

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

May 17, 2024

Westchester County Board of Legislators
800 Michaelian Office Building
148 Martine Avenue
White Plains, NY 10601

Re: Legislation authorizing the County of Westchester to enter into an agreement with Harco National Insurance Company, as surety (the "Surety") for Transit Construction Corp. ("Transit"), and with Transit-Halmar, JV, being a joint venture between Transit and Halmar International, LLC, for the County to settle its claim against the Surety regarding Department of Public Works and Transportation Contract No. 19-510 (the "Contract"), whereby the Surety shall tender to the County, the services of Transit-Halmar, JV, and Transit-Halmar, JV shall agree to complete the remaining work under the Contract.

Dear Honorable Members of the Board:

This request, if enacted, would authorize the County of Westchester (the "County"), acting by and through its Commissioner of Department of Public Works and Transportation ("DPWT"), or his designee, to enter into an agreement with Harco National Insurance Company, as surety (the "Surety") for Transit Construction Corp. ("Transit"), and with Transit-Halmar, JV, being a joint venture between Transit, and Halmar International, LLC, for the County to settle its claim against Harco regarding DPWT Contract No. 19-510 (the "Contract"), whereby the Surety shall tender to the County, the services of Transit-Halmar, JV, and Transit-Halmar, JV shall agree to complete the remaining work under the Contract.

On or about November 23, 2022, the County entered into the Contract with Transit, regarding work identified as Rehabilitation of the Main Street Bridge over the Bronx River Parkway, and the Bronx River (BIN No. 3348690), in the City of White Plains, New York (the "Project"). The Contract was for the total amount of \$6,482,000.00, and subject to increase or decrease pursuant to its terms.

On or about November 30, 2022, the Surety issued a performance and payment bond to the County regarding the Contract, with each bond having an independent penal sum of \$6,482,000.00 (the "Bonds").

Michaelian Office Building
148 Martine Avenue, 6th Floor
White Plains, New York 10601

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*Please be advised that service by facsimile is not accepted.



By letter from the County to Transit and the Surety dated April 5, 2024, the County declared and certified that Transit was in material default of the Contract, and made a claim against the Surety's Bonds to facilitate completion of the work.

The County declared and certified that Transit was in material default of the Contract for several reasons. First, the County determined that Transit failed to pay fringe benefits to its employees performing work under the Contract. Second, Transit failed to pay at least 10 entities providing work and/or labor and/or material to Transit regarding the Contract, within seven days of Transit receiving payment from the County. Transit's failure to make payment to the entities resulted in four of them filing mechanics liens against the Project, which Transit then failed to discharge. Lastly, the County determined that Transit failed to have a sufficient number of workers and/or material at the Project to properly complete it.

On May 16, 2024, the County's Board of Acquisition and Contract approved a DPWT resolution authorizing the County to terminate the Contract with Transit.

Pursuant to the County's demand upon the Surety to complete the remaining work under the Contract, the Surety proposes an agreement to tender to the County, the services of Transit-Halmar, JV to complete the remaining work, and Transit-Halmar, JV agrees to do so. (the "proposed tender agreement").

The financial background and terms of the proposed tender agreement, are as follows:

The County's Contract with Transit was for the amount is \$6,482,000.00. The County, to date, has paid Transit \$2,970,672.92, leaving an unpaid Contract balance of \$3,511,327.08.

The County is holding back money on past approved payment applications by Transit, totaling \$526,904.45 (the "holdback amount"), as required to withhold due to mechanic's liens filed against the Project by subcontractors and material suppliers to Transit. The County shall pay the \$526,904.45 holdback amount to the Surety, which shall further reduce the unpaid Contract balance from \$3,511,327.08, to \$2,984,422.63 (the "adjusted unpaid Contract balance").

Transit-Halmar, JV shall agree to complete all remaining work under the Contract in full accordance with all of the Contract's terms and provisions, for the total amount of \$3,581,307.15.

