

# EXHIBIT 1

## **AMENDED AND RESTATED PROJECT AGREEMENT BETWEEN CITY OF DULUTH AND SPIRIT MOUNTAIN RECREATION AREA AUTHORITY**

**THIS AMENDED AND RESTATED PROJECT AGREEMENT** (this “Agreement”) is by and between the City of Duluth, a Minnesota municipal corporation (the “City”), and Spirit Mountain Recreation Area Authority, a public authority established under Minnesota Laws 1973, Chapter 327 (the “Spirit Mountain Authority”).

**WHEREAS**, the Spirit Mountain Recreation Area is a recreational mountain providing downhill and cross country skiing opportunities in the winter and adventure park and mountain biking opportunities in the summer. The Spirit Mountain Recreation Area is managed by the Spirit Mountain Authority.

**WHEREAS**, the Spirit Mountain All-Weather Mountain Bike Trail Design Plan (the “Plan”) designed an all-weather mountain bike trail within the Spirit Mountain Recreation Area to allow biking in a variety of weather conditions. An all-weather bike trail uses a variety of techniques during construction to help prevent damage in wet conditions without negatively affecting the trails when dry. The Plan identified and designed aspects of the proposed trail alignments, including connectivity to the all-weather trail from the upper and lower chalets at the Spirit Mountain Recreation Area.

**WHEREAS**, to execute some of the objectives contained in the Plan, the Spirit Mountain Authority would like to construct two portions of the all-weather mountain bike trail, which will be completed in two phases (collectively, the “Project”). The location of Phase I of the Project is depicted in magenta on the attached Exhibit A (“Phase I”) and the location of Phase II of the Project is depicted in blue on the attached Exhibit A (“Phase II”). The areas in which Phase I and Phase II are to be constructed, as depicted on Exhibit A, are collectively referred to as the “Project Area”.

**WHEREAS**, the City and the Spirit Mountain Authority entered into a Project Agreement dated August 22, 2017 relating to Phase I (the “Original Agreement”), but wish to amend, restate and completely replace the Original Agreement with this Agreement, so that Phase I and Phase II can be covered in one single agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained in this Agreement, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

## **I. TERM AND AFFECT ON ORIGINAL AGREEMENT**

A. Notwithstanding the date of execution of this Agreement, the term of this Agreement shall begin August 7, 2017 and shall expire on the end of the day on December 31, 2020 (the “Term”).

B. This Agreement amends, restates and completely replaces the Original Agreement.

## **II. PROJECT DETAILS**

A. The Spirit Mountain Authority will complete the following on or before the expiration of the Term (collectively, the “Spirit Mountain Deliverables”):

1. For Phase I: construct approximately 1.8 miles of an all-weather mountain bike trail in the location depicted in magenta on the attached Exhibit A, with the following specifications: the trail corridor shall be cleared of all brush and vegetation (trees over 6” DBH will be avoided) to a width of eight feet (8') and a height of ten feet (10'); the trail will be constructed 48 inches in width and its tread surface will be capped with limestone or class 5 crusher fines built and compacted with mechanical equipment; adequate boardwalk and/or bridges will be provided to the satisfaction of the City in areas that are low and wet; no wetlands may be filled.

2. For Phase II: construct approximately 2.0 miles of an all-weather mountain bike trail in the location depicted in blue on the attached Exhibit A, with the following specifications: the trail corridor shall be cleared of all brush and vegetation (trees over 6” DBH will be avoided) to a width of eight feet (8') and a height of ten feet (10'); the trail will be constructed 48 inches in width and its tread surface will be capped with limestone or class 5 crusher fines built and compacted with mechanical equipment; adequate boardwalk and/or bridges will be provided to the satisfaction of the City in areas that are low and wet; no wetlands may be filled.

3. Install, as directed by the City, all necessary wayfinding, including maps, at both the trailhead and on the trail.

4. Provide the City with GIS information for the location of the new trails in a format allowing the information to be entered into the City’s GIS system.

5. Purchase and install all needed storm water best management practices.

6. Obtain and pay for all applicable permits needed to complete the Project.

7. Provide all labor necessary to complete the Project.

8. To the extent the cost of the City Deliverables (defined below) exceeds the City Contribution (defined below), order and pay for the additional materials and equipment rentals necessary to complete the Project.

