



# Huntsville, Alabama

305 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 12/5/2024

**File ID:** TMP-4911

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**Department:** General Services

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to execute Change Order No. 3 and Final between the City of Huntsville and Garber Construction for the Huntsville Aquatic Center Phase 4.

Resolution No.

**Finance Information:**

**Account Number:** 4013-14-00000-523040-000000000

**City Cost Amount:** \$69,226.92

**Total Cost:** \$6,634,306.71

**Special Circumstances:**

**Grant Funded:** NONE

**Grant Title - CFDA or granting Agency:** N/A

**Resolution #:** N/A

**Location: (list below)**

**Address:** 2213 Drake Avenue

**District:** District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☒ District 5 ☐

**Additional Comments:**

Change Order No. 3 and Final is for the installation of a 3M diving board and platform to include an allowance for independent testing for grounding of the platform.



## **RESOLUTION NO. 2024-**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, and the Mayor that the contract with Garber Construction Company, Inc. for Construction Services for the Huntsville Aquatic Center Phase 4 located at 2213 Drake Avenue, Huntsville, Alabama, approved and executed by the City of Huntsville, Alabama on the 11th day of May, 2023, be and the same is hereby amended as is reflected on Change Order No. 3 and Final attached hereto.

**BE IT FURTHER RESOLVED** that the total contract amount be hereby is amended from Six Million Five Hundred Sixty-Five Thousand Seventy Nine Dollars and 79/100s (\$6,565,079.79) on behalf of the City of Huntsville, a municipal corporation in the State of Alabama to Six Million Six Hundred Thirty-Four Thousand Three Hundred Six Dollars and 71/100s (\$6,634,306.71), including this Change Order No. 3 and Final in the amount of Sixty Nine Thousand Two Hundred Twenty-Six Dollars and 92/100s (\$69,226.92) said Change Order is substantially in word and figures as attached hereto and identified as “Change Order No. 3 and Final to the contract between City of Huntsville and Garber Construction Company, Inc. for the construction services of the Huntsville Aquatic Center Phase 4,” consisting of three (3) pages together with the signature of the City Council President and an executed copy of said document being permanently kept on file in the office of the City Clerk of the City of Huntsville, Alabama.

**ADOPTED** this the 5th day of December, 2024.

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President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 5th day of December, 2024.

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Mayor of the City of Huntsville,  
Alabama

# "EXHIBIT B"

CITY OF HUNTSVILLE, ALABAMA

## CONTRACT CHANGE ORDER

CHANGER ORDER NO: 3

DATE: 11/20/2024 PROJECT: Huntsville Aquatic Center Phasse 4

TO: Garber Construction Company, Inc.  
(Contractor)

**TERMS:** You are hereby authorized, subject to the provisions of your contract for this project, to make the following changes thereto in accordance with the attached Change Order Request and supporting documents and to

**FURNISH:** The necessary labor, materials, and equipment to CMR#36 R1 - 3M Diving Board

TOTAL ADDITION OR DEDUCTION TO CONTRACT PRICE (NOTE: Numbers in parentheses are deductions).

For this Change	\$ <u>69,226.92</u>	\$ <u>69,226.92</u>
ORIGINAL CONTRACT PRICE		\$ <u>6,464,000.00</u>
Net total previous Change Orders		\$ <u>101,079.79</u>
Previous revised Contract Price		\$ <u>6,565,079.79</u>
This Change Order No. <u>3</u> ADD		\$ <u>69,226.92</u>
Revised Contract Price this date		\$ <u>6,634,306.71</u>

Extension of time resulting from this Change Order 260 (Indicate no. of calendar days).

The amount of this Change Order will be the responsibility of City of Huntsville

This contract modification constitutes full and mutual accord and satisfaction for all time and all cost related to this change. By acceptance of this Contract Modification, the Contractor hereby agrees that the modification represents an equitable adjustment to the Contract, and further, agrees to waive all right to file any further claims or changes arising out of or as a result of this change, or the accumulation of executed Contract Modifications on this Contract.

The Contractor and Owner(s) hereby agree to the terms of this Change Order as contained herein.

### CONSENT OF SURETY

The Ohio Casualty Insurance Company  
(Company)

By Mike LeCroy  
(Authorized Representative) **Mike LeCroy**  
**Attorney-In-Fact**

### RECOMMENDED

By [Signature]  
(Design Engineer or Architect)

By [Signature]  
(COH Facilities Project Manager)

By [Signature] <ES>  
(Director of General Services)

### CONTRACTING PARTIES

Garber Construction Company, Inc.  
(Contractor)

By [Signature]  
(Authorized Representative)

### CITY OF HUNTSVILLE, ALABAMA

By \_\_\_\_\_  
(Its Mayor)

By \_\_\_\_\_  
(President of City Council)

Date December 5, 2024

The parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.





