

**Construction Contract**  
**City of Waukesha – Clearwing Systems Integration, LLC**  
 Les Paul Performance Center Project

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to as the City; and Clearwing Systems Integration, LLC , 11101 West Mitchell Street, West Allis, Wisconsin 53214, referred to as Contractor. Together the City and Contractor are referred to as the Parties.

**Recitals**

The City requires the installation of lighting equipment in connection with the rehabilitation and refurbishing of the Les Paul Performance Center in Cutler Park, and has determined that Contractor is qualified to perform the work. Contractor is willing to perform the construction work.

Now, therefore, the City and Contractor agree and contract as follows:

**1. Contractor Work.** Contractor shall perform the following:

- a. Provision of all labor, materials, tools and equipment required to install the following items in the Les Paul Performance Center, according to architectural plans, drawings and specifications provided by the City:

Description	Manufacturer	Part No.	Qty
Desire D60 XTI Lustr+	Electronic Theater Controls	SELD60XTI-L	8
D40/D60 XTI Double Pole Mount	Electronic Theater Controls	D40XTIDPM	4
COLORado 2-Quad Zoom IP	Chauvet	COLORado 2-Quad Zoom IP	6
Vertical Lighting Boom	Clearwing	Custom	2
ColorBurst Powercore 14°	Philips Color Kinetics	123-000015-07	16
Octagonal Surface Mount Box			16
45° Glare Shield	Philips Color Kinetics	120-000103-13	16
Data Enabler Pro	Philips Color Kinetics	106-000004-00	2
Paradigm Architectural Processor	Electronic Theater Controls	P-ACP	1
Net3 One-Port Output Gateway	Electronic Theater Controls	N31G-1F	6
Net3 One-Port Input Gateway	Electronic Theater Controls	N31G-1M	1
Button Control Station	Electronic Theater Controls	UH10005-11	2
10-Button Control Station	Electronic Theater Controls	UH10010-11	2
SmartSwitch Relay Panel	Electronic Theater Controls	SS-241P	1
24-Port PoE Switch			1
Equipment Rack			1
Lot Cable and Accessories			1

- b. Installation of two vertical booms on the interior side walls of the stage.
- c. Hanging all lighting fixtures.
- d. Commissioning the system.
- e. Provision of training on the use of the system to City personnel.

- f. Contractor shall not be responsible for, and the City shall require its electrical contractor to perform, pulling low-voltage cabling, and pulling and terminating all circuit wiring from the existing breaker panel to the relay panel and from the relay panel to the receptacles. Contractor shall be responsible for terminating low-voltage cabling.
2. **Standards for Work.** Contractor shall perform the Work using new materials of good quality, in a workmanlike manner, and in accordance with accepted and customary practices in the industry. Contractor shall be responsible at its sole cost for obtaining all necessary permits, and for complying with all applicable codes and the requirements of the City. Contractor shall ensure that it will employ a sufficient number of workers skilled in their trades to perform the Work according to the terms of this Contract.
3. **Payment.** The City shall pay Contractor a total amount of Fifty-Two Thousand Three Hundred Thirty-Six Dollars (\$52,336.00), as follows:
  - a. Twenty-Six Thousand One Hundred Sixty-Eight Dollars (\$26,168.00) upon execution of this Contract.
  - b. Eighteen Thousand Three Hundred Seventeen Dollars and Sixty Cents (\$18,317.60) upon delivery to the Work site of all equipment listed in section 1.a.
  - c. The remaining balance of Seven Thousand Eight Hundred Fifty Dollars and Forty Cents (\$7850.40), upon satisfactory completion of the Work in full compliance with all terms and conditions of this Contract, and the delivery of lien waivers from itself and all subcontractors and materials providers.
4. **Time.** Contractor shall commence the Work as promptly after execution of this Contract as is possible, and shall complete the Work no later than **June 5, 2015**, subject only to delays for circumstances beyond Contractor's control, provided Contractor recommences work promptly upon the delay circumstances ceasing.
5. **Other Contractors' Work.** Contractor acknowledges that other contractors will be present and working at the Work site, and that there may be conflicts. Contractor agrees that it will cooperate in good faith with other contractors to allow all contractors to complete their work in the most efficient manner possible.
6. **Changes.** This Contract can only be amended by the written mutual agreement of the Parties. No change to the scope of the Work, or the total amount to be paid to Contractor, shall be effective unless done by the written mutual agreement of the Parties.
7. **Warranty.** Contractor warrants that its Work will conform to the terms of this Contract, and warrants its workmanship for a period of one year after completion of the Work. Contractor shall insure that all manufacturer warranties are transferred to the City.
8. **Insurance.** Contractor shall maintain insurance of the following kinds and for at least the following limits, at all times during the performance of the Work. Contractor shall obtain an endorsement making the City an additional insured and loss payee. All policies shall be from insurers licensed to issue such policies in Wisconsin.
  - a. Commercial general liability, \$1,000,000 per occurrence, \$2,000,000 aggregate.
  - b. Builders risk, to the value of the improvements to be created by the Work.
  - c. Excess liability umbrella, \$1,000,000.
  - d. Worker compensation, to statutory requirements.
9. **Assignment Prohibited.** This Contract, or the performance of the Work, may not be assigned by either Party without the written consent of the other.

