

Exhibit 1

**WILLARD MUNGER STATE TRAIL / CITY OF DULUTH
KAYAK BAY TRAIL CONNECTIONS
COOPERATIVE AGREEMENT
BETWEEN
THE STATE OF MINNESOTA AND THE CITY OF DULUTH**

This Agreement, between the State of Minnesota, acting by and through the Commissioner of the Department of Natural Resources, hereinafter referred to as the "State" and the City of Duluth, hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, the Commissioner of Natural Resources has the authority, duty and responsibility under Minnesota Statutes Section 85.015, sub. 15, to establish, develop, maintain and operate the Willard Munger State Trail; and

WHEREAS, the State and the City are authorized under Minnesota Statutes Section 471.59 to enter into agreements to jointly or cooperatively exercise common powers; and

WHEREAS, the State owns land that traverses **Sections 13, 23 and 24, T49N, R15W**, St. Louis County, as shown on the map attached and incorporated into this agreement as **Exhibit A**; and

WHEREAS, the City is proposing the development of Kayak Bay Drive, a municipal public roadway that will traverse the existing Willard Munger State Trail, herein after referred to as the "Trail", in association with a public – private development, which is to include a public recreation area along the shoreline of the St. Louis River, a conceptual only design is attached and incorporated into this agreement as **Exhibit B**, which is of high priority to the City; and

WHEREAS, the City shall apply to the State for a permanent easement for Kayak Bay Drive over and across the State-owned land shown on Exhibit A for the here-in-after-described Kayak Bay Drive Trail Crossing, which shall be considered by the State outside of the terms of this agreement per State Statute and Policy; and

WHEREAS, the State has determined that the proposed improvements, including the development of Kayak Bay Drive and the Kayak Bay Drive Trail Crossing as well as the new St. Louis River Public Water Access facility, as conceptually depicted on the Preliminary Plan developed by the City and as conceptually represented in **Exhibit B** represent positive public recreational improvements; and

WHEREAS, the City and State have agreed that preserving the recreational intent of the Trail by restricting all future private and public crossing of the Trail within the City of Duluth is of high priority; and

WHEREAS, the City has agreed that following the completion of Kayak Bay Drive it will not request nor support any additional public or private non-recreational crossings of the Trail within the City; and

WHEREAS, the City has agreed to design and construct, in association with future improvements to Pulaski Street, improvements to the existing Trail crossing of Pulaski Street lying within the street right-of-way for Pulaski Street (the hereinafter-described “Pulaski Street Trail Crossing”) as generally depicted on the map attached and incorporated into this agreement as Exhibit C along with certain improvements to the Munger Trail lying outside street right-of-way for Pulaski Street (the “Pulaski/Munger Improvements”), which are not part of the Pulaski Trail Crossing; and

WHEREAS, the City has agreed to design and construct improvements to the existing Trail crossing of Riverside Drive (the hereinafter described “Riverside Drive Trail Crossing”), in association with future improvements to Riverside Drive as generally depicted on the map attached and incorporated into this agreement as Exhibit D; and

WHEREAS, the hereinafter-described Kayak Bay Drive Trail Crossing, the Pulaski Street Trail Crossing and the Riverside Drive Trail Crossing are hereinafter collectively referred to as the “Trail Crossings”; and

WHEREAS, a copy of the Duluth City Council resolution authorizing the City to enter into this agreement is attached hereto as Exhibit E; and

NOW, THEREFORE, in consideration of the mutual benefit to be derived by the public bodies hereto and for the benefit of the general public, the parties agree as follows:

I. STATE DUTIES AND RESPONSIBILITIES

- a. The State shall permit the City access to the segment of the Trail corridor as defined in the map attached and incorporated into this Agreement as Exhibit F, for the purposes of the engineering and design of the proposed Kayak Bay Drive Trail Crossing as generally depicted on said Exhibit F (the “Kayak Bay Drive Trail Crossing”).
- b. The State shall be allowed to review and approve the preliminary and final plans for Kayak Bay Drive Trail Crossing as proposed by the City. All revisions to the Kayak Bay Drive Trail Crossing as depicted on Exhibit F shall meet ADA requirements.
- c. The State shall be permitted to review and approve any alterations to Kayak Bay Drive Trail Crossing as depicted on Exhibit F or to the Pulaski Street Trail Crossing, the Pulaski/Munger Improvements or the Riverside Drive Trail Crossing as depicted on Exhibits C and D respectively that would affect the Trail during the term of this agreement.

