



CITY OF SANTA FE SPRINGS
SPECIAL MEETING OF THE CITY COUNCIL
AGENDA

MONDAY, DECEMBER 2, 2024
AT 5:00 P.M.

CITY HALL COUNCIL CHAMBERS
11710 TELEGRAPH ROAD
SANTA FE SPRINGS, CA 90670

CITY COUNCIL

Jay Sarno, Mayor
William K. Rounds, Mayor Pro Tem
Joe Angel Zamora, Councilmember
Annette Rodriguez, Councilmember
Juanita Martin, Councilmember

CITY MANAGER

René Bobadilla, P.E.

CITY ATTORNEY

Rick Olivarez

CITY STAFF

Assistant City Manager
Fire Chief
Police Chief
Director of Community Services
Director of Finance
Director of Parks & Recreation
Director of Community Development
Director of Police Services
Director of Public Works

Nicholas Razo
Chad Van Meeteren
Aviv Bar
Maricela Balderas
Lana Dich
Gus Hernandez
Cuong Nguyen
Dino Torres
James Enriquez

NOTICES

This City Council Meeting ("Council") will be held in person and will meet at City Hall – City Council Chambers, 11710 E. Telegraph Road, Santa Fe Springs, California. The meeting will be live streamed on the City's YouTube Channel and can be accessed on the City's website via the following link:

https://santafesprings.org/city_council/city_council_meetings/index.php

Americans with Disabilities Act: In compliance with the ADA, if you need special assistance to participate in a City meeting or other services offered by this City, please contact the City Clerk's Office. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

SB 1439: Effective January 1, 2023, City Council Members are subject to SB 1439 and cannot participate in certain decisions for a year after accepting campaign contributions of more than \$250 from an interested person. The Council Member would need to disclose the donation and abstain from voting.

Public Comments: The public is encouraged to address City Council on any matter listed on the agenda or on any other matter within its jurisdiction. If you wish to address the City Council on the day of the meeting, please fill out a speaker card provided at the door and submit it to City Clerk staff. You may also submit comments in writing by sending them to the City Clerk's Office at cityclerk@santafesprings.org. All written comments received by 12:00 p.m. the day of the City Council Meeting will be distributed to the City Council and made a part of the official record of the meeting. Written comments will not be read at the meeting, only the name of the person submitting the comment will be announced. Pursuant to provisions of the Brown Act, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The City Council may direct staff to investigate and/or schedule certain matters for consideration at a future City Council meeting.

Please Note: Staff reports and supplemental attachments are available for inspection at the office of the City Clerk in City Hall, during regular business hours 7:30 a.m. – 5:30 p.m., Monday – Thursday. Telephone: (562) 868-0511.

CALL TO ORDER**ROLL CALL****PUBLIC COMMENTS ON AGENDA ITEMS**

At this time, the general public may address the City Council on agenda items *only*. Please be aware that the maximum time allotted for members of the public to speak shall not exceed three (3) minutes per speaker. State Law prohibits the City Council from taking action or entertaining extended discussion on a topic not listed on the agenda. Please show courtesy to others and direct all of your comments to the City Council.

1. CLOSED SESSION**CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

(Pursuant to Government Code Section 54956.8)

Property: 13081 Telegraph Road (Assessor Parcel No. 8005-012-031)

Agency negotiator: René Bobadilla, City Manager and Cuong Nguyen, Director of Community Development

Negotiating parties: HUGHES MARINO

Under negotiation: Price and Terms

2. CLOSED SESSION**CONFERENCE WITH LABOR NEGOTIATORS**

(Pursuant to California Government Code Section 54957.6)

Agency Designated Representatives: City Manager

Employee Organizations: Santa Fe Springs City Employees' Association, Santa Fe Springs Management and Confidential Employees' Association, and Santa Fe Springs Executive Management Association

3. CLOSED SESSION REPORT**CONSENT AGENDA****4. RESIDENTIAL STREET IMPROVEMENTS 2024-2025 – AWARD OF CONTRACT (PUBLIC WORKS)****RECOMMENDATION: It is recommended that the City Council:**

- 1) Award a construction contract to Toro Enterprises, Inc., of Oxnard, California in the amount of \$6,059,065.00 for the construction of the Residential Street Improvements 2024-2025 Project and authorize the City Manager to execute the agreement; and
- 2) Authorize the City Manager to execute Task Order No. 82 to Southstar Engineering, Inc., for On-Call Professional Engineering Services for Construction Management and Inspection Services for \$90,000; and
- 3) Take such additional, related action that may be desirable.

ADJOURNMENT

I, Fernando N. Muñoz, Deputy City Clerk for the City of Santa Fe Springs hereby certify that a copy of this agenda has been posted no less than 24 hours at the following locations; City's website at www.santafesprings.org; Santa Fe Springs City Hall, 11710 Telegraph Road; Santa Fe Springs City Library, 11700 Telegraph Road; and the Town Center Plaza (Kiosk), 11740 Telegraph Road.



CITY OF SANTA FE SPRINGS

CITY COUNCIL AGENDA STAFF REPORT

TO: Honorable Mayor and City Council Members

FROM: René Bobadilla, P.E., City Manager

BY: James Enriquez, P.E., Director of Public Works / City Engineer

SUBJECT: RESIDENTIAL STREET IMPROVEMENTS 2024-2025 – AWARD OF CONTRACT

DATE: December 2, 2024

RECOMMENDATION:

It is recommended that the City Council:

- 1) Award a construction contract to Toro Enterprises, Inc., of Oxnard, California in the amount of \$6,059,065.00 for the construction of the Residential Street Improvements 2024-2025 Project and authorize the City Manager to execute the agreement; and
- 2) Authorize the City Manager to execute Task Order No. 82 to Southstar Engineering, Inc., for On-Call Professional Engineering Services for Construction Management and Inspection Services for \$90,000; and
- 3) Take such additional, related action that may be desirable.

FISCAL IMPACT

The Residential Street Improvements 2024-2025 Project is an approved Capital Improvement Project and is funded by local return funds and the Utility Users Tax (UUT) Capital Improvement Plan Fund in the amount of \$7,240,259.68. The total estimated project cost using the lowest responsible bidder is \$6,710,000 and there are sufficient project funds are available.

