

# EXHIBIT 1

## **GRAND AVENUE 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 entitled the “Grand Avenue Nordic Center,” hereinafter referred to as the “Project.” When completed, the Project will include 5.4 km of cross country ski trails, 3.3 km of which will be equipped with state-of-the-art snowmaking and lighting that provides 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 by extending the season, early and late, providing skiing when there is inadequate natural snow, and offering a lit trail to allow early morning and night skiing.

WHEREAS, the Project will be completed in multiple phases. Phase I of the Project shall be that project as bid by City pursuant to City Bid No.18-0084 and as the same may be modified from time to time by City, which portion of the Project is hereinafter referred to as the “Phase I Project”.

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

WHEREAS, DXC has committed to donate approximately \$430,000 in cash in hand to defray a portion of the cost of construction of the Phase I Project 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.

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 Manager of Parks and Recreation or designee (“Parks Manager”) and DXC shall act through its President or designee (“DXC President”).

II. Term.

Notwithstanding the date of execution, this Agreement shall commence on May 14, 2018 (the “Effective Date”) and shall continue through the completion of the Project, unless earlier terminated as provided for herein (the “Term”).

III. City Phase I Construction Responsibilities.

No later than October 1, 2018, City shall award and enter into a construction contract with a contractor selected by City for the construction of the Phase I Project. Said contract will require completion of the Phase I Project no later than December 31, 2018. City shall be responsible for contract administration and for all costs associated therewith. Although the above dates represent the ultimate deadlines under this agreement, City will make best efforts to award and enter into said contract by August 1, 2018 and to encourage completion of the Phase I Project by November 1, 2018, out of a desire to diminish the risk of delays due to early freeze conditions and enable Spirit Mountain to capitalize on early season sales, the Project’s anticipated period of highest profitability.

IV. DXC Phase I Responsibilities.

DXC shall be responsible for the following:

(A) No later than May 21, 2018, DXC shall have paid \$430,000 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 I Project, to defray the City’s costs for design and engineering services related to the Phase I Project, to defray the cost of equipment purchased for the Phase I Project and to defray other costs incurred by City in connection with the construction of the Phase I Project (together the “Phase I Costs”), said funds to be deposited into Fund 452-030-4660-HANDHTAX-1506;

(B) DXC represents to City that it is willing to make a commitment of funds for the Phase I Project in the additional amount of \$125,000 (the “Committed Funds”). Between the effective date of this Agreement and November 1, 2018, DXC agrees to use its best efforts to collect the Committed Funds from those persons or entities pledging them and from other such persons or entities, which funds shall be deposited into Fund 452-030-4660-HANDHTAX-1506. Said Committed Funds shall be used to pay the Phase I Costs.

(C) By March 31, 2019, DXC shall use its best efforts to secure additional donated funds (the “Additional Funds”) in addition to those referred to Subparagraph A and B above for

the uses described in Subparagraph A above; it is DXC's intent to endeavor to raise at least \$195,000 in Additional Funds by that date. Upon collection of any Committed Funds not paid to City pursuant to Subparagraph B above and the receipt of any Additional Funds, DXC shall pay said funds to City to be deposited into Fund 452-030-4660-HANDHTAX-1506 which shall be used only to pay Phase I Costs;

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 I 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 Parks Manager.

- (A) Pursue the full completion of 5.4 km of trail construction, with 3.3 km of trails equipped with lighting and snowmaking;
- (B) Develop and administer cross country ski-based programs to increase skill development in the community;
- (C) Partner on programmatic efforts to increase access to the Grand Avenue Nordic Center by community members in all neighborhoods; and
- (D) Work together to plan and promote events to increase use of the trails by the local community and visitors to the city;
- (E) Cooperatively apply for relevant state and federal grants to financially assist with the completion of the Project, including the management of awarded grants; and
- (E) Initiate a public information campaign before, during, and after construction of the Project.

VI. Title to Project

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

VI. Default--Phase I Project.

A. By City

If City shall have failed to execute a contract for the construction of the Phase I Project by October 1, 2018, 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 I 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 I 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 I obligations.

VII. 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 I.

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: Property and Facilities Manager  
1532 W. Michigan Street  
Duluth, Minnesota 55806  
(218) 730-4430

Duluth Cross Country Ski Club  
Attn: Kari Hedin  
1346 W. Arrowhead Rd., PMB 344  
Duluth, MN 55811  
(218) 349-9486

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.

