

STAFF REPORT



ITEM NO. 12
CITY OF OCEANSIDE

DATE: April 2, 2008

TO: Honorable Mayor and City Councilmembers

FROM: Neighborhood Services Department

SUBJECT: **APPROVAL OF A PROFESSIONAL SERVICES AGREEMENT WITH OMEGATURF, INC., FOR THE INSTALLATION OF SYNTHETIC TURF IN PARKWAY AREAS IN THE LIBBY LAKE NEIGHBORHOOD AS PART OF THE OCEANSIDE S.U.N. 2007 PROJECT**

SYNOPSIS

Staff recommends that the City Council approve the professional services agreement with OmegaTurf, Inc., of San Diego in an amount not to exceed \$135,044, for the installation of synthetic turf in parkway areas in the Libby Lake Neighborhood as part of the Oceanside S.U.N. (Supporting Urban Neighborhoods) 2007 Project, and authorize the City Manager to execute the agreement.

BACKGROUND

The Oceanside S.U.N. 2007 Project was focused in the Libby Lake Neighborhood on September 22, 2007. The project involved properties along Calle Mariposa, Calle Los Santos, Calle Solimar, Calle Vallecito and Calle Las Positas. Activities completed on that day included housing painting, new fencing, trash and debris removal, and installing new garage doors. As a final element in completing the project, synthetic turf needs to be installed in the parkway areas of the above streets. Parkway areas are the small linear landscape areas between the curb and sidewalk. The proposed material will exactly match the synthetic turf installed by OmegaTurf, Inc., in the parkway areas of the Oceanside S.U.N. 2006 Project which encompassed Calle Montecito and Calle Estrella.

ANALYSIS

The installation of synthetic turf in the parkway areas within the Oceanside S.U.N. 2007 Project area will complete all the S.U.N. Project elements for the Libby Lake Neighborhood. The benefits for the City are low parkway maintenance and water conservation. This Project has served as a model for other possible landscaping projects throughout the City wherein maintenance and water conservation are issues. The City received a rebate from the San Diego County Water Authority for its use of synthetic turf in the Oceanside S.U.N. 2006 Project. A similar rebate will be sought for this year's installation, if available.

Due to the fact that the proposed synthetic turf material for the Oceanside S.U.N. 2007 Project matches the synthetic turf material used in the Oceanside S.U.N. 2006 Project exactly, the Neighborhood Services Department has received procurement approval for a sole-source justification for this Professional Services Agreement.

FISCAL IMPACT

CDBG funds have been budgeted for parkway improvements for the Oceanside S.U.N. 2007 Project in account (237) 298753.5392. There is no impact to the General Fund.

COMMISSION OR COMMITTEE REPORT

Does not apply.

CITY ATTORNEY'S ANALYSIS

The referenced documents have been reviewed by the City Attorney and approved as to form.

RECOMMENDATION

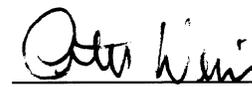
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PREPARED BY:



Frank Grana
Housing Program Manager

SUBMITTED BY:

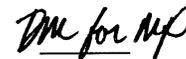


Peter A. Weiss
City Manager

REVIEWED BY:

Michelle Skaggs Lawrence, Deputy City Manager

Margery M. Pierce, Director of Neighborhood Services



DM for MP

ATTACHMENTS: 1. Professional Services Agreement
2. Sole-source Justification

CITY OF OCEANSIDE

PROFESSIONAL SERVICES AGREEMENT

PROJECT: Oceanside S.U.N. 2007 – Parkway Artificial Turf

THIS AGREEMENT is made and entered into this 4th day of March, 2008, by and between the CITY OF OCEANSIDE, a municipal corporation, hereinafter designated as "CITY", and **OmegaTurf, Inc.**, hereinafter designated as "CONTRACTOR."

NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. **SCOPE OF WORK.** The project is more particularly described as follows:

Provide materials, and install artificial turf in the parkway strips of Calle Mariposa, Calle Las Positas, and Calle Vallecitos per specifications contained in the proposal by **OmegaTurf, Inc.**, dated August 28, 2007, and incorporated and attached to this agreement as Attachment "A".

