

**SPIRIT MOUNTAIN NORDIC CENTER  
PARTICIPATION AGREEMENT  
BETWEEN THE CITY OF DULUTH  
AND THE DULUTH CROSS-COUNTRY SKI CLUB**

THIS PARTICIPATION AGREEMENT is by and between the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota, hereinafter referred to as the “City,” and the Duluth Cross-Country Ski Club, a Minnesota non-profit corporation, hereinafter referred to as “DXC.” The City and DXC are hereinafter referred to as a “Party” or collectively as the “Parties.”

WHEREAS, DXC is a Minnesota non-profit corporation whose mission is to provide healthy lifestyles, fitness, and fun through cross-country skiing by providing programs, informational resources and special events to the community. DXC works to accomplish its mission by: (a) promoting and supporting cross-country skiing in Duluth; (b) providing cross-country skiing resources and information to the community; (c) offering opportunities for youth and adults to ski, race and socialize; and (d) preserving, maintaining and enhancing ski trails and facilities.

WHEREAS, in May 2015, the Duluth City Council passed the Duluth Cross-Country Ski Trail Master Plan that outlined a cross-country ski trail project for the Spirit Mountain Recreation Area previously entitled the “Grand Avenue Nordic Center” and presently entitled the “Spirit Mountain Nordic Center,” hereinafter referred to as the “Project.” When completed, the Project will include 5.5 km of cross-country ski trails, 3.3 km of which will be equipped with state-of-the-art snowmaking and lighting, as well as 2.2 km connector trail connecting the Nordic Center to the cross-country ski trails at the top of the recreation area. The Project will provide a dependable season-long venue for recreational skiing, youth activities and regional high school events. The Project will become a regional center of activity for cross-country skiing during the early and late seasons, providing skiing when there is inadequate natural snow, and offering a lit trail to allow early morning and night skiing. Phase II of the Project includes the 2.2 km Connector, 800 meters of Loop 3, and one water pump for the Nordic Center.

WHEREAS, the Project will be completed in multiple phases. Phase II of the Project shall include the 2.2 km Connector, 800 meters of Loop 3, and one water pump for the Nordic Center, which portion of the Project is hereinafter referred to as the “Phase II Project”.

WHEREAS, the Parties will jointly fund the Phase II Project with their respective amounts and desire to memorialize their respective financial commitments for the Phase II Project through this Agreement.

WHEREAS, DXC has committed to donate approximately \$114,000 in cash in hand to defray a portion of the cost of construction of the Phase II Project (Exhibit A) and has further committed to use its best efforts to raise additional donations as hereinafter set forth to further defray said costs and to transfer any such funds so raised to City.

WHEREAS, the City, in collaboration with the Spirit Mountain Recreation Area Authority, has secured an external grant from the Greater Minnesota Regional Parks and Trails Commission for implementation of the Phase II Project and additional capital improvements to recreational amenities at Spirit Mountain. The DXC committed funding of \$114,000 is a portion of the required match for the grant.

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

I. Administration.

For purposes of administering this Agreement, the City shall act through its Properties, Parks, and Libraries Department Director or designee (“City Representative”) and DXC shall act through its President or designee (“DXC President”).

II. Term.

Notwithstanding the date of execution, this Agreement shall commence upon execution by both parties (the “Effective Date”) and shall continue through the completion of the Project, unless earlier terminated as provided for herein (the “Term”).

III. City Phase II Responsibilities.

- (A) City shall award and enter into a construction contract with a contractor selected by City for the construction of the Phase II Project. Said contract will require substantial completion of the Phase II Project no later than June 30, 2025.
- (B) City will make best efforts to encourage completion of the Phase II Project by November 1, 2024, to diminish the risk of delays and enable Spirit Mountain to capitalize on early season sales, the Project’s anticipated period of highest profitability.
- (C) City shall openly and promptly communicate status updates and the anticipated timeline for construction of the Phase II project, including any alterations that may or may not influence the site’s ability to be used during the skiing season.
- (D) City shall be responsible for construction contract administration and for all costs associated therewith. During the Phase II Project construction, the City shall direct the contractor to minimize the displacement of use for the existing infrastructure.
- (E) In the event that the Phase II Project is accomplished under budget, the City will prioritize a scope of work that includes lighting to the degree that the budget allows. Should lighting not be financially attainable in this phase, the City and DXC agree to discuss the addition of lighting in future phase(s) of work.

#### IV. DXC Phase II Responsibilities.

No later than May 31, 2023, DXC shall have paid \$114,000 to City under the terms and conditions set forth in this Agreement, which funds shall be used solely to defray a portion of the City's costs of constructing the Phase II Project, to defray the City's costs for design and engineering services related to the Phase II Project, to defray the cost of equipment purchased for the Phase II Project and to defray other costs incurred by City in connection with the construction of the Phase II Project (together the "Phase II Costs"), with said funds to be deposited into Fund 452-030-4660-HANDHTAX-1506 (Tourism & Recreational Projects – Finance – Gifts and Donations – Half & Half Tax Projects – Nordic Lower Spirit).

#### V. Joint Responsibilities Moving Forward

From and after the Effective Date of this Agreement and going forward through and after the completion of the construction and financial obligations undertaken by the parties herein and for the foreseeable future, the parties hereto agree that they will both use their best efforts to cooperatively promote and operate the Project, including the Phase II Project, in a manner consistent with the intent of the Duluth Cross-Country Ski Trail Master Plan. This paragraph represents the intention of the parties on an on-going basis, subject to the right of the parties to agree to terminate these obligations by written agreement of the DXC and the City Representative.

- (A) Pursue the full completion of 5.5 km of trail construction, with 3.3 km of trails equipped with lighting and snowmaking;
- (B) Pursue the full completion of the 2.2 km (1.4 mile) connector trail from the Spirit Mountain Nordic Center to the upper cross-country ski trails;
- (C) Pursue procurement and installation of one water pump;
- (D) Communicate status updates about Phase II Project construction; and
- (E) Cooperatively apply for relevant state and federal grants to financially assist with future phases and the completion of the Project: City assumes administration and management of awarded construction grants.

