

RESOLUTION NO. 29371

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF TRANSPORTATION TO ENTER INTO A PARTNERSHIP AGREEMENT, PROJECT NO. T-18-001-801, WITH MBSC BLACK CREEK, LLC FOR UPPER RIVER GORGE BLACK CREEK PHASE 8 AND TO ACCEPT THE COSTS AND FEES ASSOCIATED WITH THE PROCUREMENT AND SERVICES OF A LICENSED GEOTECHNICAL ENGINEER TO INSPECT AND APPROVE DESIGNS FOR A NEW CITY STREET.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,
That it is hereby authorizing the Administrator for the Department of Transportation to enter into a Partnership Agreement, Project No. T-18-001-801, with MBSC Black Creek, LLC for Upper River Gorge Black Creek Phase 8 and to accept the costs and fees associated with the procurement and services of a licensed geotechnical engineer to inspect and approve designs for a new City street.

ADOPTED: March 20, 2018

/mem



**CITY OF CHATTANOOGA
PUBLIC/PRIVATE PARTNERSHIP STANDARD FORM AGREEMENT**

This PUBLIC WORKS PUBLIC PRIVATE PARTNERSHIP STANDARD FORM AGREEMENT (“Agreement”) is entered into by the City of Chattanooga, a Tennessee municipal corporation, (“City”) and the Developer identified below, subject to the following terms and conditions:

1. General Terms

Effective Date	The date the City’s authorized representative signs the Agreement.
Developer Name	MBSC Black Creek, LLC
Developer Address	4700 Cummings Cove Drive Chattanooga, TN 37419
Project Name	Upper River Gorge Black Creek Phase 8
Project Number	T-18-001-801
Project Location	Mount Aetna
Term	Subject to the requirements of the third party geotechnical engineer, as detailed below, the review of the construction documents and geotechnical report shall endure for a period of six (6) months after the retainage of the third party designee geotechnical engineer.
Source of Project Funds	MBSC Black Creek, LLC
Project Purpose	To pay for the procurement and services of a licensed Geotechnical Engineer.
Communication to City	City of Chattanooga Department of Transportation Attn: Blythe Bailey 1250 Market Street, Ste. 3030 Chattanooga, TN 37402

CDOT.Public-Private Partnership Agreement

<p>Communication to Developer</p>	<p>Andrew Stone Development Director MBSC Black Creek, LLC 4700 Cummings Cove Drive Chattanooga, TN 37419 (518) 331-2124 astone@blackcreekclub.com</p>
<p>City Responsibilities</p>	<p>The City will utilize said contribution to select and hire a geotechnical engineer as a third party designee to review the above materials for the safety and welfare of the public. The licensed geotechnical engineer’s review shall assist the City inspect and approve designs for a new City street to serve future development on Mount Aetna.</p>
<p>Developer Responsibilities</p>	<ol style="list-style-type: none"> 1. Developer shall pay to the City any and all costs and fees associated with the procurement and services of the licensed Geotechnical Engineer, who will act as a third party designee of the City to inspect and approve designs for a new City street to serve future development on Mount Aetna, as set forth in Exhibit A attached hereto. 2. Developer shall assist licensed geotechnical engineer, as necessary, in his or her review of the designs and plans as described below. Developer shall provide any documents requested by the licensed geotechnical engineer, in order of him or her to complete a full assessment and inspection of the Developer’s plans for the proposed City Street. 3. Upon approval of the Developer’s designs, Developer shall construct the new City street, in accordance with City specifications, and shall dedicate said street as public ROW upon the completion of construction. 4. Developer, through its agent, Chazen Companies, shall furnish all necessary materials to the licensed geotechnical engineer, which shall include, but is not limited to, the following: <ul style="list-style-type: none"> • The geotechnical report • Technical cross sections • Retaining walls • Vertical rock cuts • Slope stabilization techniques • Embankment construction

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2. Project Purpose. The Parties enter into this Agreement for the Project Purpose stated in Section 1.
3. Responsibilities. The City and Developer agree to undertake the responsibilities as set forth in Section 1.
4. Non-Performance. In the unlikely event the City is unable to perform its duties under this Agreement, the Developer agrees to hold the City harmless and waive any rights to make any claim against the City for costs associated with non-performance.
5. Insurance. Developer shall purchase and maintain during the life of this Agreement, insurance coverage which will satisfactorily insure Developer against claims and liabilities which arise because of the execution of this Agreement, with the minimum insurance coverage as follows:
 - a. Commercial General Liability Insurance, with a limit of \$1,000,000 for each occurrence and \$2,000,000 in the general aggregate.
 - b. Automobile Liability Insurance, with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
 - c. Worker's Compensation Insurance and Employer's Liability Insurance, in accordance with statutory requirements, with a limit of \$500,000 for each accident.
 - d. Professional Liability Insurance, with a limit of \$1,000,000 for each claim and aggregate.

