

E. NEW BUSINESS

- 5. Resolution 2024-XX: Authorizing the mayor to enter into a memorandum of agreement with Homer Electric Association, Inc. to provide efficient danger tree removal adjacent to above ground utility infrastructure within KPB lands and KPB road rights-of-way.**

Kenai Peninsula Borough

Planning Department – Land Management Division

MEMORANDUM

TO: Brent Johnson, Assembly President
Members of the KPB Assembly

THRU: Peter A. Micciche, Mayor
A. Walker Steinhage, Deputy Borough Attorney
Sovala Kisenia, Risk Manager
Scott Griebel, Road Service Area Director
Robert Ruffner, Planning Director
Aaron Hughes, Land Management Officer

FROM: Julie Denison, Land Management Technician

DATE: May 3, 2024

RE: Resolution 2024-XXX, Authorizing the Mayor to Enter into a Memorandum of Agreement with Homer Electric Association, Inc. to Provide for Efficient Danger Tree Removal Adjacent to Above-Ground Utility Infrastructure within KPB Lands and KPB Rights-of-Way (Mayor)

The Kenai Peninsula Borough (KPB) and Homer Electric Association, Inc. (HEA) share the common goals of keeping communities safe and resilient to power disruption and reducing wildfire risks as identified in the KPB Community Wildfire Protection Plan. The current spruce bark beetle situation impacting many KPB communities highlights the need to be proactive and to work together to optimize our capabilities in responding to the changing forest conditions.

Recognizing the importance of operationalizing this relationship, the Memorandum of Agreement (MOA) acts as a framework for ongoing collaboration. The resolution authorizes the mayor to enter into a MOA with HEA. The MOA itself provides HEA standing permission during utility infrastructure maintenance to enter KPB land or KPB road rights-of-way to address trees that are dangerous to above-ground utility infrastructure. The MOA sets forth standards for operation which ensure the protection of other KPB interests. Additionally, as proposed through a US Forest Service Community Wildfire Defense grant, the MOA can serve as an example for future similar agreements between other power utilities and the KPB or other large landowners.

The activities covered by the MOA are of a maintenance nature. The danger trees are deemed to be of no commercial value for the purposes of the KPB code provision applicable to disposal of commercial quantities of materials and forest resources.

Your review and consideration of the resolution is appreciated.

Introduced by: Mayor
Date: 5/21/24
Action:
Vote:

**KENAI PENINSULA BOROUGH
RESOLUTION 2024-XXX**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
MEMORANDUM OF AGREEMENT WITH HOMER ELECTRIC ASSOCIATION, INC.
TO PROVIDE EFFICIENT DANGER TREE REMOVAL ADJACENT TO ABOVE-
GROUND UTILITY INFRASTRUCTURE WITHIN KPB LANDS AND KPB ROAD
RIGHTS-OF-WAY**

WHEREAS, the Kenai Peninsula Borough (KPB) and Homer Electric Association, Inc. (HEA) have identified common goals in the KPB Community Wildfire Protection Plans; and

WHEREAS, “danger tree” is a term used to describe a tree that due to its size, condition and location poses a risk of falling into above-ground utility infrastructure; and

WHEREAS, proactively mitigating damage from danger trees to above-ground utility infrastructure is an important step for reliable energy distribution to KPB residents; and

WHEREAS, KPB owns and manages land and KPB rights-of-way adjacent to many miles of HEA above-ground utility infrastructure and associated utility rights-of-way; and

WHEREAS, KPB has proposed through a US Forest Service Community Wildfire Defense Grant, to assist power utilities with obtaining long-standing permissions from large landowners, for which this Memorandum of Agreement (MOA) can serve as an example; and

WHEREAS, HEA has effective operational methods to handle dangerous trees and to reduce fire risks along its above-ground utility infrastructure, which are suitable for general application on KPB lands and rights-of-way in both rural and urban settings, and which operational methods form many of the standards set forth in this MOA; and

WHEREAS, the KPB Road Service Area at its regularly scheduled meeting of May 14, 2024, recommended _____.

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of May 3 _____, 2024, recommended _____.

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

SECTION 1. That the mayor is authorized to enter into an MOA with HEA for danger tree removal on KPB owned or managed land and within KPB road rights-of-way, similar to the draft accompanying this resolution.

