



# Huntsville, Alabama

308 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 3/9/2023

**File ID:** TMP-2650

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**Department:** General Services

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to execute Change Order No. 1 to the agreement between the City of Huntsville and Miller & Miller, Inc., for construction services for the John Hunt Park Kids Space Phase II.

**Type of Document:** Resolution No.

**Finance Information:**

**Account Number:** 4013-14-00000-521016-00000000

**City Cost Amount:** \$214,028.23

**Total Cost:** \$6,994,778.23

**Special Circumstances:**

**Grant Funded:** NO

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

**Resolution #:** N/A

**Location: (list below)**

**Address:** 2010 Airport Road

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

**Additional Comments:**

Upsizing various trees and changes to landscape plans per revised drawings; additional shade sail structures; Change stepping stones to concrete in lieu of limestone blocks; additional grading work.

## RESOLUTION NO. 23-

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, and the Mayor that the contract with Miller & Miller, Inc., for Construction Services for the John Hunt Park Kids Space Phase II, Huntsville, Alabama, approved and executed by the City of Huntsville, Alabama on the 14th day of April, 2022, be and the same is hereby amended as is reflected on Change Order No. 1 attached hereto.

**BE IT FURTHER RESOLVED** that the total contract amount be hereby is amended from Six Million Seven Hundred Eighty Thousand Seven Hundred Fifty Dollars and 00/100s (\$6,780,750.00) on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, to Six Million Nine Hundred Ninety-Four Thousand Seven Hundred Seventy-Eight Dollars and 23/100s (\$6,994,778.23), including this Change Order No. 1 in the amount of Two Hundred Fourteen Thousand Twenty- Eight Dollars and 23/100s (\$214,028.23), said Change Order is substantially in word and figures as attached hereto and identified as “Change Order No. 1 to the contract between City of Huntsville and Miller & Miller, Inc., for the construction services at the John Hunt Park Kids Space Phase II,” consisting of seven (7) 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-Treasurer of the City of Huntsville, Alabama.

**ADOPTED** this the 9th day of March, 2023.

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

**APPROVED** this the 9th day of March, 2023.

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Mayor of the City of Huntsville,  
Alabama

# "EXHIBIT B"

CITY OF HUNTSVILLE, ALABAMA

## CONTRACT CHANGE ORDER

CHANGE ORDER NO. 1

DATE: 01/23/2023  
TO: Miller & Miller, Inc.

PROJECT: John Hunt Park Kids Space Phase II

(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#1-Rev 3, CMR #2-Rev 3, CMR #3-Rev 3, & CMR #4  
(Description of work to be done or changes to be made)

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

For this Change <u>\$ 214,028.23</u>	\$	
ORIGINAL CONTRACT PRICE	\$	6,780,750.00
Net total previous Change Orders	\$	0.00
Previous revised Contract Price	\$	6,780,750.00
This Change Order No. <u>1</u> ADD (DEDUCT)	\$	<u>214,028.23</u>
Revised Contract Price this date	\$	6,994,778.23

Extension of time resulting from this Change Order 0 (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 future 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

Fidelity and Deposit Company of Maryland  
(Company)

By [Signature] Josh Price, Attorney-in-Fact  
(Authorized Representative)

### RECOMMENDED

By [Signature] Collin Orcutt (Schoel)  
(Design Engineer or Architect)

By [Signature]  
(COH Facilities Project Manager)

By [Signature]  
(Director of General Services)

### CONTRACTING PARTIES

Miller & Miller, Inc.

(Contractor)

By [Signature] Mark E. Miller, President  
(Authorized Representative)

CITY OF HUNTSVILLE, ALABAMA

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

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

Date \_\_\_\_\_

**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND  
POWER OF ATTORNEY**


KNOW ALL MEN BY THESE PRESENTS: That the ZURICH AMERICAN INSURANCE COMPANY, a corporation of the State of New York, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, a corporation of the State of Illinois, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND a corporation of the State of Illinois (herein collectively called the "Companies"), by **Robert D. Murray, Vice President**, in pursuance of authority granted by Article V, Section 8, of the By-Laws of said Companies, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute, and appoint **Renee ELLIS, Paul B. SCOTT JR., Thomas J. GENTILE, Billie Jo SANDERS, David J. DURDEN, Milton A. KOPF and Josh PRICE**, all of Montgomery, Alabama., EACH, its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed: **any and all bonds and undertakings**, and the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Companies, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the ZURICH AMERICAN INSURANCE COMPANY at its office in New York, New York., the regularly elected officers of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at its office in Owings Mills, Maryland., and the regularly elected officers of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at its office in Owings Mills, Maryland., in their own proper persons.