If any of the above cited policies expire during the life of this Agreement, it is the Developer's responsibility to forward renewal Certificates within ten (10) days after the renewal date containing all the aforementioned insurance provisions. Certificates must specifically cite the following provisions:

- i. City of Chattanooga, its agents, representatives, officers, directors, officials and employees must be named an Additional Insured under the following policies:
 - a) Commercial General Liability
 - b) Auto Liability
 - c) Worker's Compensation Insurance & Employer's Liability Insurance
 - d) Professional Liability Insurance
- ii. Developer's insurance must be primary insurance as respects performance of subject contract.
- iii. All policies, except Professional Liability Insurance, if applicable, waives rights of recovery (subrogation) against City of Chattanooga, its agents, representatives, officers, directors, officials and employees for any claims arising out of work or services performed by Developer under this Agreement.

6. Audit. City may audit all financial and related records (including digital) associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by Developer. City may further audit any records associated with the terms of the Agreement to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the expenditure of any funds appropriated by City) or to identify conflicts of interest. Developer shall at all times during the term of the Agreement and for a period of seven (7) years after the expiration or earlier termination of this Agreement, keep and maintain the foregoing records. Documents shall be maintained by Developer necessary to clearly reflect all work done and actions taken. All such records shall be maintained in accordance with generally accepted accounting principles. Developer shall, at its own expense, make such records available for inspection and audit (including copies and extracts of records as required) by City at all reasonable times and upon reasonable prior notice.

The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between Developer and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Developer's obligations to City under this Agreement.

Costs of any audits conducted in accordance with this Section and not addressed elsewhere will be borne by City unless the audit identifies significant findings that benefit City. Developer shall reimburse City for the actual and reasonable costs of an audit that identifies significant findings that benefit City. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit City may have by federal, state, or municipal law, whether those rights, powers, or obligations are express or implied.

7. Indemnification. Developer agrees to defend, indemnify, hold free and harmless the City, its elected officials, officers, agents and employees, at Developer's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the City, its elected officials, officers, agents and employees arising out of the performance of the Developer, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the Developer, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the Developer, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the City, its elected officials, officers, agents and employees based upon the work performed by the Developer, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the Developer shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.

8. Miscellaneous.

8.1. Assignments. Neither this Agreement nor any rights, duties or obligations described in this Agreement shall be assigned or subcontracted by Developer without the prior written consent of City, which shall not be unreasonably withheld. In the event that the City approves an assignment, each and all of the terms and conditions of this Agreement shall extend to the benefit of the successors and assigns of Developer.

8.2. Governing Law. This Agreement shall be governed by the laws of the State of Tennessee as to all matters, including, but not limited to, matters of validity, construction, effect and performance.

8.3. Entire Agreement. This Agreement and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the Parties with respect to the subject matter hereof.

8.4. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of such provisions of this Agreement.

[Signature page to follow]

