

**Ordinance 200463**

**Utility Concessions Agreement between the  
City of Kansas City, Missouri and Green Wave Technology, Inc.  
Project No. EV2721**

**THIS CONTRACT** is dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between the City of Kansas City, Missouri, a constitutionally chartered municipal corporation (“City”) and Green Wave Technology, Inc. (“Contractor”), whereby Contractor shall provide Utility Services to the City in accordance with the terms and conditions contained in this contract.

**Sec. 1. Definitions.**

"**Accounting Period**" is defined as one calendar month of which there must be twelve within each calendar year.

"**Agreement**" shall refer to this Utility Concessions Agreement for the Kansas City Convention and Entertainment Facilities.

"**CEF**" is defined as "Convention and Entertainment Facilities" and is the name of the department of the City that administers this agreement.

"**City**" shall refer to the City of Kansas City, Missouri, a constitutionally chartered municipal corporation of the State of Missouri.

"**Director**" is defined as the Executive Director of CEF, his or her designee or successor who is authorized to determine compliance with the terms of this Agreement and to exercise all of City's rights under this Agreement, except termination rights and rights requiring appropriation of funds by City Council.

"**Client**" will refer to any entity or individual that schedules with and contracts with CEF for the use of part or all of the Premises.

"**Customer**" will refer to any person who attends an event at the Premises.

"**Equipment**" shall refer to items relating to the provision of services provided for in this agreement by either the Contractor or the City.

"**City Equipment**" shall refer to the equipment owned by the City.

"**Commission Rate Fee**" shall refer to the compensation owed to City from Contractor in consideration of the rights and privileges granted hereunder.

"**Contractor**" shall refer to Green Wave Technology, Inc.

"**Contractor Premises**" shall refer to that space in the Facility specifically designated for use by the Contractor to provide services on an exclusive basis as described below.

"**Contractor Services**" means the provision of electrical power, water and wastewater, compressed air, natural gas, temporary telephone installation, and wired internet service by Contractor at the CEF as determined by a Lessee who will pay for such Services on a prearranged fixed fee charge basis.

"**Exclusivity**" shall refer to the exclusive rights and privileges granted by City to Contractor under this Agreement.

"**Exhibitor Services**" shall mean the provision of all utility and communication services to exhibitors of trade, convention or public shows for which Contractor shall have exclusive right of sales.

"**Facilities Use License Agreement**" shall mean an Agreement between the City and "Lessee", which sets forth the terms and conditions of the Lessee's use of the CEF.

"**GAAP**" shall mean reference to "Generally Accepted Accounting Principles".

"**Gross Sales**" shall mean the total amounts paid or payable to Contractor for Services rendered pursuant to the terms of the Utility Agreement whether such amounts be evidenced by cash, check, credit, charge account or otherwise and shall include the amounts received from the sales of all such services, together with the amount received from all orders taken or received for Facility, whether such orders be filled from there or elsewhere, less only any sales or other taxes collected with the provision of Services and paid to the appropriate taxing authority. In no event shall there be deducted from Gross Sales any taxes imposed upon the operations or existence of Contractor (such as, without limitation, income taxes (whether federal, state or municipal) franchise taxes, use taxes or other similar impositions, nor shall there be deducted any amount or reserve for bad debts from sales on credit or bank charges for credit card sales.

"**Lessee**" shall mean any party, whether it be a group, individual, corporation or other entity, holding an event in the CEF pursuant to a Facilities Use License Agreement (as defined herein).

"**Monthly Amount Due City**" shall refer to Monthly Gross Sales for each service type multiplied by the "% to City" listed on the Compensation Schedule. The sum of all such products, for all 'service types' shall be the 'Commission amount due to City'.

"**Monthly Gross Sales by Service Type**" shall mean for each 'service type' this shall be the total amount invoiced by Contractor for a calendar month. Any amounts invoiced but not collected shall be included in the Monthly Gross Sales from Concessions.

"**Monthly Reimbursable Expenses**" shall mean reimbursable expenses to include expenses for approved work performed on a time and material basis at the request of the "City". All expenses must be supported by documentation acceptable to City expense. Electrical power

cables, breaker boxes or other electrical wiring, fixtures or switches, piping valves, and other plumbing fixtures or appurtenance which are not permanently installed, are generally not reimbursable items. These expenses shall be billed separate and not by reduction in the Monthly Revenue submitted to the City for "Services". Similarly, the 'time' to install electronic or utility services for CEF customers, tenants or exhibitors generally will not be a reimbursable expense.

**"Premises"** are defined as certain properties and facilities that are under the management of CEF and utilize as their primary address 301 W. 13th Street, Kansas City, Missouri 64105. Under this agreement, the Premises include the Convention Center, Municipal Auditorium, Barney Allis Plaza, American Royal Center. Within the Convention Center are public spaces commonly known as Level 3 Exhibit Hall, 2100 meeting rooms, 2200 meeting rooms, the Conference Center, Lobby 2400, the Grand Ballroom, all common spaces in between. Within the Municipal Auditorium are spaces commonly known as Municipal Arena, the Music Hall, the Little Theatre and the Lower Exhibition Hall as well as other offices and storage areas.

**"Services"** shall refer to all services incorporated into this Agreement, specifically those stated in Section 2 of this document.

**"State"** is defined as the government of the State of Missouri.

**"Temporary Utility Services"** shall refer to the operation of providing temporary electrical installations, water and wastewater, natural gas connections, wired internet and telephone services to those users of the CEF on a temporary cash basis.

## **Sec. 2. Services to be performed by Contractor.**

This agreement is considered a "Turnkey" operation. The Contractor is responsible for performing each of the following requirements either through its own work force or through a qualified subcontractor. The Contractor shall be the SOLE contact point and the SOLE responsible party to whom the City shall hold accountable for the proper functioning of the services and/or material required under this Agreement.

A. **Services to be performed by Contractor.** Contractor shall provide temporary utilities services at competitive industry rates for clients, exhibitors, leaseholders and tenants of the facilities for the following services:

1. IP Telephone Service
2. Wired Internet Access
3. Wireless Internet Access
4. Electrical Power
5. Water, Wastewater
6. Gas and Compressed Air

- B. **Event related maintenance and repair.** The City may from time to time also require the services of the Contractor to perform event-related maintenance and repair services on a time and material basis. Payment for these services shall be approved in writing prior to Contractor performing the work, and shall be billed to the City in accordance with rates set forth in attachment 1, labor and material markup rate, attached hereto, and made part hereof.

