



George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

March 4, 2021

Westchester County Board of Legislators
Michaelian Office Building
148 Martine Avenue, 8th Floor
White Plains, New York 10601

Re: Legislation authorizing the County of Westchester, acting by and through the County Attorney, to settle the claim against Henningson, Durham & Richardson Architecture and Engineering, P.C. in association with HDR Engineering, Inc., for defense and indemnification with respect to the claims of E.E. Cruz & Company, Inc. for additional compensation under Contract No. 11-503-Rev

Dear Honorable Members of the Board:

Attached for your consideration is an Act which, if adopted by your Honorable Board, would authorize the Westchester County Attorney to settle the claim of the County of Westchester (the "County") against Henningson, Durham & Richardson Architecture and Engineering, in association with HDR Engineering, Inc. ("HDR") for defense and indemnification with respect to the claims of EE Cruz & Company, Inc. ("Cruz") for additional compensation under Contract No. 11-503-REV for the public improvement project known as "Rehabilitation of Fulton Avenue Bridge over Hutchinson River (BIN 3348220), City of Mount Vernon and Village of Pelham Manor, New York" (the "Project").

By written agreement between the County and HDR, dated May 14, 2010, and the amendments thereto, dated April 30, 2014 and July 13, 2017, respectively (collectively, the "Agreement"), HDR agreed to provide the County with engineering design and construction administration services associated with the Project. Pursuant to Paragraph Eighth of the Agreement, HDR agreed to indemnify and hold harmless the County from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of HDR's performance or failure to perform under the Agreement.

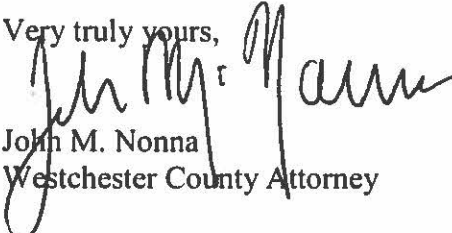
On or about May 12, 2016, the County entered into Contract No. 11-503-REV with Cruz for the construction of the Project. On or about February 2, 2020, Cruz submitted to the Commissioner of the Department of Public Works and Transportation a verified statement in the form of a "Final Application for Payment," asserting claims for additional compensation under Contract No. 11-503-REV, Contract Item Nos. 589.01, 800.23 and 800.34 (the "Cruz Claims")



The Cruz Claims demand additional compensation in the total sum of \$1,744,719.00 and assert that said compensation stems from alleged design flaws and/or miscalculations in the design documents prepared by HDR for the Project.

By letter, dated September 25, 2020, the County, acting by the County Attorney's Office, demanded that HDR indemnify and hold harmless the County, pursuant to Paragraph Eighth of the Agreement, with respect to the Cruz Claims. In an effort to avoid the potential cost of litigation, negotiations between the Department of Law, the Department of Public Works and Transportation, and the principals of HDR have resulted in a proposed agreement to settle the County's claim for defense and indemnification with respect to the Cruz Claims, conditioned on your Honorable Board's approval. Pursuant to the proposed settlement agreement, HDR is to pay the County the total sum of \$154,254.40 as contribution to a proposed \$850,000.00 settlement between the County and Cruz for the Cruz Claims, and the County and HDR will release each other with regard to the Cruz Claims.

This Act is subject to Section 158.11(5) of the Westchester County Charter.

Very truly yours,

John M. Nonna
Westchester County Attorney

Attachments

cc: Kenneth Jenkins, Deputy County Executive
Joan McDonald, Director of Operations
Hugh J. Greechan, P.E.
Commissioner of Department of Public Works

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a transmittal from the County Attorney pursuant to Section 158.11(5) of the Westchester County Charter for the adoption of an Act which, if adopted by this Board, would authorize the Westchester County Attorney to settle the claim of the County of Westchester (the "County") against Henningson, Durham & Richardson Architecture and Engineering, P.C. in association with HDR Engineering, Inc. ("HDR") for defense and indemnification with respect to the claims of EE Cruz & Company, Inc. ("Cruz") for additional compensation under Contract No. 11-503-REV, for the public improvement project known as the "Rehabilitation of the Fulton Avenue Bridge over Hutchinson River (BIN 3348220), City of Mount Vernon and Village of Pelham Manor, New York" (the "Project").