The total project cost breakdown is as follows:

CITY COUNCIL AGENDA REPORT – MEETING OF DECEMBER 2, 2024

Residential Street Improvements 2024-2025 – Award of Contract

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ITEM	ESTIMATED AMOUNT
Construction	\$ 6,059,065.00
Design	\$ 50,000.00
Engineering	\$ 100,000.00
Inspection	\$ 100,000.00
Contingency	\$ 400,935.00
Total Project Cost	\$ 6,710,000.00

PROJECT FUNDING	AMOUNT
Prop C	\$ 1,199,321.68
TDA	\$ 41,035.00
Gas Tax	\$ 712,000.00
Measure R	\$ 1,753,894.00
Measure M	\$ 1,654,009.00
Utility Users Tax (UUT) Capital Improvement Fund	\$ 680,000.00
Residential Street Lighting Systems Upgrade Project (UUT)	\$ 1,200,000.00
Total Project Cost	\$ 7,240,259.68

BACKGROUND

The proposed Residential Street Improvements 2024-2025 Project locations are shown in Attachment A. The scope of work consists of grinding the existing street pavement and placing new asphalt concrete overlays, replacing some driveway ramps, curb and gutter, cross gutters, ADA curb ramps, sidewalks, adding new traffic striping, and installing conduit and pull boxes for future street lighting use. Due to the timing of the streets improvements and a portion of a future street lighting project overlapping, construction will include the street lighting portion before the streets are paved as to not impair the newly paved asphalt pavement.

ANALYSIS

On October 1, 2024, the City Council authorized the advertisement for construction bids for the subject project. The solicitation for construction bids was advertised on October 24, 2024 in accordance with the California Public Contract Code.

Bids were opened on November 7, 2024, and a total of seven bids were received. City staff reviewed the proposals and determined that all bid proposals complied with the project specifications. The apparent low bidder for the project was Toro Enterprises, Inc. of Oxnard, CA with a bid totaling \$6,059,065.00. The tabulated bid results are as follows:

Company Name	Audited Bid	Publicly Read Bid Amount
1. Toro Enterprises, Inc.	\$6,059,065.00	\$6,059,065.00
2. Onyx Paving Company, Inc.	\$6,566,000.00	\$6,566,000.00

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Residential Street Improvements 2024-2025 – Award of Contract

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Company Name	Audited Bid	Publicly Read Bid Amount
3. R.J. Noble Company	\$6,576,540.00	\$6,576,540.00
4. Copp Contracting, Inc.	\$6,721,892.00	\$5,695,921.60 *
5. All American Asphalt	\$7,088,199.00	\$7,088,199.00
6. Sequel Contractors, Inc.	\$7,351,150.00	\$7,351,150.00
7. Hardy & Harper, Inc.	\$9,050,000.00	\$9,050,000.00

*Copp Contracting, Inc. entered incorrect unit cost into PlanetBids resulting in a mathematical error.

The bid proposal submitted by Toro Enterprises, Inc. in the amount of \$6,059,065.00, is approximately 10% below the Engineer's Estimate of \$6,740,000.00 and is acceptable.

The Department of Public Works has reviewed the bids and determined the low bid submitted by Toro Enterprises, Inc. to be responsive and responsible.

ENVIRONMENTAL

Not applicable.

DISCUSSION

The completion of the Residential Street Improvements 2024-2025 project will renew the service life of the existing street pavement and hardscape. The project will also help reduce maintenance repair costs.

SUMMARY/NEXT STEPS

Upon approval of the City Council of the recommended action, City staff will coordinate with the Contractor on the delivery of the project.

ATTACHMENTS:

- A. Attachment 1 – Site Plan
- B. Contract Agreement
- C. Task Order No. 82 with Southstar Engineering, Inc.

<u>ITEM STATUS:</u>	
APPROVED:	☐
DENIED:	☐
TABLED:	☐
DIRECTION GIVEN:	☐

SITE PLAN

Proposed Residential
Street Improvements
2024-2025



AGREEMENT FOR CONSTRUCTION
RESIDENTIAL STREET IMPROVEMENTS 2024-2025
CONTRACTOR'S NAME

This Agreement for Construction ("Agreement") is entered into on this day of , 2024, by and between the CITY OF SANTA FE SPRINGS, a California municipal corporation ("City") and TORO ENTERPRISES, INC., 2101 E. Ventura Blvd., Oxnard, CA 93036, State Contractor's License No. 710580, ("Contractor"). Hereinafter, the City and the Contractor may be referred to collectively as the "Parties." The Parties mutually agree as follows: Contractor shall furnish all labor, equipment and materials for, and perform residential street improvement work which is covered in the Contractor's Bid Proposal (the "Work"), in accordance with the provisions and requirements in the Contract Documents as defined by this Agreement.

ARTICLE 1 – CONTRACT DOCUMENTS

1.1 **Definitions.** The meanings of all capitalized terms used herein and in the Contract Documents and not otherwise defined in this document shall be the same as those definitions set forth in the General and Standard Specifications and Special Provisions.

1.2 **Contract Documents.** The "Contract Documents," except for Modifications issued after execution of this Agreement, consist of the following documents, all of which are either attached hereto as exhibits or are incorporated herein by this reference, are intended to be correlative and constitute Contractor's performance obligations:

- a. Permits from the City's Building, Planning, and Public Works Departments and similar Governmental Approvals for the Work required by applicable law.
- b. Change Orders and other Modifications issued after execution of the Agreement.
- c. This Agreement, as signed by the Parties, including the following exhibit, and Certificates of Insurance and Additional insured endorsements for Contractor:

Exhibit "A" – Workers Compensation Certification

Exhibit "B" – Performance and Payment Bonds

Exhibit "C" – Claims Procedure

- d. Addenda with later Addenda having priority over earlier Addenda issued in connection with the Notice Inviting Bids, as follows:
Addendum No. _____, issued _____, 20____, _____ pages.
- e. Contractors Bid Proposal, for the above-referenced Bid No. _____ (comprised of Notice Inviting Bids, Instructions to Bidders and attachments, Bid Schedule of Prices, List of Subcontractors, Proposal, Signature Certification/Authorization, Bid Guaranty, and where applicable, Contractor Qualification Statement and/or Subcontractor Qualification Statement.
- f. Special Provisions, General Specifications and Standard Specifications.

- g. City and other agency's Standard Drawings.
- h. All documents, maps, texts and items referred to in the foregoing documents.

