TO: City Council

FROM: Department of Public Works

SUBJECT: AWARD OF CONTRACT FOR THE CONSTRUCTION OF FY 2019-20 ANNUAL MINOR STREETS REHABILITATION PROGRAM, SB1, SPECIFICATION NO. SV 19-05

STAFF RECOMMENDATION

It is recommended that the City Council award the attached contract (page 6) to Toro Enterprises, Inc. in the amount of $1,988,358.00 for the construction of FY 2019-20 Annual Minor Streets Rehabilitation Program, SB1, Specification No. SV 19-05.

BACKGROUND AND OVERVIEW

Staff recommends that the City Council award a construction contract to Toro Enterprises, Inc. in the amount of $1,988,358.00 for the construction of FY 2019-20 Annual Minor Streets Rehabilitation Program, SB1, Specification No. SV 19-05. (Location Map, Attachment A, page 4 and List of Streets, Attachment B, page 5).

On July 26, 2019, the Public Works Department solicited construction bids for the project that includes the rehabilitation of various residential streets. Improvements will consist of rubberized asphalt overlay, concrete repair of cross gutters, curb, gutter, sidewalk, driveway approaches, tree root pruning, traffic signing and striping, and all appurtenant work in conjunction with street improvements.

FINDINGS AND ALTERNATIVES

A Notice Inviting Bids was published in the Ventura County Star and was also submitted to various publications and plan rooms. A Notice was also mailed to the contractors on the City’s Contractors List, including local contractors, and was posted on the City’s website.
On August 16, 2019, the bid opening date, five bids were received, and the results are shown in the table below:

<table>
<thead>
<tr>
<th>Contractor</th>
<th>Schedule I and II Total Bid Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toro Enterprises Inc., Oxnard, CA</td>
<td>$1,988,358.00</td>
</tr>
<tr>
<td>All American Asphalt, Corona, CA</td>
<td>$2,007,852.40</td>
</tr>
<tr>
<td>C.A. Rasmussen, Valencia, CA</td>
<td>$2,070,905.70</td>
</tr>
<tr>
<td>Onyx Paving, Anaheim, CA</td>
<td>$2,231,000.00</td>
</tr>
<tr>
<td>Granite Construction Company, Oxnard, CA</td>
<td>$2,434,036.10</td>
</tr>
<tr>
<td>Engineer's Estimate</td>
<td>$2,046,848.20</td>
</tr>
</tbody>
</table>

Staff has reviewed the bids received and determined that the lowest bid submitted by Toro Enterprises, Inc. (Toro) is responsive and cost competitive. Based on Toro’s previous work accomplishments, staff believes that Toro possesses the necessary qualifications and experience for the construction of the project and is considered to be a responsible bidder.

Additionally, construction materials testing will be required during the construction of this project. The Department has negotiated and approved the firm of Twining, Inc. (Twining) for materials testing services for the not-to-exceed amount of $22,062.

On the basis of awarding a construction contract to Toro Enterprises, Inc. the total project cost is estimated as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction Bid Amount (Toro)</td>
<td>$1,988,358.00</td>
</tr>
<tr>
<td>Soils/Materials Testing (Twining)</td>
<td>$22,062.00</td>
</tr>
<tr>
<td><strong>Total Project Cost</strong></td>
<td><strong>$2,010,420.00</strong></td>
</tr>
</tbody>
</table>

The FY 2019-20 Streets and Roads budget contains sufficient funds for this project. Based on an award date of August 26, 2019, it is anticipated that the project construction will begin in September 2019, and be completed in December 2019.

Traffic control to minimize inconvenience will be monitored closely during construction, and the contractor will be required to maintain sufficient traffic flow, pedestrian access, and access to private properties.

