

# CITY OF HIGH POINT

## AGENDA ITEM



**Title:** Contract Continuation-Asplundh-FY 2019-2020

Garey S. Edwards, Electric Utilities Director

**From:** Tyler Berrier, Assistant Director Electric Utilities

**Meeting Date:** May 20, 2019

**Public Hearing:** N/A

**Advertising Date /**

**Advertised By:** N/A

**Attachments:** Asplundh Contract

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### PURPOSE:

Acceptance/Continuation of this Contract will allow Asplundh Tree Expert Co. to provide line clearance tree services (tree trimming) for the upcoming fiscal year.

### BACKGROUND:

Each year High Point participates in the ElectriCities Joint Purchasing Agreement. This program has allowed Cities to bid as a large quantity, usually resulting in lower pricing. One of the many services offered in this program is tree trimming. ElectriCities has bid the Tree Trimming contract and Asplundh Tree Expert Co. was the lowest responsive bidder. This contract is for the upcoming year and can be extended year to year, if both parties wish to continue.

### BUDGET IMPACT:

The estimated cost for these services is \$875,500 for the next fiscal year and is budgeted in the 2019-2020 Annual Budget.

### RECOMMENDATION / ACTION REQUESTED:

City Council is requested to approve the agreement and continue utilizing Asplundh Tree Expert Co. for the next fiscal year in the estimated amount of \$875,500.



**SERVICES AGREEMENT**  
**Tree Trimming #022217-N**

WITNESS THIS SERVICES AGREEMENT, made and entered into as of the 2<sup>nd</sup> day of April 2017, by and between **ELECTRICITIES OF NORTH CAROLINA, INC.**, a joint municipal assistance agency (herein "ElectriCities"), and **Asplundh Tree Expert Co.**, a Pennsylvania corporation (herein the "Service Provider").

**RECITALS**

ElectriCities desires to have the Service Provider provide certain services for each member of ElectriCities which elects to utilize the services of the Service Provider (referred to herein collectively as the "Participating Members" and singularly as a "Participating Member"), and the Service Provider, as an independent Service Provider, desires to provide those services, pursuant to the terms and provisions of this Agreement.

**COVENANTS**

NOW, THEREFORE, in consideration of the terms and provisions herein contained, IT IS AGREED:

1. **Scope of Work.**

(a) The Service Provider hereby agrees to provide each Participating Member with the services set out in Schedule A attached hereto (the "Services"), as outlined in RFP #022217-N dated February 22, 2017 and described in Service Provider's bid. Each Participating Member shall acknowledge its election to utilize services of the Service Provider by executing an agreement, a copy of which is attached hereto as Exhibit A (the "MC Agreement"), thereby specifically subjecting itself to the rights and obligations under this Agreement; copies of executed MC Agreement shall be provided to the Service Provider upon request. The Service Provider hereby acknowledges the rights of each Participating Member under this Agreement with the same force and effect as if each Participating Member had been a party signatory hereto and each Participating Member shall be considered a party to this Agreement. The Participating Member shall request the desired services from time to time and at any time during the term of this Agreement, but no Participating Member shall be under obligation to request any minimum amount of Services. Each request for Services shall be covered by a separate Service Order substantially in the form attached as Schedule B hereto, which shall be signed and dated by representatives of each party and attached hereto. The Service Provider shall only undertake the Services which it is authorized to provide under the Service Order(s). The Services shall be performed to the satisfaction of each Participating Member and in full compliance with the terms and provisions of this Agreement. The Service Provider shall provide all of the personnel, materials, equipment, motor vehicles and supervision necessary to perform the Services. All motor vehicles, tools and equipment to be provided by the Service Provider shall be in good condition and suitable for the work to be performed hereunder, and shall be properly maintained to ensure their availability and efficiency in operation.

(b) ElectriCities shall act as the agent of each Participating Member with only that authority and liability as specifically set forth in this Agreement and all actions taken by ElectriCities pursuant to this Agreement shall be solely in that capacity and not on its own

behalf. ElectriCities makes no representations or warranties hereunder and shall have no obligation or liability hereunder including, but not limited to, payment for the Services, except in the limited capacity of the agent of each Participating Member as provided hereunder. It is understood and acknowledged that some or all members of ElectriCities may not elect to receive the Services. ElectriCities shall provide a list of the Participating Members, if any, that desire to participate. The Service Provider hereby acknowledges that no minimum number of Participating Members is guaranteed to participate hereunder.

2. **Payment.** The Service Provider will submit all invoicing within ten (10) days after completion of work. If the work will exceed thirty (30) days, the Service Provider may submit monthly invoices. Payments for work performed will be made within 30 days after receipt of the invoice at the rates and terms set forth in Schedule C attached hereto by the Participating Member. The Participating Member shall make all payments directly to the Service Provider and ElectriCities shall have no responsibility or liability for the payment of any services provided to the Participating Member by the Service Provider. There will be no compensation for lost work days which shall include, but not be limited to, work days lost due to inclement weather, equipment malfunctions or Participating Member's scheduled holidays. There shall be no add-on costs to the per unit cost specified on Schedule C, Rates, Charges and Expenses.

