

84391

TO: Honorable Members of the Board of Acquisition and Contract

FROM: John M. Nonna
County Attorney

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

DATE: April 16, 2021

SUBJECT: Authority to (i) rescind the Resolution approved on August 27, 2020 to approve Change Order No. 2 to Contract No. 11-503-REV for the Rehabilitation of the Fulton Avenue Bridge over the Hutchinson River (BIN 3348220), City of Mount Vernon and Village of Pelham Manor, New York, in the amount of \$695,745.60, and (ii) authorize the County to enter into an agreement with E.E. Cruz & Company, Inc. to settle certain claims of E.E. Cruz & Company, Inc. for additional compensation under Contract No. 11-503-REV in the amount of \$850,000.00.

By a resolution approved on May 12, 2016, your Honorable Board awarded Contract No. 11-503-REV for the Rehabilitation of the Fulton Avenue Bridge over the Hutchinson River (BIN 334822), City of Mount Vernon and Village of Pelham, New York, (the "Project") 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 (the "Contract").

By a resolution approved on October 10, 2019, your Honorable Board approved Change Order No. 1 to the Contract to authorize the performance of certain additional work necessary to complete the Project due to unexpected field conditions in the amount of \$167,215.20.

By a resolution approved on August 27, 2020 (the "August 27th Resolution"), your Honorable Board approved Change Order No. 2 to the Contract, which was in response to certain claims of the Contractor for additional compensation under the Contract in the amount of \$1,774,719.00 alleged by the Contractor in its verified statement in the form of a "Final Application for Payment," dated February 2, 2020, revised July 2, 2020, with respect to Contract Item Nos. 589.01, 800.23 and 800.34 (the "Contractor's Claims"). Change Order No. 2 authorized the payment of \$695,745.60 to the Contractor for the removal of additional steel under Contract Item No. 589.01 from the Fulton Avenue Bridge and authorized no payment to the Contractor for its claims under Contract Item Nos. 800.23 and 800.34 for FB 5 Interferences. Change Order No. 2 was approved commensurate with the Commissioner of Public Works and Transportation's Determination, dated

August 27, 2020, (the “Commissioner’s Determination”) issued with regard to the Contractor’s Claims.

Subsequent to the approval of Change Order No. 2, the County and the Contractor entered into further negotiations with regard to the Contractor’s Claims.

On March 22, 2021, by Act No. 2021-200, the County Board of Legislators authorized the County Attorney to settle the Contractor’s Claims as follows: (i) the County will pay \$850,000.00 to the Contractor in full and final satisfaction of the Contractor’s Claims, of which \$154,254.40 will be contributed to the County by its engineer for the Project, Henningson, Durham & Richardson Architecture and Engineering, in association with HDR Engineering, Inc. (“HDR”), (ii) the Contractor and County will release each other from all claims related to the Contractor’s Claims, and (iii) the County will release and retract the disincentive assessment made in the Commissioner’s Determination identified as Item No. 698,93940015.

Authorization is now sought from your Honorable Board for the County to rescind the August 27th Resolution approving Change Order No. 2 to the Contract in the amount of \$695,745.60 and instead authorize the County to enter into an agreement with the Contractor to settle the Contractor’s claims as approved by the County Board of Legislators by Act No. 2021-200 and set forth above (the “Settlement Agreement”).

Submitted simultaneously with this Resolution is a resolution authorizing an agreement with HDR to settle the claim of the County for defense and indemnification against HDR under Agreement No. 10-910 in connection with the Contractor’s Claims as follows: (i) HDR will pay the total sum of \$154,254.40 to the County as contribution to the proposed \$850,000.00 settlement between the County and Contractor for the Contractor’s Claims, and (ii) the County and HDR will release each other with regard to the Contractor’s Claims.

The proposed Settlement Agreement is in the public’s best interest because the County will avoid incurring the potential expense of litigation, hearing, or adjudication of any issues of fact or law with regard to the Contractor’s Claims.

Accordingly, we recommend adoption of the attached proposed Resolution.

JMN/HJG/rn
Encl.

RESOLUTION

Upon a communication from the County Attorney and the Commissioner of the Department of Public Works and Transportation, be it:

RESOLVED, that the resolution approved on August 27, 2020 approving Change Order No. 2 to Contract No. 11-503-REV for the Rehabilitation of the Fulton Avenue Bridge over the Hutchinson River (BIN 334822), City of Mount Vernon and Village of Pelham, New York (the "Contract"), in the amount of \$695,745.60, is hereby rescinded; and be it further

RESOLVED, that the County of Westchester (the "County") is authorized to enter into an agreement with E.E. Cruz & Company, Inc. (the "Contractor") to settle the claims of the Contractor for additional compensation in the total amount of \$1,774,719.00 under the Contract, with respect to Contract Item Nos. 589.01 (Removal of Existing Steel) and 800.23 and 800.34 (FB – Interferences) (collectively, the "Contractor's Claims"), by the payment of \$850,000.00 to the Contractor as full and final satisfaction of the Contractor's Claims of which \$154,254.40 will be contributed to the County by its engineer for the Fulton Avenue Bridge project, Henningson, Durham & Richardson Architecture and Engineering in association with HDR Engineering, Inc., and be it further

RESOLVED, that the County and the Contractor shall release each other from all claims associated with the Contractor's Claims, and the County shall release and retract the disincentive assessment made in the Commissioner of Public Works and Transportation's Determination, dated August 27, 2020, identified as Item No. 698,93940015; and be it further

RESOLVED, that the County Attorney, or his designee, and the Commissioner of the Department of Public Works and Transportation, or his designee, are hereby authorized to execute and deliver all documents and take such actions as they deems necessary and desirable to accomplish the purposes hereof.

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Bond Act No.	Dollars
	366	46	RB2UU00C	6210-99	BA # 50-2015 BA #200-2009 BA #252-2015	\$295,000.00
	366	46	RB03S01C	6210-99	BA # 51-2015 BA #254-2015	\$280,000.00
	101	46	6000	4310		\$275,000.00

Budget Funding Year(s) 2021 Start Date: May 26, 2016 End Date: December 31, 2020
(must match resolution)

Funding Source: Tax Dollars 100% County Contractor Federal I.D. No./
State Aid _____ Social Security No.: _____
\$850,000.00 Federal Aid _____ Vendor No.: _____
(must match resolution) Other _____ Encumbrance No.: _____