

ORDINANCE NO. 7901-23

AN ORDINANCE AUTHORIZING AN ENCROACHMENT UPON THE MUSEUM PARKWAY RIGHT-OF-WAY, IN THE CITY OF NEWPORT NEWS, VIRGINIA, AS MORE PARTICULARLY SET FORTH HEREIN, AND AUTHORIZING THE CITY MANAGER TO EXECUTE AND THE CITY CLERK TO ATTEST AN ENCROACHMENT AGREEMENT BETWEEN THE CITY OF NEWPORT NEWS, VIRGINIA AND THE MARINERS' MUSEUM.

WHEREAS, the Council of the City of Newport News, Virginia is authorized pursuant to Virginia Code §15.2-2009 and Va. Code §15.2-2010 to permit encroachments upon certain public ways within the City of Newport News, Virginia; and

WHEREAS, The Mariners' Museum, a Virginia non-stock corporation, owns real estate in the City of Newport News known as 100 Museum Drive (Tax ID No. 231.0001-01) ("the Property"); and

WHEREAS, the Property is adjacent to a public right-of-way known as Museum Parkway ("Museum Parkway Right-of-Way"); and

WHEREAS, The Mariners' Museum has asked for an encroachment to allow it to install two overlooks and a trail for pedestrian use, portions of which will be located upon the Property and portions of which will be located within the Museum Parkway Right-of-Way, all as shown on the drawing attached to the proposed Encroachment Agreement between the City of Newport News, Virginia and The Mariners' Museum, a copy of which is attached hereto and made a part hereof (the "Encroachment Agreement"); and

WHEREAS, this encroachment can be facilitated without causing undue public danger or inconvenience, and with no adverse effects on the maintenance of the Museum Parkway Right-of-Way, given the terms incorporated in the proposed Encroachment Agreement; and

WHEREAS, The Mariners Museum has requested that City Council authorize the encroachments and the execution of the Encroachment Agreement; and

WHEREAS, the City Manager recommends that the Council authorize the encroachments requested by The Mariners' Museum and authorize the execution of the Encroachment Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Newport News, Virginia:

1. That it desires to, and hereby does, authorize a non-permanent, revocable encroachment upon the Museum Parkway Right-of-Way as described herein.
2. That the non-permanent, revocable encroachment is authorized subject to compliance with the terms of that certain Encroachment Agreement between the City of Newport News, Virginia and The Mariners' Museum, a copy of which is attached hereto and made a part hereof.

3. That it hereby authorizes and directs the City Manager to execute and the City Clerk to attest, on behalf of the City of Newport News, Virginia, that certain Encroachment Agreement by and between the City of Newport News, Virginia and The Mariners' Museum.

4. That a copy of this ordinance and the executed Encroachment Agreement be recorded in the real estate records of the Clerk's Office of the Circuit Court of the City of Newport News, Virginia.

5. That this ordinance shall be in effect on and after the date of its adoption, May 23, 2023.

PASSED BY THE COUNCIL OF THE CITY OF NEWPORT NEWS ON MAY 23, 2023

Mabel Washington Jenkins, MMC
City Clerk

Phillip D. Jones
Mayor

A true copy, teste:

City Clerk

**PREPARED BY AND
RETURN TO:
Office of the City Attorney
2400 Washington Ave, 9th Floor
Newport News, VA 23607
(757) 926-8416 phone
(757) 926-8549 fax**

**Adjacent to Tax ID No. 231.0001-01
Right-of-Way known as Museum Parkway**

Consideration: \$0

ENCROACHMENT AND MAINTENANCE AGREEMENT

THIS ENCROACHMENT AND MAINTENANCE AGREEMENT (the "Agreement") is made and entered as of this 23rd day of May, 2023, by and between the **CITY OF NEWPORT NEWS, VIRGINIA**, a municipal corporation in the Commonwealth of Virginia whose mailing address is 2400 Washington Avenue, Newport News, Virginia 23607 (hereinafter referred to as "GRANTOR" or "City"), and **THE MARINERS' MUSEUM**, a Virginia non-stock corporation, whose mailing address is 100 Museum Drive, Newport News, Virginia 23606 (hereinafter referred to as "GRANTEE").

