

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into by and between Harris County (“Harris County”) and Merchants Bonding Company (Mutual) and Merchants National Bonding, Inc. (collectively, “Merchants”). Together Harris County and Merchants are referred to herein as the “Parties.” The MOU is effective as of the last date of execution by the Parties.

1. Harris County entered into a contract dated January 26, 2021 (“Contract”) with Burnside Services, Inc. (“Burnside”) for construction of Job No. 20/-362 Road construction at Gessner Road From West Road to Beltway 8 for Harris County Precinct 1 – UPIN 1810MF0R801 project (“Project”).

2. As required by the Contract, Merchants issued payment (“Payment Bond”) and performance (“Performance Bond”) bonds, both numbered TXC610836, on behalf of Burnside for the Project, each in the penal sum of \$10,073,264.00 (collectively, the “Bonds”).

3. On May 20, 2022, Burnside sent a letter to Harris County indicating its intent to close its business as of that date. Subsequently, on May 24, 2022, Burnside sent a letter to Harris County surrendering its right to complete the Contract (collectively, the “Default and Termination Letters”).

4. On May 31, 2022, Burnside filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code in a proceeding styled *In re Burnside Services, Inc.*, No. 22-31458, in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (“Bankruptcy”).

5. Following receipt of the Default and Termination Letters and notice of the Bankruptcy, Harris County made demand upon Merchants under the Performance Bond.

6. As of the date of this MOU, Harris County is holding \$4,163,236.74 under the Contract (“Contract Balance”). The Parties agree that the Contract Balance, less the amounts held for retainage, is dedicated for use in completion of the remaining Contract work. Harris County will release retainage when due pursuant to the Contract Documents.

7. During Merchants’ investigation and evaluation of Harris County’s demand under the Performance Bond, the Parties agree that it is necessary to perform certain remaining Contract work identified on the attached Exhibit “A” on an expedited basis as emergency work (“Emergency Work”).

8. Merchants obtained a quote, attached and incorporated as Exhibit “B,” from Allgood Construction to perform the Emergency Work for \$744,072 (“Quote”). The Parties agree that the Quote is reasonable and the Emergency Work is necessary to complete the remaining Contract work.

9. The Parties intend for this MOU to set forth the understandings between the Parties with respect to the cost of the Emergency Work.

10. Merchants will schedule the Emergency Work with Allgood Construction consistent with the Quote for the earliest feasible date. Merchants will pay Allgood Construction directly for the cost of the Emergency Work, which payment is expected to be \$744,072.

11. The Parties agree that Merchants will receive penal sum credit on the Performance Bond in an amount corresponding to the amount of its payment to Allgood Construction for the Emergency Work, which credit is expected to be \$744,072. The actual amount of the penal sum credit will be the actual amount paid by Merchants to Allgood Construction for the Emergency Work. The penal sum of the Payment Bond will not be altered by this MOU.

12. Following the Emergency Work, the Parties will work together cooperatively to address the scope of work remaining under the Contract. Both Parties agree that periodic payments, inspections and other requirements regarding all work to be performed for the Project will be subject to and comply with all terms and conditions of the Contract Documents.

13. Except as expressly stated herein, nothing contained in this MOU shall in any way alter or waive the legal or equitable rights of the Parties and the Parties reserve any and all rights, claims, and defenses they have or may have under the Contract, Bonds, applicable law or any other agreement.

14. It is agreed and understood by Harris County and Merchants that there have been no oral or other agreements of any kind whatsoever as a condition precedent or to induce the execution and delivery of this MOU by any party hereto and this MOU has not been induced by or made in reliance upon any oral or written representations by either party or its agents, employees, attorneys, or consultants.

15. It is understood that this MOU is an expression of the intention of the Parties and only such of those terms and conditions as incorporated into mutually satisfactory documents executed by the Parties hereto shall be enforceable.

16. This MOU shall be governed by the laws of the State of Texas.

The remainder of this page is left intentionally blank.

Harris County

By: _____
Name: Lina Hidalgo
Title: Harris County Judge
Date: _____

Agreed to as to Form:
CHRISTIAN MENEFFEE
Harris County Attorney

By: Randy Keenan
Randy Keenan, Assistant County Attorney
CACI: 22GEN2643

Merchants Bonding Company (Mutual)

By: J. Perkins
Name: Jaime Perkins
Title: Claims Attorney
Date: August 12, 2022

Merchants National Bonding, Inc.

