

VEGETATION MANAGEMENT

MASTER AGREEMENT

This **AGREEMENT** is made and entered into as of the 7th day of September, 2022, by and between **KENERGY CORP.**, Post Office Box 18, Henderson, Kentucky 42419, hereinafter “KENERGY” and **ASPLUNDH TREE EXPERT, LLC**, 200 Two Oaks Drive, Nicholasville, KY 40356, hereinafter “ASPLUNDH;”

WITNESSETH:

WHEREAS, KENERGY selected ASPLUNDH to perform vegetation management control activities on KENERGY’s electric distribution system as an independent contractor and the parties desire to enter into a written agreement regarding this matter;

NOW, therefore, for valuable consideration, including the mutual promises and covenants of the parties, **IT IS AGREED** as follows:

ARTICLE I – GENERAL

1. ASPLUNDH shall furnish all supervision, labor, tools, transportation, machinery, equipment and materials and other means required to perform vegetation management control activities on KENERGY’s electric distribution system in strict accordance with KENERGY’s specifications.

2. ASPLUNDH warrants that it has made careful examination of the project including the specifications and terms and conditions and has become informed as to the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered and the kind of facilities required for undertaking and completing the scope of work and has become acquainted with the labor conditions, state and local laws and regulations which affect the proposed work.

3. ASPLUNDH warrants that it possesses all licenses required to perform vegetation management control activities on KENERGY’s electric distribution system.

4. ASPLUNDH shall perform all work in compliance with all applicable Federal, State, and local laws, rules and regulations applicable to its performance under this AGREEMENT.

5. ASPLUNDH shall perform all work as an independent contractor, not as a subcontractor, agent, or employee of KENERGY, and shall employ capable, experienced, reliable and skilled workmen as may be required to complete the scope of work outlined in this AGREEMENT.

6. ASPLUNDH warrants that it possesses adequate financial resources for the performance of the work covered by this AGREEMENT.

ARTICLE II – PERFORMANCE

1. Schedule

ASPLUNDH will initiate personnel and equipment mobilization on the KENERGY system no later September 26th, 2022.

Unless agreed to in writing by both parties, the entire scope of work assigned to ASPLUNDH in any year must pass final KENERGY quality control no later than the last calendar day of the year in which the work is assigned.

2. Scope of Work

The scope of work includes performing the following vegetation management control activities on KENERGY’S electric distribution facilities.

Labor, Material & Equipment

Vegetation management control activities performed on designated circuits, including all primary, secondary, neutral, service line conductors and associated overhead electrical facilities for Kenergy fiber construction project. Work should also include clearing of rights-of-way floor.

Table 1

2022-2023 Phase 1 Circuits	
Substation	Circuit
031-Guffie	4- Cleopatra
031- Guffie	1- Glenville
024- Utica	1- Browns Valley
024- Utica	2- Red Hill
024- Utica	3- Locust Grove Rd
024- Utica	4- Utica
024- Utica	5- Old Barmet
026- Pleasant Ridge	2- Maple Leaf Lake
026- Pleasant Ridge	3- Popular Log Brg
026- Pleasant Ridge	4- Hwy 140 West
015- Whitesville	1- Hwy 54 West
015- Whitesville	2- Whitesville
015- Whitesville	3- Ralph
015- Whitesville	4- Stevens Sch. Rd
014-Weberstown	1- S Hancock Elem.
014-Weberstown	3- Pellville
023- Masonville	1- Velvet Farm
023- Masonville	2- Stoney Bk Subd.
023- Masonville	3- Masonville

032- St. Joe	1- Curdsville
032- St. Joe	2- West Louisville
032- St. Joe	3- Possum Trot Rd
032- St. Joe	4- Jennings RD
022-West Owensboro	1- Meadowlark Dr
022-West Owensboro	2- O'boro Airport
022-West Owensboro	3- Hwy 81 South
022-West Owensboro	4- Lydanne Brg. Rd
022-West Owensboro	5- Hwy 56/ Sorgho
027- Bon Harbor	1- Post Office
027- Bon Harbor	2- Ben Hawes Park
027- Bon Harbor	3- Worthington Rd
027- Bon Harbor	4- 5th Street Rd
027- Bon Harbor	5- Lee Rudy/Hwy 60
021- Stanley	1- Newman
021- Stanley	2- Hwy 60 East
021- Stanley	3- Birk City
025- Philpot	1- Pleasant Valley
025- Philpot	3- Old State Rd
025- Philpot	4- Premium Allied
025- Philpot	5- Karnes Grove Rd
025- Philpot	7- Cedar Hills
071- Morganfield	1- Waverly
071- Morganfield	2- Boxville
071- Morganfield	3- Caseyville
071- Morganfield	4- Spring Grove
063- Geneva	1- Alzey
063- Geneva	2- Airport/Office
063- Geneva	3- Smith Mills
083- Riverport	2- Unison
083- Riverport	3- Shamrock