The following alternatives are available to the City Council:

1. Award the attached contract (page 6) to Toro Enterprises, Inc. in the amount of $1,988,358.00 for the construction of FY 2019-20 Annual Minor Streets Rehabilitation Program, SB1, Specification No. SV 19-05;

2. Do not award the contract at this time and provide direction to staff.

Staff recommends Alternative No. 1.
SUGGESTED CITY COUNCIL MOTION

I move to award a contract to Toro Enterprises, Inc. in the amount of $1,988,358.00 for the construction of FY 2019-20 Annual Minor Streets Rehabilitation Program, SB1, Specification No. SV 19-05.

SUMMARY

On July 26, 2019, the Public Works Department solicited bids for the construction of the FY 2019-20 Annual Minor Streets Rehabilitation Program, SB1, Specification No. SV 19-05. On August 16, 2019, Toro Enterprises, Inc. submitted the lowest responsive and responsible bid. Therefore, it is recommended that the City Council award a contract to Toro Enterprises, Inc. in the amount of $1,988,358.00 for construction of the project.

Ronald K. Fuchiwaki
Public Works Director

Prepared by: Sarah Sheshebor, Senior Engineer

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</thead>
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</tr>
<tr>
<td>Contract</td>
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</tr>
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CITY OF SIMI VALLEY
DEPARTMENT OF PUBLIC WORKS

PROJECT LOCATIONS

LOCATIONS MAP
NO SCALE

FY 2019-20
ANNUAL MINOR STREETS
REHABILITATION PROGRAM, SB-1
SV 19-05
FY 2019-20 Annual Minor Street Rehabilitation (SB1)
List of Streets

Schedule I:

1. Acadia Street (Royal Avenue to Shenandoah Avenue)
2. Shenandoah Avenue (Acadia Street to Olympic Street)
3. Olympic Street (Shenandoah Avenue to Olympic Street)
4. Trailrock Court (Circle Knoll Dr to Cul-de-Sac)
5. Burnside Street (Justin Avenue to Elmdale Avenue)
6. Lawnview Court (Pinecrest St to Cul-de-Sac)
7. Birchfield Street (Lawnview Court to Elmdale Avenue)
8. Amberly Place (Birchfield Street to Cul-de-Sac)
9. Toby Place (Birchfield Street to Cul-de-Sac)
10. Wanda Avenue (Alamo Street to Cul-de-Sac)
11. Roxy Street (Wanda Avenue to Cul-de-Sac)
12. Ocie Avenue (Roxy Street to Nicholas Street)
13. Nicholas Street (Ocie Avenue to Cul-de-Sac)
14. Woodrow Avenue (Alamo Street to Nicholas Street)
15. Velma Court (Woodrow Avenue to Cul-de-Sac)
16. Spring Breeze Court (Lake Breeze Place to Cul-de-Sac)
17. Lake Breeze Place (Lake Park Drive to Cul-de-Sac)
18. White Swan Court (Lake Park Drive to Cul-de-Sac)
19. Lazy Brook Court (Lake Park Drive to Cul-de-Sac)
20. Parkfront Place (Lake Park Drive to Cul-de-Sac)
21. Silver Lake Court (Parkfront Place to Cul-de-Sac)
22. Sailwind Court (Parkfront Place to Cul-de-Sac)
23. Blue Lake Court (Sailwind Court to Cul-de-Sac)
24. Kane Avenue (Morley Street to Heywood Street)
25. Earl Avenue (Morley Street to Heywood Street)
26. Darcy Avenue (Morley Street to Heywood Street)
27. Morley Street (Bridget Avenue to Sycamore Drive)
28. Gene Avenue (Morley Street to Victoria Street)
29. Noel Circle (Gene Avenue to Cul-de-Sac)
30. Elizondo Avenue (Haven Avenue to Sycamore Drive)
31. Twin Peaks Avenue (Martha Morrison Drive to Cul-de-Sac)
32. Hampton Avenue (Birchcroft Street to Oak Haven Avenue)
33. Oak Haven Avenue (Birchcroft Street to Hampton Avenue)
34. Brandon Avenue (Fitzgerald Road to Cul-de-Sac)
35. Glenhurst Court (Darby Street to Cul-de-Sac)
36. Harrington Road (Appleton Road to End)
37. Wilson Drive (Harrington Road to Cul-de-Sac)
38. Cadman Street (Hietter Avenue to Goddard Avenue)
39. Goddard Avenue (Cadman Street to Bayside Street)
40. Becky Street (Goddard Avenue to Tapo Canyon Road)
41. Delano Court (Boalt Avenue to Cul-de-Sac)
42. Boalt Avenue (Bayside Street to Cochran Street)

