

**SECOND AMENDMENT TO
ZOO MANAGEMENT AGREEMENT
BETWEEN
CITY OF DULUTH
AND
ARROWHEAD ZOOLOGICAL SOCIETY, INC.**

THIS SECOND AMENDMENT TO ZOO MANAGEMENT AGREEMENT (this “Second Amendment”) is by and between the CITY OF DULUTH, a municipal corporation organized and existing under the laws of the State of Minnesota (“City”), and the ARROWHEAD ZOOLOGICAL SOCIETY, INC. d/b/a LAKE SUPERIOR ZOOLOGICAL SOCIETY, a Minnesota nonprofit corporation (“Society”). The City and Society collectively are hereinafter referred to as the “Parties.”

WHEREAS, the Parties entered into a Zoo Management Agreement dated June 14, 2016, with contract number 22879 (the “Agreement”) which provides for management and operation of the Lake Superior Zoological Gardens, a public recreational and educational facility containing buildings, pathways, a collection of animals, public amenities, and related improvements (the “Zoo”);

WHEREAS, the Agreement expires on May 31, 2026; and

WHEREAS, the Parties desire to extend the term of the Agreement until December 31, 2026, to align with the City’s fiscal year.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

In this Second Amendment, terms deleted from the Agreement will be ~~struck out~~ and terms added will be underlined.

I. That Section VI. A. will be amended as follows:

Notwithstanding the date of execution of this Agreement, this Agreement shall be deemed to commence on June 1, 2016, and shall continue through ~~May 31, December 31, 2026~~, unless earlier terminated as provided for herein.

II. That Section VIII. will be amended by replacing it in its entirety with the following:

VIII. INDEMNIFICATION

To the fullest extent permitted by law, Society agrees that it shall defend, indemnify, and hold harmless the City, its officers, employees, and agents, 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 Society 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 Society, 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 Society, 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, Society shall appear and defend all lawsuits against the City of Duluth growing out of such injuries or damages. Society 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 omissions of City. This Section, in its entirety, shall survive the termination of this Agreement if any amount of work has been performed by Society. Nothing in this provision shall affect the limitations of liability of the City as set forth in Minnesota Statutes Chapter 466.

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

III. Except as specifically amended pursuant to this Second Amendment, the Agreement and all its terms remain in full force and effect.

[Remainder of this page left intentionally blank. Signature page to follow.]

IN WITNESS WHEREOF, the City and Society have executed this Second Amendment as indicated by their signatures below.

CITY OF DULUTH

ARROWHEAD ZOOLOGICAL SOCIETY,
INC.

By: _____
City Administrator with delegated Authority

By: _____

Dated: _____

Its: _____

Printed Name: _____

Attest:

Dated: _____

By: _____
City Clerk

By: _____

Dated: _____

Its: _____

Printed Name: _____

Countersigned:

Dated: _____

City Auditor

Approved as to form:

City Attorney