As work progresses throughout the year, KENERGY may determine it is appropriate to add additional circuits to this list to be performed. Added circuits and pricing will be documented with an addendum to this Agreement.

Specifications for Work

ASPLUNDH is responsible to obtain the following tree and conductor clearances:

- Primary: All multi-phase conductors:
 - 6 feet under neutral clearance
 - 2 feet under bottom communication
- Primary: All single-phase conductors:
 - 6 feet under neutral clearance
 - 2 feet under bottom communication
- Secondary: All open wire conductors:
 - 6 feet under neutral clearance
 - 2 feet under bottom communication

Ground clearing: 10 feet under lines.

Service Orders

Vegetation management control activities performed on a specific portion of a circuit identified by KENERGY through a KENERGY generated Service Order.

Service Orders Specifications

ASPLUNDH shall us the following specifications when clearing vegetation for proposed line extensions:

ASPLUNDH is responsible to obtain the following tree and conductor clearances:

- Primary: All multi-phase conductors:
 - 6 feet under neutral clearance
 - 2 feet under bottom communication
- Primary: All single-phase conductors:
 - 6 feet under neutral clearance
 - 2 feet under bottom communication
- Secondary: All open wire conductors:
 - 6 feet under neutral clearance
 - 2 feet under bottom communication

Ground clearing: 10 feet under lines.

3. Performance Standards

ASPLUNDH shall conduct all work under this AGREEMENT in accordance with the following performance standards.

- a. All trees and brush removed shall be cut at ground level and treated with herbicide, leaving no stumps above ground.
- b. Any and all debris, underbrush, logs and other useless materials shall be removed by ASPLUNDH as rapidly as practical as the work progresses.
- c. Directional pruning techniques are used on KENERGY'S system, where appropriate. Pruning activities are based on accepted arboricultural standards, including ANSI A300 – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning), International Society of Arboriculture Best Management Practices, Utility Pruning of Trees – Special Companion Publication to the ANSI A300 Standard and Pruning Trees Near Electric Utility Lines, A Field Pocket Guide For Qualified Line-Clearance Tree Workers by Dr. Alex Shigo. All tree pruning shall be done so as to obtain clearance with due regard to current and future tree health and in conformity with permissions obtained.
- d. All stumps shall be chemically treated for maximum control of regrowth.
- e. ASPLUNDH is to leave all gates and fences as found.
- f. ASPLUNDH agrees that its personnel and equipment shall at all times present a neat appearance.
- g. All work shall be done in a professional manner giving the utmost respect to KENERGY'S members, the general public and others with whom ASPLUNDH may come into contact during completion of this project.
- h. ASPLUNDH agrees that complaints of any nature shall receive immediate attention and that all reasonable efforts shall be made for a prompt resolution of such complaints. This shall be communicated to the property owner and KENERGY start to finish.

4. Unsatisfactory Work Progress

KENERGY shall have the right to require ASPLUNDH to increase the number of employees and to increase or change the amount or kind of tools and equipment if at any time the progress of the work shall be unsatisfactory to KENERGY; but the failure of the KENERGY to give any such directions shall not relieve ASPLUNDH of his obligations to complete the work within the time and in the manner specified in this agreement.

- i. KENERGY requires that ASPLUNDH utilize these standards, where appropriate.

ARTICLE III – PAYMENT AND REPORTING

1. Payment

KENERGY and ASPLUNDH agree to the following payment:

Labor, Material, & Equipment

ASPLUNDH agrees to perform clearing on those circuits identified in Table 1, above. For this work, KENERGY agrees to pay ASPLUNDH an amount equal that identified in Schedule “A” below.

