

Council Meeting of  
April 8, 2008

Honorable Mayor and Members  
of the City Council  
City Hall  
Torrance, California

**Members of the Council:**

**SUBJECT: Public Works - Award a Public Works Agreement to Pivot Group, Inc. for Construction of the FY2007-08 Curb, Gutter and Sidewalk Replacement Program (Access Ramps), I-93. Expenditure: \$553,287**

**RECOMMENDATION**

Recommendation of the Public Works Director that City Council:

1. Approve the plans and specifications for the FY2007-08 Curb, Gutter and Sidewalk Replacement Program (Access Ramps), I-93 (B2008-04); and
2. Accept the "Claim of Error" letter from Sturgeon General, Inc., the initial lowest bidder, and relieve them of their Bid; and
3. Award a Public Works Agreement to Pivot Group, Inc. in the amount of \$526,940 and authorize a 5% contingency in the amount of \$26,347 to construct the FY2007-08 Curb, Gutter and Sidewalk Replacement Program (Access Ramps), I-93 (B2008-04).

**Funding**

Funding for the Public Works Agreement and 5% contingency is available from the Residential Curb, Gutter and Sidewalk Replacement, I-93.

**BACKGROUND AND ANALYSIS**

The FY 2007-11 Residential Curb, Gutter & Sidewalk Replacement is a multi-year program included in the City's adopted FY 2007-11 Capital Budget as project I-93 ("I-93 Program"). The project provides for the replacement of damaged curbs, gutters and sidewalk; installation of curb ramps that are compliant with the Americans with Disabilities Act ("ADA"); and removal and replanting of parkway trees. Since 2007, the primary focus of the I-93 Program had been to install ADA-compliant curb ramps at locations where they currently are non-existent. These are locations where there is either a 6-inch or 8-inch high concrete curb along the corner radii of intersections. The goal is to remove the existing concrete curbs and sidewalks along the corner radii and then install new ADA-compliant curb ramps. The installation of these ramps will create a continuous path of travel for both pedestrians and physically-challenged individuals that use either battery-operated carts or wheelchairs.

In FY2006-07 (Phase 1), 480 curb ramps were installed on all city streets south of 190<sup>th</sup> Street and north of Sepulveda Boulevard. In FY2007-08 (Phase 2), 170 ramps will be installed from 190<sup>th</sup> Street to Redondo Beach Boulevard, extending across the east-west city limits. A project location map is provided in Attachment A.

The I-93 Program was advertised for bid on January 20, 2008 as B2008-04. Sixteen (16) bids were received and opened on February 21, 2008 with the following results:

<u>BIDDER</u>	<u>BASE BID AMOUNT</u>
1. Sturgeon General, Inc.	\$ 385,520.00
2. Pivot Group, Inc	\$ 498,940.00
3. S. Parker Engineering, Inc.	\$ 531,950.00
4. D & L Wheeler Enterprises	\$ 562,765.00
5. Portsmouth Construction, Inc.	\$ 564,440.00
6. Sully-Miller Contracting Co.	\$ 591,100.50
7. Vanguard Construction	\$ 597,900.00
8. Lonerock, Inc.	\$ 629,550.00
9. CJ Concrete Construction, Inc.	\$ 692,575.00
10. Silvia Construction, Inc.	\$ 712,365.00
11. Y & M Construction, Inc.	\$ 762,725.00
12. McKenna General Engineering, Inc.	\$ 769,114.00
13. Damon Construction Co.	\$ 847,337.50
14. PALP, Inc, dba Excel Paving Co.	\$ 922,897.50
15. EBS, Inc.	\$ 977,995.00
16. Kalban, Inc	\$1,102,650.00

The Engineer's estimate for this project is between \$640,000 and \$700,000. When bids were opened, Sturgeon General, Inc. ("Sturgeon") was the apparent lowest bidder for the project, based on its listed total bid price. However, upon subsequent review of all bids, staff determined that Sturgeon miscalculated its total bid price. As such, Sturgeon was notified and subsequently filed a claim of error (Attachment B) asking to be relieved from its bid. Staff from the Public Works Department and City Attorney's Office have reviewed Sturgeon's letter and have no objection, as it is in accordance with the CA Public Contract Code.