CDOT.Public-Private Partnership Agreement

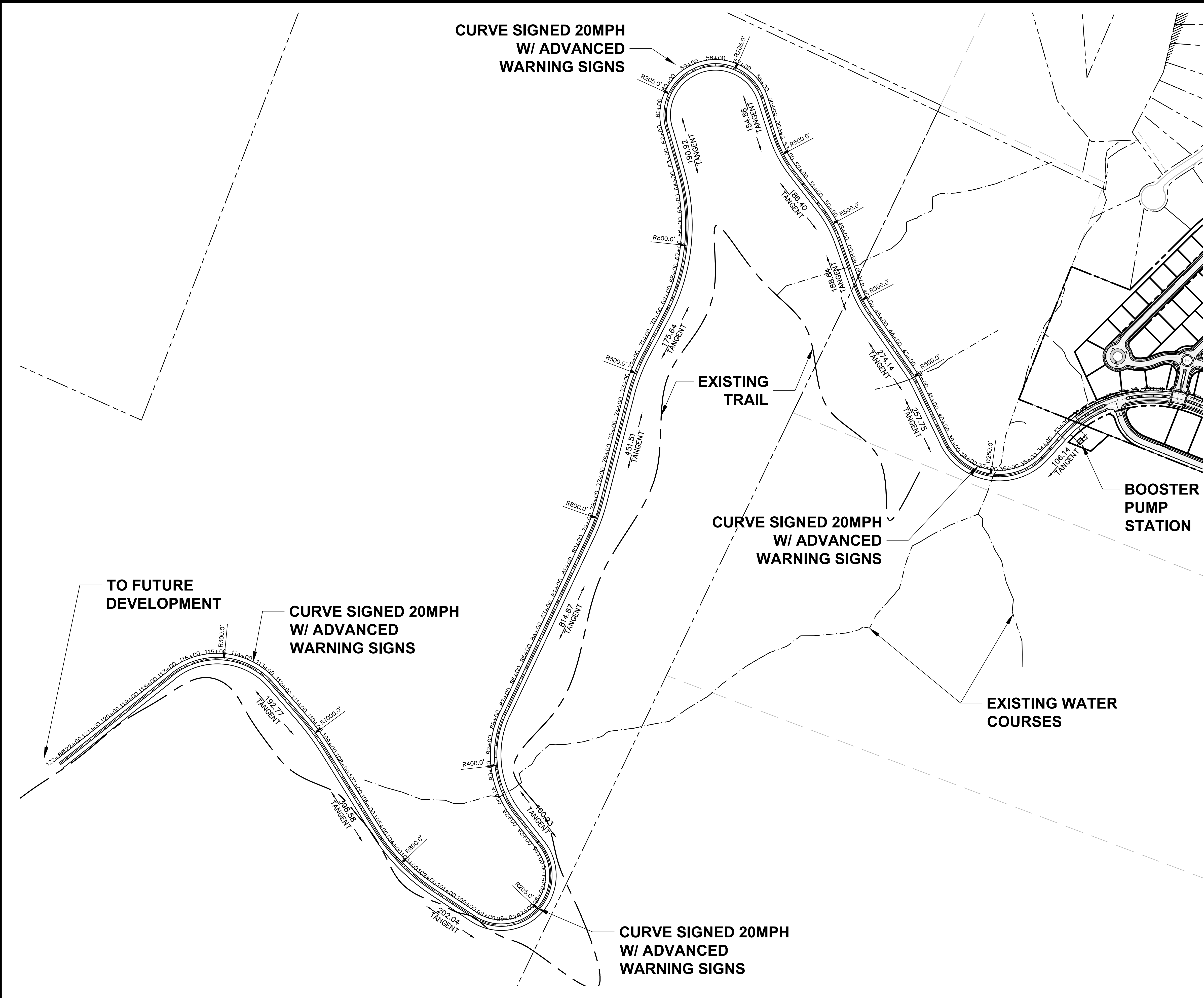
The City and Developer are in agreement to the above terms as they pertain to the Project and by the execution of signatures below agree to perform their respective responsibilities as set out herein. The signatories to this Agreement affirm they are duly authorized to sign on behalf of the represented entities.

CITY OF CHATTANOOGA
By:
Name/Title:

DEVELOPER
By:
Name/Title:

Verification Statements (Requesting Department and by Assigned Attorney)

Requesting Department verifies no changes have been made to this Standard Form Agreement without prior review & approval by the Office of the City Attorney. Signed & Dated	
An Attorney for the City has reviewed this Agreement and approves it as to form and legality. Signed & Dated	

