RESOLUTION AUTHORIZING A TEN (10) YEAR MANAGEMENT AGREEMENT BETWEEN THE CITY OF DULUTH AND THE ARROWHEAD ZOOLOGICAL SOCIETY, INC.

CITY PROPOSAL:
RESOLVED, that the proper city officials are hereby authorized to execute a ten (10) year agreement, substantially in the form attached as Exhibit 1, with the Arrowhead Zoological Society, Inc., d/b/a Lake Superior Zoological Society, for the continued management and operations of the Lake Superior Zoological Gardens; payments by the city will be made from Fund 200-130-5310 (Zoo, Community Resources, Contract Services).

This Resolution was adopted unanimously.

I, Jeffery J. Cox, City Clerk of the City of Duluth, Minnesota, do hereby certify that I have compared the foregoing passed by the city council on 6/13/2016, with the original approved and that the same is a true and correct transcript therefrom.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said city of Duluth.

[Signature]

Date Certified: 6-14-16
ZOO MANAGEMENT AGREEMENT
BETWEEN
THE CITY OF DULUTH
AND THE
ARROWHEAD ZOOLOGICAL SOCIETY, INC.

THIS AGREEMENT, effective as of the date of attestation by the City Clerk, is made 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 501(c)(3) Minnesota non-profit corporation ("Society"). The City and Society collectively are hereinafter referred to as the “Parties.”

WHEREAS, the City is the owner of Fairmont Park, a public recreation area, which contains the Lake Superior Zoological Gardens, a public recreational and educational facility containing buildings, pathways, a collection of animals and other items of interest, public amenities, and related improvements (the “Zoo”). As part of the City’s Park and Recreation program, the Zoo has provided an educational and recreational facility and resource to the community, the public schools, the residents of Duluth, and visitors to the area.

WHEREAS, the Zoo’s mission is to “provide close-up animal experiences which inspire connections to wildlife and action toward conservation in our region and around the world” (the “Mission”). The Society is dedicated to carrying out the Mission through numerous animal exhibits, animal enrichment demonstrations, educational programs and camps, events, and more.

WHEREAS, City wants to retain the services of Society to operate and manage the Zoo in order to continue its public use and purpose.

WHEREAS, Society wishes to provide the services needed to continue the operation of the Zoo.

NOW, THEREFORE, in consideration of their mutual promises, the Parties agree as follows:

I. GENERAL TERMS

A. Single Agreement

This Agreement replaces and supersedes any prior agreements between the Parties. Under the terms of this Agreement, Society shall hold and operate the Zoo in trust, pursuant to this Agreement, for the benefit of the City as set out in Laws 1961, Chapter 91.
B. Facility

This Agreement pertains to the Zoo premises and facility located in Fairmont Park, whose boundaries are outlined in red on the attached Exhibit A (the “Premises”). The Premises includes all animals, artifacts, collections, displays, buildings, structures, improvements, and fixtures as set forth on Exhibit B, which exhibit is current as of the date of execution of this Agreement.

C. Ownership License

The ownership, title, and all rights of ownership to the Zoo, its animals, except those specimens that are owned by other zoological institutions, collections, improvements, real and personal property shall be and remain with City, subject to the terms of this Agreement.

D. License

The City grants to the Society a license to manage the Zoo to carry out the terms of this Agreement. If due to requirements of significant donors and the Society needs to have recordable interest in the real estate which the Zoo property is located, then Society may request the City to amend this Agreement to obtain such recordable interest in the real estate. This request can be made at any point during the Term of this Agreement.

E. Statutory Authority

The Zoo was established by Section 35-10 of the Duluth City Code in 1929. Chapter 91 of Session Laws of Minnesota for 1961 authorizes the City to contract with a Minnesota non-profit, zoological society to manage the Zoo.

F. Authority to Enter Into Agreement

The City has the authority to enter into and execute the Agreement under the Statutory Authority section above and Sections 1, 18(h), and 32 of the Duluth City Charter.

G. Governmental Program

The parties are entering into this Agreement to carry out a governmental program, which is the operation of a public zoo as further described herein and under the statutory authority described above.