3. **Term.** This Agreement shall commence on the date above written and shall continue for a period of one (1) year and from year to year thereafter; provided, however, that either ElectriCities or the Service Provider, for any reason or no reason, may terminate this Agreement immediately by providing the other party with written notice at least thirty days prior to the expiration of the then current term, and each Participating Member that has agreed to be a party to this Agreement may terminate this Agreement as to it immediately by providing ElectriCities and the Service Provider with written notice thereof; provided, further, that in no event shall the term of this Agreement, including any extensions thereof, exceed three (3) years. Upon the termination of its participation under this Agreement by a Participating Member, that Participating Member shall have no further liability or obligation to the Service Provider except for the Participating Member to compensate the Service Provider for the Services performed prior to the date of termination in full compliance with the terms and provisions of this Agreement. Upon the termination of this Agreement by ElectriCities or the Service Provider, ElectriCities and the Participating Members shall have no further liability or obligation to the Service Provider except that each Participating Member shall remain liable to pay the Service Provider for Services performed prior to the date of termination in full compliance with the terms and provisions of this Agreement. Without in any way limiting a Participating Member's right to terminate this Agreement as provided above, ElectriCities and each Participating Member may also suspend the Services to be performed hereunder for any length of time if, in ElectriCities' or the Participating Member's sole opinion, conditions of weather, flood, strikes or other emergencies make it desirable to do so, or the work is not being performed in full compliance with the terms and provisions of this Agreement. If ElectriCities or a Participating Member suspends the work, it shall provide the Service Provider with reasonable notice of its dissatisfaction with the work or other reason and a reasonable time to bring the work into full compliance with this Agreement. The Participating Member shall not be responsible to pay the Service Provider for any Services or related costs during the period the Service is suspended. Discontinuances of work, and or extensions of time ordered or granted by ElectriCities under this clause shall not be construed in any way as the basis for a claim for extra compensation by the Service Provider including but not limited to, any claim based on loss of efficiency or

productivity and shall not operate to release the Service Provider from any of its obligations hereunder. The right of ElectriCities or a Participating Member to suspend the Service shall be in addition to, and not in lieu of, any and all other rights or remedies ElectriCities and the Participating Members may have at law or in equity, and ElectriCities' or a Participating Member's failure to suspend the Service shall not be deemed approval of the Service or a release or waiver of any such rights and remedies.

4. **Warranties and Representations of the Service Provider.** The Service Provider hereby warrants and represents to ElectriCities and the Participating Members that:

(a) All Services and labor supplied by the Service Provider under this Agreement (i) shall fully comply with all of the terms and provisions of this Agreement; and (ii) shall be performed with due care in a workmanlike manner and be free from all defects, omissions, or commission which cause or result in, directly or indirectly, any loss, damage or injury to any person or property.

(b) All parts, products and materials if any are installed by the Service Provider (new, rebuilt or otherwise) are warranted to operate in accordance with the specifications as set forth in Schedule A attached hereto and shall be free from all defects for a period of one(1) year from performance of the Services.

(c) These warranties and representations are in addition to, and not in lieu of, any and all implied warranties and shall survive the performance of the Services.

5. **Preservation of Property.**

(a) The Service Provider shall only enter upon private property for the purpose of performing the Services agreed to hereunder. The Service Provider shall be responsible for the preservation of all public and private property, and shall use such precautions as are necessary to prevent damage or injury thereto.

(b) Service Provider shall be responsible for loss or damage to motor vehicles, materials, equipment and other items used or held in connection with the Services. If Service Provider's employees are issued any equipment or other property of a Participating Member for use under the Agreement, such employees are expected to return such equipment or other property in the same condition in which it was issued, reasonable wear and tear accepted and take reasonable actions to prevent damage or loss of such equipment or other property. Service Provider will be required to reimburse each Participating Member for the repair or replacement cost of any lost or damaged equipment or other property of that Participating Member.

(c) All of the Services shall be performed at the Service Provider's risk, and if the Services or any product or material provided in connection therewith is damaged or destroyed in any way prior to completion, the Service Provider shall promptly repair or replace the same at no additional cost or expense to any Participating Member.

6. **Safety and Regulation.**

(a) Service Provider shall perform the Services under this Agreement with the utmost regard for public safety and welfare, taking all necessary safety precautions as required by each Participating Member or by local, state, and federal authorities to safeguard lives and properties.

(b) Service Provider shall perform the Services hereunder in strict compliance with each Participating Member's policies and procedures, if it has any, that apply to the Services and as they may change from time to time. Each Participating Member shall provide Service Provider with those policies and procedures prior to or with the Service Order to which they apply.

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**Compliance with Laws**

(a) The Service Provider shall comply with all federal, state and local laws, rules, regulations, and/or ordinances applicable to the Services to be performed hereunder, including, without limitation, those related to environmental protection and safety and health as promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970, as amended.

(b) The Service Provider will obtain all of the appropriate governmental licenses and permits necessary to perform the Services to be provided hereunder, including, without limitation, those related to environmental protection and shall maintain such licenses and permits at all times during the term hereof and as otherwise required by law. The Service Provider shall provide each Participating Member, or its designee, with a copy of such licenses and permits upon request.

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**Service Provider Personnel**

(a) The Service Provider shall at all times be responsible for the conduct and discipline of its employees, and provide personnel to perform the Services hereunder with the proper skills, experience, knowledge and technical training necessary therefore. Any employees of the Service Provider who shall appear in any way unqualified or presents a public image detrimental to a Participating Member, in ElectriCities' or that Participating Member's sole judgment, shall no longer be assigned to perform work for that Participating Member and shall not again perform any work for that Participating Member, without that Participating Member's prior written consent. It shall be the Service Provider's responsibility to conduct adequate background checks on all employees providing Services under this Agreement. The Service Provider shall not permit the use or possession of firearms, alcohol or drugs of any type while conducting Services pursuant to this Agreement. No employee of the Service Provider under the age of 18 shall be permitted to perform any of the Services or permitted on the property owned by the Participating Member or its customers.

(b) Attention is called to the fact that certain portions of the Services calls for workmen skilled not only in their trade, but specialized in the particular line required. The Service Provider shall provide that such work shall be performed by workmen who are skilled and specialized in the work to which they are assigned. None of the Service Provider's Level II Technicians or engineers may be withdrawn by the Service Provider from the work without due notification being given to the Participating Member and ElectriCities; provided, however, that no such work withdrawal shall be made if it will jeopardize successful completion of the work. Such personnel may be removed, without approval, if they become unavailable for reasons beyond Service Provider's control (such as death, disability or resignation of employment) or has been terminated by Service Provider for cause

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**Cooperation**

The Service Provider agrees, at its cost and expense, to make available its employees and records and to otherwise cooperates as reasonably requested by a Participating Member when necessary to participate in any action or proceeding related to the Services to be provided under this Agreement.