SECTION 2. That the activities covered by the MOA are of a maintenance nature. The danger trees are deemed to be of no commercial value for the purposes of the KPB code provisions applicable to disposal of commercial quantities of materials and forest resources.

SECTION 3. That the removal of danger trees for these purposes along rights-of-ways is deemed to be a general vegetation maintenance activity in the management of land and rights-of-way, and are not considered to be governed by more specific forestry provisions of KPB Chapter 17.

SECTION 4. That this resolution is effective immediately.

ADOPTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS * DAY * 2024.

Brent Johnson, Assembly President

ATTEST:

Michele Turner, CMC, Borough Clerk

Yes:

No:

Absent:

MEMORANDUM OF AGREEMENT

Between the Kenai Peninsula Borough (KPB) and Homer Electric Association, Inc. (HEA) for Danger Tree Removal on KPB Owned or Managed Land and KPB Road Rights-of-Way (ROW)

- WHEREAS,** KPB owns and/or manages certain lands and public road ROW's within the KPB municipal boundary; and
- WHEREAS,** HEA operates a system of electrical conductors (infrastructure) and associated utility ROW's within the KPB municipal boundary; and
- WHEREAS,** certain trees situated on KPB land and KPB road ROW's, which are outside of utility ROW's, pose an elevated risk of contact with electrical conductors and accordingly are classified as danger trees; and
- WHEREAS,** HEA endeavors to maintain its infrastructure corridors to be free of threat from encroaching vegetation and danger trees located outside of HEA's utility ROW's; and
- WHEREAS,** presently HEA may only clear encroaching vegetation and danger trees outside of HEA's utility ROW's if and when permission is obtained from the property owner; and
- WHEREAS,** benefits associated with removal of danger trees include resilience of power infrastructure, wildfire fuel mitigation, and corridor safety; and
- WHEREAS,** KPB finds that it is in the public's best interest to provide a reasonable allowance for HEA to enter KPB land and KPB road ROW's adjacent to HEA infrastructure corridors for the purpose of acting to address danger trees located on KPB land and KPB road ROW's; and
- WHEREAS,** this Memorandum of Agreement (Agreement) is intended to provide a framework, including standing permission and terms thereof, for HEA to conduct danger tree actions on KPB land and KPB road ROW's, outside of limits of utility ROW's; and
- WHEREAS,** this Agreement does not modify, amend, or alter in any way HEA's rights and responsibilities under its existing utility ROW's.

NOW THEREFORE, the Kenai Peninsula Borough, whose address is 144 N. Binkley Street, Soldotna, AK 99669, and Homer Electric Association, Inc., whose address is 3755 Electron Drive, Homer, AK 99603, hereby agree as follows:

1. That KPB will provide HEA with map data, in mutually agreed formats, showing the current location of KPB land and KPB road ROW's subject to this Agreement in the area of HEA infrastructure, with data requests made to the KPB Planning Department and data delivery within 30-days of such requests.

2. That HEA will provide KPB with map data, in mutually agreed formats, showing the location of HEA infrastructure subject to this Agreement, with data requests made of _____ and data delivery within 30-days of such requests.
3. That HEA will provide KPB with locations of treatment on a semi-annual basis.
4. That KPB grants permission to HEA, its employees, agents, and contractors, to enter KPB land and KPB road ROW's for the purpose of addressing danger trees in accordance with the terms and conditions set forth herein.
5. That for the purposes of this Agreement, "danger tree" means a tree that, due to its position and structural characteristics, poses an elevated risk of contacting HEA infrastructure. Common structural characteristics of danger trees include those of height and proximity to be within striking distance of the infrastructure or corridor and that the tree has structural deficiency such as mortality, decay, lean, branching, breakage, insufficient roothold, or wind exposure. Healthy live trees that do not pose an elevated risk to infrastructure are not considered danger trees. Addressing danger trees includes allowances for reasonable access and minimized damage to nearby healthy live trees incidental to danger tree operations.
6. That for scheduled projects, HEA will notify KPB of danger tree plans including the project locations and general timeframes.
7. That for emergency danger tree response, such as wind storm events, no prior notification to KPB is required.
8. That HEA will provide KPB with 24 hours advance notice prior to entering that subset of KPB lands that contain public facility sites such as schools, solid waste sites, emergency services facilities, and active third-party interests such as leases in order to determine particular access and material handling specifications appropriate to the particular site. HEA will make reasonable efforts to avoid conflict with facility operations. This subset of lands and corresponding list of current contacts will be supplied by the KPB Planning Department.
9. That all activities within 50' of an anadromous stream identified in KPB 21.18 require a permit from the River Center; nothing in this Agreement alters this requirement.
10. That the general specifications for addressing danger trees will be as follows:
 - a. Stump height must be less than 12" as measured from the high ground side of the stump.
 - b. Trees must be limbed with slash scattered to attain ground contact, with slash height not exceeding 18" above ground or snow surface.
 - c. Tree boles must be bucked into manageable lengths, typically 8 feet or less.
 - d. All materials landing along roads must be moved at least 10' off road edge and outside of the roadway ditch line.

