



# Administrative Report

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H.11., File # 24-0068

Meeting Date: 1/23/2024

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**To:** MAYOR AND CITY COUNCIL  
**From:** TED SEMAAN, PUBLIC WORKS DIRECTOR

## **TITLE**

APPROVE ESCROW AGREEMENT NO. 2247 WITH TORO ENTERPRISES, INC. FOR THE DEPOSIT OF THE MONTHLY PROGRESS PAYMENTS' 5% RETENTION FOR THE MANHATTAN BEACH BOULEVARD RESURFACING - AVIATION BOULEVARD TO INGLEWOOD AVENUE PROJECT

## **EXECUTIVE SUMMARY**

Toro Enterprises, Inc. (Toro) was awarded a Public Works Contract in the amount of \$4,162,813.75 to complete the Manhattan Beach Boulevard Resurfacing - Aviation Boulevard to Inglewood Avenue Project, Job No. 41160, and will begin work in mid-2024.

As part of the contract administration and under the provision of the Public Contract Code, Toro has opted to open an escrow account into which the City will make retention deposits, in lieu of the City retaining 5% of the monthly progress payments. The attached Escrow Agreement between Toro, the City, and Banner Bank is necessary for the administration of that account. Establishment of the account does not increase costs to the City and the account governed by this Agreement will be closed immediately upon the disbursement of all funds after the project is accepted as complete by the City and the 35-day notice period for potential claims has passed with no claims being submitted.

## **BACKGROUND**

Toro was awarded a Public Works Contract in the amount of \$4,162,813.75 to complete the Manhattan Beach Boulevard Resurfacing - Aviation Boulevard to Inglewood Avenue Project, Job No. 41160. Construction is expected to start in May 2024 and be completed within one hundred working days.

As required by Public Contract Code Section 9203, the City withholds a 5% retention of each progress payment made to the contractor to ensure that the contractor completes the project per the Agreement. Section 22300 of the Public Contract Code provides contractors with the option of having retention funds deposited in a joint escrow account rather than being retained by the administering public agency. Toro has requested that contract retention payments be placed in escrow pursuant to Escrow Agreement 2247 with Banner Bank named as the Escrow Agent.

The Escrow Agreement gives the City the right to draw on the funds held in escrow in the event of default by the Contractor. Upon the City's written notice that the construction Contract is final and complete, the escrow will be closed and all funds therein will be returned to the Contractor less

applicable escrow fees and charges. The Escrow Agreement requires Toro to pay all costs incurred by the escrow agent.

**COORDINATION**

The City Attorney's Office has approved the Escrow Agreement as to form.

**FISCAL IMPACT**

There is no fiscal impact associated with the item. All costs associated with the escrow account will be paid by Toro.

**APPROVED BY:**

*Mike Witzansky, City Manager*

**ATTACHMENTS**

- Agmt - Escrow Agreement No. 2247- Toro Enterprises, Inc., and Banner Bank