



**PHILADELPHIA
INSURANCE COMPANIES**

IL4-135-05-07, Chicago, Illinois 60603, attn: Arlene Kaminski (312) 992-5771 (“Escrow Agent”), including, without limitation, any and all amounts now due, scheduled to become due in the future, or which become due on account of any increases in or amendments, additions, supplements, extensions, extras, change orders, additional work or other additional matters relating to the Contract (collectively the “Contract Payments”).

2. Nothing contained in this Agreement shall prevent the Obligee from withholding payment to Escrow Agent of any amounts Obligee is entitled to withhold from Contractor by virtue of terms of the Contract or applicable law.

3. This Agreement shall inure to the benefit of and be binding upon the parties successors and permitted assigns.

Nothing contained in this Agreement shall modify the obligations of Contractor under the Contract.”

IN WITNESS WHEREOF, the parties hereto have executed and delivered, or caused to be executed and delivered, this Agreement as of the date first written above.

OBLIGEE:

Hidalgo County Urban County Program

Signature: _____

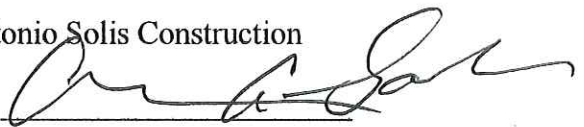
Name: Diana R. Serna

Title: UCP Director

Date: _____

CONTRACTOR:

Armin Antonio Solis Construction

Signature: 

Name: Armin A Solis

Title: owner

Date: 5/4/15



FUNDS DISBURSING AGREEMENT

THIS FUNDS DISBURSING AGREEMENT is made as of this day of hereinafter "**Effective Date**"), by and between Armin Antonio Solis Construction, a Texas corporation, with a principal place of business located at 1954 North FM 2360 Rio Grande City, TX 78582 (hereinafter "**Contractor**"), and MAGUIRE INSURANCE AGENCY, INC., underwriting manager for Philadelphia Indemnity Insurance Company ("**PHLY**").

RECITALS

A. Contractor and Hidalgo County Urban County Program ("**Obligee**") have entered into a construction and services contract for Memorial Park – install raid deck, new light and canopy, (as the same may be modified, supplemented or amended from time to time, the "**Contract**") relating to that certain project (the "**Project**") described on the schedule attached hereto as **Exhibit A** (the "**Project Fact Sheet**").

B. Pursuant to the Contract, Contractor is required to obtain one or more surety bonds in order to secure Contractor's payment of subcontractors and/or performance under the Contract.

C. PHLY has agreed to issue that certain Payment bond 313,466.00 and that certain performance bond 313,466.00 in favor of Obligee (the "**Bonds**") and as required by Obligee under the Contract.

D. In connection with its issuance of the Bonds, PHLY and Contractor are entering into this Agreement regarding the control and disbursement of all payments to be made by Obligee under the Contract.

NOW THEREFORE, in consideration of the foregoing premises and mutual covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

1.1 **Definitions.** The following terms as used in this Agreement shall have the following meanings:

"**Administrative Fee**" has the meaning given to such term in Section 5.3.

"**Agreement**" means this Funds Disbursing Agreement, as it may be amended or supplemented from time to time, together with all attachments, exhibits, schedules, riders and addenda, all of which are incorporated herein by this reference and made a part hereof.



A Member of the Tokio Marine Group

“**Bonds**” has the meaning given to such term in the recitals to this Agreement.

“**Bond Documents**” means this Agreement, the Bonds, the Payment Direction Agreement, the Escrow Agreement, the General Indemnity Agreement (to the extent related to the Bonds) and all other agreements, instruments, certificates, requests, statements, disclosures and documents executed or delivered by any person or entity relating to any of the foregoing.

“**Contract**” has the meaning given to such term in the recitals to this Agreement.

“**Contract Amount**” means the aggregate amount payable to Contractor by Obligee under the Contract.

“**Contract Payment**” has the meaning given to such term in Section 2.2.

“**Disbursement Request**” has the meaning given to such term in Section 3.1.

“**Effective Date**” has the meaning given to such term in the introductory paragraph of this Agreement.

“**Escrow Account**” has the meaning given to such term in the Escrow Agreement.

“**Escrow Agent**” has the meaning given to such term in the Escrow Agreement.

“**Escrow Agreement**” has the meaning given to such term in Section 2.3.

“**Escrow Funds**” means the Contract Payments received by Escrow Agent from Obligee pursuant to the Payment Direction Agreement and held and disbursed by Escrow Agent pursuant to the Escrow Agreement.

“**General Indemnity Agreement**” has the meaning given to such term in Section 2.1.

“**Overhead**” means Contractor’s actual out of pocket costs in connection with the Contract for administration, field office and home office costs, general management costs, required insurance, materials used in temporary structures, and other costs incidental to the performance of the Contract.

“**Obligee**” has the meaning set forth in the recitals to this Agreement.

“**Payment Direction Agreement**” has the meaning given to such term in Section

“**Profit**” means all amounts payable to Contractor under the Contract not allocable to the costs of construction or Overhead.



“**Project**” has the meaning set forth in the recitals to this Agreement.

“**Project Budget**” means the detailed budget for the Project prepared by Contractor and delivered to PHL Y, as the same may be updated from time to time, and containing a schedule of amounts for categories of construction work on the Project under the Contract, including, without limitation, all costs and expenses for labor, materials, supplies, construction management, waste removal and other services, Overhead, Profit and the other sums arising from the Project, together with any additions, supplements, change orders or other modification to the Contract.

“**Project Timeline**” means the timeline of all interim and final completion dates for each phase of the Project prepared by Contractor and delivered to PHL Y, as the same may be amended and updated from time to time.

“**Release**” has the meaning given to such term in Section 3.1.

“**Reserve Amount**” has the meaning given to such term in Section 3.3 hereof.

“**Subcontractors**” means all subcontractors, suppliers and other parties with whom Contractor executes contracts with at any time regarding the Project, and any other person or entity that at any time performs work on, or supplies equipment or materials for, the Project that may otherwise obtain liens under the Contract or against the Project under applicable law, or to which PHL Y may have any liability under any Bond.

“**Subcontracts**” means any oral or written agreement between Contractor and any Subcontractor relating to the Project.

