

78640

DATE: August 17, 2020

TO: Honorable Members of the Board of Acquisition and Contract

FROM: Hugh J. Greechan, Jr., P.E.
Commissioner of Public Works and Transportation

SUBJECT: Change Order No. 2
Contract No. **11-503-Rev.**
Rehabilitation of the Fulton Avenue Bridge
Over Hutchinson River (BIN 3348220)
City of Mount Vernon and Village of Pelham Manor, New York

Contractor: E.E. Cruz & Company, Inc.
Amount of Change Order No. 2: \$695,745.60

By resolution approved on May 12, 2016, your Honorable Board awarded Contract No. 11-503-Rev. for the Rehabilitation of the Fulton Avenue Bridge over Hutchinson River (BIN 3348220), City of Mount Vernon and Village of Pelham Manor, New York to E.E. Cruz & Company, Inc. (the "Contractor"), 32 Avenue of the Americas, New York, New York 10013, in the amount of \$14,816,000.00 ("Contract No. 11-503-Rev.").

The work under Contract No. 11-503-Rev. included all necessary labor, materials and equipment required to remove and replace the steel bridge deck, steel stringers and bracing, sidewalk panels and various secondary members, remove and replace both approach spans, remove and replace the operator's house and associated electrical/mechanical components, install an emergency generator, perform lead paint abatement and perform bridge painting work.

On October 10, 2019, your Honorable Board approved Change Order No. 1 to Contract No. 11-503-Rev. ("Change Order No. 1") to provide for the performance of certain additional work necessary to complete the project encountered due to unexpected field conditions in the amount of \$167,215.20 ("Contract No. 11-503-Rev." and "Change Order No. 1" are collectively referred to as the "Contract").

On or about February 11, 2020, the Contractor submitted a Verified Final Application for Payment to the County Department of Public Works and Transportation (the "Department"), and, on April 22, 2020 and July 2, 2020, filed supplemental materials in support of its Verified Final Application for Payment (the "Final Pay Application").

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The Contractor listed the following two (2) amounts as unpaid bills and liabilities in the Final Pay Application:

<u>Name of Claimant.</u>	<u>Purpose</u>	<u>Amount</u>
EE Cruz	589.01- Removal of existing Steel	\$1,292,000.00
EE Cruz	FB 5 Interferences	\$452,718.00

(Collectively, referred to as the "Requests for Payment").

In addition, the Contractor requested the final release of retainage in the Final Pay Application.

Prior to the submission of the Final Pay Application, the Department met with the Contractor to discuss the Contractor's Requests for Payment. The Department informed the Contractor that it was going to follow the procedure set forth on page 8 of the Contract and asked the Contractor to submit its requests, along with all supporting documentation, to the Department. The procedure on page 8 of the Contract provides:

"[S]hould any dispute arise respecting the true construction, interpretation or meaning of the Contract plans, specifications or conditions herein, or the measurement for the payment thereunder, same shall be referred to and decided by the said Commissioner and his decision hereon shall be final and conclusive upon the parties hereto and may not be challenged except in a proceeding commenced pursuant to Article 78 of the Civil Practice Law and Rules. This provision shall also apply to the true value of any duly authorized extra work or any work permitted by agreement in case any work shall be ordered performed, or any work called for shall be so omitted under and upon the direction of said Commissioner."

The Commissioner reviewed the Contractor's Requests for Payment, the documentation submitted by the Contractor in support of its Requests for Payment, and the plans, specifications and conditions in the Contract. The Commissioner in accordance with the terms of the Contract has prepared a determination in response to the Contractor's Requests for Payment, which has been provided to your Honorable Board, and concludes the Contractor should be paid the following amounts:

<u>Name of Claimant.</u>	<u>Purpose</u>	<u>Amount</u>
EE Cruz	589.01- Removal of existing Steel	\$695,745.60
EE Cruz	FB 5 Interferences	\$0.00

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Accordingly, a Change Order No. 2 is being submitted to your Honorable Board to authorize the payment to the Contractor of \$695,745.60 for "589.01 – Removal of existing Steel" to pay the Contractor for the removal of certain additional steel from the Fulton Avenue Bridge, less a disincentive assessment caused by the Contractor's failure to meet a substantial completion date set forth in the Contract. In addition, no approval is being sought for payment under Item "FB-5 Interferences," which concerns certain field modifications along the upper and lower flanges of the Bridge Floor Beam 5, because such modifications could have been avoided if the Contractor verified the dimensions as required by the drawings, plans and specifications.

The objective of the Contract is to rehabilitate a structurally and operationally deficient bascule drawbridge resulting from continued use in a harsh environment over brackish waters.

The Contract is in the public's best interest because it will repair County roadways and make them safer for public use.

Accordingly, it is requested that your Honorable Board take action on the following:

Approval of Change Order No. 2:

Total Amount of Change Order No. 2 \$695,745.60

This Change Order has been reviewed by the Law Department and a proposed form of Resolution is attached hereto for your approval.

Approval is recommended.

HJG/RAN
Encl.

RESOLUTION

RE: CONTRACT NO. 11-503-Rev.
CONTRACT AMOUNT: \$14,816,000.00
CHANGE ORDER NO. 1: \$167,215.20
CHANGE ORDER NO. 2: \$695,745.60
NET INCREASE: \$862,960.80
REVISED CONTRACT AMOUNT: \$15,678,960.80

CHANGE ORDER NO. 2

UPON A COMMUNICATION FROM THE COMMISSIONER OF THE DEPARTMENT OF PUBLIC WORKS AND TRANSPORTATION,

WHEREAS, this Honorable Board by a resolution approved on May 12, 2016 awarded Contract No. 11-503-Rev. for the Rehabilitation of the Fulton Avenue Bridge over Hutchinson River (BIN 3348220), City of Mount Vernon and Village of Pelham Manor, New York, to E.E. Cruz & Company, Inc. (the "Contractor"), 32 Avenue of the Americas, New York, New York 10013, in the amount of \$14,816,000.00 ("Contract No. 11-503-Rev."); and

WHEREAS, this Honorable Board by a resolution approved on October 10, 2019 approved Change Order No. 1 to Contract No. 11-503-Rev. ("Change Order No. 1") in the amount of \$167,215.20 ("Contract No. 11-503-Rev." and "Change Order No. 1" being collectively referred to as the "Contract"); and

WHEREAS, the Contractor filed a Verified Final Application for Payment with the Department of Public Works and Transportation in which it listed the following two (2) amounts as unpaid bills and liabilities under the Contract:

<u>Name of Claimant</u>	<u>Purpose</u>	<u>Amount</u>
EE Cruz	589.01- Removal of existing Steel	\$1,292,000.00
EE Cruz	FB 5 Interferences	\$452,718.00

(Collectively, referred to as the "Requests for Payment"); and

WHEREAS, Hugh J. Greechan, Jr., P.E., Commissioner of Public Works and Transportation, pursuant to the terms of the Contract, reviewed the Contractor's Requests for Payment, the documentation submitted by the Contractor in support of its Requests for Payment, and the plans, specifications and conditions in the Contract, and recommends the Board approve Change Order No. 2 in the amount of \$695,748.60, as follows:

<u>Name of Claimant</u>	<u>Purpose</u>	<u>Amount</u>
EE Cruz	589.01- Removal of existing Steel	\$695,745.60
EE Cruz	FB 5 Interferences	\$0.00; and