#### VI. Title to Project

The Parties acknowledge that the City will own the improvements constructed and/or installed during the Phase II Project and that Spirit Mountain Recreation Area Authority will operate the Spirit Mountain Nordic Center. The Parties also acknowledge that this Agreement solely relates to the funding of Phase II and not for the operation or management of the cross-country ski trails.

#### VII. Default – Phase II Project.

- (A) By City

If City shall have failed to substantially complete the construction of the Phase II Project by June 30, 2025, DXC shall have the right to terminate this Agreement by giving written notice

of such termination as provided for in Subparagraph B of Section VII below. In the event of such termination, all funds given to the City to that date by DXC in connection with this Agreement shall be refunded to DXC within 30 days, EXCEPT any of said funds previously used or committed to pay Phase II Costs. Upon such termination, this Agreement shall be deemed null and void and thereafter neither party shall have any obligation to the other party hereunder.

(B) By DXC

In the event that DXC shall be in default of its obligations as set forth in Subparagraph A of Paragraph IV above, the full amount of such obligation shall continue to be immediately due and owing to City. In addition, City shall be entitled to any and all costs accrued by City which it may incur in the course of enforcing said payment obligation, including but not limited to court cost and legal costs, which shall include the value of City staff attorney and other staff time, and shall further be entitled to the cost of borrowing funds at commercial bank rates to fund that portion of the Phase II Costs that the DXC funds were intended to cover. Provided that nothing in this Subparagraph shall be in derogation of DXC's rights under Subparagraph A above in the event of a City Default of its Phase II obligations.

VIII. Communications and Reporting.

- (A) The Parties agree that a full and complete exchange of information is necessary for a successful relationship, and each party agrees to communicate openly and regularly with the other with regard to this Agreement, the Project, and Phase II.
- (B) Unless otherwise provided herein, notice to the City or DXC shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the Parties at the addresses hereinafter set forth or to such other respective persons or addresses as the Parties may designate to each other in writing from time to time:

City of Duluth  
Attn: Properties, Parks and Libraries  
Department Director  
1532 W. Michigan Street  
Duluth, Minnesota 55806  
(218) 730-4430

Duluth Cross-Country Ski Club  
Attn: President  
1346 W. Arrowhead Rd., PMB 344  
Duluth, MN 55811  
info@duluthxc.com

- (C) DXC acknowledges that, as provided in Minnesota Statutes Section 16C.05, Subd. 5, all of DXC's books, records, documents, and accounting procedures and practices related to this Agreement are subject to examination by the City or the State Auditor for six (6) years from the date of termination or expiration of this Agreement. Upon twenty-four (24) hours advance written notice by the City, DXC shall provide all requested books, records, documents, and accounting procedures and practices related to this Agreement.
- (D) DXC agrees to maintain all records relating to this Agreement during the Term and for six (6) years after its termination, cancellation, or expiration.



IX. Independent Relationship.

It is agreed that nothing contained in this Agreement is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties or of constituting DXC as an agent, representative, or employee of the City for any purpose or in any manner whatsoever. The Parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement. DXC's employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of DXC's employees while so engaged and any and all claims whatsoever arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors, or employees shall in no way be the responsibility of the City. DXC and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers' Compensation, Unemployment Insurance, disability pay, or severance pay from or on behalf of the City.

X. Third Party Beneficiaries.

This Agreement is to be construed and understood solely as an agreement between the Parties regarding the subject matter herein and shall not be deemed to create any rights in any other person or on any other matter. No person, organization, or business shall have the right to make claim that they are a third-party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between the Parties, may be waived at any time by mutual agreement of the Parties.

XI. Government Data Practices.

- (A) DXC shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by DXC under this Agreement.
- (B) The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by DXC. If DXC receives a request to release the data referred to in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, DXC must immediately notify the City and consult with the City as to how DXC should respond to the request. DXC agrees to hold the City, its officers, and employees harmless from any claims resulting from DXC's unlawful disclosure or use of data protected under state and federal laws.

XII. Severability.

The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

### XIII. Force Majeure.

Neither party shall be liable for any failure of or delay in performance of its obligations under this Agreement to the extent such failure or delay is due to circumstances beyond its reasonable control, including, without limitation, acts of nature, acts of a public enemy, fires, floods, wars, civil disturbances, sabotage, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, franchises or permits, or inability to obtain labor, materials, equipment, or transportation. Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the party's obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays.

### XIV. General Provisions.

- (A) The recitals at the beginning of this Agreement are true and correct and are incorporated into this Agreement by reference.
- (B) DXC agrees that it shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the City.
- (C) The Parties represent to each other that the execution of this Agreement has been duly and fully authorized by their respective governing bodies or boards, that the officers of the Parties who executed this Agreement on their behalf are fully authorized to do so, and that this Agreement when thus executed by said officers of said Parties on their behalf will constitute and be the binding obligation and agreement of the Parties in accordance with the terms and conditions hereof.
- (D) Any amendments to this Agreement shall be in writing and shall be executed by the same officers who executed this Agreement or their successors in office.
- (E) The waiver by the City or DXC of any breach of any term, covenant, or condition of this Agreement shall not be deemed to be a waiver of any subsequent breach of same or any other term, covenant, or condition of this Agreement.
- (F) This Agreement, including exhibits, constitutes the entire agreement between the Parties and supersedes all prior written and oral agreements and negotiations between the Parties relating to the subject matter hereof. This Agreement may be executed and delivered by a party by facsimile or PDF transmission, which transmission copy shall be considered an original and shall be binding and enforceable against such party. The exhibits to this Agreement are as follows:

Exhibit A      DXC Board Resolution Authorizing \$114,000 Donation to the City

Exhibit B      Greater Minnesota Regional Parks and Trails Commission Grant Agreement

IN WITNESS WHEREOF, the Parties have hereunto set their hands the day and date first shown below.

CITY OF DULUTH

DULUTH CROSS-COUNTRY SKI CLUB

By: \_\_\_\_\_  
Emily Larson, Mayor

By: Kath Meisner  
Kathryn Meisner, President

Dated: \_\_\_\_\_

Dated: 4/27/23

Attest: \_\_\_\_\_  
Ian B. Johnson, City Clerk

Dated: \_\_\_\_\_

Countersigned:

\_\_\_\_\_  
Josh Bailey, City Auditor

Approved as to form:

\_\_\_\_\_  
Rebecca St. George, City Attorney

## EXHIBIT A



Duluth Cross-Country Ski Club  
1346 West Arrowhead Road  
PMB 344  
Duluth MN 55811

RESOLUTION AUTHORIZING A \$114,000 DONATION TO THE CITY OF DULUTH FOR COMPLETION OF THE GRAND AVENUE NORDIC CENTER PROJECT.