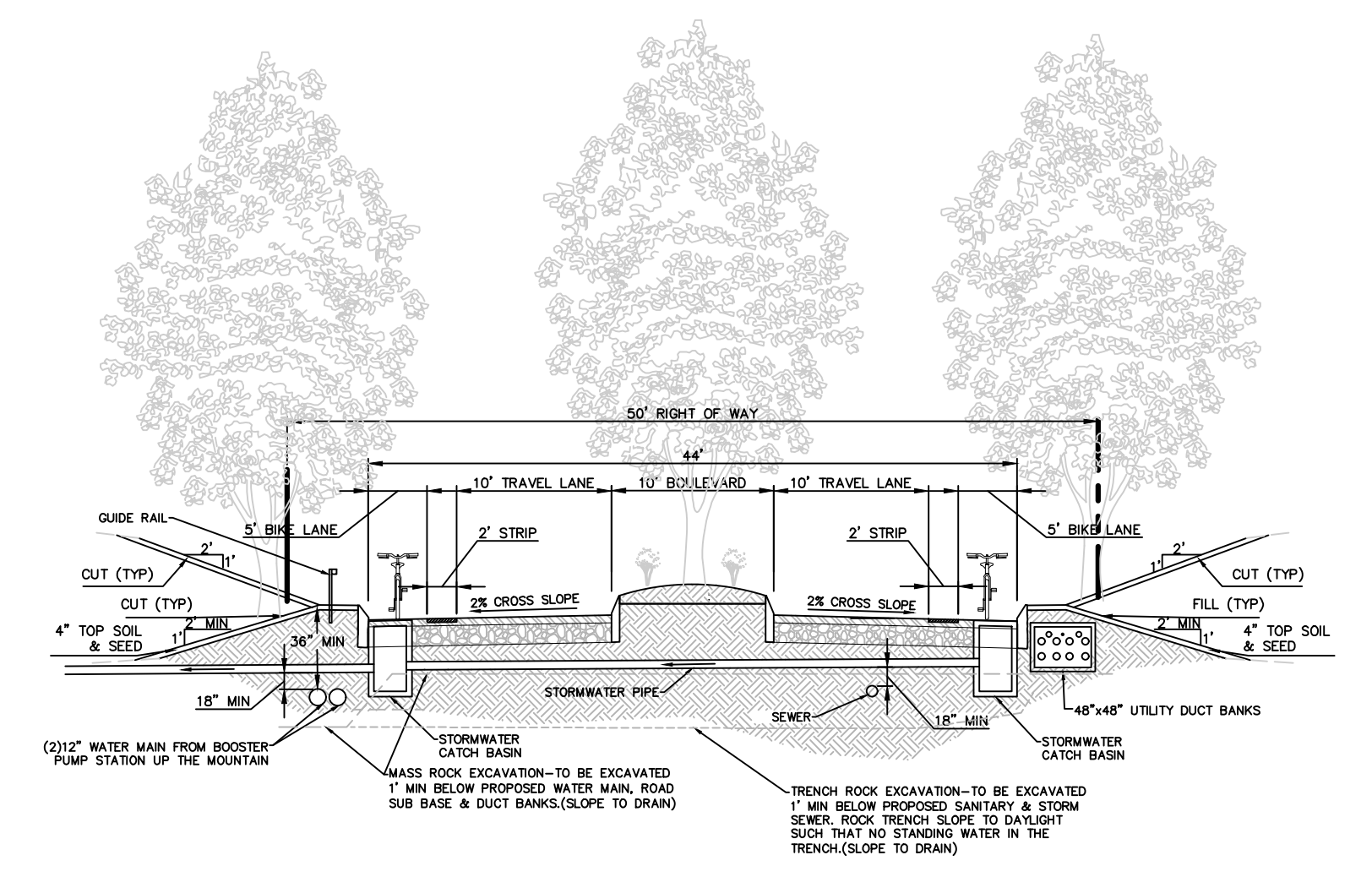


ROAD DESIGN CRITERIA: POSTED 25MPH & 20MPH CURVES
 25MPH DESIGN SPEED
 K VALUE = 12 CREST / 26 SAG
 MIN CL RADIUS=205MIN
 MAX 14% GRADE
 MIN 4% GRADE
 BREAKS IN MEDIAN EVERY 1000'±
 NO HYDRANTS ALONG ROUTE-HIGH PRESSURE WATER MAINS

PRELIMINARY EARTH WORK:
 MAX CUT DEPTH 45'
 MAX FILL DEPTH 30'

11,200LF ROAD

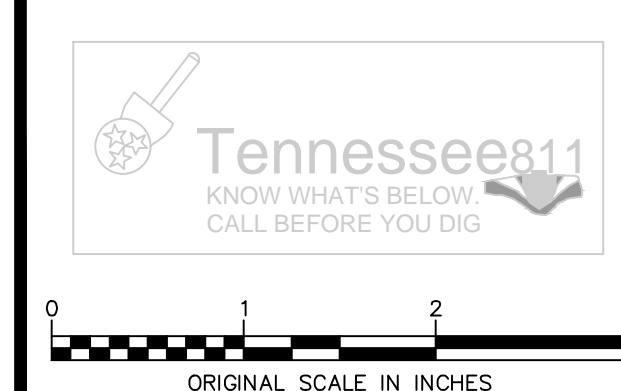
PRELIMINARY LAYOUT:
 *CUT SLOPES ARE SET AT 2:1
 *FILL SLOPES ARE SET AT 2:1
 WALLS & VERTICAL ROCK CUTS ARE ANTICIPATED



3B UPPER RIVER GORGE DRIVE
 C805 SCALE: NOT TO SCALE



CONCEPT PLAN - NOT FOR CONSTRUCTION



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CHAZEN ENGINEERING CONSULTANTS, LLC
 1705 Division Street, Nashville, Tennessee 37203
 PHONE: (615) 953-4909

New York Locations:

Hudson Valley Office: 21 Fox Street Poughkeepsie, New York 12601 Phone: (845) 454-3980	Capital District Office: 547 River Street Troy, New York 12180 Phone: (518) 273-0055	North Country Office: 375 Bay Road Queensbury, New York 12804 Phone: (518) 812-0513	Central NY Office: 721 East Genesee Street Syracuse, New York 13210 Phone: (315) 251-1013
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rev.	date	description

RIVER GORGE DRIVE EXTENSION AT BLACK CREEK MOUNTAIN
 PHASE 8 - UPPER RIVER GORGE DRIVE

25 MPH ROAD W/ SIGNED 20MPH CURVES

CITY OF CHATTANOOGA, HAMILTON COUNTY, TENNESSEE

designed	checked
TCC	MF
7/1/2017	1"=200'
project no.	11605.04
sheet no.	C805