B. The City will do the following as needed from time to time during the Term (the “City Deliverables”): purchase materials and rent equipment, as listed under the City of Duluth columns on the attached Exhibits B and C, at a cost not to exceed the City Contribution (defined

below). The City will purchase materials and rent equipment directly from vendors. The Spirit Mountain Authority shall communicate and coordinate with the City as to the timing of material deliveries and equipment rentals.

### **III. PAYMENT OF PROJECT COSTS**

A. The City will contribute the following amounts to pay for the Project: (a) for Phase I, an amount not to exceed \$72,000 (the “Phase I Contribution”); and (b) for Phase II, an amount not to exceed \$74,200 (collectively, the “City Contribution”). The Spirit Mountain Area Authority acknowledges that the Phase I Contribution has been fully contributed by the City as of the date of execution of this Agreement.

B. Subject to the requirements of this Agreement, the City will pay the City Contribution directly to the vendors providing the materials and equipment rentals. The City Contribution shall be used exclusively to complete the Project and for no other purpose. The City Contribution shall be payable from Fund 452-030-5530-HANDHTAX-1518. Except for the City Contribution, the City shall have no responsibility to pay for the Project or pay any money to the Spirit Mountain Authority or any third party pursuant to this Agreement.

C. The Spirit Mountain Authority shall pay for all costs of the Project, except for that portion to be paid with the City Contribution.

D. The City Contribution will be paid utilizing half-and-half sales tax revenue provided by the City. Because the City is using half-and-half sales tax revenue for the City Contribution, the Spirit Mountain Authority’s contribution to the cost of the Project must be equal to or greater than the amount paid by the City toward the cost of the Project. In the event that the Spirit Mountain Authority’s contribution to the cost of the Project is less than the amount paid by the City toward the cost of the Project, the Spirit Mountain Authority shall reimburse the City in an amount necessary to make the City Contribution equal to the Spirit Mountain Authority’s contribution to the cost of the Project. This obligation shall survive termination or expiration of this Agreement.

E. Periodically during the Term as requested by the City, and within 15 days of completion of the Project, the Spirit Mountain Authority shall submit to the City’s Director of Public Administration detailed documentation of the Spirit Mountain Authority’s costs incurred for the Project, including but not limited to: (i) verification of materials purchased, (ii) invoices and/or receipt of payment to employees (including hours worked) and contractors; and (iii) documentation of all volunteer hours donated to the Project.

### **IV. EARLY TERMINATION OR EXPIRATION OF AGREEMENT**

A. **ABANDONMENT.** The City may terminate this Agreement with seven (7) days written notice to the Spirit Mountain Authority if the City determines that the Spirit Mountain Authority has abandoned the Project or stopped providing the Spirit Mountain Deliverables, or both.

B. FOR CAUSE. The City may terminate this Agreement if the Spirit Mountain Authority breaches any provision of this Agreement, including its exhibits, if such breach is not cured to the satisfaction of the City within ten (10) days of delivery of a written notice by the City (or such longer time as specified in the notice). The notice shall identify the breach and the actions necessary to remedy the breach.

C. IMMEDIATELY. The City may terminate or suspend this Agreement immediately if the City believes in good faith that the health, welfare or safety of the Spirit Mountain Authority agents, employees, volunteers, City employees or volunteers, or the general public would be placed in immediate jeopardy by the continuation the Spirit Mountain Authority's operations with respect to the Project.

## **V. ACCESS**

The City shall have unlimited access to the Project Area during the Term for the purposes of inspecting and ensuring the Spirit Mountain Authority's compliance with this Agreement.

## **VI. INSURANCE AND INDEMNIFICATION**

A. During the Term, the Spirit Mountain Authority shall have such insurance coverage as will protect the Spirit Mountain Authority and the City against risk of loss or damage to the Project or the Project Area and against claims that may arise or result from the Spirit Mountain Authority's operations with respect to the Project and in the Project Area. The Spirit Mountain Authority shall procure and maintain continuously in force General Commercial Liability Insurance written on an "occurrence" basis under a Comprehensive General Liability Form in limits of not less than \$1,500,000 aggregate per occurrence for personal bodily injury and death and limits of not less than \$1,500,000 for property damage liability. Insurance required by this Agreement shall be taken out and maintained in responsible insurance companies organized under the laws of the states of the United States and licensed to do business in the State of Minnesota. Insurance shall cover public liability including premises and operations coverage, independent contractors - protective contingent liability, personal injury, contractual liability covering the indemnity obligations set forth herein, and products – completed operations. The Spirit Mountain Authority shall provide Certificates of Insurance to the City evidencing said insurance coverage, which must be in a form acceptable to the City. The Certificates of Insurance shall name the City as an additional insured. The required insurance policies shall be in a form acceptable to the City Attorney and shall contain a condition that they may not be cancelled without at least thirty (30) days' written notice to the City.