WITNESSETH:

WHEREAS, Grantee is the owner of a certain parcel of real property (the "Property") known as 100 Museum Drive, Tax Parcel # 231.0001.01, in the City of Newport News, Virginia; and

WHEREAS, the Property is adjacent to a sixty foot (60') right-of-way owned by Grantor known as Museum Parkway ("Museum Parkway Right-of-Way"); and

WHEREAS, Grantee desires to install two overlooks and a trail for pedestrian use and ingress/egress (collectively, the "Trail"), portions of which will be located upon the

Property and portions of which will be located within the Museum Parkway Right-of-Way, as shown on the plans attached hereto as Exhibit A; and

WHEREAS, the Trail, to be constructed by Grantee, is intended to be open to the general public and known as Martha's Way; and

WHEREAS, it is understood by and between the parties hereto that the portions of the Trail constructed upon the Property will be owned and maintained by the Grantee; and

WHEREAS, Exhibit A designates certain portions of the Trail, namely the widening of Museum Parkway and striping, within the Museum Parkway Right-of-Way that will be maintained by the City (the "City Portion"), it being the intent and understanding of Grantor and Grantee that the City Portion will be owned and maintained by City as part of the Museum Parkway Right-of-Way upon completion of construction; and

WHEREAS, Exhibit A designates certain portions of the Trail, namely, the connector from Museum Parkway to a cinder path, the cinder path, and a boardwalk and overlooks, within the Museum Parkway Right-of-Way that will be maintained by the Grantee ("the Encroachments"), it being the understanding of Grantor and Grantee that said Encroachments will be maintained by the Grantee pursuant to the terms of this Agreement; and

WHEREAS, the City Council of the City of Newport News, by ordinance adopted at its meeting on May 23, 2023, approved the Encroachments described herein upon the aforesaid Museum Parkway Right-of-Way.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Grantor and Grantee, Grantor and Grantee do hereby agree as follows:

1. **Acknowledgement and Agreement Regarding Encroachments.** Grantor, insofar as its rights and interests are concerned, does hereby consent to the Encroachments, pursuant to Va. Code §15.2-2009 and §15.2-2010, and hereby grants permission to the Grantee to install the Trail and maintain the Encroachments within the Museum Parkway Right-of-Way, subject to the following terms and conditions.

2. **Use.** Permission for the Encroachments is granted provided the construction, use, and maintenance thereof do not interfere with the safe and efficient construction, operation, maintenance or use of the Museum Parkway Right-of-Way, or any of the facilities therein (said right-of-way and facilities hereafter referred to, collectively, as "Grantor's Facilities"), and further provided that such activities are in compliance with all applicable laws, ordinances, regulations, and codes. Grantee agrees

it will not construct or cause to be constructed or erected any other structure or improvement upon the Museum Parkway Right-of-Way.

3. **Defective Condition.** If the Encroachments, or any portion thereof, are determined by the Grantor to be in such a defective condition as to cause damage to or to otherwise adversely affect Grantor's Facilities, the safety and health of pedestrians, or the general safety and health of the public, Grantee shall cause the condition to be corrected, remedied or removed at no expense to Grantor within thirty (30) days after written notification by Grantor. Grantee agrees to reimburse Grantor all costs incurred by Grantor in repairing any damage to Grantor's Facilities arising out of the use of the Encroachments within thirty (30) days of receiving an invoice from Grantor for such costs.

4. **Indemnity.** The Grantee hereby agrees to defend, indemnify and save harmless the Grantor and its agents, officials, and employees from any and all claims, demands, damages, including death, and liability of every kind and nature whatsoever for, on account of, or arising out of the installation, maintenance, and/or use of the Encroachments under the consent hereby granted, except to the extent caused by the gross negligence or willful misconduct of Grantor.