WHEREAS, the Grand Avenue Nordic Center, when completed, will include 5.4km of cross-country ski trails, with snowmaking and lighting to provide a dependable, season-long venue for recreational skiing, youth activities, and regional high school events, and

WHEREAS, the City of Duluth, Spirit Mountain Recreation Area and Duluth Cross-Country Ski Club have jointly agreed to fund the project, and

WHEREAS, the Duluth Cross-Country Ski Club supports the City of Duluth's funding application to the Greater Minnesota Regional Park and Trail Commission (GMRPTC) for project implementation.

NOW, THEREFORE, BE IT RESOLVED, that the proper board officials are hereby authorized to donate an additional \$114,000 for the project to serve as match for the pending GMRPTC grant.

This resolution was adopted by majority vote of the Duluth Cross-Country Ski Club Board of Directors.

I, Mark Wallis, Duluth Cross-Country Ski Club Board President, do hereby certify said resolution on July 26<sup>th</sup>, 2021.

Name: Mark W. Wallis  
Title: 7/26/2021 DXC PRESIDENT

**EXHIBIT B**

**STATE OF MINNESOTA  
GRANT CONTRACT AGREEMENT  
GMRPTC23-02**

This grant contract is between the State of Minnesota, acting through its Commissioner of Natural Resources ("STATE") and Spirit Mountain Recreation Area Authority, 9500 Spirit Mountain Place, Duluth, MN 55810 ("GRANTEE").

**Recitals**

1. Under [Minn. Stat. 84.026](#), the Commissioner of Natural Resources is authorized to enter into contractual agreements with any public or private entity for the provision of statutorily prescribed natural resources services by the department.
2. Under Minn. Laws 2019, 1st Special Session, Chapter 2, Article 3, Section 3b, the State has allocated funds for grants for parks and trails of regional significance outside of the seven county metropolitan area under [Minn. Stat. 85.535](#).
3. The Grantee has made application to the State for a portion of the allocation for the purpose of conducting the project entitled Spirit Mountain Recreation Area.
4. The Grantee represents that it is duly qualified and agrees to perform all services described in this grant contract to the satisfaction of the State. Pursuant to [Minn. Stat. 16B.98](#), Subd. 1, the Grantee agrees to minimize administrative costs as a condition of this grant.

**Grant Contract Agreement****1 Term of Grant Contract Agreement****1.1 Effective Date**

July 1, 2022, Notwithstanding Minnesota Statutes, section 16A.41, the Commissioner may make payments for otherwise eligible grant-program expenditures that are made on or after the effective date of the appropriation. No payments will be made to the Grantee until this grant contract is fully executed.

**1.2 Expiration Date**

June 30, 2025, or until all obligations have been satisfactorily fulfilled, whichever occurs first.

**1.3 Survival of Terms**

The following clauses survive the expiration or cancellation of this grant contract: 8. Liability; 9. State Audits; 10. Government Data Practices and Intellectual Property Rights; 12. Publicity and Endorsement; 13. Governing Law, Jurisdiction, and Venue, 15. Data Disclosure, 20. Resource Management and Protection and 24. Land Retention and Deed Restriction.

**2 Grantee's Duties**

The Grantee, who is not a state employee, will:

## EXHIBIT B

Comply with required grants management policies and procedures set forth through Minn. Stat.16B.97 Subd. 4 (a) (1) and comply with Attachment A, Project Budget, which is incorporated and made a part of this contract.

The Grantee agrees to complete the project in accordance with the approved budget to the extent practicable and within the project period specified in the grant contract. Any material change in the scope of the project, budget or completion date shall require prior written approval by the State.

### 3 Time

The Grantee must comply with all the time requirements described in this grant contract agreement. In the performance of this grant contract agreement, time is of the essence.

### 4 Consideration and Payment

#### 4.1 Consideration

The State will pay for all services performed by the Grantee under this grant contract agreement as follows:

##### *(a) Compensation*

The Grantee will be paid for all services performed pursuant to this grant contract not to exceed \$1,254,471.

##### *(b) Matching Requirement*

Grantee certifies that the following matching requirement for the Grant will be met by Grantee. The total project cost is \$1,678,696. The Grantee agrees to provide a nonstate cash match of a least \$424,225.

##### *(c) Total Obligation*

The total obligation of the State for all compensation and reimbursements to the Grantee under this grant contract agreement will not exceed \$1,254,471.

#### 4.2 Payment

The State will promptly pay the Grantee after the Grantee presents a payment request and required expenditure documentation for the services actually performed and the State's Authorized Representative accepts the documentation. Invoices must be submitted timely and according to the following schedule: Upon completion of services or up to four requests during the contract period. A final reimbursement of no more than 10% may be withheld until final completion of services.

#### 4.3 Contracting and Bidding Requirements

Per [Minn. Stat. §471.345](#), grantees that are municipalities as defined in Subd. 1 must follow the law.

*(a)* For projects that include construction work of \$25,000 or more, prevailing wage rules apply per [Minn. Stat. §§177.41](#) through [177.44](#). These rules require that the wages of laborers and workers should be comparable to wages paid for similar work in the community as a whole.

*(b)* The grantee must not contract with vendors who are suspended or debarred in MN: <http://www.mmd.admin.state.mn.us/debarredreport.asp>.

## EXHIBIT B

### 5 Conditions of Payment

All services provided by the Grantee under this grant contract agreement must be performed to the State's satisfaction, as determined at the sole discretion of the State's Authorized Representative and in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations. The Grantee will not receive payment for work found by the State to be unsatisfactory or performed in violation of federal, state, or local law.

### 6 Authorized Representative

The State's Authorized Representative is Mai Neng Moua, Grants Specialist Coordinator, Minnesota Department of Natural Resources, 500 Lafayette Road, St. Paul, MN 55155, [mai.n.moua@state.mn.us](mailto:mai.n.moua@state.mn.us), 651.259.5638 or her successor, and has the responsibility to monitor the Grantee's performance and the authority to accept the services provided under this grant contract agreement. If the services are satisfactory, the State's Authorized Representative will certify acceptance on each invoice submitted for payment.

