First Reading: December 17, 2024

Second Reading: dispensed

RESOLUTION 2024 - 141

A RESOLUTION AUTHORIZING THE TOWNSHIP ADMINISTRATOR TO EXECUTE A RIGHT OF ENTRY AGREEMENT WITH SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY (SORTA) FOR THE SYCAMORE TOWNSHIP SCHOOL ROAD & SOLZMAN ROAD SIDEWALK PROJECT (PID 119074) AND DISPENSING WITH THE SECOND READING

WHEREAS, the Board of Township Trustees is desirous of making improvements to road ways and constructing sidewalks in the Township, and has entered into an LPA Federal Local-Let Project Agreement with the State of Ohio Department of Transportation for the construction of a sidewalk on the south side of School Road, beginning at the Township and City of Sharonville Corporation Line, thence continuing to Solzman Road, thence continuing along the west side of Solzman Road to East Kemper Road, the "School Road and Solzman Road Sidewalk Project PID119074"; and

WHEREAS, the Board of Trustees desires to proceed with the "School Road and Solzman Road Sidewalk Project PID119074", and approve the Southwest Ohio Regional Transit Authority Right of Entry Agreement between Sycamore Township and the Southwest Ohio Regional Transit Authority for the construction of a sidewalk on the south side of School Road, on property owned by the Southwest Ohio Regional Transit Authority; and

NOW THEREFORE, BE IT RESOLVED by the Board of Township Trustees of Sycamore Township, State of Ohio:

SECTION 1.

The attached Southwest Ohio Regional Transit Authority Right of Entry Agreement between Sycamore Township and the Southwest Ohio Regional Transit Authority for the School Road and Solzman Road Sidewalk Project (PID119074) is hereby approved, and the Township Administrator is hereby authorized and directed to execute the Agreement on behalf of the Board.

SECTION 2.

The Trustees of Sycamore Township, upon at least a majority vote do hereby dispense with the requirement that this resolution be read on two separate days, and hereby authorizes the adoption of this Resolution upon its first reading.

SECTION 3.

This Resolution shall take effect on the earliest date allowed by law.

VOTE RECORD:

Mr. Kellums Aye.	Ms. Schwegmann Aye	Mr. Weidman Ayz_
PASSED at a mee December, 2024.	eting of the Board of Townshi	p Trustees this 17 th day of Weldman, Chairman
	In.	wegmann, Vice Chairman
	AUTHENTICATION	
This is to certify that the Township Fiscal Officer this 17th	day of December, 2024. Jonathan	T. Deters Township Fiscal Officer
APPROVED AS TO FORM:		
0 1		

RIGHT OF ENTRY AGREEMENT

	THIS R	RIGHT OF	ENTRY A	GREEMENT	(this " <u>A</u>	greement")	is executed	and de	livered
as of	the	day of	•	, 20	(the	"Effective	Date"), by	and be	etween
SOU	THWEST	T OHIO R	EGIONAI	L TRANSIT	AUTHO	ORITY, a p	olitical subd	ivision	of the
State	of Ohio,	whose add	ress is 525	Vine Street,	Suite 50	0, Cincinnat	i, Ohio 4520)2-2540), Attn:
Khale	d Shamn	nout (" <u>Grar</u>	ntor"), and	SYCAMOR	RE TOW	NSHIP, a	(n) division	in Ha	milton
Coun	ty, Ohio	, whose ac	ddress is 8	540 Kenwoo	d Road	Sycamore	Township,	Ohio	45236
("Gra	<u>ntee</u> "). G	rantor and (Grantee are	referred to co	ollectivel	y in this Ag	reement as the	he " <u>Par</u>	ties."

