CITY OF JOPLIN
COUNCIL AGENDA ITEM

ITEM
Council Bill 2020-141 – approving a Pedestrian Crossing License Agreement with Missouri & Northern Arkansas Railroad Company, Inc and the City of Joplin.

MEETING DATE
July 20, 2020

ORIGINATING DEPARTMENT
Public Works - Engineering

ATTACHMENTS
Location Map, Agreement, Council Bill 2020-141 Ordinance

REVIEWED BY
Director of Public Works: David Hertzberg; Director of Finance: Leslie Haase; City Attorney: Peter Edwards; City Manager: Nicholas Edwards.

SUMMARY
This Council Bill approves the execution of a pedestrian crossing license agreement between Missouri & Northern Arkansas Railroad Company, Inc (MNA) and the City of Joplin as it pertains to construction of sidewalk improvements on 3rd and 4th street related to the 4th and School Stormwater project (TS0612).

BACKGROUND
The Parks and Storm Water Sales Tax was approved by voters in 2011. A capital improvement project recommendation list was developed for the utilization of the 2012-2022 Parks and Storm Water Sales Tax funds which was approved by voters. Included in the list of approved projects was a project for culvert and ditch improvements at 4th and School. The existing ditch and culverts running between the existing railroad tracks and the Empire Market property do not have sufficient capacity and cause flooding in the adjacent Empire Market building. The ditch empties into 2-24" RCP culverts where it crosses under 4th street and into a 42" RCP which has a less than 5-year design capacity. The 4th and School stormwater project includes ditch and culvert improvements to increase the system capacity and accommodate the 100-year event. The improvements include installation of a precast 5' x 6' reinforced concrete box culvert crossing underneath MNA railroad at 5th street as well as storm sewer improvements in parallel with the railroad right-of-way. Also included in the project are improvements to the existing sidewalks on 3rd and 4th street which cross the MNA railroad. This agreement allows for the installation of the sidewalk improvements portion of the project.

RECOMMENDATION
Staff recommends adoption of this Council Bill No. 2020-141, a pedestrian crossing license agreement between Missouri & Northern Arkansas Railroad Company, Inc (MNA) and the City of Joplin on first reading.

PEDESTRIAN CROSSING LICENSE AGREEMENT

THIS LICENSE AGREEMENT, effective as of the ____ day of _____, 2020, is between **MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.** with an office at13901 Sutton Park Drive, S., Suite 270, Jacksonville, Florida 32224, a Delaware corporation, hereinafter called "RAILROAD" and **CITY OF JOPLIN**, **MISSOURI**, a political subdivision of the State of Missouri with an address of 602 South Main Street, Joplin, MO 64801, hereinafter called "CITY".

WITNESSETH:

WHEREAS, the CITY desires to construct, use, maintain, repair, renew at-grade public pedestrian crossings across and over the tracks and property of RAILROAD, at or near the RAILROAD'S Milepost 332.0 (4th and 3rd Streets), at Webb City Tamko Industrial Subdivision, Joplin, Jasper County, MO, more particularly described in Exhibit A attached hereto and incorporated herein by reference, hereinafter referred to as the "CROSSING SITE"; and

WHEREAS, with the consent of the owner of the right-of-way, RAILROAD is agreeable to permitting the CITY to construct, use, maintain, repair, renew and ultimately remove the CROSSING SITE under the terms and conditions set forth herein.

NOW, THEREFORE, for the covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. RAILROAD hereby permits the CITY to construct use, maintain, repair, renew and ultimately remove the CROSSING SITE under the terms and conditions set forth herein.

2. The CROSSING SITE includes but is not limited to any existing railroad crossing warning signs, crossing surfaces, track structures and automatic crossing warning devices which are, or might be, located within or adjacent to the locations described in Exhibit A, provided that, the construction of the CROSSING SITE shall be done by RAILROAD as provided in this License Agreement ("Agreement") and further provided that, notwithstanding rights to the CITY granted herein, RAILROAD reserves the right to perform all work required on the railroad right-of-way including construction, drainage, lighting and vegetation management. CITY shall pay the RAILROAD the entire cost and expense of labor, materials and equipment furnished by RAILROAD in performing any such work. The status of the CITY is that of a licensee and not lessee, granting the CITY the right to use the CROSSING SITE as specified herein.