**Sec. 3. Event Related Services.**

- A. **Meetings.** Contractor understands and acknowledges that, due to the nature of the convention and entertainment business, it will be necessary for Contractor to be available to meet with Lessees to plan their needs and services at CEF events. Contractor hereby agrees that it will attend any such meeting with a Lessee or potential user of the City Facilities upon City's request with no compensation due to Contractor.

- B. **Service Desk.** Provide a Service Desk which is to be staffed during, move-in, open days and move-out times of all events requiring the services granted herein. Contractor shall locate a service desk during the event period at times and in a location that is mutually agreed to by the Contractor, Lessee and the City.

Contractor agrees the service desk will be staffed at all times by trained personnel skilled in customer relations. The Service Desk shall have a twofold purpose: not only will it serve as the principal technical center for all Contractor orders and issues it shall also serve as a point of contact for customers on all issues. The Contractor's personnel shall be responsible for contacting the City representative in a timely manner of any event related issues, problems, or requests that are the City's responsibility. The City agrees to provide the Service Desk with the communication devices to convey these issues.

- C. **Removal of Equipment.** Contractor shall immediately remove all temporary equipment following its disconnection at the conclusion of each event and return the Service Facilities to their original condition.
- D. **Obstructions.** No wiring or plumbing installation shall extend across pedestrian aisles unless absolutely necessary to service the Lessees and crossing of the pedestrian isle is authorized by the City. The City retains the right to direct the Contractor(s) to cross an aisle or to refuse to cross an aisle.
- E. **Unsafe Installations.** The Contractor shall monitor all exhibitor/Lessee installations during the event period to insure against unsafe and hazardous connections made by Contractor or Lessee. If such connections are noticed, Contractor shall be responsible for resolving the unsafe situation immediately, with the assistance of the City if necessary.



**Sec. 4. Exclusivity Rights of Contractor.**

- A. **Exclusivity.** Contractor shall have the exclusive rights within the Premises to provide the following services ("Utility and Telecommunication Services"):
1. **Telecommunications.** The provision of telecommunications equipment and services to client and customer.
  2. **Wired Internet.** The provision of wired Internet access to customer and client.
  3. **Wireless Internet.** The provision of wireless Internet access to customer and client.
  4. **Electrical Hook-Ups.** The provision of temporary electrical hook-ups or additional power as required to client and customer beyond the use of standard 110 volt wall outlets.
  5. **Other Utilities.** The provision of compressed air, water, natural gas and wastewater connections to all exhibitors and attendees.
  6. **Standard Wall Outlet.** Where the needs of the Lessee exceed the load demands of a standard wall outlet, Lessee must select the approved Contractor for additional electrical supply.
- B. **Exceptions to Exclusivity.** Notwithstanding anything in this Agreement to the contrary, Contractor's Concession Rights shall be subject to the following exceptions:
1. **Distributed Antenna System.** The facilities cellular "DAS" Distributed Antenna System will be excluded from the scope of the RFP. The successful Contractor will not perform any work related to the DAS System.
  2. **Other Services.**
    - a. Lessee may occasionally use standard 110 volt wall outlets, at the discretion of the City, without assistance or charges from Contractor.
    - b. City reserves the right to allow Lessees of both premises to use in-house service personnel for utility service connections when such action is deemed to be in the best interest of the City as determined by the Director.

- c. The installation, maintenance and operation of permanently installed utility services and fixtures such as electrical wall outlets, telecommunications and data connections, water fountains, kitchen utilities, restroom facilities, heating ventilation, air conditioning and sinks are excluded unless the Contractor(s) damage such fixtures during the performance of work defined in this Agreement.

**Sec. 5. Exclusivity Rights of City.**

- A. **Reservation of rights.** The City specifically and exclusively reserves all rights for any equipment or service (including emerging technology) that is not specifically contracted for as a result of this Agreement.
- B. **City Sponsored Events.**
  - 1. Rights granted herein shall not be inferred, implied, or construed to prevent or prohibit the City from providing service to City sponsored events or Contractor may be requested to provide service for these events at a reduced cost to the City.
  - 2. If City requires services in support of City events or City sponsored events at the Facilities, then Contractor shall provide such Services at no charge, except actual charges incurred by Contractor for equipment rental and/or labor, which shall be paid by City, at its option, in response to an invoice from Contractor.
- C. **Suspension of Services.** Contractor shall be required to suspend or modify its operations at the direction of City, if City determines it is in its best interest; provided, however, that none of Contractor's Equipment and/or labor shall be utilized by Lessees of the City when Contractor is excluded from providing said services.

**Sec. 6. Scope of Services to be performed by Contractor.**

**Sec. 6.1. Performance of Services.**

- A. **Complimentary Wireless Internet (Clients).** The City reserves the right to require the Contractor to provide complimentary wireless internet bandwidth access at no charge, to any City client, at the City's request and sole discretion.
- B. **Complimentary Wireless Internet (lobbies/common areas).** Contractor shall provide complimentary wireless internet access in all lobbies and common areas, 24 hours per day.
- C. **In-House Food and Beverage Catering/Concessionaire.** Contractor shall provide utility service at labor and material costs as identified in Attachment 1

(excluding telephones and the internet) to the facilities In-House Food and Beverage Concessionaire as appropriately requested in the area of adjoining areas where the Contractor is contracted to perform work.

- D. **Waiver of Commission Rate.** City may elect to waive all or any portion of the Commission Rate Percentage for select national conventions, travel and meeting-industry events, major sports-related events, and other events expected to have a significant economic impact on the greater Kansas City Area, as determined by the City in its sole discretion. In the event the City makes such election, Contractor represents that it shall reduce its pricing to the designated facility user by an amount equivalent to the City-elected reduction of the Commission Rate Percentage.
- E. **Scheduling.** Except as otherwise provided in this Agreement, Contractor agrees to provide all required services in accordance with the Contract granted herein when any event or attraction is scheduled within the facilities. The Contractor agrees services will be available twenty-four (24) hours per day, seven (7) days per week, or as needed to service clients.
- F. **Electronic Ordering of Services.** Contractor upon inception of this Agreement must have capability of receiving orders for services via the internet through a secure web-site owned by the Contractor.