Schedule II:

1. Graceland Street (Justin Avenue to Elmdale Avenue)
CONTRACT BETWEEN THE CITY OF SIMI VALLEY AND
TORO ENTERPRISES, INC., FOR FY 2019-20 ANNUAL
MINOR STREETS REHABILITATION PROGRAM, SB1,
SPECIFICATION NO. SV 19-05

THIS CONTRACT is made and entered into in the City of Simi Valley on this 26th day of August 2019, by and between the CITY OF SIMI VALLEY, a municipal corporation, hereinafter referred to as CITY, and TORO ENTERPRISES, INC., a California corporation, hereinafter referred to as CONTRACTOR.

RECITALS

WHEREAS, on July 26, 2019, CITY invited bids for FY 2019-20 Annual Minor Streets Rehabilitation Program, SB1 per Specification No. SV 19-05; and

WHEREAS, pursuant to said invitation, CONTRACTOR submitted a Proposal which was accepted by CITY for said project.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises, obligations and covenants hereinafter contained, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are true and correct and are a part of this CONTRACT.

2. Term. The term of this CONTRACT shall be from the date this CONTRACT is made and entered, as first written above, and shall be completed no later than sixty (60) consecutive working days after the receipt of the Notice to Proceed and final acceptance of all work by the City.

3. Incorporation By Reference. Public Contract Code Section 22300, Specification No. SV 19-05, consisting of 225 pages and all documents incorporated by reference therein, and the CONTRACTOR’S Bid consisting of the CONTRACTOR’S Proposal Statement, Proposed Schedule of Work and Prices, and Bidder’s Statement of Subcontractors and Material Fabricators, are hereby incorporated by reference and made a part of this CONTRACT.

4. Precedence of CONTRACT Documents. If there is a conflict between or among CONTRACT documents, the document highest in precedence shall control. The precedence shall be:

   First: This Document consisting of 8 pages excluding paragraph 3
   Second: Permits from other agencies as may be required by law
   Third: Special Provisions
   Fourth: Bid Terms and Conditions
   Fifth: Detailed Plans
Sixth: Standard Plans  
Seventh: Standard Specifications Modifications  
Eighth: "Standard Specifications for Public Works Construction" (SSPWC)  
Ninth: Reference Specifications  
Tenth: CONTRACTOR'S Proposal

Change orders, supplemental agreements, and approved revisions to plans and specifications become a part of item First.

5. **Obligations of the CITY.**

   A. The CITY shall be obligated to pay CONTRACTOR based upon the actual City-authorized quantities in place and the unit and/or lump sum prices bid by CONTRACTOR, including but not limited to all labor, material and equipment, rather than the CONTRACT bid price.

   B. CITY shall make regular progress payments to the CONTRACTOR within 30 days after mutual concurrence with the unit quantities and/or lump sum items of work performed, subject to applicable retention requirements. In no event shall the total amount paid exceed the CONTRACT bid price of $1,988,358.00 unless otherwise agreed to by the parties in writing.

   C. Upon receipt of an invoice for work performed to CITY'S satisfaction, CITY shall make progress payments within thirty (30) days of receipt of invoice. If the work is not performed satisfactorily or the invoice is defective, CITY shall notify CONTRACTOR, in writing, of the reasons within seven (7) days of receipt of invoice. The intent of this Section is to comply with Public Contract Code Section 20104.50.