3. The CROSSING SITE shall be used for public at-grade pedestrian crossing purposes only and no utility, including telecommunications facilities, pipes, wires, cables; or other line or structure shall be placed in, on or over the CROSSING SITE without the previous consent in writing of the RAILROAD. CITY further agrees that it will at all times keep the CROSSING SITE, together with the additional portions of the railroad right-of-way within 325 feet of the northerly and southerly limits or boundaries of the CROSSING SITE, clear of any vegetation or other growth greater than two (2) feet in height on each side of the tracks at the sole expense of the CITY and without cost to RAILROAD or lien upon the railroad property.

4. This Agreement shall automatically renew to continue in effect thereafter from year to year, subject to termination by the RAILROAD or CITY upon sixty (60) days prior written notice.

5. CITY shall pay an annual license fee in advance to RAILROAD of Zero U.S. Dollars ($0.00), for use of the CROSSING SITE.

6. The provisions and stipulations of this Agreement are a part of the consideration of the licensing of the CROSSING SITE, and in the event the CITY shall fail to comply with any of the covenants and conditions, then, at the option of the RAILROAD, this Agreement shall be terminated with full legal rights and remedies retained by the RAILROAD, including but not limited to the right to reenter, repossess, and remove the CROSSING SITE if it shall elect to do so.

7. The CITY shall obtain any necessary permits for the installation, construction, erection, repair, and maintenance of any of the RAILROAD-owned or maintained facilities described in this Agreement.

8. Unless otherwise specified, the cost of and liability for installation, construction, maintenance, replacement and removal of all facilities at the CROSSING SITE, including but not limited to the track structure, railroad and highway devices, and grade crossing surfaces, will be performed by the RAILROAD at the sole cost of the CITY. In the event that RAILROAD engages one or more contractors to perform said work, then RAILROAD shall manage such contractor(s) and the CITY shall pay such contractor(s) directly.

9. After the installation of the CROSSING SITE, the replacement costs of the new structure shall be the sole responsibility of the CITY. The CITY shall, at its sole expense, maintain and replace the remainder of the sidewalk inside the railroad right-of-way, plus any paving which may be located between the ends of the ties. If such work is required due to replacement of the structure of the CROSSING SITE, the CITY shall perform such work in accordance with the time and operational requirements of RAILROAD. The CITY will give prior notice to RAILROAD of all work to be performed by it at or near the CROSSING SITE and no such work shall be performed by CITY without the prior approval of RAILROAD. All work performed by the CITY shall be conducted at such times and in such manner as to not interfere or impeded the operations of RAILROAD. The RAILROAD shall provide a construction watchman at said CROSSING SITE while work is being performed by the CITY under the provisions of this Agreement, at the sole expense of the CITY.

10. The CITY agrees, acknowledges and understands that the RAILROAD reserves the right to make any changes at any future time in its existing tracks or other facilities, including the installation, maintenance and operation of any additional track or tracks or other facilities on its right-of-way at the CROSSING SITE. The CITY agrees to bear the total expense of any changes or additions to the pavement and traffic signal devices, the WARNING DEVICES or other railroad signalization equipment or new track structure at the CROSSING SITE, whether these changes or additions are required by law or order of any public or judicial authority, done voluntarily by the RAILROAD, or requested by the CITY.

11. The CITY agrees that it will install, maintain, and replace all necessary drainage facilities to prevent the accumulation of surface water due to the existence of the CROSSING SITE. Such facilities must first be approved by the RAILROAD and any governing bodies having jurisdiction thereof and operation of the facilities shall also be subject at all time to their approval. An additional license agreement may be required by the RAILROAD, depending upon the location of such drainage facilities and type, size, depth, and other specifications of the proposed facilities, as submitted to the RAILROAD.

