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SERVICE AGREEMENT NO. 032212

WOMEN'S JAIL DORMITORY FLOOR PROJECT

THIS AGREEMENT, made and entered into this 16th day of May, **2012**, by and between Gila County, a political subdivision of the State of Arizona, hereinafter designated the County, and **Bio Clean Cleaning and Coatings LLC (BC Coating's)**, of the City of Mesa, State of Arizona, hereinafter designated the Contractor.

WITNESSETH: The Contractor, for and in consideration of the sum to be paid him by the County, in the manner and at the time hereinafter provided, and of the other covenants and agreement's herein contained, hereby agrees, for himself, his heirs, administrators, successors, and assigns as follows:

ARTICLE 1 – SCOPE OF SERVICES: The Contractor shall provide for the complete provision in the scope of work below in a good and workmanlike and substantial manner and to the satisfaction of the County under the direction of the Gila County Facilities and Land Manager or designee. All work must be performed in conformance with industry standards and best practices.

Scope of Service

Contractor shall provide for the material and installing of a BASF product on the floors of the Gila County Jail Women's Dormitory located at 1100 South Street, Globe, Arizona.

The Women's Dormitory is approximately 4,295 square feet. The contractor shall apply a polyurethane flooring system to the floor. The product to be used will be the CONIPUR product by BASF Building Systems, Light Traffic System.

Product Specifications

From the American Institute of Architects (AIA) BASF Product Specifications at www.aia.org

PART 1 - GENERAL

1.1 SUMMARY
A. Section Includes:
1. Waterproofing and pedestrian traffic coating for interior and exterior elevated slabs as scheduled.

B. Related Sections:
1. Section 03 30 00 - Cast-in-Place Concrete.

1.2 SYSTEM DESCRIPTION

A. Fluid-applied polyurethane waterproofing coating consisting of fast-setting 2-component reactive curing mechanism with very low odor. VOC compliant.

B. Deck Coating System:
1. CONIPUR 78 PRIMER: 2-component polyurethane-based adhesive primer.
2. CONIPUR 265-Z BASE COAT: 2-component fast-curing polyurethane base coat.
3. CONIPUR 275 TOP COAT: 2-component fast-curing aromatic polyurethane topcoat.
4. CONIPUR 295 TOP COAT: 2-component aliphatic 100 percent solids, fast-curing topcoat with UV resistance.

C. Performance Requirements: Provide material complying with the following requirements:
1. Crack Bridging (Base Coat): Passes per ASTM C 957.
2. Adhesion Peel (Primer and Base Coat): Plywood 25 pli, Concrete 14 pli per ASTM C 957.
3. Tensile Strength (Base Coat): 2,500 psi (17.2 MPa) per ASTM D 412.
4. Elongation (Base Coat): 900 percent per ASTM D 412.
5. Tensile Strength (Top Coat): 3,000 psi (20.7 MPa) per ASTM D 412.
6. Elongation (Top Coat): 30 percent per ASTM D 412.
7. Hardness: ShoreD (70) per ASTM D 2240.
8. Taber Abrasion Resistance (Primer/Base Coat/Top Coat): 9 mg lost per ASTM C 957. CS-17 Wheel, 1,000 gm load, 1,000 cycles

1.3 SUBMITTALS

A. Comply with Section [01 33 00].

B. Product Data: Submit manufacturer's technical bulletins and MSDS on each product.

C. Submit list of project references as documented in this Specification under Quality Assurance Article. Include contact name and phone number of person charged with oversight of each project.

D. Quality Control Submittals:
1. Provide protection plan of surrounding areas and non-work surfaces.

1.4 QUALITY ASSURANCE

A. Comply with Section [0140 00].

B. Qualifications:
1. Manufacturer Qualifications: Company with minimum 15 years of experience in manufacturing of specified products and systems.
2. Applicator Qualifications: Company with minimum of 5 years experience in application of specified products and systems on projects of similar size and scope, and is acceptable to product manufacturer.
a. Successful completion of a minimum of 5 projects of similar size and complexity to specified Work.

C. Field Sample:
1. Install at Project site or pre-selected area of building an area for field sample, as directed by Architect.

a. Provide mock-up of at least 100 square feet (9.3 sm) to include surface profile, sealant joint, crack, flashing, and juncture details and allow for evaluation of slip resistance and appearance.
b. Apply material in strict accordance with manufacturer's written application instructions.

2. Manufacturer's representative or designated representative will review technical aspects; surface preparation, application, and workmanship.
3. Field sample will be standard for judging workmanship on remainder of Project.
4. Maintain field sample during construction for workmanship comparison.
5. Do not alter, move, or destroy field sample until Work is completed and approved by Architect.
6. Obtain Architect's written approval of field sample before start of material application, including approval of aesthetics, color, texture, and appearance.

1.5 DELIVERY, STORAGE AND HANDLING

A. Comply with Section [01 60 00]

B. Comply with manufacturer's ordering instructions and lead-time requirements to avoid construction delays.

C. Deliver materials in manufacturer's original, unopened, undamaged containers with identification labels intact.

1.6 PROJECT CONDITIONS

A. Environmental Requirements:
1. Minimum application temperature is 40 degrees F (4 degrees C) and rising.
2. Do not apply in rain or when rain is expected within 24 hours. Do not apply above 90 degrees F (32 degrees C) or below 40 degrees F (4 degrees C) or when temperatures are expected to fall below 40 degrees F (4 degrees C) within 24 hours.