**Sec. 6.2. Cancellation, Termination or Interruption of Event.** Contractor understands and agrees that City reserves the right, in its sole discretion, to cancel, interrupt or terminate any event (public or private). Contractor hereby agrees, that it will not make, against City, any claim for damages to Contractor arising out of any lawful act of City, its officers, agents, employees or representatives.

**Sec. 6.3 Occupancy of Premises.**

- A. **Use of Premises.**
  - 1. Contractor shall have the right to the peaceful use of Premises as set forth in this Agreement and in accordance with applicable laws and regulations.
  - 2. Should Premises be disrupted during the term of this Agreement by remodeling or the construction of additional facilities, these disruptions shall not constitute grounds for financial responsibility, grievance or default against the City.
- B. **Conduct of Other Business.** Contractor shall use Premises solely for the transaction of business that is directly related to the obligation(s) of this Agreement. Premises shall not be used for sales or any other services as part of or related to any other business owned, operated, or in which Contractor participates.



- C. **Accepting of Premises.** Contractor shall accept the Premises in an "as is" condition and keep clean and orderly all assigned areas, temporary or permanent including loading docks. Contractor is responsible for accepting all deliveries to and/or for Contractor's operation and, to the extent possible, shall schedule deliveries to occur outside event activities that are scheduled within the Premises.

**Sec. 6.4. Premise Damage/Repair.**

- A. **Repair.** The Contractor shall be responsible for and repair all damage to buildings due to carelessness of employees under their employment or direction, and exercise reasonable care to avoid any damage to the Customer's property. The Contractor will report to the City any damage which may exist or may occur during the occupancy thereof. All repairs to be scheduled must be approved in advance by the City.
- B. **Notification.** Contractor shall give City prompt notice followed by formal written notice of any fire or damage occurring to the premises and a copy of all notices by Contractor of any claim for bodily injury occurring within the building.
- C. **Maintenance.** The Contractor must schedule maintenance with the CEF representative to avoid service interruptions during peak periods.

**Sec. 6.5 Facility Equipment Maintenance.** Contractor is responsible for the general maintenance and care of utility boxes within the exhibition area of the City Facilities. This includes, but is not limited to, the monitoring of utility covers, elimination of debris caused by Contractor and the repair/replacement of minor problems or damage as designated by the City (i.e., blown fuses, broken face plates, broken valves). Contractor must get City pre-approval before proceeding with repairs.

**Sec. 6.6 Signage.** Contractor shall not erect, maintain or keep at the Premises any structure or equipment of any kind, except as approved within this agreement and with the written consent of City. Contractor shall not make any alteration in, or additions to nor post any sign upon, any part of the Premises or permit signs to be posted for advertising of services of any nature, on Contractor's Premises without prior written permission from the Director.

**Sec. 6.7 Inventory and Equipment.**

- A. **Start-up Equipment.** Contractor is responsible for obtaining, at Contractor's sole cost and expense, the equipment necessary to satisfy the requirements of this Agreement. Contractor shall submit to City a list of "Startup" equipment when submitting Proposal for this Agreement. Contractor shall provide and install as necessary all equipment to allow compatibility between in-house service connections and Contractor equipment. All electrical equipment shall comply with all applicable City of Kansas City, Missouri standards, National Electric Code standards, Underwriters' Laboratory standards, and be compatible with

building power. Contractor shall have sufficient quantities of the Service Equipment available to satisfy a 2,000 (10'x10') booth trade show which utilizes 70% of all meeting rooms, ballrooms, general assembly halls, and registration areas.

- B. **Damaged or broken equipment.** Any property of the City damaged or broken by the Contractor will be the sole responsibility of Contractor to replace or reimburse the City at the discretion of the City at the current replacement cost.
- C. **Removal.** Contractor shall not remove any article, piece of equipment, or other items furnished by City, for any reason, without the prior, express written permission of the Director.

#### **Sec. 6.8 Utilities and Environmental.**

##### **A. Utilities.**

- 1. **Use.** Contractor shall use reasonable care to avoid waste of utilities and energy. Contractor will cease use, of equipment, materials or processes which violate contamination or pollution control ordinances, and regulations of governmental agencies authorized to issue or monitor it. City shall be responsible for maintaining sewer lines, unless Contractor's negligence shall have been the cause necessitating such maintenance, repair or replacement.

##### **B. Environmental.**

- 1. **Hazardous Materials.** Contractor shall not store, use or dispose of any hazardous materials on the Premises, except those used in the ordinary course of normal retail operations, unless Contractor first secures the written authorization of City. Contractor agrees to comply with all applicable laws and regulations and any reasonable conditions City may impose, including the submission to City of all Material Safety Data Sheets (MEM) for the hazardous materials to be used and/or stored.
- 2. **Environmental Remediation.** City acknowledges and warrants that Contractor shall not be liable for or required to remove, remediate and/or manage any hazardous substance located on any portion of the Premises, or coming on the Premises from sources off the Premises, except for any hazardous substances resulting solely and directly from Contractor's activities under this Agreement.
- 3. **Recycling Program.** Contractor agrees to cooperate with any recycling program instituted by the City.



## **Sec. 6.9 Contractor Services.**

### **A. Pricing of Services.**

1. Prices of services shall not be higher than those charged for the same services at comparable facilities. Contractor shall meet with the Director or designee at least annually to review the general price structure of all services sold and may, by approval of Director in writing, for good cause shown, increase or decrease the price of any services.
2. Contractor shall perform a survey of three (3) comparable convention centers and provide results to the Convention and Entertainment Facilities, at the City's request.
3. City shall have final approval of all pricing. Contractor must properly post prices on all order forms: the price for both advance event move-in discount orders, non-discounted orders, and floor orders received the day of the event.

## **Sec. 6.10 Contractor Personnel.**

### **A. Access to Premises.**

1. **Event Access.** Contractor shall be entitled to a reasonable number of employees on the Premises to adequately service clients, exhibitors and the public working or attending events. Contractor's employees will be allowed free access to their assigned areas within the Premises, in accordance with security regulations established by the City. City reserves the right to designate a specific entrance he used by all Contractor's employees. Depending on the nature of the event activity this designated entrance may change from time to time.
2. **Events with Admission Charge.** Contractor employees and officers shall be admitted free of charge to the Premises, at any event which the Contractor provides services. City shall permit only appropriately credentialed employees and other personnel of Contractor to be permitted lathe Service Facilities without payment of an admission fee when required. The Director reserves the right to deny entry to any person employed by Contractor in the exercise of this agreement.

