

Introduced by:	Mayor
Date:	11/22/16
Action:	Postponed to 01/03/17
Vote:	9 Yes, 0 No, 0 Absent
Date:	01/03/17
Action:	Postponed to 02/14/17
Vote:	9 Yes, 0 No, 0 Absent
Date:	02/14/17
Action:	Adopted as Amended
Vote:	9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2016-073**

**A RESOLUTION APPROVING A MANAGEMENT AGREEMENT BETWEEN THE
CITY OF SELDOVIA AND THE KENAI PENINSULA BOROUGH ON BEHALF OF
THE SELDOVIA RECREATIONAL SERVICE AREA TO MANAGE THE SEA OTTER
COMMUNITY CENTER**

WHEREAS, since March 2013, the City of Seldovia has managed the facility known as the Sea Otter Community Center (“SOCC”) which is in the best interests of the Seldovia Recreational Service Area and the borough; and

WHEREAS, management of the SOCC is governed by an agreement between the City of Seldovia and the borough; and

WHEREAS, a multi-year management agreement for the SOCC through June 30, 2021 would be efficient and meet the needs of the city and the borough; and

WHEREAS, the fiscal year 2017 amount shall not exceed \$29,200 as approved in the service area’s budget under contractual services by way of Ordinance 2016-19; and

WHEREAS, at its meeting of October 26, 2016, the Seldovia City Council recommended approval of the Management Agreement for the Sea Otter Community Center; and

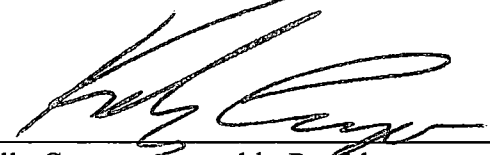
WHEREAS, the Seldovia Recreational Service Area Board met on October 21, 2016 to consider the agreement and recommended modifications of the agreement for the management of the Sea Otter Community Center;

NOW, THEREFORE, BE IT RESOLVED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That the mayor is authorized to enter into a management agreement with the City of Seldovia substantially in the form of the agreement attached to this resolution for the Sea Otter Community Center on behalf of the Seldovia Recreational Service Area.

SECTION 2. That this resolution takes effect immediately upon its adoption.

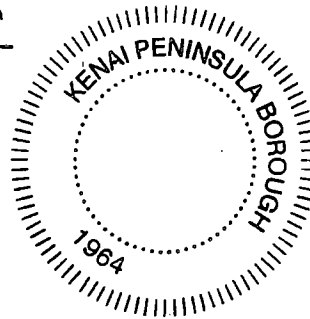
ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 14TH DAY OF FEBRUARY, 2017.



Kelly Cooper, Assembly President

ATTEST:


John Blankenship, MMC, Borough Clerk



11/22/16 Vote on motion to postpone:

Yes: Bagley, Dunne, Fischer, Gilman, Holmdahl, Knopp, Ogle, Welles, Cooper

No: None

Absent: None

01/03/17 Vote on motion to postpone:

Yes: Bagley, Dunne, Fischer, Gilman, Holmdahl, Knopp, Ogle, Welles, Cooper

No: None

Absent: None

02/14/17 Vote on motion to adopt as amended:

Yes: Bagley, Dunne, Fischer, Hibbert, Holmdahl, Ogle, Schaefer, Welles, Cooper

No: None

Absent: None

**MANAGEMENT AGREEMENT
FOR THE
SEA OTTER COMMUNITY CENTER**

1. **Parties.** The parties to this agreement are the Kenai Peninsula Borough (KPB) on behalf of the Seldovia Recreational Service Area (SRSA) and the City of Seldovia (SELDOVIA).

2. **Purpose.** The purpose of this management agreement is to contract with SELDOVIA to manage the facility known as the Sea Otter Community Center (SOCC) which is owned by the Kenai Peninsula Borough and located on the Susan B. English School campus at Tract 3B Fleming Giles Estates No 2, Plat No 96-01, Seldovia Recording District, Third Judicial District, State of Alaska. SELDOVIA will employ a coordinator for this purpose and also provide custodial services for the SOCC.