10.

**Service Provider Identification**

The Service Provider, upon request of a Participating Member, shall provide adequate identification for its personnel so that the public can easily identify them.

11. **Books and Records** The Service Provider shall maintain its books and records to support all work performed and all items billed to a Participating Member and shall retain all such books and records for a period of three (3) years following the year in which the Services were performed or earlier termination of this Agreement. In addition, the Service Provider shall maintain all records required by any local, state or federal law, rule or regulation. Each Participating Member or ElectriCities may review and copy all books and records maintained pursuant to this Section 11.

12. **Reports** In addition to all other reports required by this Agreement, Service Provide shall provide each Participating Member with such other reports, copies and printouts as the Participating Member shall reasonably request in connection with the Services.

13. **Indemnification**

(a) The Service Provider agrees to the fullest extent permitted by law, to **INDEMNIFY, DEFEND AND HOLD HARMLESS** ElectriCities, and its officials, officers, directors, agents or employees, from and against any and all liability, loss, damages, costs, claims, demands, fines, penalties, cleanup costs and other pollution-related items, expenses and fees (including, without limitation, reasonable attorney's fees and consultant's fees) of whatever type and nature which shall be caused (directly or indirectly) by, arise out of, or in any manner be connected with (i) the Service Provider's provision of Services pursuant to this Agreement; (ii) the inaccuracy of any representation or warranty given by the Service Provider pursuant to this Agreement; or (iii) the violation by the Service Provider in the performance of this Agreement of any ordinance, regulation, rule or law of any political subdivision or duly constituted public authority having jurisdiction over the Service Provider or the Participating Members for the work performed under this Agreement to the extent caused by the Service Provider's negligent acts, errors or omissions. Those that result from the acts or omissions (negligent or otherwise) of ElectriCities, or its officials, officers, directors, agents or employees, related to the Services to be performed under this Agreement, except those that arise from the willful misconduct of ElectriCities, or its officials, officers, directors, agents or employees. In no event shall ElectriCities or either parties officials, officers, directors, agents or employees, be liable for any incidental, special, consequential, or indirect damages.

(b) The Service Provider agrees to the fullest extent permitted by law, to **INDEMNIFY, DEFEND AND HOLD HARMLESS** the Participating Member, and its officials, officers, directors, agents or employees, from and against any and all liability, loss, damages, costs, claims, demands, fines, penalties, cleanup costs and other pollution-related items, expenses and fees (including, without limitation, reasonable attorney's fees and consultant's fees) of whatever type and nature which shall be caused (directly or indirectly) by, arise out of, or in any manner be connected with (i) the Service Provider's provision of Services pursuant to this Agreement; (ii) the Service Provider's breach of this Agreement; (iii) the inaccuracy of any representation or warranty given by the Service Provider pursuant to this Agreement; or (iv) the violation by the Service Provider in the performance of this Agreement of any ordinance, regulation, rule or law of any political subdivision or duly constituted public authority having jurisdiction over the Service Provider or the Participating Members for the work performed under this Agreement to the extent caused by the Service Provider's negligent acts, errors or omissions, except those that arise from the sole negligence or willful misconduct of the Participating Member, or its officials, officers, directors, agents or employees. Except as may result from Section 19 hereof, in no event shall the Participating Member or its officials, officers, directors, agents or employees, be liable for any incidental,

special, consequential, or indirect damages. The Service Provider agrees that the Participating Member, and its officials, officers, directors, agents or employees are third party beneficiaries of the provisions of this Agreement with the right to enforce the same and that their obligations to ElectriCities and its officials, officers, directors, agents or employees hereunder shall be joint and several.

14. **Insurance**

The Service Provider shall not begin to provide any Services under this Agreement until: (i) it has obtained all the insurance required herein; and (ii) if requested by ElectriCities or a Participating Member, it has furnished certificates evidencing such insurance to ElectriCities and/or the Participating Member, or a designee. Every certificate of insurance evidencing the coverage as required herein shall provide that: "No reduction, modification, cancellation or expiration of the policies shall become effective until thirty (30) days from the date of written notice thereof has been given to the Participating Members and ElectriCities." The Service Provider shall obtain and maintain at all times during the term of this Agreement, at its own cost and expense, the following insurance having listed minimum amounts of insurance coverage:

SERVICE PROVIDER SHALL OBTAIN AND MAINTAIN AT IT'S EXPENSE AND SHALL REQUIRE ALL OF IT'S SUBCONTRACTORS TO CARRY, DURING THE TERM OF THIS AGREEMENT, THE MINIMUM INSURANCE COVERAGES SET FORTH BELOW:

TYPE	LIMITS	
<b>Workers Compensation &amp; Employers Liability</b>	Statutory	
	Each Accident	\$100,000
	Disease-Policy Limit	\$500,000
	Disease-Each Employee	\$100,000

- Workers Compensation Policy shall be endorsed to waive the rights of subrogation against ElectriCities, the appropriate Power Agency (if any), the Participating Member (if any) and their officers, directors, officials and employees. Form WC 000313 should be attached to policy.

<b>Commercial General Liability</b>	Each Occurrence	\$1,000,000
	Per Project Aggregate	\$2,000,000

- Commercial General Liability Policy shall be written on an occurrence form covering premises-operations, products-completed operations, personal injury and contractual; with no exclusion for liability arising from explosion, collapse or underground property damage

<b>Automobile Liability</b>	Each Occurrence	\$1,000,000
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- Auto Policy shall cover all owned, hired or non-owned vehicles.