By: J. Perkins
Name: Jaime Perkins
Title: Claims Attorney
Date: August 12, 2022

EXHIBIT A

The scope of work for the completion of the 3 – 10' x 10' RCB crossing of HCFCD Unit No. E141-00-00 at STA 194+23.15 includes:

- A. Desilting & Cleanout of the already installed 3-10'x10' RCB
- B. Desilting & Cleanout of HCFCD Unit No. E141-00-00 at crossing location, and upstream and downstream of crossing
- C. Construction of two (2) proposed concrete headwalls
- D. Construction of proposed channel grading and transition
- E. Construction of proposed concrete slope paving
- F. Construction of proposed rock riprap erosion protection

Installation of fill material on top of crossing to proposed subgrade elevation; establishing temporary erosion control to prevent erosion

ALLGOOD CONSTRUCTION COMPANY



1702 Settegast Ranch Rd
Richmond, TX 77406

P: 832-847-4071
M: 832-451-0393

Contact: Michael Boenig
E: michael@allgoodconstruction.com

Bill To: J.S. Held LLC

Contact: Allen Thibodeaux

Proposal #: Gessner Headwall

Address: 110 Cypress Station Dr, Suite 155
Houston, TX 77090

Phone: 832.793.8432
Email: athibodeaux@jsheld.com

Proposal Date: 7/7/2022

PROPOSAL

Proposal For: Gessner Rd RE Emergency Construction Work over HCFC ROW

Item #	Description	Qty	Unit Measure	Unit Price	Price
1	MOBILIZATION AND DEMOBILIZATION	1.00	LS	\$7,000.00	\$7,000.00
2	ROW Fill TO PROPOSED ROADWAY GRADE	5000.00	CY	\$11.20	\$56,000.00
3	CORRUGATED METAL PIPE (24")(PRE-COATED)(GALVANIZED)(16 GAUGE)	198.00	LF	\$119.00	\$23,562.00
4	RIPRAP GRADE NO. 1(18")	503.00	SY	\$140.00	\$70,420.00
5	REINFORCED CONCRETE SLOPE PAVING (5")	1759.00	SY	\$147.00	\$258,573.00
6	WINGWALL(PW-1) (HW=16FT)	2.00	EA	\$150,941.00	\$301,882.00
7	BACKSLOPE INTERCEPTOR STRUCTURE	3.00	EA	\$3,500.00	\$10,500.00
8	CUT SWALES FOR BACKSLOPE INTERCEPTOR	405.00	LF	\$7.00	\$2,835.00
9	DE-WATERING AND/OR BY-PASS PUMPING	1.00	LS	\$7,000.00	\$7,000.00
10	CLEAINGIN OUT 10'X10' RCB	1.00	LS	\$1,400.00	\$1,400.00
11	REPAIRS TO 10'X10' RCB	1.00	LS	\$2,100.00	\$2,100.00
12	REMOVAL OF EXISTING FORMS, REBAR, DEBRIS IN CHANNEL	1.00	LS	\$1,400.00	\$1,400.00
13	CHANNEL GRADING	1.00	LS	\$1,400.00	\$1,400.00
				TOTAL	\$744,072.00

ORDER OF COMMISSIONERS COURT
Authorizing a Memorandum of Understanding

The Commissioners Court of Harris County, Texas, convened at a meeting of said Court at the Harris County Administration Building in the City of Houston, Texas, on the _____ day of _____, 2022 with the following members present, to-wit:

A quorum was present when, among other business, the following was transacted:

**ORDER AUTHORIZING THE MEMORANDUM OF UNDERSTANDING BETWEEN
HARRIS COUNTY, MERCHANTS BONDING COMPANY (MUTUAL), AND
MERCHANTS NATIONAL BONDING, INC.**

Commissioner _____ introduced an order and made a motion that the same be adopted. Commissioner _____ seconded the motion for adoption of the order. The motion, carrying with it the adoption of the order, prevailed by the following vote:

	Yes	No	Abstain
Judge Hidalgo	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ellis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Garcia	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Ramsey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Comm. Cagle	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

The County Judge thereupon announced that the motion had duly and lawfully carried and that the order had been duly and lawfully adopted. The order thus adopted as follows:

Section 1. The Harris County Judge is authorized to execute the Memorandum of Understanding between Harris County, Merchants Bonding Company (Mutual) and Merchants National Bonding, Inc.. This document provides for the commencement of emergency work at the Gessner Rd. project site in Precinct 4. Emergency work is being performed at this location due to the original contractor abandoning the job. There is no additional allocation of funds for this work as the project had already been allocated funding in the amount of \$10,298,263.90 for the contract with the previous contractor. The remainder of the work at the site will be present to Commissioners Court at a later time.

Section 2. The County Engineer, or his/her designee, are authorized to take such actions and execute such other documents as they deem necessary or convenient to carry out the purposes of this order.