

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
PUBLIC WORKS DEPARTMENT**

TO: Mayor and City Council

FROM: Thomas G. Wendorf, P. E., Director of Public Works

THROUGH: Terry M. Brechtel, City Manager

COPIES: Melissa Byrne Vossmer, Louis A. Lendman, Milo D. Nitschke, Andrew Martin, Jason E. Cosby, Tim Palomera, Doug Yerkes, Kenneth Appedole, Charles Leschber, William A. Hensley and file

SUBJECT: St. Mary's Street Parking Garage Closeout

DATE: May 1, 2003

SUMMARY AND RECOMMENDATIONS

This ordinance approves Field Alteration No. 10 in the amount of \$60,175.04 to the contract with Affirmed General Contracting, Inc. in connection with the construction of St. Mary's Street Parking Garage at 400 North St. Mary's Street, Council District 1 and authorizes the City Manager or her designee to accept and execute a settlement agreement regarding payment to the City in the amount of \$250,000.00 for delivery of the completed project.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

This ordinance reflects a decrease in the construction contract by \$60,175.04, and also authorizes the City Manager, or her designee, to approve a settlement agreement with the contractor, substantially in form attached, or as approved by the City Attorney within the next 30 days, in consideration of the payment of \$250,000.00 relative to delivery of the completed project.

The six story, 700 car, St. Mary's Parking Garage was constructed pursuant to Ordinance No. 92178, dated July 27, 2000. Alley work totaling \$29,000 is being deleted from this project. The alley work approved by Ordinances No. 96639 and No. 97362 is being performed by Public Works crews. Additionally, remaining allowances are addressed by this Field Alteration reduction. A site location map is attached (see attachment #1).

POLICY ANALYSIS

Approval of this ordinance will be a continuation of City Council policy to complete approved funded 2000 Parking System Revenue Bond projects.

FISCAL IMPACT

Funds deducted from the construction contract in the amount of \$60,175.04 and retainage funds in the amount of \$250,000.00 will result in a total deduction from the contract of \$310,175.04. These funds will be returned to 2000 Parking Revenue Bonds, their originating funding source.

COORDINATION

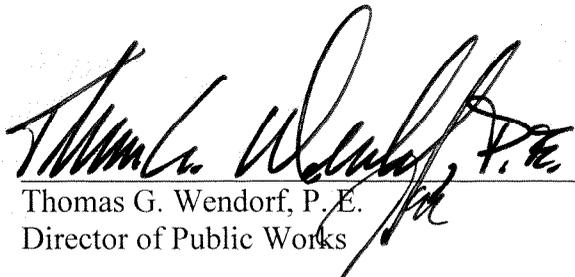
This request for ordinance has been coordinated with the Office of Management and Budget, and the Finance Department.

SUPPLEMENTAL COMMENTS

No additional design fees were generated for this project, therefore a Discretionary Contracts Disclosure Form is not required.