Statement of Agreement

1. Grant of Entry and Use.

- (a) For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant to Grantee a temporary, non-exclusive right (the "Right of Entry") to enter upon, occupy and have possession of certain portions as specifically described or depicted in Exhibit B attached hereto (the "Access Area") of certain real property situated in Sycamore Township, Hamilton County, Ohio, being described in Exhibit A attached hereto. The Right of Entry shall be solely for the purposes of construction of a new pedestrian crossing, an aerial fiber optic crossing on existing utility poles, and a new water main crossing within the Access Area (collectively, the "Permitted Work") solely in accordance with the plans and specifications (the "Plans") attached as Exhibit C hereto, which were previously delivered to and approved in writing by Grantor. Grantee, by acceptance of the Right of Entry, agrees that the Right of Entry shall be subject to the terms and conditions set forth in this Agreement.
- (b) The term of the Right of Entry shall be the period from the Effective Date until the earliest of (i) written notification by Grantee of completion of the Permitted Work, (ii) the date that is thirty (30) days after Grantor notifies Grantee of its default hereunder and Grantee fails to cure the default, or (iii) two (2) years after the Effective Date (the "Termination Date"). This period may only be extended by written amendment to this Agreement, signed by the Parties.
- 2. <u>Use of Right of Entry Generally.</u> Grantee shall use the Right of Entry only for its intended purposes, in a safe, careful and proper manner, in accordance with all applicable laws, and in such a manner as will not unreasonably interfere with the use of the Access Area or any of Grantor's other property for railroad or other transportation purposes by Grantor and its successors and assigns. Grantee shall perform the Permitted Work in strict compliance with the Plans, any and all applicable legal requirements and the terms and conditions of this Agreement.
- 3. <u>Consideration</u>. In consideration for the grant of the Right of Entry, Grantee shall (i) pay to Grantor the sum of \$500.00 upon acceptance of the Right to Entry and (ii) pay or reimburse Grantor and I&O (as defined herein) for their reasonable costs and expenses incurred in connection with the Right of Entry. Without limiting the generality of the immediately

preceding sentence, Grantee shall pay to Grantor a sum of \$_N/A, upo	n acceptance of
the Right of Entry (in addition to the payments provided for above), of which \$_	N/A
is a review fee payable to Grantor's engineering consultant in connection with the	Right of Entry
and \$N/A is the estimated legal and review fees of Grantor in conn	ection with the
Right of Entry.	

4. Railroad Right of Way.

- (a) The Access Area is within a railroad right-of-way (the "ROW") owned by Grantor, in which the Indiana & Ohio Rail Corp., a subsidiary of Genesee & Wyoming Inc. (collectively, together with its successors and assigns, "I&O"), has certain rights. Grantee must apply for a Right of Entry Permit or Contractor Occupancy/Access Agreement and receive approval from I&O to enter the ROW or carry out any activities therein. In connection with the Permitted Work pursuant to the Right of Entry, Grantee shall not use nor permit the use of any equipment on, across or within 25 feet of any track within the ROW, unless supervised by a representative of I&O (for so long as I&O has rights in the Access Area) and Grantor, unless Grantor waives its right with respect to each particular use of equipment.
- (b) Grantee shall use only existing public grade crossings for pedestrian and vehicular traffic across any track within the ROW in exercising the Right of Entry.
- (c) Before entering the Access Area, Grantee shall give Grantor and I&O at least seventy-two (72) hours written notice. Grantee, when performing any work in or to the Access Area, shall furnish any necessary watchmen to see that persons, equipment and materials are kept a safe distance away from the tracks on the approach of any moving equipment on the tracks. In addition to, but not in limitation of any of the foregoing provisions, if at any time Grantor or I&O should deem crossing flagmen or watchmen necessary, Grantee agrees to bear the full cost and expense thereof.
- 5. <u>Damage</u>. In the event that Grantee disturbs the surface of the ground and/or damages any of the improvements (including, without limitation, the railroad tracks) in using the Right of Entry, Grantee shall promptly restore the same to their prior condition. Without limiting the generality of the immediately preceding sentence, Grantee shall properly grade, seed and mulch any disturbed areas of the ground to prevent ponding of water and erosion, and shall leave any ditches clean and free of debris. The provisions of this Section 5 shall survive any cancellation, expiration or termination, for any reason, of this Agreement.
- 6. Costs Related to Permitted Work. All costs and expenses in connection with the maintenance, repair or replacement of the Permitted Work shall be borne by Grantee, and Grantee shall promptly pay such costs without the imposition of any lien or charge on the Access Area. Grantee hereby acknowledges and agrees that if any lien is filed against the property described in Exhibit A as a result of the Right of Entry or Grantee's activities in the Access Area and Grantee has not had such lien removed of record within thirty (30) days after the date of the initial filing of such lien, Grantee shall be in default of this Agreement, and Grantor shall have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity. Use of the Access Area for railroad or other transportation purposes by Grantor, its successors and