H. Gross Revenue

For purposes of this Agreement, “Gross Revenue” shall include any and all income, revenue, monies, sums and things of value of whatsoever kind or nature and howsoever designated or obtained (less customary refunds and credits), received by Society from the operation of the Premises from any and all sources directly and/or indirectly arising from and/or pertaining to the Premises and their operation throughout the year, including Zoo-related
fundraising events and activities held on the Premises or Zoo, less sales, use and other applicable taxes. Donations and restricted gifts made directly to the Society are specifically excluded from the term “Gross Revenue.”

II. REPRESENTATIONS OF THE SOCIETY

A. The Society is a 501(c)(3), nonprofit corporation duly organized and existing under the laws of the State of Minnesota and has the power to enter into this Agreement and by proper action has been duly authorized to execute this Agreement.

B. The execution and delivery of this Agreement and the consummation of the transactions herein contemplated do not and will not conflict with, or constitute a breach of or a default under, any agreement to which the Society is a party or by which it is bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature upon any of the property or assets of the Society contrary to the terms of any instrument or agreement.

C. There is no litigation pending or to the best of the Society’s knowledge threatened against the Society affecting its ability to carry out the terms of this Agreement or to carry out the terms and conditions of any other matter materially affecting the ability of the Society to perform its obligations hereunder.

D. The Society has complied or will comply with all legal requirements applicable to it with respect to this Agreement. The Society will observe all applicable laws, regulations, ordinances and orders of the United States, State of Minnesota and agencies and political subdivisions thereof.

E. The Society will remain a non-profit corporation and a 501(c)(3) tax exempt organization.

F. The Society will promptly give the City written notice of the commencement of any action, suit, or proceeding before any court or arbitrator or any governmental department, board, agency or other instrumentality affecting the Society or any property of the Society or to which the Society is a party for which an adverse determination or result could materially adversely affect the Society’s financial condition, the operations of its business, or its operation of the Zoo, or which could impair the Society’s ability to fully comply with any term, condition, or provision contained in the Agreement and in such written notice Society will state the nature and status of such action, suit or proceeding.

G. The Society will not, without the proper written consent of the City, create or permit to be created or allow to exist any lien on the Zoo.

H. The Society will not, without the prior written consent of the City, enter into any agreement or other commitment the performance of which would constitute a breach of any of the terms, conditions, provisions, representations, warranties, and/or covenants contained in the Agreement.
I. The Society will use the Zoo only to provide a public zoo facility consistent with the Mission.

J. At a minimum, the Society will comply with USDA requirements for the care of Zoo animals. The Society will operate the Zoo using its best efforts, and in accordance with generally accepted operating practices. The Society shall operate the Zoo in a safe, clean, and sanitary condition, consistent with the requirements of the Association of Zoos and Aquariums and shall make reasonable effort to obtain and maintain accreditation from that Association.

K. The Society will set the hours of operation of the Zoo with the approval of the City’s Manager of Parks and Recreation.

L. The Society, in its management and operation of the Zoo and each Society contractor and subcontractor, shall not discriminate against any person or exclude any person from participating in any programs, activities, or employment or otherwise deny anyone the benefits of such programs or activities, on the basis of age, race, religion, creed, color, sex, sexual orientation, national origin, ancestry, or disability.

M. The Society has had an opportunity to inspect and conduct an independent assessment of the Zoo and agrees to accept the same in its “AS IS” condition.

N. The Society will not alter the names of previously named facilities. Specifically, the “Willard Munger Animal Care Center” and “Griggs Learning Center” names shall remain.

O. The Society, in conjunction with the City, will make good faith efforts to explore avenues to finance capital improvements, including bonding.

III. DUTIES OF THE SOCIETY

A. Management Duties of the Society

1. The Society at its cost and expense, and subject to the reimbursement by the City pursuant to Section V.A. hereof, will be solely responsible for the management and operation of the Zoo, including without limitation, the items set forth in Exhibit C and other duties specified in this Agreement. The Society will use the Zoo in a manner that is consistent with the Mission, and will provide the City reasonable access to the Zoo. The Society will have the right to set prices for the services it offers, including but not limited to the Zoo entrance fee and education programs offered to the public. Such prices shall be family friendly in order to keep the operations financially accessible to the general community.