B. The City reserves the right to require the Spirit Mountain Authority to increase the coverages set forth above and to provide evidence of such increased insurance to the extent that the liability limits as provided in Minn. Stat. § 466.04 are increased.

C. The City does not represent or guarantee that the required types or limits of insurance coverage are adequate to protect the Spirit Mountain Authority's interests and liabilities.

D. The City shall not be liable to the Spirit Mountain Authority for any injury or damage resulting from any defect in the construction or condition of the Project or the Project Area

nor for any damage that may result from the negligent or intentional acts of any other person whatsoever.

E. The Spirit Mountain Authority agrees to indemnify, save harmless, and defend the City and its officers, agents, servants and employees from and against any and all claims, suits, loss, judgments, costs, damage and expenses asserted by any person by reason of injury to or death of any and all persons, including employees or agents of the City or the Spirit Mountain Authority, and including any and all damages to property to whomsoever belonging, including property owned by, leased to, or in the care, custody, and control of the Spirit Mountain Authority, arising out of, related to or associated with the use, maintenance or operation of the Project or the Project Area by the Spirit Mountain Authority or performance of its obligations under this Agreement.

## **VII. RECORDS RETENTION**

The Spirit Mountain Authority agrees to maintain all records relating to this Agreement and the Project during the Term and for six (6) years after the termination, cancellation, or expiration of this Agreement.

## **VIII. INDEPENDENT RELATIONSHIP**

A. Nothing contained in this Agreement is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting the Spirit Mountain Authority as 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.

B. The Spirit Mountain Authority and its employees shall not be considered employees of the City and any claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of its employees or agents while so engaged shall in no way be the responsibility of the City.

## **IX. NO ASSIGNMENT ALLOWED**

The Spirit Mountain Authority shall not in any way assign or transfer its rights or interests under this Agreement, but may engage a contractor to perform the construction portion of the Spirit Mountain Deliverables. The Spirit Mountain Authority remains responsible for all work performed by any contractor or subcontractor.

## **X. LAWS, RULES AND REGULATIONS**

A. During the Term, the Spirit Mountain Authority shall conduct its activities related to the Project in strict compliance with the United States Constitution and with the applicable laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and the City.

B. The Spirit Mountain Authority shall comply with all applicable federal and state laws regarding unlawful discrimination.

## **XI. TAXES**

The Spirit Mountain Authority shall pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of performing the Project, including real property and sales taxes, if applicable. It is further agreed that the City, in its discretion, may pay the same on behalf of the Spirit Mountain Authority and immediately collect the same from the Spirit Mountain Authority, or reduce any amount owed the Spirit Mountain Authority by the City pursuant to this Agreement. The Spirit Mountain Authority shall further be obligated to collect and/or pay any sales and use taxes imposed by any governmental entity entitled to impose such taxes on or before the date they are due and to file all required reports and forms in proper form related thereto on or before their due date.

## **XII. GOVERNMENT DATA PRACTICES**

A. The Spirit Mountain Authority 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 the Spirit Mountain Authority 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 the Spirit Mountain Authority. If the Spirit Mountain Authority receives a request to release the data referred to in this clause, the Spirit Mountain Authority must immediately notify and consult with the City as to how the Spirit Mountain Authority should respond to the request. The Spirit Mountain Authority agrees to hold the City, its officers, and employees harmless from any claims resulting from the Spirit Mountain Authority's unlawful disclosure or use of data protected under state and federal laws.

## **XIII. WAIVER**

The waiver by the City of any breach of any term, covenant, or condition in this Agreement, shall not be deemed a waiver of any subsequent breach of same or any term, covenant, or condition of this Agreement.

## **XIV. NO THIRD PARTY RIGHTS**

This Agreement is to be construed and understood solely as an agreement between the parties hereto 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 hereto, may be waived at any time by mutual agreement between the parties hereto.

