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CITY OF SACRAMENTO

July 15th, 1980

CITY MANAGER'S OFFICE

RECEIVED
JUL 10 1980

IRVIN E. MORAES
REAL ESTATE SUPERVISOR

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

SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 449-5626

City Council
Sacramento, California

Honorable Members In Session:

SUBJECT: Approval of Private Contract for Brigham Estates
Unit No. 3, Improvement Proceeding No. 5077

BACKGROUND INFORMATION

As a condition of approval of the tentative subdivision map for Brigham Estates Unit No. 3, attached is a private contract between John F. Otto, Inc., as Owner, and Teichert Construction, 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 # 5077

APPROVED
BY THE CITY COUNCIL

JUL 15 1980

OFFICE OF THE
CITY CLERK

July 15th, 1980
DISTRICT NO. 6

INSURANCE CERTIFICATES O.K.

Contract Number 497-101

SUB-CONTRACT AGREEMENT

The lender is:

NAME Home Federal Savings & Loan Assoc. of San Diego
5330 Primrose Drive, Suite 120
ADDRESS Fair Oaks, California 95628

Date June 24, 1980

This agreement is by and between

NAME John F. Otto, Inc.
ADDRESS P.O. Box 2858, Sacto., CA 95812
TELEPHONE (916) 441-6870

NAME Teichert Construction
ADDRESS P.O. Box 15002, Sacto., CA 95813
TELEPHONE (916) 484-3311

hereinafter called the Contractor, and

hereinafter called the Sub-Contractor for the work on

College Greens Executive Plaza and Brigham Estates #3
Sacramento

Project per contract with

NAME Carson Development Co., Inc.
ADDRESS 1126 2nd Street, Sacto., CA 95814

HEREINAFTER

called Owner, (and) in accordance with certain plans and specifications prepared by Alan Oshima
dated March 31, 1980 including addendums #

Sub-Contractor having thoroughly informed himself of the conditions surrounding the work by thorough examination and comparison of all plans and specifications insofar as they relate in any way to the work to be undertaken herein, agrees to furnish all material, labor, supervision, tools, appliances, permits and certificates necessary to construct and complete in a workmanlike manner, in strict accordance with said plans and specifications including the general and special conditions and details illustrative thereof, as approved by the Contractor,

Scope of Work: sitework complete including grading, paving, building pads, on- and off-site utilities, frontage improvements, storm drainage, and on-site concrete per Teichert Construction's letter of May 2, 1980 (copy attached). All work per plans sheets 1 of 1 and 1 of 1 and 1 of 2 prepared by Justice & Associates Inc., dated March 31, 1980.

Amount: Office Complex \$142,570.00
Brigham Estates #3 17,820.00

for the sum of:

One Hundred Sixty Thousand, Three Hundred Ninety Dollars \$ 160,390.00

including all taxes and fees which may now or hereafter be levied.

In performance of the work described above the parties agree as follows:

A. Time is the essence of this contract. The Sub-Contractor shall commence the work promptly as directed by the Contractor, and prosecute same energetically and expeditiously, in full cooperation with the Contractor, other Sub-Contractors, and in accord with the requirements of the general construction as determined by the Contractor until fully completed and accepted; taking into account acts of God, strikes, lockouts, and similar action beyond the control of the Sub-Contractor. He shall comply with all State and Federal health, safety and environmental laws, ordinances, codes and regulations of all governmental authorities relating to said work or workmen, employ labor under conditions satisfactory to the Contractor and discontinue the employment on this contract of any employees unsatisfactory to the Contractor; furnish and maintain all insurance policies hereinafter required; insure his own risk in or about the building project, including all his temporary material, structures, tools and equipment used by him or his Sub-Contractors; remove and replace promptly all his defective or non-conforming work or material; report in writing any errors, inconsistencies, or omissions relating to his work; and deliver to the Contractor written applications for progress payments by the 5th day of each calendar month, except the final application which shall be delivered to the Contractor on completion and acceptance of the Sub-Contractor's work. He shall not assign or sublet this contract as a whole nor any moneys due or to become due him hereunder, without previous written consent of the Contractor; and not to deviate from said plans, specifications and details, except on written order of the Contractor.

