

CONSTRUCTION CONTRACT

This Agreement made between **Ardor Solutions, 9502 S. Eastern, Oklahoma City, Oklahoma 73160**, hereinafter referred to as contractor, and the Board of County Commissioners of Oklahoma County, Oklahoma, hereinafter referred to as County.

WITNESSETH:

Contractor and County, for the consideration set forth herein, agree as follows:

I. CONSIDERATION: That Contractor is the lowest and most qualified bidder for:

Oklahoma County Project No. E-2010-B

Application of High Performance Epoxy Coating on Concrete Floors, Base and Walls in Certain Shower Areas at the Oklahoma County Jail

for the total bid price as accepted of not to exceed **Forty Eight Thousand Dollars (\$48,000.00)**.

II. DESCRIPTION OF WORK: Contractor shall for the above consideration perform the following specified work at Oklahoma County:

Twelve Sets of Showers in Pods – Base, Epoxy Floor and Walls 5 ft. up
Silka 207 Single Broadcast System. Wall System is Sikgard 215 with 206 Top
\$3,277.00 per set \$39,324.00

Three Areas Outside Showers – Demo, Re-Slope and Epoxy Floor
Slope with Silka 1000. Apply Silka 207 Single Broadcast with 207 Topcoat
\$2,291.00 \$6,873.00

In consideration of any unforeseen demolition or preparation, and in lieu of any Change Order, an additional **\$1,803.00** is allowed to achieve the Contract.

III. CONTRACT TIME: The Contractor shall complete all Work not later than **Fourteen (14) Calendar Days**, (March 14, 2010). It is expressly understood that time is of the essence and commencement of the work shall begin immediately upon approval of the contract by the Board of County Commissioners.

IV. SCOPE OF WORK: Contractor shall furnish, except as otherwise provided, at his own cost and expense, all labor and services and material for the completion of the work proposed to be done under this contract. Contractor will complete the same in a thorough, workmanlike, and substantial manner in every respect to the satisfaction and approval of an authorized representative of the County, within the time specified herein.

V. LIABILITY FOR DAMAGES: County, its officers, agents, or employees, shall not in any manner be answerable or responsible for any loss or damage to the work or to any part thereof; to any materials, building, equipment, or other property that may be used or employed therein, or placed on the work site during the progress of the work; for any injury done or damages or compensation required to be paid under any present or future law, to any person, whether an employee of contractor or otherwise; or for any damage to any property occurring during or resulting from the work. Contractor shall indemnify County, its officers, agents and employees, against all such injuries, damages, and compensation arising or resulting from causes other than County's neglect, or that of its officers, agents, or employees.

VI. INSPECTION OF WORK AND MATERIALS:

- A. The County may appoint and employ such persons as may be necessary to act as inspectors or agents for the purpose of supervising in the interest of County, materials furnished and work done as the work progresses.
- B. County, its inspectors, agents, or representatives, shall, at all times, have unrestricted access to all parts of the work and to other places where or in which the preparation of materials and other integral parts of the work are being carried on and conducted.

C. Contractor shall provide all facilities and assistance required or requested to carry out the work of supervision and inspection by an authorized representative of the County, inspectors or agents.

D. Inspection of the work by these authorities or their representatives shall in no manner be presumed to relieve in any degree the responsibility or obligations of Contractor, or to constitute Contractor an agent of County.

E. No material of any kind shall be used in the work until it has been inspected and accepted by the County. All rejected materials shall be immediately removed from the premises. Any materials or workmanship found at any time to be defective shall be replaced or remedied at once regardless of previous inspection. Inspection of materials shall be promptly made, and, where practicable, at the source of supply.

F. Whenever the specifications, the instructions of the County, or the laws, ordinances, or regulations of any public authority require work to be specially tested or approved, Contractor shall give the County timely notice of its readiness for inspection, and if the inspection is by another authority, of the date fixed for such inspection.

VII. **INSURANCE:** Contractor shall not commence work under this contract until he has obtained all insurance required under this section and such insurance has been approved by the County. Likewise, Contractor shall not allow any approved subcontractor to commence work on his subcontract until all similar insurance required of subcontractor has been so obtained and approved. The following insurance shall be required:

A. Workers Compensation insurance for all of Contractor's employees engaged in work at the site of the project.

B. Comprehensive public liability and property damage insurance insuring the County against any liability, including but not limited to personal injury, accidental death, property damage arising out of the performance of this contract in at least an amount sufficient to satisfy any claims under the Oklahoma Governmental Tort Claims Act, 51 O.S., Secs. 151-171. The insurance policy must contain provisions that Oklahoma County be notified if the insurance carrier intends to cancel or not renew the policy.

VIII. **COMPLIANCE WITH LAWS:** Contractor and every subcontractor or person doing or contracting to do any work contemplated by this contract shall keep himself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of his contract or any extra work, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances, or regulations are mentioned herein, and shall indemnify County, its officers, agents, and employees against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations.

