AGREEMENT
BETWEEN SANTA FE COUNTY AND SUPERIOR FLOORING, LLC
TO PROVIDE AND COMPLETE THE APPLICATION
OF A POLYUREA SEALER
ON THE FLOOR AT THE
SANTA FE ADULT DETENTION FACILITY

THIS AGREEMENT is made and entered into on this 12th day of December, 2012, by and between **SANTA FE COUNTY** (hereinafter referred to as the "County"), a New Mexico political subdivision, and **SUPERIOR FLOORING, LLC,** whose address is 2321 Calle Anna Jean Court, Santa Fe, NM 87505 (hereinafter referred to as the "Contractor").

WHEREAS, in order to meet requirements of the New Mexico State Environment Department, the floor at the Santa Fe Adult Detention Facility must be sealed with a high tensile, high elongation, fast set spray-applied polyurea sealer that complies with FDA requirements specified 21 CFR 175.300;

WHEREAS, the County procured the services of the Contractor through IFB 2013-0211-CORR/PL;

WHEREAS, Contractor submitted the lowest bid and is capable of applying the polyurea sealer in accordance with the manufacturer's recommended application and 21 CFR 175.300.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. SCOPE OF WORK

The Contractor shall provide the following materials and services:

A. Provide all necessary materials, labor and services to apply a high-tensile, high elongation, fast set, spray applied polyurea sealer on approximately 5,200 square feet of floor at the Santa Fe County Adult Detention Facility (SFCADF) in Santa Fe, New Mexico.

B. The application of the sealer shall meet all specifications and requirements of FDA regulations at 21 CFR 175.300 (Resinous and polymeric coatings), the New Mexico Environment Department and the manufacturer's specifications. The County recommends Specialty Products, Inc. Ultra Bond HT-FC or the equivalent.

C. Apply product with the manufacturer's recommended surface preparation and the product shall be applied or installed with gray color with a minimum thickness of 120 mils. Product shall turn up on the wall for an approximate 3" cove base and be applied with a final fog coat application for a non-slip surface.

D. Provide all clean up for its operations and maintain full control of construction debris. All construction debris shall be removed from the work areas and disposed of at an approved waste disposal site before the end of each work day. The SFCADF trash containers shall not be used by the Contractor for disposal of Contractor's construction debris.

E. Time is of the essence for this project. Contractor shall begin services on the date indicated in the Notice to Proceed issued by the County. Time is of the essence in completing the actual application of the sealant. Once the Contractor commences with the application of the floor sealant, Contractor shall complete the application of the sealant within seventy-two (72) hours after commencement to minimize downtime of the kitchen facility.

F. Contractor shall abide by SFCADF's tool and material controls and requirements.

G. Contractor shall correct any work rejected by the County, without cost to the County, if the work does not conform to the specifications indicated in subparagraphs B and C above. Contractor shall for a period of one (1) year after final completion of the work, correct any work that does not conform to the specifications in subparagraphs B and C above.

H. Upon completion of the work, Contractor shall provide a maintenance/preventative maintenance manual for the floor sealant and the name, address and telephone number(s) for the manufacture and any suppliers.

2. EFFECTIVE DATE; DATE OF COMMENCEMENT AND COMPLETION

The effective date of this Agreement is the date indicated above and the term of this Agreement is sixty (60) days from the effective date unless earlier terminated pursuant to Section 6 (Termination) or Section 7 (Appropriations and Authorizations). The number of days for completion of the services and work is sixty (60) calendar days. The Contractor shall commence the services and work on the date indicated on the Notice to Proceed issued by the County (date to be indicated on the Purchase Order issued by the County). The Contractor shall complete all services and work no later than sixty (60) calendar days from the date indicated in the Notice to Proceed (as stated on the Purchase Order), subject to any amendment provided in Section 15 herein.

