

Introduced by: Mayor, Cox
Date: 11/07/23
Action: Adopted
Vote: 9 Yes, 0 No, 0 Absent

**KENAI PENINSULA BOROUGH
RESOLUTION 2023-079**

**A RESOLUTION AUTHORIZING A MEMORANDUM OF AGREEMENT BETWEEN
THE KENAI PENINSULA BOROUGH AND THE CITIES OF KACHEMAK, KENAI,
HOMER, SELDOVIA, SEWARD, AND SOLDOTNA FOR THE JOINT EXERCISE OF
TOURISM PROMOTION**

WHEREAS, Article X, Section 13 of the Alaska Constitution authorizes local governments to enter into cooperative agreements and the joint administration of any function or power not otherwise prohibited by law or charter; and

WHEREAS, KPB 19.10.030 provides that the Borough may exercise its non-area-wide tourism promotion powers with a city through joint exercise or administration with a city; and

WHEREAS, the Borough recently engaged a promotion video team to create videos to promote tourism and, as part of the videos, the Borough may directly and indirectly promote the incorporated cities within the Borough; and

WHEREAS, the Memorandum of Agreement (MOA) between the Borough and the local signatory cities reflects the desire to memorialize the joint exercise and promotion of tourism and will constitute their agreement on terms and conditions related to tourism promotion, and provide for the potential for future joint ventures; and

WHEREAS, the MOA does not obligate the Borough nor any city to expend funds on tourism proposition campaigns; and

WHEREAS, the Assembly finds it is in the best interest of the Borough to participate in the joint exercise of tourism promotion;

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

SECTION 1. That the Mayor is authorized to enter into a Memorandum of Agreement between the Kenai Peninsula Borough and the Cities of Kachemak, Kenai, Homer, Seldovia, Seward, and Soldotna for the Joint Exercise of a Tourism Promotion substantially in the form of the MOA attached hereto and incorporated herein by reference. The Mayor is authorized to execute necessary amendments to the MOA and other documents necessary to effectuate the intents and purposes of this resolution. If a city does not want to participate and does not execute the MOA, an MOA that removes cities that chose not to participate will be considered substantively the same as the MOA attached hereto.

SECTION 2. This resolution is effective upon adoption.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 7TH DAY OF NOVEMBER, 2023.



Brent Johnson, Assembly President

ATTEST:


Michele Turner, CMC, Borough Clerk



Yes: Cooper, Cox, Ecklund, Elam, Hibbert, Ribbens, Tunseth, Tupper, Johnson
No: None
Absent: None

Memorandum of Agreement

Between Kenai Peninsula Borough and the Cities of
Kachemak, Kenai, Homer, Seldovia, Seward, and Soldotna
For the Joint Exercise of a Tourism Promotion

This Memorandum of Agreement (hereinafter the “Agreement”) is by and between the Kenai Peninsula Borough, whose address is 144 North Binkley Street, Soldotna, AK 99669, (hereinafter “Borough”) and the participating Cities of Kachemak, Kenai, Homer, Seldovia, Seward, and Soldotna (hereinafter “Cities,” or “City”) whose addresses are included on the signatory page below, for the purpose of intergovernmental joint exercise of tourism promotion (hereinafter “tourism promotion”).

WHEREAS, Article X, Section 13 of the Alaska Constitution authorizes local governments to enter into agreements for the cooperative or joint administration of any function or power, unless otherwise prohibited by law or charter; and

WHEREAS, AS 29.35.010(13) provides authority for the Borough to enter into intergovernmental cooperative agreements for the joint administration of a Borough function or power; and

WHEREAS, KPB 19.10.030 provides that the Borough may exercise its non-areawide tourism promotion powers with a city through joint exercise or administration with a city; and

WHEREAS, the Borough recently engaged a promotion video team to create tourism promotion videos for the Borough and as part of those videos the Borough’s intent would be to directly and indirectly promote the signatory cities within the Borough; and

WHEREAS, the parties hereto wish to memorialize the joint exercise and promotion of tourism which will constitute their agreement on terms and conditions related to tourism promotion, and provide for the potential for future joint ventures as well;

THE PARTIES THEREFORE AGREE, in consideration of the mutual promises contained in this Agreement and the services and fees provided, as set forth below:

1. PURPOSE AND INTENT

This Agreement is established and entered into between the parties for the purpose of jointly exercising promotion of tourism powers. This Agreement contemplates a basic promotion of tourism intergovernmental agreement and does not obligate the Borough or a city to fund or promote tourism.