5. **Insurance.** The Grantee will maintain general liability coverage in the amount of at least One Million Dollars (\$1,000,000) per occurrence, endorsed to name the Grantor as an additional insured thereon for any liability related to the Encroachments or otherwise arising out of this Agreement, and obtain an endorsement requiring the insurer to provide the City with at least thirty (30) days advance notice of cancellation (ten (10) days' notice for cancellation due to non-payment of premium), and shall continue to provide the Grantor with updated certificates of insurance upon each renewal of the coverage. Failure to provide or maintain the required insurance coverage shall result in termination of this Agreement.

6. **Termination.** This Agreement shall in no way be construed as the granting of a perpetual easement or any type of property right by Grantor. Pursuant to Va. Code §15.2-2010, the permission granted herein shall be deemed to be a license revocable at the pleasure of the City. This Agreement is revocable at will by either party upon one hundred eighty (180) days' written notice. Prior to the effective date of any such revocation or termination, Grantee shall cause the Encroachments to be removed from the Museum Parkway Right-of-Way at no expense to Grantor, unless otherwise agreed to by Grantor in writing. Grantee agrees to reimburse Grantor all costs incurred by Grantor in removing said Encroachments should Grantee fail to do so, and all costs incurred by Grantor in repairing any damage to Grantor's Facilities arising out of the removal of the Encroachments, within thirty (30) days of receiving an invoice from Grantor for such costs.

7. **Reservation.** Grantor reserves all rights of access to its Museum Parkway Right-of-Way for construction, operation, and maintenance of Grantor's Facilities

without incurring any liability for damage to or loss of use of the Encroachments described herein or for inverse condemnation thereof. Grantor expressly reserves all rights, privileges, and immunities granted to it under the laws and statutes of the United States and the Commonwealth of Virginia and under the Code of Ordinances of the City of Newport News as to any claims made against it.

8. **Governing Law.** This Agreement shall be governed and construed under the laws of the State of Virginia, without regard to its conflicts laws or choice of law rules.

9. **Successor and assigns.** The terms of this Agreement are binding upon and shall inure to the benefit and obligation of the heirs, personal representatives, successors and assigns of the parties and their respective successors in title, but shall not otherwise grant any rights to any entity not a party to this Agreement nor create any rights in any third-party beneficiary of this Agreement.

10. **Exhibits.** The Exhibits attached to this Agreement are incorporated herein by reference and made a part hereof.

11. **Incorporation of Recitals.** The Recitals at the beginning of this agreement are hereby adopted and incorporated as though set forth fully herein.

[SIGNATURE PAGES FOLLOW]

WITNESS the following signatures and seals:

GRANTOR

CITY OF NEWPORT NEWS, VIRGINIA

By: _____
Name: Cynthia D. Rohlf
Title: City Manager

ATTEST:

APPROVED AS TO FORM:

Mabel Washington Jenkins,
City Clerk

Collins L. Owens, Jr.
City Attorney

COMMONWEALTH OF VIRGINIA
City of Newport News, to wit:

The foregoing instrument was acknowledged before me this ___ day of _____,
2023, by Cynthia D. Rohlf, as City Manager, and attested by Mabel Washington Jenkins,
as City Clerk, on behalf of the City of Newport News, Virginia.

NOTARY PUBLIC

Registration No. _____

My Commission Expires: _____

GRANTEE

THE MARINERS' MUSEUM,
a Virginia non-stock corporation

By: _____
Name: Howard H. Hoege III
Title: President and CEO

STATE/Commonwealth of _____
City/County of _____, to wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2023, by Howard H. Hoege III, as President and CEO, on behalf of THE MARINERS'
MUSEUM, a Virginia non-stock corporation.