Pivot Group, Inc. ("Pivot") is the second lowest responsible bidder. Pivot submitted a bid in the amount of \$498,940.00, which is \$141,060 less than the lower range or the Engineer's estimate. There are no errors in their Bidder's Proposal. The firm's references and contractor's license have been checked and found to be in order.

### Additive Bid Item – Construct Concrete Cross Gutter

An additive bid item is included in a Bid when an agency wishes to obtain a price from a bidder to construct a desired improvement; however, the agency is not required to include the additive bid item in a Public Works Agreement if there is insufficient funding. Also, the cost of any additive bid item is not used to determine the lowest, responsible bidder.

The Bid package (B2008-04) for the I-93 Program contained an additive bid item to construct 10 concrete cross-gutters at areas where drainage improvements are needed. The concrete cross gutters are typically constructed as part of the I-93 Program; however, due to budget concerns, the cross gutters were included as an additive bid item, instead of a base bid item. Pivot submitted a bid in the amount of \$28,000 for the additive bid item. Because their base bid is \$141,060 less than the lower range of the Engineer's estimate, there is sufficient funding to add the additive bid item to the Public Works Agreement. The combined total of Pivot's base bid (\$498,940) and additive bid (\$28,000) is \$526,940, which is still well below the Engineer's estimate. It should be noted that Pivot remains the lowest responsible bidder even when their additive bid is added to its base bid. Therefore, the Public Works Director recommends that Council award the Public Works Agreement (Attachment C) to Pivot Group, Inc.

It is anticipated that construction of the I-93 Program will commence in May 2008 and be completed by August 2008.

Respectfully submitted,

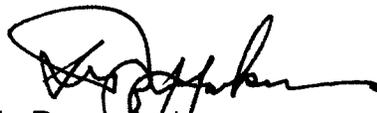
ROBERT J. BESTE  
Public Works Director

CONCUR:



Robert J. Beste  
Public Works Director

By   
Craig Bilezerian  
Engineering Manager



LeRoy J. Jackson  
City Manager

Attachments: A. Location Map, I-93 Program  
B. Claim of Error, Sturgeon General, Inc.  
C. Public Works Agreement, Pivot Group, Inc.







**STURGEON GENERAL, INC.**  
**2519 W. WOODLAND DR.**  
**ANAHEIM, CA. 92801**  
**TEL-714-995-9800**  
**FAX-714-995-9801**

February 26, 2008

Ms. Sue Herbers, City Clerk  
City of Torrance  
3031 Torrance Blvd  
Torrance, Ca 90509  
Tel-310-539-3986  
Fax-310-618-2931  
Sherbers@tornet.com

RE: FY2007-08 CURBB, GUTTER AND SIDEWALK REPLACEMENT PROGRAM  
(ACCESS RAMPS) B2008-04

Dear Ms. Herbers,

Upon further review of our bid, Sturgeon General Inc. asserts that we did make a clerical error in the computation of our bid. Therefore, we are asking for bid relief and that our bid bond is returned to us.

This letter is meant to comply with the Public Contract Code Section 5103.

PCC 5103 reads: the bidder shall establish to the satisfaction of the court that:

- a) **A mistake was made.**  
Sturgeon General states that a mistake was made in our bid. The mistake was not due to an error in judgment, but to a clerical mistake. The clerical error/mistake is prima facie.
- b) **He or she gave the public entity written notice within five days after the bid opening of the bids of the mistake, specifying in the notice in detail how the mistake occurred.**  
Sturgeon has complied with this. To be specific, the bid should read \$481,250.00 instead of \$381,250.00
- c) **The mistake made the bid materially different then he or she intended it to be.**  
Sturgeon General states that the mistake in our bid made it materially different in the amount of (\$100,000.00). Sturgeon Generals bid should have been \$481,250.00 instead of \$381,250.00. The incorrect amount written in the actual bid was "materially different" than the amount Sturgeon General "intended".
- d) **The mistake was made in filling out the bid and not due to error in judgments or to carelessness in inspecting the site of the work, or in reading the plans or specifications.**

Therefore, Sturgeon General Inc. asks that you give "bid relief" and send our bid bond back to us and/or "destroy" the bid bond.

