

EXHIBIT 1

PROJECT AGREEMENT BETWEEN CITY OF DULUTH AND SPIRIT MOUNTAIN RECREATION AREA AUTHORITY

THIS PROJECT AGREEMENT is by and between the City of Duluth, a Minnesota municipal corporation (“City”), and Spirit Mountain Recreation Area Authority, a public authority established under Minnesota Laws 1973, Chapter 327 (“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 (“Plan”) designed an all-weather mountain bike trail 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 Spirit Mountain.

WHEREAS, to execute some of the objectives contained in the Plan, the Spirit Mountain Authority would like to construct the downhill portion of the all-weather mountain bike trail which will be approximately 1.8 miles long and accessible from the lower chalet (the “Project”). The location of the Project is depicted in red on the attached Exhibit A (the “Project Area”).

WHEREAS, the Project will be paid for utilizing half-and-half sales tax revenue provided by the City as further described below, and matched by Spirit Mountain Authority.

WHEREAS, Spirit Mountain Authority is prepared to provide the Spirit Mountain Deliverables, as defined below, in order to complete the Project.

WHEREAS, the City is prepared to provide Spirit Mountain Authority with materials and equipment rental for the Project in an amount up to \$72,000 (the “City Contribution”).

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

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, 2017 (the “Term”).

II. PROJECT

A. Spirit Mountain Authority will provide the following Deliverables to complete the Project on or before the expiration of the Term, in the Project Area (collectively, the “Spirit Mountain Deliverables”):

1. Construct approximately 1.8 miles of an all-weather mountain bike trail as depicted in red on the attached Exhibit A and 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 City in areas that are low and wet; no wetlands may be filled;

2. Installation of all necessary wayfinding, including maps, at both the trailhead and on the trail; whereby Spirit Mountain Authority will work with City to complete;

3. GIS information regarding the new trail to be provided to be entered into the City’s GIS system;

4. Obtain and pay for all applicable permits needed to complete the Project, which approximate costs are shown on the attached Exhibit B;

5. Provide all labor necessary to complete the Project, which estimated labor costs are shown on the attached Exhibit B;

6. Submit to City detailed documentation of Spirit Mountain Authority’s costs incurred, including but not limited to, verification of materials purchased and invoices and/or receipt of payment to employees (including hours worked) and contractors hired to complete the Project; and

7. Pay for all costs of the Project not specifically mentioned in this Agreement, except for that portion to be paid with the City Contribution.

All invoices for work on the Project shall be submitted to City’s Director of Public Administration.

B. City will provide the following Deliverables to complete the Project on or before the expiration of the Term, in the Project Area (collectively, the “City Deliverables”):

1. Rent all necessary equipment need to complete the Project, which approximate costs are shown on the attached Exhibit B;

2. Order and pay for all materials needed to complete the Project, which materials are more closely defined on the attached Exhibit B;

III. COMPENSATION BY CITY

Subject to the requirements of this Agreement, City will pay the City Contribution directly to the suppliers of the City Deliverables. 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, City shall have no responsibility to pay for the Project or pay any money to Spirit Mountain Authority or any third party pursuant to this Agreement.

IV. EARLY TERMINATION OR EXPIRATION OF AGREEMENT

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

B. FOR CAUSE. City may terminate this Agreement for the material breach by Spirit Mountain Authority of any provision of this Agreement, including its exhibits, if such breach is not cured to the satisfaction of City within ten (10) days of delivery of a written notice by 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. City may terminate or suspend this Agreement immediately if City believes in good faith that the health, welfare or safety of Spirit Mountain Authority agents, employees, volunteers, City employees or volunteers, or the general public would be placed in immediate jeopardy by the continuation Spirit Mountain Authority's operations with respect to the Project.

V. ACCESS

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

VI. INSURANCE AND INDEMNIFICATION

A. During the Term, Spirit Mountain Authority shall have such coverage as will protect Spirit Mountain Authority and City against risk of loss or damage to the Project or the Project Area and against claims that may arise or result from Spirit Mountain Authority's operations on the Project or the Project Area during the Term. 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 \$1,500,000 for property damage liability. Insurance required in 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. Spirit Mountain Authority shall provide Certificates of Insurance to City evidencing said insurance coverage, which shall be in a form acceptable to City. The Certificates of Insurance shall name 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 City.

B. City reserves the right to require 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. City does not represent or guarantee that these types or limits of coverage are adequate to protect Spirit Mountain Authority’s interests and liabilities.

D. City shall not be liable to 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. Spirit Mountain Authority agrees to indemnify, save harmless, and defend 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 City or 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 Spirit Mountain Authority, arising out of, related to or associated with the use, maintenance or operation of the Project or the Project Area by Spirit Mountain Authority or performance of its obligations under this Agreement.

VII. RECORDS RETENTION

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 Spirit Mountain Authority as agents, representatives or employees of 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. Spirit Mountain Authority and its employees shall not be considered employees of 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 City.

IX. NO ASSIGNMENT ALLOWED

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 (Deliverables 1 through 6 in Section II above). Spirit Mountain Authority remains responsible for all work performed by any contractor or subcontractor.