Schedule “A”

2022-2023			
Labor			
Type	Asplundh	Asplundh OT	
Foreman	\$ 42.36	\$ 61.00	
Trimmer	\$ 36.48	\$ 52.53	
Operator	\$ 39.41	\$ 56.75	
Groundman	\$ 31.33	\$ 45.12	

* CPI or 3% increase on one year anniversary date of contract

2022-2023 Equipment	
55' Bucket	\$ 18.47
Chipper	\$ 6.84
4x4 pickup	\$ 13.47
Saws	\$ 0.75
Tractor/ Mower	\$ 30.56

Service Orders

ASPLUNDH agrees to perform vegetation management control activities on specific portions of circuits identified by KENERGY through a KENERGY generated Service Order and KENERGY agrees to pay ASPLUNDH for that work based on time and equipment (T&E) incurred to complete that work. The labor and equipment rates to be paid during 2022-2023 for this work are contained in Schedule “A”.

2. Invoicing

ASPLUNDH will invoice KENERGY monthly, for all work completed during the previous month. Invoices shall include those costs incurred for fiber construction project, and costs associated with Service Orders. Payment will be due thirty (30) days following receipt of the invoice.

3. Third Party Invoicing

Should ASPLUNDH engage a third party to perform under this contract, then ASPLUNDH has the sole responsibility for payment to the third party and ASPLUNDH shall obtain and submit to KENERGY all performance reporting from such third party.

4. Reporting

ASPLUNDH shall provide to KENERGY the following reports:

- a. Weekly timesheets shall be submitted for all work performed under this AGREEMENT.
- b. Safety Reports
 - i. A monthly OSHA recordable report outlining the monthly rate and the cumulative annual rate.
 - ii. ASPLUNDH shall immediately notify KENERGY of any safety incidents, property damage or near misses and provide a written follow-up report within 72 hours of the occurrence detailing the event, the root cause of the event and the steps ASPLUNDH will take in the future to prevent a reoccurrence.
- c. Crew Locations – Every Monday by 9:00 am CST or EDT where applicable, ASPLUNDH will e-mail to KENERGY the location of all personnel performing work on KENERGY’S system. Updated notification is required when crew schedule or location changes. ASPLUNDH will also be responsible to notify KENERGY daily of the location of personnel performing work on Service Orders or Work Orders. This correspondence shall also identify any non-functional equipment and the date equipment is expected to return to service.

5. Taxes

The prices included in this Agreement include any sums which are or may be payable by ASPLUNDH on account of taxes imposed by any taxing authority related to services provided by ASPLUNDH under the terms of this AGREEMENT.

ARTICLE IV – MISCELLANEOUS

1. Safety

ASPLUNDH shall at all times take all reasonable precautions for the safety of its employees and of the public and shall comply with all applicable provisions of Federal, state and local safety laws, regulations and codes.

The following provisions shall not limit the generality of the above requirements:

- a. ASPLUNDH shall conduct work in such a manner so as to cause the least possible obstruction of public highways.
- b. ASPLUNDH shall provide and maintain all such guard lights and other protection for the public as may be required by applicable statutes, ordinances and regulations or by local conditions.
- c. ASPLUNDH shall do all things necessary or expedient to properly protect any and all property whether owned by KENERGY or others from damage. In the event that any such property is damaged in the course of work ASPLUNDH shall at its own expense restore any or all of such damaged property immediately to as good a state as before such damage occurred.
- d. Where the right-of-way traverses cultivated lands, ASPLUNDH shall limit the movement of crews and equipment so as to cause as little damage as possible to crops, orchards or property and shall endeavor to avoid marring the lands. All fences which are necessarily opened or moved during work on the project shall be replaced in as good condition as they were found and precautions shall be taken to prevent the escape of livestock. ASPLUNDH shall not be responsible for loss of or damage to crops, orchards or property (other than livestock) on the right-of- way necessarily incident to work on the project and not caused by negligence or inefficient operation of ASPLUNDH.
- e. This vegetation management work from the commencement to completion shall be under the charge and control of Asplundh and during such period of control by Asplundh, Asplundh shall make good and repair all injury and damage to KENERGY property caused by Asplundh's negligence.