If you have any questions, please feel free to contact our office or myself at 714-745-8243.

Thank you,

Michael Sturgeon



## PUBLIC WORKS AGREEMENT

This PUBLIC WORKS AGREEMENT ("Agreement") is made and entered into as of \_\_\_\_\_, 2008 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and PIVOT GROUP, INC., a California corporation ("CONTRACTOR").

### RECITALS:

- A. The CITY wishes to retain the services of an experienced and qualified CONTRACTOR to construct **FY2007-08 CURB, GUTTER AND SIDEWALK REPLACEMENT PROGRAM (ACCESS RAMPS), B2008-04;**
- B. In order to obtain the desired services, The CITY has circulated a Notice Inviting Bids for the construction of **FY2007-08 CURB, GUTTER AND SIDEWALK REPLACEMENT PROGRAM (ACCESS RAMPS)**, Notice Inviting Bids No. B2008-04 (the "NIB"); and
- C. CONTRACTOR has submitted a Bid (the "Bid") in response to the NIB. CONTRACTOR represents that it is qualified to perform those services requested in the Plans and Specifications. Based upon its review of all Bids submitted in response to the NIB, The CITY is willing to award the contract to CONTRACTOR.

### AGREEMENT:

#### 1. SERVICES TO BE PERFORMED BY CONTRACTOR

CONTRACTOR will provide the services and install those materials listed in the Plans and Specifications, which are on file in the Public Works Department. The NIB and the Plans and Specifications are made a part of this Agreement. A copy of the Bid is attached as Exhibit A.

#### 2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect for one year from the Effective Date.

#### 3. COMPENSATION

##### A. CONTRACTOR's Fee.

For services rendered pursuant to this Agreement, CONTRACTOR will be paid in accordance with CONTRACTOR's Bid; provided, however, that in no event will the total amount of money paid the CONTRACTOR, for

services initially contemplated by this Agreement, exceed the sum of \$526,940.00 ("Agreement Sum"), unless otherwise first approved in writing by the CITY.

B. Schedule of Payment.

Provided that the CONTRACTOR is not in default under the terms of this Agreement, upon presentation of an invoice, CONTRACTOR will be paid monthly, within 30 days after the date of the monthly invoice.

**4. TERMINATION OF AGREEMENT**

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.
2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONTRACTOR will:
  - a) cease operations as directed by CITY in the notice;
  - b) take actions necessary, or that CITY may direct, for the protection preservation of the work; and
  - c) except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.
3. In case of such termination for CITY's convenience, CONTRACTOR will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.
2. In the event this Agreement is terminated for cause by the default of the CONTRACTOR, the CITY may, at the expense of the CONTRACTOR and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this

Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONTRACTOR under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONTRACTOR and its surety from liability for the default. Under these circumstances, however, the CONTRACTOR and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONTRACTOR or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

#### C. Termination for Breach of Law.

In the event the CONTRACTOR or any of its officers, directors, shareholders, employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONTRACTOR's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONTRACTOR has been given notice and an opportunity to present evidence in mitigation.

#### 5. **FORCE MAJEURE**

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

**6. RETENTION OF FUNDS**

CONTRACTOR authorizes the CITY to deduct from any amount payable to CONTRACTOR (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate the CITY for any losses, costs, liabilities, or damages suffered by the CITY, and all amounts for which the CITY may be liable to third parties, by reason of CONTRACTOR's negligent acts or omissions or willful misconduct in performing or failing to perform CONTRACTOR's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONTRACTOR, or any indebtedness exists that appears to be the basis for a claim of lien, the CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of the CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONTRACTOR to insure, indemnify, and protect the CITY as elsewhere provided in this Agreement.

**7. THE CITY'S REPRESENTATIVE**

The Public Works Director is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by the CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONTRACTOR.

**8. CONTRACTOR REPRESENTATIVE(S)**

The following principal(s) of CONTRACTOR are designated as being the principal(s) and representative(s) of CONTRACTOR authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Andre Haghverdian, President

**9. INDEPENDENT CONTRACTOR**

The CONTRACTOR is, and at all times will remain as to the CITY, a wholly independent contractor. Neither the CITY nor any of its agents will have control over the conduct of the CONTRACTOR or any of the CONTRACTOR's employees, except as otherwise set forth in this Agreement. The CONTRACTOR may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of the CITY.