“**Sworn Statement**” has the meaning given to such term in Section 4.1(g).

ARTICLE 2 PURPOSE, NATURE AND TERM OF AGREEMENT

2.1 Purpose of Agreement. This Agreement has been entered into by Contractor and PHL Y as a material inducement for PHL Y to issue the Bonds. The purpose of this Agreement is to help PHL Y ensure Contractor’s performance under the Contract and the payment of Subcontractors in order to limit PHL Y’s exposure under the Bonds. In furtherance of the foregoing, Contractor hereby authorizes and directs PHL Y to review all Disbursement Requests and supporting documents received from Contractor and, subject to the terms and conditions hereof, direct the disbursement of all Escrow Funds by Escrow Agent. This Agreement supplements but is not, and is not intended as, a substitute for the provisions contained in the General Agreement of Indemnity dated [REDACTED], executed by and among Contractor, as principal, [REDACTED], as indemnitor(s) in favor of PHL Y as surety, (the “**General Indemnity Agreement**”).



2.2 Payment Direction Agreement. Contractor shall enter into an agreement with Obligee substantially in the form attached hereto as **Exhibit B** (the “**Payment Direction Agreement**”) pursuant to which Contractor shall authorize and direct Obligee to deliver to Escrow Agent, for the benefit PHLY, all payments now or hereafter due to Contractor from Obligee under the Contract including, without limitation, all amounts relating to any retainage, change orders, amendments, or replacements of or to the Contract (collectively, “**Contract Payments**”).

2.3 Escrow Agreement. Contractor shall enter into an agreement substantially in the form attached hereto as **Exhibit C** (the “**Escrow Agreement**”) pursuant to which, among other things, Contractor shall authorize and direct Escrow Agent to receive Contract Payments, deposit such Contract Payments in an Escrow Account, as Escrow Funds, and disburse such Escrow Funds solely in accordance with direction from PHLY. Contractor shall retain title to the Escrow Funds, subject to the interests of PHLY, until Escrow Agent disburses the Escrow Funds in accordance with the terms of the Escrow Agreement. The parties acknowledge and agree that PHLY shall have the sole and exclusive right to direct disbursements from the Escrow Account by providing appropriate instructions to Escrow Agent consistent with the terms of this Agreement. PHLY shall not be liable for any act, error, omission, or malfeasance attributable to any Escrow Agent.

2.4 No Trust or Fiduciary Relationship. Contractor acknowledges and agrees that PHLY is not, and shall not act in the capacity of, a trustee or other fiduciary with respect to the Escrow Account or the Escrow Funds. Neither PHLY nor any of its officers, directors, partners, employees, agents, attorneys and other advisors, attorneys in fact or affiliates shall be held liable for any claims based upon the purported existence of any fiduciary duty owed to Contractor or based upon any duties arising from the purported existence of any alter ego, domination, or other similar relationship. Contractor further acknowledges and agrees that no term of this Agreement or of any related agreement, document or instrument, and no course of dealing between the parties, shall be deemed to create any agency, partnership or joint venture relationship between the parties or any fiduciary duty on the part of PHLY in favor of Contractor or the Obligee, any Subcontractor or any other person or entity involved with the Project.

2.5 Term. The term of this Agreement shall commence on the Effective Date and end upon the date that all conditions to making of the final disbursement of Escrow Funds set forth in Section 3.5 are satisfied, and PHLY directs the Escrow Agent to make such final disbursement.

ARTICLE 3

DISBURSEMENT PROCEDURES

3.1 Disbursement Requests. Contractor shall request that PHLY direct the disbursement of Escrow Funds to Contractor or a Subcontractor from the Escrow Account on account of Project costs by submitting a written request for such disbursement executed by an authorized representative of Contractor and substantially in the form attached hereto as **Exhibit D** (a “**Disbursement Request**”). Each Disbursement Requests shall (i) identify the payee and the



amount to be paid, (ii) identify and provide copies of all applicable invoices and other supporting documentation for such payment, (iii) identify the relationship of the requested payment to line items in the Project Budget, (iv) provide a detailed breakdown of prior amounts paid to such payee and the amount of payments remaining to be made to such payee through Project completion, (v) indicate whether the requested payment is the final payment for such payee, (vi) be accompanied by an original form lien waiver or release (partial or final as applicable) relating to such Disbursement Request similar in substance to one of the forms attached hereto as **Exhibit E** (partial release) or **Exhibit F** (final release), or otherwise in form and substance acceptable to PHLY, properly executed by such payee and duly notarized (a “**Release**”), and (vii) if the Disbursement Request relates to a request for payment to Contractor, contain an additional certification that all Project costs and other amounts that are then due and payable to Subcontractors have been fully paid.

3.2 Disbursements Orders. PHLY shall direct Escrow Agent to make disbursements from the Escrow Funds only if (i) the conditions or requirements set forth in Section 3.1 have been satisfied, (ii) PHLY has previously received copies of all payment applications submitted by Contractor to Obligees relating to or including the same costs or payments covered by such Disbursement Request, (iii) PHLY is satisfied, after such review or investigation as it deems appropriate in its sole discretion, as to the completeness, accuracy and veracity of all matters relating to the Disbursement Request and the supporting documents submitted therewith, including without limitation, all receipts, delivery tickets, payroll and other additional cost information requested by PHLY, (iv) PHLY has determined, in its sole discretion, that the amount requested is in line with or reasonable in relation to the status of or progress on the Project and the amounts budgeted for such payments in the Project Budget, (v) the Reserve Amount is fully funded and Escrow Funds are otherwise available to pay the requested disbursement, (vi) Contractor is not in default of its obligations under this Agreement or the Contract, and (vii) no draw or claim against any of the Bonds has been made. If all of the foregoing requirements have not been satisfied, PHLY shall have the right to reject the applicable Disbursement Request or adjust the amount of the Disbursement Request and direct the Escrow Agent to disburse such other amounts that PHLY determines, in its sole discretion, reasonable and appropriate.

