

**FIRST AMENDMENT TO
DEER MANAGEMENT SERVICE AGREEMENT
BETWEEN THE CITY OF DULUTH
AND ARROWHEAD BOWHUNTERS ALLIANCE**

THIS FIRST AMENDMENT TO DEER MANAGEMENT SERVICE AGREEMENT (this “First Amendment”) is entered into by and between the City of Duluth, a municipal corporation created and existing under the laws of the State of Minnesota (the “City”) and Arrowhead Bowhunters Alliance, Inc., a Minnesota non-profit corporation (the “Agent”).

WHEREAS, the parties entered into a Deer Management Services Agreement dated August 15, 2022, with contract number 24365 (the “Agreement”), which details the management of the annual deer hunt within the City of Duluth by the Agent for the purpose of controlling the wild deer population in Duluth.

WHEREAS, the Agreement may, by its terms, be amended by written agreement and upon approval by resolution of City Council; and

WHEREAS, the Term of the Agreement is set to expire on March 15, 2025; and

WHEREAS, both parties desire to extend the Term of the agreement for three (3) additional years.

NOW, THEREFORE, the City and the Agent agree to amend the Agreement as follows:

In this First Amendment, the deleted items will be ~~struck out~~ and added terms will be underlined.

I. That the Section 6 of the Agreement will be amended as follows:

6. The term of this Agreement shall be from the Effective Date to ~~March 15,~~ following the third hunting season of this contract March 15, 2028, unless earlier terminated as set out herein. ~~At any time within 90 days of the termination date of this contract, the CAO, his/her designee, or the Mayor, may renew this contract for a period not to exceed three additional years. Either party may terminate this Agreement with or without cause by providing sixty (60) days written notice to the other party.~~ Any renewal shall be done by written instrument, dated and executed. A renewal may include modifications. After termination, Agent's obligations under this Agreement, including to indemnify and to insure for incidents occurring during the term of this Agreement, shall continue in force.

II. That Section 15 of the Agreement will be struck in its entirety and replaced by the following Section 15:

15. To the fullest extent permitted by law, Agent shall defend, indemnify, and hold City and its employee, officers, and agents harmless from and against any and all costs or expenses, claims or liabilities, including but not limited to, reasonable attorney's fees and expenses, whether asserted by Agent or any third party. Said obligations to defend, indemnify, and hold harmless shall include, but not be limited to the obligation to defend, indemnify, and hold harmless the City in all matters where claims of liability against the City arise out of, relate to, are attributable to, are passive or derivative of, or vicarious to the negligent, intentional, or wrongful acts or omissions of Agent, including but not limited to the failure to supervise, breach of warranty, the failure to warn, the failure to prevent such act or omission by Agent, its employees, or its agents, and any other source of liability. Said obligations to defend, indemnify, and hold harmless shall be triggered upon the assertion of a claim for damages against City. On ten (10) days' written notice from the City of Duluth, Agent shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. Agent shall not be required to indemnify City for amounts found by a fact finder to have arisen out of the intentional, willful, or wanton acts or omission of the City. This Section, in its entirety, shall survive the termination of this Agreement for any reason. Agent shall not have the obligation to indemnify the City for its intentional, willful, or wanton acts. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

Agent understands this provision may affect its rights and may shift liability and specifically agrees to the same.

III. That Section 16 of the Agreement will be struck in its entirety and replaced by the following Section 16:

16. a. Agent shall comply with the following insurance obligations and shall provide the minimum amounts of insurance from insurance companies authorized to do business in the state of Minnesota and comply:

- (1) Workers' compensation insurance in accordance with the laws of the State of Minnesota;
- (2) Commercial General Liability Insurance with limits not less than \$1,500,000 Single Limit, and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance. Such insurance shall be in a company approved by the City of Duluth; and shall provide for the following: Liability for Premises, Operations, Completed Operations, Independent Contractors, and Contractual Liability. Umbrella coverage with a "form following" provision may be utilized to meet the required minimum amount stated above. Such insurance shall indemnify Agent and City from all liability described in the Indemnification paragraphs above;
- (3) City of Duluth shall always be named as Additional Insured under the Commercial General, and Automobile Liability Policies; and

- (4) Agent to provide Certificate of Insurance evidencing all coverages required above. Such Certificate shall contain an unconditional requirement that the insurer must notify the City without fail not less than thirty (30) days prior to any cancellation, or ten (10) days prior to any non-renewal of the policy or coverages evidenced by said certificate, and shall further provide that failure to give such notice to City will render any such change or changes in said policy or coverages ineffective as against the City. The use of an "Accord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG 2010 Pre-2004); and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.
- b. The insurance required herein shall be maintained in full force and effect for at least the period from July 1 to January 1 during the life of this Agreement and shall protect Agent, its employees, agents, and representative from claims and damages including but not limited to personal injury and death and any act or failure to act by Agent, its employees, agents, and representatives in the negligent performance of work covered by this Agreement.
- c. Certificates showing that Agent is carrying the above-described insurance in the specified amounts shall be furnished to the City prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.
- d. The City of Duluth does not represent or guarantee that these types or limits of coverage are adequate to protect Agent's interest and liabilities. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

IV. That the Section 17 of the agreement will be amended as follows:

17. A City Review Panel will evaluate the performance of Agent and Agent's compliance with the terms and conditions of this Agreement. The Review Panel will be comprised of the following five individuals: Director of Parks and Recreation, Police Chief, City Forester, the Chief Administrative Officer or his/her designee. A representative from the Department of Natural Resources may also attend and participate in the review process. will hold an annual meeting by March 15 of the year following each year's hunt. The topics addressed at the annual meeting will include but are not limited to: results of the hunt; disciplinary actions and outcomes as set out in sections 10 and 11; any rule changes proposed for the next year's hunt; any amendments to the agreement. The Composition of the Review Panel may change year to year, but in general should include the following: ABA Board members; City staff member serving as the liaison to the ABA; Manager of Parks and Recreation; Duluth Police Department staff person who typically responds to calls relating to the hunt; Director of Parks, Properties and Libraries. Staff from the Minnesota Department

of Natural Resources should also be invited to the annual meeting including the MN DNR Conservation Officer assigned to the hunt area and the MN DNR Area Wildlife Manager. If the review panel identifies any issues or concerns about the performance of this contract, it will provide a list of them to Agent, and the Agent shall have reasonable opportunity to respond. The Review Panel shall recommend to the City Administration and City Council whether this contract should be renewed, be modified, or if a new agent should be selected.

- V. This First Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, but all of which together shall constitute but one and the same instrument. Signatures to this Agreement transmitted by facsimile, by electronic mail in "portable document format" (.pdf), or by any other electronic means which preserves the original graphic and pictorial appearance of the Agreement, shall have the same effect as physical delivery of the paper document bearing the original signature.
- VI. Except as specifically amended pursuant to this First Amendment, the Agreement remains in full force and effect. In the event of a conflict between the provisions of this First Amendment and the provisions of the Deer Management Services Agreement, the provisions of this First Amendment shall govern.

IN WITNESS WHEREOF, the City and the Agent have executed this First Amendment as indicated below.

CITY OF DULUTH

ARROWHEAD BOWHUNTERS
ALLIANCE, INC.

By: _____
City Administrator with delegated authority

By: _____

Dated: _____

Printed Name: _____

Attest: _____
City Clerk

Its: _____

Dated: _____

Date: _____

Countersigned: _____
City Auditor

Approved as to form:

City Attorney