**10. BUSINESS LICENSE**

The CONTRACTOR must obtain a City business license prior to the start of work under this Agreement, unless CONTRACTOR is qualified for an exemption.

**11. OTHER LICENSES AND PERMITS**

CONTRACTOR warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

**12. FAMILIARITY WITH WORK**

By executing this Agreement, CONTRACTOR warrants that CONTRACTOR (a) has thoroughly investigated and considered the scope of services to be performed, (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 set forth in this Agreement. Should CONTRACTOR discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONTRACTOR must immediately inform the CITY of that fact and may not proceed except at CONTRACTOR's risk until written instructions are received from the CITY.

**13. CARE OF WORK**

CONTRACTOR must 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 other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by the CITY, except those losses or damages as may be caused by the CITY's own negligence.

**14. CONTRACTOR'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS**

Records of the CONTRACTOR's time pertaining to the project, and records of accounts between the CITY and the CONTRACTOR, will be kept on a generally recognized accounting basis. CONTRACTOR will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to the CITY during normal working hours. CONTRACTOR will maintain these records for three years after final payment.

**15. INDEMNIFICATION**

CONTRACTOR will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONTRACTOR, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONTRACTOR's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONTRACTOR and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONTRACTOR will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONTRACTOR will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

**16. NON-LIABILITY OF THE CITY'S OFFICERS AND EMPLOYEES**

No officer or employee of the CITY will be personally liable to CONTRACTOR, in the event of any default or breach by the CITY or for any amount that may become due to CONTRACTOR.

**17. INSURANCE**

- A. CONTRACTOR must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:
1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:
    - a. Combined single limits of \$2,000,000 per occurrence.
  2. General Liability including coverage for premises, products and completed operations, independent contractors, personal injury and contractual obligations with combined single limits of coverage of at

least \$3,000,000 per occurrence, with an annual aggregate of no less than \$5,000,000.

3. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least \$1,000,000.
- B. The insurance provided by CONTRACTOR will be primary and non-contributory.
  - C. The CITY of Torrance, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insureds under the automobile and general liability policies.
  - D. CONTRACTOR must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.
  - E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to the CITY.
  - F. CONTRACTOR must include all subcontractors as insureds under its policies or must furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors will be subject to all of the requirements of this Paragraph 17.

## **18. SUFFICIENCY OF INSURERS**

Insurance required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of the CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the CITY, the CONTRACTOR agrees that the minimum limits of any insurance policies and/or the performance bond required by this Agreement may be changed accordingly upon receipt of written notice from the Risk Manager; provided that CONTRACTOR will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of the CITY within 10 days of receipt of notice from the Risk Manager.

**19. CONFLICT OF INTEREST**

- A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.
- B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

**20. NOTICE**

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
  - 1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
  - 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
  - 3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
  - 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
  - 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the

next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONTRACTOR: Pivot Group, Inc.  
150 S. Glenoaks Blvd.,#9170  
Burbank, CA 91502  
Phone: (818) 550-8681  
Fax: (818) 378-8865

CITY: City Clerk  
City of Torrance  
3031 Torrance Boulevard  
Torrance, CA 90509-2970  
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

## **21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING**

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either the CITY or CONTRACTOR without the prior written consent of the other.

## **22. INTEGRATION; AMENDMENT**

This Agreement represents the entire understanding of the CITY and CONTRACTOR as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

## **23. INTERPRETATION**

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

**24. SEVERABILITY**

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

**25. TIME OF ESSENCE**

Time is of the essence in the performance of this Agreement.

**26. GOVERNING LAW; JURISDICTION**

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

**27. COMPLIANCE WITH STATUTES AND REGULATIONS**

CONTRACTOR will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

**28. WAIVER OF BREACH**

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will 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 will not be a waiver of any other default concerning the same or any other provision of this Agreement.