PART 2 - PRODUCTS

2.1 MANUFACTURERS

A. Subject to compliance with requirements, provide products from the following manufacturer:
1. BASF Building Systems
889 Valley Park Drive
Shakopee, MN 55379
Customer Service: 800- 433-9517
Technical Service: 800-243-6739
Direct Phone: 952-496-6000
Internet: www.degussabuildingsystems.com

B. Substitutions: Comply with Section [01 60 00].

C. Specifications and Drawings are based on manufacturer's proprietary literature from Degussa Building S ystems. Other manufacturers shall comply with minimum levels of material, color selection, and detailing indicated in Specifications or on Drawings. Architect will be sole judge of appropriateness of substitutions.

2.2 MATERIALS

A. Acceptable Product:

1. Primer: Conipur 78 Primer.
2. Base coat: Conipur 265-Z.
3. Top Coat: Conipur 275.
4. Top Coat: Conipur 295.
5. Aggregate: Sonoguard Aggregate.
6. Clean-up: Reducer 990.
7. Sealant Primer: Sonneborn Primer 733.
8. Sealant: Sonneborn SL-2 or Sonneborn Ultra.
9. Deep joint Sealant: Sonneborn SL-2 or Sonneborn NP-2.
10. Plywood Joint Sealant: Sonneborn NP-1 or Sonneborn NP-2.
11. Reinforcing Fabric: Sonoshield Reinforcing Fabric.

2.3 MIXING

A. Mix material per manufacturer instructions.

B. Color

1. Gray.
2. Charcoal Gray.

PART 3 - EXECUTION

3.1 EXAMINATION

A. Comply with Section [01 70 00].

3.2 SURFACE PREPARATION

A. Ensure substrates are sound and free of dust, dirt, laitance, paints, oils, grease, curing compounds, or any other contaminants

B. Verify substrate has properly cured. If efflorescence is present, mechanically remove it before proceeding. For extreme cases where this is not adequate, contact Technical Service.

1. Concrete should have minimum compressive strength of 3,000 psi (21 MPa) and be cured for minimum of 28 days or 80 percent of design strength.

C. Mechanically prepare substrate to remove previous coatings, laitance, and miscellaneous surface contamination. Shotblast surface to profile equal to International Concrete Repair Institutes CSP 3.

1. Roughen or brush blast extremely smooth surfaces to ensure good mechanical adhesion.
2. Patch holes and cracks before installation.

3.3 APPLICATION- GENERAL

A. Surface Prestriping and Detailing:

1. Prestripe with primer 1 inch (25 mm) beyond surfaces that require detail Work, using short-nap roller.
2. For nonmoving joints and cracks less than 1/16 inch (1.6 mm) wide, apply 25 to 30 wet mils (0.6 to 0.8 mm) prestriping of base coat over cured primer. Apply base coat to fill and overlap joint or crack 3 inches (76 mm) on each side. Feather edges.

3. Route dynamic cracks and joints over 1/16 inch {1.6 mm) to minimum of 1/4 inch by 1/4 inch {6 by 6 mm) and clean. Install bond breaker tape to prevent adhesion to bottom of joint. Prime joint faces only with sealant primer and fill with sealant. Fill joints deeper than 1/4 inch {6 mm) with backer rod and deep joint sealant. For cracks, apply sealant flush with adjacent surface. For expansion joints, apply sealant slightly concave.
4. Coat sealed joints 1 inch (25 mm) or less with deck coating system.
5. Do not coat expansion joints exceeding 1 inch (25 mm) wide, including primary wide expansion-joint system.
6. Where coating system will be terminated and no wall, joint, or other break exists, cut 1/4 inch by 1/4 inch {6 by 6 mm) keyway into concrete. Fill and coat keyway as application of base coat progress.

3.4 LIGHT TO MEDIUM DUTY TRAFFIC SYSTEM

A. Apply 4 wet mils (0.1 mm) of primer.

B. Apply 25 wet mils (0.5 mm) of base coat. Allow base coat to dry 3 to 4 hours.

C. Apply 15 wet mils (0.4 mm) of top coat.

D. Immediately broadcast aggregate at rate of 10 to 15 pounds per 100 square feet {0.5 to 0.75 kg/sm) into wet top coat. Coat and backroll to encapsulate. Allow to cure.

3.5 CLEANING

A. Clean wet traffic membrane from tools and equipment with Reducer 990 or Xylene. Remove cured materials mechanically.

B. Clean up and properly dispose of debris remaining on Project site related to application.

C. Remove temporary coverings and protection from adjacent Work areas.

3.6 PROTECTION

A. Protect system from damage during construction.

ARTICLE 2 – TERMINATION: The County reserves the right to terminate the Contract, in whole or in part at any time, when in the best interest of the County, without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work as directed in the notice. If the contract is terminated, the County shall be liable only for the services rendered under this contract and accepted material received by the County before the effective date of termination.

