

CLEVELAND PUBLIC LIBRARY

Board Meeting

January 17, 2017

**RESOLUTION APPROVING CHANGE ORDER #M008 FOR HEAT
CONVERSION PROJECT AND AUTHORIZING CLEVELAND PUBLIC
LIBRARY TO ENTER INTO A PROJECT CLOSEOUT AND SETTLEMENT
AGREEMENT WITH MARLIN MECHANICAL LLC**

WHEREAS, On February 14, 2013 the Cleveland Public Library entered into a building and construction contract (the "Contract") with Marlin Mechanical LLC for the conversion of the electric heating system to a gas heating system in the Library's Main Building and the Louis Stokes Wing (the "Project"); and

WHEREAS, The original Contract was in the amount of \$639,455.92. This Board approved seven (7) change orders to the Contract increasing the total amount to \$821,313.53. Change Order #M002 in the amount of \$68,750.00 added an electric humidification system to the Project, and Change Order #M005 in the amount of \$21,688.00 added a reverse osmosis system to the Project. The sum of \$148,121.51 remains in the Library's Project fund as Project retainage; and

WHEREAS, A dispute has arisen between the Library and Marlin Mechanical LLC concerning the design, installation, operation and maintenance of the electric humidification system and the reverse osmosis system. The Library claims the humidification system was improperly designed and undersized and has not been working properly, and that the reverse osmosis system is inoperable. The Contractor disputes these claims and further alleges that any failure of the humidification or reverse osmosis systems is due to the Library's improper maintenance of these systems; and

WHEREAS, In order to resolve the dispute to avoid the expense and time of litigation and to close out the Project, the Library and Marlin Mechanical LLC would like to enter into a Project Close Out and Settlement Agreement whereby the Library will be permitted to keep the Project retainage and Marlin will pay the Library an additional \$30,000.00 to cover the costs of upgrading the humidification system and purchasing and installing new components for the reverse osmosis system. The following change order is necessary to deduct the Project retainage from the cost of the work from the Contract:

EXHIBIT 7

Contractor	Change	Amount
Marlin Mechanical LLC	#M008	(\$ 148,121.51)
Deduction for Project retainage under the Contract.		
Total Net Decrease		(\$ 148,121.51)
TOTAL ADJUSTED CONTRACT AMOUNT		\$673,192.02

WHEREAS, The Board of Library Trustees has the authority, in its discretion, to approve written change orders and subsequently amend the contract sum; now therefore be it

RESOLVED, That Change Order #M008 deducting the sum of \$148,121.51 from the Contract between the Cleveland Public Library and Marlin Mechanical LLC reducing the total amount of the Contract to \$673,192.02 is hereby approved, and a Project Closeout and Settlement Agreement providing for payment of \$30,000 by Marlin Mechanical LLC to the Library and the mutual release of the parties is also hereby approved. The Executive Director, CEO is authorized to execute the Change Order, the Project Closeout and Settlement Agreement and such other documents and instruments as are necessary to effectuate the actions authorized by this Resolution, subject to approval of the Chief Legal Officer.

Change Order

PROJECT <i>(Name and address):</i> Cleveland Public Library - Main Library Heat Conversion Project 325 Superior Avenue Cleveland, Ohio 44114	CHANGE ORDER NUMBER: M-8 DATE: 1/6/2017	OWNER: <input checked="" type="checkbox"/> ARCHITECT: <input checked="" type="checkbox"/> CONTRACTOR: <input checked="" type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
TO CONTRACTOR <i>(Name and address):</i> Marlin Mechanical, LLC 6600 Grant Avenue Cleveland, Ohio 44105	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: 3/1/2013 CONTRACT FOR: Mechanical Work	

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)
Reduction of contract value to resolve dispute between Contractor and Owner regarding the humidification system and the reverse osmosis system.

The original Contract Sum was	\$ 639,455.92
The net change by previously authorized Change Orders	\$ 181,857.61
The Contract Sum prior to this Change Order was	\$ 821,313.53
The Contract Sum will be decreased by this Change Order in the amount of	\$ 148,121.51
The new Contract Sum including this Change Order will be	\$ 673,192.02

The Contract Time will be unchanged by Zero (0) days.
The date of Substantial Completion as of the date of this Change Order therefore is 1/6/2017

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Spectrum Energy Concepts, Inc. (Project Manager) ARCHITECT <i>(Firm name)</i> 3346 Arbor Way ADDRESS	Marlin Mechanical CONTRACTOR <i>(Firm name)</i> 6600 Grant Ave., Cleveland, OH 44105 ADDRESS	Cleveland Public Library OWNER <i>(Firm name)</i> 325 Superior Ave., Cleveland, OH 44114 ADDRESS
_____ <i>BY (Signature)</i> _____ <i>(Typed name)</i>	_____ <i>BY (Signature)</i> John Kresila <i>(Typed name)</i>	_____ <i>BY (Signature)</i> _____ <i>(Typed name)</i>
_____ DATE	_____ DATE	_____ DATE