### **B. Qualifications and Conduct.**

1. **Attire.** All personnel employed by Contractor shall be neat, clean, and courteous at all times, shall abide by all applicable laws and the Facility rules and regulations and shall wear appropriate uniforms and a badge with the employee name or number legibly imprinted. The type and design

of the uniforms and identification badges are subject to the approval of the Director.

2. **Conduct.**

a. When any employee of Contractor conducts himself in an improper, offensive or disrespectful manner, and fails to observe the standards set for all personnel, upon request of the Director, and/or his/her designee, such employee may be removed from the Premises.

b. Contractor's employees shall furnish good, prompt and efficient service adequate to meet the demands of all users of the Facility. All personnel shall conduct themselves in a first class manner in accordance with the best practices in the hospitality industry.

3. **Certification.** Contractor shall employ, train and supervise personnel with appropriate qualifications and experience and in sufficient numbers to provide all services required under this Agreement. Specifically, Contractor shall provide certified electricians, plumbers, and such other licensed professionals as are needed to successfully and legally satisfy the requirements of this Agreement. Each employee of the Contractor who provides temporary utility installation services shall meet the current licensing requirements of the City of Kansas City, Missouri. Employees shall be responsible for paying all applicable social security, unemployment, workers' compensation and other employment taxes. Personnel must include skilled labor to setup, dismantle and move equipment as needed.

C. **On Site Supervision.**

1. **On Site Manager.** The Contractor(s) shall employ, at all times during the term of the License Agreement, an active, qualified, competent and experienced manager who is satisfactory to the City, available to manage the Contractor'(s) operations, and empowered to represent and act for the Contractor(s) in matters pertaining to day-to-day operations under this Agreement. The Contractor(s) shall include the name of the intended manager and qualifications in the Proposal. The Contractor(s) shall also provide 30-day written notice to the City of any changes as to the identity and 24-hour telephone number(s) of its Manager. If at any time the City finds that the Manager or his/her alternate is unsatisfactory, the Contractor(s) shall replace him/her with one who is satisfactory to the City within ten (10) days.

2. **Master Electrician.** The Contractor(s) shall employ a Master Electrician, who will have the ultimate responsibility to determine that all electrical

equipment installations and services provided the Master Electrician complies with applicable laws, administrative and safety codes.

3. **Journeyman Plumber.** The Contractor(s) shall employ a journeyman plumber, licensed by the State of Missouri and registered with the City of Kansas City, Missouri, who will have the ultimate responsibility to determine that all plumbing equipment, installations and services provided comply with applicable laws and administrative and safety codes.

## **Sec. 6.11 Advertising.**

### **A. Advertising Guidelines.**

1. **Advertising Rights.** All advertising on Premises belongs to the City. Contractor shall not advertise on the Premises without the prior written approval of the of the Director of Conventions and Entertainment Facilities.
2. **Logo.** Contractor shall not use the name or logo of the Facility on any material without the written approval of the Director of Conventions and Entertainment Facilities. City may require Contractor to use specially designed logo on order forms, uniforms etc.
3. **Signage.** Contractor agrees that no signs, advertising displays, or exterior decorations shall be painted on or erected in any manner upon the Premises without the prior written approval of City. All such signs shall conform to reasonable standards established by City with respect to wording, type, size, design, color and location. A concise written description of signage, along with a brief artist's rendering and proposed color scheme shall be submitted to City for review and approval.

**Sec. 6.12 Commissions.** In consideration of the rights granted to Contractor as set forth in this Agreement, Contractor shall pay to City commissions ("Commissions") on Gross Sales obtained by Contractor from providing Services at the rates set forth in the commissions schedule attached hereto as Utility Fee Schedule and made a part hereof. Should the City decide to assess a surcharge to customers on gross sales, 100% of collected revenue generated by the surcharge will belong to the City with no commissions to be paid to Contractor. The cost of billing, collecting, accounting and remitting to the City shall be assumed by Contractor at no cost to the City. See Attachment 2.

## **Sec. 6.13 Sales and Commissions.**

### **A. Statement of Gross Sales; Payment.**

1. By the twentieth (20th) day of each month following the end of each Accounting Period, Contractor shall provide a statement of "Gross Sales"

for such Accounting Period together with payment of Commissions due with respect to such period. Contractor shall provide such statement, categorized by each service type, event, date and job number; and an annual year-to-date accounting of all prior months for the current annual term of the contract. Contractor shall have a seven (7) day grace period from the 20<sup>th</sup> day of the month. However, if the Commissions due to the City are not paid within that time period a late fee charge of five (5) percent will be added to the delinquent amount. including attorney's fees incurred or expended by the City in collection of said delinquent amount due.

2. Additionally, each statement shall be provided in Microsoft Excel (or compatible software) to the email address below.

Statements and electronic files should be sent to:  
Kansas City Convention and Entertainment Facilities  
Attention: Accounting  
301 W. 13th Street  
Kansas City, MO 64105  
[Mark.Cunningham@kcmo.org](mailto:Mark.Cunningham@kcmo.org) / [CEFD-AP@kcmo.org](mailto:CEFD-AP@kcmo.org)

- B. **Books and Records.** Contractor shall maintain accurate books and records in connection with its Agreement with the City, and shall retain such records for a period of at least five (5) years following the conclusion of each Contract Year. City shall have the right, upon reasonable notice being given to Contractor to review and audit Contractor's records of Gross Sales.
- C. **Record Keeping.** Contractor shall use accounting software and other equipment as necessary to properly and accurately record all Gross Sales from the provision of services. Such equipment and records shall be subject to the reasonable approval and inspection of City during regular business hours.

**Sec. 6.14 Bad Debt.** Contractor's failure to collect payment on the account of patrons to whom Contractor has extended credit purchase privileges shall not be deemed as a cause to reduce the Gross Sales on which Commission Fee Payments are based, nor shall it relieve Contractor of the obligation to promptly pay commissions.