1.3 **Interpretation.** In the event of any conflict between any of the Contract Documents, the document highest in the order of precedent shall control. The order of precedent shall be the same as that set forth in the 2018 Edition of the Standard Specifications for Public Works Construction, unless otherwise revised in the Special Provisions.

1.4 **Entire Agreement.** This Agreement together with all other Contract Documents represents the entire and integrated agreement between City and Contractor and supersedes any prior written or oral agreements between them concerning the subject matter contained in the Contract Documents. There are no representations, agreements, arrangements or understandings, oral or written, between the Parties hereto, relating to the subject matter contained in the Contract Documents, which are not fully expressed herein.

ARTICLE 2 - SERVICES OF CONTRACTOR

2.1 **Scope of Services.** In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the Contract Documents, which services may be referred to herein as the "Services" or "Work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that Contractor is a provider of first class work and services and Contractor is experienced in performing the work and services contemplated herein and, in light of such status and experience, Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. Further, Contractor represents that it is knowledgeable and experienced in constructing improvements that are compliant with all applicable accessibility requirements and warrants that all work performed under this agreement will comply with all applicable accessibility requirements.

2.2 **Compliance with Law.** All services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental having jurisdiction in effect at the time service is rendered, including but not limited to, all applicable accessibility requirements.

2.3 **Licenses, Permits, Fees and Assessments.** Contractor shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement, including registration with the Department of Industrial Relations of the State of California as required by Labor Code Section 1725.5 before commencing performance under this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder. Contractor shall be responsible for all subcontractors' compliance with this Section 2.3.

2.4 Familiarity with Work. By executing this Contract, Contractor warrants that Contractor (a) has thoroughly investigated and considered the scope of services to be performed, including the requirement that the facilities being constructed must comply with all applicable accessibility requirements, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor shall immediately inform the City of such fact and shall not proceed except at Contractor's risk until written instructions are received from the City.

2.5 Standard of Performance. Contractor, its subcontractors and their employees, in the performance of Contractor's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Contractor's field. Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, shall be borne in total by the Contractor and not by the City. The failure of a project to achieve the performance goals and objectives stated in this Agreement is not a basis for requesting re-performance unless the work conducted by Contractor and/or its subcontractors is deemed by the City to have failed the foregoing standard of performance.

In the event Contractor fails to perform in accordance with the above standard:

2.51. Contractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of City. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Contractor shall work any overtime required to meet the deadline for the task at no additional cost to the City;

2.5.2. The City shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and

2.5.3. The City shall have the option to direct Contractor not to re-perform any task which was not performed to the reasonable satisfaction of the City Manager pursuant to application of subsections 1 and 2 above. In the event the City directs Contractor not to re-perform a task, the City shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the City's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the City may have under law.

2.6 Care of Work. Contractor shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be

responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

2.7 Further Responsibilities of Parties. Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other. Contractor shall require all subcontractors to comply with the provisions of this Agreement.

2.8 Trenches or Excavations. Pursuant to California Public Contract Code Section 7104, in the event the work included in this Agreement requires excavations more than four (4) feet in depth, the following shall apply:

- a. Contractor shall promptly, and before the following conditions are disturbed, notify City, in writing, of any: (1) material that Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; (2) Subsurface or latent physical conditions at the site different from those indicated; or (3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.
- b. City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work shall issue a change order per Section 3.4 of this Agreement.
- c. That, in the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

2.9 Utility Relocation. City is responsible for removal, relocation, or protection of existing main or trunk line utilities to the extent such utilities were not identified in the invitation for bids or specifications. City shall reimburse contractor for any costs incurred in locating, repairing damage not caused by contractor and removing or relocating such unidentified utility facilities, including equipment idled during such work. Contractor shall not be assessed liquidated damages for delay arising from the removal or relocation of such unidentified utility facilities.

ARTICLE 3 – CONTRACT PRICE AND PAYMENT

3.1 **Contract Price.** City shall pay Contractor the Contract Price of Six Million Fifty-Nine Thousand Sixty-Five Dollars (\$6,059,065.00) which includes all California sales or use tax and County and City taxes, in consideration for the Contractor's full, complete and timely performance of all of the Work required by the Contract Documents. The Contract Price includes any Alternative/Additive Bid Items which were awarded with the Contract.

Contractors agree to allocate the use tax derived from contracts or subcontracts of \$5 million or more directly to the job site location by obtaining a sub-permit of the Contractor's seller's permit for the jobsite and allocating the local tax to the jobsite address on the appropriate schedule of the applicable sales tax returns. Contractor shall provide City with proof of such filing prior to City's issuance of the Notice to Proceed.

3.2 **Substitution of Securities.** In accordance with Section 22300 of the California Public Contract Code, Contractor may substitute securities for any monies withheld by the City to ensure performance of the Contract. Such substitution shall be made at the request and expense of Contractor. Securities equivalent to the amount withheld may be deposited with the City or with a state or federally chartered bank as escrow agent. Securities eligible for substitution shall include those listed in Section 16430 of the Government Code, bank or saving and loan certificates of deposit, interest bearing demand deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and City.

3.3 **Changes to the Contract Price.** Contractor shall not be compensated for any extra materials used or time expended over and above the Contract Price, unless prior written approval for the same has been granted by the City.

3.4 **Additional Services.** City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum as set forth in Section 3.1, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor. Any increase in compensation of twenty-five percent (25%) or less of the Contract Sum, or in the time to perform of one hundred eighty (180) days or less may be approved by the Contract Officer. Any increases, taken either separately or cumulatively, that result in the Contract Sum exceeding \$50,000 must be approved by the City Council. It is expressly understood by Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be costlier or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefore.

3.5 Payment Procedures.

3.5.1 Progress Payments. All progress payments shall be made in accordance with Public Contract Code § 20104.50, as follows:

a. The City shall make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request. If the City fails to make any progress payment within 30 days after receipt of an undisputed and properly submitted payment request from a contractor on a construction contract the City shall pay interest to the Contractor equivalent to the legal rate set forth in subdivision (a) of § 685.010 of the Code of Civil Procedure.

b. Upon receipt of a payment request, the City shall act in accordance with both of the following:

(1) Each payment request shall be reviewed by the City as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.

