

**SERVICES CONTRACT
BETWEEN
THE CITY OF JACKSONVILLE
AND
NATURAL SAND COMPANY, INC.
FOR
TEMPORARY PITCHING MOUND FOR BASEBALL GROUNDS**

THIS CONTRACT, made and entered into this 3 day of Feb., 2015 (the "Effective Date"), by and between the CITY OF JACKSONVILLE (the "CITY"), a municipal corporation existing under the Constitution and the laws of the State of Florida, and NATURAL SAND COMPANY, INC. (the "CONTRACTOR"), a Pennsylvania corporation authorized to transact business in Florida and with its principal offices at 149 South Broad Street, Grove City, PA 16127.

WHEREAS, the CITY (as the "Buyer") issued a Request for Proposal No. EFC-0324-15 (the "RFP") for certain services described in the RFP (the "Services"); and

WHEREAS, based on CONTRACTOR'S response to the RFP dated November 14, 2014, consisting of 85 pages (the "Response"), the CITY has awarded this Contract to CONTRACTOR; and

NOW THEREFORE, in consideration of the premises and the mutual covenants contained below, the parties agree as follows:

1. **Performance of Services.** The Services will be performed by CONTRACTOR as specified in the RFP and the Response. CONTRACTOR shall have daily access to the Baseball Grounds of Jacksonville from February 16, 2015 through February 26, 2015, and at such other times as mutually agreed between CITY and CONTRACTOR, in order to provide the Services. All construction will be complete and the flat field components will be installed consistent with the Contract Documents (defined below) by February 27, 2015. All product shipment necessary for the Services shall be made by February 16, 2015. No later than March 15, 2015, the flat field components will be removed and the DuraPitch Mound Professional portable pitching mound components will be installed. Game preparation for the pitching mound will be overseen by CONTRACTOR with all work performed by CITY'S turf changeover contractor.

2. **Compensation.** CONTRACTOR will be paid by the CITY for the Services in accordance with Section 3.16 of the RFP. CONTRACTOR may submit invoices for progress payments upon full execution of this contract for services performed.

3. **Maximum Indebtedness.** As required by Section 106.431, *Ordinance Code*, the CITY's maximum indebtedness, for all products and services under this Contract shall be a fixed monetary amount not-to-exceed ONE HUNDRED NINETY-FOUR THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$194,850.00).

4. **Term.** The initial term of this Contract shall commence on the Effective Date and shall expire on May 1, 2015, unless sooner terminated by either party in accordance with the terms of the RFP.

5. **Contract Documents.** This Contract consists of the following documents which are hereby incorporated as if fully set forth herein and which, in case of conflict, shall have priority in the order listed:

- This document, as modified by any subsequent signed amendments
- Any amendments to the RFP
- Specific Information Regarding The RFP (Section 1 of the RFP)
- Description of Services and Deliverables (Section 4 of the RFP)
- General Instructions to Respondents (Section 2 of the RFP)
- General Contract Conditions (Section 3 of the RFP)
- Any Purchase Order under the Contract
- The Response, provided that any terms in the Response that are prohibited under the RFP shall not be included in this Contract.

6. **Notices.** All notices under this Agreement shall be in writing and shall be delivered by certified mail, return receipt requested, or by other delivery with receipt to the following:

As to the CITY:

Sports & Entertainment Officer
City of Jacksonville
Office of Sports & Entertainment
117 West Duval Street, Suite 280
Jacksonville, Florida 32202

With Copy To:

Office of General Counsel
City of Jacksonville
Attn: Governmental Operations
117 West Duval Street, Suite 480
Jacksonville, Florida 32202

As to the CONTRACTOR:

Kurt P. Mershimer
Natural Sand Company Inc
149 South Broad St.
Grove City, PA 16127

7. **Contract Managers.** Each Party will designate a Contract Manager during the term of this Contract whose responsibility shall be to oversee the Party's performance of its duties and obligations pursuant to the terms of this Contract. As of the Effective Date, CITY'S Contract Manager is Keith Van Der Leest, Assistant General Manager, SMG-Jacksonville, and the CONTRACTOR'S Contract Manager is Kurt Mershimer, 4783 Harlansburg Road, Slippery Rock, PA 16057. Each Party shall provide prompt written notice to the other Party of any changes to the Party's Contract Manager or his or her contact information; provided, such changes shall not be deemed Contract amendments and may be provided via email.

8. **Entire Agreement.** This Contract constitutes the entire agreement between the parties hereto for the Services to be performed and furnished by the CONTRACTOR. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein shall be binding. CONTRACTOR may not unilaterally modify the terms of this Contract by affixing additional terms to materials delivered to the CITY (e.g., "shrink wrap" terms accompanying or affixed to a deliverable) or by including such terms on a purchase order or payment document. CONTRACTOR acknowledges that it is entering into this Contract for its own purposes and not for the benefit of any third party.

9. **Amendments.** All changes to, additions to, modifications of, or amendment to this Contract, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties hereto.