3. **Allowed Activities.** The coordinator employed by SELDOVIA shall manage the SOCC to provide the services which are authorized by the SRSA plan adopted by the KPB assembly on June 3, 2014, approved by the coordinator and take place at the SOCC and the Susan B. English school campus. Off campus recreational activities conducted by the SRSA are not subject to this management agreement

4. **Term.** This management agreement is valid from July 1, 2016, to June 30, 2021.

5. **Consideration.** The KPB shall pay SELDOVIA on the 15th day of each month for the services SELDOVIA provided in the preceding month under this agreement beginning the month the agreement is fully executed. An administration fee equivalent to 6 percent of the monthly bill may be charged by the City and included in the monthly billing. The total amount of the agreement shall not exceed \$29,200 for FY2017. The total amount of the agreement for FY2018, FY2019, FY2020 and FY2021 shall not exceed the amount budgeted and appropriated by the KPB Assembly for contractual services for the SOCC for each fiscal year. The parties will enter an amendment to this agreement setting forth the contractual amount for each fiscal year covered by this agreement.

6. **Keys.** KPB will provide SELDOVIA with keys to the SOCC. SELDOVIA agrees that no duplication of keys will be made without the express written permission of the KPB. SELDOVIA will return all keys that KPB issued and all duplicate keys at the conclusion of the term of this management agreement. When the SOCC is not in use for activities authorized by this management agreement the facility shall be locked.

7. **SELDOVIA's Obligations.**

A. To keep the SOCC in a clean, neat, and safe condition.

B. To properly dispose of all rubbish, garbage, and waste in a clean and sanitary manner in reasonable and regular intervals.

- C. To refrain from engaging in any activity which could result in civil liability to KPB.
- D. Schedule events and ensure that all parties running events sign the most recent facility use agreement approved by the borough.
- E. Assess fees for use consistent with KPB 1.26.020(C) and the fee schedule approved pursuant to KPB Chapter 1.26.
- F. Ensure events conducted at the facility are within the allowed activities set forth in Section 3 of this management agreement.
- G. Make the appropriate preparations for uses of the facility.
- H. Ensure proper oversight is available for each use with a designated responsible party.
- I. Prepare and deliver a monthly report to the SRSA board regarding uses of the facility and financial reports including all revenues and expense.
- J. Comply with and ensure full compliance with all applicable local, state and federal laws and regulations, including without limitation labor laws, governing SELDOVIA's operations, programs, services, facilities and equipment. SELDOVIA shall refrain from use or allowing use of the premises in any manner inconsistent with said laws, the SRSA plan and policy manual, or this agreement.
- K. Immediately notify the KPB of any lawsuits or claims pending or filed against SELDOVIA relating to SELDOVIA's services pursuant to this agreement. Immediately notify the KPB of any injuries occurring during programs operated by SELDOVIA and of any damages to KPB equipment or property.
- L. Maintain and conduct an annual inventory of the equipment, software, and other personal property in the facility and provide copies to the SRSA Board and borough Finance Department.
- M. Promptly notify the KPB of maintenance, repair, and facility concerns.

8. KPB's Obligations.

- A. KPB shall provide SELDOVIA occupancy of the subject property during the agreement term for the purposes set forth in this agreement.
- B. KPB will maintain and repair the roof, exterior walls, and foundation.
- C. KPB shall pay consideration for SELDOVIA's employment of a coordinator and custodial services as set forth in section 5 of this agreement.

9. School Rules. It is understood that the SOCC is located on the campus of the Susan B. English KPBSD kindergarten through 12th grade school. As such the following rules must be observed in accord with KPBSD school board policy:

- A. To provide competent adult supervision.
- B. Smoking is prohibited.
- C. Alcoholic beverages and illegal or illicit drugs are not permitted in school facilities or on school property at any time.
- D. Obscenity is prohibited.
- E. Firearms or other deadly or defensive weapons, as defined in AS 11.81.900(b) (17) and (26), are not permitted in school facilities or on school property.
- F. Installation of equipment, alteration of existing building facilities, use of materials that affect the condition of floors, walls or other building parts may not be undertaken without specific approval from KPB.
- G. Advertising or sales of merchandise and printed matter, except that incidental to school or service area programs, is prohibited on school grounds.