**Sec. 6.15 Unpaid Fees.** All unpaid fee payments due City hereunder shall bear a service charge of one and a half (1.5%) per month. If same are not paid and received by City on or before the day of the month in which payments are due. Contractor agrees that it shall pay and discharge all costs and expenditures, including reasonable attorney's fees incurred or expended by City in collection of said delinquent amounts due, including service charges.

**Sec. 6.16 Notice, Place and Manner of Payments.** Payments shall be made by check at the office of the Director, or at such other place in the City of Kansas City, Missouri as City may

hereafter designate, in writing, and shall be made in legal tender of the United States. Checks are to be payable to the City of Kansas City, Missouri.

**Sec. 6.17 Other Fees and Charges.** If Contractor fails, neglects or refuses to perform or fulfill any of the conditions of this Agreement within five (5) days of receipt of written notice from City, should City be required or elect to pay any sum or sums or incur any obligations or expense because of Contractor's failure, neglect or refusal, Contractor will reimburse City for such payments made including all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred.

**Sec. 6.18 Business Records and Reports.**

- A. **Records.** Contractor shall maintain an accurate accounting of all receipts and disbursements connected with the operation of the Rights granted hereunder. All accounting shall be separate from the accounting used for Contractor's personal financial affairs, or any business or business location operated by Contractor. The method of accounting shall be subject to the approval of the Director and shall include the following:
  
- B. **Accounts.**
  - 1. Contractor shall maintain a separate commercial account at a bank diverse from and other accounts. This account shall be exclusively used for all receipts involved in any resulting agreement. Contractor shall maintain real proprietary and nominal account segregating and identifying assets, liabilities, net worth, income and expense in accordance with GAAP.
  - 2. Contractor shall provide and keep in force, at all times, a written authorization to the depository bank(s) for City to obtain information and records from the bank concerning any and all accounts and to inspect the same.
  - 3. At City's request, Contractor will make available copies of certified daily bank deposits with respect to Gross Sales.

**Sec. 18. Scope of City Responsibilities.**

**Sec. 18.1 Contractor Assigned Location.** City shall provide a room for storage and use thereof in Hall A and Hall B of Bartle Exhibition Hall.

**Sec 18.2 Occupancy of Premises.** City shall have the right to inspect all equipment and work for the purpose of examining the state of repair and condition of premises and equipment, and for the purpose of determining whether the terms, covenants, and conditions contained within this agreement are being fully and faithfully observed and performed. City shall have the right to reject the character of service and require that



undesirable practices be discontinued or remedied. Failure of Contractor to take appropriate action after notification from City shall be considered a breach of contract.

**Sec. 18.3 Event Desk Hours of Operation.** City shall have the right to approve or change, with 24 hours' notice, Contractor Event Service Desk hours of operation to adequately meet the demands of events taking place within the Facility. City reserves the right to approve or disapprove placement of Event Service Desk and equipment areas, as well as dates, times and number, whether temporary or permanent.

**Sec. 18.4 Notification.** City shall provide Contractor, in a timely fashion of all information necessary to schedule accordingly and service events within the facilities including those events where Contractor's services are not required. City will make every effort to notify Contractor of definite bookings on a timely basis. Contractor may request from City's Contract Compliance Officer a report of all future bookings in the Facility.

**Sec. 18.5 Receiving Dock.** City shall provide, at its expense, use of dumpsters and trash removal service at the Facility's receiving docks for the nonexclusive use of Contractor. Use the dumpsters only for trash created at the facilities during the normal course of business of servicing city clients.

**Sec. 18.6 Utilities.**

- A. City shall provide and pay for the necessary and reasonable quantities of the following utilities used by Contractor in course of normal operations. Contractor shall use all reasonable care to avoid waste of the following utilities and energy:
1. Domestic Cold Water
  2. Gas (Low Pressure)
  3. Electrical Energy
  4. Wastewater Disposal
  5. Compressed Air
  6. Internet Bandwidth
- B. City shall pay for all sewer charges from Contractor's operations, unless Contractor's negligence shall have been the cause necessitating such maintenance, repair or replacement.

**Sec. 18.7 City Obligations for Repair and Maintenance.**

- A. **Approval.** City retains the right to approve/disapprove all enhancements or fixtures to premises provided by Contractor.
- B. **Payments.** City shall bear the cost for event-related repair and maintenance to the Premises.
- C. **City Responsibility for Maintenance.** City shall maintain the structure and mechanical systems as outlined in this agreement. City shall timely make and pay for all repairs, maintenance and replacements to the Facility (including the Concession Premises), including, without limitation, mechanical and utility systems (including HVAC and exhaust systems), structural components (including floors, walls, roofs and ceilings), excepting only (i) those items expressly stated herein to be the responsibility of Contractor and (ii) repairs necessitated by Contractor's negligence.

#### **Sec. 18.8 Right to Enter, Inspect and Make Repairs.**

- A. **City Right to Enter.** City and its authorized officers, employees, agents, Contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Contractor's operations as is reasonably practicable) to enter upon and in the Contractor's work area for the following purposes:
  - 1. **Inspection.** Inspect such premises to determine whether Contractor has complied and is complying with the terms and conditions of this Agreement.
  - 2. **Maintenance.** Perform maintenance and make repairs to any case where City is obligated to do so or Contractor is obligated but has failed to do so, after City has given Contractor reasonable notice to do so, in which event Contractor shall reimburse City for the reasonable cost thereof promptly upon demand.
  - 3. **Access.** Gain access to the mechanical, electrical utility and structural systems of the Premises for the purpose of inspecting, maintaining and repairing such systems.

#### **Sec. 18.9 Utilities and Environmental Interruption.**

- A. **Service Interruptions.**
  - 1. City shall not be responsible for service interruption(s) if the cause of the interruption is beyond reasonable control of City, or if the interruption(s) result from equipment failures, power outages or maintenance requirements.

2. City shall not be responsible for any associated damage(s) resulting from said service interruptions.
3. City shall retain the right to interrupt utility services as may be required to make new connections, disconnect existing connections, or for regular inspection and/or maintenance requirements.
4. Whenever possible, interruption of utility services for said requirements shall be scheduled in advance with the cooperation of Contractor.
5. City shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God or other work stoppage, federal, state, or local government action, and/or the breakdown or failure of City owned equipment providing that service, or any act or condition beyond its reasonable control. Further, City shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.