12. Lighting facilities adequate to comply with the requirements of the laws of the State of Missouri covering illumination of pedestrian crossings shall be installed, maintained, and replaced at or near this CROSSING SITE by and at the sole cost of CITY.

13. Facilities at or near the CROSSING SITE that are not specifically covered by this Agreement, including but not limited to pedestrian walkways, may not be constructed by CITY at or near the CROSSING SITE without the prior written approval of RAILROAD, which approval is in RAILROAD'S sole discretion. The cost and liability for such facilities, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of CITY.

14. If at any time RAILROAD, at CITY'S request, performs work required to be performed by CITY hereunder, the cost and liability for such work, including but not limited to claims for personal injury or death or damage to property of any person or persons whomsoever, shall be the sole responsibility of CITY.

15. The CITY further covenants to pay the RAILROAD, within thirty (30) days after presentation of the same, all bills submitted by RAILROAD including maintenance and all bills for electricity for the lighting and illumination of the CROSSING SITE if same are provided by RAILROAD.

16. At the termination of this Agreement for any cause, or upon termination of the CITY'S use of the CROSSING SITE as herein described, all rights of the CITY shall terminate and the CITY shall remove, under the RAILROAD'S supervision and direction, at CITY'S entire cost and expense, said sidewalk and all non-RAILROAD-owned improvements placed upon the RAILROAD'S right-of-way and restore the ground to its original condition.

17. The CITY shall indemnify, defend and hold harmless RAILROAD for assessments or other charges of any kind whatsoever against the RAILROAD at any time for any portion of public improvements installed on or within two hundred (200) feet of the CROSSING SITE arising out of the existence of the CROSSING SITE.

18. The CITY shall not in any way, or at any time, interfere with or obstruct RAILROAD'S right-of-way, the movement of RAILROAD'S trains and other railroad operations, or interfere with the RAILROAD'S use thereof, or the use thereof by RAILROAD'S assigns, invitees, lessees or licensees.

19. TO THE EXTENT ALLOWED BY LAW, THE CITY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS RAILROAD ITS AFFILIATES, OFFICERS, DIRECTORS AND EMPLOYEES FROM ANY AND ALL SUITS, CLAIMS, LIABILITY, LOSSES, DAMAGES, EXPENSES AND COSTS (INCLUDING REASONABLE ATTORNEYS FEES) INCURRED BY OR ASSERTED AGAINST RAILROAD WHETHER FOR PERSONAL INJURY OR DEATH OR DAMAGE TO PROPERTY OF ANY PERSON OR PERSONS WHOMSOEVER, RELATING TO, RESULTING FROM OR ARISING OUT OF THE CONSTRUCTION, INSTALLATION, MAINTENANCE OR REPLACEMENT OF THE CROSSING SITE BY RAILROAD, THE PERFORMANCE OF WORK BY RAILROAD REQUIRED TO BE PERFORMED BY CITY HEREUNDER, OR THE EXISTENCE OR USE OF THE CROSSING SITE OR CITY FACILITIES, INCLUDING BUT NOT LIMITED TO PEDESTRIAN WALKWAYS, AT OR NEAR THE CROSSING SITE AND **REGARDLESS OF WHETHER SUCH INJURY OR DAMAGE IS CAUSED OR ALLEGED TO BE CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENCE OF RAILROAD.** NOTWITHSTANDING THE FOREGOING, THE CITY SHALL HAVE NO

INDEMNIFICATION OBLIGATION FOR THE GROSS NEGLIGENCE OR INTENTIONAL, WRONGFUL ACTS OF RAILROAD.

The CITY will include in any contract which it may let for the whole or part of any work to be performed hereunder by or for the CITY that each of its contractors shall apply for and enter into a CONTRACTOR'S RIGHT OF ENTRY AGREEMENT with RAILROAD, such agreement to be provided by RAILROAD.

CITY agrees to comply with the **INSURANCE REQUIREMENTS,** attached hereto as Exhibit B and made a part hereof, and shall provide the required Certificate of Insurance to RAILROAD simultaneous to the execution of this Agreement.