- d. The State shall permit the City to review any alterations to the Pulaski Street Trail Crossing, Kayak Bay Drive Trail Crossing or Riverside Drive Trail Crossing proposed by the State during the term of this Agreement. Proposed alterations to the Trail shall meet ADA requirements.
- e. The State and the City may cooperate on future alternate Trail and/or Trail use specific corridors that would provide for enhanced user safety and/or experiences. Any proposed corridor revisions would require an amendment to this agreement or a new agreement as the parties deem appropriate.
- f. The State shall provide and install all trail related informational signs for the Trail Crossings within the State Trail right-of-way as determined by Department of Natural Resources policy.
- g. The State and the City may cooperate on the development and installation of trail informational signs for the Trail and City Trail Crossings.
- h. The State reserves the right to inspect the Trail and the Trail Crossings at any time to ensure the City is in compliance with the terms of the Agreement.

II. CITY'S DUTIES AND RESPONSIBILITIES

- a. The City shall be solely responsible for the design and construction of Kayak Bay Drive and the Kayak Bay Drive Trail Crossing as referred to in **Exhibit F**. The proposed Kayak Bay Drive Trail Crossing shall meet ADA requirements.
- b. The City shall permit the State to review and approve the preliminary and final plans for Kayak Bay Drive Trail Crossing as proposed by the City.
- c. The City shall apply for and receive an Easement from the State for the Kayak Bay Drive Trail Crossing prior to the construction of Kayak Bay Drive or any associated improvements proposed by the City. The easement referenced shall not be a component of this agreement.
- d. The City shall design and construct Pulaski Street Trail Crossing and the Pulaski/Munger Improvements in association with future improvements to Pulaski Street
- e. The City shall obtain all federal, state and local permits necessary for the construction of Kayak Bay Drive and Kayak Bay Trail Crossing, the Pulaski Street Trail Crossing, the Pulaski/Munger Improvements and Riverside Drive the Trail Crossing as proposed by the City.
- f. The City shall operate and maintain the Kayak Bay Drive, Pulaski Street and Riverside Drive Trail Crossings consistent with all local, state, and federal laws,

regulations and rules that may apply to the management, operation and maintenance of the facilitates of this type.

- g. The City shall provide and install all trail related informational signs for the Trail Crossings within City trail right-of-way as determined by City policy.
- h. The City and the State may cooperate on the development and installation of trail informational signs for the Trail and City Trail Crossings
- i. Upon completion of the Trail Crossings, the City shall have primary responsibility for the administration, operations and annual maintenance of the Trail Crossings.
- i. The City shall permit the State to review and approve any alterations to the Trail Crossings proposed by the City during the construction of the Trail Crossings. Proposed alterations to the Trail Crossings shall meet ADA requirements.

III. FUNDING

The State shall provide funding for its responsibilities under Article I (a)(b)(c)(d)(e)(f)(g)(h) above through the standard internal purchasing process including, but not limited to, a separate requisition in which funds will be encumbered. The total obligation of the State is limited to the amount of funds legislatively appropriated and administratively allocated to this project.

IV. LIABILITY

Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by the law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, and other applicable law. The City's liability shall be governed by and limited to the amount set forth in Minnesota Statutes, Sections 466.01-466.15, and other applicable law.

V. TERM

- a. *Effective Date: September 1, 2018*, or the date that the **State obtains all required signatures** under Minnesota Statutes Section 16C.05, Subdivision 2, **whichever is later**.
- b. *Expiration Date: September 1, 2058*, for a period of forty (40) years except as otherwise provided herein or agreed to in writing by both parties. This agreement shall renew at the end of the term for an additional five (5) year period unless a party gives three (3) months written notice to the other party to terminate the agreement. This agreement shall continue to automatically renew at the end of each five (5) year period unless the required notice is given.