By written agreement, dated May 14, 2010, and the amendments thereto, dated April 30, 2014 and July 13, 2017, respectively (collectively, the Agreement"), HDR agreed to provide the County with engineering design and construction administration services for the Project. Pursuant to Paragraph Eighth of the Agreement, HDR agreed to indemnify and hold harmless the County from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of HDR's performance or failure to perform under the Agreement.

On or about May 12, 2016, the County entered into Contract No. 11-503-REV with Cruz for the construction of the Project. On or about February 2, 2020, Cruz submitted to the Commissioner of the Department of Public Works and Transportation a verified statement in the form of a "Final Application for Payment," asserting claims for additional compensation under Contract No. 11-503-REV, Contract Item Nos. 589.01, 800.23 and 800.34 (the "Cruz Claims").

The Cruz Claims demand additional compensation in the total sum of \$1,744,719.00 and assert that said compensation stems from alleged design flaws and/or miscalculations in design documents prepared by HDR for the Project.

Your committee is informed that, by letter dated, September 25, 2020, the County, acting by and through the County Attorney's Office, demanded that HDR indemnify and hold harmless the County, pursuant to Paragraph Eighth of the Agreement, with respect to the Cruz Claims. In addition, in an effort to avoid the potential cost of litigation, negotiations between the Department of Law, the Department of Public Works and Transportation, and the principals of HDR have resulted in a proposed agreement (the "Settlement Agreement") to settle the County's claim for defense and indemnification with respect to the Cruz Claims, condition on your Honorable Board's approval. Pursuant to the proposed Settlement Agreement, HDR is to pay to the County the total sum of \$154,254.40 as contribution to a proposed \$850,000.00 settlement between the County and Cruz for the Cruz Claims, and the County and HDR will release each other with regard to the Cruz Claims.

Your Committee has come to the determination that entering into the proposed Settlement Agreement with HDR, without incurring the potential additional expense of further litigation, hearing, or adjudication of any issues of fact or law, is in the best interest of the County.

Your Committee recommends that this Board approve the accompanying Act authorizing the Westchester County Attorney to settle the County's claim for defense and indemnification against HDR associated with the Cruz Claims.

An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
_____, 2021

ACT NO.: -2021

AN ACT authorizing the County Attorney to settle a claim on behalf of the County of Westchester against Henningson, Durham & Richardson Architecture and Engineering, P.C. in association with HDR Engineering, Inc., for defense and indemnification in connection with the claims of EE Cruz & Company, Inc. for additional compensation under Contract No. 11-503-REV for Rehabilitation of the Fulton Avenue Bridge over Hutchinson River (BIN 3348220), City of Mount Vernon and Village of Pelham Manor, New York.

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

Section 1. The Westchester County Attorney is hereby authorized to settle the claim of Westchester County (the "County") for defense and indemnification against Henningson, Durham & Richardson Architecture and Engineering, P.C. in association with HDR Engineering, Inc. in connection with the claims of EE Cruz & Company, Inc. ("Cruz") for additional compensation under Contract No. 11-503-REV for Rehabilitation of the Fulton Avenue Bridge over Hutchinson River (BIN 3348220), City of Mount Vernon and Village of Pelham Manor, New York under Contract Item Nos. 589.01, 800.23 and 800.34 (the "Cruz Claims"). Pursuant to the proposed settlement with HDR, HDR is to pay the County the total sum of \$154,254.40 as contribution to a proposed \$850,000.00 settlement between the County and Cruz for the Cruz Claims, and the County and HDR will release each other with regard to the Cruz Claims.

§2. The County Attorney, or his designee, is hereby authorized to execute and deliver all documents and take such actions as the he deems necessary and desirable to accomplish the purposes hereof.

§3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Heningson, Durham & Richardson NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND AIRPORT FUND SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense _____

Total Current Year Revenue \$ 154,254

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations Other (explain)

Identify Accounts: 366-46-RB2UU-00-9636 : \$53,716.83 ;

366-46-RB03S-01-9636: \$50,994.69 ;

101-52-1000-9670: \$49,542.88

Potential Related Operating Budget Expenses: Annual Amount _____

Describe: _____

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Michael Dunn

Title: Assistant Budget Analyst

Department: Budget

Date: March 5, 2021

Reviewed By: 
Budget Director

Date: 3/5/21