ARTICLE 3 - INDEMNIFICATION: Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee

shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

ARTICLE 4 – INSURANCE REQUIREMENTS: Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The County in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**
   Policy shall include bodily injury, property damage and broad form contractual liability coverage.
   - General Aggregate $2,000,000
   - Products – Completed Operations Aggregate $1,000,000
   - Personal and Advertising Injury $1,000,000
   - Each Occurrence $1,000,000

   a. The policy shall be endorsed to include the following additional insured language: **"The County of Gila shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".**

2. **Worker's Compensation and Employers' Liability**

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	$100,000
Disease – Each Employee	$100,000
Disease – Policy Limit	$500,000

   a. Policy shall contain a **waiver of subrogation** against the County of Gila.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the County of Gila is named as an additional insured, the County of Gila shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.
3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.

C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, reduced in coverage or endorsed to lower limits except after thirty (30) days prior written notice has been given to the County. Such notice shall be sent directly to **Gila County Purchasing, 1400 E. Ash St., Globe, AZ, 85501,** and shall be sent by certified mail, return receipt requested.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the state of Arizona and with an "A.M. Best" rating of not less than B+ VI. The County in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the County with certificates of insurance (ACORD form or equivalent approved by the County) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the County before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Gila County Purchasing, 1400 E. Ash St., Globe, AZ, 85501**. The County project/contract number and project description shall be noted on the certificate of insurance. The County reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time.

F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insured's under its policies **or** Contractor shall furnish to the County separate certificates and endorsements for each subcontractor. All coverage's for subcontractors shall be subject to the minimum requirements identified above.

G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the County Attorney, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

ARTICLE 5 – LEGAL ARIZONA WORKERS ACT COMPLIANCE: Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws. County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor. In the event that remedial action under this Article results in delay to one or more tasks on the critical path of Contractor's approved construction or critical milestones schedule, such period of delay shall be deemed excusable delay for which Contractor shall be entitled to an extension of time, but not costs.

ARTICLE 6 – LAWS AND ORDINANCES: This agreement shall be enforced under the laws of the State of Arizona. Contractor shall maintain in current status all Federal, State and Local licenses and permits required for the operation of the business conducted by the Contractor. The Contractor shall comply with the applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and applicable federal regulations under the Act.

ARTICLE 7– ANTI-TERRORISM WARRANTY: Pursuant to A.R.S. § 35-393.06(B) and 35-301.06(A) the Contractor certifies that it does not have scrutinized business operations in Iran or Sudan and that they are in compliance with the Export Administration Act and not on the Excluded Parties List.

ARTICLE 8 – CANCELLATION: This agreement is subject to cancellation pursuant to A.R.S. §38-511. If the Agreement is terminated, the county shall be liable only for payment for services rendered and accepted material received by the County before the effective date of termination.

ARTICLE 9 – RELATIONSHIP OF THE PARTIES: Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. Contractor warrants that he has obtained or will obtain Worker's Compensation Insurance for his employees working on this contract and that any subcontractors will likewise obtain Worker's Compensation Insurance for of their employees working on this contract. It is further agreed by Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

ARTICLE 10 – NON-APPROPRIATIONS CLAUSE: Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to

circumvent the requirements of this contract, or to enable the County to contract with another Contractor for the same supplies or services covered under this Addendum.

ARTICLE 11 – ENTIRE CONTRACT CLAUSE: The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral agreement or oral provision outside this Contract shall have any force or effect

ARTICLE 12 – NON-WAIVER OF ENFORCEABILITY: Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision

ARTICLE 13 – GOVERNING LAW: Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

ARTICLE 14– TERM: Contract shall be effective date signed by the County Manager and expires **June 31, 2012 .**

ARTICLE 15 – PAYMENT/BILLING: Contractor shall be paid a flat fee of **$ 19,627.50** for completion of the project outlined in the scope of services.

All invoices shall be submitted to Gila County Accounts Payable, 1400 E. Ash St, Globe, Arizona and include the following information:

- Purchase Order Number
- Contract Number
- Invoice Number
- Service Location
- Vendor Name and Address
- Description of Service

Any alterations to the scope of work resulting in a change in cost must have prior written approval by the County. Any unauthorized work may result in non-payment to the vendor.

Gila County employs a "Net 15" payment term for services meaning the payment will be issued fifteen (15) days from the date the County receives the invoice from the Contractor. Purchase orders sent to the Contractor reflect these terms and conditions.

The Contractor shall have a current I.R.S. W-9 form on file with the County unless not required by law. The County shall not remit payment if the Contractor does not have a current W-9.

IN WITNESS WHEREOF, two (2) identical counterparts of **Agreement No. 032212**, each for all purposes shall be deemed an original thereof, have been duly executed by the parties hereinabove named, on the date and year first above written.

GILA COUNTY

Don E. McDaniel Jr., County Manager

Date:

BIO CLEAN CLEANING AND COATINGS LLC

Contractor Signature

Print Name Ray Aycox

Date: 4-16-12

APPROVE AS TO FORM

Bryan B. Chambers, Chief Deputy County Attorney