VI. AUDIT

Under Minnesota Statutes Section 16C.05, sub. 5, the books, records, documents and accounting procedures and practices of the City relevant to this agreement shall be subject to examination by the Commissioner of Natural Resources, the Legislative Auditor and the State Auditor for a minimum of six years from the end of this agreement.

VII. ANTITRUST

The City hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations that arose under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

VIII. CANCELLATION

This Agreement may be cancelled by the State at any time with cause or as necessary as provided in Article III, upon thirty (30) days written notice to the City. This Agreement may also be cancelled by the State if it does not obtain funding from the Minnesota Legislature, or other funding sources, or if funding cannot be continued at a level sufficient to allow for the completion of the activities covered under this agreement. The State will notify the City by written or fax notice. The State will not be obligated to pay for services provided after the notice is given and the effective date of cancellation. The State will not be assessed any penalty if the agreement is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate the necessary funds. The State shall provide the City notice of lack of funding within a reasonable time of the State's receiving that notice.

This agreement may be cancelled by the City at any time with cause with (30) days written notice to the State. The City will also notify the State by written or fax notice

IX. GOVERNMENT DATA PRACTICES

The City and the State must comply with the Minnesota Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this agreement. The civil remedies of Minn. Stat. 13.08 apply to the release of the data referred to in this clause by either the City or the State.

X. PUBLICITY AND ENDORSEMENT

Any publicity regarding the subject matter of this 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 City individually or jointly with others, or any subcontractors, with respect to the program and services provided from this agreement.

XI. COMPLETE AGREEMENT

This Agreement constitutes the entire agreement between the parties. Any amendment to this 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 agreement, or their successors in office.

XII. OTHER TERMS AND CONDITIONS

NOTICES: Any notice, demand or communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

The State

Minnesota Department of Natural Resources
Attn: Parks and Trails Division Area (2D)
Supervisor
701 South Kenwood
Moose Lake, MN 55767

The City

City of Duluth
Attn: Parks & Recreation Manager
411 W. First Street, Ground Floor
Duluth, MN 55802

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IN WITNESS WHEREOF, the parties have caused the Agreement to be duly executed intending to be bound thereby.

**DEPARTMENT OF NATURAL
RESOURCES**

By: _____

Title: _____

Date: _____

DEPARTMENT OF ADMINISTRATION
Delegated to Materials Management Division

By: _____

Title: _____

Date: _____
(Effective Date)

**STATE ENCUMBRANCE
VERIFICATION**

Individual certifies that funds have been
encumbered as req. by Minn. Stat. 16A.15 and
16C.05.

By: _____

Date: _____

Contract: _____

CITY OF DULUTH

By: _____
Mayor

Attest: _____
City Clerk

Dated: _____

Countersigned:

City Auditor

Approved as to form:

City Attorney



Printed Date: 9/18/2018

The City of Duluth has tried to ensure that the information contained in this map or electronic document is accurate. The City of Duluth makes no warranty or guarantee concerning the accuracy or reliability. This drawing/data is neither a legally recorded map nor a survey and is not intended to be used as one. The drawing/data is a compilation of records, information and data located in various City, County and State offices and other sources affecting the area shown and is to be used for reference purposes only. The City of Duluth shall not be liable for errors contained within this data provided or for any damages in connection with the use of this information contained within.

The City of Duluth requires that this map/data not be redistributed to any party in whole or in part, including any derivative works or products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



Exhibit A
Willard Munger Trail Corridor
Township 49 Range 15
Sections 13, 23 & 24