IX. **TERMINATION:**

A. If Contractor (1) is adjudged as bankrupt, (2) makes a general assignment for the benefit of his creditors, (3) has a receiver appointed on account of his insolvency, or (4) persistently or repeatedly refuses or fails, in cases for which extension of time in writing is provided, to supply enough properly skilled workmen or proper materials, fails to make prompt payment for materials or labor, persistently disregards laws, ordinances, or instructions of the County, ceases operations under the contract at any time or otherwise is guilty of a substantial violation of any provision of the contract, then Oklahoma County, upon certification of the County that sufficient cause exists to justify such action, may, without prejudice to any other right or remedy and after giving Contractor and his surety written notice, terminate the employment of contractor, take possession of the premises and of all materials, tools, and appliances thereon, and finish the work by whatever method County may deem expedient. In such case, Contractor shall not be entitled to receive any further payment until the work is finished. If the unpaid balance of the contract price exceeds the expense of finishing the work, including compensation

for additional material and administrative services, such excess shall be paid to Contractor. If such expense exceeds the unpaid balance, Contractor shall pay the difference to County. The expenses incurred by County, as herein provided, and the damage incurred through Contractor's default shall be certified by the County.

X. ACCEPTANCE OF WORK: No act of County, or of any representative of either, in superintending or directing the work, or any extension of time for the completion of the work, shall be regarded as an acceptance of such work or any part thereof, or of materials used therein, either wholly or in part. Acceptance shall be evidenced only by the final certificate of the County. Before any final certificate will be allowed, Contractor will be required to swear to and sign a statement of all claims on account of work done and materials furnished under this contract and that all claims for materials provided or labor performed have been paid and set aside in full. No waiver of any breach of this contract by County or any acting on its behalf shall be held as a waiver of any other subsequent breach thereof. Any remedy provided herein shall be taken and construed as cumulative.

XI. COMPENSATION: County shall pay and Contractor shall receive the prices stipulated in the proposal, which is incorporated and made a part of this contract, as full compensation for everything furnished and done by Contractor under this contract, including all loss or damage arising out of the work or from the action of the elements; for any unforeseen obstruction or difficulty encountered in the prosecution of the work; for all risks of every description associated with the work; for all expenses incurred due to the suspension or discontinuance of the work; and for well and faithfully completing the work as herein provided.

XII. PROGRESS AND FINAL PAYMENTS: Partial payments may be made to Contractor for material on hand and work performed at Contractor's request but in any event not more often than monthly.

A. On final completion of the work and settlement of all claims, owner shall pay Contractor the remainder of the contract price. Provided, there shall be retained from such final payment, or from any payments due contractor under this contract, all amounts that may be expended by County for work done or materials furnished in carrying out any of the work done under this contract that Contractor has failed to do to the satisfaction of the County; all amounts that may be necessary to pay for labor, tools, plant, and materials engaged and used in the work and for which Contractor has failed to pay; all sums that County is entitled to retain as liquidated damages in case the contract is not completed within the time specified; and all other sums that, by the terms of the contract or any laws of the State of Oklahoma, County is or may be authorized to reserve and retain.

B. Acceptance by Contractor of the final estimate and the final payment by County to Contractor shall be a release of County from all claims and liabilities to Contractor for anything done or furnished for or relating to the work, or for any act, neglect, fault, or default of County or of any person relating to or affecting the work.

C. Up to ten percent (10%) of all partial payments made shall be withheld as retainage. At any time the Contractor has completed in excess of fifty percent (50%) of the total Contract amount, the retainage shall be reduced to five percent (5%) of the amount earned to date if the Owner or Owner's duly authorized representative has determined that satisfactory progress is being made, and upon approval by the surety. If satisfactory progress is not maintained, the retainage may be increased back to ten percent (10%) of the total Contract amount.

XIII. INCORPORATION OF PROVISIONS REQUIRED BY LAW: Each provision and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though each were included herein. If through mistake or otherwise any such provision is not inserted or is not correctly inserted, the contract shall be amended to make such insertion on application of either party.

XIV. MODIFICATIONS: County may modify this contract with respect to the arrangement, character, alignment, grade, or size of the work or appurtenances whenever in its opinion it shall deem it necessary or advisable to do so. Contractor shall accept such modifications when ordered in writing by the County and approved by the Board of County Commissioners of Oklahoma County. Any such modifications shall not subject contractor to increased expense without equitable compensation which compensation shall be determined by the County and Board of County Commissioners of Oklahoma County. If any modification results in a decrease in the cost of work involved, an equitable deduction from the contract price shall be made. Such deductions shall be determined by the County. The determination of any such additional compensation or deduction shall be based on the bids submitted and accepted. No modifications in the work shown on the plans and described in the specifications shall be made, unless the nature and extent thereof has first been certified by the County in writing and sent to Contractor.