6. **Obligations of the CONTRACTOR.**

   A. CONTRACTOR shall perform as required by this CONTRACT. CONTRACTOR agrees to perform the services more specifically set forth in the “Scope of Work” attached hereto and incorporated herein as Exhibit “A” and as further described in the incorporated documents. CONTRACTOR also warrants on behalf of itself and all subcontractors engaged for the performance of this CONTRACT that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

   B. CONTRACTOR shall obey all Federal, State, local, and special district laws, ordinances, and regulations.

   C. CONTRACTOR shall abide by the CITY’S Business Tax Ordinance, of which proof of payment must be obtained prior to performance of this CONTRACT. CONTRACTOR shall maintain a valid Business Tax Certificate for the term of the CONTRACT.
D. Prevailing wage: In addition to any applicable federal requirements, the CONTRACTOR shall comply with all applicable California laws related to prevailing wage, including but not limited to California Labor Code 1720 et seq. and all other California prevailing wage laws and regulations, and all requirements, regulations or decisions of the California Department of Industrial Relations related thereto. CONTRACTOR further stipulates to follow all requirements and pay any penalties due, if any, under Section 1813 of the California Labor Code. The CONTRACTOR shall post the prevailing rate per diem wages at each job site. Further CONTRACTOR shall indemnify, defend, and hold CITY harmless from any claim that prevailing wages should have been paid pursuant to this CONTRACT, including federal prevailing wage requirements under the Davis-Bacon Act, if applicable and shall be liable for the payment of same and any penalties thereon. CONTRACTOR is responsible for paying all legally required prevailing wages, and in the case of a difference between state and Federal law, the highest legally required rate.

CONTRACTOR and all subcontractors must be registered and remain registered with DIR (Department of Industrial Relations) through the term of the CONTRACT in accordance with the California Labor Code (“Labor Code”), in particular Labor Code Section 1771.1, and any successor or replacement provision thereto, unless a small project exemption applies ($25,000 for public works or $15,000 for maintenance). CONTRACTOR further agrees that it will follow all requirements and obligations set forth in Labor Code Section 1776.

7. **Audit.**

A. At any time during normal business hours and as often as the CITY may deem necessary, CONTRACTOR shall make available to CITY for inspection its records pertaining to this CONTRACT. CONTRACTOR shall permit CITY to audit, examine and/or reproduce such records. CONTRACTOR will retain such financial records, time sheets, work progress reports, invoices, bills and project records for at least (2) years after termination or final payment under this CONTRACT. This paragraph shall survive for two (2) years after termination of this CONTRACT.

B. CITY shall have the option of inspecting and/or auditing all records and other written materials used by CONTRACTOR in preparing its statements to CITY as a condition precedent to any payment to CONTRACTOR.

8. **Hold Harmless and Indemnification.** CONTRACTOR shall defend, indemnify, and hold harmless CITY, its agents, officials, officers, representatives, and employees, from and against all claims, lawsuits, liabilities or damages of whatever nature arising out of or in connection with, or relating in any manner to any act or omission of CONTRACTOR, its agents, employees, and subcontractors, and employees thereof, pursuant to the performance or non-performance of this CONTRACT. The CONTRACTOR shall thoroughly investigate any and all claims and indemnify the CITY and do whatever is necessary to protect the CITY, its agents, officials, officers, representatives, and employees as to any such claims, lawsuits, liabilities, expenses, or damages arising out of this CONTRACT. The CITY shall be included as an Additional Insured in the automobile/liability insurance policies and endorsements of the CONTRACTOR. The CONTRACTOR must select an
attorney acceptable to the CITY who will defend such proceeding and the CITY will
control any litigation thereof. Such approval by the CITY will not be unreasonably
withheld. This paragraph shall survive the termination of the CONTRACT.

9. **Amendments.** Any amendment, modification, or variation from the
terms of this CONTRACT shall be in writing and shall be effective only upon mutual
written approval by the Director of Public Works and CONTRACTOR.

10. **Anti-Discrimination.** In the performance of the terms of this
CONTRACT, CONTRACTOR shall not engage in, nor permit subcontractors to engage
in, discrimination in employment of persons because of the age, race, color, religious
creed, sex, sexual orientation, national origin, ancestry, physical disability, mental
disability, medical condition, or marital status of such persons. Violation of this
provision may result in the imposition of penalties referred to in Labor Code Section
1735.