3. COMPENSATION AND PAYMENT

A. In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

In no event shall the total compensation paid to Contractor by County under this Agreement exceed fifty seven thousand five hundred dollars ($57,500) exclusive of gross receipts tax.

B. The Contractor shall submit a written request for payment to the County when payment is due under this Agreement. Upon the County's receipt of the written request, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought.

C. Contractor acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services. The County shall issue payment of all undisputed amounts within twenty-one (21) days after the County receives an undisputed request for payment from the Contractor. In the event the County fails to tender payment within twenty (21) days after receipt of an undisputed request for payment, the County shall pay interest to the Contractor beginning on the twenty-second day after payment was due, computed at one and one-half percent (1.5%) of the undisputed amount per month or fraction of a month until the payment is issued.

D. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

4. LIQUIDATED DAMAGES

Contractor and County recognize that time is of the essence in this Contract. The County will suffer financial loss if application of the floor sealant is not completed within seventy two (72) hours. The floor sealant shall be applied, dry and otherwise completed within seventy-two (72) hours (3 consecutive 24 hour days) from the time the Contractor begins the application of the sealant.

As liquidated damages for delay (but not a penalty) beyond the seventy two (72) hour time period, Contractor agrees to pay the County $1,500 per day for each day that expires after the 72 hour period until the sealant application is completed and the kitchen facility is ready to receive the re-installation of all kitchen equipment.

5. ADDITIONAL SERVICES

A. The parties agree that all work and services set forth in Section 1 (Scope of Work) of this Agreement, shall be completed in full, to the satisfaction of the County

B. The County may from time-to-time request changes in the Scope of Work to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the County and the Contractor, shall be incorporated in written amendments to this Agreement.

6. TERMINATION

A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective twenty (20) days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within twenty (20) days, the breaching party shall have a reasonable time to cure the breach, provided that, within ten (10) days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.

B. Termination for Convenience of the County. The County may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of termination. The notice shall specify the effective date of termination, which shall not be less than ten (10) days from the Contractor's receipt of the notice.

7. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of the County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to the Contractor. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

8. INDEPENDENT CONTRACTOR

The Contractor and its agents are independent contractors and not employees or agents of the County. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use County vehicles, or participate in any other benefits afforded to employees of the County. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the County and agrees not to purport to do so.

9. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the County. Any attempted assignment or transfer without the County's advance written approval shall be null and void and without any legal effect.

10. SUBCONTRACTING

A. Contractor shall be wholly responsible for the entire performance of the work whether or not subcontractors are used. The County will make payments directly to the Contractor. Contractor is wholly responsible for making any and all payments to its subcontractors in conformity with the Prompt Payment Act, NMSA 1978, § 57-28-5.

B. Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the County. Any attempted subcontracting or delegating without the County's advance written approval shall be null and void and without any legal effect.

11. CONTRACTOR AND CONTRACTOR'S PERSONNEL OR SUBCONTRACTORS

A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.

B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel (i) shall not be employees of or have any contractual relationships with the County and (ii) shall be fully licensed and qualified to perform such work or services.

C. Contractor shall not employ any employees, personnel, or subcontractors who have not completed a County-approved security clearance or background check for the completion of the work under this Agreement. Any such employees, personnel or subcontractors that Contractor may employ after the effective date of this Agreement shall not begin any work until the County provides clearance or a background check is completed for that employee or subcontractor.

D. The County may provide an escort or full time supervision of the Contractor and its employees during any or all phases of this work should the County determine that it is in the County's interest to do so.

E. The County and the Corrections Department reserves the right to escort Contractor or any of Contractor's employees or subcontractors off the premises or facility for any inappropriate conduct or actions that jeopardize the safety, security or well being of the facility. Inappropriate behavior by the Contractor, its employees, or subcontractors shall immediately cancel this Agreement. Any violation of any law by

the Contractor, its employees or subcontractors will be prosecuted.