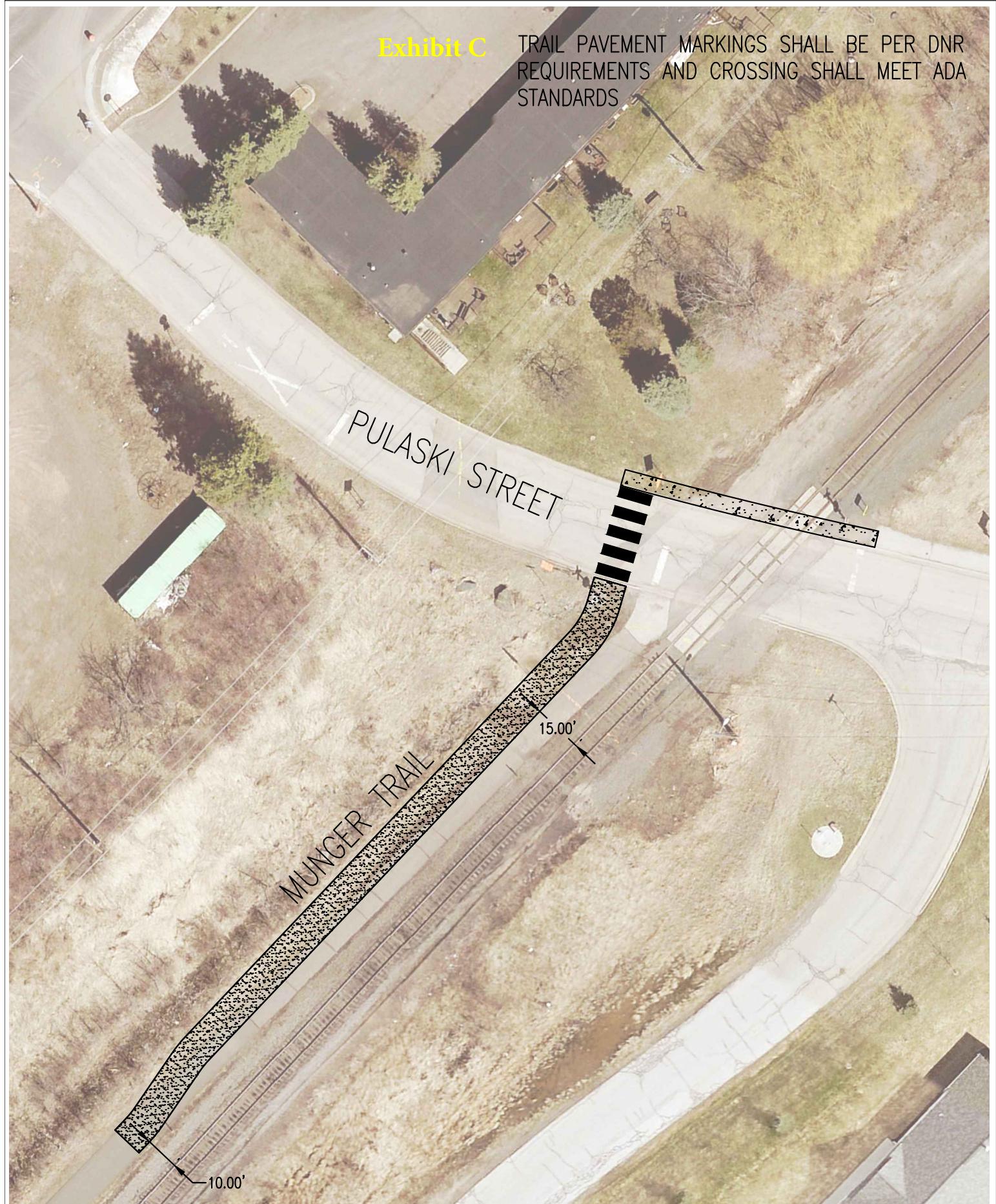
State of Minnesota

0 900 1,800 Feet



Exhibit C

TRAIL PAVEMENT MARKINGS SHALL BE PER DNR REQUIREMENTS AND CROSSING SHALL MEET ADA STANDARDS



WILLARD MUNGER STATE TRAIL PULASKI ST. X-ING

1403

SKETCH PLAN

CITY OF DULUTH ENGINEERING
DEPT. OF PUBLIC WORKS AND UTILITIES

NO SCALE

Exhibit D

TRAIL PAVEMENT MARKINGS SHALL BE PER DNR
REQUIREMENTS AND CROSSING SHALL MEET ADA
STANDARDS