2. The Parties acknowledge that a number of foreseeable and unforeseeable events may result in a materially detrimental change or substantial financial impact in the Society’s ability to perform under this Agreement, as originally intended. The Society shall prepare contingency plans to sustain Zoo operations through such an event. In the event that a materially detrimental event occurs, then the Society will implement its contingency plans. If, after implementing the contingency plan and exhausting all other resource available to it, the Society
remains unable to perform its obligations under the Agreement, then the Society may seek assistance from the City. The Society understands and agrees that the City is under no obligation to accommodate the Society’s request.

3. The Society, at its cost and expense, will be solely responsible for all maintenance and janitorial services of the Premises and Zoo, except for the items explicitly stated in Section V.G. below.

B. Revenues, Funding, and Reports

1. Gross Revenues generated from operation of the Zoo and Zoo-related activities shall be collected by the Society, turned over to the City, and accounted for, under procedures, methods and instructions set out by the City. The intent of this provision is to ensure that the City complies with all bond requirements that govern the finances and operation of the Zoo and for the Society to maintain its status as a 501(c)(3) nonprofit. This includes all monies received from the operation of the Zoo and the Zoo related fundraising activities and any other money or funds received by Society as a result of operating the Zoo. The parties agree that all the money thus collected shall be used solely to finance the operation of, maintenance of, and capital improvements to the Zoo or the creation of an endowment for the Zoo.

C. Capital Improvements

1. For the purpose of this Agreement, “Capital Improvement” means: (a) the addition or betterment of a long-term asset that extends the useful life of the property, such as a structural improvement to real property, and (b) an addition or improvement more than the sum of twenty-five thousand dollars and no/100ths ($25,000.00) and projected with a lifespan of at least five (5) years.

2. The Society, at its cost and expense, will be solely responsible for all Capital Improvements to the Premises and Zoo, with the exception of monies appropriated by the Duluth City Council specifically for Capital Improvements to the Premises or Zoo, if any.

3. Prior to commencing a Capital Improvement to the Zoo or Premises, Society shall submit to the City a Project Proposal Request along with detailed plans and specifications. Said plans and specifications must be prepared by an architect, engineer, surveyor, landscape architect or interior designer licensed or certified in accordance with Minnesota Statutes Section 326.02 and Minnesota Rules Chapter 1800.5000. A copy of the Project Proposal Request form is attached to this Agreement as Exhibit D. No work may begin on any Capital Improvement until the Society has written approval by the City and secures all necessary building permits. All construction shall conform to all applicable laws and the Duluth City Code.

4. Building contractors employed by Society shall provide and maintain a performance bond and construction insurance as reasonably established by the City. The Society shall provide copies of said performance bond and construction insurance to the City.
5. Prior to commencement of any construction, alteration or improvement on said
Premises, Society shall provide the City with sufficient proof of required insurance, including
worker’s compensation. Such proof of insurance must be approved by the City Attorney before
the commencement of any construction hereunder.

6. Capital Improvements to the Zoo or Premises constructed by Society under this
Agreement will be accepted by the City Council only after verification of the City Architect that
the project has been completed in compliance with the plans and specifications approved by the
City.

D. Non-Capital Improvements

The Society may make non-capital modifications to the Zoo. All such improvements
shall be made with due diligence, in a workman-like manner, and in conformity with good
industry practice.

E. Information

1. Each year and within ninety (90) days before the start of its fiscal year, the
Society will provide the City with a copy of its annual budget for the coming year.

2. Each year and within one hundred and twenty (120) days after the start of its
fiscal year, the Society will provide the City with a copy of an annual report of the Zoo activities,
including reservations, season passes, safety and maintenance. The annual report shall also
contain a current list of the Zoo’s animals, living creatures, and plant collections.

3. The Society will provide the City audited financial statements when they become
available. The Society will supply the City any and all other financial reports detailing other
aspects of the Society’s operation of the Zoo as the City may reasonably deem necessary.

4. As required by any State grant or bond agreement, the Society will provide the
City with an initial program report and budget reports that show revenues and expenses and other
reports that call for an annual determination that the Zoo is being used for the governmental
programs described herein.

5. Each year and within ninety (90) days before the start of each fiscal year of the
Society during the term of this agreement, the Society shall provide the City with an updated five
(5) year capital plan that outlines the capital needs for the Premises and Zoo.