<b>Umbrella Liability</b>	Each Occurrence	\$5,000,000
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**Additional Insured(s)**

- General Liability, Automobile Liability and Umbrella Liability Policies shall be endorsed to include ElectriCities, the appropriate Power Agency (if any) and the Participating Member (if any) and their officers, directors, officials and employees as additional insured with respect to liability arising Service Provider's ongoing and completed operations. This coverage shall be primary as to (and non-contributory with) any and all insurance (including self-insurance) maintained or otherwise available to the additional insured.

<b>Professional Liability</b>	Per Claim	\$1,000,000
<b>(When Requested or Required)</b>		

<b>Pollution Liability</b>	Per Claim	\$1,000,000
<b>(When Requested or Required)</b>		

All insurance policies shall be written by a fully qualified insurance company licensed to provide insurance in the state where services are to be performed. An A M Best rating of at least A- VIII shall be required. Service Provider shall present a certificate of insurance in proper form prior to starting performance of the agreement, confirming compliance with the above requirements. All required policies of insurance shall be endorsed to provide thirty days prior notice of cancellation to ElectriCities and copies of such endorsements and additional insured endorsements shall be attached to certificate of insurance.

Compliance with the above requirements shall in no way limit or restrict Service Provider's obligations under any indemnity agreements in this subcontract. Service Provider acknowledges that the above insurance requirements do not constitute advice or a representation that only such policies or limits of liability are adequate to protect the Service Provider from losses in connection with its business under this agreement.

All policies, except Workers' Compensation, shall be endorsed to name each Participating Member and ElectriCities and, if requested by ElectriCities, the appropriate Power Agency, as additional insured(s), with respect to liability arising out of the Service Provider's Services performed under this Contract using the form of an additional insured endorsement as shall be requested by a Participating Member or ElectriCities. All insurance policies shall be written by a fully qualified insurance company licensed to provide insurance in the state where the Services are to be performed. An A M Best rating of at least A-VI shall be required. The comprehensive general liability insurance to be carried by the Service Provider pursuant to this Agreement shall include coverage for all of the Service Provider's contractual liability under this Agreement with limits not less than those set forth above.

Compliance with the above requirements shall in no way limit or restrict the Service Provider's obligations under the indemnity or other provisions of this Agreement. Nothing herein shall be deemed to restrict the amount or types of insurance the Service Provider shall carry and the Service Provider is at risk for making its own decisions regarding those items. The Service Provider acknowledges that no requirement for insurance contained in this Agreement constitutes advice or a representation by the Participating Members or ElectriCities that only such policies, in such amounts, are necessary to protect the Service Provider from losses in connection with its business under this Agreement. Maintenance of this insurance, and the performance by the Service Provider of its obligations under this Section, shall not relieve the Service Provider of liability under any other provisions of this Agreement, including, without limitation, those involving indemnification.



15. **Confidentiality**

(a) The Service Provider acknowledges and agrees that the information and materials it receives in connection with the Services performed under this Agreement (the "**Confidential Information**") is confidential and a valuable asset, and is disclosed to the Service Provider solely on the condition that it agrees that, during and, for a period of one (1) year after, the term of this Agreement, it will maintain the absolute confidentiality of the Confidential Information, will not use or disclose the Confidential Information in any business or other capacity, will not disclose the confidential information to anyone not performing the Services under this Agreement, and will not make unauthorized copies of any portion of the Confidential Information disclosed in writing or other tangible form.

(b) To effectuate the foregoing, Service Provider agrees that, upon request of ElectriCities or a Participating Member, each of the Service Provider's employees that is involved in the Services provided under this Agreement shall execute and deliver a confidentiality agreement in a form reasonably satisfactory to ElectriCities or a Participating Member, as the case may be; provided, however, obtaining these agreements shall in no way limit the Service Provider's obligations or liabilities under this Agreement. Service Provider acknowledges that in the event of the breach of this Section 15, the Participating Member and ElectriCities will be irreparably damaged and that damage will be difficult to determine with the certainty or to compensate ElectriCities or a Participating Member fully for the monetary value of its losses and damages. Therefore, in addition to all remedies at law or in equity, Service Provider agrees that any prohibited disclosure or misuse of the Confidential Information shall give rise to remedies at law or in equity, including actions for damages or temporary restraining order, preliminary injunction and permanent injunction to enjoin the conduct of Service Provider and/or its employees in violation of the provisions of this Section.

16. **Survival** Where any covenants, obligations, indemnities or other provisions contained in this Agreement, or in any other instrument executed in connection with the transactions described herein, by its context or otherwise, evidences the intent of the parties that such provision should survive the expiration or other termination of this Agreement, the provisions shall survive the expiration or other termination. Without limiting the generality of the foregoing, the parties specifically acknowledge and agree that all the covenants, obligations and indemnities made in Sections 4, 13, 14, 15 and 19 of this Agreement shall survive the expiration or other termination.

17. **Scheduling**

(a) Service Provider's work hereunder shall be performed during the normal work week, Monday through Friday except for Participating Member's scheduled holidays. The normal work day shall not exceed eight (8) hours. Travel time to and from the Participating Member's premises and the lunch period shall not be included as part of the standard eight (8) hour work day with the starting time to be coordinated with each Participating Member.

(b) Service Provider agrees that the work shall be commenced and carried out at such points, and in the order of precedence, and at such times and seasons as may be required to meet the schedule provided by ElectriCities and/or the Participating Member pursuant to Section 1 (b) above for the completion of the Inspection and Testing Services.

(c) No necessity for an extension of time provided by ElectriCities or the Participating Member pursuant to Section 17 above for the completion of the Inspection and Testing Services is anticipated, but if untoward or extraordinary circumstances should arise beyond the control of the Service Provider, which in the opinion of ElectriCities or the

Participating Member should entitle the Service Provider to a reasonable extension of time, such extension may be granted but such extension or the refusal to grant an extension shall not be the basis for any claim for additional compensation by the Service Provider, including any claim based on loss of efficiency or productivity, and shall not operate to release the Service Provider from any of its obligations hereunder.