10. Repairs and Improvements.

- A. No alterations to the subject property shall be made by SELDOVIA.
- B. Routine Repair and Maintenance and Supplies. KPB shall supply the ordinary maintenance and repair of SOCC and equipment and replacement of supplies that are normally performed on a day-to-day, periodic, or routine basis in order keep the facility and equipment in good, clean, efficient and safe condition including but not limited to paying electric, fuel oil, water, telephone, cleaning, pest control, and waste removal expenses. KPB shall purchase all materials and supplies necessary to carry on the day-to-day operation of the SOCC and provide the services authorized by this management agreement. SELDOVIA shall provide custodial services as follows:

Three to five hours per week including interior cleaning such as vacuuming, mopping, garbage disposal and similar tasks, and basic maintenance such as changing light bulbs and programming thermostats and similar tasks.

11. Relationship of the Parties. The services to be rendered under this agreement are those of an independent contractor. SELDOVIA will not at any time directly or indirectly act as an agent, servant or employee of the KPB or make any commitments or incur any liabilities on behalf of the Borough without the KPB's express consent. The KPB, its administration, and the SRSA shall not supervise or direct SELDOVIA except as set forth in this agreement.

12. Liability. SELDOVIA shall be liable for damage to any KPB owned property resulting from its management and occupancy of the SOCC. Such damages shall be restored, repaired or replaced by SELDOVIA at SELDOVIA's sole expense; failure to repair damages subjects

SELDOVIA to all available remedies KPB has at law or equity. The election of one remedy will not prohibit KPB from pursuing any and all of the available remedies.

13. Insurance. KPB shall maintain insurance on the building as respects to physical damage, except that if SELDOVIA has caused said damage SELDOVIA's General Liability insurance will respond.

SELDOVIA shall purchase at its own expense and maintain in force at all times during the term of this permit the following insurance policies:

Commercial General Liability Policy to include bodily injury, personal injury, and property damage with respect to the property and the ACTIVITIES conducted by SELDOVIA in which the coverage shall not be less than \$1,000,000.00 per occurrence and if Seldovia carries higher limits then those limits apply. The policy purchased shall name KPB as an additional insured with respect to the ACTIVITIES conducted on the property and a waiver of subrogation. SELDOVIA shall notify KPB with thirty (30) days or more advanced written notice of any pending cancellation or change in coverage.

Workers' compensation insurance coverage as required by Alaska law with statutory limits and employer liability limits of \$1,000,000 and contain a waiver of subrogation in favor of KPB. Proof of such coverage shall be provided to the SRSA and KPB upon execution of this agreement and otherwise immediately upon request.

Proof of Insurance: SELDOVIA shall deliver to KPB certificates of insurance showing coverage in place as required. This insurance shall be primary and exclusive of any other insurance held by KPB. Failure to provide insurance as required by this section, or a lapse in coverage, is a material breach entitling KPB to terminate this agreement. Upon renewal of insurance coverage during the contract, certificates of insurance shall be delivered to the KPB's address shown herein.

14. Mutual Defense and Indemnification. SELDOVIA shall indemnify, defend and hold the KPB harmless from and against any and all claims, demands, suits or liability of any nature, kind or character whatsoever under this agreement, including costs, expenses and attorneys' fees, resulting from negligent acts, errors, or omissions of SELDOVIA or SELDOVIA's officers, agents, employees, partners, contractors, and sub-consultants who are directly responsible to SELDOVIA (collectively "SELDOVIA"). SELDOVIA is not required to indemnify, defend, or hold harmless the KPB for a claim of, or liability for, independent negligent acts, errors, and omissions that are solely the KPB's.

KPB shall indemnify, defend and hold SELDOVIA harmless from and against any and all claims, demands, suits or liability of any nature, kind or character whatsoever under this agreement, including costs, expenses and attorneys' fees, resulting from negligent acts, errors, or omissions of KPB or KPB's officers, agents, employees, partners, contractors, and sub-consultants who are directly responsible to KPB (collectively "KPB"). KPB is not required to indemnify, defend, or hold harmless SELDOVIA for a claim of, or liability for, independent negligent acts, errors, and omissions that are solely SELDOVIA's.