The Grantee's Authorized Representative is Ann Glumac, Executive Director, Spirit Mountain Recreation Area Authority, 9500 Spirit Mountain Place, Duluth, MN 55810, [ann@glumac.biz](mailto:ann@glumac.biz), 218.391.4350 or her successor. If the Grantee's Authorized Representative changes at any time during this grant contract agreement, the Grantee must immediately notify the State.

### 7 Assignment Amendments, Waiver, and Grant Contract Agreement Complete

#### 7.1 Assignment

The Grantee shall neither assign nor transfer any rights or obligations under this grant contract agreement without the prior written consent of the State, approved by the same parties who executed and approved this grant contract agreement, or their successors in office.

#### 7.2 Amendments

Any amendments to this grant contract agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original grant contract, or their successors in office.

#### 7.3 Waiver

If the State fails to enforce any provision of this grant contract agreement, that failure does not waive the provision or the State's right to enforce it.

#### 7.4 Grant Contract Agreement Complete

This grant contract agreement contains all negotiations and agreements between the State and the Grantee. No other understanding regarding this grant contract, whether written or oral, may be used to bind either party.

### 8 Liability

The Grantee must indemnify, save, and hold the State, its agents, and employees harmless from any claims or causes of action, including attorney's fees incurred by the State, arising from the performance of this grant contract agreement by the Grantee or the Grantee's agents or employees. This clause will not be construed to bar any legal remedies the Grantee may have for the State's failure to fulfill its obligations under this grant contract agreement. Nothing herein shall be deemed a waiver by the Grantee of the limits

## **EXHIBIT B**

on liability set forth in Minn. Stat. § 466.04 or a waiver of any available immunities or defenses. The Grantee's obligation to hold and save the Grantor harmless shall be limited by the limitations on liability set forth in Minn. Stat. § 466.04, as amended from time to time.

### **9 State Audits**

Under Minn. Stat. § 16B.98, Subd.8, the Grantee's books, records, documents, and accounting procedures and practices of the Grantee or other party relevant to this grant contract agreement or transaction are subject to examination by the State and/or the State Auditor or Legislative Auditor, as appropriate, for a minimum of six years from the end of this grant contract agreement, receipt and approval of all final reports, or the required period of time to satisfy all state and program retention requirements, whichever is later.

### **10 Government Data Practices and Intellectual Property Rights**

#### **10.1 *Government Data Practices***

The Grantee and State must comply with the Minnesota Government Data Practices Act, [Minn. Stat. Ch. 13](#), as it applies to all data provided by the State under this grant contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the Grantee under this grant contract agreement. The civil remedies of [Minn. Stat. §13.08](#) apply to the release of the data referred to in this clause by either the Grantee or the State. If the Grantee receives a request to release the data referred to in this Clause, the Grantee must immediately notify the State. The State will give the Grantee instructions concerning the release of the data to the requesting party before the data is released. The Grantee's response to the request shall comply with applicable law.

#### **10.2 *Intellectual Property Rights***

##### **(A) *Intellectual Property Rights***

The State owns all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trademarks, and service marks in the Works and Documents *created and paid for under this contract*. Works means all inventions, improvements, discoveries (whether or not patentable), databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, and disks conceived, reduced to practice, created, or originated by the Grantee, its employees, agents, and subcontractors, either individually or jointly with others in the performance of this contract. Works includes "Documents." Documents are the originals of any databases, computer programs, reports, notes, studies, photographs, negatives, designs, drawings, specifications, materials, tapes, disks, or other materials, whether in tangible or electronic forms, prepared by the Grantee, its employees, agents, or subcontractors, in the performance of this contract. The Documents will be the exclusive property of the State and all such Documents must be immediately returned to the State by the Grantee upon completion or cancellation of this contract. To the extent possible, those Works eligible for copyright protection under the United States Copyright Act will be deemed to be "works made for hire." The Grantee assigns all right, title, and interest it may have in the Works and the Documents to the State. The Grantee must, at the request of the State, execute all papers and perform all other acts necessary to transfer or record the State's ownership interest in the Works and Documents.

##### **(B) *Obligations***

###### **1. *Notification***

Whenever any invention, improvement, or discovery (whether or not patentable) is made or conceived for the first time or actually or constructively reduced to practice by the Grantee,



## EXHIBIT B

including its employees and subcontractors, in the performance of this contract, the Grantee will immediately give the State's Authorized Representative written notice thereof, and must promptly furnish the Authorized Representative with complete information and/or disclosure thereon.

### *2. Representation*

The Grantee must perform all acts and take all steps necessary to ensure that all intellectual property rights in the Works and Documents are the sole property of the State, and that neither Grantee nor its employees, agents, or subcontractors retain any interest in and to the Works and Documents. The Grantee represents and warrants that the Works and Documents do not and will not infringe upon any intellectual property rights of other persons or entities. Notwithstanding Clause 8, the Grantee will indemnify; defend, to the extent permitted by the Attorney General; and hold harmless the State, at the Grantee's expense, from any action or claim brought against the State to the extent that it is based on a claim that all or part of the Works or Documents infringe upon the intellectual property rights of others. The Grantee will be responsible for payment of any and all such claims, demands, obligations, liabilities, costs, and damages, including but not limited to, attorney fees. If such a claim or action arises, or in the Grantee's or the State's opinion is likely to arise, the Grantee must, at the State's discretion, either procure for the State the right or license to use the intellectual property rights at issue or replace or modify the allegedly infringing Works or Documents as necessary and appropriate to obviate the infringement claim. This remedy of the State will be in addition to and not exclusive of other remedies provided by law.

## **11 Workers Compensation**

The Grantee certifies that it is in compliance with [Minn. Stat. §176.181](#), Subd. 2, pertaining to workers' compensation insurance coverage. The Grantee's employees and agents will not be considered State employees. Any claims that may arise under the Minnesota Workers' Compensation Act on behalf of these employees and any claims made by any third party as a consequence of any act or omission on the part of these employees are in no way the State's obligation or responsibility.