assigns, will not be interrupted by any maintenance, repair or replacement of the Permitted Work.

- 7. <u>Access Temporary</u>. Grantee acknowledges that the Right of Entry granted pursuant to this Agreement is temporary in nature and that Grantee shall have no right pursuant to this Agreement to install or maintain facilities and/or other improvements in the Access Area that will continue to exist after the Termination Date.
- 8. <u>Preservation of Rights</u>. Except and unless otherwise specifically modified by the terms and conditions of this Agreement, any and all rights, privileges, titles and interests in or to the Access Area are preserved and retained by Grantor. Without limiting the generality of the foregoing sentence, Grantor reserves the right to use and grant other rights to other entities over the Access Area, as long as such use does not unreasonably interfere with the rights granted under this Agreement. Grantor shall have the right at all times to paramount use of the Access Area, and Grantee shall exercise reasonable and prudent care in the use of the Right of Entry and shall require those permitted hereunder to use the Right of Entry, to likewise exercise reasonable and prudent care in the use of the Right of Entry.
- 9. Right to Cure. Grantee covenants and agrees that, if it shall at any time fail to comply with the terms of this Agreement, Grantor, in its sole discretion may after notice to, or demand upon, Grantee, cure such failure. Notwithstanding the foregoing, prior notice shall not be necessary in the event of an emergency (such as the existence of danger to property or person or where there may exist any violation of applicable legal requirements). All reasonable costs and expenses incurred by Grantor in connection with curing such failure shall be payable to Grantor on demand, and Grantee covenants to pay any such sum or sums promptly. Any action taken by Grantor pursuant to this Section shall not waive, or release Grantee from, any obligations of Grantee under this Agreement. The provisions of this Section 10 shall survive any cancellation, expiration or termination, for any reason, of this Agreement.
- 10. Insurance. Before this Agreement shall be effective, Grantee shall, at its sole cost and expense procure, provide, deliver to Grantor and thereafter maintain in effect during the term of this Agreement, including the Termination Date, and for a minimum period of two years after completion of this project general and automobile liability insurance with respect to the use of the Right of Entry. Such insurance shall be in limits of not less than \$5,000,000.00 per occurrence and annual aggregate. Said coverage can be provided by any combination of primary and excess/umbrella liability policies. All such primary, umbrella and/or excess liability policies shall be endorsed to state their respective occurrence and aggregate limits apply separately to each project Grantee undertakes. Said policies shall also provide coverage for both premises and completed operations with Grantor being named as an additional insured. Such insurance shall include Grantor as an additional insured with coverage in favor of Grantee applying on a primary and non-contributory basis, irrespective of any other insurance coverage which Grantee may chose to maintain. In the event Grantee elects to carry insurance limits in excess of those outlined above, Grantor shall also benefit from and be covered under said higher limits. Grantee will provide that Grantor be notified in writing at least ten (10) days in advance of any cancellation of or change in the coverages provided thereunder.

In addition, Grantee and any employees, agents and/or contractors of Grantee working on the Permitted Work shall obtain Railroad Protective Liability Insurance in the amounts of \$2,000,000.00 per occurrence and \$6,000,000.00 aggregate. Alternatively, Grantee may request that the standard exclusion contained in its Commercial General Liability policy that applies to work performed within 25 feet of a railroad track be deleted from the policy. Evidence of this deletion must be provided on the certificate of insurance submitted to Grantor.