10. **Payment of Claims.** Pursuant to Wis. Stats. §779.14(1e), Contractor shall pay all claims for labor, services, materials, plans, or specifications performed, furnished, procured, used, or consumed in the performance of the Work, and maintain a list of all subcontractors, suppliers, and service providers performing, furnishing, or procuring labor, services, materials, plans, or specifications under this Contract.
11. **Direct Payments to Subcontractors.** Pursuant to Wis. Stats. §779.14(1m)(d)(2)a., the City may make direct payments to any subcontractors or pay Contractor with checks that are made payable to the Contractor and to one or more subcontractors.
12. **Performance Bond.** Pursuant to Wis. Stats. §779.14(1m)(d)(2)b., Contractor shall obtain and deliver to the City, promptly upon execution of this Contract, a payment and performance bond in the amount of the total payment amount shown in section 3, conditioned on the faithful performance of this Contract and the payment to every person, including every subcontractor, supplier, or service provider, of all claims for payment for labor, services, materials, plans, or specifications performed, furnished, or procured for the purpose of performing the Work. No assignment, amendment or change of this Contract will release the sureties on the bond.
13. **Notices.** All notices required by this Contract, and all other communications between the Parties, shall be addressed as follows:
  - To the City:       Attention Ron Grall  
                          City of Waukesha Dept of Parks Recreation & Forestry  
                          1900 Aviation Drive  
                          Waukesha WI 53188
  - To Contractor:    Attention Jill Maurer  
                          Clearwing Systems Integration, LLC  
                          11101 West Mitchell Street  
                          Milwaukee WI 53214
14. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other to contracts, and have no vicarious liability for the other's acts or omissions.
15. **Indemnification.** Contractor shall indemnify and hold the City harmless from any and all claims, demands, causes of action, lawsuits, penalties, liabilities or other obligations of any kind arising out of, or connected in any way with, Contractor's performance of the Work.
16. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
17. **Corporate Authorization.** The individuals executing this Contract on behalf of the Parties represent that they are duly authorized to bind the Parties contractually. The Parties represent that the execution of this Contract is not prohibited by the Parties' articles of incorporation, by-laws or other internal operating orders, or by any applicable law, regulation or court order. The Parties shall provide proof upon request.
18. **Assistance of Counsel, Voluntary Contract.** The Parties acknowledge that they have either had the assistance of legal counsel in the review and execution of this Contract, or have voluntarily waived the opportunity to do so; that they have read and understand each of this Contract's terms, conditions and provisions, and their effects; and that they have executed this Contract freely, of their own volition, and not under conditions of duress.

19. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
20. **Costs of Enforcement.** The Parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching Party will pay the non-breaching Party's costs incurred in such legal action, including actual attorney fees. If a judgment is taken, then costs of enforcement will be added to the judgment.
21. **Integration.** This Contract embodies the entire agreement of the Parties with respect to the subject matter expressed herein. All other inconsistent agreements and understandings of the Parties with respect only to the subject matter expressed herein are superseded and are unenforceable.
22. **Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the Parties to this Contract.
23. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
24. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
25. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. The Parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin, and waive all jurisdictional defenses.

**City of Waukesha**

\_\_\_\_\_  
 By Shawn N. Reilly, Mayor  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Attested by Gina L. Kozlik, City Clerk  
 Date: \_\_\_\_\_

To certify that funds are provided for payment:

\_\_\_\_\_  
 Richard L. Abbott, Director of Finance  
 Date: \_\_\_\_\_

**Clearwing System Integration, LLC**

\_\_\_\_\_  
 By (print name) \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_