3.3 Reserve Funds. PHLY is hereby authorized to cause the Escrow Agent to reserve a portion of all Contract Payments received by Escrow Agent and held in the Escrow Account as Escrow Funds for the protection of PHLY from all claims, losses, damages or expenses that may be asserted against or incurred by PHLY with respect to the Bonds. The amount of Escrow Funds so reserved (the “**Reserve Amount**”) shall initially be equal to ZERO percent (0%) of the aggregate amount of all Contract Payments received by the Escrow Agent from Obligees. The Reserve Amount may be increased or decreased from time to time as PHLY may determine, in its sole discretion, appropriate. Unless otherwise directed by PHLY, the Reserve Amount shall not be available for disbursement to Contractor or any Subcontractor unless and until the conditions set forth in Section 3.5 have been satisfied.



3.4 Suspension of Disbursements. Notwithstanding anything in this Agreement to the contrary, in the event of a claim against any of the Bonds, PHLY shall have the right to (i) suspend and/or discontinue disbursement instructions to the Escrow Agent on account of Disbursement Requests, and (ii) direct disbursement of some or all of the Escrow Funds to itself in order to pay Contractor's obligations under the Bond Documents or to otherwise reimburse PHLY on account of such claim. Nothing contained in this Section 3.4 or elsewhere in this Agreement shall be construed to relieve Contractor of its obligations under this Agreement or the Contract, and Contractor agrees that at all times while this Agreement is in effect, Contractor shall continue to prepare and submit Disbursement Requests for work performed on the Project and otherwise perform all of its obligations under the Contract, all Subcontracts and this Agreement.

3.5 Disbursement of Reserve Amount. PHLY may direct the disbursement of the Reserve Amount, if any, from the Escrow Account to Contractor upon the satisfaction of all of the following conditions precedent:

- (a) all claims and disputes regarding the Project are resolved to the satisfaction of PHLY;
- (b) PHLY has received fully executed final Releases from all Subcontractors;
- (c) Contractor has submitted to PHLY a fully-completed and duly notarized certificate regarding project completion substantially in the form the certificated attached hereto as **Exhibit G**;
- (d) PHLY has received a fully-completed and duly notarized certificate regarding project completion substantially in the form the certificated attached hereto as **Exhibit H** from Obligee; and
- (e) All amounts owing to PHLY under the Bond Documents have been paid and PHLY has received payment from the Escrow Fund of all amounts it is entitled to receive pursuant to the terms of this Agreement.

3.6 Final Disbursement of Escrow Funds. PHLY shall direct a final disbursement of all Escrow Funds contained in the Escrow Account to Contractor upon the satisfaction of all of the conditions sets forth in Section 3.5 above, and Obligee has delivered the final Contract Payment (including all retainage) to Escrow Agent.

ARTICLE 4 RESPONSIBILITIES AND OBLIGATIONS OF CONTRACTOR



4.1 Contractor's Pre-Commencement Duties. Prior to commencement of any work under or pursuant to the Contract, Contractor shall deliver to PHL Y the following items, fully completed and executed as applicable:

- (a) a copy of the Payment Direction Agreement;
- (b) the Escrow Agreement;
- (c) the Project Fact Sheet;
- (d) a copy of the Contract, inclusive of all exhibits, addenda, general conditions and related documents;
- (e) the Project Budget;
- (f) the Project Timeline;
- (g) a sworn statement executed by Contractor, duly notarized and substantially in the form attached hereto as **Exhibit I**, identifying the names, addresses and telephone numbers of all Subcontractors and containing a brief description of each Subcontract and the dollar amount thereof (the "**Sworn Statement**");
- (h) copies of all Subcontracts and all other purchase orders, estimates, invoices, statements or other documents evidencing the purchase, ordering or rental of materials, equipment or other supplies for the Project;
- (i) copies of all plans and specifications for the Project;
- (j) copies of all permits, approvals and licenses required to be obtained from any governmental authority for the construction work to be performed on the Project;
- (k) to the extent permitted by applicable law, copies of waivers or releases of liens against the Project duly executed by each Subcontractor identified in the Sworn Statement and/or properly recorded in the applicable office for the recording of public records; and
- (l) any other information or written materials regarding the Project and/or Contractor relevant to this Agreement, which PHL Y may request in writing.

4.2 Supplemental Statements. Contractor shall provide to PHL Y a revised and fully complete Sworn Statement, executed by Contractor and duly notarized, in the event there is any change to the information contained in any Sworn Statement previously delivered to PHL Y due to (a) the addition or deletion of a Subcontractor, (b) the addition or deletion of a Subcontract, (c)



any change in the dollar amount of any Subcontract, or (d) any other material change to the information contained in such Sworn Statement.

4.3 Construction of Project. Contractor shall commence construction of the Project promptly and use best efforts to cause all work on the Project to proceed diligently and continuously so that the Project may be substantially completed no later than the scheduled completion date set forth in the Project Timeline. Contractor covenants and agrees that, prior to submitting any Disbursement Request, Contractor will inspect and confirm the sufficiency or completeness of the applicable work performed or materials or equipment used or delivered relating to such Disbursement Request.

4.4 Notice of Certain Events. No later than five (5) days after Contractor's receipt of notice or knowledge of the occurrence of any one of the following events or circumstances, Contractor shall provide notice of same to PHLI, together with copies of documents evidencing or otherwise relating to such event or circumstance:

- (a) any actual, potential or asserted backcharge, credit or offset against the Contract;
- (b) any actual, potential or asserted default under the Contract;
- (c) any actual, potential or asserted default or dispute under a Subcontract, or claim of delay or interference by a Subcontractor or any other person or entity on the Project;
- (d) any event requiring the submission of a revised Sworn Statement as set forth in Section 4.2;
- (e) additional purchase orders or the receipt of any written notice of change orders, extras, additional improvements or work relating to the Project;
- (f) amendments or modifications to the Project Budget;
- (g) amendments or modifications to the Project Timeline;
- (h) any claim or the assertion of a lien on account of nonpayment for labor, materials or equipment supplied to the Project; or
- (i) the receipt of notice by any person or entity from any governmental authority or court concerning Contractor or the Project.

4.5 Books and Records. Contractor shall maintain accurate and complete books and records relating to the Project, the Contract and all Disbursement Requests, and copies of all correspondence to or from Oblige, Contractor, any governmental authority and any other party involved with the Project.



