

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: March 15, 2021

White Plains, New York

COMMITTEE ON

Benjamin Boynton

Arthur B.

Benjamin Boynton

Budget & Appropriations

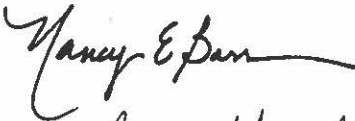





Law & Major Contracts

Dated: March 15, 2021
White Plains, New York


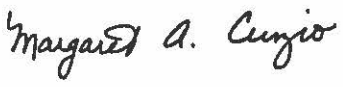

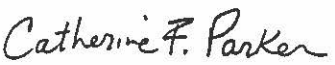






The following members attended the meeting remotely, as per Governor Cuomo's Executive Order 202.1 and approved this item out of Committee with an affirmative vote. Their electronic signature was authorized and is below.

Committee(s) on:

Law & Major Contracts

Budget & Appropriations

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.