Grantee shall confirm that each contractor and subcontractor, if any, performing any portion of the Permitted Work complies with the foregoing insurance requirements. Grantee shall provide certificates of insurance evidencing such insurance for Grantee, each such contractor and each such subcontractor.

11. <u>Liability</u>. Grantee shall be responsible for all liabilities, damages, claims, costs and expenses arising from Grantee's use of the Right of Entry. Without limiting the generality of the foregoing, Grantee acknowledges that persons and property within the Access Area pursuant to the Right of Entry are in constant danger of injury, death or destruction incident to the operation of the railroad tracks within the Access Area, whether by Grantor, I&O or others; and Grantee accepts the Right of Entry subject to such dangers. Grantee assumes all liability for injury to or death of persons, and for loss or damage to property, within the Access Area pursuant to the Right of Entry, regardless of whether caused or contributed to by any acts, omissions or negligence on the part of Grantor, I&O and/or their respective affiliates, officers, agents, employees and/or contractors (collectively, the "Grantor Parties"). Grantee shall be responsible for any and all liability and damages arising out of the risks herein assumed by Grantee, including attorneys' fees and other costs in connection therewith, arising out of Grantee's use of the Right of Entry. The provisions of this Section 11 shall survive any cancellation, expiration, or termination, for any reason, of this Agreement.

12. Hazardous Substances.

- (a) Grantee shall not bring or permit to be brought into the Access Area any Hazardous Substances other than in strict compliance with applicable environmental law. For purposes of this Section 12, "Hazardous Substances" shall include (A) any "hazardous substance" as defined in §101(14) of CERCLA (42 U.S.C. §9601(14)) or regulations promulgated thereunder; (B) any "solid waste", "hazardous waste", or "infectious waste", as such terms are defined in any environmental laws; (C) asbestos, urea-formaldehyde, polychlorinated biphenyls, nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any environmental laws; and (D) any additional substances or materials which are classified or considered to be hazardous or toxic under any environmental laws.
- (b) Without limiting the generality of the liability provided in Section 11, Grantee shall reimburse Grantor for, any and all losses, liabilities, damages, penalties, claims, injuries to persons or property, costs and expenses arising in connection with or as a result of the use, handling, storage, transportation, manufacture, release or disposal of any Hazardous Substances or other materials in, on, under or about the Access Area by Grantee, by any officer, employee, agent, licensee or invitee of Grantee or in connection with Grantee's use of the Right

of Entry, whether foreseeable or unforeseeable, regardless of the source or the time of discovery. The foregoing includes, without limitation, all costs of removal, response, investigation or remediation of any kind, and disposal of such Hazardous Substances. The provisions of this Section 12 shall survive any cancellation, expiration, or termination, for any reason, of this Agreement.