**29. ATTORNEY'S FEES**

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. CONTRACTOR'S AUTHORITY TO EXECUTE

The persons executing this Agreement on behalf of the CONTRACTOR warrant that (i) the CONTRACTOR is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONTRACTOR; (iii) by so executing this Agreement, the CONTRACTOR is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONTRACTOR is bound.

CITY OF TORRANCE,  
a Municipal Corporation

Pivot Group, Inc.  
a California Corporation

\_\_\_\_\_  
Frank Scotto, Mayor

By: Andre Haghverdian  
President

ATTEST:

\_\_\_\_\_  
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III  
City Attorney

By: \_\_\_\_\_

Attachments: Exhibit A: Bid

**EXHIBIT A**

**Bid**

## BIDDER'S PROPOSAL

Company: PIVOT GROUP, INC.

B2008-04

Total Bid: \$498,940.<sup>00</sup>

PROPOSAL, SPECIFICATIONS, BOND AND AFFIDAVIT  
FOR THE CONSTRUCTION OF  
FY2007-08 CURB, GUTTER AND SIDEWALK REPLACEMENT PROGRAM  
(ACCESS RAMPS)

Honorable Mayor and Members  
of the Torrance City Council  
Torrance, California

Members of the Council:

In accordance with the Notice Inviting Bids pertaining to the receiving of sealed proposals by the City Clerk of the City of Torrance for the above titled improvement, the undersigned hereby proposes to furnish all Work to be performed in accordance with the Plans, Specifications, Standard Drawings, and the Contract Documents, for the unit price or lump sum set forth in the following schedule.

BID SCHEDULE

Item No.	Quantity	Unit of Measure	Description of Work	Unit Price	Total Price
1	550	LF	REMOVE PCC CURB OR CURB & GUTTER (HEIGHT AND WIDTH VARIES) NOT WITHIN THE LIMITS OF CURB ACCESS RAMPS	\$13. <sup>70</sup>	\$7,535. <sup>00</sup>
2	170	EA	REMOVE EXISTING CORNER RADIUS CURB OR CURB AND GUTTER (HEIGHT & WIDTH VARIES) AND SIDEWALK (WIDTH VARIES). CONSTRUCT NEW CORNER PCC CURB OR CURB & GUTTER PER APWA STD. 120-1 [TYPE: A1-150(6); A1-150(8); A2-150(6) OR A2-150(8)] OVER 8" CMB AND 3.5" THICK CURB ACCESS RAMP ON 4" CMB, INCLUDING RESTORATION OF 1-FOOT WIDE SLOT PATCH. CURB RAMP IS NOT MONOLITHIC WITH CURB OR CURB & GUTTER.	\$2,150. <sup>00</sup>	\$365,500. <sup>00</sup>

3	550	LF	CONSTRUCT PCC CURB OR CURB & GUTTER PER APWA STD. 120-1 [TYPE: A1-150(6); A1-150(8); A2-150(6) OR A2-150(8)] OVER 8" CMB, INCLUDING RESTORATION OF 1-FOOT WIDE SLOT PATCH. MATCH EXISTING CURB HEIGHT AND GUTTER WIDTH	\$ 26. <sup>81</sup> / <sub>100</sub>	\$ 14,300. <sup>00</sup> / <sub>100</sub>
4	5,900	SF	REMOVE EXIST. SIDEWALK AND CONSTRUCT 3.5"-THICK PCC SIDEWALK OVER 4" CMB, OUTSIDE LIMITS OF CURB ACCESS RAMP.	\$ 7. <sup>95</sup> / <sub>100</sub>	\$ 46,905. <sup>00</sup> / <sub>100</sub>
5	157	EA	FURNISH AND INSTALL 36" X 48" DETECTABLE WARNING SURFACE PANEL AT ACCESS RAMP	\$ 300. <sup>00</sup> / <sub>100</sub>	\$ 47,100. <sup>00</sup> / <sub>100</sub>
6	800	SF	CONSTRUCT 8" PCC CROSS GUTTER PER APWA STD. 122-1 OVER 8" CMB INCLUDING 1-FOOT WIDE SLOT PATCH (LOCATIONS SHOWN IN APPENDIX II)	\$ 16. <sup>00</sup> / <sub>100</sub>	\$ 12,800. <sup>00</sup> / <sub>100</sub>
7	600	SF	CONSTRUCT 6" AC PAVEMENT OVER 8" CMB	\$ 8. <sup>00</sup> / <sub>100</sub>	\$ 4,800. <sup>00</sup> / <sub>100</sub>