11. **Termination.** If, during the term of this CONTRACT, CITY
determines that CONTRACTOR is not faithfully abiding by any term or condition
contained herein, CITY may notify CONTRACTOR in writing of such defect or failure to
perform. The notice must give to the CONTRACTOR a ten (10) day period of time
thereafter in which to perform said work or cure the deficiency. If CONTRACTOR has
not performed the work or cured said deficiency within the ten (10) days specified in the
notice, such failure shall constitute a breach of this CONTRACT, and CITY may
terminate this CONTRACT immediately by written notice to CONTRACTOR to said
effect. Thereafter, neither party shall have any further duties, obligations,
responsible, or rights under this CONTRACT except, however, any and all
obligations of CONTRACTOR'S surety shall remain in full force and effect and shall not
be extinguished, reduced, or in any manner waived by the termination hereof. In said
event, CONTRACTOR shall be entitled to the reasonable value of its services
performed from the beginning of the period in which the breach occurs up to the day it
received CITY'S Notice of Termination, minus any damages, including liquidated
damages if so provided herein, occasioned by such breach. CITY reserves the right to
delay any such payment until completion or confirmed abandonment of the project, as
may be determined in the CITY’S sole discretion, so as to permit a full and complete
accounting of costs. In no event, however, shall CONTRACTOR be entitled to receive
in excess of the compensation quoted in its bid.

12. **Insurance.** CONTRACTOR shall, prior to commencing
performance hereunder, submit proof of all insurance coverage as required by the
Specification or other document incorporated in and made a part of this CONTRACT.

13. **Complete CONTRACT.** This CONTRACT shall constitute the
complete CONTRACT between the parties hereto. No verbal agreement,
understanding, or representation not reduced to writing and specifically incorporated
herein shall be of any force or effect, nor shall any such verbal agreement,
understanding, or representation be binding upon the parties hereto.
14. **Independent Contractor.** It is expressly understood between the parties to this CONTRACT that no employee/employer relationship is intended; CONTRACTOR is an independent contractor.

15. **Time of Performance.** Time is of the essence in this CONTRACT.

16. **Liquidated Damages.** Should the CONTRACTOR fail to complete the project, or any part thereof, in the time agreed upon in the CONTRACT or within such extra time as may have been allowed for delays or extensions granted as provided in the CONTRACT, the CONTRACTOR shall reimburse the CITY for the additional expense and damage for each calendar day that the CONTRACT remains uncompleted after the CONTRACT completion date. It is agreed that the amount of such additional expense and damage incurred by reason of failure to complete the CONTRACT is the per diem rate $1,500 per calendar day. Such amounts are hereby agreed upon as liquidated damages for the loss to the CITY resulting from the failure of the CONTRACTOR to complete the project within the allotted time and to the value of the operation of the works dependent thereon.

   It is expressly understood and agreed that this amount is a reasonable amount and is established in lieu of damages which are incapable of calculation at the inception hereof; and this amount is not to be considered in the nature of a penalty. The CITY shall have the right to deduct such damages from any amount due, or that may become due to the CONTRACTOR, or the amount of such damages shall be due and collectible from the CONTRACTOR or the CONTRACTOR'S Surety.

   Progress payments made after the scheduled completion date shall not constitute a waiver of liquidated damages.

17. **Conflict of Interest.** Neither CONTRACTOR nor any employees, agents, or subcontractors of CONTRACTOR who will be assigned to this project, to the best of CONTRACTOR'S knowledge, own any property or interest in properties, business relationships, or sources of income which may be affected by the performance of this CONTRACT. Should one party hereto learn of any such interest, income source, or business relationship, such fact shall immediately be brought to the attention of the other party hereto. If the parties thereupon cannot mutually agree upon a means to eliminate the conflict, CITY may terminate the CONTRACT immediately for non-performance pursuant to Section 11 herein.