**MUTUAL RELEASE, PROJECT CLOSE OUT AND SETTLEMENT
AGREEMENT BY AND BETWEEN MARLIN MECHANICAL LLC AND
THE CLEVELAND PUBLIC LIBRARY**

This Mutual Release, Project Close Out and Settlement Agreement (“Agreement”) is effective the last date of execution, and is made by and between **Marlin Mechanical LLC**, with an office located at 6600 Grant Avenue, Cleveland, Ohio 44105 (“Contractor”), and the **Cleveland Public Library**, with its principal place of business at 325 Superior Avenue, Cleveland, Ohio 44114 (the “Library”).

RECITALS

- A. The Library and the Contractor (jointly referred to herein as the “Parties”) entered into a building and construction contract (“Contract”) on February 14, 2013 for the conversion of the electric heating system to a gas heating system in the Library’s Main Building and the Louis Stokes Wing (the “Project”).
- B. The original amount of the Contract was \$639,455.92. The Parties entered into seven (7) Change Order amendments to the Contract, Change Orders M001 through M007, increasing the total contract amount to \$821,313.53. Change Order M002 in the amount of \$68,750.00 added an electric humidification system to the Project, Change Order M005 in the amount of \$21,688.00 added a reverse osmosis system to the Project, and Change Order M007 in the amount of \$5,082.00 covered the cost of replacing the distribution tubes for the reverse osmosis system.
- C. A dispute has arisen concerning the design, installation, operation, and maintenance of the humidification system and the reverse osmosis system. The Library claims the humidification system was improperly designed and undersized, and that the reverse osmosis system is

inoperable. The Contractor disputes these claims and further alleges that the Library improperly maintained these systems (“Disputed Matters”).

D. The Parties, without intending to admit any wrongdoing, fault, or liability whatsoever, desire to resolve the Disputed Matters in an effort to avoid the expense and time of litigation.

NOW THEREFORE, in consideration of the foregoing and the mutual promises, covenants and understandings recited herein, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Contractor agrees to execute Change Order M008, reducing the amount of the Contract by \$148,121.51. This sum includes Project Retainage under the Contract and Contractor hereby releases and holds the Library harmless from any claims or demands to said Retainage. A Copy of Change Order M008 is attached to this Agreement and incorporated herein by reference as Exhibit “A”.
2. Contractor further agrees to pay the Library within thirty (30) calendar days of the full execution of this Agreement and receipt of a completed W-9 form from the Library, the sum of \$30,000.00 by certified check or money order made payable to the Cleveland Public Library.
3. In order that the Library may properly close out this Project, the Contractor further agrees to provide the Library with a signed Certification of Contract Completion (attached hereto and incorporated herein as Exhibit “B”), an Affidavit of Compliance with regard to the payment of Prevailing wages on this Project (attached hereto and incorporated herein as Exhibit “C”), and final Lien Wavers and Releases from all subcontractors on the Project, within 30 days calendar days from the full execution of this

Agreement. The Certification of Contract Completion shall be subject to modifications of the Contract contained in Change Order No. 8 and this Agreement.

4. If and to the extent that warranties provided by manufacturers of equipment supplied by Contractor to the Library under the Contract are still in effect, and if and to the extent that such warranties are assignable, Contractor hereby assigns such warranties to the Library. Contractor shall provide Library with all documents in Contractor's possession or control concerning said warranties within thirty (30) calendar days of the full execution of this Agreement.

5. In consideration of the Change Order value and payment described in Sections 1 and 2 of this Agreement, respectively, the receipt and sufficiency of which is hereby acknowledged, the Parties, on behalf of themselves, their officers, employees, agents, assigns, successors, any predecessors in interest or parent companies, hereby irrevocably and unconditionally release, acquit and forever discharge each other and each other's respective officers, directors, employees and agents, successors and assigns of and from any and all claims, causes of action, damages, back charges, demands, losses, expenses, costs, charges and liabilities of whatever kind, nature or description, known or unknown, arising out, by reason of, or in any manner related to the Contract, the Disputed Matters, the Project, or this Agreement.

6. This Agreement shall be construed in accordance the laws of the State of Ohio and inure to the benefit of and will be binding upon the successors and assigns of the Library and Contractor.

7. It is understood and agreed that the exchange of consideration described herein is not to be construed as an admission of any liability, fault, or responsibility on the part of either Party in relation to the Disputed Matters.

8. The Parties agree that each party will be responsible for its own costs, attorney's fees and consultant fees incurred in connection with this Agreement and the actions prescribed herein.

