

109935

TO: Board of Acquisition and Contract**FROM:** Hugh J. Greechan, Jr., P.E.
Commissioner of Public Works and Transportation**DATE:** October 31, 2024**SUBJECT:** Resolution for the County of Westchester to approve Change Order No. 1 to the contract between the County, Mace Contracting Corporation ("Mace"), and Endurance American Insurance Company, whereby Mace assumed all obligations of Custom Marine, Inc. under Contract 12-517-Rev., for Cellular Bulkhead Rehabilitation – Phase III & IV, at the Yonkers Joint Wastewater Treatment Plant, Yonkers, New York to extend the term of the Replacement Contract, from March 7, 2024 to December 31, 2026.

On September 24, 2020, your Honorable Board awarded Contract No. 12-517-Rev. to Custom Marine, Inc. ("Custom") for the amount of \$6,628,460.00 for work described as Cellular Bulkhead Rehabilitation, Phase III & IV at the Yonkers Joint Wastewater Treatment Plant in Yonkers, New York. The Agreement was duly executed.

By letter from the County to Custom dated March 3, 2023, the County declared Custom in default of the Contract, due to its failure to make a good faith effort to attain the 20% Participation Goal. Additionally, the County asserted in said letter, that Custom not only failed to make good faith effort to attain the 20% Participation Goal, but misrepresented to the County that it had attained said goal.

By ACT No. 163-2023 on April 17, 2023, the County Board of Legislators authorized the County Attorney to retain the law firm of Sheppard, Mullin, Richter and Hampton, LLP ("Sheppard Mullin") to represent the County regarding Custom's default under the Contract.

By letter from Sheppard Mullin to Endurance American Insurance Company ("Endurance") dated April 27, 2023, the County demanded that Endurance, pursuant to its obligations under its Performance Bond, complete the remaining work under the Contract.

Pursuant to the County's demand upon Endurance to complete the remaining Work under the Contract, Endurance proposed an agreement to tender to the County, the services of Mace Contracting Corporation ("Mace"), who agreed to complete the remaining Work.

By ACT No. 231-2024 on May 6, 2024, the County Board of legislators authorized the County, acting by and through its Commissioner of the Department of Public Works and Transportation, to enter into a tender agreement with Custom and Mace, for Mace to perform the remaining work under Contract No. 12-517-Rev. (the "Replacement Contract").

Pursuant to the Replacement Contract, Mace provides all necessary labor, materials and equipment required to rehabilitate the cellular bulkhead at the Yonkers Joint Wastewater Treatment Plant.

The Replacement Contract is in the public's best interest because promote the health and safety of the general public by ensuring continued uninterrupted operation of the plant's wastewater treatment systems.

Due to the past time required to i) pursue a default against Custom under Contract 12-517-Rev, and ii) authorize Mace to complete the remaining work under Contract 12-517-Rev., it is necessary to extend the term of the Replacement Contract, from March 7, 2024 through December 31, 2026, to allow Mace to complete the work under the Replacement Contract. All other terms and conditions of the Replacement Contract shall remain unchanged and in full force and effect.

The Department will track scheduling and accomplishments by Mace and perform on-site inspections to ensure the successful completion of the work.

It is requested that your Honorable Board take action on the following:

Approval of Change Order No. 1:

Total Amount of Change Order No. 1	\$0.00
---	---------------

A proposed form of Resolution is attached hereto for your approval.

Approval is recommended.

LR

RESOLUTION

RE: CONTRACT NO. 12-517-Rev.
CONTRACT AMOUNT: \$ 6,628,460.00
CHANGE ORDER NO. 1: \$ 0.00
AMENDED CONTRACT AMOUNT: \$ 6,628,460.00

CHANGE ORDER NO. 1

Upon communication from the Commissioner of Public Works and Transportation,

WHEREAS, Hugh J. Greechan, Jr., P.E., Commissioner of Public Works and Transportation, requests approval of Change Order No. 1 to the contract between the County of Westchester, Mace Contracting Corporation ("Mace"), and Endurance American Insurance Company, whereby Mace assumed all obligations of Custom Marine, Inc. under Contract 12-517-Rev., for Cellular Bulkhead Rehabilitation – Phase III & IV, at the Yonkers Joint Wastewater Treatment Plant, Yonkers, New York (the "Replacement Contract"), to extend the term of the Replacement Contract, from March 7, 2024 through December 31, 2026, to allow Mace to complete the work under said Contract; and

WHEREAS, this matter has been discussed by the Board; now, therefore, be it

RESOLVED, that Change Order No. 1 to the Replacement Contract is hereby approved to extend the term, from March 7, 2024 through December 31, 2026, and be it further

RESOLVED, that all other terms and conditions of the Replacement Contract shall remain in full force and effect; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized and empowered to execute any and all documents necessary or appropriate to effectuate the purposes hereof.

Total Amount of Change Order No. 1 \$0.00

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Bond Act No.	Dollars
	322	60	SY03702C	6210-99	BA #88-2014	\$0.00
	322	60	SY03703C	6210-99	BA #186-2017	\$0.00

Budget Funding Year(s): 2024 **Start Date:** October 8, 2020 **End Date:** December 31, 2026

(must match resolution)

Funding Source: **Tax Dollars** 100% County

State Aid _____

\$ 0.00 **Federal Aid** _____

(must match resolution)

Other _____