X. LAWS, RULES AND REGULATIONS

A. During the Term, 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 City of Duluth.

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

XI. TAXES

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 City may pay the same on behalf of Spirit Mountain Authority and immediately collect the same from Spirit Mountain Authority, or reduce any amount owed Spirit Mountain Authority by City pursuant to this Agreement. 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. Spirit Mountain Authority shall comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by City under this Agreement, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by 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 Spirit Mountain Authority. If Spirit Mountain Authority receives a request to release the data referred to in this clause, Spirit Mountain Authority must immediately notify City and consult with City as to how Spirit Mountain Authority should respond to the request. Spirit Mountain Authority agrees to hold City, its officers, and employees harmless from any claims resulting from Spirit Mountain Authority's unlawful disclosure or use of data protected under state and federal laws.

XIII. WAIVER

The waiver by 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
Director of Public Administration
411 W. First Street, Room 402
Duluth, Minnesota 55802

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

XVI. COMPLIANCE WITH AGREEMENT

The right of Spirit Mountain Authority to perform the Project and receive the City Contribution are subject to 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

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

[Remainder of this page is intentionally left blank.]

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: _____

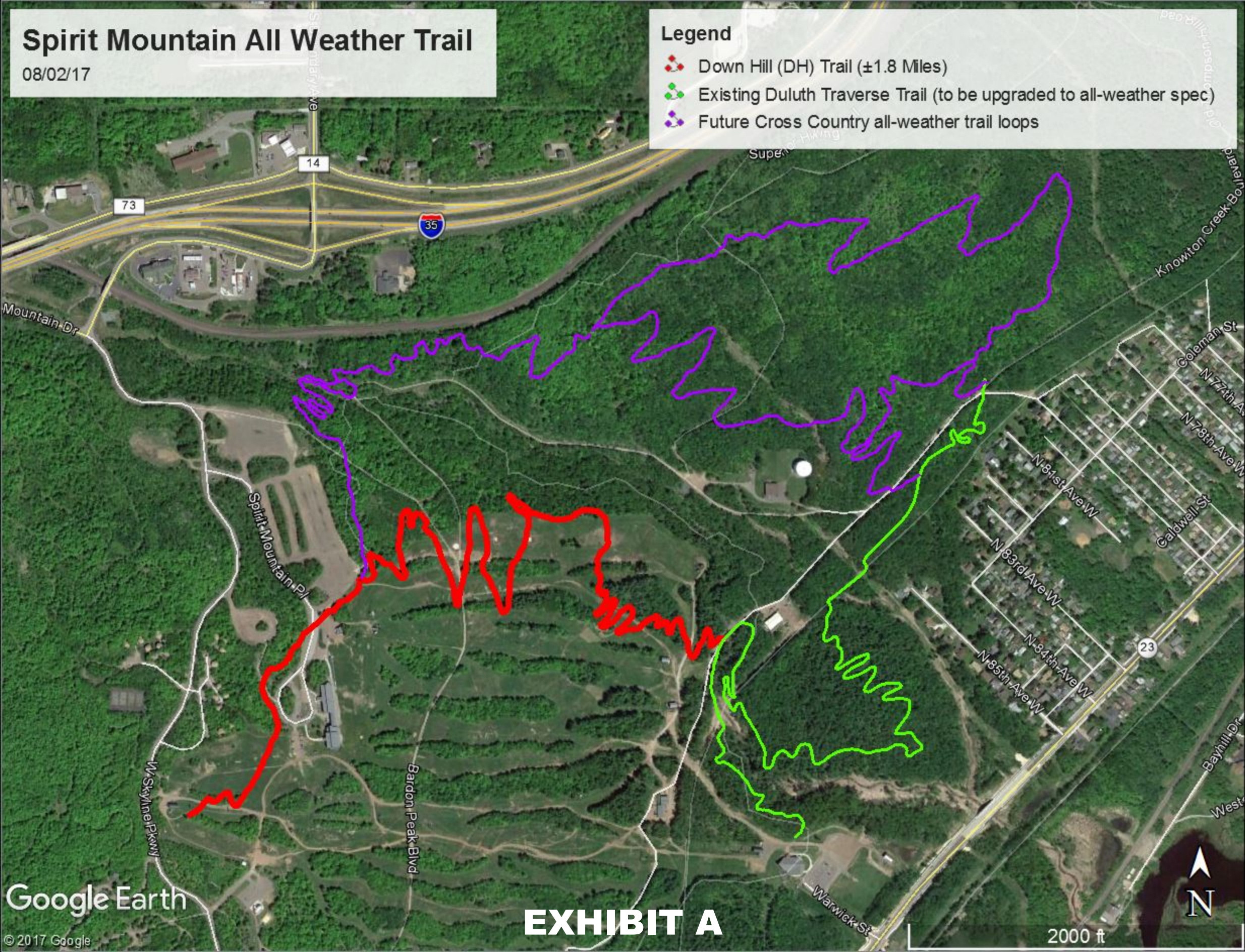
Dated: _____

Spirit Mountain All Weather Trail

08/02/17

Legend

-  Down Hill (DH) Trail (±1.8 Miles)
-  Existing Duluth Traverse Trail (to be upgraded to all-weather spec)
-  Future Cross Country all-weather trail loops



Google Earth

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EXHIBIT A

2000 ft

EXHIBIT B

ESTIMATED PROJECT COSTS

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 = \$1800 per month x 3 = \$5,400
- Excavator 2 = \$2100 per month x 3 = \$6,300
- Skid Steer = \$2200 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