- 13. <u>Waiver</u>. This Agreement is made without covenant or warranty by Grantor as to its title to the Access Area, and Grantee waives all right to claim damages in the event Grantee shall be evicted, ejected or required to surrender possession of the Access Area by anyone owning or claiming title to or any interest in the Access Area, or by reason of failure of title of Grantor, or for any other cause whatsoever. Grantee acknowledges and understands that Grantor makes no representation or warranty whatsoever, express or implied, with respect to the Access Area including, without limitation, any hazards or dangers found at the Access Area. Grantee understands and acknowledges that it enters the Access Area at its own risk.
- 14. <u>Permits and Approvals</u>. The burden of obtaining all permits and approvals which may be necessary or appropriate in connection with the Permitted Work shall be upon Grantee and shall be at the sole risk, cost and expense of Grantee, whose responsibility it shall be to comply with all federal, state and local laws and assume all cost and expense and responsibility in connection therewith.
- 15. <u>Assignment</u>. The rights conferred hereby shall be the privilege of Grantee only, and no assignment or transfer thereof shall be made without the consent and agreement in writing of Grantor, which may be withheld or refused in Grantor's sole discretion, being first had and obtained. Any assignment entered into without Grantor's prior written consent and agreement is void ab initio.
- 16. <u>Notices</u>. All written notices provided for herein shall be addressed to the party to be notified at the address set forth in the first paragraph of the Agreement, or at such other address(es) as may be specified by written notice, and shall be deemed to have been validly given or made (a) the next business day after such notice is delivered to a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement, satisfactory with such carrier, made for the payment of such fees, or (b) three (3) business days after mailing via registered or certified U.S. mail, return receipt requested.
- 17. <u>Default and Remedies</u>. In the event of a default by Grantee, Grantor may seek any and all remedies permitted under this Agreement, in equity or by law. Without limiting the generality of the foregoing, in the event of a default by Grantee hereunder that is not cured within thirty (30) days, or such other time as is reasonable under the circumstances, after delivery of written notice of such default by Grantor, Grantor may, in its sole discretion, terminate the Right of Entry by delivering written notice thereof to Grantee. Notwithstanding anything to the contrary contained in this Agreement, in no event shall Grantor be liable for any damages to, or loss of, personal property or equipment sustained by Grantee within the Access Area, even if caused by the negligence of Grantor. The provisions of this Section 16 shall survive any cancellation, expiration or termination, for any reason, of this Agreement.

- 18. <u>Entire Agreement; Amendments</u>. This Agreement constitutes the sole and entire Agreement between the Parties regarding the subject matter hereof. This Agreement may not be changed, altered or amended except by an instrument in writing executed by Grantor and Grantee (or their respective successors or assigns).
- 19. <u>No Partnership, Joint Venture, or Lease</u>. None of the terms or provisions of this Agreement shall be deemed to create a partnership between the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. This Agreement and the rights of Grantee contained in this Agreement shall not be construed as a lease and shall not create a landlord-tenant relationship between Grantor and Grantee.
- 20. <u>Governing Law.</u> The terms and conditions of this Agreement shall be governed by and construed under the laws of the State of Ohio, without regard to such state's conflicts of law provisions.
- 21. <u>Severability</u>. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law. However, if any provision of this Agreement or the application thereof to any party or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to parties whose circumstances are other than those to which it is invalid or unenforceable, shall not be affected thereby.
- 22. <u>Execution in Counterparts</u>. This Agreement may be executed and delivered in any number of counterparts each of which so constituted and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

[Signature Pages Follow]

Grantor has executed this Agreement as of t	he day of October, 2018.
	SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY, a political subdivision of the State of Ohio
	By:
STATE OF OHIO COUNTY OF HAMILTON, SS:	
The foregoing instrument was acceptable of the control of the cont	eknowledged before me this day of of Southwest Ohio of the State of Ohio, on behalf of Southwest
	Notary Public

[Signatures Continue on Following Page]

	[GRANTEE], a(n)
	By: Name: Title:
STATE OF OHIO COUNTY OF HAMILTON, SS:	
, 20, by	was acknowledged before me this day o, of [Grantee], a(n behalf of
	Notary Public

EXHIBIT A – Legal Description EXHIBIT B – Access Area EXHIBIT C – Plans

EXHIBIT A

Legal Description

[To be inserted]

LEGAL DESCRIPTION

BEING A RIGHT OF ENTRY AREA OVER, THROUGH AND ACROSS A 2.239-ACRE TRACT OF LAND OWNED BY SOUTHWEST OHIO REGIONAL TRANSIT AUTHORITY AS CONVEYED IN OFFICIAL RECORD 9308, PAGE 674, SITUATE IN SECTION 1 AND SECTION 7, TOWN 3, RANGE 2, SYCAMORE TOWNSHIP, HAMILTON COUNTY, OHIO AND BEING MORE FULLY DESCRIBED AS FOLLOWS:

Beginning at an iron pin found on the northwest corner of Lot 11 of Nordloh's First Industrial Subdivision as shown on Plat Book 112, Pages 5 and 6 and being on the east line of said 2.239-acre tract;

thence, South 05°-17'-21" West, 10.69 feet, along the west line of said Lot 11 to a point;

thence, North 86°-01'-46" West, 60.02 feet, to a point on the east line of a 1.234-acre tract of land owned by 7645 School Rd LLC as conveyed in Official Record 15247, Page 28 and the west line of said 2.239-acre tract;

thence, North 05°-17'-21" East, 20.62 feet, along said east line of said 1.234-acre tract to a point on the south right-of-way line of School Road;

thence, South 79°-51'-25" East, 30.67 feet, along the south right-of-way line of School Road to a point;

thence, North 87°-16'-21" East, 29.73 feet, along the south right-of-way line of School Road to a point on the east line of said 2.239-acre tract;

thence, South 05°-17'-21" West, 10.10 feet, to the principal place of beginning.

Containing 0.026 acres more or less and all being subject to any legal highways and easements of record. With 0.013 acres being within Section 1 and 0.013 acres being within Section 7.

The bearings are based on NAD 83 CORS 2011 adjustment, Ohio South Zone, ODOT VRS CORS Network. The above description was prepared by Wesley D. Goubeaux, Ohio Professional Surveyor Number 8254, based on a field survey performed under his direct supervision and dated November 5, 2024.

GOUBEAUX

Wesley D. Goubeaux, PS #8254

 $\frac{11/07/2024}{\text{Date}}$

EXHIBIT B

Access Area

(See Attached.)