18. **Notice** All notices permitted or required pursuant to the terms of this Agreement shall be deemed made or given if personally delivered, including, without limitation to workers on the job site, or when placed in the United States Mail postage prepaid, certified mail, return receipt requested, and addressed to the parties hereof as follows:

**ElectriCities of North Carolina, Inc.**

P. O. Box 29513

Raleigh, North Carolina 27626-0513

Attention: Procurement Specialist

**Asplundh Tree Expert Co.**

Charlotte, North Carolina

Attention: Barry Suddreth

**Participating Member**

To the address listed on the MC Agreement for each Participating Member

Each party hereto may change its address for the provisions of notices by giving the other parties notice thereof in the manner provided for giving notices hereunder.

19. **Independent Service Provider** Service Provider is contracting under the terms and provisions of this Agreement as an independent contractor and shall act as such at all times during the term of this Agreement. Except as set forth in Section 1(b) hereof, the parties hereto shall not act, or be deemed to act, as agents or partners of the other, nor be acting in any joint venture under this Agreement. Service Provider is not authorized to represent the Participating Member, or ElectriCities, or otherwise bind the Participating Member or ElectriCities in any dealings with third parties. All employees furnished by the Service Provider pursuant to this Agreement shall be deemed to be the Service Provider's employees exclusively. Service Provider shall be solely responsible for paying all taxes, fees, assessments and premiums of any kind payable on its employees and operations.

20. **Force Majeure** Delays or failure of a party in the performance of its required obligations shall be excused if caused by circumstances beyond the reasonable control of the party affected; including but not limited to, acts of God, strikes, labor holiday, fire, flood, windstorm, explosion, riot, war, sabotage, actions or requests of governmental authorities, accident, inability to obtain material, equipment or transportation, provided that a prompt notice of such delay is given and the parties shall be diligent in attempting to remove such cause(s).

21. **Assignment** Service Provider may not assign this Agreement or any of its rights, duties or obligations hereunder, or subcontract any of the services to be performed hereunder, without the prior written consent of ElectriCities, which consent may be withheld for any reason. No such assignment, even though thus consented to, or approval of subcontracts or

Subcontractors by ElectriCities shall relieve Service Provider from its liability under this Agreement for the performance and completion of work by the time and in the manner herein contracted for.

**22. Non-Exclusivity** This Agreement is not to be construed as granting the Service Provider the sole or exclusive right to provide the Services to the Participating Members or ElectriCities, and each Participating Member and ElectriCities hereby expressly reserves the right to contract with any other party for such services, as it deems necessary or appropriate. No minimum amount of work is expressly or impliedly assured under this Agreement. Each Participating Member reserves the right to determine how much, if any, Services shall be provided by the Service Provider under this Agreement.

**23. Binding Effect** All the terms, covenants and conditions hereof shall be binding upon the parties hereto and, subject to Section 21 hereof, shall bind and inure to the benefit of any successors or assigns.

**24. Waivers** Failure of a party hereto to complain of any act or omission on the part of a party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waivers by a party hereto at any time, express or implied, or of any breach of any of the provisions of this Agreement shall be deemed consent to any subsequent breach of the same or any other provisions.

**25. Construction** This Agreement shall be governed and enforced in accordance with the laws of the State of North Carolina, notwithstanding the principles of conflicts of law. If any provision of this Agreement, or portion thereof, shall be determined to be void or unenforceable by any court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement, or portion thereof, all of which other provisions, or portions thereof, shall remain in full force and effect. If any provision of this Agreement, or portion thereof, is capable of two interpretations, one of which would render the provision, or portion thereof, void and the other of which would render the provision, or portion thereof, valid, then the provision, or portion thereof, shall have the meaning which renders it valid. In addition, if any provision of this Agreement, or portion thereof, is determined to be void or unenforceable by a court of competent jurisdiction, but the court determines that by limiting or modifying such provision, or portion thereof, in a certain fashion it would become valid or enforceable, then such provision, or portion thereof, shall be deemed to be written, construed, and enforced as so limited or modified. Whenever the neuter gender is used in this Agreement, it shall also include the male and female gender whenever appropriate, and vice versa.

**26. Captions** The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such sections.

**27. Forum and Consent to Jurisdiction** The parties agree that, to the fullest extent permitted by law, any action or proceeding relating to this Agreement shall only be instituted and prosecuted in the state or federal courts of North Carolina. The Service Provider specifically consents to such jurisdiction and to extraterritorial service of process. Nothing herein shall affect the right of ElectriCities or a Participating Member to service process in any manner permitted by law or to commence legal proceedings or otherwise proceed against

Service Provider in any other jurisdiction.

28.               **Further Assurances**       Service Provider agrees to perform any further acts and execute and deliver any further documents that may be reasonably necessary to carry out the purposes and provisions of this Agreement.

29.               **Additional Provisions**       The parties also agree to the additional terms and provisions set forth on Schedule D attached hereto, if any are in fact set out in writing thereon. Any conflict or inconsistency between the terms and provisions set forth on Schedule D and those set forth anywhere else in this Agreement shall be resolved in favor of those terms and provisions set forth in Schedule D.

30.               **Entire Agreement**       This Agreement contains the entire agreement of the parties concerning the subject matter hereof. It supersedes all prior or conflicting agreements, representations, promises or conditions. It may be changed only by agreement in writing signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. All schedules and exhibits attached hereto, including, without limitation, the MC Agreements, the service options and the service orders to be executed hereafter, are hereby incorporated herein by reference, and any reference herein to this Agreement shall be deemed to include all such schedules and exhibits.

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**IN WITNESS WHEREOF**, the parties hereto have signed and sealed this Agreement in the manner prescribed by law, to be effective the day and year first above written.

ASPLUNDH TREE EXPERT CO.