2. BOROUGH’S OBLIGATIONS

- a. In its sole discretion, subject to appropriation and availability of funds, the Borough may from time to time promote Borough tourism in a manner that also promotes the great cities within the Borough.

- b. Should the Borough include a city in a promotion of tourism campaign, Borough administration will provide the city administration with a draft of the campaign, prior to publication or release, of the promotional materials for city review and approval.
- c. Any Borough tourism promotion campaign not approved by a city, will not include any direct or specific references to that city.

3. CITIES' OBLIGATIONS

- a. In its sole discretion, subject to appropriation and availability of funds, a city may from time to time promote tourism in a manner that also promotes the area outside of a city.
- b. A city that is provided a draft or pre-release screening of any promotional materials from the Borough agrees to respond within two weeks of receipt and agrees not to disseminate or release the materials which will be considered proprietary, confidential, and subject to deliberative process privilege until a final version is released or otherwise publicized.

4. WITHDRAWAL

Any party to this Agreement may withdraw from the Agreement at any time and for any reason with the understanding that if a party withdraws from this Agreement after a promotional campaign has begun any promotion of tourism materials that includes the city may not be able to be removed immediately. Such materials will be removed when it is reasonably practical to do so.

5. CITY AND KPB CODE AND STATE LAW

This Agreement does not supersede any City code, City charter, or KPB code or state law. If a provision of this Agreement conflicts with KPB or City code, City charter, or state law, the respective code and state law controls.

6. CONFIDENTIALITY

All draft or pre-release promotional materials are considered confidential and proprietary to the party providing the materials to the other party. For Borough materials, third-party requests for the materials prior to release will be referred to the Borough and the Borough will respond accordingly.

7. SOLE RESPONSIBILITY FOR CLAIMS.

Any party that runs a tourism promotion campaign pursuant to this Agreement is solely responsible for any claims that arise from the campaign.

8. DISCLAIMER OF WARRANTY.

Any tourism promotion under this Agreement is furnished as is, where is, with all faults and without warranty of any kind, express or implied, including any warranty of merchantability or fitness for any particular purpose.

9. AMENDMENT OF AGREEMENT

This Agreement may only be modified or amended by written agreement of the parties.