**Sec. 18.10 Waiver of Commissions.**

- A. City agrees to not waive any percentages or commissions to lessees of the CEF without notification of Contractor.
- B. City shall have the right to intervene and resolve any dispute between Contractor and Lessees of the CEF should there be a discrepancy that is not resolved in the satisfaction of both parties. The decision of the Director shall be final.

**Sec. 19. Term of Agreement.**

This Contract shall begin on June\_\_, 2020 and shall end on June\_\_, 2021. Subject to annual appropriation by the City Council of Kansas City, Missouri, this Agreement may, at City's option, be renewed on an annual basis for five (5) additional one (1)- year terms.

The Director is authorized to renew this Agreement and/or enter into an amendment to extend the term of this Contract and time of performance for this Contract without City Council approval. Contractor agrees at the expiration of the term or earlier termination hereof, it will surrender possession of the Premises and City's equipment, peaceably and in good condition, excepting wear and tear, and City shall have the right to take possession thereof at such time with or without due process of law.

**Sec. 20. Compensation and Reimbursement.**

As consideration for management of the Utility Services Agreement, Contractor agrees to pay City, each year during the term hereof, a commission rate fee based on a percentage of gross sales per service category as set forth in commission schedule.

**Section 21. Notices.**

All notices required by this Agreement shall be in writing sent by certified U.S. mail, postage prepaid, or commercial overnight courier, to the following:

**City of Kansas City, Missouri:**

Oscar McGaskey, Executive Director  
Kansas City Convention and Entertainment Facilities  
301 W. 13th Street, Suite 100  
Kansas City, Missouri 64105  
E-mail: Oscar.McGaskey@kcmo.org

**Contractor:**

Green Wave Technology, Inc  
Teresa Dresslaer, President  
1600 Genessee, Suite 604  
Kansas City, MO 64102  
E-mail: convention@grnwav.com

**Sec. 22. No Gratuities and Kickbacks.**

The provisions of City's Code Section 3-303, prohibiting gratuities to City employees, and kickbacks by subcontractors, and Code Sections 3-307 and 3-309, imposing sanctions for violations, shall apply to this Agreement.

- A. **Gratuities.** Contractor certifies that it has not and will not offer or give any City employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.
- B. **Kickbacks.** Contractor certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

**Sec. 23. Conflicts of Interest.** The provisions of City's Code of Ordinances Sections 2-2001, 2-2002, 2-2020, 2-2021 and 2-2022 prohibiting City officers and employees from having a financial or personal interest in any contract with City, and Code Sections 2-2100 and 2-2101,

imposing sanctions for violations, shall apply to this Agreement. Contractor certifies that no known officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no known officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Contractor in this Agreement.

**Sec. 24. Prohibition against Contingent Fees.** The provisions of City's Code Section 3-305, prohibiting the retention of persons to solicit contracts for contingent fees, and Code Sections 3-307 and 3-309, imposing sanctions for violations, shall apply to this Agreement. Contractor agrees that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Contractor for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from Contractor price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**Sec. 25. Assignability or Subcontracting.** Contractor shall not assign or transfer any part or all of its obligations or interests in this Agreement without prior written approval of City. If Contractor shall assign or transfer any of its obligations or interests under this Agreement without the City's prior written approval, it shall constitute a material breach of this Agreement. This provision shall not prohibit Contractor from subcontracting as otherwise provided herein.

**Sec. 26. Independent Contractor.** Contractor is an independent Contractor with respect to all services performed under this Agreement. Contractor accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Contractor on work performed under the terms of this Agreement. Contractor shall defend, indemnify and save harmless City from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of City, or Contractor shall be deemed or construed to create any third-party beneficiary or principal and agent Contractor or relationship with City. Contractor is not City's agent and Contractor has no authority to take any action or execute any documents on behalf of City.

**Sec. 27. Minority and Women's Business Enterprises and Workforce.**

City desires that Minority Business Enterprises ("MBE") and Women's Business Enterprises ("WBE") have a maximum opportunity to participate in the performance of City contracts. City desires that all Contractors, subcontractors or assignability thereof for services supplied comply with MBE/WBE goals. The Minority Business Enterprise (MBE) goal for this project is 10% MBE and 5% WBE. Goals shall be applied to "Gross Sales" and maintenance expenditures for the premises.

Contractor shall not sell, subcontract, assign or transfer any part or all of Contractor's obligations or interests without City's prior approval. If Contractor shall sell, subcontract, assign or transfer any part of Contractor's interests or obligations under this Agreement without the prior approval of City, it shall constitute a material breach of this Agreement.

**Sec. 28. General Indemnification.** Contractor shall defend, indemnify, and hold harmless City and any of its agencies, officials, officers or employees from and against all claims, damages, liability, losses, costs and expenses, including reasonable attorneys' fees, arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by Contractor, its employees, agents, or subcontractors, or caused by others for whom Contractor is liable, regardless of whether or not caused in part by any act or omission of City, its agencies, officials, officers, or employees. Contractor's obligations under this section with respect to indemnification for acts or omissions of City, its agencies, officials, officers, or employees shall be limited to the coverage and limits of insurance that Contractor is required to procure and maintain under this Agreement.

**Sec. 29. Insurance.**

A. Contractor shall procure and maintain in effect throughout the duration of this Contract insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Contract, Contractor shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Contractor's Self-Insured Retention.

1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:

- a) Severability of Interests Coverage applying to Additional Insureds.
- b) Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
- c) No Contractual Liability Limitation Endorsement.
- d) Additional Insured Endorsement, ISO form CG20 10, or its equivalent.