4.6 Access to Project and Information. Contractor shall furnish to PHL Y such information as PHL Y may, from time to time, request with respect to the Project or the business or financial affairs of Contractor. Contractor shall permit any officer, employee, agent, accountant, consultant or other representative of PHL Y, as often as PHL Y may require, to: (a) visit and inspect the Project; (b) inspect, audit and make copies of or prepare extracts from Contractor's books, records, contracts, correspondence and any other written materials relating to the Project; and (c) discuss the status of the Project and the financial affairs of Contractor with Contractor, any Subcontractor or Oblige e, or their respective officers, employees agents, accountants and consultants.

4.7 Inspection of Project. If an inspection of the Project is requested by PHL Y pursuant Section 4.6 above, Contractor shall provide PHL Y or its agents and representatives adequate facilities for inspection of the Project and full access to the Project. Any inspection of the Project by PHL Y pursuant to this Agreement shall be performed by or on behalf of PHL Y at Contractor's expense for PHL Y's benefit. PHL Y does not undertake any obligation or duty to any person or entity to determine or opine whether the construction of the Project has been performed or completed in accordance with any plans and/or specifications relating thereto, or whether such construction has been accomplished in a reasonable, acceptable, safe or workmanlike manner. Consequently, any inspection of the Project by or for PHL Y shall not be relied upon in any manner as the equivalent of or a substitute for a contractor, architectural or engineering inspection.

4.8 Receipt of Contract Payments. In the event that any Contract Payments are delivered directly to Contractor by Oblige e, Contractor will immediately notify PHL Y of the receipt of such Contract Payments. Contractor will receive any such Contract Payments solely as the agent of PHL Y and the Escrow Agent and will immediately turn the same in the form received (except for the endorsement of Contractor where appropriate) over to the Escrow Agent for deposit into the Escrow Account and, until so turned over, Contractor will hold the same in trust for the benefit of PHL Y.

ARTICLE 5 ADDITIONAL AGREEMENTS AND ACKNOWLEDGEMENTS OF THE PARTIES

5.1 Communications With Project Participants. PHL Y may contact and otherwise communicate directly with Oblige e, any Subcontractor and/or any of their respective representatives or consultants to the extent PHL Y deems necessary, in its sole discretion, to determine the status of the Project and such parties accounts with Contractor with respect to the Project.

5.2 Right to Retain Professionals. PHL Y may retain or consult with attorneys, consultants and other professionals of PHL Y's selection, at any time and at Contractor's expense, concerning PHL Y's rights and obligations under this Agreement and the other Bond Documents.



5.3 Administrative Fee. PHLY shall receive a non-refundable, fully earned administrative fee equal to ONE percent (1%) of the Contract Amount plus a set-up charge of \$750.00 for a total fee of \$3,884.66 (the “Administrative Fee”) to cover the costs of administering this Agreement and maintaining the Escrow Account. The Administrative Fee shall be deemed fully earned and non-refundable upon the Effective Date and shall be paid to PHLY from the Escrow Fund prior to any other disbursements from the Escrow Fund, provided that, in the event that the total dollar value of the Contract Amount increases, PHLY shall be entitled to receive a corresponding increase in the Administrative Fee. The Administrative Fee shall not be subject to any refund, reduction or set-off in the event the Contract Amount decreases or the Project does not proceed or meets an early or untimely termination.

5.4 Payment of Fees From Escrow Account. Contractor hereby authorizes PHLY to direct the disbursement of Escrow Funds directly to itself for reimbursement of all amounts for inspection fees, professional fees, Administrative Fees, or the payment of reimbursement obligations relating to claims against the Bonds as and when any such amounts become due and owing to PHLY pursuant to the terms of this Agreement or the other Bond Documents. This authorization is in addition to any other rights belonging to PHLY under the other Bond Documents, including its rights to posting of collateral, indemnity, and other rights related to claims made under any Bonds.

5.5 Reliance Upon Documents. PHLY may, without incurring any liability, act in reliance upon any writing or instrument or signature which it, in good faith, believes to be genuine and in compliance with this Agreement, may assume the validity and accuracy of any statement or assertion contained in such writing or instrument, may assume that any person or entity purporting to give or deliver any such writing or instrument has been duly authorized to do so, and shall not have any obligation or duty to make any independent investigation as to such matters, regardless of any prior or contemporaneous oral or written communication received by it from any party.

5.6 No Implied Duties. PHLY’s obligations and responsibilities under this Agreement are limited to those expressly set forth herein. Nothing in this Agreement or the other Bond Documents shall obligate PHLY to issue any additional bonds or provide financing or any other form of financial accommodation to Contractor with respect to the Project or otherwise. All decisions with respect to completion of the Project shall be made by Contractor only, and PHLY assumes no management or other control over completion of the Project or any actions taken by Contractor. PHLY shall have no obligation whatsoever to monitor or oversee the use or application of such funds distributed from the Escrow Account at its direction, including, without limitation, whether or not the party receiving such disbursement utilizes any such funds for payroll, withholding, other taxes or other payments which such receiving party is obligated to make.

5.7 No Guaranty. PHLY does not guaranty nor is PHLY responsible for ensuring (a) that construction of the Project will proceed or be completed; (b) that the Project will be in



accordance with governmental rules and regulations or all plans and/or specifications relating to the Project when and if the Project is completed; (c) the quality of workmanship or materials, (d) except to the extent otherwise provided in the Bonds, that all obligations incurred by Contractor in connection with the Project will be paid, satisfied or discharged; or (e) that the Contract Amount or Contract Payments will be sufficient to complete the Project.

5.8 Exculpation. Barring gross negligence, PHLY shall not be liable for any act, error, or omission made in good faith in the performance of this Agreement. Notwithstanding the foregoing, in no event shall any of PHLY's officers, directors, partners, employees, agents, attorneys and other advisors, attorneys in fact or affiliates be personally liable for any act which they may do or omit to do hereunder or under the other Bond Documents. Neither PHLY nor any of its officers, directors, partners, employees, agents, attorneys and other advisors, attorneys in fact or affiliates shall be responsible in any manner for any recitals, statements, representations or warranties made by any person or entity contained in the Contract, any Subcontract, this Agreement or any other Bond Document or in any certificate, report, statement or other document referred to or provided for therein or received by PHLY under or in connection therewith, or for the value given for, validity, effectiveness, genuineness, enforceability or sufficiency of any of the foregoing, or the failure of any person or entity to perform its obligations with respect thereto. Notwithstanding any right PHLY may have hereunder or otherwise, PHLY shall not be under any obligation to Contractor or any other person or entity to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Bond Document, or to inspect the Project or the properties, books or records of any person or entity related thereto. Any act done or omitted to be done by PHLY pursuant to the advice of its attorneys shall be deemed conclusively to have been performed or omitted in good faith by PHLY.