TOTAL BID PRICE \$ \$ 498,940.<sup>00</sup>/<sub>100</sub>  
(Figures)\*

TOTAL BID PRICE: Four hundred ninety eight thousand  
(Words)\* nine hundred forty dollars only

**\*BID MAY BE REJECTED IF TOTAL IS NOT SHOWN IN FIGURES AND WORDS.**

B2008-04  
ADDITIVE BID ITEM

Note:

The City may choose to add the item of work "CONSTRUCT 8" PCC CROSS GUTTER PER APWA STD. 122-1 OVER 8" CMB INCLUDING 1-FOOT WIDE SLOT PATCH AT VARIOUS LOCATIONS SHOWN IN APPENDIX V". The contractor's unit bid price per square foot and total bid for the addition of this material shall be completed in the table below.

Item No.	Quantity	Unit	Description	Unit Price	Total Bid
A1	1,000	SF	CONSTRUCT 8" PCC CROSS GUTTER PER APWA STD. 122-1 OVER 8" CMB INCLUDING 1-FOOT WIDE SLOT PATCH AT VARIOUS LOCATIONS SHOWN IN APPENDIX V	\$ 28. <sup>00</sup>	\$ 28,000. <sup>00</sup>

The above unit price includes all work appurtenant to the various items as outlined in the Specifications and all work or expense required for the satisfactory completion of said item. In case of a discrepancy between the unit price and total bid, the unit price shall govern.

The undersigned declares that it has carefully examined the Plans, Specifications, and Contract Documents, and has investigated the site of the work and is familiar with the conditions thereon.

PIVOT GROUP, INC.

Contractor

Date: 02/20/08

By: Andrew J. [Signature]

Contractor's State License No. 863806

Address: 150 S. GLENOAKS BLVD., #9170  
BURBANK, CA 91502

Class A, B

Phone: (818) 550-8681

(818) 378-8865

(818) 378-8865 (CELL)

ACKNOWLEDGMENT OF ADDENDA RECEIVED – B2008-04

The Bidder shall acknowledge the receipt of addenda by placing an "X" by each addendum received.

Addendum No. 1 \_\_\_\_\_

Addendum No. 2 \_\_\_\_\_

Addendum No. 3 \_\_\_\_\_

Addendum No. 4 \_\_\_\_\_

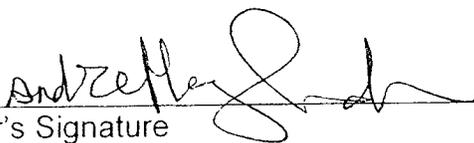
Addendum No. 5 \_\_\_\_\_

Addendum No. 6 \_\_\_\_\_

Addendum No. 7 \_\_\_\_\_

Addendum No. 8 \_\_\_\_\_

If an addendum or addenda have been issued by the City and not noted above as being received by the Bidder, the Bid Proposal may be rejected.

  
Bidder's Signature

2/20/08  
Date

CONTRACTOR'S AFFIDAVIT

STATE OF CALIFORNIA }  
COUNTY OF LOS ANGELES }

B2008-04

ANDRE HAGHVERDIAN, being first duly sworn, deposes and says:

- 1. That he is the PRESIDENT  
Title  
of PIVOT GROUP, INC.  
(Name of Partnership, Corporation, or Sole Proprietorship)

hereinafter called "Contractor," who has submitted to the City of Torrance a proposal for the Construction of FY2007-08 CURB, GUTTER AND SIDEWALK REPLACEMENT PROGRAM (ACCESS RAMPS), B2008-04;