21. (a) CITY, at its own cost and expense, when performing any work in connection with the CROSSING SITE shall request RAILROAD to furnish any necessary construction watchmen for the protection of RAILROAD'S employees, property, and train operations. RAILROAD shall be notified at least two (2) weeks in advance of the performance of any work in connection with the CROSSING SITE.

(b) In addition to, but not in limitation of any of the foregoing provisions, if at any time RAILROAD should deem it necessary to place construction watchmen for the protection of any person or property, during the construction, maintenance, repair, alteration, renewal, or removal at the CROSSING SITE, RAILROAD shall have the right to place such construction watchmen, or other persons. All watchmen fees have been waived for the CITY in exchange for CITY covering all costs of installation and maintenance of the CROSSING SITE as described in Exhibit C and made a part hereof. The furnishing or failure to furnish construction watchmen, or other persons by the RAILROAD under this paragraph, however, shall not release CITY from any and all other liabilities assumed by CITY under the terms of this Agreement. The CITY shall enter into a Contractor's Right of Entry Agreement and Safety Rules Agreement when it or its contractor or anyone claiming under this Agreement proposes to enter upon the CROSSING SITE to perform work under this Agreement in order that proper warning may be provided for trains. The CITY further agrees that at all times its personnel or agents are on the property of the RAILROAD, they will be accompanied by a RAILROAD representative and any cost involved will be borne by the CITY. All persons entering the Property pursuant to the permission granted herein shall comply and perform the Work in accordance with Genesee & Wyoming Inc.'s Code of Ethics and Conduct and all publicly available policies referenced therein, including but not limited to the Contractor Safety Rules (collectively, the "Policies") which can be located at:

https://gwrr.com/about_us/code-of-ethics

and

https://www.gwrr.com/download.axd/0774e378f35949f59f232ef1adbc63e7.pdf?d=Contractor%20Safety%20Rules

22. Installation, maintenance, and replacement of any and all railroad advance warning signs and pavement markings on any road approaching the CROSSING SITE shall be the sole responsibility and cost of the CITY, and at its sole expense.

23. The CITY hereby acknowledges that it has been notified that its personnel will or may be working in an area containing active fiber-optic transmission cable as well as other cables and other facilities.

24. If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

25. This Agreement will be governed by the laws of the State of Missouri. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties related to the subject matter of this Agreement. Any future change or modification of this Agreement must be in writing and signed by both parties.

26. It is understood by and between the respective parties hereto that this License Agreement cancels and supersedes any other License Agreements between the RAILROAD and CITY with respect to the matters contained herein.

27. In the event funds are not appropriated and budgeted in any fiscal year for any financial obligation under this Agreement, CITY shall notify RAILROAD of such occurrence and this Agreement shall terminate on the last day of the fiscal year for which the appropriation was made without penalty or expense to CITY of any kind whatsoever.

IN WITNESS WHEREOF, the RAILROAD and the CITY have caused this instrument to be executed in their corporate names and respective seals to be hereunto affixed in duplicated the day first hereinafter written by their undersigned officials thereunto lawfully authorized.

Witness:

MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC.

_____

By: _____

Title: _____

Date: _____

Witness:

CITY of JOPLIN, **MISOURI,** a political subdivision of the State of Missouri

_____

By: _____

Title: _____

Date: _____

EXHIBIT A

May 27, 2020



CITY OF JOPLIN, MISSOURI
PEDESTRIAN CROSSING AGREEMENT
3rd Street Existing Crossing Lat/Long 37.0881407,-94.5026099
3rd Street Proposed Crossing Lat/Long 37.0881328,-94.5026103
4th Street Existing Crossing Lat/Long 37.0875424,-94.5026828
4th Street Proposed Crossing Lat/Long 37.0875654,-94.5026770
Webb City Tamko Industrial Subdivision MP 332.0

NOT TO SCALE

EXHIBIT B
INSURANCE REQUIREMENTS

(a) The CITY ("Licensee") shall, at its own cost and expense, prior to entry onto RAILROAD ("Licensor")'s Property or the commencement of any work pursuant to this Agreement, procure and thereafter maintain throughout the term of this Agreement the following types and minimum amounts of insurance:

(i) The Licensee shall maintain Public Liability or Commercial General Liability Insurance ("CGL"), including Contractual Liability Coverage and CG 24 17 "Contractual Liability – Railroads" endorsement, covering all liabilities assumed by the Licensee under this Agreement, without exception or restriction of any kind, with a combined single limit of not less than Two Million Dollars ($2,000,000) for Bodily Injury and/or Property Damage Liability per occurrence, and an aggregate limit of not less than Six Million Dollars ($6,000,000) per annual policy period. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Licensor and its affiliates and** shall name the **Licensor and its affiliates as Additional Insured**. An Umbrella or Excess policy may be utilized to satisfy the required limits of liability under this section but must "follow form" and afford no less coverage than the primary policy.

(ii) The Licensee shall maintain Commercial Automobile Insurance for all owned, non-owned and hired vehicles with a combined single limit of not less than One Million Dollars ($1,000,000) for Bodily Injury and/or Property Damage Liability per occurrence. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Licensor and its affiliates and** shall **name the Licensor and its affiliates as Additional Insured**.

(iii) The Licensee shall maintain Statutory Workers' Compensation and Employers' Liability Insurance for its employees (if any) with minimum limits of not less than One Million Dollars ($1,000,000) for Bodily Injury by Accident, Each Accident; One Million Dollars ($1,000,000) for Bodily Injury by Disease, Policy Limit; One Million Dollars ($1,000,000) for Bodily Injury by Disease, Each Employee. Such insurance policy shall be endorsed to provide a **Waiver of Subrogation in favor of the Licensor and its affiliates**, if applicable.

(b) The following general insurance requirements shall apply:

(i) The specified insurance policies must be affected under standard form policies underwritten by insurers licensed in the state where work is to be performed and carry a minimum Best's rating of "A-" and size "Class VII" or better. The Licensor reserves the right to reject as inadequate any insurance coverage provided by an insurer that is rated less than the ratings specified in this section.

(ii) All coverages shall be **primary and non-contributory to any insurance coverages maintained by** the **Licensor** and **its affiliates.**

(iii) All insurance policies shall be endorsed to provide the Licensor with thirty (30) days prior written notice of cancellation, non-renewal, or material changes.

(iv) The Licensee shall provide the Licensor with certificates of insurance evidencing the insurance coverages, terms and conditions required prior to commencement of any activities on or about the Property. Said certificates should reference this Occupancy License Agreement by agreement date and description and shall be furnished to the Licensor at the following address, or to such other address as the Licensor may hereafter specify:**MISSOURI & NORTHERN ARKANSAS RAILROAD COMPANY, INC**.
C/O Genesee & Wyoming Railroad Services, Inc.
13901 Sutton Park Drive South, Suite 160
Jacksonville, FL 32224

(v) If any policies providing the required coverages are written on a Claims-Made basis, the following shall apply:

(1) The retroactive date shall be prior to the commencement of the work;

(2) The Licensee shall maintain such policies on a continuous basis;

(3) If there is a change in insurer or policies are canceled or not renewed, the Licensee shall purchase an extended reporting period of not less than three (3) years after the contract completion date; and

(4) Licensee shall arrange for adequate time for reporting of any loss under this Agreement.

(c) The Licensor may require the Licensee to purchase additional insurance if the Licensor reasonably determines that the amount of insurance then being maintained by the Licensee is insufficient in light of all relevant factors. If the Licensee is required to purchase additional insurance, the Licensor will notify the Licensee. Failure of the Licensee to comply within thirty (30) days shall be considered a default subject to termination of the Agreement.

(d) Furnishing of insurance by the Licensee shall not limit the Licensee's liability under this Agreement, but shall be additional security, therefore.

(e) The above indicated insurance coverages shall be enforceable by any legitimate claimant after the termination or cancellation of this Agreement, or any amendment hereto, whether by expiration of time, by operation of law or otherwise, so long as the basis of the claim against the insurance company occurred during the period of time when the Agreement was in effect and the insurance was in force.