(2) Any payment request determined not to be a proper payment request suitable for payment shall be returned to the Contractor as soon as practicable, but not later than seven (7) days, after receipt. A request returned pursuant to this section shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

c. The number of days available to the City to make a payment without incurring interest pursuant to §20104.50 of the Public Contract Code shall be reduced by the number of days by which the City exceeds the seven-day return requirement set forth in paragraph (2) of subdivision (b) above.

d. A “progress payment” includes all payments due contractors, except that portion of the final payment designated by the contract as retention earnings.

e. A payment request shall be considered properly executed if funds are available for payment of the payment request, and payment is not delayed due to an audit inquiry by the financial officer of the local agency.

3.5.2 Retention. Within sixty (60) calendar days after City accepts final completion of the Work, City shall pay Contractor the amounts City deducted and retained from Contractor’s progress payments, except such sums which are required by applicable law or authorized by the Contract to be further retained. In the event of a dispute between City and Contractor concerning the amount of final payment due, the City may withhold from final payment, including Liquidated Damages provided forth in the Contract Documents, together with an amount not to exceed 150% of the disputed amounts.

ARTICLE 4 – TIME FOR PERFORMANCE

4.1 **Date of Commencement/Notice to Proceed.** The date of commencement of the Work shall be established in a written Notice to Proceed issued by the City. The City will not issue a Notice to Proceed to the Contractor until this Agreement, bonds and insurance documents have been executed by all parties and approved by the City.

4.2 **Contract Time.** Contractor shall perform the Work in a diligent manner and shall complete all of the Work of the Contract, excluding any Plant Establishment, if applicable, within Ninety (90) calendar days after the date specified to Contractor in the Notice to Proceed issued by then City.

ARTICLE 5 – LIQUIDATED DAMAGES AND INCENTIVE BONUS

5.1 **Amounts of Liquidated Damages.** Failure of Contractor to complete the Work within the time allowed will result in damages being sustained by City. Such damages are, and will continue to be, impracticable and extremely difficult to determine. For each consecutive working day in excess of the time specified for the completion of Work, as adjusted in accordance with the Standard Specifications, Contractor shall pay to City, or have withheld from monies due Contractor, the sum of Two Thousand Dollars (\$2,000). Execution of this Agreement shall constitute agreement by City and Contractor that said sum is the minimum value of the costs and actual damage caused by the failure of Contractor to complete the Work within the allotted time. Such sum is liquidated damages and shall not be construed as a penalty, and may be deducted from payments due Contractor if such delay occurs.

ARTICLE 6 – CLAIMS AND DISPUTES

6.1 **Claims Procedures.** Contractor shall comply with the claims procedure set forth in Public Contract Code Section 9204, a summary of which is attached to this agreement as **Exhibit “C.”**

6.2 **Government Code Claims Procedures.** Contractor further acknowledges that notwithstanding Contractor’s compliance with the claims procedures set forth herein, Contractor must also comply with the claims procedures set forth in Government Code sections 900 et seq. prior to filing a lawsuit against the City for any such claim. Failure to submit a Government Code claim or comply with the claims provision contained herein shall bar Contractor from bringing and maintaining a valid lawsuit against the City.

6.3 **Cooperation and Notification.** In the event any claim or action is brought against City relating to Contractor’s performance or services rendered under this Agreement, Contractor shall render any reasonable assistance and cooperation which City might require. The City shall provide notification to Contractor within ten (10) business days upon receipt of any third party claim relating to this Agreement.

ARTICLE 7 – LOCAL BUSINESS LICENSE, TAXES AND FEES

7.1 Business Tax Certificate and Governmental Approvals. As a condition of the Contract, Contractor and all subcontractors shall, during the term of this Agreement, secure and annually renew business tax certificates pursuant to Chapter 35.070, et seq. of the Santa Fe Springs Municipal Code to operate in the City, and shall also secure and maintain at all times during performance of the Work, any other licenses, fees, permits or similar Governmental Approvals required by Applicable law.

7.2 Offsets. Contractor acknowledges and agrees that with respect to any business tax or penalties thereon, utility charges, invoiced fee or other debt which is owed, or which becomes owed, by Contractor to City, City reserves the right to withhold and offset said amounts from any payments, refunds or reimbursements owed by City to Contractor under the Contract. Notice of such withholding and offset shall promptly be given to Contractor by City in writing. In the event of a dispute as to the amount owed or whether such amount is owed to City, City will hold such disputed amount until either the appropriate appeal process has been completed or until the dispute has been resolved.

ARTICLE 8 – BONDS

8.1 Performance and Payment Bonds. Prior to City's execution of this Agreement, Contractor shall furnish to the City two (2) duly executed surety bonds using the forms included within the Bidding Requirements, one (1) as security for the faithful performance of the Contract and one (1) as security for the payment of all persons performing labor and furnishing materials in connection with the Contract. Both bonds shall be in the amount of one hundred percent (100%) of the Contract Price and shall be subscribed by an Admitted Surety Insurer which is authorized to transact surety insurance business in the State of California with a policy holder's rating of A- or higher and a Financial Class of VII or larger. Should any bond or surety become insufficient, Contractor shall furnish City a new bond within ten (10) days after receiving notice from City. No payments will be due or paid under the Contract until any and all bond deficiencies have been remedied. Contractor, by execution of this Agreement acknowledges that the bonds are not Contract Documents, but are separate obligations.

ARTICLE 9 – WORKERS' COMPENSATION INSURANCE

9.1 Workers' Compensation Insurance Certificate. By executing this Agreement, Contractor certifies that Contractor is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation or to undertake self-insurance before commencing any of the Work. Contractor shall comply with Labor Code Section 1861 by signing and filing the workers' compensation certification attached hereto as Exhibit "A" and incorporated herein by reference.

9.2 Evidence of Coverage. Prior to the City's execution of this agreement, Contractor shall file with the City either 1) a certificate of insurance or self-insurance evidencing that such insurance is in effect, or that Contractor is self-insured for such coverage; or 2) a certified statement that Contractor has no employees, and acknowledging that if Contractor does employ any person,

the necessary certificate of insurance will immediately be filed with City. Any Certificate filed with the City shall provide that City shall be given ten (10) days prior written notice before modification or cancellation thereof.

9.3 **Carrier Rating.** Contractor's workers' compensation insurance carrier shall be authorized to transact insurance business in the State of California with a policy holder's rating of A- or higher and a Financial Class of VII or larger.