2. If applicable, Workers' Compensation Insurance, as required by statute, including Employers Liability with limits of:

Workers' Compensation Statutory Employers Liability \$100,000 accident with limits of:  
\$500,000 disease-policy limit

\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: with a limit of \$1,000,000 written on an “occurrence” basis, covering owned, hired, and non-owned automobiles. If the Contractor owns vehicles, coverage shall be provided on an “any auto” basis. If the Contractor does not own any vehicles, coverage shall be provided on a “hired autos” and “non-owned autos” basis. The insurance will be written on a Commercial Business Auto form or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the Agreement, by Contractor.
  4. If applicable, Professional Liability Insurance with limits per claim and annual aggregate of \$1,000,000.
- B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this Contract. Contractor shall provide to City an execution of this Contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- C. All insurance coverage must be written by companies that have an A.M. Best’s rating of “A-V” or better, and area licensed or approved by the State of Missouri to do business in Missouri.
- D. Contractor’s failure to maintain the required insurance coverage will not relieve Contractor of its contractual obligation to indemnify the City pursuant to Sections 1 and 2. If the coverage afforded is cancelled or changed or its renewal is refused, Contractor shall give at least thirty (30) days prior written notice to City. In the event of Contractor’s failure to maintain the required insurance in effect, City may order Contractor to immediately stop work, and upon ten (10) days’ notice and an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.
- E. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

**Sec. 30. Governing Law.** This Agreement shall be construed and governed in accordance with the law of the State of Missouri. Any action in regard to the Agreement or arising out of its terms and conditions must be instituted and litigated in the courts of the State of Missouri within

Jackson County, Missouri, and in no other. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

**Sec. 31. Compliance with Laws.** Contractor shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract. Contractor, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Agreement.

**Sec. 32. Tax Compliance.** Contractor shall provide proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a precondition to the City making the first payment under this contract or any contract renewal when the total contract amount exceeds \$160,000. If Contractor performs work on a contract that is for a term longer than one (1) year, the Contractor also shall submit to the City proof of compliance with the City's tax ordinances administered by the City's Commissioner of Revenue as a condition precedent to the City making final payment under the contract.

**Sec. 33. Termination of Agreement.**

City may, acting by and through the Director, may declare this Agreement terminated in its entirety in the manner provided in Section 17 (17.1-17.5) hereof, and it may exercise all rights of entry and re-entry, with or without process of law, for one or more of the following events:

- A. **Non-Payment.** If the fees, rentals, charges or other money payments which lessee herein agrees to pay, or any part thereof, shall be unpaid thirty (30) days after the date the same shall become due.
- B. **Default.** If Contractor shall have failed in the performance of any covenant or condition herein required, failure by City to take any authorized action upon such default by Lessee shall not be construed to be or act as a waiver of said default or any subsequent default by Lessee. The acceptance of payments by City from Lessee for any period or periods after a default by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement for failure of Lessee to perform keep or observe any of the terms, covenants or conditions hereof.
- C. **Suspension or Revocation of Act, Power, License, Permit or Authority.** If any act, power, license, permit or authority has been suspended or revoked for any period in excess of thirty (30) days, thereby preventing Contractor from fully complying with all of the rights and obligations of this Agreement.
- D. **Levy or Attachment or Execution Upon.** The levy of any attachment or execution, or of any process of a court of competent jurisdiction which, as a direct consequence of such process, interferes or will interfere with Lessee's occupancy of the Leased Premises and its operations under this Agreement, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed or set aside within a period of thirty (30) days.



- E. **Voluntary Abandonment, Desertion, Vacation or Discontinuance.** If Contractor without the prior consent of City, voluntarily abandons, deserts, vacates or discontinues all or part of its operation of the Concession Rights, or the Concession Premises or any other action that results in a failure by Contractor to provide the public and others with the service contemplated hereunder.
- F. **Changes in Personnel.** Contractor will obtain ten (10) day prior written approval from the City which approval shall not be unreasonably withheld, in order to change personnel for Project Supervisor, Manager or Master Electrician.

**Sec. 34. Termination for Convenience.**

- A. City may, at any time upon ten (10) days' notice to Contractor specifying the effective date of termination, terminate this Contract, in whole or in part. If this Contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.
- B. If this Contract is terminated prior to Contractor's completion of services, all work or materials prepared or obtained by Contractor pursuant to this contract shall become City's property.
- C. If this Contract is terminated prior to Contractor's completion of the services to be performed hereunder, Contractor shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the Contract. Contractor shall prepare an accounting of the services performed and money spent by Contractor up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

**Sec. 35. Defaults and Remedies.**

Contractor shall be in default of this Agreement upon the happening of any of the following events:

- A. If Contractor fails to comply with any of the provisions required of Contractor under this Agreement, and such failure continues for a period of twenty (20) days after written notice is given to Contractor by City; or
- B. If, by operation of law or otherwise, the right, title, or interest of Contractor in this Agreement is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City; or

- C. Upon the occurrence of any one or more of the events as set forth in subparagraphs 1 through 4 of this Section, or upon any other default or breach of this Agreement, City may, at City's option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default:
1. Interplead funds to a court or pay any sum required to be paid by Contractor to parties other than City, and which Contractor has incurred in connection with this Agreement and failed to pay. Any amount so paid in good faith by City, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith will be repaid by Contractor to City on demand; or
  2. Enjoin any breach or threatened breach by Contractor of any covenants, Agreements, terms, provisions or conditions hereof; or
  3. Bring suit for the performance of any covenant devolving upon Contractor for performance or damage thereof, all without terminating this Agreement; or
  4. Terminating this Agreement upon ten (10) days written notice to Contractor, specifying date of termination.

**Sec. 36. Waiver.** Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Contractor to which the same may apply and, until complete performance by Contractor of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

**Sec. 37. Rights and Remedies Cumulative and Not Exclusive.** All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that City may have exercised any remedy without terminating this Agreement shall not impair City's rights thereafter to terminate or to exercise any other remedy herein wanted or to which City may be otherwise entitled.

**Sec. 38. Americans with Disabilities Act.** Contractor agrees to comply, during the course of this Agreement, with all provisions of the Americans with Disabilities Act, as applicable and as amended from time to time.

**Sec. 39. Affirmative Action.** If this contract exceeds \$300,000 and Contractor employs fifty (50) or more people, Contractor shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to

those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Contractor warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Contractor shall:

- A. Submit, in print or electronic format, a copy of Contractor's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years. If, and only if, Contractor does not possess a current certification of compliance, Contractor shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two (2) calendar years.
- B. Require any subcontractor awarded a subcontract exceeding \$300,000 to affirm that subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
- C. Obtain from any subcontractor awarded a subcontract exceeding \$300,000 a copy of the subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, subcontractor does not possess a current certificate of compliance, Contractor shall obtain a copy of the subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.
- D. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Contractor fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, cancelled or suspended, in whole or in part, and Contractor may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

**Sec. 40. Records.**

- A. **For purposes of this section:**
  - 1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this Contract and their delegates and agents.