## **XV. NOTICES**

Notices shall be sufficient if sent by regular United States mail, postage prepaid, addressed to the following persons:

City  
City of Duluth  
Attn: Director of Public Administration  
411 W. First Street, Room 402  
Duluth, Minnesota 55802

Spirit Mountain Recreation  
Area Authority  
Spirit Mountain Recreation  
Area Authority  
Attn: Brandy Ream  
9500 Spirit Mountain Place  
Duluth, Minnesota 55810

## **XVI. COMPLIANCE WITH AGREEMENT**

The right of the Spirit Mountain Authority to perform the Project and receive the City Contribution are subject to the Spirit Mountain Authority's compliance with the undertakings, provisions, covenants, and conditions herein.

## **XVII. APPLICABLE LAW**

The laws of the State of Minnesota shall govern all interpretations of this Agreement, and the appropriate venue and jurisdiction for any litigation that may arise under the Agreement will be in and under those courts located within St. Louis County, Minnesota.

## **XVIII. AMENDMENTS**

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

## **XIX. SEVERABILITY**

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, then 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.

## **XX. AUTHORITY TO EXECUTE AGREEMENT**

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.

## **XXI. INCIDENT REPORTS**

The Spirit Mountain Authority shall notify the City's Property and Facilities Manager in writing of any incident of injury to the Spirit Mountain Authority's employees, volunteers, or subcontractors or loss or damage to property in relation to the Project and occurring during the Term.

## **XXII. ENTIRE AGREEMENT**

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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date shown below.

**CITY OF DULUTH**

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

Attest:  
  
\_\_\_\_\_  
City Clerk  
Date Attested: \_\_\_\_\_

Approved as to form:  
  
\_\_\_\_\_  
City Attorney

Countersigned:  
  