6. Society shall promptly notify the City’s Park and Recreation Manager in writing
of any incident of injury or loss or damage to the Premises or any Society’s participants or
invitees occurring on or within the Premises during the term of this Agreement. Such written
report shall be in a form acceptable to the City’s Claims Investigator and Adjuster. A copy of
the City’s form of Incident Report is attached hereto and incorporated by reference into this
Agreement as Exhibit E.
F. Sale, Disposal, or Replacement of Equipment and Exhibits

The Society shall notify the City, in writing, at least five days before of the need to sell, dispose, or replace any Zoo equipment or exhibit, including animals. The Society may immediately dispose of any deceased animals, but will notify the City as soon as possible thereafter. The Society and City will jointly provide of the sale, disposal and replacement of equipment and exhibits in an expeditious manner.

G. Care of Animals and Living Creatures.

Due to the Society’s training and expertise in animal care, the Society shall have the control and management of the care, custody, and direction of the Institutional Collection Plan of the Zoo’s animals and living creatures in methods that are consistent with the Association of Zoos and Aquariums’ accreditation standards. These duties include, but are not limited to:

1. Presentation in a manner that reflects modern zoological practices in exhibit design, balancing animals’ functional welfare requirements with aesthetic and educational considerations;

2. Housing of animals and living creatures in enclosures with appropriate groupings that meet their physical, psychological, and social needs;

3. Protection of animals and living creatures from weather or other environmental conditions clearly known to be detrimental to their health; and

4. Having a clear process for identifying, communicating, and addressing animal welfare concerns within the institution in a timely manner, and without retribution;

5. Having a written nutrition program that meets the behavioral and nutritional needs of all species, individuals, and colonies/groups in the Zoo. Animal diets must be of a quality and quantity suitable for each animal’s nutritional and psychological needs; and

6. Having a written, formal procedures for quarantined animals, pests, euthanasia, and other animal care.

IV. REPRESENTATIONS OF THE CITY

A. No public official of the City has either a direct or indirect financial interest in this Agreement, nor will any public official of the City either directly or indirectly benefit financially from this Agreement.

B. The City has been duly authorized to execute and deliver this Agreement.

C. There is no litigation pending or, to the best of the City's knowledge, threatened against the City affecting its ability to carry out the terms of this Agreement or to carry out the
terms and conditions of any other matter materially affecting the ability of the City to perform its obligations hereunder.

D. The City will make good faith efforts, along with the Society, to explore avenues to finance capital improvements, including bonding.

V. DUTIES OF THE CITY

A. Reimbursement of Costs.

1. The City shall reimburse the Society for the actual and direct expenses incurred by the Society in the operation and maintenance of the Zoo no more frequently than a weekly basis upon submission of a reimbursement request, subject to the limitations set forth herein and in Section V.A.3. below. Each reimbursement request submitted by the Society shall include a check register sorted by expense category and a payroll register. City reserves the right to request additional back-up documentation to support an expense.

2. The City shall provide a working capital fund in an amount not to exceed One Hundred Thousand and no/100ths dollars ($100,000.00) (“Working Fund”). The outstanding balance of the Working Fund shall be deducted from the Society’s final reimbursement request or earlier if determined and requested by Society.

3. Unless otherwise agreed to by the parties, the maximum amount of expenses to be reimbursed by the City pursuant to Section V.A. in any calendar year shall not exceed an amount equal to: (i) the Gross Revenue generated from operations of the Premises and paid to the City during such calendar year, plus (ii) Six Hundred Seventy Thousand and no/100ths dollars ($670,000.00) from funds appropriated by the City Council, including the tourism tax (“City Funds”) (the Gross Revenues and the City Funds are sometimes collectively referred to as the “Compensation”). It is understood and agreed between the parties that in the event the Zoo does not utilize a portion of the Compensation in any year during the Term of this Agreement, that such unused amount will be carried-over to the next year and added to the Compensation for the Society’s use as provided for herein.

4. The City’s obligation to make payments during any City fiscal year succeeding the current fiscal year shall be subject to availability and appropriation of funds as further provided in Section V.H. below.