Subject to the Surety's facilitation of the release of all mechanic's liens for work, materials, and labor provided on the Project, the County shall pay Transit-Halmar, JV the adjusted unpaid Contract balance of \$2,984,422.63, subject to increase or decrease, and in full accordance with the Contract's terms and provisions. The Surety shall pay Transit-Halmar, JV the amount of \$596,884.52.

The aforementioned amounts to be paid by the County and the Surety to Transit-Halmar, JV, total \$3,581,307.15, and equals the agreed upon amount for Transit-Halmar, JV to complete the remaining work under the Contract.

Under the County's Contract with Transit, the County may owe additional amounts for work performed by Transit on the Project pursuant to one or more approved change orders, which the County shall now pay to the Surety due to Transit's default of the Contract. As the payments would be for work pursuant to change order, which are authorized additional payments under the Contract, such would not further reduce the adjusted unpaid Contract balance of \$2,984,422.63.

Transit-Halmar, JV shall provide the County a performance bond, and a payment bond, with each bond in the independent penal sum of \$3,581,307.15, being the total amount to be paid to Transit-Halmar, JV to complete the remaining work under the Contract.

Pursuant to the above, and except for increases or decreases in County payments pursuant to the Contract's terms, the County shall not pay more than the total Contract amount of \$6,428,000.00 to complete the remaining work, and which is exhibited as follows:

Amount Paid by the County to Transit:	\$2,970,672.92
Adjusted Unpaid Contract Balance to be Paid by the County to - Transit-Halmar, JV:	2,984,422.63
Holdback Amount to be Paid by the County to the Surety:	<u>526,904.45</u>
Total Paid by the County:	<u>\$6,482,000.00</u>

Under the proposed tender agreement, the County shall release and discharge the Surety from any and all claims, demands, causes of action whether known or unknown, damages (including liquidated damages), and/or expenses arising out of or in any way related to: (1) the Contract between the County and Transit; (2) the Project; (3) the Surety's Bonds; and/or (4) Transit-Halmar, JV's completion of the Project, except for (a) the Surety's payment obligations to Transit subcontractor, suppliers, and laborers who submitted bond and/or mechanic's lien claims, and (b) its obligation to investigate and discharge its Bond obligations regarding any payment claims by subcontractors, suppliers, and laborers of Transit for labor and materials provided for the Project prior to Transit's cessation of work as general Contractor on the Project.

It is advisable that the County enter into the proposed tender agreement with the Surety and Transit-Halmar, JV, to allow the remaining work under the Contract to be completed, and without cost to the County additional to that authorized under the Contract.

To protect the County's legal interests, and upon recommendation of Hugh J. Greechan, Jr., P.E., Commissioner of the Department of Public Work and Transportation, authority for the County to enter into the proposed tender agreement with the Surety, and Transit-Halmar, JV, is requested.

Very truly yours,


Frederick M. Sullivan
Assistant Chief Deputy County Attorney

fms/cji

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if approved by your Board, would authorize the County of Westchester (the “County”), acting by and through its Commissioner of the Department of Public Works and Transportation (“DPWT”), or his designee, to enter into an agreement (the “Proposed Agreement”) with Harco National Insurance Company, as surety (the “Surety”) for Transit Construction Corp. (“Transit”), and with Transit-Halmar, JV, being a joint venture between Transit and Halmar International, LLC, for the County to settle its claim against the Surety regarding DPWT Contract No. 19-510 (the “Contract”), whereby the Surety shall tender to the County, the services of Transit-Halmar, JV, and Transit-Halmar, JV shall agree, to complete the remaining work under the Contract.

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It is advisable that the County enter into the proposed tender agreement with the Surety, and Transit-Halmar, JV, as it will allow the remaining work to be completed, and without cost to the County additional to that authorized under the Contract.