9.4 **Subcontractor Worker's Compensation Insurance.** Contractor shall require each of its Subcontractors to obtain and maintain for the duration of this Agreement, complete workers' compensation insurance, meeting or exceeding the coverage's and amounts that California law requires.

ARTICLE 10 – CONTRACTOR'S LIABILITY INSURANCE

10.1 **Minimum Scope.** Prior to City's execution of this Agreement and Contractor's commencement of Work, Contractor shall secure, submit proof of and shall thereafter maintain without interruption, until completion of and acceptance by the City of the Work, such commercial general and automobile liability insurance as shall protect Contractor, its Subcontractors and the Additional Insured's from any and all claims for damages for personal injury, including accidental death, as well as any and all claims for property damage which may arise from or which may concern operations under the Contract, whether such operations be by or on behalf of Contractor, any subcontractor or anyone directly or indirectly employed by, connected with or acting for or on behalf of any of them.

10.2 **Carrier Ratings.** All liability insurance shall be issued by an insurance company or companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A- or higher and a Financial Class of VII or larger.

10.3 **Minimum Limits.** Contractor shall maintain minimum limits of insurance as follows:

10.3.1 **Commercial General Liability:** Contractor's commercial general liability insurance policy shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability, products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount not less than \$1,000,000 per occurrence, an aggregate limit for products/completed operations in the amount not less than \$2,000,000.

10.3.2 **Automobile Liability Insurance:** Contractor's automobile liability policy shall cover both bodily injury and property damage in an amount not less than \$1,000,000 per occurrence and an aggregate limit of not less than \$1,000,000. All of Contractor's automobile and/or commercial general liability insurance policies shall cover all vehicles used in connection with Contractor's performance of this Agreement, which vehicles shall include, but are not limited to, Contractor owned vehicles, Contractor leased vehicles, Contractor's employee vehicles, non-Contractor-owned vehicles and hired vehicles.

10.3.3 Builder's Risk Insurance. Unless otherwise set forth in the special provisions, during the term of this contract, Contractor shall maintain in force, at its own expense, Builder's Risk insurance on all risks of direct physical loss basis, excluding damage caused by an act of God, pursuant to California Public Contract Code § 7105, for an amount equal to the full completed value of the covered structure or replacement value of alterations or additions. The policy shall include as loss payee, the City of Santa Fe Springs, the Contractor, and its sub-contractors as their interest may appear. The City shall not be responsible for the theft of any materials, equipment in the possession and control of Contractor.

10.3.4 Umbrella or excess liability insurance. Contractor shall obtain and maintain an umbrella or excess liability insurance policy that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall provide that the policy will respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason; have the same effective dates as the primary policies; pay on behalf of the insureds and not reimbursement; the policies shall "follow form" to the underlying primary policies; and the insureds, including the additional insureds shall be the same as the primary policies.

10.4 **Notice of Cancellation and Renewals.** The policies shall not be canceled unless thirty (30) days prior written notification of intended cancellation has been given to City by certified or registered mail (this obligation may be satisfied in the alternative by requiring such notice to be provided by Contractor's insurance broker and set forth on its Certificate of Insurance provided to City). Contractor agrees that upon receipt of any notice of cancellation or alteration of the policies, Contractor shall procure within five (5) days, other policies of insurance similar in all respects to the policy or policies to be cancelled or altered. Contractor shall furnish to the City copies of any endorsements that are subsequently issued amending coverage or limits within fourteen (14) days of the amendment.

10.5 **All Coverage's.** The insurance policy or policies shall also comply with the following provisions:

- a. Policies shall include premises/operations, products completed operations, independent contractors, owners and contractors' protection, explosion, collapse, underground hazard, broad form contractual, personal injury with employment exclusion deleted, and broad form property damage.
- b. The policy shall be endorsed to waive any right of subrogation against the City and its subcontractors, employees, officers, agents and directors for work performed under this Agreement.
- c. If policies are written on a claims made basis, the certificate should so specify and the policy must continue in force for **ten (10) years** after completion of the Project. The retroactive date of the coverage must also be listed.
- d. The policy shall specify that the insurance provided by Contractor will be considered primary and not contributory to any other insurance available to the City of Santa Fe Springs. Contractor shall provide Form No. CG 20010413 to City.

- e. All policies of insurance shall name the City as an Additional Insured and shall contain the following language: “Solely with respect to work done by and on behalf of the name insured for the City of Santa Fe Springs, it is agreed that the City of Santa Fe Springs, and its officers, officials, employees and agents are added as additional insureds under this policy.”
- f. Coverage provided by Contractor shall be primary and any insurance or self-insurance procured or maintained by the City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City’s own insurance or self-insurance shall be called upon to protect it as a named insured.

10.6 Certificates of Insurance, Additional Insured Endorsements and Deductibles. Prior to execution of the Agreement, and thereafter upon City’s request, Contractor shall furnish City with original certificates of insurance and additional insured endorsements setting forth evidence of all insurance coverage required by this Article. Each certificate and endorsement is to be signed by a person authorized by that insurer to bind coverage on its behalf.

10.7 Contractor’s Failure to Provide Required Insurance. Failure to maintain required insurance at all times shall constitute a default and material breach. In such event, Contractor shall immediately notify City and cease all performance under this Contract until further directed by the City. In the absence of satisfactory insurance coverage, City may, at its discretion and sole option: (a) procure insurance with collection rights for premiums, attorneys’ fees and costs against Contractor by way of set-off or recoupment from sums due Contractor; (b) immediately terminate or suspend Contractor’s performance of the Contract; (c) pay Contractor’s premiums for renewal of Contractor’s coverage; or (d) self-insure the risk, with all damages and costs incurred, by judgment, settlement or otherwise, including attorneys’ fees and costs, being collectible from Contractor, by way of set-off or recoupment from any sums due Contractor. Upon demand, Contractor shall repay City for all sums that City paid to obtain, renew, reinstate or replace the insurance, or City may offset the cost against any monies that the City may owe Contractor.

10.8 Verification of Coverage. City shall have the right to obtain complete and certified copies of Contractor’s and Subcontractors’ insurance policies (including, but not limited to, the declarations page, form list and riders), endorsements or certificates required under the Contractor Documents, upon request (including, but not limited to, the declarations page, form list and riders).