- 2. That said proposal is genuine; that the same is not sham; that all statement of facts therein are true;
- 3. That such proposal was not made in the interest or behalf of any person, partnership, company, association, organization or corporation not named or disclosed;
- 4. That the Contractor did not, directly or indirectly, induce, solicit or agree with anyone else to submit a false or sham bid, to refrain from bidding, or to withdraw the bid, to raise or fix the bid price of the Contractor or anyone else, or to raise or fix any overhead, profit or cost element of the Contractor's price or the price of anyone else; and did not attempt to induce action prejudicial to the interest of the City of Torrance, or of any other bidder, or anyone else interested in the proposed contract;
- 5. That the Contractor has not in any manner sought by collusion to secure for itself an advantage over any other bidder or to induce action prejudicial to the interests of the City of Torrance, or of any other bidder or of anyone else interested in the proposed contract;
- 6. That the Contractor has not accepted any bid from any subcontractor or materialman through any bid depository, the bylaws, rules or regulations of which prohibit or prevent the Contractor from considering any bid from any subcontractor or materialman, which is not processed through said bid depository, or which prevent any subcontractor or materialman from bidding to any contractor who does not use the facilities of or accept bids from or through such bid depository;

CONTRACTOR'S AFFIDAVIT (CONTINUED)

7. That the Contractor did not, directly or indirectly, submit the Contractor's bid price or any breakdown thereof, or the contents thereof, or divulge information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, or to any individual or group of Individuals, except to the City of Torrance, or to any person or persons who have a partnership or other financial interest with said Contractor in its business.

Dated this 20 day of February, 2008.

Subscribed and Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

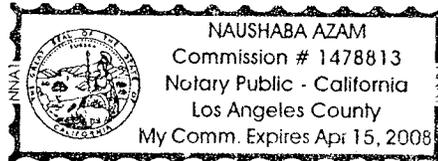
Andre Hagverdian  
\_\_\_\_\_  
(Contractor)  
President  
\_\_\_\_\_  
(Title)

Notary Public in and for said County and State.  
(Seal)

State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 20 day of FEB., 2008, by ANDRE HAGTUERDIAN, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature Naushaba Azam



## LIST OF SUBCONTRACTORS

The Bidder is required to fill in the following blanks in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act (Chapter 2 of Division 5, Title 1 of the Government Code of the State of California) and should familiarize itself with Section 2-3 of the Standard Specifications.

Name Under Which Subcontractor is Licensed: Tyner Paving Company

License Number: 676195

Address of Office, Mill or Shop: 2005 San Fernando Rd., Los Angeles, CA

Specific Description of Sub-Contract: AC Paving Work

Name Under Which Subcontractor is Licensed: \_\_\_\_\_

License Number: \_\_\_\_\_

Address of Office, Mill or Shop: \_\_\_\_\_

Specific Description of Sub-Contract: \_\_\_\_\_

Name Under Which Subcontractor is Licensed: \_\_\_\_\_

License Number: \_\_\_\_\_

Address of Office, Mill or Shop: \_\_\_\_\_

Specific Description of Sub-Contract: \_\_\_\_\_

Name Under Which Subcontractor is Licensed: \_\_\_\_\_

License Number: \_\_\_\_\_

Address of Office, Mill or Shop: \_\_\_\_\_

Specific Description of Sub-Contract: \_\_\_\_\_

Subcontractors listed in accordance with the provisions of Section 2-3 must be properly licensed under the laws of the State of California for the type of work which they are to perform. Do not list alternate subcontractors for the same work.

REFERENCES

(Work similar in magnitude and degree of difficulty completed by Contractor within the past three [3] years.)

1. Name (Firm/Agency): City of Simi Valley  
 Address: 4949 Tapo Canyon Rd., Simi Valley, CA  
 Contact Person: Mansour Moradi Telephone No.: (805)583-6891  
 Title of Project: ADA Curb Ramp Project  
 Project Location: city wide  
 Date of Completion: Dec 2007 Contract Amount: \$ 70,000
2. Name (Firm/Agency): County of Orange  
 Address: 1152 E. Fruit St, Bldg. 1, Santa Ana, CA  
 Contact Person: Steve Johsz Telephone No.: (714)567-7742  
 Title of Project: HCA - Animal Care facility - Parking lot  
 Project Location: 561 The City Dr., Orange, CA  
 Date of Completion: Feb 2008 Contract Amount: \$ 510,000
3. Name (Firm/Agency): City of Santa Clarita  
 Address: 29200 Valencia Blvd., Santa Clarita, CA  
 Contact Person: Denise Clark Telephone No.: (661)286-4148  
 Title of Project: Basketball Court Renovation Project  
 Project Location: 3 Parks City wide  
 Date of Completion: July 2007 Contract Amount: \$ 180,000
4. Name (Firm/Agency): City of Lakewood  
 Address: Studebaker Blvd., Lakewood, CA  
 Contact Person: Carol Godlewski Telephone No.: (562)866-9771  
 or Jane Anderson  
 Title of Project: Rynerson Park Shelter Renovation  
 Project Location: Rynerson Park, Lakewood  
 Date of Completion: Feb 2007 Contract Amount: \$ 220,000