By: Barry D. Suddreth  
Barry D. Suddreth

Title: Vice President

Address: 351 Orchard Circle  
Charlotte, NC 28217

ATTEST: Margaret K. Davis  
Secretary



ELECTRICITIES OF NORTH CARLONA, INC.

By: Chris Jones  
Title: CEO

Address: PO Box 29513  
Raleigh, NC 27626-0513

ATTEST: Christy Olive  
Asst. Secretary

(CORPORATE SEAL)

## EXHIBIT A

### **Tree Trimming**

This Agreement dated \_\_\_\_\_ is between ElectriCities of North Carolina, Inc. ("ElectriCities"), P.O. Box 29513, Raleigh, North Carolina 27626-0513 and \_\_\_\_\_ for the purpose of providing **Tree Trimming services (the "Services")**.

ElectriCities on behalf of the Participating Member, has contracted with Asplundh Tree Expert. Co. (the "**Service Provider**"), an independent Service Provider, to provide the Services Participating Members that desire such Services. ElectriCities shall use its good faith efforts to assist in the administration of that agreement between ElectriCities and the Service Provider, a copy of which is attached hereto and incorporated herein by reference (the "**Services Agreement**"), and the Participating Member hereby agrees to be subject to all the terms and provisions thereof.

Work shall be performed during the standard work week (Monday-Friday) and at times agreed to between the Participating Member and the Service Provider. The Participating Member shall furnish all assistance as requested by the Service Provider for the purpose of this Agreement.

The Service Provider shall furnish all labor, materials, supervision and equipment needed to perform the Services for members of ElectriCities which elect to utilize the Services. The Participating Member shall select the Services it desires by completing a Service Order for such Service.

The Service Provider will submit invoices and back-up information directly to the Participating Member as set forth in the Services Agreement for work performed for the Participating Member. These invoices shall be the basis of payment by the Participating Member. Payment by the Participating Member shall be made directly to the Service Provider within thirty (30) days of receipt of the Service Provider's invoice.

The Participating Member acknowledges that ElectriCities shall not be responsible for the Services to be provided by the Service Provider and that the Participating Member shall be solely responsible for the payment of all amounts due for the Services. The Participating Member agrees to the fullest extent permitted by law, to **RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS** ElectriCities, and its officials, officers, directors, employees and agents from and against any and all liability, damages, costs, claims, demands, fines, penalties, cleanup costs and other pollution-related items, expenses and fees (including, without limitation, reasonable attorney's fees and consultant's fees) of whatever type or nature, which shall be caused (directly or indirectly) by, arise out of, or in any manner be connected with (i) this Agreement; (ii) the Services Agreement; (iii) the Services for the Participating Member provided pursuant to the Services Agreement; or (iv) the acts or omissions (negligent or otherwise) of the Participating Member, the Service Provider, or their respective officers, employees or agents related to the Services to be performed for the Participating Member under the Services Agreement; including, without limitation, to the fullest extent permitted by law, those that result from the acts or omissions (negligent or otherwise) of ElectriCities, or its officials, officers, directors, employees or agents related to the Services to be performed for the Participating Member under the Services Agreement; including, without limitation, to the fullest extent permitted by law, those that result from

## EXHIBIT A

### **Tree Trimming**

This Agreement dated \_\_\_\_\_ is between ElectriCities of North Carolina, Inc. ("**ElectriCities**"), P.O. Box 29513, Raleigh, North Carolina 27626-0513 and \_\_\_\_\_ for the purpose of providing **Tree Trimming services (the "Services")**.

ElectriCities on behalf of the Participating Member, has contracted with \_\_\_\_\_ (the "**Service Provider**"), an independent Service Provider, to provide the Services Participating Members that desire such Services. ElectriCities shall use its good faith efforts to assist in the administration of that agreement between ElectriCities and the Service Provider, a copy of which is attached hereto and incorporated herein by reference (the "**Services Agreement**"), and the Participating Member hereby agrees to be subject to all the terms and provisions thereof.

Work shall be performed during the standard work week (Monday-Friday) and at times agreed to between the Participating Member and the Service Provider. The Participating Member shall furnish all assistance as requested by the Service Provider for the purpose of this Agreement.

The Service Provider shall furnish all labor, materials, supervision and equipment needed to perform the Services for members of ElectriCities which elect to utilize the Services. The Participating Member shall select the Services it desires by completing a Service Order for such Service.

The Service Provider will submit invoices and back-up information directly to the Participating Member as set forth in the Services Agreement for work performed for the Participating Member. These invoices shall be the basis of payment by the Participating Member. Payment by the Participating Member shall be made directly to the Service Provider within thirty (30) days of receipt of the Service Provider's invoice.


The Participating Member acknowledges that ElectriCities shall not be responsible for the Services to be provided by the Service Provider and that the Participating Member shall be solely responsible for the payment of all amounts due for the Services. The Participating Member agrees to the fullest extent permitted by law, to **RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS** ElectriCities, and its officials, officers, directors, employees and agents from and against any and all liability, damages, costs, claims, demands, fines, penalties, cleanup costs and other pollution-related items, expenses and fees (including, without limitation, reasonable attorney's fees and consultant's fees) of whatever type or nature, which shall be caused (directly or indirectly) by, arise out of, or in any manner be connected with (i) this Agreement; (ii) the Services Agreement; (iii) the Services for the Participating Member provided pursuant to the Services Agreement; or (iv) the acts or omissions (negligent or otherwise) of the Participating Member, the Service Provider, or their respective officers, employees or agents related to the Services to be performed for the Participating Member under the Services Agreement; including, without limitation, to the fullest extent permitted by law, those that result from the acts or omissions (negligent or otherwise) of ElectriCities, or its officials, officers, directors, employees or agents related to the Services to be performed for the Participating Member under the Services Agreement; including, without limitation, to the fullest extent permitted by law, those that result from the acts or omissions

(negligent or otherwise) of ElectriCities, or its officials, officers, directors, agents or employees related to the Services to be performed under this Agreement, except that arise directly from the willful misconduct of ElectriCities or its officials, officers, directors, agents or employees. In no event shall ElectriCities or its officials, officers, directors, agents or employees, be liable for any incidental, special, consequential, or indirect damages. The release and indemnification provisions of this Agreement shall survive the expiration or other termination of this Agreement, and are in addition to and not a limitation of any other rights or remedies ElectriCities, or its officials, officers, directors, agents or employees may have under this Agreement. If any provision of this Agreement or portion thereof is determined to be void or unenforceable by a court of competent jurisdiction, then such determination shall not affect any other provision of this Agreement or portions thereof, all of which other provisions and portions thereof shall remain in full force and effect.