Your Committee has carefully considered the subject matter and the accompanying Act, and recommends authorizing the County, acting by and through the Commissioner of the Department of Public Works and Transportation, or his designee, to enter into the proposed tender agreement with the Surety, and with Transit-Halmar, JV, for the County to settle its claim against the Surety, whereby the Surety shall tender to the County, the services of Transit-Halmar, JV, and Transit-Halmar, JV shall agree to complete the remaining work under the Contract.

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

Dated: White Plains, New York
May , 2024

:cji
COMMITTEE ON

FISCAL IMPACT STATEMENT

CAPITAL PROJECT #: RB03Y

NO FISCAL IMPACT PROJECTED

SECTION A - CAPITAL BUDGET IMPACT

To Be Completed by Budget

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

Source of County Funds (check one):

Current Appropriations

Capital Budget Amendment

Surety Agreement for Contract 19-510

SECTION B - BONDING AUTHORIZATIONS

To Be Completed by Finance

Total Principal

PPU

Anticipated Interest Rate

Anticipated Annual Cost (Principal and Interest):

Total Debt Service (Annual Cost x Term):

\$ -

Finance Department:

SECTION C - IMPACT ON OPERATING BUDGET (exclusive of debt service)

To Be Completed by Submitting Department and Reviewed by Budget

Potential Related Expenses (Annual): \$ -

Potential Related Revenues (Annual): \$ -

Anticipated savings to County and/or impact of department operations

(describe in detail for current and next four years):

SECTION D - EMPLOYMENT

As per federal guidelines, each \$92,000 of appropriation funds one FTE Job

Number of Full Time Equivalent (FTE) Jobs Funded:

N/A

SECTION E - EXPECTED DESIGN WORK PROVIDER

County Staff

Consultant

Not Applicable

Prepared by: Dianne Vanadia

Title: Associate Budget Director

Department: Budget

Date: 5/17/24

Reviewed By: 
Budget Director

Date: 5/17/24

AN ACT authorizing the County of Westchester to enter into an agreement with Harco National Insurance Company, as surety (the "Surety") for Transit Construction Corp, ("Transit), and with Transit-Halmar, JV, for the County to settle its claim against the Surety regarding Department of Public Works and Transportation Contract No. 19-510. (the "Contract"), whereby the Surety shall tender to the County, the services of Transit-Halmar, JV, and Transit-Halmar, JV shall agree to complete the remaining work under the Contract.

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

Section 1. The County of Westchester is hereby authorized by and through its Commissioner of Public Works and Transportation ("DPWT"), or his designee, to enter into a tender agreement (the "proposed tender agreement") with Harco National Insurance Company, as surety (the "Surety") for Transit Construction Corp. ("Transit"), and with Transit-Halmar, JV, for the County to settle its claim against the Surety regarding DPWT Contract No. 19-510 (the "Contract"), whereby the Surety shall tender to the County, the services of Transit-Halmar, JV, and Transit-Halmar, JV shall agree to complete the remaining work under the Contract.

Section 2. The County, as part of the proposed tender agreement, is authorized to release and discharge the Surety from any and all claims, demands, causes of action, whether known or unknown, damages (including liquidated damages), and/or expenses arising out of or in any way related to: (1) the Contract between the County and Transit; (2) the Project; (3) the Surety's Bonds; and/or (4) Transit-Halmar, JV's completion of the Project, except for (a) the Surety's payment obligations to Transit subcontractors, suppliers, and laborers who submitted bond and/or mechanics lien claims, and (b) its obligation to investigate and discharge its Bond obligations

regarding any payment claims by subcontractors, suppliers, and laborers of Transit for labor and materials provided for the Project prior to Transit's cessation of work as general Contractor on the Project.

Section 3. The Commissioner of the Department of Public Works and Transportation, or his duly designated representative, is hereby authorized to prepare and execute all documents necessary or desirable to accomplish the purpose of this Act.

Section 4. This Act shall take effect immediately.