B. The Sub-Contractor certifies that he is an independent Contractor within the scope of all federal, state, and local codes, acts and ordinances and is solely responsible under all such codes, acts and ordinances for all payroll taxes, deductions, withholdings, and contributions. Sub-Contractor shall protect and fully indemnify the Owner, Contractor and Surety against all liability for claims and liens for labor, materials, equipment and supplies, including attorneys fees, resulting therefrom which may accrue from labor employed by, or materials, equipment and supplies ordered by the Sub-Contractor. Nothing herein shall be construed as affecting the Sub-Contractor's rights to protect himself through claims or liens on his own behalf. Sub-Contractor shall indemnify the Contractor and owner against and save them harmless from any and all claims, suits or liability for injuries to property, injuries to persons, including death, and from any other claims, suits or liability, on account of any act or omission of the Sub-Contractor, or any of his officers, agents, employees or servants. The Sub-Contractor shall maintain Workmen's Compensation Insurance and Public Liability Insurance for Bodily Injury and Property Damage in an amount acceptable to the Contractor continuously during the life of this contract. Such insurance shall cover liability from all hazards including ownership, use, and maintenance of any automotive equipment, and including products and completed operations. At the request of the Contractor, the Sub-Contractor shall procure for the Contractor from the insuring company a certificate of insurance, evidencing the types of insurance and limits carried. Policies shall have a cancellation clause making it mandatory that ten days written notice be given the Contractor before any reduction or cancellation in coverage.

C. The Sub-Contractor shall comply with, observe and be bound by all terms and provisions of any collective bargaining agreements executed by Contractor or on Contractor's behalf, which do not conflict with the terms and provisions of the Collective Bargaining Agreements executed by the Sub-Contractor to the extent that the terms and provisions of such agreements can legally be applied to the work to be done hereunder. Sub-Contractor agrees that if any portion of such work is further sub-contracted such further Sub-Contractor shall be bound by and observe the terms and provisions of such collective bargaining agreements to the same extent as is herein required of Sub-Contractor, and that an express provision imposing such obligation upon the further Sub-Contractor shall be included in any such further sub-contract. Sub-Contractor shall indemnify and save Contractor harmless from and against any liability, claim, loss, damage or cause of action resulting in any way, directly or indirectly, from failure to comply with the requirements of this paragraph.

D. The Contractor shall pay or cause to be paid to the Sub-Contractor, on or before the last day of each month 90% of the approved value of the materials supplied and work performed during the preceding month. If the retention withheld from the Contractor by the Owner is reduced, the retention withheld under this Agreement shall be reduced as applicable to work satisfactorily performed. Sub-Contractor shall furnish, if and when required by Contractor, payroll affidavits, receipts, vouchers, releases or claims of labor, materialmen, and Sub-Contractors performing work or furnishing major items of materials under this Agreement, and it is agreed that no payment hereunder shall be made, except at Contractor's option, until and unless such releases are furnished. When the work is fully performed, accepted, and required guarantees furnished the Contractor, the entire amount retained shall be paid the Sub-Contractor not later than five days prior to the expiration date of the Sub-Contractor's "Mechanic Lien" period or 35 days from the date his work was completed and accepted whichever is first. All payments to the Sub-Contractor are subject to further conditions shown in this contract.

E. The Contractor reserves the rights to retain out of the moneys due or to become due to the Sub-Contractor, an amount sufficient to indemnify the Contractor against loss by reason of lien or claim against the Sub-Contractor, including reasonable cost of litigation thereunder, if the Contractor might be held directly or indirectly liable for such lien or claim, until such liability shall cease to exist; to require as a prerequisite to making any payment to the Sub-Contractor, satisfactory evidence that the Sub-Contractor has paid or made arrangements to pay which are satisfactory to the Contractor, at least 90 per cent of the cost of the total work (labor, materials, taxes, etc.) for which such payment is to be made.

F. The Contractor has the right to make written changes in the plans, specifications and details. The Sub-Contractor shall be governed by such changes on presentation to him. Price allowances for extra work or deductions for reduced work caused by such changes shall be mutually agreed upon in writing. Such agreements shall be subject to arbitration as herein-after provided.