ATTACHMENTS

- 1.) Project Map
- 2.) Field Alteration No. 10
- 3.) Settlement Agreement

 4/18/03

Thomas G. Wendorf, P.E.
Director of Public Works

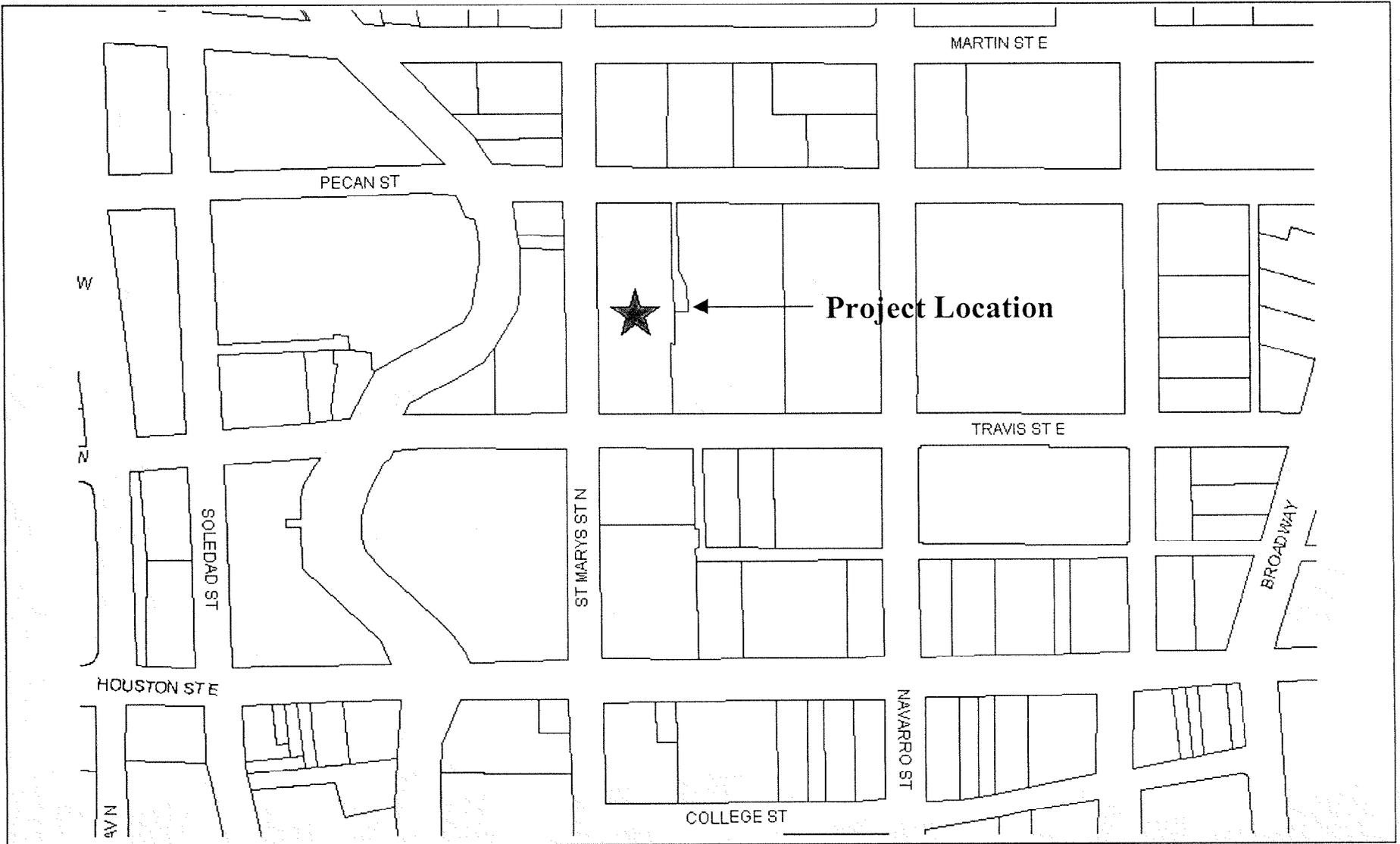


Melissa Byrne Vossmer
Assistant City Manager

Approved:



Terry M. Brechtel
City Manager



St. Marys Parking Garage
Council District No. 1

G.I.S. Location Map



CITY OF SAN ANTONIO
DEPARTMENT OF PUBLIC WORKS
FIELD ALTERATION REQUEST

Attachment # 2
Field Alteration No. 10

Date March 31, 2003

Project Name (as shown on the Work Project Authorization):
St. Mary's Street Garage

The revision or amendment described below in the work originally or previously specified is hereby requested; including all changes in costs. (Described work to be added or deleted. Attach revised plan sheet affected or drawings as required):

Security Allowance	6014.00
Alternate Allowance	8379.06
Termite Control	6178.00
Site Concrete	4010.00
Storm Drainage	29,000.00
Federal ADP Allow	6593.98
Total deductive Change Order	60,175.00

Justification for proposed alteration (description in detail as to why this work is to be added or deleted - use attachments if necessary):

Change in scope of work.

Resulting change in contract cost by this Field Alteration: \$60,175.00 Increase (attach summary)
 Decrease

Resulting in an: Increase of 0 Working Days. (To be negotiated by the Contractor and the City)
 Decrease Calendar

Requested by: Affirmed General Contracting, Inc.
Contractor (type in full name)

City Contractor
City, Consulting Engineer/Architect, Other
(Please specify)

By: _____
(Signature of authorized representative)
Title: Eddie Daly, Chief Operations Officer

RECOMMENDED:

Consultant (Project Engr/Arch Only) _____ Other (if required, i.e. City Dept, Project Mgmt, SAWS, etc.) _____

Firm Name: Alamo Architects, Inc.
Jerry Lammers

City Engineer _____ City Architect – William Hensley, Public Works Department
Dougals W. Yerkes, PhD., P.E.