NOTARY PUBLIC

Registration No. _____

My Commission Expires: _____

rep4379

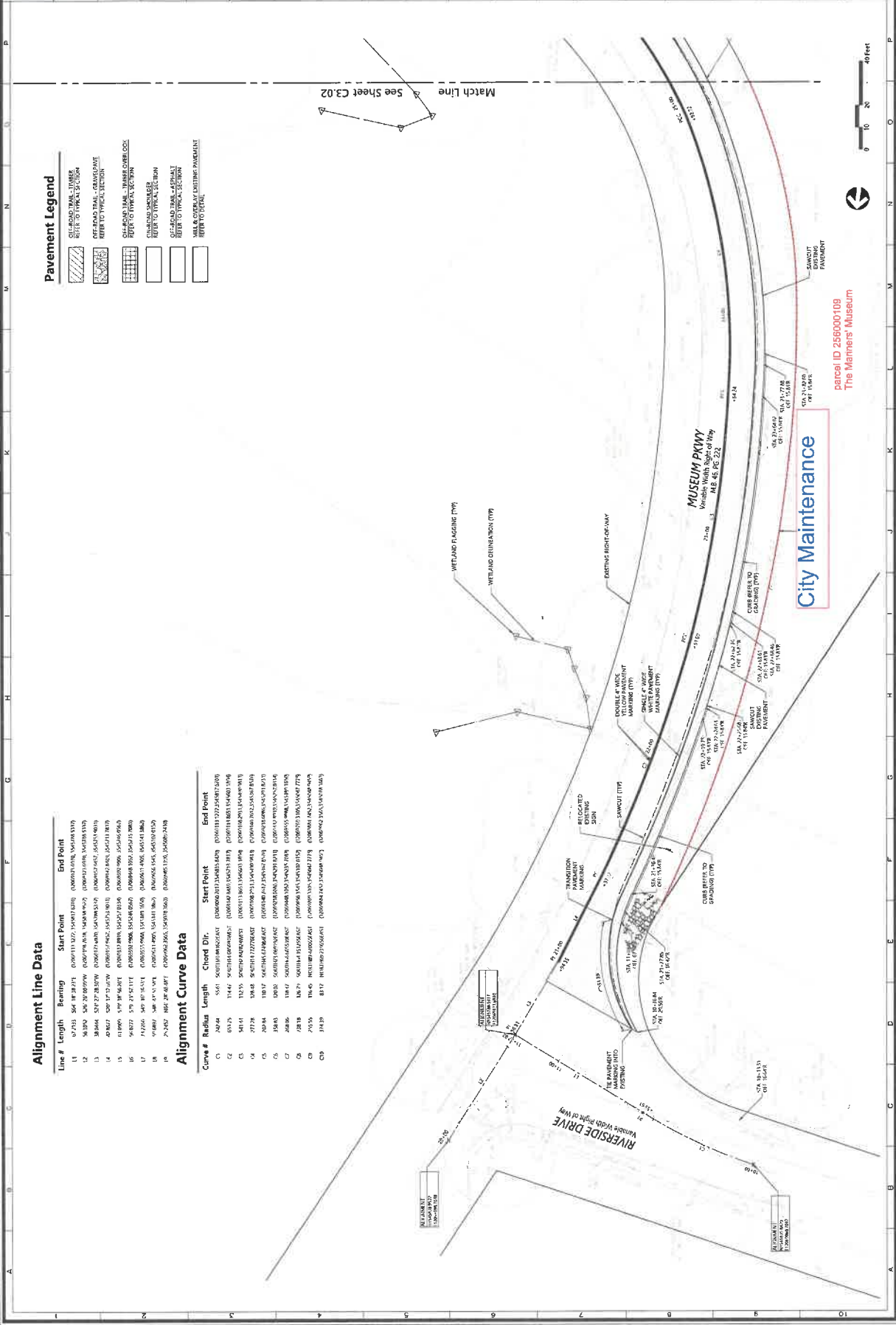
EXHIBIT A



Project: **SITE PLAN OF MARTHA'S WAY TRAIL**
 AT THE MARINERS' MUSEUM & PARK
 100 MUSEUM DRIVE, NEWPORT NEWS, VA 23606

revision	date	description
1	11/08/2021	
2	21-0028-00000	

sheet no: **C3.01**
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Pavement Legend