G. In case of dispute as to the true intent of the plans and specifications or of this agreement, either party thereto may demand settlement of the dispute by reference to a Board of Arbitration consisting of one person selected by the Contractor, one person selected by the Sub-Contractor and these two to select a third person. The written decision of any two members of this Board shall be final and binding on both parties hereto. Each party hereto shall pay one-half of the expense of such arbitration. Neglect of either party to appoint an arbitrator within three days after written notice by certified or registered mail has been delivered to his last known address by the party demanding the arbitration shall operate as a waiver of his right to arbitrate and the question in dispute shall be decided by the arbitrator already appointed. No dispute shall interfere with the progress of the general construction.

H. If Sub-Contractor should neglect to prosecute the work diligently and properly or fail to perform any provision of this contract, the Contractor, after three days written notice to the Sub-Contractor, may, without prejudice to any other remedy he may have, make good such deficiencies and may deduct the cost thereof from the payment then or thereafter due the Sub-Contractor; provided, however, that if such action is based upon faulty workmanship, the Architect or Owner shall first have approved such action.

I. During the course of construction, the Sub-Contractor shall remove his waste materials and maintain the premises at all times in a clean and orderly condition. Upon completion of the work under this Agreement, the Sub-Contractor shall remove from the site all temporary structures and debris incident to his operation. If Sub-Contractor fails to clean-up within two days after written notification by the Contractor to do so, the Contractor may proceed with that function as he adjudges necessary and in the manner he may deem expedient, and will deduct the cost thereof from moneys due under this Agreement.

J. Contractor shall not backcharge Sub-Contractor unless Contractor shall have given Sub-Contractor written notice prior to Contractor incurring any cost. Sub-Contractor shall be billed and invoiced within (30) days after the completion of the work for which the backcharge is made.

K. No payment made under this contract, except the final payment, shall be conclusive evidence of the performance of this contract, either in whole or in part, and no payment shall be construed to be an acceptance of defective work or improper materials. In case of loss or destruction of said work by fire, earthquake, or any other cause, and in event that the Contractor is paid any money as payment for such loss or destruction, the Contractor shall pay a just share to the Sub-Contractor. Any riders or special conditions attached hereto shall become a part of this agreement upon the signature of both parties being affixed thereto. In case of default of either party nothing herein shall affect the rights of the injured party to adopt any legal means he may deem necessary to protect his interests and recover damages including reasonable attorney fees from the party in default.

L. If the Contractor fails to make any of the payments provided for herein when due, the Sub-Contractor shall have the right, after five days written notice delivered to the Contractor's last known address, to demand and receive, in addition to the sum due, interest thereon at the rate of ten (10) per cent per annum, beginning on the day following the above mentioned due date.

M. With the execution of this Agreement, Sub-Contractor shall, if required by Contractor, and at Contractor's expense obtain a Labor and Material Bond and Faithful Performance Bond in an amount requested by Contractor. Said bonds shall be secured by a surety company, acceptable to the Contractor.

N. Liquidated damages shall not be assessed against the Sub-Contractor unless they have been assessed against the Prime Contractor because of delays caused by the Sub-Contractor.

O. To the best knowledge and belief of the parties this Agreement now contains no provision that is contrary to Federal or State Law or any ruling or regulation of a Federal or State agency. Should, however, any provision of this Agreement, at any time during its term be in conflict with any such law, ruling or regulation, then such provision shall continue in effect only to the extent permitted. In the event any provision of this Agreement is thus held inoperative, the remaining provisions of this Agreement shall, nevertheless, remain in full force and effect.

P. "Contractors are required by law to be licensed and regulated by the Contractors' State License Board. Any questions concerning the responsibilities of a contractor may be referred to the registrar of the board whose address is:

CONTRACTORS' STATE LICENSE BOARD, 1029 "N" Street, Sacramento, California 95814.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for themselves, their heirs, executors, successors, administrators, and assigns on the day and year first above written.

CONTRACTOR

SUB-CONTRACTOR

JOHN F. OTTO, INC

TEICHERT CONSTRUCTION

By Carl R. Otto Vice-President

By Robert Massa District Manager

XX Corporation Partnership Proprietorship

XX Corporation Partnership Proprietorship

Contractor's State License No. 178809

Sub-Contractor's State License No. 8

Approved and recommended for general use by Sacramento Builders' Exchange, Inc., 1331 T Street, Sacramento, California