The said Vice President does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article V, Section 8, of the By-Laws of said Companies, and is now in force.

IN WITNESS WHEREOF, the said Vice-President has hereunto subscribed his/her names and affixed the Corporate Seals of the said **ZURICH AMERICAN INSURANCE COMPANY, COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, this 2nd day of December, A.D. 2021.



**ATTEST:**  
**ZURICH AMERICAN INSURANCE COMPANY  
COLONIAL AMERICAN CASUALTY AND SURETY COMPANY  
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

  
\_\_\_\_\_  
By: **Robert D. Murray**  
Vice President

  
\_\_\_\_\_  
By: **Dawn E. Brown**  
Secretary

**State of Maryland  
County of Baltimore**

On this 2nd day of December, A.D. 2021, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, **Robert D. Murray, Vice President and Dawn E. Brown, Secretary** of the Companies, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and acknowledged the execution of same, and being by me duly sworn, depose and saith, that he/she is the said officer of the Company aforesaid, and that the seals affixed to the preceding instrument are the Corporate Seals of said Companies, and that the said Corporate Seals and the signature as such officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporations.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



  
\_\_\_\_\_  
Constance A. Dunn, Notary Public  
My Commission Expires: July 9, 2023

## EXTRACT FROM BY-LAWS OF THE COMPANIES

"Article V, Section 8, Attorneys-in-Fact. The Chief Executive Officer, the President, or any Executive Vice President or Vice President may, by written instrument under the attested corporate seal, appoint attorneys-in-fact with authority to execute bonds, policies, recognizances, stipulations, undertakings, or other like instruments on behalf of the Company, and may authorize any officer or any such attorney-in-fact to affix the corporate seal thereto; and may with or without cause modify or revoke any such appointment or authority at any time."

### CERTIFICATE

I, the undersigned, Secretary of the ZURICH AMERICAN INSURANCE COMPANY, the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY, and the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that Article V, Section 8, of the By-Laws of the Companies is still in force.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY at a meeting duly called and held on the 15th day of December 1998.

RESOLVED: "That the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the Seal of the Company may be affixed by facsimile on any Power of Attorney...Any such Power or any certificate thereof bearing such facsimile signature and seal shall be valid and binding on the Company."

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the COLONIAL AMERICAN CASUALTY AND SURETY COMPANY at a meeting duly called and held on the 5th day of May, 1994, and the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seals of the said Companies, this 23rd day of January, 2023.



*MJ Pethick*

By: Mary Jean Pethick  
Vice President

**TO REPORT A CLAIM WITH REGARD TO A SURETY BOND, PLEASE SUBMIT A COMPLETE DESCRIPTION OF THE CLAIM INCLUDING THE PRINCIPAL ON THE BOND, THE BOND NUMBER, AND YOUR CONTACT INFORMATION TO:**

Zurich Surety Claims  
1299 Zurich Way  
Schaumburg, IL 60196-1056  
[www.reportsfclaims@zurichna.com](mailto:www.reportsfclaims@zurichna.com)  
800-626-4577

# "EXHIBIT A"

## CONTRACT MODIFICATION REQUEST

DATE: 11/3/2022 CMR NUMBER: 1 Rev. 3  
 PROJECT: Kid Space - Skate Park Improvements @ John Hunt Park Phase II  
 OWNER: City of Huntsville  
 ARCHITECT: Schoel  
 CONTRACTOR: Miller & Miller, Inc.

### DESCRIPTION OF CHANGE (BY GENERAL CONTRACTOR):

Up-sizing of various trees and changes to landscape plans per revised drawings provided by Schoel Engineering

\*Time extension pending receipt and approval of schedule impact documentation.

1. TOTAL COST (CONTRACTOR TO ATTACH DETAILED BREAKDOWN): \$106,330.52  
 2. TIME EXTENSION IN CALENDAR DAYS (ATTACH JUSTIFICATION): 0  
 THIS CHANGE AFFECTS THE CRITICAL PATH OF THE PROJECT N/A

### 3. SUBMITTED BY:

A. CONTRACTOR

Contractor - Miller & Miller, Inc.