XV. COMPLETENESS OF CONTRACT: The written terms and provisions of this contract shall supersede all prior verbal statements of any officer or other representative of County, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this contract or the contract documents.

XVI. GUARANTY OF WORK:

- A. Contractor agrees to guarantee all work under this contract for a period of 1 year from the date of final settlement thereof.
- B. If any unsatisfactory condition or damage develops within the time of this guaranty due to workmanship that is defective, inferior, or not in accordance with the contract, Contractor shall, whenever notified by the County, immediately place such guaranteed work in a condition satisfactory to the County and make repairs of all damage to the buildings, equipment, and grounds made necessary in the fulfillment of the guaranty.
- C. If Contractor fails to proceed promptly to comply with the terms of any guaranty under this contract, Contractor agrees that County may have such work performed as the County considers necessary to fulfill such guaranty or may allow the damage or defective work to remain as it is. In the first instance, Contractor shall promptly pay County such sums as were expended in fulfilling the guaranty; in the second instance, he shall promptly pay County such sums of money as it would have been necessary to expend to fulfill them. Usual wear and tear and the results of accidents not chargeable to Contractor or his agents are excepted from the above requirements. Everything necessary for the fulfillment of any guaranty must be done without any expense to County.

XVII.

TAXES:

This project, according to Title 68 O.S. § 1356, and Oklahoma Tax Commission Rules 65-19-056 and 710:65-07-013 is exempt from Sales Tax. The Contractor shall provide a list of Subcontractors and Sub-subcontractors for the Board of County Commissioners approval at a public meeting to approve tax exempt status. Tax exempt status will be in effect for this project only and a termination date shall be specified by letter to Contractor and each Subcontractor. Title 68, Section 1356(I) of the Oklahoma Statutes specifies that any person making purchases on behalf of the County must certify in writing, on the copy of the invoice or sales ticket to be retained by said purchaser that the purchases are made on behalf of Oklahoma County.

XVIII.

OWNER IS A SUBDIVISION OF THE STATE OF OKLAHOMA

It is expressly understood that the Owner under this agreement is a subdivision of the State of Oklahoma and consequently may only contract within the limitations provided by Oklahoma law. Notwithstanding any other provision to the contrary hereinbefore set forth, the provisions of this Article shall control any other provision of this Agreement.

Contractor shall not perform any Work contemplated within the meaning of "the Work" described in the Contract Documents herein, until the Contractor receives a Purchase Order from the Owner showing that the full amount of the obligation created pursuant to this Agreement for the Project has been encumbered within an unencumbered amount previously appropriated for such purpose within the budget of the Owner for the Owner's Fiscal year. For the purpose of this agreement it is understood and agreed that the full amount of the obligation created pursuant to this Agreement is no more than **Forty Eight Thousand Dollars (\$48,000.00)**. No Change Order will be approved pursuant to terms of this agreement. It is expressly understood that time is of the essence, and an additional \$1,803.00 has been allowed within the not to exceed value of this contract for any additional, unforeseen expenses that may be required to achieve completion by March 14, 2010.

CONTRACTOR:

Ardor Solutions
9502 S. Eastern
Oklahoma City, OK 73160
405-799-4030

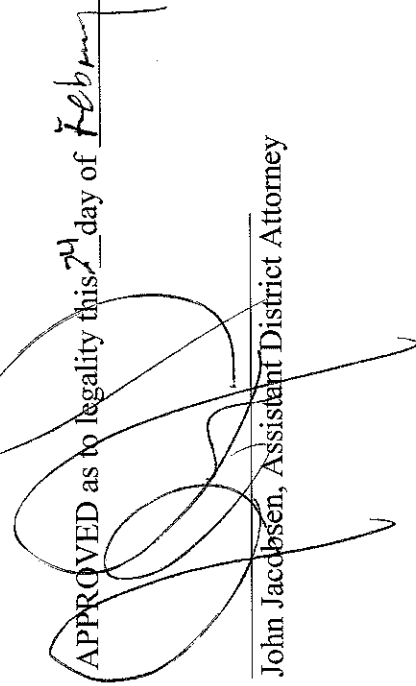

Contractor

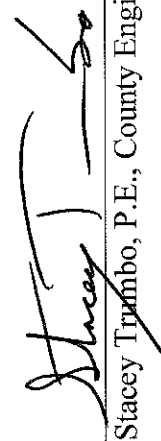
Bryan A Cassiter Field Office
(Printed Name and Title)

Signed before me this ___ day ___ of, 2010.

Notary Public
My Comm. expires _____

APPROVED as to legality this 2nd day of February, 2010.


John Jacobsen, Assistant District Attorney

APPROVED:

Stacey Trumbo, P.E., County Engineer

IN WITNESS WHEREOF, the parties have executed this agreement this ___ day of ___, 2010.

COUNTY:
BOARD OF COUNTY COMMISSIONERS
OKLAHOMA COUNTY, OKLAHOMA

Chairman

Member

ATTEST:

Carolynn Caudill, County Clerk