## **12 Publicity and Endorsement**

### **12.1 *Publicity***

Any publicity regarding the subject matter of this grant contract agreement must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Grantee individually or jointly with others, or any subcontractors, with respect to the program, publications, or services provided resulting from this grant contract. All projects primarily funded by state grant appropriations must publicly credit the State of Minnesota, including on the grantee's website when practicable.

### **12.2 *Signage***

Any site funded by this grant contract shall display a sign at a prominent location at the entrance to the site and in a form approved by the State that acknowledges funding through this grant.

## EXHIBIT B

### 13 Governing Law, Jurisdiction, and Venue

Minnesota law, without regard to its choice-of-law provisions, governs this grant contract agreement.

Venue for all legal proceedings out of this grant contract agreement, or its breach, must be in the appropriate state or federal court with competent jurisdiction in Ramsey County, Minnesota.

### 14 Termination

#### 14.1 *Termination by the State*

The State may immediately terminate this grant contract agreement with or without cause, upon 30 days' written notice to the Grantee. Upon termination, the Grantee will be entitled to payment, determined on a pro rata basis, for services satisfactorily performed.

#### 14.2 *Termination for Cause*

The State may immediately terminate this grant contract agreement if the State finds that there has been a failure to comply with the provisions of this grant contract, that reasonable progress has not been made or that the purposes for which the funds were granted have not been or will not be fulfilled. The State may take action to protect the interests of the State of Minnesota, including the refusal to disburse additional funds and requiring the return of all or part of the funds already disbursed.

### 15 Data Disclosure

Under [Minn. Stat. § 270C.65](#), Subd. 3, and other applicable law, the Grantee consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number, already provided to the State, to federal and state tax agencies and state personnel involved in the payment of state obligations. These identification numbers may be used in the enforcement of federal and state tax laws which could result in action requiring the Grantee to file state tax returns and pay delinquent state tax liabilities, if any.

### 16 Non-Discrimination Requirements

No person in the United States must, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. Including but not limited to:

- a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance; Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
- b) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.
- c) The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

## **EXHIBIT B**

- d) Title II of the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination against qualified individuals with disabilities in services, programs, and activities of public entities.
- e) Any other applicable non-discrimination law(s).

### **17 Americans with Disabilities Act and Final Guidelines for Outdoor Developed Areas**

The Grantee shall construct, operate, and maintain all facilities and programs in compliance with all state and federal accessibility laws, regulations, and guidelines including the [Final Guidelines for Outdoor Developed Areas](#). Information on compliance with the Americans with Disabilities Act is available at [U.S. Access Board](#).

### **18 Reporting**

The Grantee shall submit a progress report, in a form prescribed by the State, by January 1 of each year during the term of this grant contract. A final report must be submitted with the request for final reimbursement. Forms will be provided by the State.

### **19 Inspections**

The State's authorized representatives shall be allowed, at any time, to conduct periodic site visits and inspections to ensure work progress in accordance with this grant contract, including a final inspection upon project completion. Following closure of the project, the State's authorized representatives shall be allowed to conduct post-completion inspections of the site to ensure that the site is being properly operated and maintained and that no conversion of use has occurred.

### **20 Resource Management and Protection**

The Grantee shall protect, manage, and maintain, or cause to maintain, the property acquired and/or developed pursuant to this grant contract. Properties shall be kept reasonably safe for public use, if applicable. All state and federal accessibility laws, regulations and standards shall be adhered to. Vegetation management and similar safeguards and supervision shall be provided to the extent feasible. Buildings, roads, trails and other structures and improvements, if any, shall be kept in reasonable repair throughout their estimated lifetime to prevent undue deterioration.

The Grantee shall keep the facility open to the general public at reasonable hours and at times of the year consistent with the purpose and type of use of the property and appropriate management and protection of natural resources.

### **21 Invasive Species Prevention**

Grantees and subcontractors must follow Minnesota DNR's Operational Order 113, which requires preventing or limiting the introduction, establishment and spread of invasive species during activities on public waters and DNR-administered lands. This applies to all activities performed on all lands under this grant agreement and is not limited to lands under DNR control or public waters. [Operational Order 113](#) is incorporated into this contract by reference. The grantee shall prevent invasive species from entering into or spreading within a project site by cleaning equipment and clothing prior to arriving at the project site.

If the equipment or clothing arrives at the project site with soil, aggregate material, mulch, vegetation (including seeds) or animals, it shall be cleaned by Grantee furnished tool or equipment (brush/broom, compressed air, or pressure washer) at the staging area. The Grantee or subcontractor shall dispose of

## **EXHIBIT B**

material cleaned from equipment and clothing at a location determined by the Grantee or their representative. If the material cannot be disposed of onsite, secure material prior to transport (sealed container, covered truck, or wrap with tarp) and legally dispose of offsite.

### **22 Conflict of Interest**

It is the policy of the State to work to deliberately avoid actual and potential conflict of interests related to grant making at both the individual and organizational levels.

A conflict of interest (actual or potential) occurs when a person has actual or apparent duty or loyalty to more than one organization and the competing duties or loyalties may result in actions which are adverse to one or both parties. A conflict of interest exists even if no unethical, improper, or illegal act results from it.

The Grantee, by signing this contract with the State, certifies it has read and understands the Office of Grants Management [Conflict of Interest Policy 08-01](#), will maintain an adequate Conflict of Interest Policy and, throughout the term of the contract, monitor and report any actual or potential conflicts of interest to the State's Authorized Representative.

### **23 Minnesota Historical Sites Act and Minnesota Field Archaeology Act**

For projects involving land acquisition and/or construction, the State Historic Preservation Office must review the project to determine if the site is a potential location for historical or archeological findings. If the State Historic Preservation Office determines that a survey is required, the survey would need to be completed prior to any site disturbance for development projects and prior to the final reimbursement of the grant funds for acquisition projects.

### **24 Land Retention and Deed Restriction**

#### **24.1 Land Retention (Park)**

For Park Projects (including acquisition and/or development): All land within the project boundary must be retained and operated for outdoor recreation in perpetuity and a condition of this requirement must be recorded with the deed using language provided in the grant contract. This boundary must include all contiguous lands currently owned by the applicant and managed for public recreation and any additional land to be acquired with this grant.