15. Termination for cause.

A. SELDOVIA's right to occupy and manage the SOCC will, at KPB's discretion and option, cease should SELDOVIA allow any of the following to occur on the subject property:

- 1) Failure to comply with any material term of this agreement; or
- 2) Commit waste of the property, beyond normal wear and tear and to fail to cure such waste. Waste is defined as unreasonable conduct that results in physical damage to the property or substantial diminution in the value of the property.

B. In the event of a default, KPB shall give SELDOVIA written notice of the default and a ten day opportunity in which to cure. If the default is not cured by this deadline, this agreement shall terminate and KPB may immediately take possession of the subject property.

C. If KPB violates any material provision of this agreement SELDOVIA may give written notice of the violation and of SELDOVIA's intent to terminate the agreement. If KPB fails to correct the violation within ten days after receipt of written notice SELDOVIA may terminate the agreement.

16. Termination for convenience. Either party may terminate this agreement for convenience upon 60 days written notice to the other party.

17. Transfer. This management agreement may not be transferred or assigned by SELDOVIA without prior written approval by the KPB Mayor. The SRSA board shall have the opportunity to comment on any proposed transfer or assignment prior to the Mayor's disapproval or approval.

18. Interpretation and Enforcement. This agreement is being executed by the parties following negotiations between them. It shall be construed according to the fair intent of the language as a whole, not for or against any party. The titles of sections in this agreement are not to be construed as limitations or definitions but are for identification purposes only.

19. Severability. If any section or clause of this agreement is held invalid by a court of competent jurisdiction, or is otherwise invalid under the law, the remainder of this agreement shall remain in full force and effect.

20. Understanding. SELDOVIA acknowledges that it has read and understands the terms of this agreement, has had the opportunity to review the same with counsel of its choice, and is executing this agreement of its own free will.

21. Notices. Any notice required pertaining to the subject matter of this agreement shall be personally delivered or mailed by prepaid first-class, registered or certified mail to the following addresses:

KENAI PENINSULA BOROUGH:

Borough Mayor
144 N. Binkley Street
Soldotna, AK 99669

CITY OF SELDOVIA:

City Manager
148 Dock Street, P.O. Box B
Seldovia, AK 99663

22. Jurisdiction; Choice of Law. Any civil action arising from this agreement shall be brought in the superior court for the Third Judicial District of the state of Alaska at Kenai. The law of the State of Alaska shall govern the rights and obligations of the parties.

23. Non-Waiver. The failure of the KPB at any time to enforce a provision of this agreement shall in no way constitute a waiver of the provisions, nor in any way affect the validity of this agreement or any part thereof, or the right of the KPB thereafter to enforce each and every protection hereof.

24. Agreement Administration.

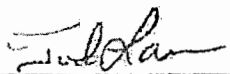
- A. The mayor, or his designee, will be the representative of the KPB administering this agreement.
- B. The services to be furnished by SELDOVIA shall be administered, supervised, and directed by the Seldovia city manager or the manager's designee who shall be an employee of the City of Seldovia.

25. Integration. This instrument and all appendices and amendments hereto embody the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this agreement shall supersede all previous communications, representations or agreements, either oral or written, between the parties.

KENAI PENINSULA BOROUGH:

CITY OF SELDOVIA

Mike Navarre, Mayor

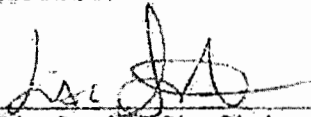


Tod Larson, City Manager

ATTEST:

ATTEST:

Johni Blankenship, Borough Clerk



Lisa Stanish, City Clerk

NOTARY ACKNOWLEDGMENTS

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Mike Navarre, Mayor of the Kenai Peninsula Borough, an Alaska municipal corporation, for and on behalf of the corporation.

Notary Public in and for Alaska
Commission Expires: _____

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

The foregoing instrument was acknowledged before me this 13th day of January, 2017, by Tod Larson, City Manager of the City of Seldovia, an Alaska municipal corporation, for and on behalf of the corporation.

CASSIDI LITTLE
Notary Public, State of Alaska
Commission # 160910015
My Commission Expires
September 10, 2019

Cassidi Little
Notary Public in and for Alaska
Commission Expires: September 10, 2019