

Introduced by:	Mayor
Date:	06/15/21
Action:	Postponed to 07/06/21
Vote:	8 Yes, 0 No, 1 Absent
Date:	07/06/21
Action:	Adopted as Amended
Vote:	8 Yes, 0 No, 1 Absent

**KENAI PENINSULA BOROUGH  
RESOLUTION 2021-048**

**A RESOLUTION APPROVING AN UPDATED MANAGEMENT AGREEMENT FOR  
THE SEA OTTER COMMUNITY CENTER ON BEHALF OF THE SELDOVIA  
RECREATIONAL SERVICE AREA**

**WHEREAS,** the Seldovia Recreational Service Area (“SRSA”) was formed pursuant to Kenai Peninsula Borough (“Borough”) Ordinance 2011-28 and voter approval in the October 2011 regular election; and

**WHEREAS,** the SRSA provides for the furnishing of recreational services within the service area that are based out of, and utilize the Sea Otter Community Center (“SOCC”), and other facilities as may be authorized by the Borough Assembly, and additional recreational services as are recommended by the service area board and established by the assembly through the budget process; and

**WHEREAS,** services to be provided may include but not be limited to senior citizen and youth programs, musical instruction and practice, accommodation of visiting schools on field trips, facility rental for organizations and individuals for meetings and celebrations, adult education, nature education and outdoor activities, and that the services shall be different from those provided by the City of Seldovia (“City”); and

**WHEREAS,** effective July 1, 2016 through July 1, 2021 the Borough entered into a contract with the City to manage the SOCC, including scheduling events, assessing fees consistent with the Borough fee schedule, ensuring the SOCC is prepared for events and other activities associated with managing the facility for the SRSA; and

**WHEREAS,** the Borough and City have been discussing and negotiating updates to the agreement including clarification of services to be provided by the City, the City personnel needed to meet the SRSA’s needs and the amount to be paid for those services, consistent means of communications between the City and the SRSA, and other potential options for services to be provided by the City for SRSA subject to approval; and

**WHEREAS,** the City and Borough staff involved in the discussions have agreed upon the accompanying agreement subject to approval by the City Council and Borough Assembly after considering the recommendations of the SRSA Board; and

**WHEREAS,** at its regularly scheduled meeting held on June 14, 2021, the borough Planning Commission recommended approval by unanimous consent; and

**WHEREAS,** at its meeting of June 28, 2021 the Seldovia City Council considered this Agreement and recommended approval as amended by the passage of Seldovia City Council Resolution 21-35; and

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

**SECTION 1.** That the Kenai Peninsula Borough Assembly approves the accompanying Management Agreement for the Sea Otter Community Center on behalf of the Seldovia Recreational Service Area and authorizes the Mayor to execute an agreement substantially in the form of this agreement.

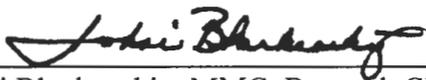
**SECTION 2.** This resolution shall become effective immediately upon adoption.

**ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS 6TH DAY OF JULY, 2021.**



\_\_\_\_\_  
Brent Hibbert, Assembly President

ATTEST:



\_\_\_\_\_  
Johni Blankenship, MMC, Borough Clerk



06/15/21 Vote on motion to postpone:

Yes: Bjorkman, Carpenter, Chesley, Cox, Derkevorkian, Dunne, Johnson, Hibbert

No: None

Absent: Elam

07/06/21 Vote on motion to adopt as amended:

Yes: Bjorkman, Carpenter, Chesley, Derkevorkian, Dunne, Elam, Johnson, Hibbert

No: None

Absent: Cox

**MANAGEMENT AGREEMENT  
FOR THE  
SEA OTTER COMMUNITY CENTER  
KPB PROPOSED 7-6-21 – RESOLUTION 2021-048**

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 facility coordinator, community recreation assistant, and janitor 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. The SRSA and City of Seldovia may arrange a separate agreement to address off campus recreational activities subject to advance assembly approval of the use of any additional facilities, and also that any such additional recreational services are recommended by the service area board and established by the assembly through the budget process as provided in KPB 16.55.090. This shall not preclude the SRSA from contracting with other organizations to provide for off campus recreational activities by separate agreement in accordance with borough procurement processes and subject to compliance with the above restrictions.
  
4. Term. This management agreement is valid from July 1, 2021, to June 30, 2026.
  
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. Services include the full cost of the employees as it relates to services provided for the SOCC. An administration fee equivalent to 3 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 \$37,000 for FY2022; this total covers the 3 percent admin fee and associated personnel expenses. The total amount of the agreement for FY2023, FY2024, FY2025 and FY2026 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 and collect 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, and shall also provide this report to the Borough Finance Director on a monthly basis.
- 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. Provide monthly invoice with supporting documentation, to include employee hours by position and dollars associated to each, on or before 30 days after each month end.
- M. Comply with all Borough Finance and Purchasing Departments' code requirements, policies and procedures including but not limited to procurement, cash management, petty cash, accounts receivable and vendor payments.

N. 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.

O. 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. Additionally, SELDOVIA shall negotiate with the KPB through a separate facility use agreement, if it wishes to use of the SOCC as an incident command center for the City. The City shall be responsible for any costs associated with that use.

B. KPB will maintain and repair the roof, exterior walls, and foundation.

C. KPB shall pay consideration for SELDOVIA's employment of a facility coordinator, community recreation assistant, and janitor 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 12<sup>th</sup> 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:

Up to eight 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. During the period in which the contract is amended on an annual basis as detailed in section 5, the City Manager will annually meet with SRSA to request feedback on the services provided within the past fiscal year specifically regarding any areas that stood out as successful and any areas in need of improvement.

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 Commercial 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 except as otherwise agreed in this section for Commercial General Liability insurance:

Commercial General Liability Policy (CGL) 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.

The borough through the SRSA agrees to reimburse SELDOVIA for the portion of SELDOVIA'S CGL insurance premiums that is directly attributable to the activities conducted by SELDOVIA under this agreement and future increases and changes in policy amounts based on market changes and insurance needs, except that the borough shall not be responsible for any premium increases that are due to claims based on the acts or omissions of SELDOVIA or its

employees. In such case, the parties shall in good faith negotiate the amount of the borough's payment for the CGL insurance. By July 1<sup>st</sup> of each year, or as soon thereafter as possible, SELDOVIA shall provide to the KPB a copy of its insurance billing that shows the portion of liability coverage charges attributable to the services provided by SELDOVIA to the KPB on behalf of the SRSA under this agreement.

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. To the extent allowed by law 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.

To the extent allowed by law, 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 thirty-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 thirty 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
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CITY OF SELDOVIA:	City Manager P.O. Drawer B Seldovia, AK 99663
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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.



STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Rachel Friedlander, City Manager of the City of Seldovia, an Alaska municipal corporation, for and on behalf of the corporation.

\_\_\_\_\_  
Notary Public in and for Alaska  
Commission Expires: \_\_\_\_\_