WILLARD MUNGER STATE TRAIL RIVERSIDE X-ING

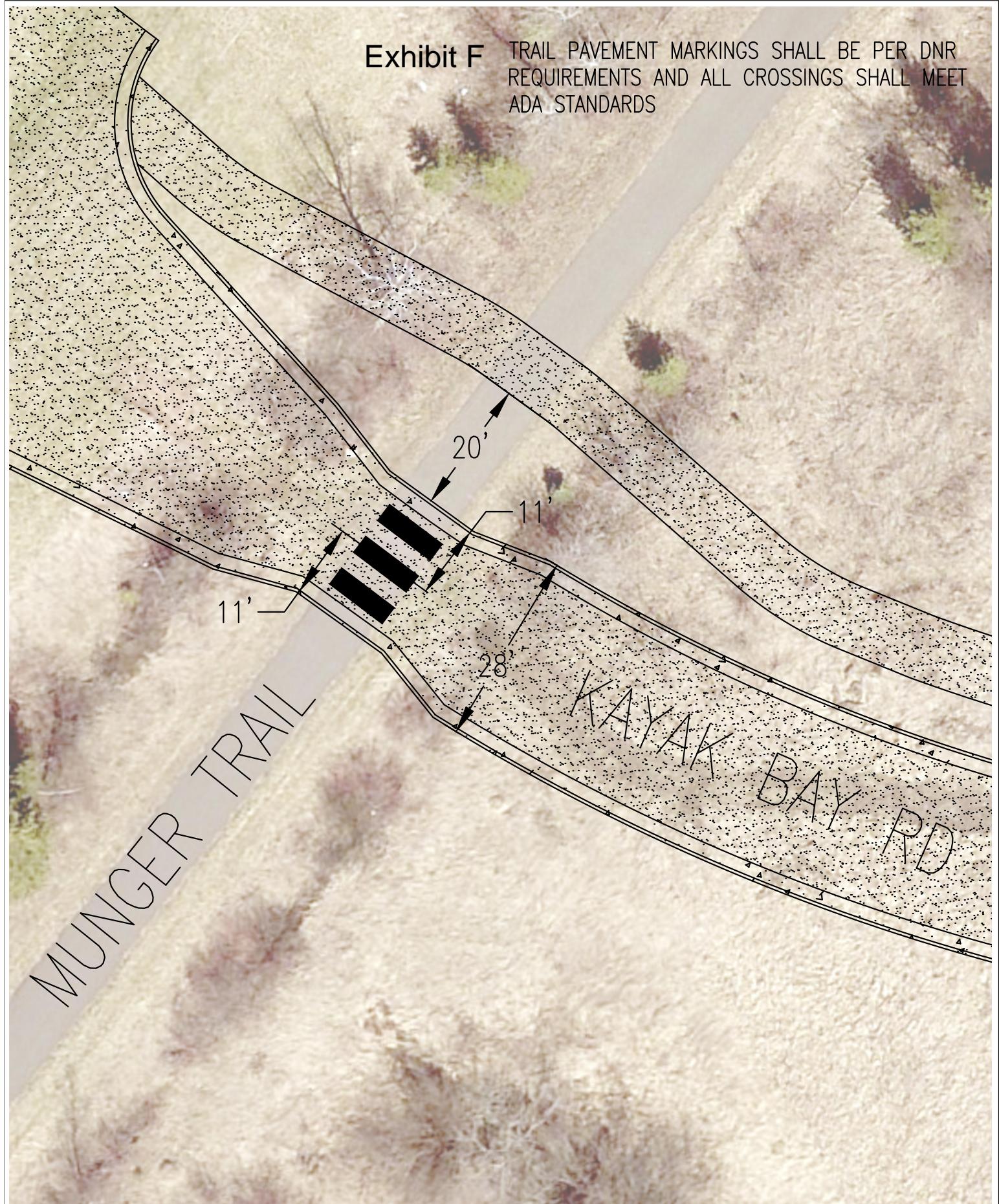
1403

SKETCH PLAN

CITY OF DULUTH ENGINEERING
DEPT. OF PUBLIC WORKS AND UTILITIES

NO SCALE

Exhibit F TRAIL PAVEMENT MARKINGS SHALL BE PER DNR REQUIREMENTS AND ALL CROSSINGS SHALL MEET ADA STANDARDS



WILLARD MUNGER STATE TRAIL KAYAK BAY RD. X-ING

1403

SKETCH PLAN

CITY OF DULUTH ENGINEERING
DEPT. OF PUBLIC WORKS AND UTILITIES

NO SCALE