2. Employee Safety

IT IS UNDERSTOOD BY AND BETWEEN THE PARTIES THAT THE ELECTRIC CIRCUITS OF KENERGY ARE TO CONTINUE IN NORMAL OPERATION DURING WORK PERFORMED UNDER THIS AGREEMENT. ASPLUNDH is to provide personnel qualified to work around energized lines and all work shall be performed to meet all applicable OSHA Safety Rules and Regulations, specifically OSHA 1910.269 and ANSI Z133 standards. ASPLUNDH is to provide and use such protective equipment as OSHA deems necessary for the protection of its employees, KENERGY'S employees and the general public and to guard against interfering with the normal operation of said circuits. Any circuits that are damaged, need repair or de-energized shall be done by KENERGY. ASPLUNDH may be invoiced for system damages caused by its performance under this AGREEMENT.

3. Safety Violations

Repeated and/or uncorrected safety violations, practices or working conditions by ASPLUNDH may be cause for KENERGY to suspend or terminate this AGREEMENT

4. Removal of ASPLUNDH Employee

KENERGY reserves the right to require the removal from the project of any employee of ASPLUNDH if in the judgment of KENERGY such removal shall be necessary in order to protect the interest of KENERGY.

5. Resource Availability and Response Time

All ASPLUNDH personnel who normally work on KENERGY'S system shall be available 24/7 during the contract term for any emergency restoration work that may emerge on the KENERGY system. ASPLUNDH cannot at any time remove these personnel and/or equipment resources without prior approval from KENERGY. Crew(s) will be required to report to the designated KENERGY work location within 2 hours of notification.

6. Violating Provisions of this AGREEMENT

Upon violation by ASPLUNDH of any of the provisions of this AGREEMENT, after written notice of such violation given to ASPLUNDH by KENERGY, ASPLUNDH shall immediately correct such violation. Upon failure of ASPLUNDH to do so, KENERGY may correct such violation at ASPLUNDH's expense. Provided, however, in the event of an emergency where notice is not practical, KENERGY may, if it deems it necessary or advisable, correct such violation at ASPLUNDH's expense without such prior notice to ASPLUNDH.

7. Permits

ASPLUNDH agrees to secure all permits and licenses necessary for the work to be performed hereunder and to pay all charges and fees required for such permits and licenses.

8. Inspection of Records

KENERGY shall have the right to inspect all payrolls and other data and records of ASPLUNDH relevant to the work associated with this AGREEMENT. ASPLUNDH will provide all reasonable facilities necessary for such inspection. ASPLUNDH shall have an authorized agent accompany the inspector when final inspection is made and, if requested by KENERGY, when any other inspection is made. KENERGY shall maintain this right for a period of five (5) years following completion of all work under this AGREEMENT.

9. Indemnification

ASPLUNDH shall defend, indemnify, and hold harmless KENERGY and KENERGY's directors, officers, and employees from all claims, causes of action, losses, liabilities, and expenses (including reasonable attorney's fees) for personal loss, injury, or death to persons (including but not limited to ASPLUNDH's employees) and loss, damage to or destruction of KENERGY's property or the property of any other person or entity (including but not limited to ASPLUNDH's property) to the proportionate extent caused by ASPLUNDH's negligent performance of the Agreement, or the materials or equipment supplied or services performed by ASPLUNDH, its subcontractors and suppliers of any tier. But nothing herein shall be construed as making ASPLUNDH liable for any injury, death, loss, damage, or destruction caused by the sole negligence of KENERGY.

To the maximum extent permitted by law, ASPLUNDH shall defend, indemnify, and hold harmless KENERGY and KENERGY's directors, officers, and employees from all liens and claims filed or asserted against KENERGY, its directors, officers, and employees, or KENERGY's property or facilities, for services performed or materials or equipment furnished by ASPLUNDH, its subcontractors and suppliers of any tier, and from all losses, demands, and causes of action arising out of any such lien or claim. ASPLUNDH shall promptly discharge or remove any such lien or claim by bonding, payment, or otherwise and shall notify KENERGY promptly when it has done so. If ASPLUNDH does not cause such lien or claim to be discharged or released by payment, bonding, or otherwise, KENERGY shall have the right (but shall not be obligated) to pay all sums necessary to obtain any such discharge or release and to deduct all amounts so paid from the amount due ASPLUNDH.

ASPLUNDH shall provide to KENERGY's satisfaction evidence of ASPLUNDH's ability to comply with the indemnification provisions of the paragraphs above, which evidence may include

but may not be limited to a bond or liability insurance policy obtained for this purpose through a licensed surety or insurance company.

10. Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS, LOSS OF DATA, OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED, OR ANY THEORY OF LIABILITY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING UNDER ANY CAUSE OF ACTION AND ARISING OUT OF THIS AGREEMENT OR UNDER ANY STATUTE OR LAW CONNECTED INDEPENDENTLY OF THIS AGREEMENT TO SUCH ACTION. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE SHALL NOT EXCEED THE AGGREGATE AMOUNT OF FEES PAID BY KENERGY TO ASPLUNDH.

11. Insurance

ASPLUNDH shall take out and maintain throughout the period of this AGREEMENT the following types and minimum amounts of insurance:

Workers' Compensation - Workers' compensation and employers' liability insurance, as required by law, covering all its employees who perform any of the obligations of the Contractor(s) under the contract. If any employer or employee is not subject to the workers' compensation laws of Kentucky, the insurance shall be obtained voluntarily to extend to the employer and employee coverage to the same extent as though the employer or employee were subject to the workers' compensation laws.

Public Liability Insurance - Covering all operations under the agreement shall have limits for bodily injury or death of not less than \$1 million each occurrence, limits for property damage of not less than \$1 million each occurrence, and \$2 million aggregate for accidents during the policy period. A single limit of \$1 million on bodily injury and property damage is acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

Automobile Liability Insurance - For all motor vehicles used in connection with the agreement, whether owned, non-owned, or hired, shall have limits for bodily injury or death of not less than \$1 million per person and \$1 million each occurrence and property damage limits of \$1 million for each occurrence. A single limit of \$1 million of bodily injury and property damage is

acceptable. This required insurance may be in a policy or policies of insurance, primary and excess including the umbrella or catastrophe form.

KENERGY shall have the right at any time to require public liability insurance and property damage liability insurance greater than those required in the previous paragraphs. In any such event, the additional premium or premiums payable solely as the result of such additional insurance shall be added to the agreement price.

Except for workers' compensation, KENERGY shall be named as Additional Insured on all policies of insurance. The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to KENERGY. ASPLUNDH shall furnish KENERGY a certificate evidencing compliance with the foregoing requirements which shall provide not less than (30) days prior written notice to KENERGY of any cancellation or material change in the insurance.

12. Assignment of Guarantees

All guarantees of materials and workmanship running in favor of ASPLUNDH shall be transferred and assigned to KENERGY prior to the time ASPLUNDH receives final payment.

13. Completion upon ASPLUNDH's Default

If default shall be made by ASPLUNDH or by any subcontractor in the performance of any of the terms of this AGREEMENT, KENERGY, without in any manner limiting its legal and equitable remedies in the circumstances, may serve upon ASPLUNDH and the Surety or Sureties, if any, upon ASPLUNDH's Bond or Bonds a written notice requiring ASPLUNDH to cause such default to be corrected forthwith. Unless within twenty (20) days after the service of such notice upon ASPLUNDH such default shall be corrected or arrangements for the correction thereof satisfactory to KENERGY shall be made by ASPLUNDH or its Surety or Sureties, if any, KENERGY may take over completion of the project by Contract or otherwise at the expense of ASPLUNDH, and ASPLUNDH and its Surety or Sureties, if any, shall be liable to KENERGY for any cost or expense in excess of the Contract price occasioned thereby. KENERGY in such contingency may exercise any rights, claims or demands which ASPLUNDH may have against third persons in connection with this AGREEMENT and for such purpose ASPLUNDH does hereby assign, transfer and set over unto KENERGY all such rights, claims and demands.

14. Cumulative Remedies

Every right or remedy herein conferred upon or reserved to KENERGY shall be cumulative, shall be in addition to every right and remedy now or hereafter existing at law or in equity or by statute and the pursuit of any right or remedy shall not be construed as an election.

15. Completion of the Project

The term "Completion of the Project" shall mean full performance by ASPLUNDH of their obligations under this AGREEMENT and all amendments and revisions thereof.

16. Materials and Supplies

In the performance of this AGREEMENT there shall be furnished only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States or in any eligible country, and only such manufactured articles, materials, and supplies as have been manufactured in the United States or in any eligible country substantially all from articles, materials, or supplies mined, produced or manufactured, as the case may be, in the United States or in any eligible country; provided that other articles, materials, or supplies may be used in the event such use is pursuant to the provisions of the Rural Electrification Act of 1938, being Title IV of Public Resolution No. 122, 75th Congress, approved June 21, 1938. For the purposes of this section, an "eligible country" is any country that applies with respect to the United States an agreement ensuring reciprocal access for United States products and services and suppliers to the markets of that country, as determined by the United States Trade Representative. ASPLUNDH agrees to submit to the KENERGY such certificates with respect to compliance with the foregoing provision as KENERGY from time to time may require.