\_\_\_\_\_  
City Auditor

**SPIRIT MOUNTAIN RECREATION  
AREA AUTHORITY**

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

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

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

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

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

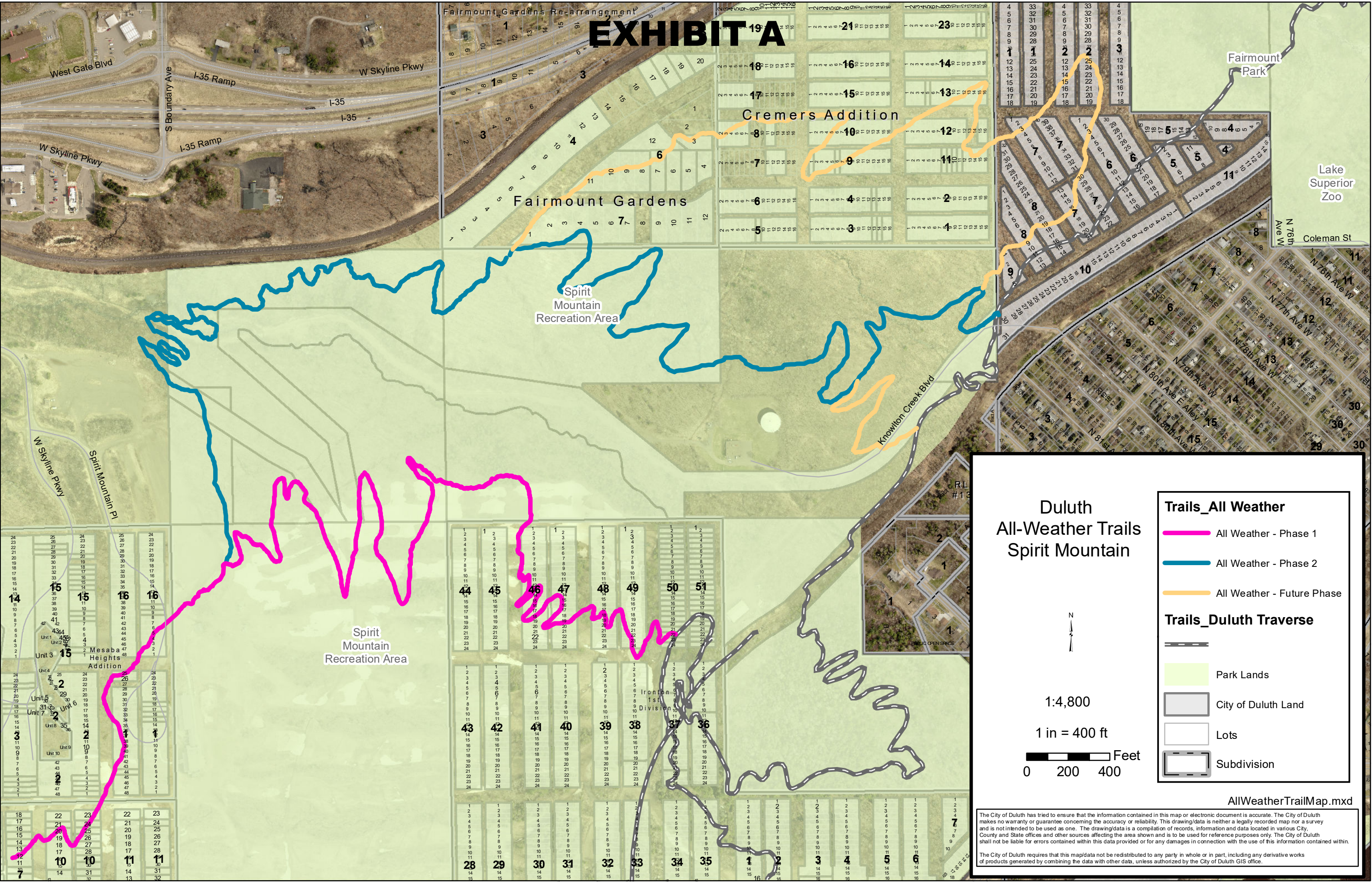
Its: \_\_\_\_\_

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

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



# EXHIBIT A



## Duluth All-Weather Trails Spirit Mountain

- Trails\_All Weather**
- All Weather - Phase 1
  - All Weather - Phase 2
  - All Weather - Future Phase
- Trails\_Duluth Traverse**
- Duluth Traverse
- Legend**
- Park Lands
  - City of Duluth Land
  - Lots
  - Subdivision



1:4,800  
1 in = 400 ft

AllWeatherTrailMap.mxd

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 of products generated by combining the data with other data, unless authorized by the City of Duluth GIS office.



## **EXHIBIT B**

### **ESTIMATED PROJECT COSTS FOR PHASE I**

#### Spirit Mountain Recreation Area Authority

Labor Expense: 40 hours per week x 12 weeks

- Employee 1 \$26.78 per hour = \$12,855
- Employee 2 \$23.89 per hour = \$11,467
- Employee 3 \$15.34 per hour = \$7,363
- Employee 4 \$15.34 per hour = \$7,363
- Independent Contractor 1 \$30 per hour = \$14,400
- Independent Contractor 2 \$25 per hour = \$12,000

Stormwater BMPs LS = \$6,647

Total Estimated SMRA Expenses: \$72,095

#### City of Duluth

Equipment Leases and Purchases

- Excavator 1 = \$1,800 per month x 3 = \$5,400
- Excavator 2 = \$2,100 per month x 3 = \$6,300
- Skid Steer = \$2,200 per month x 3 = \$6,600
- Canycom = \$15,000

Materials

- Boardwalk, Lumber & Fasteners = 630 LF @ \$30 per = \$18,900
- Class 5 Limestone = 480 CY @ \$28 per = \$13,440
- Crushed Stone = 250 CY @ \$25 per = \$6,250

Total Estimated City Expenses: \$71,890

## EXHIBIT C

### ESTIMATED PROJECT COSTS FOR PHASE II

#### Spirit Mountain Recreation Area

Labor Expense: 40 hours per week x 12 weeks

- Employee 1 - \$26.78 per hour= \$12,855
- Employee 2 - \$22.88 per hour= \$10,982
- Employee 3 - \$22.88 per hour= \$10,982
- Independent Contractor 1 - \$35 per hour = \$16,800
- Independent Contractor 2 - \$30 per hour = \$14,400

Total SMRA Labor Expense – \$66,049

SMRA Erosion Control Supplies – \$8,000

**Total Estimated SMRA Expenses: \$74,049**

#### City of Duluth

Equipment Leases and Purchases

- Excavator 1=\$1,551 per month x 3 = \$4,653
- Excavator 2 = \$2,100 per month x 3 = \$6,300
- Skid Steer= \$2,362 per month x 3 = \$7,086
- Ditch Witch= \$2,400 per month x 3 = \$7,200

Materials

- Class 5 Limestone = \$22.05 per CY x 1,487 = \$32,794
- 4” Minus Crushed Stone = \$23,45 per CY x 689 = \$16,152

**Total Estimated City of Duluth Expenses: \$74,185**