B. No management fee shall be paid to the Society.

C. The City grants the Society a license to use the Zoo as provided herein.

D. The City grants the Society a non-exclusive, non-transferable license to use all Zoo logos and trademarks in advertising and marketing of the Zoo, including without limitation, the right to use and license third parties to use such logo and trademarks on clothing and other items for sale or for promotional purposes. No changes or modification may be made to such logo and trademarks without the written permission of the City. The City reserves the right for
prior review and approval of any items or promotional or advertising materials bearing the City of Duluth name or logo, such consent shall not be unreasonably withheld or denied. The Society agrees that the City shall have the right to review and approve any new logos or trademarks created for use under this Agreement, such approval not to be unreasonably withheld or delayed, and that the City shall own all rights and interest, including copyright and trademark rights, in any new logo or trademark used in connection with the Zoo.

E. The City will continue to coordinate marketing support with the Society to include such services as a link to the Zoo web page and brochure placement in City facilities.

F. The City will allow the Society to use the lower pavilion storage room and West Duluth library basement storage locker at no charge, all of which are currently being used by the Zoo.

G. The City will be responsible for the repair and maintenance of existing underground electrical, sewer, and water lines on the Premises.

H. Upon request by the Society, the City shall disclose financial information about the Zoo or Premises, including current and outstanding bonds.

I. Funding Limitations. Notwithstanding any provision in this Agreement to the contrary, the City is not liable hereunder for the payment of any sums for which public monies have not been appropriated in the manner and to the extent required by law.

VI. TERM AND TERMINATION

A. Term of Agreement

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, 2026, unless earlier terminated as provided for herein.

B. Termination

1. Without Cause. This Agreement may be terminated as provided in Laws of Minnesota 1961, Chapter 91, Subdivision 2. Upon termination of this Agreement, each party’s respective rights, duties, and obligations with respect to matters involving the operation of the Zoo shall be determined solely and exclusively by reference to this Agreement and such provisions of the laws of the State of Minnesota as may be applicable or upon mutual agreement of the parties.

2. With Cause. In the event of a material breach of the terms of this Agreement by the Society or by the City, the other party shall give the breaching party a 30-day written notice in which to correct such violation or failure. If the breaching party does not correct such breach within 30 days after receipt of the notice, then the other party may terminate this Agreement
upon delivery of written notice of termination. In such an event of written notice of termination, this Agreement is terminated.

3. In the event that the Society becomes the subject of a bankruptcy proceeding or becomes insolvent, the City may terminate the Agreement immediately upon written notice.

4. The Society may not sell, encumber, loan, or otherwise dispose of any Zoo property after receipt of any written notice of termination.

5. The Society shall take all reasonable measures to turn over the Zoo and all other City-owned property to the City in a timely manner. Upon notice of termination, Gross Revenue and all revenues, including gate receipts, and City contributions that have not been used by the Society under this Agreement and are not needed to cover Society’s obligations incurred in performing its duties under this Agreement shall be promptly returned and contributed to the City.

6. The Society agrees that upon the termination or expiration of this Agreement, it shall surrender and deliver the animals, equipment, Zoo, and improvements thereon in good repair and clean condition, except for pre-existing conditions, the effects of ordinary wear and tear and depreciation arising from lapse of time or damage without fault or liability of the Society.

VII. INSURANCE

A. Society shall procure and maintain continuously in force a policy of insurance covering all of its activities on the Premises. A Comprehensive General Liability and Automobile Insurance policy shall be maintained in force by Society throughout the life of this agreement in an amount not less than One Million Five Hundred Thousand Dollars ($1,500,000.00) for bodily injuries and in an amount not less than Five Hundred Thousand Dollars ($500,000.00) for property damage or One Million Five Hundred Thousand Dollars ($1,500,000.00) single limit coverage per occurrence. Such coverage shall include all Society activities occurring on or within the Premises whether said activities are performed by employees or agents under contract to Society. Such policy of insurance shall be approved by the City Attorney and shall contain a condition that it may not be cancelled without thirty (30) days’ written notice to the City. The City shall be named as an additional insured on said policy of insurance required by this paragraph.

B. Society shall also provide evidence of Statutory Minnesota Workers’ Compensation Insurance.

C. Society shall provide to City Certificates of Insurance evidencing such coverage with 30-day notice of cancellation, non-renewal, or material change provisions included. The City does not represent or guarantee that these types or limits of coverage are adequate to protect the Society’s interests and liabilities.
D. The City reserves the right to require Society 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.