This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

Certificate No: 8211407-975188

## POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Jerry LeCroy, Mike LeCroy

all of the city of BIRMINGHAM state of AL each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 22nd day of February, 2024.



Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

State of PENNSYLVANIA ss  
County of MONTGOMERY

On this 22nd day of February, 2024 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal  
Teresa Pastella, Notary Public  
Montgomery County  
My commission expires March 28, 2025  
Commission number 1126044  
Member, Pennsylvania Association of Notaries

By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

### ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

### ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 20th day of November, 2024.



By: Renee C. Llewellyn  
Renee C. Llewellyn, Assistant Secretary



"EXHIBIT A"

UPDATED 10/07/2015

CONTRACT MODIFICATION REQUEST

DATE: 11/7/2024 CMR NUMBER: 36R1 - 3M Diving Board  
PROJECT: Huntsville Aquatics Center Phase 4  
OWNER: City of Huntsville  
ARCHITECT: Nola / Van Peurse Architects  
CONTRACTOR: Garber Construction Company, Inc.

DESCRIPTION OF CHANGE (BY GENERAL CONTRACTOR):

Provide and install a 3M Diving Board and Platform to include a not to exceed allowance for independent testing for grounding of the platform. (see breakdown).

1. TOTAL COST (CONTRACTOR TO ATTACH DETAILED BREAKDOWN): \$69,226.92  
2. TIME EXTENSION IN CALENDAR DAYS (ATTACH JUSTIFICATION): 260  
THIS CHANGE AFFECTS THE CRITICAL PATH OF THE PROJECT  
3. SUBMITTED BY:  
A. CONTRACTOR  
B. ARCHITECT

\*\*\*BOTTOM SECTION TO BE FILLED OUT BY CITY OF HUNTSVILLE REPRESENTATIVE\*\*\*

4. INITIATED BY: Michael McDaniel, Garber Construction

5. OWNER'S CLASSIFICATION:

CONTRACT MODIFICATION DUE TO:

- ☒ VALUE ENGINEERING OR COST REDUCTION  
☒ CHANGES IN PROJECT SCOPE OF WORK  
☐ OWNER REQUESTED UPGRADE  
☐ UNFORESEEN CONDITIONS  
☐ TECHNICAL COORDINATION

6. THIS CHANGE IS SUBMITTED FOR REVIEW AND APPROVAL AND IS CLASSIFIED AS ONE OF THE FOLLOWING TYPES:

- ☒ MINOR CHANGE OF A MONETARY VALUE AND NOT REQUIRED FOR COMPETITIVE BIDDING.  
☐ CHANGES TO THE ORIGINAL CONTRACT NECESSITATED BY UNFORESEEABLE CIRCUMSTANCES ARISING DURING THE COURSE OF THE WORK.  
☐ EMERGENCIES ARISING DURING THE COURSE OF THE WORK.  
☐ CHANGE FOR ALTERNATES PROVIDED FOR IN THE ORIGINAL BIDDING WHERE THERE IS NO DIFFERENCE IN PRICE OF THE CHANGE FROM THE ORIGINAL BEST BID ON THE ALTERNATE.  
☐ CHANGE NOT CONTEMPLATED WHEN THE PLANS AND SPECIFICATIONS WERE PREPARED AND THE PROJECT WAS BID AND WHICH IS IN THE PUBLIC INTEREST AND DOES NOT EXCEED 10% OF THE CONTRACT PRICE.  
☐ CHANGE NOT CONTEMPLATED WHEN THE PLANS AND SPECIFICATIONS WERE PREPARED AND THE PROJECT WAS BID AND WHICH IS IN THE PUBLIC INTEREST AND EXCEEDS 10% OF THE CONTRACT PRICE AND CONSTITUTES EXTRAORDINARY CIRCUMSTANCES.

7. I HAVE REVIEWED, UNDERSTAND AND RECOMMEND THIS CHANGE WITH NO EXCEPTIONS:

- A. CoH ESTIMATOR  
B. CoH PROJECT MANAGER  
C. DEPARTMENT HEAD (CUSTOMER)  
D. CoH FACILITIES PROJ MANAGER  
E. DEPARTMENT HEAD (GS)

\*\*\*THIS EXECUTED FORM DOES NOT CONSTITUTE A CHANGE ORDER. THIS DOCUMENT IS AN ACKNOWLEDGEMENT BY THESE DESIGNATED REPRESENTATIVES THAT THEY RECOMMEND TO THE CITY OF HUNTSVILLE'S CITY COUNCIL TO APPROVE THE CHANGE IN CONTRACT SUM, SCOPE AND OR TIME STATED HEREIN. THE CITY OF HUNTSVILLE'S CITY COUNCIL MUST APPROVE ALL CHANGE ORDERS.\*\*\*

00270-39

REVISED 11-3-2015 LEGAL APPVD