2. **INDEPENDENT CONTRACTOR.** CONTRACTOR'S relationship to the CITY shall be that of an independent contractor. CONTRACTOR shall have no authority, express or implied, to act on behalf of the CITY as an agent, or to bind the CITY to any obligation whatsoever, unless specifically authorized in writing by the CITY. The CONTRACTOR shall not be authorized to communicate directly with, nor in any way direct the actions of, any bidder or the construction contractor for this project without the prior written authorization by the CITY. CONTRACTOR shall be solely responsible for the performance of any of its employees, agents, or subcontractors under this Agreement. CONTRACTOR shall report to the CITY any and all employees, agents, and CONTRACTORS performing work in connection with this project, and all shall be subject to the approval of the CITY.

3. **WORKERS' COMPENSATION.** Pursuant to Labor Code section 1861, the CONTRACTOR hereby certifies that the CONTRACTOR is aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and the CONTRACTOR will comply with such provisions, and provide certification of such compliance as a part of this Agreement.

4. **LIABILITY INSURANCE.**

- 4.1. CONTRACTOR shall, throughout the duration of this Agreement maintain

Oceanside S.U.N. 2007 – Parkway Artificial Turf

comprehensive general liability and property damage insurance, or commercial general liability insurance, covering all operations of CONTRACTOR, its agents and employees, performed in connection with this Agreement including but not limited to premises and automobile.

4.2 CONTRACTOR shall maintain liability insurance in the following minimum limits:

Comprehensive General Liability Insurance
(bodily injury and property damage)

Combined Single Limit Per Occurrence	\$ 1,000,000
General Aggregate	\$ 2,000,000*

Commercial General Liability Insurance
(bodily injury and property damage)

General limit per occurrence	\$ 1,000,000
General limit project specific aggregate	\$ 2,000,000

<u>Automobile Liability Insurance</u>	\$ 1,000,000
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*General aggregate per year, or part thereof, with respect to losses or other acts or omissions of CONTRACTOR under this Agreement.

- 4.3** If coverage is provided through a Commercial General Liability Insurance policy, a minimum of 50% of each of the aggregate limits shall remain available at all times. If over 50% of any aggregate limit has been paid or reserved, the CITY may require additional coverage to be purchased by the CONTRACTOR to restore the required limits. The CONTRACTOR shall also notify the CITY promptly of all losses or claims over \$25,000 resulting from work performed under this contract, or any loss or claim against the CONTRACTOR resulting from any of the CONTRACTOR'S work.
- 4.4** All insurance companies affording coverage to the CONTRACTOR for the purposes of this Section shall add the City of Oceanside as "additional insured" under the designated insurance policy for all work performed under this agreement. Insurance coverage provided to the City as additional insured shall be primary insurance and other insurance maintained by the City of Oceanside, its officers, agents, and employees shall be excess only and not contributing with insurance provided pursuant to this Section.
- 4.5** All insurance companies affording coverage to the CONTRACTOR pursuant to this agreement shall be insurance organizations admitted by the Insurance Commissioner

Oceanside S.U.N. 2007 – Parkway Artificial Turf

of the State of California to transact business of insurance in the state or be rated as A-X or higher by A.M. Best.