10. **Counterparts.** This Contract, and all amendments thereto, may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

[Remainder of page left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the parties have executed this Contract as of the day and year first above written.

ATTEST:

CITY OF JACKSONVILLE

Cleveland Ferguson III
Deputy Chief Administrative Officer
For: Mayor Alvin Brown
Under Authority of:
Executive Order No. 2015-01

By James R. McCauley
Corporation Secretary



By Alvin Brown
Mayor

In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and un-impounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

C. Ronald Belton

Director of Finance

CITY Contract Number: 10069

1/15

Form Approved:

[Signature]
Office of General Counsel

ATTEST:

NATURAL SAND COMPANY, INC.

By Kurt P. Mershimer
Signature

KURT P. MERSHIMER
Type/Print Name

Operations Manager
Title

By [Signature]
Signature

GRANT C. McKEITH
Type/Print Name

PRESIDENT
Title

CONTRACT NUMBER 10069
(Contract Number to be inserted by the City of Jacksonville)

BOND NUMBER 601085624
(Bond Number to be inserted by the Surety)

PAYMENT BOND

REQUIRED BY SECTION 255.05, FLORIDA STATUTES

As to the Contractor/Principal:

Name: Natural Sand Company, Inc.

Principal Business Address: 149 S. Broad Street, Grove City, PA 16127

Telephone: (724) 530-2298

As to the Surety:

Name: The Ohio Casualty Insurance Company

Principal Business Address: 275 Grandview Avenue, Suite 102, Camp Hill, PA 17011

Telephone: (800) 692-7204

As to the Owner of the Property/Contracting Public Entity:

Name: The City of Jacksonville, Florida (c/o Public Works Department)

Principal Business Address: 214 North Hogan Street, Jacksonville, Florida 32202

Telephone: (904) 255-7575

Description of project including address and description of improvements:

Performance specifications and design criteria for design and construction of a demountable pitcher's mound for the Baseball Grounds of Jacksonville: Demountable pitcher's mound may be a multi-piece static assembly or a permanently installed hydraulic mound. The selected vendor shall provide all labor, material, equipment and infrastructure improvements necessary for the full and complete operation of the pitcher's mound.

CITY OF JACKSONVILLE, FLORIDA
PAYMENT BOND
REQUIRED BY SECTION 255.05, FLORIDA STATUTES

KNOW ALL MEN BY THESE PRESENTS, that NATURAL SAND COMPANY, INC., as Principal, (hereinafter the "Contractor"), and The Ohio Casualty Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and duly authorized to conduct and carry on a general surety business in the State of Florida as Surety (hereinafter the "Surety") are each held and firmly bonded unto the City of Jacksonville, a municipal corporation in Duval County, Florida, as Obligee (hereinafter the "City"), in the sum of ONE HUNDRED NINETY-FOUR THOUSAND EIGHT HUNDRED FIFTY AND NO/100 DOLLARS (\$194,850.00), lawful money of the United States of America, for the payment whereof Contractor and Surety bind themselves, their respective heirs, executors, administrators, legal representatives, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal made and entered into City Contract Number 10069 (to be inserted by the City) (the "Contract"), dated as of the 3 day of Feb., 2015, for furnishing all labor, equipment and materials, and for performing all operations necessary for a temporary pitching mound for baseball grounds, including, but not limited to, creating performance specifications and design criteria for design and construction of a demountable pitcher's mound for the Baseball Grounds of Jacksonville and infrastructure improvements necessary for the full and complete operation of the pitcher's mound, and performing other construction work as specified in the Contract Documents (hereinafter referred to as the "Project"), all in strict accordance with plans and specifications and other Contract Documents prepared by the City of Jacksonville Procurement Division, Bid

numbered ECF 0324-15, Bid Date November 19, 2014, entitled *BID SPECIFICATIONS FOR TEMPORARY PITCHING MOUND FOR BASEBALL GROUNDS SMG*, and any advertisement for bids for said work and the drawings, plans and specifications for said work and requirements of the City request for bids and award therefor and of the Contract and all documents included as a part of the Contract, all of which are, by this reference, made a part hereof to the same extent as if fully set out herein.

NOW, THEREFORE, THE CONDITION OF THIS BOND is such that if the said Principal:

(1) Provides to the City a certified copy of the recorded bond prior to commencing the work, or before recommencing the work after a default or abandonment, in accordance with Section 255.05(1)(b), Florida Statutes; and

(2) Promptly makes payments to all claimants, as defined in Sections 255.05(1) and 713.01, Florida Statutes, supplying Principal with labor, materials or supplies that are consumed or used directly or indirectly by Principal in connection with the prosecution of the work provided for in such Contract and including all insurance premiums on the work, and including any authorized extensions or modifications of such Contract; and

(3) Defends, indemnifies and saves the City harmless from claims, demands, liens, or suits by any person or entity whose claim, demand, lien or suit is for the payment of labor, materials or equipment furnished for use in the performance of the Contract, provided the City has promptly notified the Principal and Surety of any claims, demands, liens, or suits and provided there is no failure by the City to pay the Principal as required by the Contract; and

(4) Pays the City all losses, damages, expenses, costs and attorney's fees, including those incurred in appellate proceedings, that the City sustains because of the Principal's failure to

promptly make payments to all claimants as provided above, then this Bond is void; otherwise, it remains in full force and effect, both in equity and in law, in accordance with the statutes and the laws of the State of Florida and, specifically, Section 255.05, Florida Statutes.