12. RELEASE

Upon the County's issuance of the final payment to Contractor or any termination that may occur earlier than the termination date of this Agreement, the Contractor releases the County, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

13. CONFIDENTIALITY

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the County.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the County shall not be responsible for any changes to Section 1 (Scope of work), of this Agreement unless such changes are set forth in a duly executed written amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.

B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.

B. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the County agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be the state district court of New Mexico, located in Santa Fe County.

20. RECORDS AND INSPECTIONS

A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the County as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of three (3) years from the date of final payment under this Agreement; (ii) allow the County or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).

B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to County as part of the procurement process, the Contractor also agrees to require any subcontractor it may hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of three (3) years from the date of final payment under the subcontract; (ii) to allow the County or its

designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

A. The Contractor shall defend, indemnify, and hold harmless the County and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly or indirectly arising out of the Contractor's performance or non-performance of its obligations under this Agreement, including but not limited to the Contractor's breach of any representation or warranty made herein.

B. The Contractor agrees that the County shall have the right to control and participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the County and that such suit will not be settled without the County's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the County and the Contractor in such demand, suit, or cause of action, the County may retain its own counsel to represent the County's interest.

C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the County: Santa Fe County
Office of the County Attorney
102 Grant Avenue
Santa Fe, New Mexico 87501

To the Contractor: David Roybal
Superior Flooring, LLC
2321 Calle Anna Jean Court
Santa Fe, New Mexico 87505

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES; CORRECTION OF WORK

The Contractor hereby represents and warrants that:

A. It acknowledges receipt of Addendum #1 dated November 28, 2012, consisting of 5 pages, which is by reference incorporated into this Agreement.

B. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.

C. It has provided a performance bond and payment bond as required by the County, each for 100% of the contract sum.

C. Contractor is licensed by the State Construction Industries Division (CID) to complete the type of work described in Section 1 herein. Contractor also represents and warrants that all its subcontractors, if any, are fully licensed by CID to complete the work described in Section 1 herein.

D. The Contractor warrants to the County that the materials and equipment furnished by the Contractor will be new and of good quality and that the completed work will be free from defects and the work will conform to the Scope of Work specified in Section 1 herein.

E. Contractor shall correct any work rejected by the County, without cost to the County, if the work does not conform to the specifications indicated in Section 1 herein. Contractor shall for a period of one (1) year after final completion of the work, correct any work that does not conform to the specifications in Section 1 herein.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. LIMITATION OF LIABILITY

In no event shall the County be liable to the Contractor for special or consequential damages, even if the County was advised of the possibility of such damages prior to entering into this Agreement.

27. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

28. INSURANCE

A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.

B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than $1,050,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the County by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. The County of Santa Fe shall be a named additional insured on the policy.

C. Workers' Compensation Insurance. The Contractor shall comply with the provisions of the Workers' Compensation Act.

29. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

30. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by County or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

31. CAMPAIGN CONTRIBUTION DISCLOSURE FORM

The Contractor agrees to compute and submit simultaneous with execution of this Agreement a Campaign Contribution Disclosure Form approved by the County.

32. SURVIVAL

The provisions of following Sections shall survive termination of this Agreement; LIQUIDATED DAMAGES; INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW;

CONTRACTOR'S REPRESENTATIONS AND WARRANTIES; CORRECTION OF WORK ; LIMITATION OF LIABILITY; NEW MEXICO TORT CLAIMS ACT; NO THIRD-PARTY BENEFICIARIES; AND SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date first written above.

SANTA FE COUNTY:

12.10.12

Katherine Miller — Date
Santa Fe County Manager

Approved as to Form

12/10/12

Stephen C. Ross — Date
Santa Fe County Attorney

Finance Department:

12/7/12

Teresa C. Martinez — Date
Santa Fe County Finance Director

CONTRACTOR

12/12/2012

(Signature) — Date

By: David Roybal
(Print Name)

Its: Owner
(Print Title)

FEDERAL TAX I.D. NUMBER: 710-996631