- ASPHALT SURFACE OVER A 4" GRANULAR SUBGRADE REFER TO TYPICAL SECTION
- ASPHALT SURFACE OVER A 4" GRANULAR SUBGRADE REFER TO TYPICAL SECTION
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Alignment Line Data

Line #	Length	Bearing	Start Point	End Point
11	67.7131	S 86° 18' 28.71"E	(1000011.1272, 354877.8476)	(1000011.0202, 354878.1510)
12	58.3924	S 86° 20' 09.99"W	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)
13	18.8444	S 87° 27' 28.29"W	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)
14	49.8677	S 87° 17' 52.67"W	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)
15	11.8994	S 89° 30' 46.86"E	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)
16	94.8227	S 79° 27' 45.11"E	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)
17	14.2545	S 89° 30' 46.86"E	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)
18	91.8891	S 86° 47' 45.57"E	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)
19	21.8457	S 89° 30' 46.86"E	(1000011.0202, 354878.1510)	(1000011.0202, 354878.1510)

Alignment Curve Data

Curve #	Radius	Length	Chord Dir.	Start Point	End Point
C1	249.24	55.61	S 61° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C2	69.179	114.42	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C3	58.181	114.55	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C4	277.79	128.18	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C5	269.84	128.17	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C6	269.84	128.17	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C7	269.84	128.17	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C8	269.84	128.17	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)
C9	269.84	128.17	S 42° 01' 00.00"E	(1000011.1272, 354877.8476)	(1000011.1272, 354877.8476)