5.9 Indemnification. Contractor hereby indemnifies and agrees to defend (with counsel acceptable to PHLY) and hold PHLY and each of its respective directors, parent companies, subsidiaries, shareholders, affiliates, officers, agents and employees (each an, "Indemnitee") harmless from and against any liability, loss, cost, expense (including, without limitation, reasonable attorneys' fees and expenses), claim, damage, suit, action or proceeding ever suffered or incurred by an Indemnitee or in which an Indemnitee may ever be or become involved (whether as a party, witness or otherwise) arising with respect to the execution, delivery, enforcement, performance and administration of this Agreement or the other Bond Documents, or by reason of any third party claim or proceeding arising out of this Agreement, the other Bond Documents or the transactions contemplated hereby or thereby, or relating to claims of any person or entity with respect to the Escrow Funds.

5.10 WAIVER OF DELAY DAMAGES AND SPECIAL DAMAGES. PHLY SHALL NOT BE LIABLE FOR, AND CONTRACTOR HEREBY WAIVES AND RELEASES ANY CLAIMS OR REMEDIES CONTRACTOR MAY HAVE AGAINST PHLY FOR (i) ANY DELAY OR DISRUPTION DAMAGES OF ANY KIND, OR (ii) ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, WHETHER SUCH



DAMAGES ARE CLAIMED BY CONTRACTOR OR ANY THIRD PARTY CLAIMING THROUGH, UNDER OR ON BEHALF OF CONTRACTOR.

**ARTICLE 6
REPRESENTATIONS AND WARRANTIES**

In order to induce PHL Y to enter into this Agreement, Contractor makes the following representations and warranties to PHL Y, all of which shall be true, correct, and complete in all respects as of the Effective Date and at all times during the term of this Agreement (except to the extent that such representations and warranties by their terms specifically relate solely to an earlier date), and each of which shall survive the execution and delivery of this Agreement.

6.1 Organization and Legal Existence. Contractor is duly organized and validly existing under the laws of its state of formation, is in good standing in each jurisdiction in which the nature of its business makes such qualification necessary (including the jurisdiction in which the Project is located) and has the power and authority to own its assets and transact the business in which it is engaged.

6.2 Authority. Contractor has the full power and authority to enter into, execute, and deliver, and to perform its obligations under, this Agreement and the other Bond Documents, all of which have been duly authorized by all necessary corporate or other company action. No consent or approval of any person or entity, and no consent, approval, filing or registration with any governmental authority is required as a condition to the validity of this Agreement or the other Bond Documents or the performance by Contractor of its obligations thereunder, except for such consents or approvals as have been obtained.

6.3 No Conflicts. The execution and delivery by Contractor of this Agreement and the other Bond Documents, and the performance of its obligations under this Agreement and the other Bond Documents do not and will not, violate, conflict with, constitute a default under, or result in the creation of a lien or encumbrance upon the property of Contractor (other than for the benefit of PHL Y) under (a) any provision of Contractor's certificate of incorporation or formation or operating agreement, (b) any provision of any law, rule, or regulation applicable to Contractor, (c) any indenture or other material agreement or instrument to which Contractor is a party or by which Contractor or its property is bound, or (d) any judgment, order or decree of any court, arbitration tribunal, or governmental authority having jurisdiction over Contractor which is applicable to Contractor.

6.4 Binding Agreement. This Agreement and the other Bond Documents to which Contractor is party, and any other document contemplated hereby and thereby, are (or when issued and delivered will be) the legally valid and binding obligations of Contractor, enforceable against it in accordance with their respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.



6.5 Project Agreements. Contractor has the right and power to construct the Project as contemplated in the Contract. The Contract and all other agreements related thereto are in full force and effect, no default has occurred and is continuing uncured under any of them on the part of Contractor or, to the knowledge of Contractor, any other party, and all conditions to the effectiveness of such agreements currently required to be satisfied have been satisfied. No term or provision set forth in this Agreement will impede Contractor's ability to comply with or perform under the Contract or hinder the general operation of Contractor's business.

6.6 Compliance with Laws. Contractor is not in violation of any laws (including, without limitation, any statute, rule or regulation relating to employment practices or to environmental, occupational and health standards and controls) except for violations which would not reasonably be expected to have a material adverse effect on Contractor's business or its ability to perform under the Contract. Contractor has obtained all certificates, licenses, permits, qualifications and governmental authorizations required under the Contract and all laws, or orders of public authorities, necessary for construction of the Project.

6.7 Litigation. There are no actions, suits, proceedings or investigations pending or, to the knowledge of Contractor, threatened against or affecting Contractor and/or the Project before any court, arbitrator, or governmental authority that would have a material and adverse affect on the ability of Contractor to perform its obligations under the Contract and this Agreement

6.8 Labor Matters. There are no strikes or other labor disputes pending or, to the knowledge of Contractor, threatened against Contractor, Obligee or the Project.

6.9 Material Facts. Neither this Agreement, nor any other Bond Document or any other agreement, document, certificate, or statement furnished to PHL Y by or on behalf of Contractor in connection with the transactions contemplated by the Bond Documents, contains any untrue statement of material fact or any materially misleading facts.

ARTICLE 7 **ADDRESS FOR NOTICES AND DELIVERIES**

7.1 Notices. Unless otherwise provided in this Agreement, all notices or documents required or permitted to be delivered by any party relating to this Agreement or any other Bond Document shall be in writing and shall be personally delivered by certified mail (postage prepaid, return receipt requested), overnight courier, or facsimile to the relevant party as set forth below:

<u>If to PHL Y, to:</u>	Maguire Insurance Agency Inc. 1009 Lenox Drive Ste 107 Lawrenceville, NJ 08648 Attn.: Rick Kukosky 609-512-3858
-------------------------	---



If to Contractor, to: Armin Antonio Solis Construction
1954 North FM 2360
Rio Grande City, TX 78582
Attn.: Armin Antonio Solis
956-227-9058

The parties may change the address at which they are to receive notices or other deliveries hereunder, by notice in writing in the foregoing manner given to the other party. All notices sent in accordance with this provision shall be deemed delivered on the earlier date of (a) actual receipt, or (b) if transmitted by facsimile, the confirmation of the transmission if sent during the recipient's normal business hours or, if the confirmed transmission was sent after normal business hours, the next Business Day.