E. The City does not intend to waive any legal immunities, defenses, or liability limits that may be available.

F. When using the "Accord" Certificate form cancellation provisions, the words "endeavor to" on Line 2 must be deleted. As an additional insured under the contract, the City has contractual rights far exceeding that of a certificate holder. Therefore, additional named insured endorsement shall read as follows: "This policy insures the named Insured and the City of Duluth and will be primary and not contributory with City of Duluth coverage." The City of Duluth is an additional insured not subject to the "other insurance" condition or other policy terms which conflict with the agreement between the named insured and the City of Duluth.

G. The 2004 edition of ISO Additional Insured Endorsement CG 2010 is not acceptable. If the CG 20 10 is used, then it must be a pre-2004 edition.

VIII. HOLD HARMLESS AND INDEMNIFICATION

A. Society hereby 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 Society, 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 Society arising out of, related to or associated with the use, management, maintenance or operation of the premises by Society or performance of its obligations under this Agreement.

B. Society will indemnify the City for any damage to any City property on the Premises caused by Society, its agents, volunteers, employees, and invitees.

C. The City shall not be liable to Society for any injury or damage resulting from any defect in the construction or condition of the Premises, nor for any damage that may result from the negligence of any other person whatsoever, except in cases of gross negligence of a City employee.

D. In any dispute between the parties, Society waives the right to claim the protection of any immunities provided for in Minnesota Statutes Section 466.03, or pursuant to the doctrines of official immunity and vicarious official immunity.
IX. **ALCOHOL, TOBACCO, AND DRUG USE**

A. The possession, use, or sale of alcohol is permitted on the Premises only when the appropriate on-sale alcoholic beverage permit or license has been obtained from the City prior to the event and all application, fee and other requirements have been met.

B. Society acknowledges and agrees that there shall be no smoking or use of tobacco or illegal drugs whatsoever on the Premises or as otherwise prohibited by state or local laws.

X. **CITY ACCESS**

Upon notice to Society, City shall have the right to inspect the Premises at any time. Society shall not change locks or otherwise prohibit or inhibit City access to any portion of the building. City shall be exclusively responsible for the upkeep of all door locking devices and the duplication and distribution of all keys. Society is prohibited from duplicating any building key. Keys shall be distributed only to those individuals as may be designated by City or the current official contact person of Society.

XI. **INDEPENDENT RELATIONSHIP**

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting Agency as an 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. Agency shall not be considered an employee of the City, and any and all claims that may or might arise under the Workers’ Compensation Act of the State of Minnesota on behalf of Agency while so engaged and any and all claims whatsoever on behalf of Agency arising out of employment or alleged employment, including without limitation, claims of discrimination against the City, or its officers, agents, contractors, or employees shall in no way be the responsibility of the City. Agency and its officers and employees shall not be entitled to any compensation or rights or benefits of any hospital care, sick leave and vacation pay, Workers’ Compensation, Unemployment Insurance, disability pay, or severance pay.

XII. **THIRD PARTY BENEFICIARIES**

No provision of this Agreement shall inure to the benefit of any third person so as to constitute any such person as a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
XIII. GOVERNMENT DATA PRACTICES

Society 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 Society under this Agreement. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by Society. If Society receives a request to release the data referred to in this clause, then Society must immediately notify the City. The Society will inform the requesting party that the data request will be forwarded to and addressed by the City. The Society shall provide the requested information to the City within 5 calendar days. The City will assess the request and respond in a timely manner in accordance with the Minnesota Government Data Practices Act.

XIV. COMPLIANCE WITH LAWS

A. The Society shall not discriminate on the basis of race, color, creed, national origin, sexual orientation, disability, sex, religion, or status with regard to public assistance, and shall not violate any federal, state or local civil rights law, rule or regulation in the use or operation of the Zoo and/or Premises.

B. Society shall comply with all Minnesota Workers’ Compensation laws in the utilization of all employees employed on the Premises.

C. Society shall procure at its sole expense all licenses and permits necessary for carrying out the provisions of this Agreement and any repairs or improvements to the Zoo.

D. Society’s operations of the Premises shall be in compliance with the laws, rules, and regulations of the United States, State of Minnesota, St. Louis County, and the City of Duluth.

XV. TAXES

Society hereby agrees to pay all licenses, fees, taxes, and assessments of any kind whatsoever that arise because of, out of, or in the course of Society’s management of the Zoo or Premises, including real property taxes, if applicable. It is further agreed that City may pay the same on behalf of Society and immediately collect the same from the Society, if necessary. Society 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.