18. **Successors and Assigns.** The terms hereof shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that no party hereto shall assign any of the benefits and burdens hereunder, whether voluntarily or by operation of law, without the prior written consent of the other party, and any such assignment without said consent shall be void.

19. **Authority to Execute Contract.** Both CITY and CONTRACTOR do covenant that each individual executing this CONTRACT on behalf of each party is a person duly authorized and empowered to execute contracts for such party.
20. **Jurisdiction and Venue.** Jurisdiction is in an appropriate court in the State of California and venue lies in Ventura County, and the parties do not consent to arbitration. In the event of any dispute, each party shall bear its own fees and costs (including attorneys’ fees). This CONTRACT shall be governed by California law, without regard to conflict of law principles.

21. **Non-Appropriation of Funds.** Payments due and payable to CONTRACTOR for current goods and/or services are within the current budget and within an available, unexhausted and unencumbered appropriation of CITY. In the event CITY has not appropriated sufficient funds for payment of goods and/or services beyond the current fiscal year, this CONTRACT shall cover only those costs incurred up to the conclusion of the current fiscal year.

22. **Notices.** All written notices required by, or related to this CONTRACT shall be sent by Certified Mail, Return Receipt Requested, postage prepaid and addressed as listed below. Neither party to this CONTRACT shall refuse to accept such mail; the parties to this CONTRACT shall promptly inform the other party of any change of address. All notices required by this CONTRACT are effective on the day of receipt, unless otherwise indicated herein. The mailing address of each party to this CONTRACT is as follows:

**CITY**  
Ronald K. Fuchiwaki, Director  
Department of Public Works  
2929 Tapo Canyon Road  
Simi Valley, CA 93063  
Staff Contact: Sarah Sheshebor  
Senior Engineer/Capital Projects  
(805) 583-6792
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed the day and year first above written.

Attest:                                  [City of Simi Valley, A Municipal Corporation]

______________________________________ By: _________________________________
Julia Fritz, Acting City Clerk           Keith L. Mashburn, Mayor of the City
                                        of Simi Valley, California

Approved as to Form:                   [TORO ENTERPRISES, INC.]

______________________________________ By: _________________________________
Lonnie J. Eldridge, City Attorney       Print Name: _________________________________

Approved as to Content:                Title: _________________________________

______________________________________ By: _________________________________
Brian Paul Gabler, Interim City Manager Print Name: _________________________________

Title: _________________________________

______________________________________ 
Daniel L. Willhite
Deputy Administrative Services Director Print Name: _________________________________
(Support Services)

______________________________________ 
Ronald K. Fuchiwaki
Public Works Director
SCOPE OF WORK

CONTRACT BETWEEN THE CITY OF SIMI VALLEY AND
TORO ENTERPRISES, INC., FOR FY 2019-20 ANNUAL
MINOR STREETS REHABILITATION PROGRAM, SB1,
SPECIFICATION NO. SV 19-05

Schedule I

The improvements will primarily consist of approximately 737,390 S.F. of asphalt pavement cold milling, and placement of 6,940 tons of asphalt rubber hot mix overlay. The work further includes removal and replacement of curb and gutter, cross gutter, curb ramps, sidewalk, sidewalk grinding, adjustment and replacement of manhole and utility covers, replacement of traffic striping, traffic signing, and all appurtenant work.

Schedule II

The improvements will primarily consist of approximately 37,480 S.F. of asphalt pavement cold milling, and placement of 352 tons of asphalt rubber hot mix overlay. The work further includes removal and replacement of curb and gutter, cross gutter, curb ramps, sidewalk, sidewalk grinding, adjustment and replacement of manhole and utility covers, replacement of traffic striping, traffic signing, and all appurtenant work.

The Proposal shall be submitted and the work shall be performed by a State of California Class A licensed contractor in strict conformance with Specification No. SV 19-05, and now on file in the City's Department of Public Works and the office of the City Clerk.