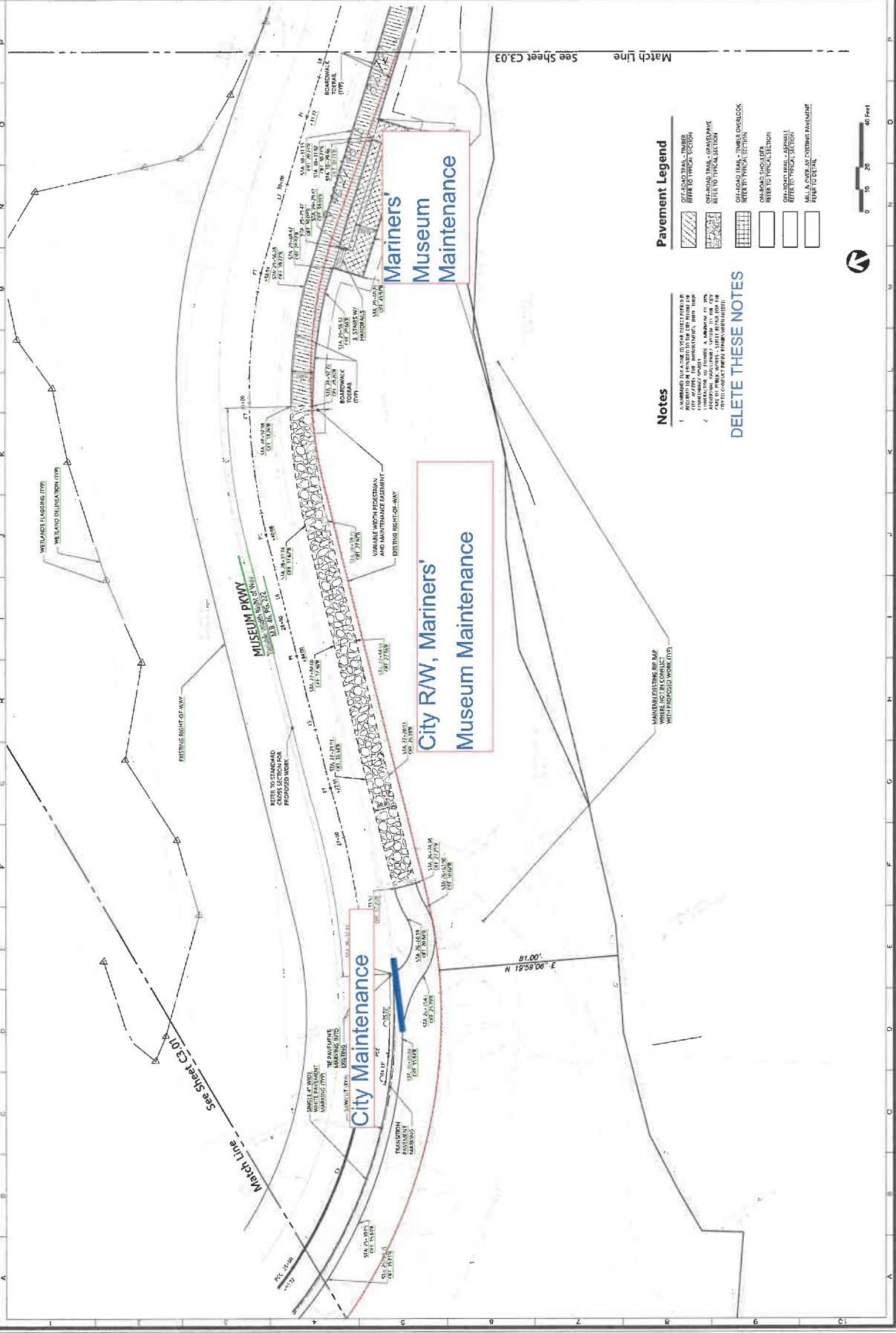
Project: MARTHA'S WAY TRAIL AT THE MARINERS' MUSEUM & PARK, VA 23066
 Drawing Title: LAYOUT & MATERIALS
 100 MUSEUM DRIVE, NEWPORT NEWS, VA 23066

no.	date	description

Survey Date: 10/26/2021
 Name: JAMES S. BROWN
 Principal: JAMES S. BROWN
 License No.: 165597-AS-43
 State: VA

DWG. NO.: 231000K
 SHEET NO.: 15 OF 38

C3.02



Pavement Legend

[Symbol]	CONCRETE DRIVEWAY
[Symbol]	ASPHALT DRIVEWAY
[Symbol]	ASPHALT DRIVEWAY WITH CURB
[Symbol]	ASPHALT DRIVEWAY WITH CURB AND SIDEWALK
[Symbol]	ASPHALT DRIVEWAY WITH CURB AND SIDEWALK AND BIKEWAY
[Symbol]	ASPHALT DRIVEWAY WITH CURB AND SIDEWALK AND BIKEWAY AND BIKEWAY
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- Notes**
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF NEWPORT NEWS SPECIFICATIONS FOR CONSTRUCTION. REFER TO TYPICAL SECTION FOR DETAILS.
 2. ALL WORK SHALL BE IN ACCORDANCE WITH THE CITY OF NEWPORT NEWS SPECIFICATIONS FOR CONSTRUCTION. REFER TO TYPICAL SECTION FOR DETAILS.
- DELETE THESE NOTES**



Project: **SITE PLAN OF MARTHA'S WAY TRAIL AT THE MARINERS' MUSEUM & PARK**
100 MUSEUM DRIVE, NEWPORT & PARK VA 23606

Drawing Title: **LAYOUT & MATERIALS**

mark	date	by	description

Survey date: 11/2022
File: 22-0023.dwg
Scale: 1"=20'-0"

Proj. man: JH
Principals: TH
Date: 08/07/23
Plot: 08/07/23

Proj. no.: 22-0023
Sheet no.: 01 of 08
C3.03