- e. All materials landing on improved or manicured features facility sites must be moved to a wooded area on the property, adjacent road ROW, or as otherwise agreeable to the site operator.
- f. All materials landing along driveways must be moved at least 10' away from the driveway.
- g. Materials may be removed by the contractor, left for the use of the site operator, left for access by members of the public to remove, or left on site for soil health.

STANDARD TERMS AND CONDITIONS

11. Defense, Hold Harmless and Indemnification. HEA will defend, indemnify and hold KPB, along with KPB's elected and appointed officers, agents and employees, harmless for any and all claims or actions for damages sustained by any person or property arising from or relating to HEA's Activities under this Agreement; excepting, however, claims or actions for which the sole proximate cause of the injury or damage is KPB's negligence or willful misconduct. This Section extends to any work or activities performed by a contractor or subcontractor of HEA and HEA must require such contractors or subcontractors to indemnify the Borough in a writing signed by the indemnifying party.

12. Insurance. Insurance coverage required under this Agreement must be primary and exclusive of any other insurance carried by the KPB. Minimum levels of insurance coverage required under this Agreement must remain in effect for the life of this Agreement. If HEA's policies contain higher limits, the KPB will be entitled to coverage to the extent of such higher limits. Certificates of insurance will be delivered to the KPB at the time of submission of the signed Agreement. KPB may request copies of required policies and endorsements, which must be provided within ten calendar days of KPB's request.

Commercial General Liability. HEA must provide and maintain commercial general liability insurance ("CGL"). The CGL policy must be written on an occurrence basis and with a limit of not less than one million dollars (\$1,000,000.00) per occurrence. If necessary to provide the required limits, the CGL policy's limits may be layered with an umbrella or excess liability policy. This policy must name the KPB as additional insured with a waiver of subrogation.

Workers' Compensation. HEA must provide and maintain workers' compensation insurance in accordance with the laws of the State of Alaska for all of its employees engaged in work under this Agreement. This coverage must include statutory coverage for states in which employees are engaging in work and employer's liability protection not less than the minimum amounts required by law. Subrogation will be waived.

Commercial Auto Liability. HEA must provide and maintain commercial auto liability insurance. The commercial auto liability policy must include a combined

single limit of not less than one million dollars (\$1,000,000.00). Coverage must include non-owned and hired car coverage. This policy must name the KPB as additional insured with a waiver of subrogation.

Pollution Liability. HEA must maintain Pollution Liability Insurance covering pollution legal liability. Coverage must be maintained in an amount of at least two hundred fifty thousand dollars (\$250,000.00) per loss. This policy must name the KPB as additional insured with a waiver of subrogation.

13. That the following are the primary representative contacts for the administration of this Agreement:

KPB	HEA
Aaron Hughes	Scott Huff
Land Management Officer	Land Management Officer
ahughes@kpb.us	shuff@homerelectric.com
(907) 714-2205	(907) 335-6209

14. That this Agreement may be amended by mutual written agreement.

15. That this Agreement benefits solely the parties and their respective successors and permitted assigns and nothing in this Agreement, express or implied, confers on any third party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

Authorized Officials

Peter A. Micciche, KPB Mayor
Date: _____

Land Management Officer, HEA
Date: _____