- 4.6 All insurance companies affording coverage shall provide thirty (30) days written notice to the CITY should the policy be cancelled before the expiration date. For the purposes of this notice requirement, any material change in the policy prior to the expiration shall be considered a cancellation.
- 4.7 CONTRACTOR shall provide evidence of compliance with the insurance requirements listed above by providing a Certificate of Insurance, in a form satisfactory to the City Attorney, concurrently with the submittal of this Agreement.
- 4.8 CONTRACTOR shall provide a substitute Certificate of Insurance no later than thirty (30) days prior to the policy expiration date. Failure by the CONTRACTOR to provide such a substitution and extend the policy expiration date shall be considered a default by CONTRACTOR and may subject the CONTRACTOR to a suspension or termination of work under the Agreement.
- 4.9 Maintenance of insurance by the CONTRACTOR as specified in this Agreement shall in no way be interpreted as relieving the CONTRACTOR of any responsibility whatsoever and the CONTRACTOR may carry, at its own expense, such additional insurance as it deems necessary.
5. **PROFESSIONAL ERRORS AND OMISSIONS INSURANCE.** Does not apply to this agreement.
6. **CONTRACTOR'S INDEMNIFICATION OF CITY.** CONTRACTOR shall indemnify and hold harmless the CITY and its officers, agents and employees against all claims for damages to persons or property arising out of the conduct, negligent acts, errors or omissions or wrongful acts of conduct of the CONTRACTOR, or its employees, agents, subcontractors, or others in connection with the execution of the work covered by this Agreement, except for those claims arising from the willful misconduct, sole negligence or active negligence of the CITY, its officers, agents, or employees. CONTRACTOR'S indemnification shall include any and all costs, expenses, attorneys' fees, expert fees and liability assessed against or incurred by the CITY, its officers, agents, or employees in defending against such claims or lawsuits, whether the same proceed to judgment or not. Further, CONTRACTOR at its own expense shall, upon written request by the CITY, defend any such suit or action brought against the CITY, its officers, agents, or employees resulting or arising from the conduct, tortuous acts or omissions of the CONTRACTOR.

CONTRACTOR'S indemnification of CITY shall not be limited by any prior or

Oceanside S.U.N. 2007 – Parkway Artificial Turf

subsequent declaration by the CONTRACTOR.

7. **COMPENSATION.** CONTRACTOR'S compensation for all work performed in accordance with this Agreement, shall not exceed the total contract price of \$ 135,044.00.

No work shall be performed by CONTRACTOR in excess of the total contract price without prior written approval of the CITY. CONTRACTOR shall obtain approval by the CITY prior to performing any work, which results in incidental expenses to CITY.

8. **TIMING REQUIREMENTS.** Time is of the essence in the performance of work under this Agreement and the timing requirements shall be strictly adhered to unless otherwise modified in writing. All work shall be completed in every detail to the satisfaction of the CITY within 180 days.
9. **ENTIRE AGREEMENT.** This Agreement comprises the entire integrated understanding between CITY and CONTRACTOR concerning the work to be performed for this project and supersedes all prior negotiations, representations, or agreements.
10. **INTERPRETATION OF THE AGREEMENT.** The interpretation, validity and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. The Agreement does not limit any other rights or remedies available to CITY.

The CONTRACTOR shall be responsible for complying with all local, state, and federal laws whether or not said laws are expressly stated or referred to herein.

Should any provision herein be found or deemed to be invalid, the Agreement shall be construed as not containing such provision, and all other provisions, which are otherwise lawful, shall remain in full force and effect, and to this end the provisions of this Agreement are severable.

11. **AGREEMENT MODIFICATION.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by the parties hereto.
12. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONTRACTOR and the CITY.

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California

County of San Diego

On Mar 4, 2008 before me, Sanlerio A. Stewart, Notary Public
(Here insert name and title of the officer)

personally appeared Christopher Mark Payne

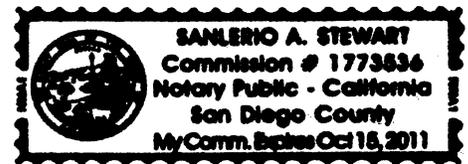
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Sanlerio A. Stewart
 Signature of Notary Public

(Notary Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Oceanside S.O.N. 2007 - Parkway Art. Turf
(Title or description of attached document)

20-5374170
(Title or description of attached document continued)

Number of Pages 5 Document Date Mar 4, 2008

(Additional information)

CAPACITY CLAIMED BY THE SIGNER

- Individual (s)
- Corporate Officer
(Title)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

Any acknowledgment completed in California must contain verbiage exactly as appears above in the notary section or a separate acknowledgment form must be properly completed and attached to that document. The only exception is if a document is to be recorded outside of California. In such instances, any alternative acknowledgment verbiage as may be printed on such a document so long as the verbiage does not require the notary to do something that is illegal for a notary in California (i.e. certifying the authorized capacity of the signer). Please check the document carefully for proper notarial wording and attach this form if required.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document