The parties hereto have made and executed this Agreement as of the day and year first above written.

ElectriCities of North Carolina, Inc.

Participating Member

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

CEO  
(Title)

\_\_\_\_\_  
(Title)





— *Serving Public Power Communities Since 1965* —

## **SCHEDULE A**

### **SCOPE OF WORK** **FOR TREE TRIMMING SERVICES**

The tree trimming services provided to ElectriCities' participating members should be performed by professional and knowledgeable personnel who will provide quality services to ElectriCities members throughout North Carolina.

#### **Service Provider Responsibilities include:**

- To furnish all labor, material, supervision and equipment to perform tree trimming services and consultation for various municipalities throughout North Carolina which are members of ElectriCities and as directed by them and ElectriCities. Such services and consultation shall include but not be limited to:
  - Clearing of brush and tree limbs near power lines
  - Removal and disposal of wood and debris related to tree trimming services at site designated by Member Municipality.
  - Advise Member Municipality of other work which would be helpful to maintain clear lines
- Vehicles used in the course of providing this service must comply with all North Carolina Motor Vehicle Regulations and be in good condition and suitable for work to be performed and shall be properly maintained
- Service Provider shall obtain all governmental licenses and permits necessary to perform the services to be provided and maintain all licenses and permits at all times while providing services to ElectriCities members
- Service Provider shall comply with all requirements of federal, state and local laws, rules, regulations, and ordinances applicable to the services being performed
- Service Provider will adhere to the scope of work and schedule as shown on individual forms entitled Schedule B, Service Order and as directed by the Member Municipality
- Service Provider shall ascertain that necessary permits, licenses and/or easements have been secured by Member Municipality when preparing to perform tree trimming services that cross highways, railroads, streets or utilities under the jurisdiction of a state, county, city, town or other public agency, public utility or private entity.
- Service Provider shall conduct work to ensure that the least possible obstruction to traffic, fire hydrants are kept accessible to fire-fighting equipment at all times, inconvenience to the general public and the residents in the vicinity of the work are as minimal as possible, and to ensure protection of persons and property. Temporary provisions shall be made by Service Provider to ensure the use of sidewalks and proper functioning of all gutters, sewer inlets, drainage ditches, and irrigation ditches.
- Service Provider shall provide adequate signs, barricades, lights and watchmen and take all precautions for protection of the work and safety of the public.
- Service Provider shall not enter private property without first obtaining permission of the landowner, or authorized agent and shall use precautions necessary to prevent damage and injury to all property.
- Service Provider shall perform reliable and accurate services in a timely manner.

- Submit weekly invoices to the Member Municipality with time cards signed by a representative of the Member Municipality where the services are performed. Submit all final invoicing within ten (10) days after completion of work.
- Service Provider will furnish an on-site, authorized individual or a duly authorized representative acceptable to the Member Municipality for the duration of the services being performed.
- Workmen will be skilled and specialized in the work to which they are assigned.
- Service Provider's employees will observe all Member Municipality's safety rules and procedures while performing tree trimming services.

### **Additional Service Provider Requirements**

#### **Special Safety Requirements**

- ◆ The Service Provider or employees of the Service Provider, shall wear full body harness while working in an aerial lift basket and
- ◆ The Service Provider or employees of the Service Provider, if exposed within 10 feet of an arc flash, must wear flame retardant clothing.

#### **Business Code of Conduct**

The Service Provider must have a suitable Business Code of Conduct policy acknowledged by its employees. This policy must cover the areas of ethics and conflict of interest. While the Service Provider's employees are on site of the property belonging to the ElectriCities member, Service Provider's employees are to conduct themselves in a professional manner .

#### **Availability:**

The core hours of services should not exceed eight-(8) hours (excluding lunch breaks) mutually agreeable between the supplier and the Member Municipality. Service Provider may provide overtime not to exceed two hours per day.

The normal workweek is Monday through Friday. No work will be scheduled on a holiday observed by the Member Municipality unless requested by the Member Municipality and agreed to by the Service Provider at an agreed to rate of pay.

#### **ElectriCities / Member Municipality's Responsibilities**

- The Member Municipality will provide all criteria and full information as to the Member Municipality's requirements using form entitled Schedule B, Service Order and designate a person with authority to act on the Member Municipality's behalf on all matters concerning the scope of work.
- The Member Municipality will to the extent lawful, arrange for access to and make all provisions for Service Provider to enter upon public and private property as required to provide the services requested.
- Member Municipality will provide Service Provider, prior to the start of any work, the Member Municipality's safety practices and regulations in effect at the time.
- Member Municipality will make prompt payment upon satisfactory completion of work.
- ElectriCities will assist the Member Municipality with resolution of any disputes between the Member Municipality and the Service Provider on items which are covered by the Services Agreement.

### ***END OF SCOPE OF WORK***

**SCHEDULE B**  
**SERVICE ORDER**

Participating Member:\_\_\_\_\_.