9. The Parties shall keep confidential this Agreement and its terms, and shall not disclose the same, except that disclosure of the terms and conditions of this Agreement shall be allowed to the Parties' attorneys, accountants, auditors, agents, brokers, boards of directors, officers, member, sureties, insurers, reinsurers, regulators, governmental agencies, tax preparers, and financial advisors. Each of the Parties may disclose the terms and conditions of this Agreement insofar as such disclosure may be necessary to enforce its terms, obligations or conditions. Nothing in this Agreement shall prohibit a Party from disclosing this Agreement or the terms and conditions of this Agreement as required by law. Contractor acknowledges that the Library is a public office as defined under Ohio public record laws, and that this Agreement is considered a public record under these laws.

10. This Agreement contains the entire agreement, and supersedes all prior agreements, arrangements or understandings, between Contractor and the Library with regard to the matters set forth herein.

11. This Agreement may not be changed, waived, discharged or terminated, except by an instrument in writing signed by the Party against whom enforcement of the change, waiver, discharge or termination is sought. No failure to act by any Party hereto shall be

deemed to constitute a waiver of any of such Party's rights or remedies hereunder. The waiver by any Party hereto of a breach of any provision or condition of this Agreement shall not operate as or be construed as a waiver of any subsequent breach or of any other provisions or conditions hereof.

12. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their authorized officers at Cleveland, Ohio this _____ day of January, 2017.

Marlin Mechanical LLC

The Cleveland Public Library

By _____

By _____
Felton Thomas Jr., Executive Director, CEO

Date _____

Date _____

EXHIBIT A



Document G701™ – 2001

Change Order

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TO CONTRACTOR <i>(Name and address):</i> Marlin Mechanical, LLC 6600 Grant Avenue Cleveland, Ohio 44105	ARCHITECT'S PROJECT NUMBER: CONTRACT DATE: 2/14/2013 CONTRACT FOR: Mechanical Work	

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)
Reduction of contract value to resolve dispute between Contractor and Owner regarding the humidification system and the reverse osmosis system.

The original Contract Sum was	\$ 639,455.92
The net change by previously authorized Change Orders	\$ 181,857.61
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NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Spectrum Energy Concepts, Inc. (Project Manager)	Marlin Mechanical	Cleveland Public Library
ARCHITECT <i>(Firm name)</i>	CONTRACTOR <i>(Firm name)</i>	OWNER <i>(Firm name)</i>
3346 Arbor Way	6600 Grant Ave., Cleveland, OH 44105	325 Superior Ave., Cleveland, OH 44114
ADDRESS	ADDRESS	ADDRESS
BY <i>(Signature)</i>	BY <i>(Signature)</i>	BY <i>(Signature)</i>
<i>(Typed name)</i>	John Kresila <i>(Typed name)</i>	<i>(Typed name)</i>
DATE	DATE	DATE

Certification of Contract Completion
State of Ohio Standard Forms and Documents

Project Name Cleveland Public Library Contract Number
Project Location 325 Superior Ave, Cleveland OH 44114 Contractor Marlin Mechanical LLC

Exceptions (attach additional pages if necessary)

Required Completion Date

Table with 2 columns: Exceptions and Required Completion Date. Contains text describing contract modifications and completion dates.

Contractor Certification

Contractor certifies that all Work, except as noted above, is 100 percent complete, is in conformance with the Contract Documents and that all other requirements for final payment and release of retainage have been completed.

Name

Signature Date

CM and A/E Certifications

Each firm signing below certifies, based on actual observation and knowledge prior to signing, that all Work, except as noted, has been completed in substantial compliance with the contract documents.

Construction Manager (if applicable)

Name

Signature Date

Architect/Engineer

Name

Signature Date

Owner Acceptance

Name

Signature Date

Contracting Authority

Contract Acceptance (check one)

- Partial
Final (all work finished with no exceptions noted)

Name

Signature Date



Department of Commerce

Division of Industrial Compliance

EXHIBIT C

Bureau of Wage and Hour Administration
6606 Tussing Road - PO Box 4009
Reynoldsburg, OH 43068-9009
Phone 614-644-2239 | Fax 614-728-8639
TTY/TDD 800-750-0750
www.com.ohio.gov

An Equal Opportunity Employer and Service Provider

John R. Kasich, Governor
Andre T. Porter, Director

Affidavit Of Compliance

PREVAILING WAGES

I, _____
(Name of person signing affidavit) (Title)

do hereby certify that the wages paid to all employees of

(Company Name)

for all hours worked on the

(Project name and location)

project, during the period from _____ to _____ are in
(Project Dates)

compliance with prevailing wage requirements of Chapter 4115 of the Ohio Revised Code. I further certify that no rebates or deductions have been or will be made, directly or indirectly, from any wages paid in connection with this project, other than those provided by law.

(Signature of Officer or Agent)

Sworn to and subscribed in my presence this _____ day of _____,
20_____.

(Notary Public)

The above affidavit must be executed and sworn to by the officer or agent of the contractor or subcontractor who supervises the payment of employees. This affidavit must be submitted to the owner (public authority) before the surety is released or final payment due under the terms of the contract is made.