No other use can be made of these lands without prior written approval of the State. The State will consider requests to convert these lands to other uses only if all practical alternatives have been evaluated and rejected on a sound basis and replacement lands of equal or greater fair market value and reasonably equivalent usefulness are acquired and dedicated to public outdoor recreation use.

For Trail Projects: All land developed by this contract must be retained and operated for outdoor recreation for a period of twenty years beginning on the contract expiration date. All land acquired by this contract must be retained and operated for outdoor recreation in perpetuity and a condition of this requirement must be recorded with the deed using language provided in the grant contract.

No other use can be made of these lands without prior written approval of the State. The State will consider requests to convert these lands to other uses only if all practical alternatives have been

## **EXHIBIT B**

evaluated and rejected on a sound basis and replacement lands of equal or greater fair market value and reasonably equivalent usefulness are acquired and dedicated to public outdoor recreation use.

### **24.2 Deed Restriction – (Park)**

For Parks Projects: The Grantee shall have the following condition recorded with the deed to all lands within the park as described in Attachment B – Boundary Map, incorporated in this contract, and submit an attested copy of the deed and the condition to the State:

In order to comply with the Department of Natural Resources Park Legacy Project Contract GMRPTC23-02, Spirit Mountain Recreation Area Authority does hereby impose the following restrictions on the property described in Attachment B to that contract:

1. The property shall be permanently managed and maintained for public outdoor recreation use.
2. The Grantee shall not at any time convert any portion of the park area to uses other than public outdoor recreation use without the prior written approval of the State acting through its commissioner of natural resources.

### **25 Ineligible Expenses**

Ineligible expenses are items that may not be funded by the grant or included as part of the local match. Including, but not limited to:

1. Expenses incurred on land not owned by the Grantee except trails on land for which the Grantee owns an interest lasting at least 20 years sufficient to ensure the facility will be maintained and operated for outdoor recreation.
2. Projects within state parks, state recreation areas and state trails.
3. Administration expenses including:
  - Appraisals
  - Closing Costs
  - Boundary Surveys
  - Archeological Surveys
4. Design and engineering expense in excess of 10% for park projects and 20% for trail projects.
5. Facilities not available for public use.
6. Acquisition of land already in public ownership.
7. Legal fees.
8. Memberships, Overhead, Insurance, Fund raising.
9. Volunteer or donated labor.
10. Bad debt, interest, or contingency funds.
11. Lobbyists or political contributions.
12. Condemnation costs.
13. Wages and expenses of grant recipient's employees.
14. Entertainment or gifts.
15. Advertising expenses.
16. Office rental costs and overhead.
17. Any expenditure that occurs outside the dates of the grant contract.

## **EXHIBIT B**

### **26 Conservation Corps Minnesota**

The Grantee must give consideration to contracting with Conservation Corps Minnesota for contract restoration and enhancement services.

### **27 Pollinator Best Management Practices**

Habitat restorations and enhancements conducted on DNR lands and prairie restorations on state lands or on any lands using state funds are subject to pollinator best management practices and habitat restoration guidelines pursuant to [Minn. Stat. 84.973](#). Practices and guidelines ensure an appropriate diversity of native species to provide habitat for pollinators through the growing season. Current specific practices and guidelines to be followed for contract and grant work can be found here: [Link to December 2014 version](#).

### **28 Force Majeure**

Neither party shall be responsible to the other or considered in default of its obligations within this Contract to the extent that performance of any such obligation is prevented or delayed by acts of God, war, riot, disruption of government, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party relying on this provision to excuse performance must provide the other party prompt written notice of the inability to perform and take all necessary steps to bring about performance as soon as practicable.

## EXHIBIT B

### 1. STATE ENCUMBRANCE VERIFICATION

*Individual certifies that funds have been encumbered as required by Minn. Stat. §*

16A.15

DocuSigned by:

Karen Potvin

Signed:

83FBE77957A34A8...

Date: July 22, 2022

### 3. STATE AGENCY

DocuSigned by:

By: Linda Erickson-Eastwood  
(with delegated authority)

Title: Division and Fiscal Services Unit Manager

Date: August 8, 2022

SWIFT Contract/PO No(s). 215280/PO# 3000215316

### 2. GRANTEE

The Grantee certifies that the appropriate person(s) have executed the grant contract agreement on behalf of the Grantee as required by applicable articles, bylaws, resolutions, or ordinances.

DocuSigned by:

By: Ann Clumac

AB1D8379B497443...

Title: Interim Executive Director

Date: July 26, 2022

DocuSigned by:

By: Aaron Stolp

AEE132DAB40B4EC...

Title: Board Chair - Spirit Mountain Recreation Area

Date: August 8, 2022

Distribution:

Agency  
Grantee  
State's Authorized Representative

## EXHIBIT B

### Attachment A - GMRPTC23-02 Duluth Spirit Mountain

Item	GMRPTC	Local Match	Total
MTB Downhill Blue Trail	\$ 77,000.00		\$ 77,000.00
MTB Downhill Black Trail	\$ 77,000.00		\$ 77,000.00
MTB Candyland Knowlton Rebuild	\$ 70,000.00		\$ 70,000.00
MTB Bike Skills Park	\$ 50,000.00		\$ 50,000.00
MTB XC Trails	\$ 176,000.00	\$ 86,000.00	\$ 262,000.00
Snowmobile Connector Trail Upper Chalet	\$ 30,000.00		\$ 30,000.00
Snowmobile Connector Trail Lower Chalet	\$ 50,000.00		\$ 50,000.00
Snowmobile Trail Spirit Campus ditching and culverts	\$ 70,000.00		\$ 70,000.00
Nordic Center Connector Trail	\$ 320,558.00	\$ 150,000.00	\$ 470,558.00
Nordic Center Loop III Trail	\$ 127,500.00	\$ 114,000.00	\$ 241,500.00
Nordic Center Pump #1	\$ 53,775.00	\$ 74,225.00	\$ 128,000.00
Design/Engineering/Constr. Admin/Permitting	\$ 152,608.00		\$ 152,608.00
<b>Total</b>	<b>\$ 1,254,441.00</b>	<b>\$ 424,225.00</b>	<b>\$ 1,678,666.00</b>
	75%	25%	