PROVIDED, no suit or action for labor, materials or supplies shall be instituted hereunder against the Principal or the Surety unless a claimant provides to each of them, both of the proper notices in accordance with the requirements of Section 255.05(2), Florida Statutes. Both notices must be given in order to institute such suit or action.

PROVIDED further, an action, except for an action exclusively for recovery of retainage, must be instituted against the Principal or Surety on this Payment Bond within one (1) year after the performance of the labor or completion of delivery of the materials or supplies in accordance with the requirements of Section 255.05(10), Florida Statutes.

PROVIDED further, an action exclusively for the recovery of retainage must be instituted against the Principal or Surety within one (1) year after the performance of the labor or completion of delivery of the materials or supplies, provided that such action must be subject to and in accordance with the conditions set forth in Section 255.05(10), Florida Statutes.

PROVIDED further, that the said Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any wise affect its obligation on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications.

SIGNED AND SEALED this 3 day of Feb, 2015.

ATTEST:

Kurt P. Marshimer
Signature

KURT P. MERSHIMER
Type/Print Name

Operations Manager
Title

Aimee McKnight
Signature

Aimee McKnight
Type/Print Name

Sec / Treasurer
Title

AS PRINCIPAL

Signed, Sealed and Delivered
in the Presence of:

Ruth I. Tilburg

Ruth I. Tilburg, Witness

The Ohio Casualty Insurance Company

Jessica J. Burgess

By: Jessica J. Burgess
Its: Attorney-In-Fact

AS SURETY

Name of Agent: First National Insurance
Agency, LLC
Address: One North Shore Center,
12 Federal St.
Pittsburgh, PA 15212

Form Approved:

[Signature]
Office of General Counsel

Note: Date of Bond Must Not Be Prior to Date of Contract

Principal: Natural Sand Company

POWER OF ATTORNEY
THE OHIO CASUALTY INSURANCE COMPANY

Agency Name: First National Insurance Agency LLC

Obligee: City of Jacksonville

Agent Code: 375448

Bond Number: 601085624

Know All Men by These Presents: That THE OHIO CASUALTY INSURANCE COMPANY, a New Hampshire Corporation, pursuant to the authority granted by Article IV, Section 12 of the Code of Regulations and By-Laws of The Ohio Casualty Insurance Company, do hereby nominate, constitute and appoint: Jean M. Wallack, Sandra K. Anderson, Mary M. Bura, Jessica J. Burgess, Susan R. Davis, Darcel L. Deeter, Nora J. Holbert, Stephen P. Lesser, Felicia M. Swigart, Jonathan P. McCauley, James J. Morrell of Pittsburgh, Pennsylvania its true and lawful agent(s) and attorney(ies)-in-fact, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all BONDS, UNDERTAKINGS, and RECOGNIZANCES, excluding, however, any bond(s) or undertaking(s) guaranteeing the payment of notes and interest thereon.

And the execution of such bonds or undertakings in pursuance of these presents, shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of said Company at their administrative offices in Keene, NH, in their own proper persons. The authority granted hereunder supersedes any previous authority heretofore granted the above named attorney(ies)-in-fact.

In WITNESS WHEREOF, the undersigned officer of the said The Ohio Casualty Insurance Company has hereunto subscribed his name and affixed the Corporate Seal of said Company this 18th day of November, 2013.



David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA
COUNTY OF MONTGOMERY

On this 18th day of November, 2013 before the subscriber, a Notary Public of the State of Pennsylvania, in and for the County of Montgomery, duly commissioned and qualified, came David M Carey, Assistant Secretary of The Ohio Casualty Insurance Company, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn deposes and says that he is the officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at the City of Plymouth Meeting, State of Pennsylvania, the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Member, Pennsylvania Association of Notaries

Notary Public in and for County of Montgomery, State of Pennsylvania
My Commission expires March 28, 2017

This power of attorney is granted under and by authority of Article IV, Section 12 of the By-Laws of The Ohio Casualty Insurance Company, extracts from which read:

ARTICLE IV - Officers: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bond, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary.

Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of The Ohio Casualty Insurance Company effective on the 15th day of February, 2011:

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

CERTIFICATE

I, the undersigned Assistant Secretary of The Ohio Casualty Insurance Company, do hereby certify that the foregoing power of attorney, the referenced By-Laws of the Company and the above resolution of their Board of Directors are true and correct copies and are in full force and effect on this date

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the Company this 3 day of Feb, 2015



Gregory W. Davenport, Assistant Secretary