



CITY OF SACRAMENTO

June 10th, 1980

REAL ESTATE AND STREET ASSESSMENTS DIVISION
915 I STREET
CITY HALL ROOM 207

SACRAMENTO, CALIFORNIA 95834
TELEPHONE (916) 449-5626

CITY MANAGER'S OFFICE
RECEIVED
JUN 4 1980

IRVIN E. MORAES
REAL ESTATE SUPERVISOR

City Council
Sacramento, California

Honorable Members In Session:

SUBJECT: Approval of Private Contract for Country Scene
Commercial, Improvement Proceeding No. 4964

BACKGROUND INFORMATION

As a condition of approval of the tentative subdivision map for Country Scene Commercial, attached is a private contract between Wincorp Industries Inc., as owners, and C. V. O'Neill, Inc., as contractor, for the construction of the subdivision improvements.

FINANCIAL DATA

There is no cost or income to the City.

RECOMMENDATION

It is recommended that said attached contract be approved.

Respectfully submitted,

R. H. Parker
City Engineer

Recommendation Approved

Walter J. Slipe
City Manager

RHP:CGP:bd
Attachment
File #4964

APPROVED
BY THE CITY COUNCIL

JUN 10 1980

OFFICE OF THE
CITY CLERK

June 10th, 1980
DISTRICT NO. 8

THE AMERICAN INSTITUTE OF ARCHITECTS



AIA Document A101

Standard Form of Agreement Between Owner and Contractor

where the basis of payment is a

STIPULATED SUM

1977 EDITION

*THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH
AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION*

Use only with the 1976 Edition of AIA Document A201, General Conditions of the Contract for Construction.

This document has been approved and endorsed by The Associated General Contractors of America.

AGREEMENT

made as of the Twelfth day of May in the year of Nineteen
Hundred and Eighty

BETWEEN the Owner: WINCORP INDUSTRIES INC.

and the Contractor: C. V. O'Neill, Inc.

The Project: Frontage Improvements for Franklin Boulevard and
Mack Road, Country Scene Commercial

Construction

The ~~XXXXXX~~ Manager: SPINKS ENGINEERING CORPORATION

The Owner and the Contractor agree as set forth below.

Copyright 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1967, 1974, © 1977 by the American Institute of Architects, 1735 New York Avenue, N.W., Washington, D. C. 20006. Reproduction of the material herein or substantial quotation of its provisions without permission of the AIA violates the copyright laws of the United States and will be subject to legal prosecution.

ARTICLE 1

THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, the Conditions of the Contract (General, Supplementary and other Conditions), the Drawings, the Specifications, all Addenda issued prior to and all Modifications issued after execution of this Agreement. These form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 7.

ARTICLE 2

THE WORK

The Contractor shall perform all the Work required by the Contract Documents for
(Here insert the caption descriptive of the Work as used on other Contract Documents.)

the frontage improvements for Franklin Boulevard and Mack Road, Country Scene Commercial, including clearing excavating; and installing of sewer main, storm drain, concrete, curbs, gutters, sidewalks and asphalt paving. The Contractor shall furnish all labor, material, equipment and appliances which shall be required to complete the Work.

ARTICLE 3

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

The Work to be performed under this Contract shall be commenced at such time as the City of Sacramento stakes out the location of the boundary lines at the site of and, subject to authorized adjustments, Substantial Completion shall be achieved not later than the Work.

September 1, 1980

(Here insert any special provisions for liquidated damages relating to failure to complete on time.)

ARTICLE 4

CONTRACT SUM

The Owner shall pay the Contractor in current funds for the performance of the Work, subject to additions and deductions by Change Order as provided in the Contract Documents, the Contract Sum of **One Hundred Sixty-Two Thousand Dollars (\$162,000.00)**.

The Contract Sum is determined as follows:

(State here the base bid or other lump sum amount, accepted alternates, and unit prices, as applicable.)

ARTICLE 5

PROGRESS PAYMENTS

Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided in the Contract Documents for the period ending the **thirtieth (30)**-- day of the month as follows:

Not later than **fifteen (15)**---days following the end of the period covered by the Application for Payment **ninety ----** percent (**-90 %**) of the portion of the Contract Sum properly allocable to labor, materials and equipment incorporated in the Work and **ninety -----** percent (**-90 %**) of the portion of the Contract Sum properly allocable to materials and equipment suitably stored at the site or at some other location agreed upon in writing, for the period covered by the Application for Payment, less the aggregate of previous payments made by the Owner; and upon Substantial Completion of the entire Work, a sum sufficient to increase the total payments to **ninety ----** percent (**-90 %**) of the Contract Sum, less such amounts as the Architect shall determine for all incomplete Work and unsettled claims as provided in the Contract Documents.

(If not covered elsewhere in the Contract Documents, here insert any provision for limiting or reducing the amount retained after the Work reaches a certain stage of completion.)

Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Specific legal advice should be obtained with respect to deletion, modification, or other requirements such as written disclosures or waivers.

ARTICLE 6
FINAL PAYMENT

Final payment, constituting the entire unpaid balance of the Contract Sum, shall be paid by the Owner to the Contractor when the Work has been completed, the Contract fully performed, and a final Certificate for Payment has been issued by the Architect.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 Terms used in this Agreement which are defined in the Conditions of the Contract shall have the meanings designated in those Conditions.