**Attachment B1**  
**Spirit Mtn Trails**

Legacy Parks and Trails

**EXHIBIT B**

**Legend**

-  Boundary
-  Existing Trail
-  Future Trail
-  Trail Development w/grant





## Attachment B2

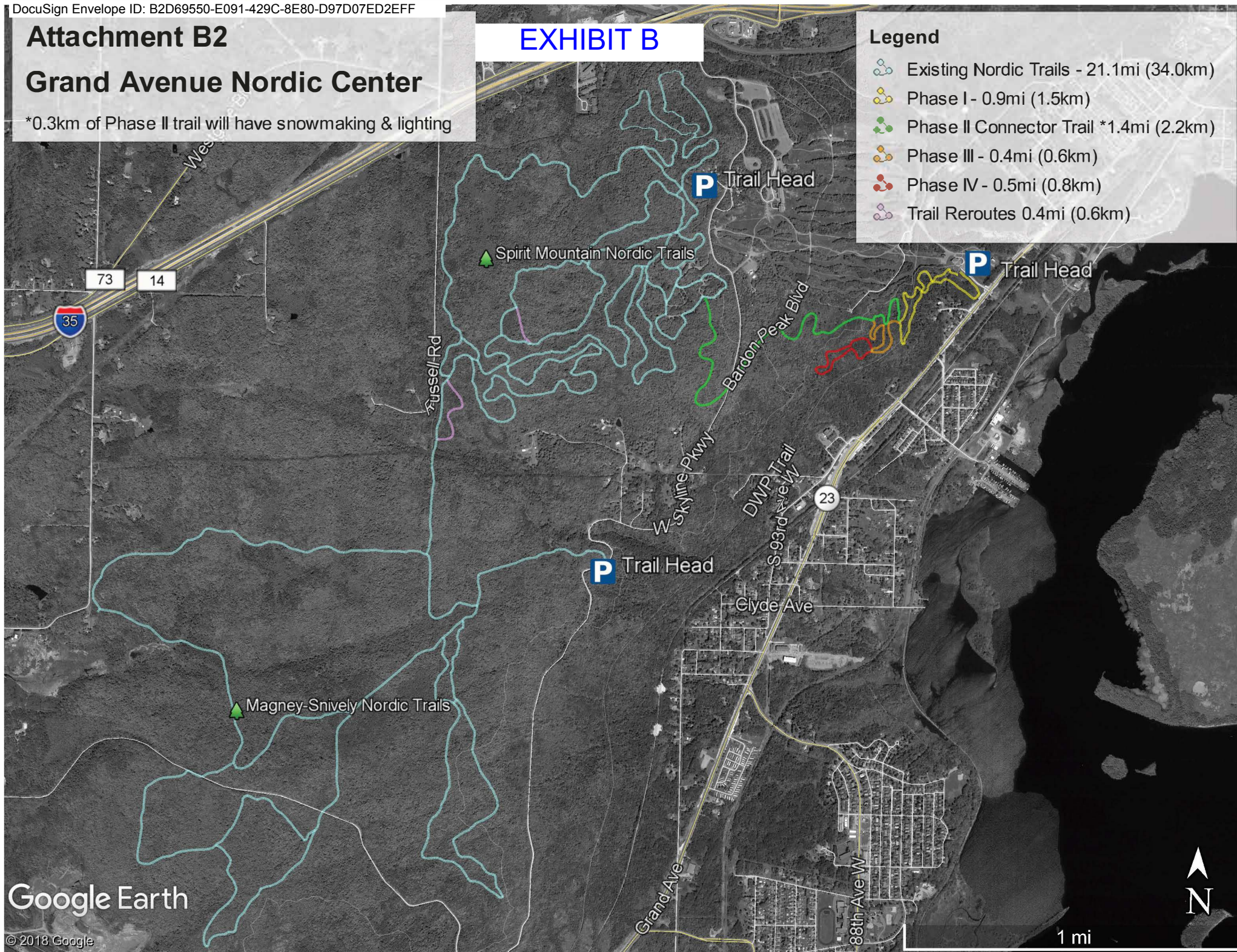
### Grand Avenue Nordic Center

\*0.3km of Phase II trail will have snowmaking & lighting

## EXHIBIT B

### Legend

- Existing Nordic Trails - 21.1mi (34.0km)
- Phase I - 0.9mi (1.5km)
- Phase II Connector Trail \*1.4mi (2.2km)
- Phase III - 0.4mi (0.6km)
- Phase IV - 0.5mi (0.8km)
- Trail Reroutes 0.4mi (0.6km)