(f) Failure to provide the required insurance coverages or endorsements (including contractual liability endorsement) or adequate reporting time shall be at Licensee's sole risk.

(g) If contractors are utilized, the Licensee agrees to require all such contractors to comply with the insurance requirements of this Exhibit B and sign a separate right of entry agreement, as required by the Agreement.

EXHIBIT C

Scope of Work; Joplin, MO, 4th & School Storm Drainage Improvements - Phase II

The following is a brief summary of the scope of work as it relates to coordination between the City of Joplin and the Missouri Northern Arkansas Railroad Company, Inc. on the above referenced project.:

A. 5th St. Box Culvert Crossing

1. City of Joplin shall:
    a. Arrange and pay for a contractor to install the precast 5' x 6' reinforced concrete Cooper E-80 rated box culvert in an open trench;
    b. Including excavation, box culvert, bedding, structural backfill, pavement replacement, ballast replacement on either side of rails (not in between), topsoil replacement, seed, and mulch;
    c. Pay and arrange for materials testing for structural backfill;
    d. Coordinate with the MNA Railroad and complete the installation of the box culvert within 60 hours over a weekend while the tracks are not in service.

2. MNA Railroad shall:
    a. Arrange and pay for the removal and replacement of a designated section of track (rails and ties) with MNA forces to allow for the installation of the box culvert, including materials;
    b. Arrange and pay for the removal and replacement of cross bucks or any required signal equipment, including materials;
    c. Waive flagging fees to the City of Joplin associated with the encroachment;
    d. Waive crossing fees to the City of Joplin associated with the crossing;
    e. Coordinate with the City of Joplin and complete the installation within 60 hours over a weekend while the tracks are not in service.

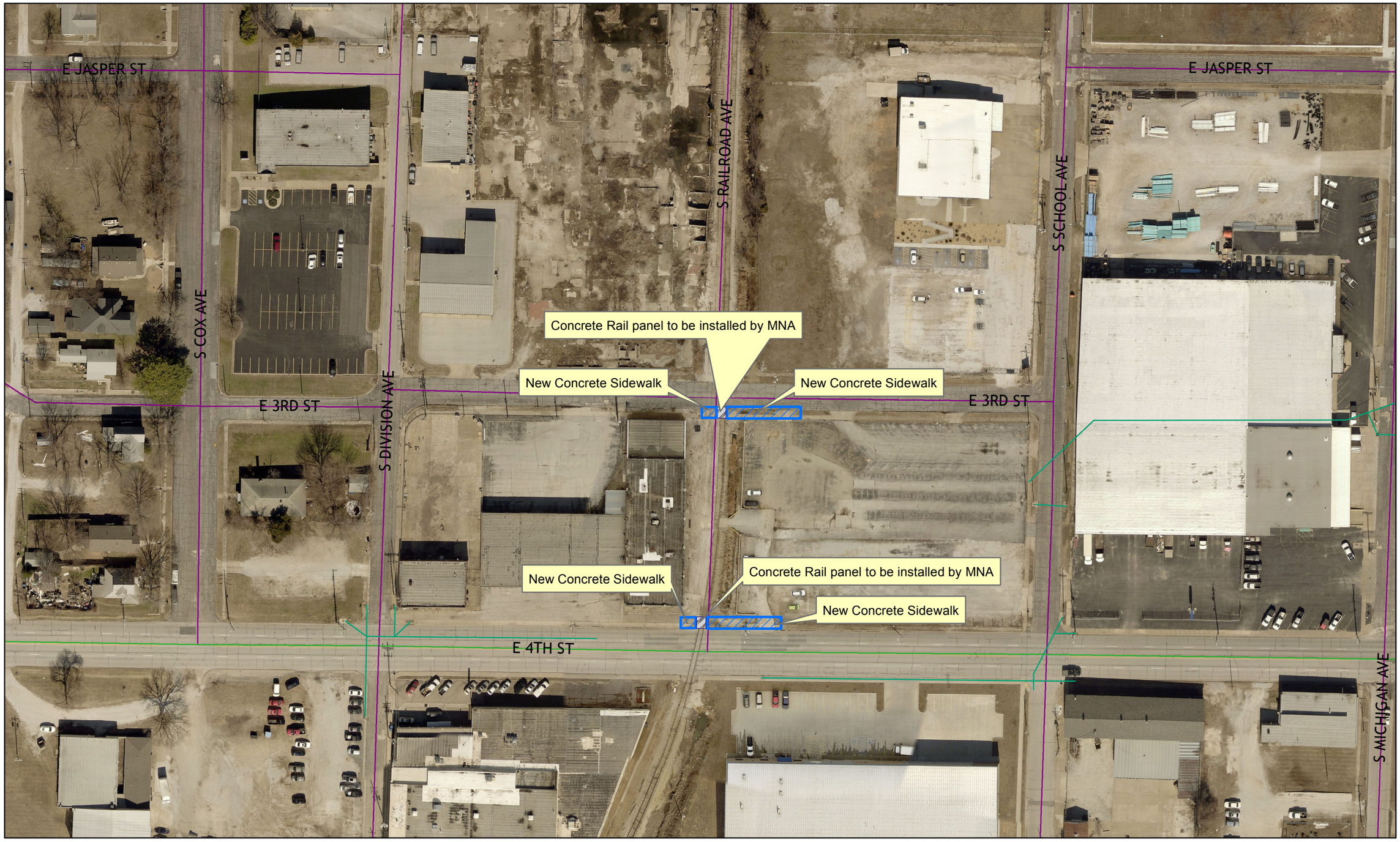
B. Parallelism, 5th St. to Vacated Jasper