ARTICLE 8 MISCELLANEOUS PROVISIONS

8.1 Further Assurances. Contractor shall execute, acknowledge, and deliver all such additional agreements, documents and instruments and take all such further action, at its own expense, as PHL Y shall deem reasonably necessary in order to further effectuate the purposes, and to carry out the terms, of this Agreement.

8.2 Survival of Covenants. The agreements, covenants and waivers of Contractor contained in this Agreement shall survive the termination of this Agreement to the extent necessary to effectuate the purposes, and to carry out the terms, of this Agreement.

8.3 Cumulative Rights; No Waiver. No failure or delay on the part of PHL Y in exercising any right, power or privilege under this Agreement, and no course of dealing between PHL Y and Contractor, shall operate as a waiver of any such right, power or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and privilege provided for herein are cumulative and not exclusive of any rights, powers, privileges or remedies which PHL Y would otherwise have under the Bond Documents or applicable law. Nothing in this Agreement shall be construed as waiving, restricting, or otherwise impinging, in whole or in part, any rights, remedies, or defenses available to PHL Y under the common law or any other agreement, including any General Indemnity Agreement.

8.4 Claims Against PHL Y. PHL Y shall not be in default under this Agreement, or under any other Bond Document, unless a written notice specifically setting forth the claim of Contractor shall have been given to PHL Y within three (3) months after Contractor first had knowledge of the occurrence of the event which Contractor alleges gave rise to such claim, and PHL Y does not



remedy or cure any such default promptly thereafter. Contractor waives any claim, set-off or defense against PHL Y arising by reason of any alleged default by PHL Y as to which Contractor does not give timely notice as aforesaid. Nothing in this provision shall be construed as creating any substantive claim rights, and no other person or entity is intended to have any rights as a third-party beneficiary of the provisions of this Section.

8.5 Third Parties. No rights are intended to be created under this Agreement or for the benefit of Oblige e or any Subcontractor or other person or entity not a party to this Agreement.

8.6 Successors and Assigns. This Agreement shall be binding upon an inure to the benefit of Contractor and PHL Y and their respective successors and assigns, provided, however, that Contractor may not assign its rights hereunder or any interest herein without the prior written consent of PHL Y, and any such assignment or attempted assignment by Contractor shall be void and of no effect with respect to PHL Y.

8.7 Severability. In the event any term, covenant or provision of this Agreement or shall be declared prohibited, invalid, or unenforceable to any extent by a court of competent jurisdiction, such term, covenant or provision shall be ineffective to the extent of such prohibition, invalidity or unenforceability in that jurisdiction, without invalidating or rendering unenforceable the remaining provisions or affecting the validity of any term, covenant or provision of this Agreement in any other jurisdiction, unless such would effect a substantial deviation from the general intent and purpose of the parties or make a significant change in the economic effect of this Agreement on the party benefited by such term or provision.

8.8 Completeness and Modification. This Agreement, and the exhibits attached hereto, constitute the entire understanding between the parties with respect the subject matter hereof, and thus supersede any prior or contemporaneous agreements or understandings, negotiations, proposals and other representations that may exist or have existed in relation to such subject matter. No waiver or modification of this Agreement shall be valid unless made in writing and signed by the parties hereto. No covenant, representation or condition not otherwise expressed in this Agreement shall replace, modify, interpret, change or restrict the express provisions of this Agreement.

8.9 Choice of Law, Forum; Waiver of Jury Trial. The validity, construction, interpretation and performance of this Agreement and any alleged tort arising or relating to the subject matter hereof shall be governed by the laws of the Commonwealth of Pennsylvania, without giving effect to its conflict of laws principles. Each of the parties hereto irrevocably agrees that any action or proceeding arising in connection with this Agreement shall be brought and maintained exclusively in the United States District Court for the Eastern District of Pennsylvania, or if subject matter jurisdiction cannot be obtained in the District Court, the Court of Common Pleas for Philadelphia County, Pennsylvania. Each party irrevocably waives, to the fullest extent permitted by law, any objection that the forum set forth herein is an inconvenient forum. Each



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party hereto irrevocably waives any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.

8.10 Counterparts; Effectiveness. This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement. This Agreement shall be deemed to have been executed and delivered when PHLY has received counterparts hereof executed by all parties listed on the signature page(s) hereto.

8.11 Authority to Enter Agreement. Contractor warrants and represents that it enters into this Agreement freely and voluntarily and further warrants that the person executing this Agreement on its behalf has authority to bind the Contractor.

IN WITNESS WHEREOF, the parties hereto have executed and delivered, or caused to be executed and delivered, this Agreement as of the Effective Date.

Armin Antonio Solis Construction

Signature: _____

Name: _____

Title: _____

Date: _____

MAGUIRE INSURANCE AGENCY INC.

Signature: _____

Name: _____

Title: _____

Date: _____



EXHIBIT B

PAYMENT DIRECTION AGREEMENT

This PAYMENT DIRECTION AGREEMENT (hereinafter "Agreement") is entered into this ____ day of May, 2015, between Armin Antonio Solis Construction ("Contractor") and Hidalgo County Urban County Program ("Obligee").

RECITALS

A. Contractor and Obligee have entered into a construction and services contract for Memorial Park – install raid deck, new light and canopy, (as the same may be modified, supplemented or amended from time to time, the "Contract") relating to that certain project (the "Project") described on the schedule attached hereto as Exhibit A (the "Project Fact Sheet").

B. Contractor has selected Philadelphia Indemnity Insurance Company ("PIIC") to provide surety bonds as required by Obligee under the Contract.

C. In connection with its issuance of the Bonds, PIIC and Contractor have agreed that Maguire Insurance Agency Inc., underwriting manager for PIIC, will direct the disbursement, from an escrow account, of all monies paid by Obligee under the Contract.

