overpayment. If audit reveals that the Railroad has been underpaid, the Commission will reimburse the Railroad for such underpayment.

(7) AMENDMENTS: Any change in this Agreement, whether by modification or supplementation, must be accomplished by a formal contract amendment signed and approved by the duly authorized representative of the parties.

(8) COMMISSION REPRESENTATIVE: The Commission's Multimodal Operations director is designated as the Commission's representative for the purpose of administering the provisions of this Agreement.

(9) ASSIGNMENT: The Railroad shall not assign, transfer, or delegate any interest in this Agreement without the prior written consent of the Commission.

(10) LAW OF MISSOURI TO GOVERN: This Agreement shall be construed according to the laws of the State of Missouri. The Railroad and the Agency shall comply with all local, state and federal laws and regulations relating to the performance of this Agreement.

(11) VENUE: It is agreed by the parties that any action at law, suit in equity, or other judicial proceeding to enforce or construe this Agreement, or regarding its alleged breach, shall be instituted only in the Circuit Court of Cole County, Missouri.

(12) CANCELLATION: The Commission may cancel this Agreement at any time for a material breach of contractual obligations by providing the Railroad with written notice of cancellation. Should the Commission exercise its right to cancel the Agreement for such reasons, cancellation will become effective upon the date specified in the notice of cancellation sent to the Railroad.

(13) AUDIT OF RECORDS: The Railroad shall maintain all records relating to this Agreement, including but not limited to invoices, payrolls, etc. These records must be available at all reasonable times at no charge to the Commission and/or its designees or representatives during the period of this Agreement and any extension thereof, and for three (3) years from the date of final payment made under this Agreement.

(14) AUTHORITY TO EXECUTE: The signers of this Agreement warrant that they are acting officially and properly on behalf of their respective institutions and have been duly authorized, directed and empowered to execute this Agreement.

(15) ORIGINAL AGREEMENT: Except as otherwise modified, amended, or supplemented by this Supplemental Agreement, the Master Agreement and all previous Supplemental Agreements between the parties shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the last date written below. The Agency executed same pursuant to Ordinance No. _____, of said Agency, approved on the ____ day of _____, 20__.

Executed by Railroad this _____ day of _____, 20__.

Executed by Agency this _____ day of _____, 20__.

Executed by Commission this _____ day of _____, 20__.