OMEGATURF

Frank Grana
Housing Program Manager
Neighborhood Services Department
City of Oceanside
Nevada Street Annex
300 North Coast Highway
Oceanside, CA 92054
Date 8/28/07

RE: Synthetic Turf Project II (for Calle Mariposa and nearby streets) , Oceanside

Dear Mr. Grana,

OmegaTurf, Inc. along with its partner For The Game, LLC are pleased to present to you our bid for the above-referenced Project.

Our measurements of the areas defined in your letter come to an actual square footage of 18,200 sq. ft., and our bid is based on that area. Our bid includes the following:

- Take-out of existing grass as needed to place headers and synthetic turf.
- Haul-off and disposal of spoils.
- Supply and placement of 2 inch layer of Class-2 road base (crushed rock), tamped in place and leveled as required.
- Supply and placement of pressure-treated wood headers at the perimeter of every turf area.
- Supply and placement of synthetic turf (OmegaTurf E620 “**Omega 6™**” featuring 60+ ounces per sq. yard face weight).
- Infill of synthetic turf as required, using a base layer of washed and graded silica sand

OMEGATURF

- Complete supply and installation of synthetic turf at \$7.42 per square foot for a total cost of \$135,044.00

OmegaTurf will warrant the synthetic turf for a period of EIGHT years.

Our lead time for this project is two weeks from the time of contracts being signed.

We look forward to working with the city on this beautification project.

Sincerely,

Chris Payne

President

OmegaTurf, Inc.

OMEGATURF

Frank Grana
Housing Program Manager
Neighborhood Services Department
City of Oceanside
Nevada Street Annex
300 North Coast Highway
Oceanside, CA 92054
Date 2/21/08

RE: SUN 2007 – Parkway Artificial Turf

Dear Mr. Grana,

Our breakdown of costs for the above referenced project are as follows:

Materials including waste for turf	62,345
Tax on Material at 7.75%	4,832
Labor	18,906
Sales Commission	13,768
General Overhead	13,505
Profit	21,688
Total	135,044

Sincerely,



Chris Payne

President

CITY OF OCEANSIDE
JUSTIFICATION FOR SOLE SOURCE/SOLE BRAND

Date: August 28, 2007

Vendor: Omega Turf, Inc.

Item: Omega Turf E620 "Omega 6"

Sole Source: Item is available from only one vendor. Item is one-of-a-kind item and is not sold through distributors. Manufacturer is a sole distributor.

Sole Brand: Various vendors can supply the specified model and brand and competitive bids will be solicited for the brand requested only.

Refer to the instructions on the back of this form for required criteria before completing this form.

JUSTIFICATION: (attach additional sheets, if required)

The artificial turf described above was used in the parkway strips of Calle Montecito and Calle Estrella for the 2006 SUN Project. It is reasonable and responsible to continue to use this same product for the rest of the parkway strips in the Libby Lake neighborhood to match shade and texture of the existing artificial grass. The existing product was selected in 2006 after reviewing other samples of artificial grass for natural appearance. Compared to bids and product samples received in 2006, this product meets the criteria for price, durability, and appearance.

CERTIFICATION:

I am aware of the City of Oceanside Municipal Code. Sections 28A.1, 28A.9, 28A.12 and Purchasing Administrative Directive Section V, Paragraph O for competitive bidding and the established criteria for justification for sole source/sole brand purchasing. As an approved department representative, I have gathered technical information and have made a concentrated effort to review comparable/equal equipment. This is documented in this justification. I hereby certify as to the validity of the information and feel confident this justification for sole source/sole brand meets the City's criteria and is accurate.

This form was completed by:

FRANK GRANA
Name

DEPARTMENT APPROVAL: Margery M. Pierce
Director for Authorized Representative/Date

NS 3375
Dept./Division Representative/Phone

PROCUREMENT APPROVAL: CB 8-29-07
Procurement Officer/Date