10.9 Reassessment of Insurance Requirements. At any time during the duration of this Contract, the City may require that Contractor obtain, pay for, and maintain more or less insurance depending on the City’s assessment of any one or more of the following factors: (1) the City’s risk of liability or exposure arising out of, or in any way connected with, Contractor’s services under this Contract; (2) the nature or number of accidents, claims, or lawsuits arising out of, or in any way connected with, Contractor’s services under this Contract; or (3) the availability, or affordability, or both, of increased liability insurance coverage.

10.10 Contractor's Insurance for Other Losses. The Contractor and its Subcontractors of every tier shall assume full responsibility for all loss or damage from any cause whatsoever to any tools, Contractor's (or Subcontractors') employee owned tools, machinery, equipment, or motor vehicles owned or rented by the Contractor, or the Contractor's agents, suppliers or Subcontractors as well as to any temporary structures, scaffolding and protective fences.

10.11 No Limitation. Contractor's maintenance of insurance as required by the Contract Documents shall not be construed to limit the liability of the Contractor or its Subcontractors of any tier to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

10.12 Subcontractors' Insurance. The Contractor shall include in all subcontracts a requirement that the Subcontractors of every tier shall obtain and maintain, at a minimum, all insurance required by Articles 9 and 19 of this Agreement except that the limits of liability and deductibles shall be in amounts determined by the Contractor, based on the degree of hazardous exposure according to the Work performed by each Subcontractor and the size of each subcontract.

Contractor shall ensure that any professional engineer retained on its behalf to provide supplemental plans and engineering calculations required in conjunction with the Work, maintains professional liability insurance during the entire term of this Agreement. Such insurance shall be in the minimum amount of \$1,000,000 to protect City from claims resulting from the engineer(s) activities. This minimum amount of coverage shall not constitute any limitation or cap on Contractor's indemnification obligations set forth herein.

The City reserves the right to request certificates of insurance from the Contractor for each Subcontractor. The Contractor acknowledges that regardless of insurance obtained by its Subcontractors, the Contractor will be responsible to the City for any and all acts of its Subcontractors.

ARTICLE 11 - INDEMNITY/DUTY TO DEFEND

11.1 Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, Contractor assumes liability for and agrees, at Contractor's sole cost and expense, to promptly and fully indemnify and hold the City, its City Council, and all of its respective officials, officers, directors, employees, managers, commission members, representatives, agents, council members, ("Indemnitees"), harmless from and against any and all loss, damage, claims, allegations, actions, suits, arbitrations, administrative proceedings, regulatory proceedings, or other legal proceedings, causes of action, demands, costs, judgments, liens, stop notices, penalties, damages, losses, anticipated losses of revenue, expenses (including, but not limited to, any fees of accountants, attorneys, experts or other professionals, or investigation expenses), costs, including attorneys' fees, or losses of any kind or nature whatsoever, whether actual, threatened or alleged, arising out of, resulting from or is in any way (either directly or indirectly) related to, or is in any manner connected with, the performance of Work, the Project, activities, operations or duties of Contractor, or anyone employed by or working under Contractor, and from all claims by anyone employed by or working under Contractor for services rendered to Contractor in the performance of this Agreement ("Indemnity Claims"), notwithstanding that the City may have benefited from their services. This indemnification provision shall apply to any acts or omissions, willful

misconduct or negligent conduct, whether active or passive, on the part of Contractor or of anyone employed by or working under Contractor.

The parties expressly agree that any payment, attorneys' fees, costs or expense that the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense or cost for the purposes of this Section, and that this Section shall survive the expiration or early termination of the Agreement.

11.2 Duty to Defend. Contractor agrees, at its sole cost and expense, to promptly defend the Indemnitees from all Indemnity Claims. The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by Contractor of the tender of any Indemnity Claim from an Indemnatee. The Contractor's obligation to defend the Indemnitees shall be at Contractor's sole expense, and not be excused because of Contractor's inability to evaluate liability or because the Contractor evaluates liability and determines that the Contractor is not liable. This duty to defend shall apply whether or not an Indemnity Claim has merit or is meritless, or which involves claims or allegations that any or all of the Indemnitees were actively, passively or concurrently negligent, or which otherwise assert that the Indemnitees are responsible, in whole or in part, for any Indemnity Claim. Contractor agrees to provide this defense immediately upon written notice from the City, and with well qualified, adequately insured and experienced legal counsel acceptable to the City.

11.3 Subcontractor Requirements. In addition to the requirements set forth hereinabove, Contractor shall ensure, by written subcontract agreement, that each of Contractor's Subcontractors of every tier shall protect, defend, indemnify and hold harmless the Indemnitees with respect to Indemnity Claims arising out of, in connection with, or in any way related to each such Subcontractors' Work on the Project in the same manner in which Contractor is required to protect, defend, indemnify and hold the Indemnitees harmless. In the event Contractor fails to obtain such defense and indemnity obligations from others as required herein, Contractor agrees to be fully responsible to the Indemnitees according to the terms of this Article.

11.4 No Limitation or Waiver of Rights. Contractor's obligations under this Article are in addition to any other rights or remedies which the Indemnitees may have under the law or under the Contract Documents. Contractor's indemnification and defense obligations set forth in this Article are separate and independent from the insurance provisions set forth in the Agreement and do not limit, in any way, the applicability, scope, or obligations set forth in such insurance provisions. The purchase of insurance by the Contractor with respect to the obligations required herein shall in no event be construed as fulfillment or discharge of such obligations. City approval of the Insurance contracts required by this Agreement does not in any way relieve the Contractor from liability under this section. In any and all claims against the Indemnitees by any employee of the Contractor, any Subcontractor, any supplier of the Contractor or Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the obligations under this Article shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor or any supplier of either of them, under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. Failure of the City to monitor compliance

with these requirements imposes no additional obligations on the City and will in no way act as a waiver of any rights hereunder.

11.5 Withholding to Secure Obligations. In the event an Indemnity Claim arises prior to final payment to Contractor, the City may, in its sole discretion, reserve, retain or apply any monies due Contractor for the purpose of resolving such Indemnity Claims; provided, however, the City may release such funds if the Contractor provides the City with reasonable assurances of protection of the Indemnitees' interests. The City shall, in its sole discretion, determine whether such assurances are reasonable.