Service Locations:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Services Requested:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Estimated Commencement and Completion Schedule: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Miscellaneous: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Participating Member

Service Provider

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

SCHEDULE C

REGULAR/OVERTIME RATES OF LABOR, TOOLS AND EQUIPMENT CHARGES  
WORK TO BE COMPLETED IN 13 WEEKS OR LESS  
(Eastern)

	2018 NORMAL RATE	2018 OVERTIME RATE
<b>A. LABOR</b>		
Working Foreman	\$ 37.28	\$ 52.19
Climber	\$ 33.62	\$ 47.08
Groundman	\$ 28.78	\$ 40.28
<b>B. EQUIPMENT</b>		
1-Hydraulic Aerial Articulating boom with single basket minimum of 501 bottom of bucket mounted on suitable truck with pneumatic tire and power saw.	\$ 14.86	
1-Chipper (Drum)	\$ 4.02	
1-2Ton Dump Type Tree Truck with hand tools, rope lines and power chain saws	\$ 12.10	
1-Stump Remover	\$ 16.50	
1-Bush Hog/Tractor	\$ 21.29	
1-Kershaw Type Heavy Brush or tree remover with 81" cutter head	N/A	
1-4x4 Tractor and Bush Hog	\$ 27.27	
1-LIII Trimlift	\$ 18.13	

SCHEDULE C

REGULAR/OVERTIME RATES OF LABOR, TOOLS AND EQUIPMENT CHARGES  
WORK TO BE COMPLETED OVER 13 WEEKS  
(Eastern)

	2018 NORMAL RATE	2018 OVERTIME RATE
<b>A. LABOR</b>		
Working Foreman	\$ 35.17	\$ 49.24
Climber	\$ 31.73	\$ 44.42
Groundman	\$ 27.14	\$ 38.00
<b>B. EQUIPMENT</b>		
1-Hydraulic Aerial Articulating boom with single basket minimum of 501 bottom of bucket mounted on suitable truck with pneumatic tire and power saw.	\$ 13.51	
1-Chipper (Drum)	\$ 3.65	
1-2Ton Dump Type Tree Truck with hand tools, rope lines and power chain saws	\$ 11.00	
1-Stump Remover	\$ 15.00	
1-Bush Hog/Tractor	\$ 19.35	
1-Kershaw Type Heavy Brush or tree remover with 81" cutter head	N/A	
1-4x4 Tractor and Bush Hog	\$ 24.79	
1-LIII Trimlift	\$ 16.48	

SCHEDULE C

REGULAR/OVERTIME RATES OF LABOR, TOOLS AND EQUIPMENT CHARGES  
WORK TO BE COMPLETED IN 13 WEEKS OR LESS  
(Western)

	2018 NORMAL RATE	2018 OVERTIME RATE
<b>A. LABOR</b>		
Working Foreman	\$ 37.28	\$ 52.19
Climber	\$ 33.62	\$ 47.08
Groundman	\$ 28.78	\$ 40.28
<b>B. EQUIPMENT</b>		
1-Hydraulic Aerial Articulating boom with single basket minimum of 501 bottom of bucket mounted on suitable truck with pneumatic tool and power saw.	\$ 14.86	
1-Chipper (Drum)	\$ 4.02	
1-2Ton Dump Type Tree Truck with hand tools, rope lines and power chain saws	\$ 12.10	
1-Stump Remover	\$ 16.50	
1-Bush Hog/Tractor	\$ 21.29	
1-Kershaw Type Heavy Brush or tree remover with 81" cutter head	N/A	
1-4x4 Tractor and Bush Hog	\$ 27.27	
1-LIII Trimlift	\$ 18.13	

SCHEDULE C

REGULAR/OVERTIME RATES OF LABOR, TOOLS AND EQUIPMENT CHARGES  
WORK TO BE COMPLETED OVER 13 WEEKS  
(Western)

	2018 NORMAL RATE	2018 OVERTIME RATE
<b>A. LABOR</b>		
Working Foreman	\$ 35.17	\$ 49.24
Climber	\$ 31.73	\$ 44.42
Groundman	\$ 27.14	\$ 38.00
<b>B. EQUIPMENT</b>		
1-Hydraulic Aerial Articulating boom with single basket minimum of 501 bottom of bucket mounted on suitable truck with pneumatic tire and power saw.	\$ 13.51	
1-Chipper (Drum)	\$ 3.65	
1-2Ton Dump Type Tree Truck with hand tools, rope lines and power chain saws	\$ 11.00	
1-Stump Remover	\$ 15.00	
1-Bush Hog/Tractor	\$ 19.35	
1-Kershaw Type Heavy Brush or tree remover with 81" cutter head	N/A	
1-4x4 Tractor and Bush Hog	\$ 24.79	
1-LIII Trimlift	\$ 16.48	

## **2018 Additional Equipment (Western and Eastern)**

- 1) Asplundh would like to make the following equipment available to ElectriCities members at the rates listed below and ask that these rates be incorporated into Schedule C.

### **13 Weeks or More**

Disc Chipper	<u>\$ 6.09</u>	p/hour
2x4 Pickup Truck	<u>\$ 9.50</u>	p/hour
4x4 Pickup Truck	<u>\$ 10.00</u>	p/hour
Jaraff	<u>\$ 65.00</u>	p/hour
PaddleFoot	<u>\$ 29.00</u>	p/hour
2x4 60'/70' Scissor Lift	<u>\$ 26.42</u>	p/hour
GeoBoy/Rayco Flail Mower	<u>\$ 110.42</u>	p/hour
Stump Treatment	<u>\$ 34.33</u>	p/gallon

### **12 Weeks or Less**

Disc Chipper	<u>\$ 6.70</u>	p/hour
Pickup Truck	<u>\$ 10.45</u>	p/hour
4x4 Pickup Truck	<u>\$ 11.00</u>	p/hour
Jaraff	<u>\$ 71.50</u>	p/hour
Paddle Foot	<u>\$ 31.90</u>	p/hour
2x4 60'/70' Scissor Lift	<u>\$ 30.39</u>	p/hour
GeoBoy/Rayco Flail Mower	<u>\$ 121.46</u>	p/hour
Stump Treatment	<u>\$ 34.33</u>	p/gallon