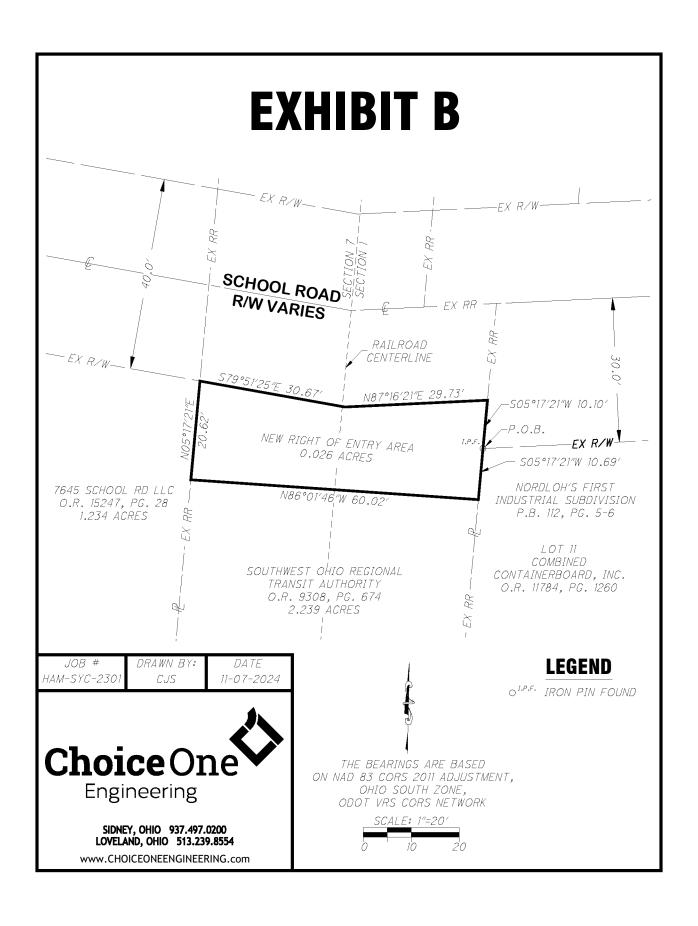
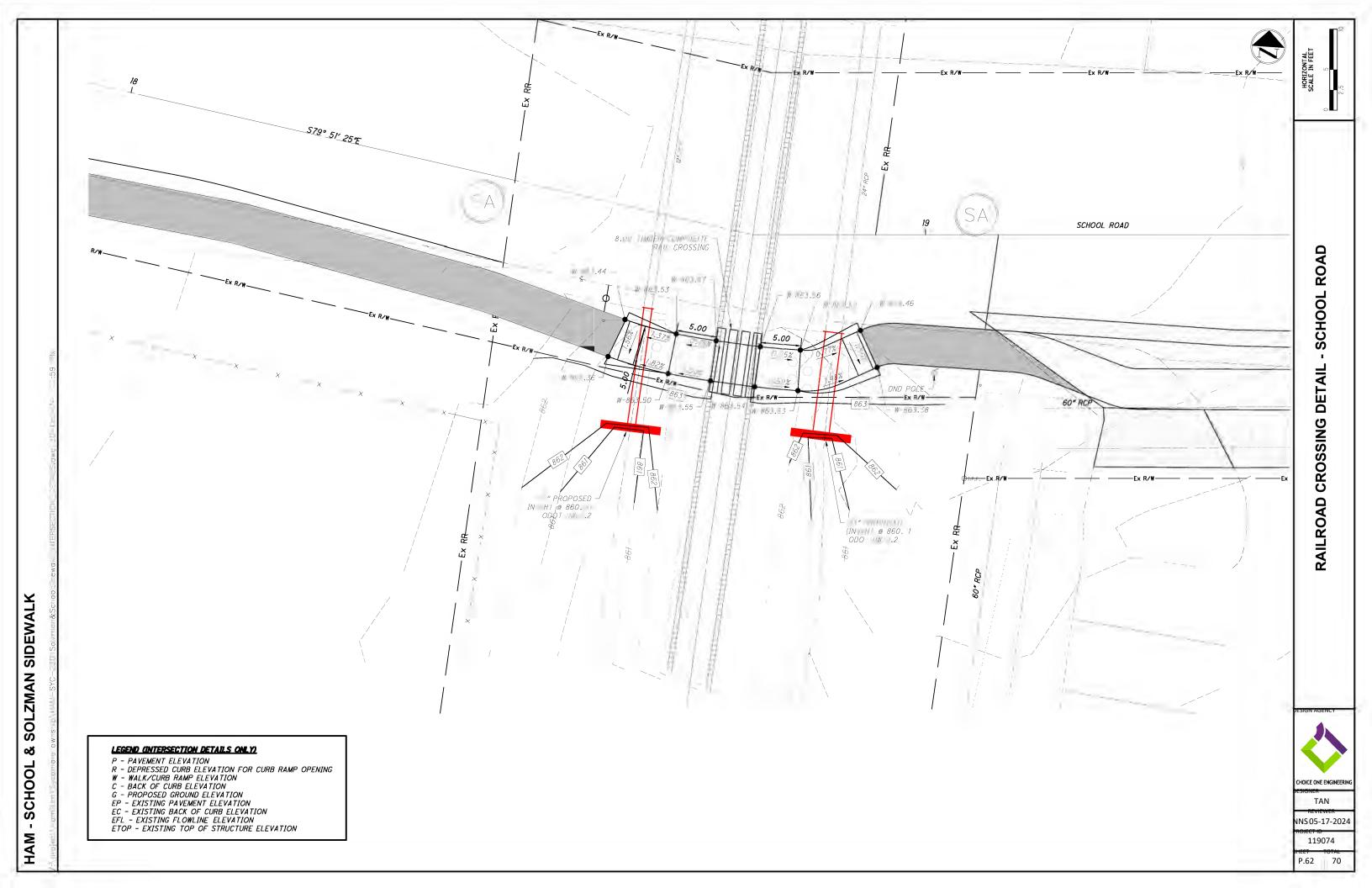