11.6 Limitations. Notwithstanding the above provisions of section 11.1 and 11.2, Contractor shall not be liable for the defense or indemnification of the City for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the City.

11.7 Survival of Indemnity Obligations. Contractor's obligations under this Article are binding on Contractor's and its Subcontractors' successors, heirs and assigns and shall survive the completion of the Work or termination of the Contractor's performance of the Work.

ARTICLE 12 – PREVAILING WAGES

12.1 Public Work Project. This Project is a public work as defined in California Labor Code Section 1720. By executing this Agreement, Contractor certifies that neither it, nor any of its subcontractors are ineligible under Labor Code Section 1777.1 or Section 1777.7 from bidding on, entering into a contract for, or performing the Work. Contractor and all Subcontractors of any tier are required to pay all workers employed in the execution of the Work not less than the general prevailing wage rates of per diem wages and overtime and holiday wages determined by the Director of the Department of Industrial Relations ("DIR") under Section 1720 et seq. of the California Labor Code. The Director's determination of prevailing rates are on file with the City and are available on-line at www.dir.ca.gov/dlsr/DPreWageDetermination.htm and are referred to and made a part hereof; the wage rates therein ascertained, determined and specified are referred to and made a part hereof as though fully set forth herein.

12.2 California Labor Code. Contractor is aware of and stipulates that Contractor will also comply with the following sections of the California Labor Code:

- a. Section, 1771, Contractor and any subcontractors shall pay not less than the general prevailing rate per diem wages.
- b. Section 1775, Contractor and any subcontractor will forfeit to City as a penalty up to \$200 for each calendar day, or portion of a day, for each worker paid less than the applicable prevailing wage rate, in addition to paying each worker the difference between the applicable wage rate and the amount actually paid.
- c. Contractor and its subcontractors must maintain certified payroll records in compliance with Labor Code sections 1776 and 1812, and all implementing regulations promulgated by the DIR. For each payroll record, Contractor and its subcontractors must certify under penalty of perjury that the information in the

record is true and correct, and that it has complied with the requirements of Labor Code sections 1771, 1811, and 1815. Contractor must electronically submit certified payroll records to the Labor Commissioner as required under California law and regulations.

- d. Section 1777.5 prescribes the terms and conditions for employing registered apprentices.
- e. Section 1810, eight hours of labor constitutes a legal day's work.
- f. Section 1813, Contractor will forfeit to the City as a penalty the sum of \$25 for each day during which a worker employed by Contractor or any subcontractor is required or permitted to work more than eight hours during any one calendar day, or more than 40 hours per calendar week, unless such workers are paid overtime wages under Labor Code section 1815.
- g. Sections 1725.5 and 1771.1 requires all general contractors and subcontractors to be registered with DIR.
- h. Contractor must also post all job site notices required by laws or regulations pursuant to Labor Code section 1771.4.

ARTICLE 13 – MISCELLANEOUS

13.1 Non-Discrimination. Except as provided in Section 12940 of the California Government Code, during Contractor's performance of the Agreement, Contractor shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, gender, gender identity, genetic information, gender expression, sex or sexual orientation, military and veteran status, in the selection and retention of employees and subcontractors and the procurement of materials and equipment. Contractor shall also comply with the requirements of the Americans with Disabilities Act in the performance of the Agreement.

13.2 Notice. Whenever any provision of the Contract Documents requires the giving of written notice, including notices, bills, invoices or other documents required or permitted under this Agreement, service shall be sufficient if sent by one party to the other by overnight courier, or by registered, certified or United States first class mail, postage prepaid and addressed as follows:

City

City of Santa Fe Springs
Attn: James Enriquez, PE
11710 Telegraph Road
Santa Fe Springs, CA 90670

Contractor

Toro Enterprises, Inc.
Sean Castillo, President
2101 E. Ventura Blvd.
Oxnard, CA 93036

13.3 Conflict of Interest. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement. Contractor and its officers, employees, associates and subcontractors, if any, will comply with all conflict of interest statutes of the State of California applicable to Contractor's services under this agreement,

including, but not limited to, the Political Reform Act (Government Code Sections 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Contractor and its officers, employees, associates and subcontractor shall not, without the prior written approval of the City Representative, perform work for another person or entity for whom Contractor is not currently performing work that would require Contractor or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute.

13.4 Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

13.5 Rights and Remedies. Rights and Remedies are cumulative except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

13.6 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement.

13.7 Disputes. In the event either party fails to perform its obligations hereunder, the nondefaulting party shall provide the defaulting party written notice of such default. The defaulting party shall have ten (10) days to cure the default; provided that, if the default is not reasonably susceptible to being cured within said ten (10) day period, the defaulting party shall have a reasonable time to cure the default, not to exceed a maximum of thirty (30) days, so long as the defaulting party commences to cure such default within ten (10) days of service of such notice and diligently prosecutes the cure to completion; provided further that if the default is an immediate danger to the health, safety and general welfare, the defaulting party shall take such immediate action as may be necessary. Notwithstanding the foregoing, the nondefaulting party may, in its sole and absolute discretion, grant a longer cure period. Should the defaulting party fail to cure the default within the time period provided in this Section, the nondefaulting party shall have the right, in addition to any other rights the nondefaulting party may have at law or in equity, to terminate this Agreement. Compliance with the provisions of this Section 13.7 shall be a condition precedent to bringing any legal action, and such compliance shall not be a waiver of any party's right to take legal action in the event that the dispute is not cured.

13.8 Termination for Default of Contractor. If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, Contractor shall vacate any City owned property which Contractor is permitted to occupy hereunder and City may, after compliance with the provisions of Section 13.7, take over the work and prosecute the same to completion by contract

or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of setoff or partial payment of the amounts owed the City as previously stated.

13.9 Force Majeure. The time period(s) specified in the Scope of Services for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the City in writing of the causes for the delay. The City shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the City such delay is justified. The City's determination shall be final and conclusive upon the parties to this Agreement.

