



# Westchester Community College

State University of New York

70658

**TO:** Board of Acquisition and Contract

**FROM:** Dr. Belinda S. Miles  
President, Westchester Community College

**DATE:** July 10, 2019

**SUBJECT:** Resolution to accept the completed work under Contract No. WCC-14-943-Health Science Building Renovation and Improvements, which the County entered into with Caladri Development Corp. (“Caladri”) on or about May 14, 2014, in the amount of \$2,518,000.00, and for authority to enter into an agreement with Travelers Casualty and Surety Company of America (“Travelers”), the surety for Caladri, pursuant to which the County will pay the final contract payment amount of \$195,704.12 to Travelers, and Travelers will defend, indemnify and hold harmless the County from any claim that the County improperly paid contract funds to Travelers.

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On or about May 14, 2014, the County of Westchester (the “County”), acting by and through the Westchester Community College (“WCC”), entered into Contract No. WCC-14-943 - Health Science Building Renovation and Improvements (the “Contract”) with Caladri Development Corp. (“Caladri”) for an amount not to exceed \$2,518,000.00. Travelers Casualty and Surety Company of America (“Travelers”), executed a Performance and Payment Bond bearing No. 106039557 (the “Bond”) on behalf of Caladri, as principal, in favor of the County, to secure Caladri’s performance under the Contract and payment by Caladri to its subcontractors. When Caladri failed to make payments to certain subcontractors and suppliers who supplied labor and/or material to the project, Travelers, pursuant its obligations under the Bond, made payments in good faith to Caladri’s unpaid subcontractors and suppliers to ensure that the project was completed in accordance with the Contract. The work required under the Contract has been completed by the sub-contractor, Unity Mechanical, Inc. (“Unity”) and a final inspection has been made by WCC which determined that the work substantially meets the terms and requirements of the contract. Unity, which had previously filed a lien against the Contract Funds, has submitted a Satisfaction of Lien and a Sub-

Contractor's Certificate - Application for Payment to WCC based upon Travelers' agreement to pay Unity its share of the funds due under the Contract upon receipt of the funds from the County.

The County presently holds a total of \$195,704.12 in retainage/contract balances due and payable for work completed under the Contract (the "Contract Funds"). In addition to its subrogation rights to the Contract Funds under the Bond, Travelers is entitled to the Contract Funds pursuant to a General Agreement of Indemnity ("GAI") Caladri and Travelers had previously entered into on or about February 24, 2012, whereby, in the event of a default (as defined therein), Caladri assigned its rights and obligations to Travelers.

It is respectfully requested that your Honorable Board take appropriate action to accept the completed work and approve the Final Contract Amount of \$195,704.12.

Further, authority is respectfully requested for the County to enter into an agreement ("Agreement") with Travelers pursuant to which the County will pay the final contract payment amount of \$195,704.12 to Travelers, and Travelers shall defend (using counsel of its own choice), indemnify and hold harmless the County, and its component agencies and departments, its officials, employees and agents, from and against claims, however described, and wherever or whenever asserted, alleged against the County, including claims without merit, but solely those claims alleging that the County improperly or unlawfully released and paid over the Contract Funds to Travelers.

If authorized, payment shall be made payable to Travelers' legal counsel "Dreifuss Bonacci & Parker, PC Attorney Trust Account" in accordance with the Agreement.

A proposed form of Resolution is attached.

BSM/JPI/RC/jrc

# RESOLUTION

## ACCEPTANCE OF COMPLETED WORK AND APPROVAL OF FINAL ESTIMATE

**RE: CONTRACT NO. WCC-14-943**

Upon communication from the President of the Westchester Community College, be it

**RESOLVED**, that the work performed under Contract No. WCC-14-943 - Health Science Building Renovation and Improvements is accepted and the Sub-Contractor's Certificate- Application for Payment from Unity Mechanical, Inc., is approved; and be it further

**RESOLVED**, that authority is respectfully requested for the County of Westchester acting by and through its Westchester Community College ("County") to enter into an agreement ("Agreement") with Travelers Casualty and Surety Company of America ("Travelers") pursuant to which the County will pay the final contract payment amount of \$195,704.12 and Travelers shall defend (using counsel of its own choice), indemnify and hold harmless the County, and its component agencies and departments, its officials, employees and agents, from and against claims, however described, and wherever or whenever asserted, alleged against the County, including claims without merit, but solely those claims alleging that the County improperly or unlawfully released and paid over the Contract Funds to Travelers, and be it further

**RESOLVED**, that the County be and hereby is authorized to pay Travelers the balance due on the net Final Estimate in the amount of \$195,704.12 payable to "Dreifuss Bonacci & Parker, PC Attorney Trust Account"; and be it further

**RESOLVED**, that payment shall be made in accordance with all applicable laws, including, without limitation, the New York State Lien Law; and be it further

**RESOLVED**, that the President or her duly authorized designee is authorized to execute all documents necessary and appropriate to carry out the purpose of this Resolution.

Account to be  
Charged/Credited

Year	Fund	Agency	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Bond Act	Dollars
	381		32	WCC-65-00-C	6210	2011- 141	\$22,250.00
	381		32	WCC-67-00-C	6210	2011- 146	\$173,454.12

Budget Funding Year(s) 2018/2019 Start Date 5/1/14 End Date 7/10/19  
(must match resolution)

Funding Source: Tax Dollars: \$97,852.06 Contractor Federal I.D. No./  
Social Security No.: \_\_\_\_\_  
State Aid: \$97,852.06  
Federal Aid: \_\_\_\_\_ Vendor No.: \_\_\_\_\_  
Other: \_\_\_\_\_ Encumbrance

APPROVED BOARD OF ACQUISITION & CONTRACT - 07/18/2019 - LISA M. ISAAC, SECRETARY