7.2 The Contract Documents, which constitute the entire agreement between the Owner and the Contractor, are listed in Article 1 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

(List below the Agreement, the Conditions of the Contract (General, Supplementary, and other Conditions), the Drawings, the Specifications, and any Addenda and accepted alternates, showing page or sheet numbers in all cases and dates where applicable.)

7.2.1 Plans and Specifications regarding the frontage improvements for Franklin Boulevard and Mack Road (Country Scene Commercial) prepared by Terra Engineering, Sacramento, California, and dated by the City of Sacramento Engineering Department as of July 23, 1979.

7.2.2 Subdivision Improvement Agreement dated August 2, 1979, entered into by and between the City of Sacramento and Dalton G. Feldstein, Joyce Feldstein, Harry Tonkin and Arika Komoorian, Paul H. Guttman and Lila L. Guttman, Trustees Of The Paul H. Guttman and Lila L. Guttman Living Trust, and Trust, and The Washington University, a Missouri corporation and Wincorp Industries Inc. The obligations to be performed by "Subdivider" under said Subdivision Improvement Agreement shall be performed by Contractor except those set forth in Paragraph 8.

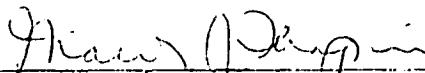
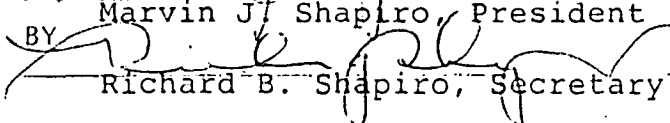
7.2.3 Agreement dated May 12, 1980, between Wincorp Industries Inc. ("Owner") and C.V. O'Neill ("Contractor") regarding Frontage improvements for Franklin Boulevard and Mack Road (Country Scene Commercial) ("Agreement").

See Rider attached hereto and by this reference incorporated herein.

This Agreement entered into as of the day and year first written above.

OWNER
WINCORP INDUSTRIES INC.,
a California corporation

CONTRACTOR
C. V. O'NEILL, INC.


BY Marvin J. Shapiro, President

BY Richard B. Shapiro, Secretary


BY C. V. O'Neill

RIDER

That certain agreement ("Agreement") herein) dated as of the twelfth day of May, 1980, (and all of the Contract Documents more particularly described therein) being entered into concurrently herewith by and between WINCORP INDUSTRIES INC., a California corporation ("Owner" herein) and C.V. O'NEILL, INC., a _____ corporation ("Contractor" herein) is hereby supplemented and amended as follows:

1. Article 7 of the Agreement is hereby amended by adding thereto the following:

7.3. For the purposes of this Agreement, all references to the word "Architect" shall mean Spinks Engineering Company, the Construction Manager of the Work.

7.4. Owner shall secure and pay for the building permit and for all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Agreement.

7.5 Before commencing the Work, Contractor shall furnish to Owner labor, materials and performance bonds naming Owner as obligee in form and with surety satisfactory to Owner guaranteeing that the Work shall be completed free of mechanic's and materialmen's liens. The securing of said bonds by Contractor as provided for herein shall increase the Contract Sum as set forth in Article 4 hereof by an amount not to exceed one percent (1%) of the Contract Sum.

7.6 Excepting only items of routine maintenance, ordinary wear and tear and unusual abuse or neglect, Contractor guarantees to Owner and to the City of Sacramento all work executed by him and all supplies, materials and devices of whatsoever nature incorporated in, or attached to the Work, or otherwise delivered to Owner as a part of the Work pursuant to the Contract, to be absolutely free of all defects of workmanship and materials for a period of one year after final acceptance of the entire Work by Owner. Contractor shall repair or replace any or all such work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one year guarantee period without expense of any nature whatsoever to Owner.

In the event that Contractor shall fail to comply with the conditions of the foregoing guarantee within ten (10) days time, after being notified of the defect in writing, Owner shall have the right, but shall not be obligated, to repair, or obtain the repair of, the defect and Contractor shall pay to Owner on demand all costs and expense of such repair. Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, Owner shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to Owner on demand all cost and expense of such repair. The foregoing statement relating to hazards to health and safety shall be deemed to include either temporary or permanent repairs which may be required as determined in the sole discretion and judgment of Owner.

If Owner, at its sole option, makes or causes to be made the necessary repairs or replacements or performs the necessary work, Contractor shall pay, in addition to actual costs and expenses of such repair or work, fifteen percent (15%) of such costs and expenses for overhead and interest at the maximum rate of interest permitted by law accruing thirty (30) days of the date of billing for such work or repairs."

IN WITNESS WHEREOF, the parties hereto have executed this Rider on the day and year first above written.

WINCORP INDUSTRIES INC., a
California corporation

By Marvin J. Shapiro
Marvin J. Shapiro

By Richard B. Shapiro
Richard B. Shapiro
"Owner"

C.V. O'NEILL, INC., a
corporation

By C.V. O'Neill
C.V. O'Neill

"Contractor"