17. Compliance with Laws

ASPLUNDH shall comply with all federal, state, and local laws, rules, and regulations applicable to its performance under this AGREEMENT and the completion of the project. ASPLUNDH acknowledges that it is familiar with the Rural Electrification Act of 1936, as amended, the Anti Kick-Back Act of 1986 (41 U.S.C. 51 et seq), and 18 U.S.C. §§ 286, 287, 641, 661, 874, 1001, and 1366, as amended.

ASPLUNDH represents that to the extent required by Executive Orders 12549 (3 CFR, 1985-1988 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), Debarment and Suspension, and 7 CFR part 3017, it has submitted to KENERGY a duly executed certification in the form prescribed in 7 CFR part 3017.

ASPLUNDH represents that, to the extent required, it has complied with the requirements of Pub. L. 101-121, Section 319, 103 Stat. 701, 750-765 (31 U.S.C. 1352), entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and any rules and regulations issued pursuant thereto.

18. Equal Opportunity Provisions

a. ASPLUNDH represents that:

It has ____, does not have ____, 100 or more employees, and if it has, that it has ____, has not ____, furnished the Equal Employment Opportunity-Employers Information Report EEO-1, Standard Form 100, required of employers with 100 or more employees pursuant to Executive Order 11246 of September 24, 1965, and Title VII of the Civil Rights Act of 1964.

ASPLUNDH agrees that it will obtain, prior to the award of any subcontract for more than \$10,000 hereunder to a subcontractor with 100 or more employees, a statement, signed by the proposed subcontractor, that the proposed subcontractor has filed a current report on Standard Form 100.

ASPLUNDH agrees that if it has 100 or more employees and has not submitted a report on Standard Form 100 for the current reporting year and that if this AGREEMENT will amount to more than \$10,000, ASPLUNDH will file such report, as required by law, and notify KENERGY in writing of such filing.

b. Equal Opportunity Clause. During the performance of this AGREEMENT, ASPLUNDH agrees as follows:

(1) ASPLUNDH will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or because of their status as protected veterans. ASPLUNDH will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, national origin or because of their status as protected veterans. Such action shall include, but not be limited to, the following: hiring, upgrading, demotions or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training, including apprenticeship. ASPLUNDH agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this Equal Opportunity Clause.

(2) ASPLUNDH will, in all solicitations or advertisements for employees placed by or on behalf of ASPLUNDH, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) ASPLUNDH will send to each labor union or representative of workers, with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers'

representative of ASPLUNDH's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (4) ASPLUNDH will comply with all provisions of Executive Order 11246 of September 24, 1965, and the rules, regulations and relevant orders of the Secretary of Labor.
- (5) ASPLUNDH will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (6) In the event of ASPLUNDH's noncompliance with the Equal Opportunity Clause of this AGREEMENT or with any of the said rules, regulations, or orders, this AGREEMENT may be canceled, terminated, or suspended in whole or in part, and ASPLUNDH may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as provided by law.
- (7) ASPLUNDH will include this Equal Opportunity Clause in every subcontractor purchase order unless exempted by the rules, regulations, or order of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. ASPLUNDH will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance; Provided, however, that in the event ASPLUNDH becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, ASPLUNDH may request the United States to enter into such litigation to protect the interests of the United States.

- c. Certificate of Nonsegregated Facilities. ASPLUNDH certifies that it does not maintain or provide for its employees any segregated facilities at any of its

establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. ASPLUNDH certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. ASPLUNDH agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this AGREEMENT. As used in this certification, the term “segregated facilities” means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. ASPLUNDH agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause, and that it will retain such certifications in its files.

19. Evidence of Payment

On request, ASPLUNDH shall deliver to KENERGY a certificate that all persons who have furnished labor in connection with the Project and subcontractors who have furnished services for the project have been paid in full.