XVI. BOND FINANCING - PROPERTY TAX/TAX EXEMPT STATUS OF SOCIETY

This Agreement is intended to preserve the tax free nature of the Premises and the bonds that have been used to finance improvements to the Premises. If any provision of this
Agreement has, or will have, in the opinion of the trustee for the bondholders or independent bond counsel, the effect of endangering or destroying the tax free nature of the income to bondholders, or, if the City Attorney concludes that a provision has the effect of endangering the tax exempt nature of the Premises, then the City Auditor shall notify the parties, and, upon notice to the parties, that provision will become void, and the parties, upon request of either, shall, in good faith, negotiate a new contract provision acceptable to bond counsel or trustee or City Attorney, as the case may be. If a new contract provision is not agreed to, either party may terminate this Agreement as provided herein for cause. In like manner, if any provision endangers the tax exempt 501(c)(3) or non-profit status of Society, it may give notice and employ the same remedy.

XVII. SEVERABILITY

The Parties agree that 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, 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.

XVIII. NOTICES

Unless otherwise provided herein, all notices and other communications required or permitted under this Agreement shall be given in writing and mailed by first class mail addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

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

Arrowhead Zoological Society, Inc.  
Attn: CEO  
7210 Fremont Street  
Duluth, MN 55807

XIX. AMENDMENT AND ASSIGNMENT

A. Society agrees that it shall neither assign nor transfer any rights or obligations under this Agreement without prior written approval of the City.

B. This Agreement may not be amended, modified, or canceled except by a written agreement dated and duly executed by each of the parties hereto.
XX. **WAIVER OF COMPLIANCE**

No failure of either party to insist upon the strict performance of any term or condition of this Agreement or to exercise any right available upon a breach thereof shall constitute a waiver of any such breach or such agreement, term, or condition. No waiver of any breach shall affect or alter this Agreement.

XXI. **GENERAL PROVISIONS**

A. **Remedies and Governing Law**

The rights and remedies set forth herein are not exclusive and are in addition to any of the rights and remedies provided by law or equity. This Agreement and all actions arising hereunder shall be governed by the laws of the State of Minnesota.

B. **Force Majeure**

In the event of forced delay in the performance by either party or obligations under this Agreement due to Acts of God or of the public enemy, strikes, lockouts, unusual delay in transportation, unavailability of materials, fire, floods, epidemics, adverse weather conditions, riots, terrorism, insurrection, war, unavoidable casualties, or judicial or governmental action or inaction, other than action by the City, the time for performance of such obligations and for the satisfaction of the conditions precedent shall be extended for the period of the forced delays.

C. **Additional Instruments**

The Parties further agree to provide information and to execute and deliver any and all additional documents and instruments as may be reasonably necessary to effect this Agreement.

D. **Records**

Society agrees that, as provided in Minnesota Statutes Section 16C.05, Subd. 5, all Society books, records, documents, and accounting procedures and practices related to the operation of the Premises are subject to examination by the City or the State Auditor for six (6) years from the date of expiration or termination of this agreement. Upon twenty-four (24) hours advance notice by City, Society shall provide all requested financial information.

E. **Dedicated Uses**

Whenever the Society procures, provides, donates, or transfers personal property acquired by it to the City for the use of the Zoo or Premises, the City agrees that such personal property shall be dedicated for the exclusive use and benefit of the Zoo during the term of this Agreement.
F. Liens

The Society shall keep the Premises and personal property free from any liens arising out of any work performed, material furnished or obligations incurred by or for the Society and any other liens or encumbrances.

G. Entire Agreement

This Agreement embodies the entire understanding of the parties and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers, duly authorized.

[Remainder of this page intentionally left blank—signature page to follow]
CITY OF DULUTH

By: __________________________
Mayor

Attest: _________________________
City Clerk

Date Attested: 6/14/16

Countersigned: __________________
City Auditor

Approved as to form:
_______________________________
City Attorney

ARROWHEAD ZOOLOGICAL SOCIETY, INC.

By: ___________________________
Diana B. Dodge

Printed Name: Diana Bouschor Dodge

Its: Board President

By: ___________________________
Julene Boe

Printed Name: Julene Boe

Its: Interim Chief Executive Officer