**REFERENCES**

If Contractor has not performed work for the City of Torrance within the last five (5) years, list all work done within said five years (attach additional sheets if necessary). Note if work was done as subcontractor [include only subcontract amount]:

Work Description & Contract Amount	Agency	Date Completed
HCA - Animal Care - Parking lot \$ 510,000	County of Orange	Feb 2008
ADA Curb Ramp Proj \$ 70,000	City of Simi valley	Dec 2007
Basketball Court Renov. \$ 180,000	City of Santa Clarita	July 2007
Alondra Lib Renov Proj \$ 230,000	city of Norwalk	Apr 2007
Rynerson Park Shelter Proj \$ 220,000	City of Lakewood	Feb 2007

Contractor's License No.: 863806 Class: A, B

a. Date first obtained: Feb 2005 Expiration Sep 2009

b. Has License ever been suspended or revoked? No.

If yes, describe when and why: \_\_\_\_\_

c. Any current claims against License or Bond? No.

If yes, describe claims: \_\_\_\_\_

Principals in Company (List all - attach additional sheets if necessary):

<u>NAME</u>	<u>TITLE</u>	<u>LICENSE NO.</u> (If Applicable)
<u>ANDRE HAGHVERDIAN</u>	<u>PRESIDENT</u> <u>100% OWNED</u>	<u>N/A</u>
_____	_____	_____
_____	_____	_____

## DBE

DBE BIDDERS LIST  
B2008-04

All bidders are required to provide the following information for each DBE and non-DBE subcontractor or subconsultant who provided a proposal, bid, quote, or were contacted by the proposed prime bidder. This information is required from the proposed prime bidder and must be submitted with their bid/proposal. The City of Torrance will use this information to maintain and update a "Bidders" List to assist in the overall annual DBE goal-setting process.

Firm Name: <u>Tyner Paving Company</u>	Phone: <u>(323)225-8014</u>
Address: <u>2005 San Fernando Rd.</u> <u>Los Angeles, CA</u>	Fax: <u>(323)225-0161</u>
Contact Person: <u>Javier Torres</u>	No. of years in business: <u>      </u>
Is the firm currently certified as a DBE under 49 CFR Part 26: YES: <u>      </u> NO: <input checked="" type="checkbox"/>	
Type of work/services/materials provided by firm? <u>AC PAVING</u>	
What was your firm's Gross Annual receipts for last year?	
Less than \$1 Million <input type="checkbox"/> Less than \$5 Million <input checked="" type="checkbox"/> Less than \$10 Million <input type="checkbox"/> Less than \$15 Million <input type="checkbox"/> More than \$15 Million <input type="checkbox"/>	

This form can be duplicated if necessary to report all bidders (DBEs and non-DBEs) information.

VIOLATIONS OF FEDERAL, STATE OR LOCAL LAWS

- 1. Has your firm or its officers been assessed any penalties by an agency for noncompliance or violations of Federal, State or Local labor laws and/or business or licensing regulations within the past five (5) years relating to your construction projects?

Yes/No: yes. Federal/State: State.

If "yes," identify and describe, (including agency and status): California Apprenticeship Council

The issue has been settled. Mistake due to being unfamiliar with certain Labor Code & un-timely manner Submittal of a certain Form.

Have the penalties been paid? Yes/No: yes.

- 2. Does your firm or its officers have any ongoing investigations by any public agency regarding violations of the State Labor Code, California Business and Professions Code or State Licensing Laws?

Yes/No: No. Code/Laws: \_\_\_\_\_ Section/Article: \_\_\_\_\_

If "yes," identify and describe, (including agency and status): \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_