B. ARCHITECT

Schoel

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

4. INITIATED BY: City of Huntsville

### 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)

[Signature]  
[Signature]  
[Signature]

\*\*\*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.\*\*\*

\*\*\* PLEASE ATTACH QUOTES WITH SIMILAR BREAKDOWNS FROM INCLUDED SUBCONTRACTORS AND SUPPLIERS \*\*\*

# "EXHIBIT A"

## CONTRACT MODIFICATION REQUEST

DATE: 11/3/2022 CMR NUMBER: 2 Rev. 3  
 PROJECT: Kid Space - Skate Park Improvements @ John Hunt Park Phase II  
 OWNER: City of Huntsville  
 ARCHITECT: Schoel  
 CONTRACTOR: Miller & Miller, Inc.  
 DESCRIPTION OF CHANGE (BY GENERAL CONTRACTOR):  
Additional Shade Sail Structures to provide additional shade for Kids Space area and Skatepark area.

\*Time extension pending receipt and approval of schedule impact documentation.

1. TOTAL COST (CONTRACTOR TO ATTACH DETAILED BREAKDOWN): \$159,921.90  
 2. TIME EXTENSION IN CALENDAR DAYS (ATTACH JUSTIFICATION): 0  
 THIS CHANGE AFFECTS THE CRITICAL PATH OF THE PROJECT N/A

3. SUBMITTED BY:  
 A. CONTRACTOR mls Contractor - Miller & Miller, Inc.  
 B. ARCHITECT Schoel School

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

4. INITIATED BY: Owner

### 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:

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### 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)

[Signature]  
[Signature]  
[Signature]  
[Signature]

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# "EXHIBIT A"

## CONTRACT MODIFICATION REQUEST

DATE: 11/4/2022 CMR NUMBER: 3 Rev. 3  
 PROJECT: Kid Space - Skate Park Improvements @ John Hunt Park Phase II  
 OWNER: City of Huntsville  
 ARCHITECT: Schoel  
 CONTRACTOR: Miller & Miller, Inc.

### DESCRIPTION OF CHANGE (BY GENERAL CONTRACTOR):

Change large 3'x3' Stepping Stones to concrete in lieu of Limestone Blocks. Stepping Stones to be coated with 3 Shades of Thorocast concrete paint as selected by Architect.

Change Order is a credit back to the City of Huntsville

1. TOTAL COST (CONTRACTOR TO ATTACH DETAILED BREAKDOWN): -\$84,196.25  
 2. TIME EXTENSION IN CALENDAR DAYS (ATTACH JUSTIFICATION): 0  
 THIS CHANGE AFFECTS THE CRITICAL PATH OF THE PROJECT N/A

### 3. SUBMITTED BY:

A. CONTRACTOR [Signature] Contractor - Miller & Miller, Inc.  
 B. ARCHITECT [Signature] Schoel

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

4. INITIATED BY: Miller and Miller (Contractor)

### 5. OWNER'S CLASSIFICATION:

#### CONTRACT MODIFICATION DUE TO:

       VALUE ENGINEERING OR COST REDUCTION  
  X   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:

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

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

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\*\*\* PLEASE ATTACH QUOTES WITH SIMILAR BREAKDOWNS FROM INCLUDED SUBCONTRACTORS AND SUPPLIERS \*\*\*



CONTRACT MODIFICATION REQUEST

DATE: 11/1/2022 CMR NUMBER: Four  
PROJECT: Kid Space / Skate Park Improvements - John Hunt Park Phase II  
OWNER: City of Huntsville  
ARCHITECT: Schoel  
CONTRACTOR: Miller & Miller Inc.

DESCRIPTION OF CHANGE (BY GENERAL CONTRACTOR):

Additional grading work required due to large portions of site not within plan tolerance of +/- 0.20 ft. Work will require additional fill and or cut and sungrade compaction.

1. TOTAL COST (CONTRACTOR TO ATTACH DETAILED BREAKDOWN): \$31,972.06  
2. TIME EXTENSION IN CALENDAR DAYS (ATTACH JUSTIFICATION): 0  
☐ THIS CHANGE AFFECTS THE CRITICAL PATH OF THE PROJECT N/A  
3. SUBMITTED BY:  
A. CONTRACTOR [Signature] Contractor - Miller & Miller Inc.  
B. ARCHITECT [Signature] Schoel

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

4. INITIATED BY: Contractor - Miller & Miller Inc.

5. OWNER'S CLASSIFICATION:

CONTRACT MODIFICATION DUE TO:

- ☐ VALUE ENGINEERING OR COST REDUCTION  
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7. I HAVE REVIEWED, UNDERSTAND AND RECOMMEND THIS CHANGE WITH NO EXCEPTIONS:

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B. CoH PROJECT MANAGER  
C. DEPARTMENT HEAD (CUSTOMER)  
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[Signature]  
[Signature]  
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