1. City of Joplin shall:
    a. Arrange and pay for a contractor to construct storm sewer improvements including, earthwork, installation of box culverts, paved ditch, and appurtenances associated with the ditch improvements;
    b. Replace any ballast that is removed by the City's contractor during the construction of improvements;
    c. Only work during the times designated by MNA Railroad for all work within 25 feet of the near rail;

d. Coordinate with MNA Railroad for the removal and replacement of signal equipment.

2. MNA Railroad shall:
   a. Arrange and pay for the removal and replacement of signal equipment at 3rd St. as noted on the plans with MNA forces to allow for the installation of storm sewer improvements, including any underground fiber or electric;
   b. Provide any specialty temporary traffic control that may be required by MNA;
   c. Waive flagging fees to the City of Joplin associated with the encroachment and shut down the railroad during designated times when not in use (It was understood that the rail is only used twice a day, Monday-Friday at approximately 10:00 am and 10:00pm for deliveries to TAMKO);
   d. Allow for pedestrian crossings at 4th St. and 3rd St.
   e. Coordinate with the City of Joplin for the construction storm sewer improvements.

4th and School Pedestrian Crossing Agreement Sidewalk Improvements



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COUNCIL BILL NO. 2020-141 ORDINANCE NO

AN ORDINANCE approving a pedestrian crossing license agreement by and between the City of Joplin and Missouri & Northern Arkansas Railroad Company, Inc, as it pertains to construction of sidewalk improvements on 3rd and 4th street related to the 4th and School Stormwater Project (TS0612); and authorizing the City Manager or his designee to execute the same by and on behalf of the City of Joplin.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF JOPLIN, as follows:

Section 1. That the said pedestrian crossing license agreement by and between the City of Joplin and Missouri & Northern Arkansas Railroad Company, Inc, a true and accurate copy of said agreement being attached hereto and incorporated herein, be, and the same is hereby approved.

Section 2. That the City Manager of the City of Joplin, Missouri, or his designee, is hereby authorized and directed to execute said agreement, or agreement in substantially similar form, by and on behalf of the City of Joplin.

Passed by the Council of the City of Joplin, Missouri, this _____ day of

_____, 2020 by a _____ vote.

_____

ATTEST: Ryan D. Stanley, Mayor

_____

Barbara J. Gollhofer, City Clerk

APPROVED AS TO FORM:

_____

Peter C. Edwards, City Attorney