MISSOURI HIGHWAYS AND
TRANSPORTATION COMMISSION

Brian C. Weiler
Multimodal Operations Division Director

MISSOURI & NORTHERN
ARKANSAS RAILROAD COMPANY

By *Al Saturnas*
Name AL SATURNAS
Title General Manager

CITY OF BRANSON








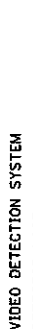
By _____
Name _____
Title _____

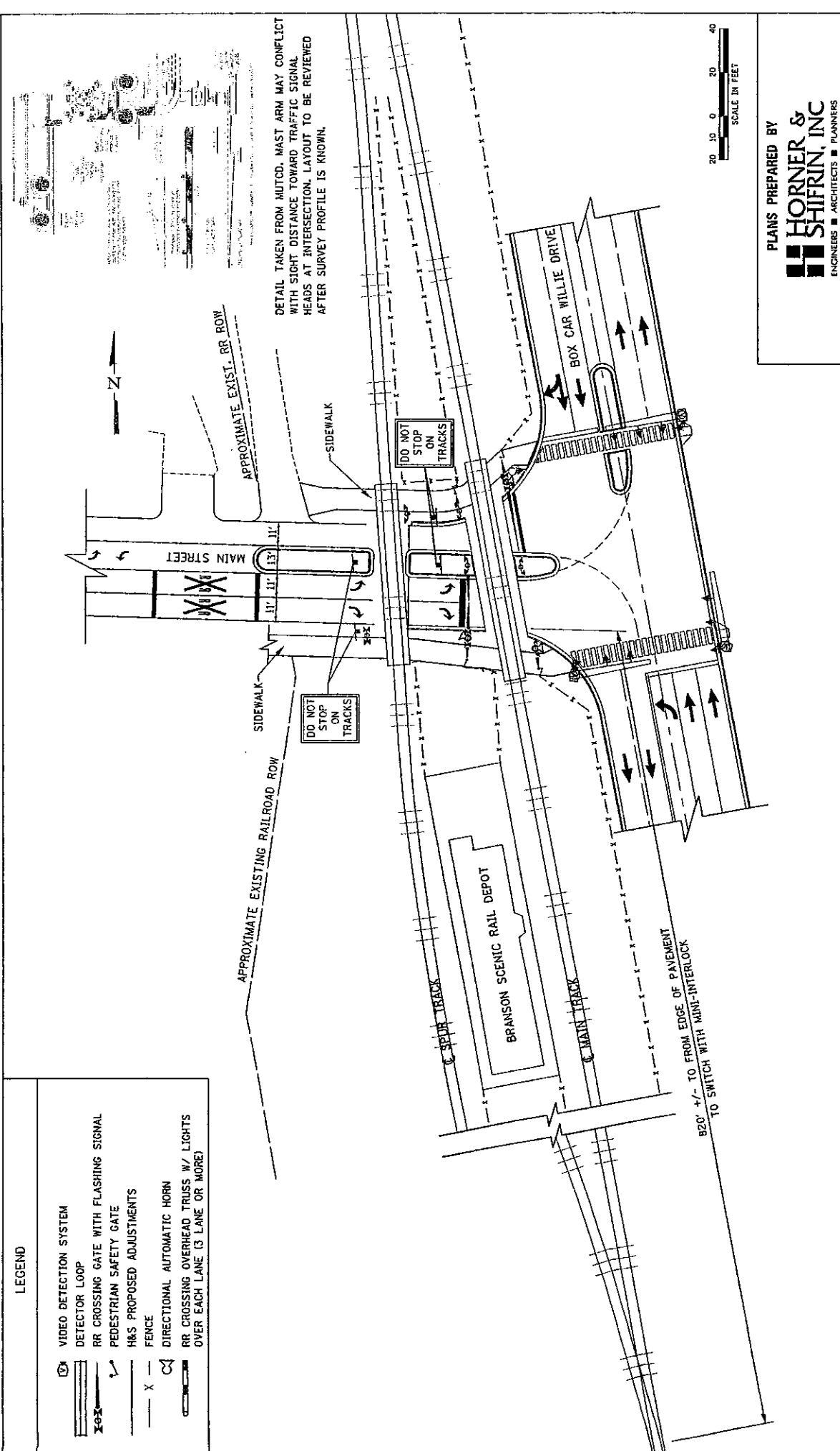
ATTEST:

Title _____

Ordinance No. _____

LEGEND

-  VIDEO DETECTION SYSTEM
-  DETECTOR LOOP
-  RR CROSSING GATE WITH FLASHING SIGNAL
-  PEDESTRIAN SAFETY GATE
-  H&S PROPOSED ADJUSTMENTS
-  FENCE
-  DIRECTIONAL AUTOMATIC HORN
-  RR CROSSING OVERHEAD TRUSS W/ LIGHTS OVER EACH LANE (3 LANE OR MORE)



DETAIL TAKEN FROM MUTCD. MAST ARM MAY CONFLICT WITH SIGHT DISTANCE TOWARD TRAFFIC SIGNAL HEADS AT INTERSECTION. LAYOUT TO BE REVIEWED AFTER SURVEY PROFILE IS KNOWN.

PLANS PREPARED BY
HORNER & SHIFRIN, INC
 ENGINEERS ■ ARCHITECTS ■ PLANNERS
 5200 OAKLAND AVENUE ■ ST. LOUIS, MISSOURI 63110
 PHONE: 314-531-0321 ■ FAX: 314-531-6966
 www.horner-shifrin.com

MAIN STREET & BOX CAR WILLIE DRIVE - PROPOSED LAYOUT