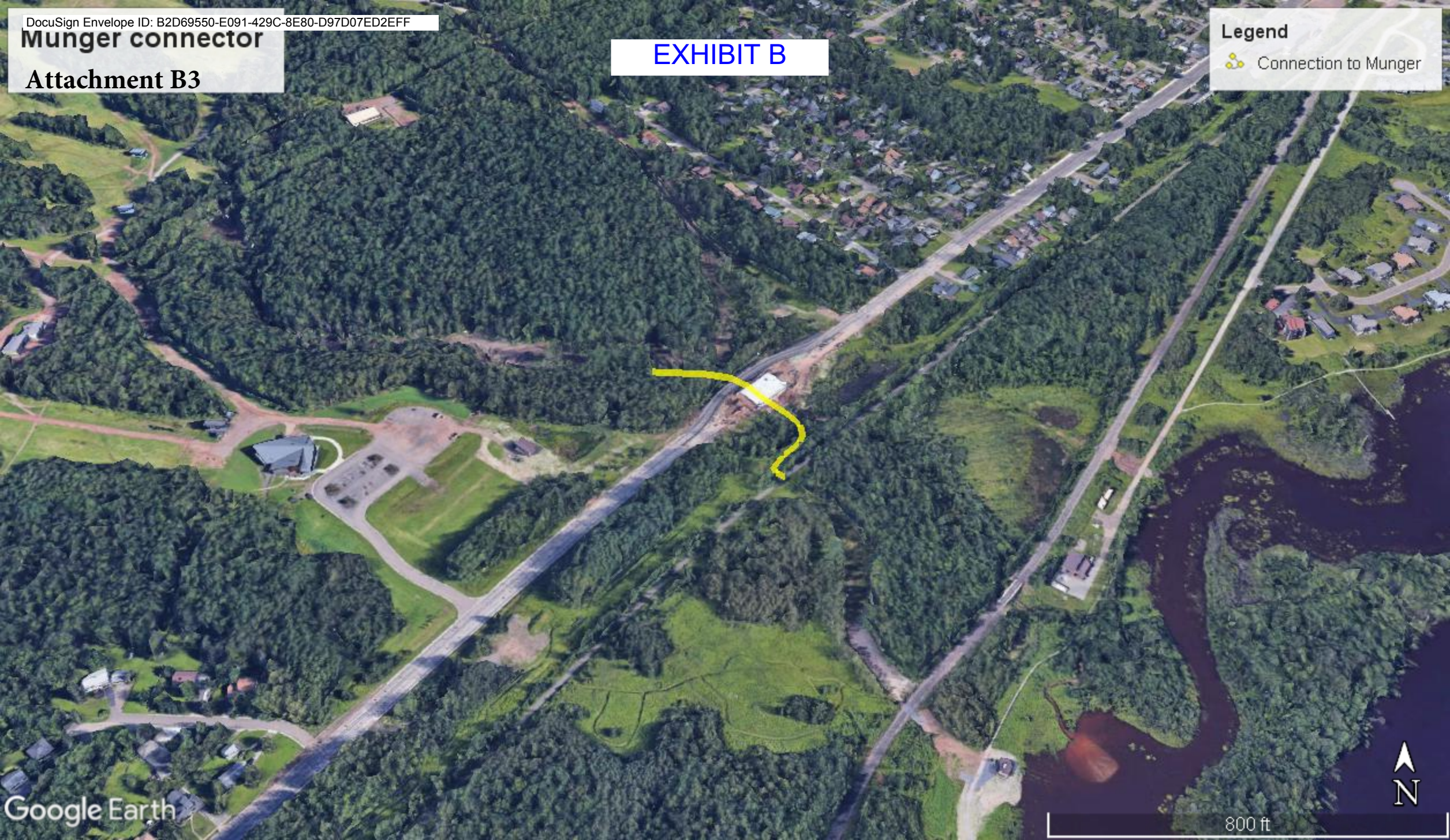
**Munger connector**

**Attachment B3**

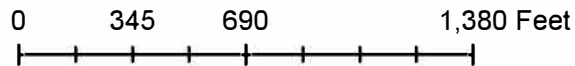
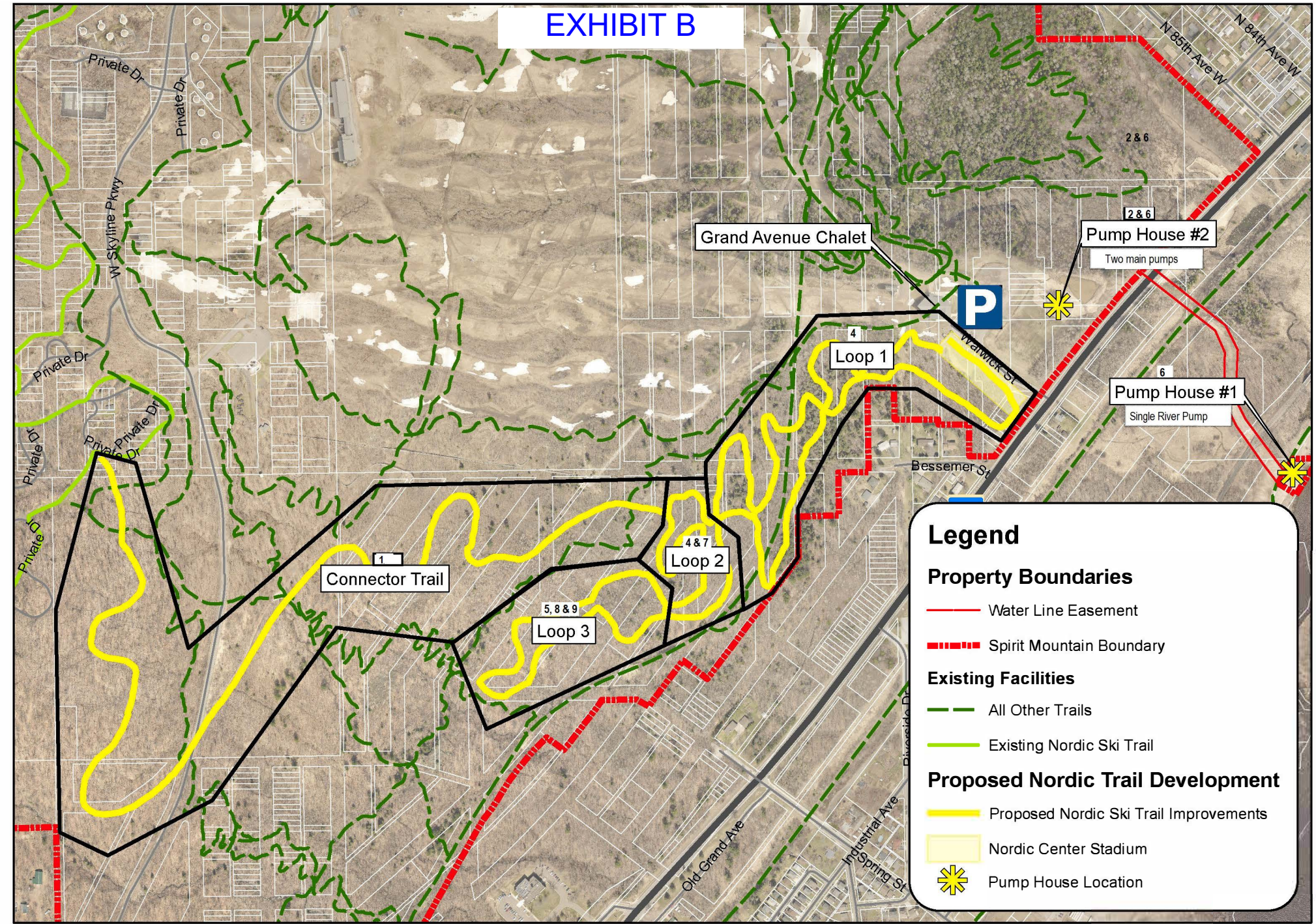
**EXHIBIT B**

**Legend**

 Connection to Munger







Attachment B4 Grand Avenue Nordic Center Site Map