E. In furtherance of the foregoing disbursement arrangement, the parties hereto desire to direct all payments made by Obligee under the Contract to the Escrow Agent described herein.

NOW THEREFORE, in consideration of the preceding recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Contractor and Obligee agrees as follows:

1. Contractor hereby authorized and directs Obligee to remit, and Obligee hereby agrees to remit, all payments due to Contractor under the Contract directly to Bank of America Merrill Lynch, Global Custody and Agency Services, located at 135 South LaSalle Street Ste 1400, IL4-135-05-07, Chicago, Illinois 60603, attn: Arlene Kaminski (312) 992-5771 ("Escrow Agent"), including, without limitation, any and all amounts now due, scheduled to become due in the future, or which become due on account of any increases in or amendments, additions, supplements, extensions, extras, change orders, additional work or other additional matters relating to the Contract (collectively the "Contract Payments").



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2. Nothing contained in this Agreement shall prevent the Obligee from withholding payment to Escrow Agent of any amounts Obligee is entitled to withhold from Contractor by virtue of terms of the Contract or applicable law.

3. This Agreement shall inure to the benefit of and be binding upon the parties successors and permitted assigns.

Nothing contained in this Agreement shall modify the obligations of Contractor under the Contract.”

IN WITNESS WHEREOF, the parties hereto have executed and delivered, or caused to be executed and delivered, this Agreement as of the date first written above.

OBLIGEE:

Hidalgo County Urban County Program

Signature: _____

Name: _____

Title: _____

Date: _____

CONTRACTOR:

Armin Antonio Solis Construction

Signature: _____

Name: _____

Title: _____

Date: _____



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EXHIBIT C

Copy

Missing



EXHIBIT D

DISBURSEMENT REQUEST

CONTRACTORS CHECKLIST FOR DISBURSEMENT OF FUNDS

INFORMATION REQUIRED FOR PROCESSING:

- Exhibit D (Disbursement Authorization) we must obtain one for each check that is to be issued.
- Copy of all invoices from subcontractors and suppliers that are to be paid.
- Copy of your pay request to the owner or general contractor.
- Partial or final lien release waiver for subcontractors and suppliers.

***Information not provided will delay the processing of disbursements.**

Please note that if payment is made by you to any supplier or subcontractor, we will need a copy of the check, a signed lien release form and a copy of the invoice in order to give a refund.



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Exhibit D Disbursement Request

FROM: Armin Antonio Solis Construction
TO: Maguire Insurance Agency Inc., underwriting manager for Philadelphia Indemnity Insurance Company
DATE:
PROJECT: Memorial Park

Please Pay the Amount of: _____

To the order of: _____

Address of Payee: _____

Final Payment (Yes) (No) _____

IF PAYMENT IS TO A SUBCONTRACTOR, COMPLETE THIS SECTION

- | | |
|---|----------|
| A. Original Contract Estimate: | \$ _____ |
| B. Change Orders (must be attached): | \$ _____ |
| C. Revised Contract Amount: | \$ _____ |
| D. Total Contract Amount Completed to Date (Including Change Orders): | \$ _____ |
| E. Percent of Work Completed to Date _____%: | \$ _____ |
| F. Total Amount of Materials Stored on Site: | \$ _____ |
| G. Total D & F: | \$ _____ |
| H. Less Amount Retained: _____% | \$ _____ |
| I. Less Previous Payment Requests (Line J from Prior Certificates): | \$ _____ |
| J. Total Amount of this Request (D + F - H - I = Total): | \$ _____ |
| K. Remaining Amount to Complete (C-G) + Accrued Retainage): | \$ _____ |

IF PAYMENT IS TO A SUPPLIER, COMPLETE THIS SECTION

INVOICE AND BUDGET INFORMATION

- Relevant invoice number(s):
(Copies of invoices must be attached) _____
- Relevant budget category/line item: _____
- Do any invoices relate to stored materials?
(If so, explanation must be attached) _____

IF PAYMENT IS TO YOU, COMPLETE THIS SECTION

- Indicate if Payment to you is for your Profit or Overhead
*No Back-up Documentation Needed, but Must be within Percentage Allowance
- Indicate if Payment to you is for your Labor Costs *Must Attach Labor Report
- Indicate if Payment to you is for Equipment or Materials out of your Inventory
*Must Attach Usage Report
- Indicate if Payment to you is for Reimbursement of Amount Previously Paid by you for Valid Project Expenses. If so, Indicate Relevant Project Cost Breakdown Category
*Must Attach Back-up Documentation and Proof of Payment (Copy of Cleared Check/Bank Statement)

- | | |
|--------------------------|-------------------|
| <input type="checkbox"/> | Profit & Overhead |
| <input type="checkbox"/> | Labor |
| <input type="checkbox"/> | Materials |
| <input type="checkbox"/> | Equipment |
| <input type="checkbox"/> | Reimbursement |

Contractor hereby certifies that the above work or service has been performed, materials have been delivered, stored and/or incorporated into the work and these activities have been approved by the undersigned and by the owner's representative. Contractor further certifies that, if disbursement to the Contractor is requested, all project costs and other amounts due and payable to subcontractors have been paid.

Signature: _____

Date: _____



EXHIBIT E

PARTIAL RECEIPT, WAIVER AND RELEASE OF CLAIMS

Upon receipt of payment in the amount of \$ _____ on behalf of _____ [Contractor] for labor, materials, equipment and services provided by the undersigned to Contractor on or with respect to _____ (the "Project"), the undersigned waives any and all mechanics' lien rights and claims it has or may have with respect to the Project, and releases and forever discharges the [owner], [Obligee], [General Contractor], [Contractor] and/or Philadelphia Indemnity Insurance Company and its underwriting manager, Maguire Insurance Agency, Inc. , and their respective officers, directors, employees, sureties, insurers, disbursing agents and representatives from any and all claims for payment, including but not limited to payment bond claims, but only to the extent of the payment acknowledged above and through the date of said payment.