2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this Contract and all Contract amendments and renewals.
- B. Contactor shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this Contract and all Contract amendments. City shall have a right to examine or audit all Records and Contractor shall provide access to City of all Records upon ten (10) days written notice from the City.
- C. The books, documents and records of Contractor in connection with this Contract shall be made available to the City Auditor, the City's Internal Auditor, the City's Director of Human Relations and the City department administering this Contract within ten (10) days after the written request is made.

#### **Sec. 41. Audit.**

- A. **Location of Records.** Documentation supporting all entries in financial records such that if all records are maintained on the Premises, all supporting information for accounting entries is also maintained on the Premises. If home office and branch accounting is not practiced by Contractor, but instead all accounting is performed at a remote centralized location, then supporting documentation for all revenue receipts shall be available to the City, together with bank deposit receipts, bank statements, payroll worksheets and all expenditures and all information transmitted to the remote accounting.
- B. **Software.** Contractor shall be responsible for the purchase and use of any service accounting software, subject to the prior approval of City, which approval shall not be unreasonably withheld.
- C. **Fee Reimbursement.** Within ninety (90) days after the close of each calendar year hereunder, or portion thereof, Contractor shall furnish to City a sworn statement certified by an independent Certified Public Accountant, as to accuracy of all required record's. If Contractor has overpaid City in any calendar year, then the amount of the overpayment will be credited to Contractor. If Contractor has underpaid City, Contractor shall pay the amount of the underpayment within thirty days. If the report of Gross Sales disclosed by such audit or observation exceeds the amount reported by Contractor by more than two percent (2%), Contractor shall within thirty days after billing, pay any additional fees disclosed by such audit. If no reasonable explanation for the discrepancy can be given, City shall have the right to declare Contractor in default.

**Sec. 42. Headings and Construction of Agreement.** The headings of each session of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used,

shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender. In the event of any conflict between this Agreement and any incorporated Attachments, the provisions of this Agreement shall control.

**Sec. 43. Merger.** This Agreement, including any referenced Attachments, constitutes the entire Agreement between City and Contractor with respect to this subject matter, and supersedes all prior Agreements between City and Contractor with respect to this subject matter, and any such prior Agreement shall be void and of no further force or effect as of the date of this Agreement.

**Sec. 44. Modification.**

- A. **Amendments.** Unless stated otherwise in this Agreement no provision of final Agreement may be waived, modified or amended except by written amendment signed by City and Contractor.
- B. **Communication.** No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this Agreement, shall effect or modify any term or terminology of this Agreement and any such act, conversation or communication shall not be binding upon City or Contractor.

**Sec. 45. Severability of Provisions.** Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

**Sec. 46. Bonds of Surety.**

- A. **Performance and Maintenance Payment Bond.** Upon execution of this Agreement, Contractor shall furnish a Performance and Maintenance Payment Bond to City on City furnished forms executed by a Surety, in the amount of the contract, guaranteeing Contractor's faithful performance of each and every term of this Agreement and all authorized changes thereto, including those terms under which Contractor agrees to pay legally required wage rates including the prevailing hourly rate of wages in the locality, as determined by the Department of Labor and Industrial Relations or by final judicial determination, for each craft or type of worker required to perform under this Contract; guaranteeing the payment of all obligations as provided in Section 107.170, RSMo, and guaranteeing the services and work against faulty workmanship and faulty materials. All Bonds required by the Contract Documents to be purchased and maintained by Contractor shall be obtained from surety or insurance companies

that are duly licensed in the State of Missouri and in the jurisdiction in which the Project is located, if not in Missouri, to issue Bonds or insurance policies for the limits and coverages so required. All surety and insurance companies shall hold an A.M. Best rating of A-, V, or better.

- B. **City Approval.** Be approved by City's Finance Department.
- C. **Issuing Qualifications.** Be qualified to issue bonds at amounts specified in the Department of the Treasury Circular 570; and
- D. **State Licensing.** Be licensed by the State of Missouri to do business in the State of Missouri; and
- E. **Rating.** Retain an A.M. Best rating of "B+, Class V" for Bonds in excess of \$200,000.

**Sec. 47. Buy American Preference.** It is the policy of the City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. When Bids offer quality, price, conformity with specifications, term of delivery and other conditions imposed in the specifications that are equal, the City shall select the Bid that uses manufactured goods or commodities that are manufactured or produced in the United States.

**Sec. 48. Binding Effect.** This Agreement shall be binding upon City and Contractor and their successors in interest.

**Sec. 49. Representations and Warranties.** City and Contractor each certify that it has the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

**Sec. 50. Noise Code.** Contractor shall comply with the provisions of Code Chapter 46, the Noise Control Code.

**Sec. 51. Obtaining Professional Services.** Code Section 2-83, prohibiting contracts with certain attorneys, architects, engineers and other professionals hereunder, shall apply to this Agreement. Contractor certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of the contract serve as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this Agreement.

**Sec. 52. Employee Eligibility Verification.** If this Contract exceeds five thousand dollars (\$5,000), Contractor shall execute and submit an affidavit, in a form prescribed by the City, affirming that Contractor does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S.C. §1324a(h)(3). Contractor shall attach to the affidavit documentation sufficient to establish Contractor's enrollment and participation in an electronic

verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Contractor may obtain additional information about E-Verify and enroll at <https://www.e-verify.gov/>. For those Contractors enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Contractor will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this section. Contractor shall submit the affidavit and attachments to the City prior to execution of the Contract, or at any point during the term of the Contract if requested by the City.

**THIS CONTRACT CONTAINS INDEMNIFICATION PROVISIONS**

IN WITNESS WHEREOF, the undersigned have executed this Agreement this day and year.

**GREEN WAVE TECHNOLOGY, INC.**

\_\_\_\_\_  
Teresa Dresslaer  
Title: President

I hereby certify that I have authority to execute this document on behalf of Contractor.

(Affix Corporate Seal)

**KANSAS CITY, MISSOURI**

By:\_\_\_\_\_  
Oscar McGaskey, Jr.  
Title: Executive Director

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred

\_\_\_\_\_  
Director of Finance