20. Nonassignment of AGREEMENT

ASPLUNDH shall not assign this AGREEMENT or any interest in any funds that may be due or become due hereunder or enter into any contract with any person, firm or corporation for the performance of ASPLUNDH's obligations hereunder or any part thereof, without the approval in writing of KENERGY and of the Surety or Sureties, if any, on any bond furnished by ASPLUNDH for the faithful performance of ASPLUNDH's obligations hereunder. If ASPLUNDH, with the consent of KENERGY and any Surety or Sureties on the ASPLUNDH's Bond or Bonds, shall enter into a subcontract with any subcontractor for the performance of any part of this AGREEMENT, ASPLUNDH shall be as fully responsible to KENERGY for the acts and omissions of such subcontractor and of persons employed by such subcontractor as ASPLUNDH would be for its own acts and omissions and those of persons directly employed by it.

21. Successors and Assigns

This agreement shall inure to the benefit of and be binding upon KENERGY, ASPLUNDH and respective successors and permitted assigns. ASPLUNDH shall not assign any of its rights or duties under this agreement, or subcontract the whole or any part of the work to be performed hereunder, without first having obtained the written consent of KENERGY authorizing such assignment or subcontract. KENERGY reserves the right to enter into a contract with additional companies for performance of the same kind of work done by ASPLUNDH under this AGREEMENT.

22. Entire Agreement

The terms and conditions set forth herein are intended by KENERGY and ASPLUNDH to constitute the complete statement of their AGREEMENT and all prior communications relating to the subject matter of this AGREEMENT, whether oral or written, are hereby superseded. No modification or amendment of this AGREEMENT shall be effective unless the same is in writing and signed by both parties.

23. Severability

If any provision of this AGREEMENT shall be determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder shall not be affected thereby, and each provision hereof shall be valid and shall be enforceable to the fullest extent permitted by law.

24. Confidentiality

All information regarding KENERGY to which ASPLUNDH is privileged shall be considered confidential and ASPLUNDH shall not release or disclose such materials or information to any person or entity without prior written consent from KENERGY.

27. Force Majeure

Except for payment obligations, neither party is liable for failing to fulfill its obligations due to acts of God, extreme weather, unforeseen regulatory actions, civil or military authority, war, riots, strikes, fire, or other causes beyond its reasonable control. To the extent a PARTY is substantially delayed by force majeure from performing its obligations hereunder, such party shall give notice and details of the force majeure to the other party as soon as practical, then the parties may extend the time of performance by written agreement.

28. Suspension by KENERGY for Convenience

KENERGY, may, without cause, suspend or delay delivery of performance of the scope of work in whole or in part for such period of time as KENERGY may determine. No adjustments shall be made to the schedule of services or prices as a result of the suspension.

29. Applicable Law

This agreement shall be construed and enforced subject to the law of the State of Kentucky.

30. Extension of AGREEMENT

This agreement may be extended upon terms and conditions mutually agreed upon by the parties.

31. Attorney's Fees

Both parties acknowledges and agree that in the event of a breach or threatened breach of any of the provisions of this AGREEMENT, the non-prevailing party agrees to pay to the prevailing party all reasonable costs, expenses and attorneys' fees incurred in seeking and obtaining injunctive relief, monetary damages and other remedies to which KENERGY incurs in enforcing its rights under this AGREEMENT.

32. Non-Exclusivity

This AGREEMENT is a non-exclusive AGREEMENT between KENERGY and ASPLUNDH. KENERGY reserves the right to obtain the same or similar services from other companies. ASPLUNDH reserves the right to offer the same or similar services to others.

33. Notices

Any notice to be given under this AGREEMENT shall be sufficient if delivered via mail or electronic mail to:

If to KENERGY:

Kenergy Corp.

ATTN: Jeff Hohn, CEO

P.O. Box 18

Henderson, KY 42419

jhohn@kenergycorp.com

If to ASPLUNDH:

ASPLUNDH TREE EXPERT, LLC

ATTN: Bobby King

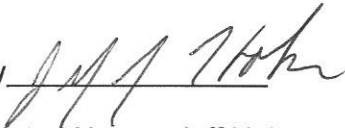
200 Two Oaks Drive

Nicholasville, KY 40356

email bobbyking@asplundh.com

IN TESTIMONY WHEREOF, witness the hands of the parties hereto as of the day and date first written above.

KENERGY CORP.

By 

Printed Name: Jeff Hohn

Title: President and CEO

ASPLUNDH TREE EXPERT, LLC

By: 

Printed Name: Randal L. Haines

Title: Vice President/Sponsor