Dated:

(Print company name)

Signature: _____

Name: _____

Title: _____

Date: _____

Notary Public
Sworn to and subscribed by me this the _____ day
of _____, 20____

My Commission Expires:

PLEASE COMPLETE AND RETURN TO:



EXHIBIT F

FINAL RECEIPT, WAIVER AND RELEASE OF CLAIMS

Upon receipt of **final** payment in the amount of \$ _____ on behalf of _____ [Contractor] for labor, materials, equipment and services provided by the undersigned to Contractor on or with respect to _____ (the "**Project**"), the undersigned waives any and all mechanics' lien rights and claims it has or may have with respect to the Project, and releases and forever discharges the [owner], [Obligee], [General Contractor], [Contractor] and/or Philadelphia Indemnity Insurance Company and its underwriting manager, Maguire Insurance Agency Inc., and their respective officers, directors, employees, sureties, insurers, disbursing agents and representatives from any and all claims for payment, including but not limited to payment bond claims.

Dated:

(Print company name)

Signature: _____

Name: _____

Title: _____

Date: _____

Notary Public
Sworn to and subscribed by me this the _____ day
of _____, 20____

My Commission Expires:

PLEASE COMPLETE AND RETURN TO:



CERTIFICATE REGARDING PROJECT COMPLETION

(Contractor)

The undersigned, _____ (“Contractor”), hereby certifies to Philadelphia Indemnity Insurance Company (“Surety”) together with its underwriting manager, Maguire Insurance Agency Inc., and _____ [Obligee], and/or their respective agents, successors and assigns, as follows with respect to _____ (the “Project”):

1. All work to be performed by Contractor pursuant to the Contract has been completed.
2. The Obligee has accepted the Project.
3. All persons or entities who have supplied labor, material or services to the Project at the request of or for the benefit of Contractor have been paid in full.
4. No person or entity has any claim against the [Obligee], [Owner], [General Contractor], or Contractor for any labor, material or services provided to the Project.
5. Contractor has no knowledge of any actual or threatened claim against the Bonds or mechanic’s lien against the Project.

All capitalized terms used herein and not defined herein shall have the meanings set forth in that certain Funds Disbursing Agreement between Contractor and Surety dated _____.

Dated:

(Print company name)

Signature: _____

Name: _____

Title: _____

Date: _____

Notary Public
Sworn to and subscribed by me this the _____ day
of _____, 20____

My Commission Expires:



EXHIBIT H

CERTIFICATE REGARDING PROJECT COMPLETION

(Obligee)

The undersigned, _____ (“Obligee”), hereby certifies to Philadelphia Indemnity Insurance Company (“Surety”) together with its underwriting manager, Maguire Insurance Agency, Inc., and _____ [Contractor], and/or their respective agents, successors and assigns, as follows with respect to _____ (the “Project”):

1. All work to be performed by Contractor pursuant to the Contract has been completed.
2. The Obligee has accepted the Project.
3. To the knowledge of Obligee, all persons or entities who have supplied labor, material or services to the Project at the request of or for the benefit of Contractor have been paid in full.
4. To the knowledge of Obligee, no person or entity has any claim against the [Contractor], [Owner] or Obligee for any labor, material or services provided to the Project.
5. Obligee has no knowledge of any actual or threatened claim against the Bonds or mechanic’s lien against the Project.

Dated:

(Print company name)

Signature: _____

Name: _____

Title: _____

Date: _____

Notary Public
Sworn to and subscribed by me this the _____ day
of _____, 20____

My Commission Expires:



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EXHIBIT I

**SWORN STATEMENT OF CONTRACTOR
TO SURETY REGARDING SUBCONTRACTORS**

State of _____

County of _____

The undersigned Armin Antonio Solis Construction (“**Contractor**”), being duly sworn, deposes and says that Contractor has retained or contracted or intends to retain or contract with the following subcontractors, equipment or material suppliers, consultants, and other persons or entities for the provision of labor, materials, equipment or services with respect to that certain project described as the Memorial Park.

Name	Address & Telephone	Type of Contract, Purchase Order	Contract Amount

The Project's costs breakdown is as follows:

Amount needed for Subcontractors:	\$ _____	
Amount needed for Contractor's Labor:	\$ _____	
Total Labor Costs; % of Contract:	\$ _____	% _____
Amount needed for Suppliers:	\$ _____	
Amount needed for in-house Material and Equipment Costs:	\$ _____	
Total Supplies, Materials & Equipment Costs; % of Contract:	\$ _____	% _____
Other Anticipated Costs/Contingency Costs: (Explain)	\$ _____	% _____
Maguire Funds Control Fee	\$ _____	% _____
Amount needed for Overhead	\$ _____	
Amount allotted to Profit	\$ _____	
Total Profit & Overhead Costs; % of Contract:	\$ _____	% _____
Total of the above sums (Should equal Contract Sum):	\$ _____	% <u>100</u>
Contract Sum:	\$ _____	% <u>100</u>



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As of this 01_ day of May ,2015_, this statement is complete and accurate in all respects, and identifies all person or entities and amounts to be paid pursuant to agreements with Contractor related to the Project. Such shall be updated in writing to Philadelphia Indemnity Insurance Company and its underwriting manager, Maguire Insurance Agency, Inc., when any of the foregoing information changes.

Armin Antonio Solis Construction

Signature: _____

Name: _____

Title: _____

Date: _____

Notary Public

Sworn to and subscribed by me this the _____ day
of _____, 20____

My Commission Expires:

PLEASE COMPLETE AND RETURN TO:

Re: For Review

From : Guadalupe V. Garcia
<guadalupe.garcia@co.hidalgo.tx.us>

Thu, May 07, 2015 11:45 AM

Subject : Re: For Review

To : Steve Crain <scrain@atlashall.com>

Our contracts always are Hidalgo County-Urban County Program.

Guadalupe V. Garcia
UCP Coordinator II

956-787-8127 ext. 2237

"Sometime Something Amazing Comes Along... Well, Here I AM!".

-Audra Vega

----- Original Message -----

From: "Steve Crain" <scrain@atlashall.com>

To: "Guadalupe V. Garcia" <guadalupe.garcia@co.hidalgo.tx.us>

Sent: Thursday, May 7, 2015 11:46:13 AM

Subject: RE: For Review

The only change depends on the name on the contract. Please advise as to the exact name on the contract. Was it Urban County or Hidalgo County acting by and through the Urban County Program?

-----Original Message-----

From: Guadalupe V. Garcia

[mailto:guadalupe.garcia@co.hidalgo.tx.us]

Sent: Thursday, May 07, 2015 10:58 AM