13.10 City's Right to Access and Audit Contractor's Project Documents.

a. If the Contractor submits a claim to the City for additional compensation, the City shall have the right, as a condition to considering the claim, and as a basis for evaluation of the claim, and until the claim has been settled, to audit the Contractor's books to the extent they are relevant. This right shall include the right to examine books, records, documents, and other evidence and accounting procedures and practices, sufficient to discover and verify all direct and indirect costs of whatever nature claimed to have been incurred or anticipated to be incurred and for which the claim has been submitted. The right to audit shall include the right to inspect the Contractor's plant, or such parts thereof, as may be or have been engaged in the performance of the Work. The Contractor further agrees that the right to audit encompasses all subcontracts and is binding upon Subcontractors. The rights to examine and inspect herein provided for shall be exercisable through such representatives as the City deems desirable during the Contractor's normal business hours at the office of the Contractor. The Contractor shall make available to the City for auditing, all relevant accounting records and documents, and other financial data, and upon request, shall submit true copies of requested records to the City.

b. The City and/or its authorized auditors or representatives, (including the California State Auditor if so requested by the City pursuant to Government Code § 8546.7) shall have access to and the right to examine, audit, excerpt, transcribe, and reproduce any of the Contractor's records for a period of at least three (3) years after termination of the Agreement and/or Final Payment. Such records include without limitation, journals, ledgers, records of accounts payable and receivable, profit and loss statements, bank statements, invoices, receipts, subcontracts, agreements, notes, correspondence, memoranda, and any documents generated and received in Contractor's performance of this Contract. Upon written notice by the City, Contractor shall promptly make all such records available to City and/or its authorized auditors or representatives and cooperate with the City and its authorized auditors or representatives in examining, auditing, excerpting, transcribing and reproducing the records.

13.11 Unfair Business Practices Claims. In entering into a public works contract or a subcontract to supply goods, services or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body renders final payment to the contractor without further acknowledgment by the parties. (Sec. 7103.5, California Public Contract Code).

13.12 Venue. Any action at law or in equity brought by either of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court in Los Angeles County, State of California.

13.13 Prohibition Against Assignment. The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

13.14 Independent Contractor. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its subcontractors, agents or employees, performs the services required herein, except as otherwise set forth herein. The City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, subcontractors, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of the City and shall remain at all times as to the City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its subcontractors, agents or employees are agents or employees of the City. The City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venture or a member of any joint enterprise with Contractor.

13.15 No Estoppel or Waiver by City. No action or failure to act by the City shall constitute a waiver of any right or duty afforded City under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically provided in this Agreement or as may be otherwise agreed in writing. The waiver by the City of any breach or violation of any term, covenant or condition of this Agreement or of any provision, ordinance, or law shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, or law or of any subsequent breach or violation of the same or of any other term, covenant, condition, ordinance, or law. The subsequent payment of any monies or fee by

the City which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by Contractor or any term, covenant, condition of this Agreement or of any applicable law or ordinance.

13.16 Signature Authority. The individuals executing this Agreement and the instruments referenced herein on behalf of Contractor each represent and warrant that they have the legal power, right and actual authority to bind Contractor to the terms and conditions hereof and thereof.

13.17 Severability. Each provision, term, condition, covenant and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant and/or restriction of this Agreement and the remainder of the Agreement shall continue in full force and effect.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

CITY OF SANTA FE SPRINGS

TORO ENTERPRISES, INC

By: _____
René Bobadilla, City Manager

By: _____
Sean Castillo

President

Attest: _____
Fernando Muñoz, Deputy City Clerk

By: _____
Name

Title

APPROVED AS TO FORM

By: _____
Rick Olivarez, City Attorney

**ON-CALL PROFESSIONAL ENGINEERING SERVICES
TASK ORDER No. 82**

In accordance with the Contract Agreement dated April 6, 2021 as executed by the City of Santa Fe Springs (CITY), a municipal corporation and Southstar Engineering and Consulting, Inc. (CONSULTANT), Task Order No. 82 – Construction Management & Inspection Services for the Residential Street Improvements 2024-2025 project construction.

Authorized Representative: James Enriquez, Director of Public Works
Address: 11710 Telegraph Road
City of Santa Fe Springs, California 90670
Telephone No.: (562) 868-0511

SOUTHSTAR ENGINEERING, INC.:

Authorized Representative: Yvette Kirrin, Principal-in-Charge
Address: 1945 Chicago Avenue, Unit C
Riverside, CA 92507
Telephone No.: (626) 644-8058

SERVICES/SCOPE OF WORK: The CITY of Santa Fe Springs desires Construction Management and Inspection Services for the Residential Street Improvements 2024-2025 project construction.

The following is the scope of work, schedule, and fee for a Construction Manager/Inspector:

1. City staff will provide existing Plans and Specifications, and any relevant data that would facilitate the project.
2. The Construction Manager/Inspector will oversee the project and will work closely with the Assistant Director of Public Works and City Engineer. The Construction Manager/Inspector will enforce the Plans and Specifications and ensure that the Contractor's quality of work complies with the City Standards. The Construction Manager/Inspector will oversee construction activities, perform field inspections, conduct pre-bid/preconstruction/weekly field meetings, register the project with DIR, verify field quantities, prepare daily/weekly summaries, take photos before/during/after construction, process payments, review certified payrolls, prepare council reports, prepare presentations, review/prepare contract change orders, review/prepare request for information, review material submittals, and generate the notice of completion, as required.
3. The Construction Manager/Inspector will update the Assistant Director of Public Works, and City Engineer on the progress of the project and submit the required documentation in a digital and hardcopy format in an organized manner to the City.

SCHEDULE:

The Residential Street Improvements 2024-2025 project is currently being awarded a contract and is anticipated to start construction in February 2025. The project has an anticipated completion date in May 2025.

FEE:

The fee for Construction Management/Inspection services will be based on the SOUTHSTAR ENGINEERING, INC. Fee Schedule. The City understands the calculated (500) hours for Construction Management/Inspection services is based on approximately (5) hours of labor per day for approximately (100) work days.

<u>Fee Summary</u>	<u>Hourly Rate</u>	<u>Total Hours</u>	<u>Total</u>
Justin Pope	\$180.00	500.00	<u>\$90,000.00</u>
(Construction Manager/Inspector)		Total Task Order	\$90,000.00

ACCEPTANCE of the terms of Task Order No. 82 is acknowledged by the following signatures of the Authorized Representatives.

SUBMITTED BY:

CITY OF SANTA FE SPRINGS

ACCEPTED BY:

SOUTHSTAR ENGINEERING AND
CONSULTING INC.

René Bobadilla P.E., City Manager

Yvette Kirrin, Principal-in-Charge

Date

Date