EXHIBIT C

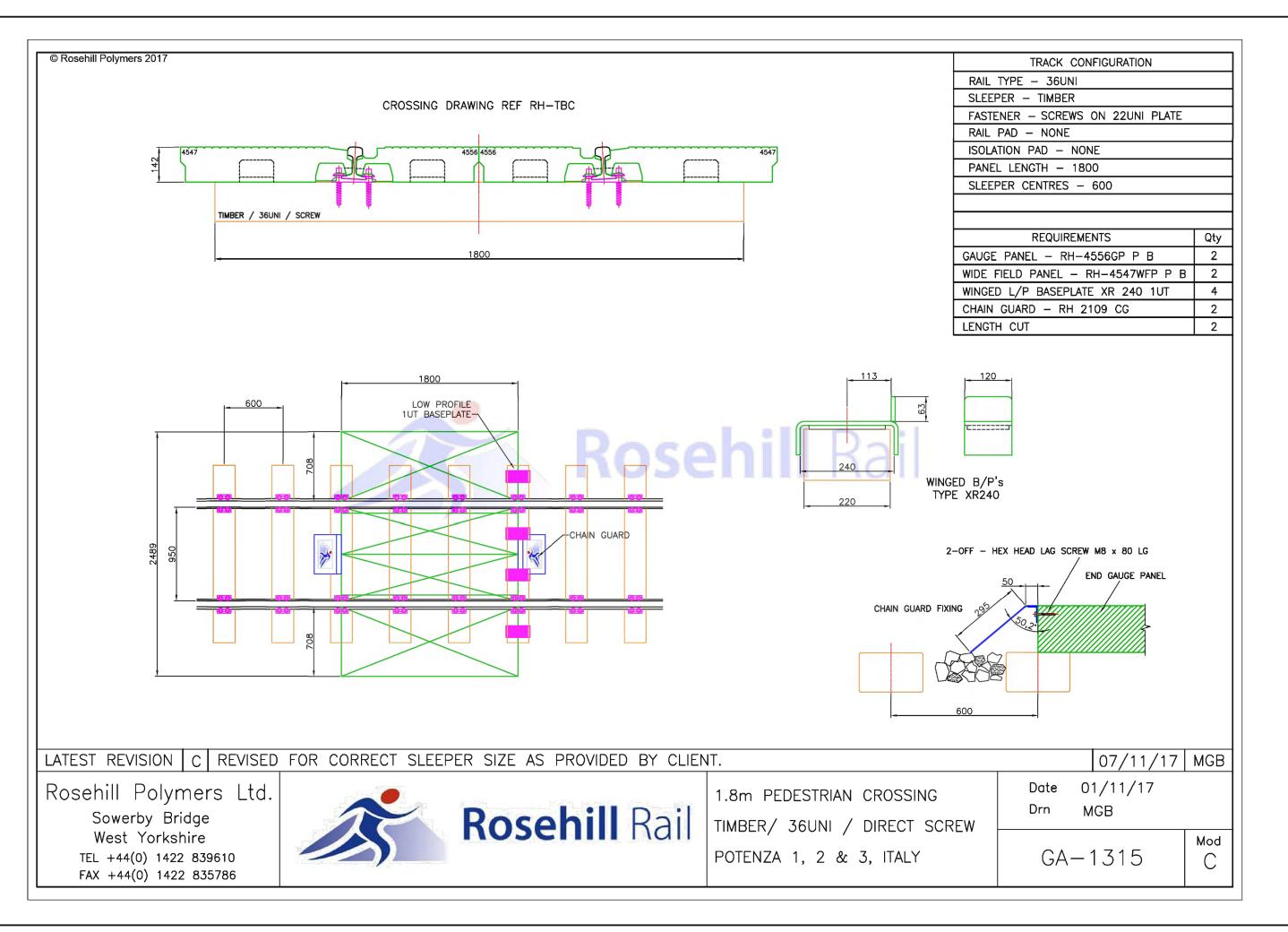
Plans

(See Attached.)











CHOICE ONE ENGINEERIN

TAN
REVIEWER
NNS 05-17-2024

119074

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