VIII. 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.

IX. 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.

X. 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.

XI. 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.

XII. 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.

XIII. 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 Depiction of the trails for the Project, including Phase I

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: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Attest: \_\_\_\_\_  
City Clerk

Its: \_\_\_\_\_

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

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

Countersigned:

\_\_\_\_\_  
City Auditor

Approved as to form:

\_\_\_\_\_  
City Attorney








# GANC Base Bid Revision

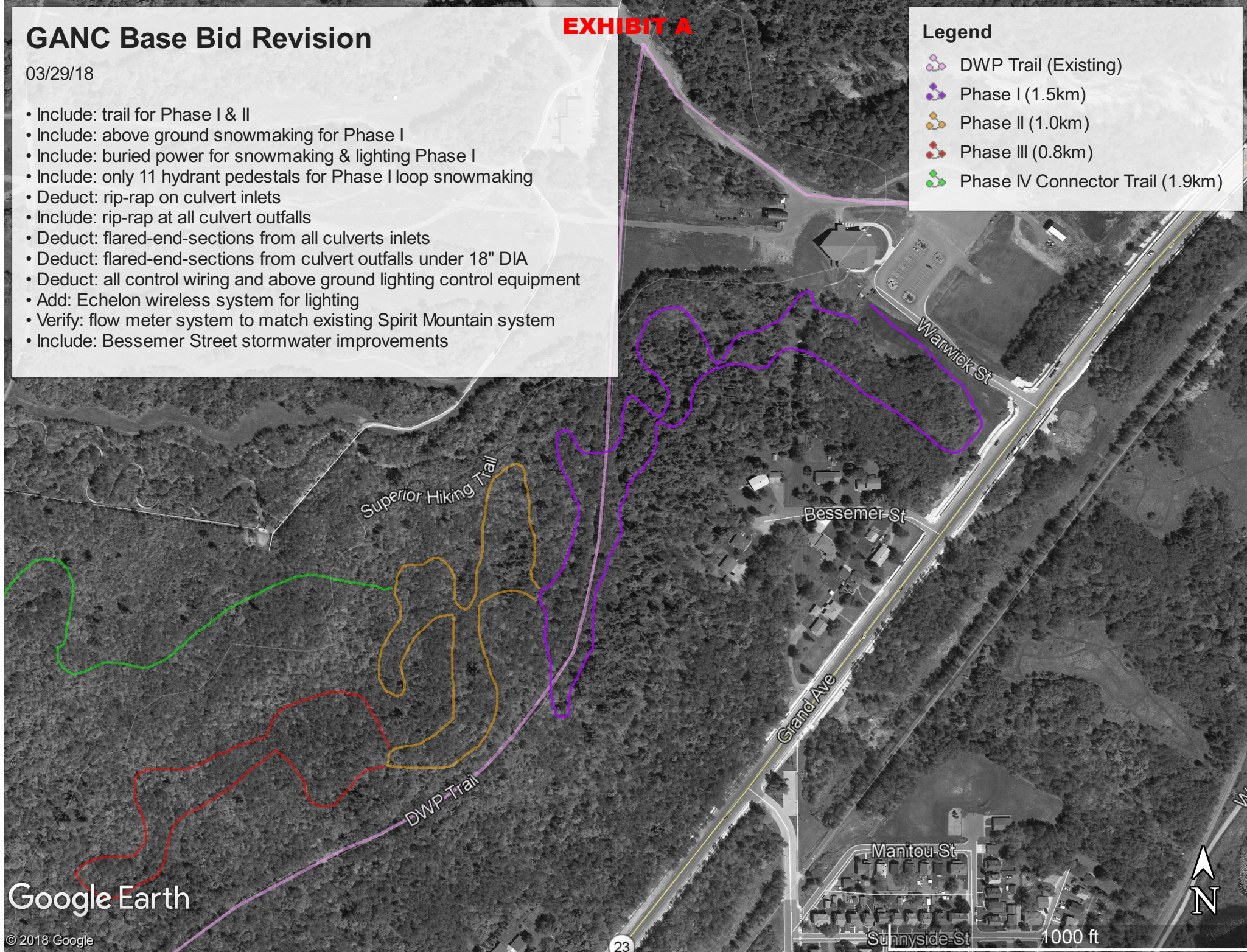
03/29/18

- Include: trail for Phase I & II
- Include: above ground snowmaking for Phase I
- Include: buried power for snowmaking & lighting Phase I
- Include: only 11 hydrant pedestals for Phase I loop snowmaking
- Deduct: rip-rap on culvert inlets
- Include: rip-rap at all culvert outfalls
- Deduct: flared-end-sections from all culverts inlets
- Deduct: flared-end-sections from culvert outfalls under 18" DIA
- Deduct: all control wiring and above ground lighting control equipment
- Add: Echelon wireless system for lighting
- Verify: flow meter system to match existing Spirit Mountain system
- Include: Bessemer Street stormwater improvements

**EXHIBIT A**

## Legend

-  DWP Trail (Existing)
-  Phase I (1.5km)
-  Phase II (1.0km)
-  Phase III (0.8km)
-  Phase IV Connector Trail (1.9km)



Google Earth

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Sunnyside St

1000 ft