10. COUNTERPARTS; ELECTRONIC SIGNATURE

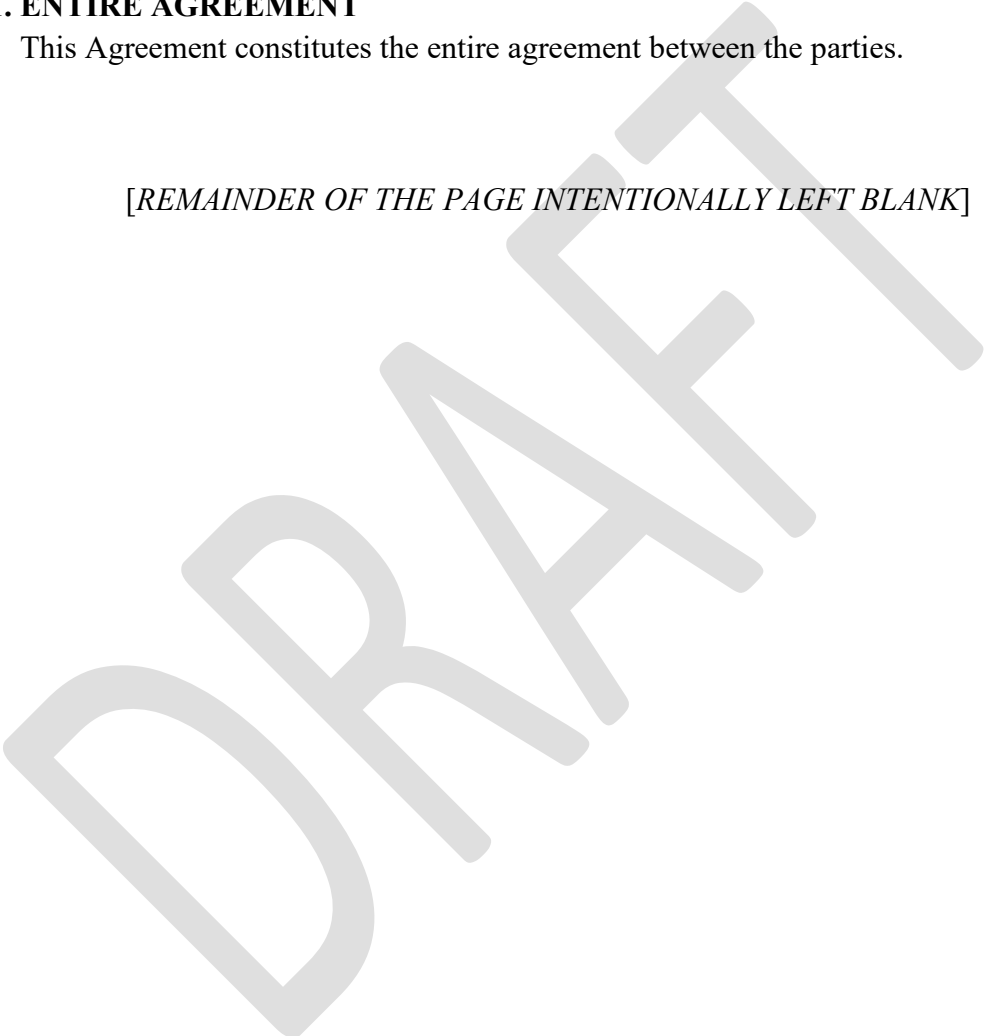
This Agreement may be executed in counterparts and may be executed by way of facsimile or electronic signature in compliance with AS 09.80, each of which when so executed shall constitute an original and all of which together shall constitute one and the same instrument.

11. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties.

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**KENAI PENINSULA BOROUGH
144 N BINKLEY STREET
SOLDOTNA, AK 99669**

By: Peter A. Micciche, Mayor

Date: _____

ATTEST:

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Michele Turner, Borough Clerk

Sean Kelley, Borough Attorney

DRAFT

**KACHEMAK CITY
59906 BEAR CREEK DR.
HOMER, AK 99603**

By: William Overway, Mayor

Date: _____

ATTEST:

Laurie Wallace, City Clerk

DRAFT

**CITY OF KENAI
210 FIDALGO AVE.
KENAI, AK 99611**

By: Terry Eubank, City Manager

ATTEST:

Shellie Saner, City Clerk

DRAFT

**CITY OF HOMER
491 E. PIONEER AVE.
HOMER, AK 99603**

By: Rob Dumouchel, City Manager

Date: _____

ATTEST:

Melissa Jacobsen, City Clerk

DRAFT

**CITY OF SELDOVIA
PO DRAWER B
SELDOVIA, AK 99663**

By: Heidi Geagel, City Manager

Date: _____

ATTEST:

Liz Diamant, City Clerk

DRAFT

**CITY OF SEWARD
PO BOX 167
SEWARD, AK 99664**

By: Kat Sorensen, City Manager

Date: _____

ATTEST:

Kris Peck, City Clerk

DRAFT

**CITY OF SOLDOTNA
177 N BIRCH ST.
SOLDOTNA, AK 99669**

By: Janette Bower, City Manager

Date: _____

ATTEST:

Johni Blankenship, City Clerk

DRAFT