APPROVED:

City Manager _____ Date _____ Director of Public Works _____ Date _____

FOR CITY USE ONLY:

Professional Services Fees for this Field Alteration are: <input type="checkbox"/> eligible <input type="checkbox"/> ineligible.	
Original Contract Amt. \$ _____	Const. Contg. Fund \$ _____
Previous Approved FAs \$ _____	Previous Approved FA \$ _____
This Field Alteration \$ _____	This Field Alteration \$ _____
Total \$ _____	Total Field Alterations \$ _____
	Balance \$ _____

Attachment # 3
Settlement Agreement

COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT

This COMPROMISE, SETTLEMENT AND RELEASE AGREEMENT ("AGREEMENT") made and entered into by and between the City of San Antonio ("City") and Affirmed General Contractors, Inc. 12015 Radium Dr., San Antonio, Texas 78216 ("AGC").

WHEREAS, on or about August 2, 2000, the City and AGC entered into a contract for the construction of the St. Mary's Parking Garage, referenced as Project #627174 (the "Contract").

WHEREAS, on or about March 22, 2002 the City took possession of the project.

WHEREAS, the parties desire to resolve all pending disputes and claims, known or unknown, by and between the parties and arising from the contract and performance thereof, and release each other from any further liability under the contract, except as limited below.

For mutual consideration, the receipt, adequacy and sufficiency of which is hereby admitted, the parties agree as follows:

- 1) The City and AGC shall execute a deductive change order in form as attached hereto as Exhibit A incorporated herein for all purposes.
- 2) Out of the sums currently held as retainage by the City, City shall pay AGC the sum of \$ _____ representing final payment of the contract balance.
- 3) Execution of the change order referenced above and receipt of the payment reference above shall constitute a full and complete release of all claims by the parties arising out of or related to the Contract. This release shall specifically inure to the benefit of the City, its employees and agents.
- 4) On or before _____, 2003 or such other date certain as agreed by the parties, AGC shall provide the City with all closeout documents referenced in the March 20, 2003 letter of Sherri L. Rice, a copy is attached as Exhibit B attached hereto and incorporated herein.
- 5) Receipt of close-out documents referenced above shall constitute a full and complete release of all claims by the parties arising out of or related to the Contract. This release shall specifically inure to the benefit of the AGC, its employees and agents, and insurers and sureties.
- 6) It is understood and agreed that this settlement is the compromise of a disputed claim and that the payment made is not to be construed as an admission of wrongdoing or liability by either party and specifically intended to avoid litigation and buy their peace.
- 7) Each party declares and represents that it understands and agrees to this compromise and settlement, that it relies wholly upon its judgment, belief, or knowledge of the nature, extent, effect and duration of the alleged damages and liability therefore and is made without reliance upon any statement or representation of the released party or parties or their representatives.
- 8) Each party further represents and warrants that no promise, inducement or agreement not herein expressed has been made and that this Agreement contains the entire understanding and agreement between the parties, and the terms recited are contractual

and not a mere recital.

- 9) It is understood that all terms, conditions, and obligations as set forth in this Agreement shall be held in the strictest confidence by the parties, their agents, attorneys and representatives and shall not be disclosed, in any manner, to other persons or entities not a party to this dispute.
- 10) It is understood and agreed that the laws of the State of Texas shall govern this Agreement.
- 11) This document may be executed in duplicate originals.
- 12) The effective date of this Agreement shall be March 31, 2003.

THE UNDERSIGNED HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE AND FULLY UNDERSTAND IT.

STATE OF TEXAS s

COUNTY OF BEXAR s

APPROVED AS TO BOTH FORM AND SUBSTANCE:
CITY OF SAN ANTONIO

By:
Its:

On this day, before me personally appeared _____ to me known to be the person named herein and who executed the foregoing Compromise and Settlement Agreement and Release, and acknowledged to me that he/she voluntarily executed the same.

SUBSCRIBED AND SWORN TO BEFORE ME, on the ____ day of ____, 2003.

[seal]

Notary Public, State of Texas

AFFIRMED GENERAL CONTRACTORS, INC.

March/April, 2003.

Hans Gors, President

STATE OF TEXAS

COUNTY OF BEXAR

On this day, before me personally appeared Hans Gors to me known to be the person named herein and who executed the foregoing Compromise and Settlement Agreement and Release, and acknowledged to me that he/she voluntarily executed the same.

SUBSCRIBED AND SWORN TO BEFORE ME, on the ____ day of ____, 1998.

[seal]

Notary Public, State of Texas