

**RESOLUTION NO. 86-2021**

**A RESOLUTION AUTHORIZING THE MAYOR TO SIGN AN AGREEMENT WITH TRAVELERS CASUALTY AND SURETY COMPANY OF AMERICA AND UNIMAK, LLC FOR COMPLETION OF WORK AT THE NEW BEACH PAVILION AND FOR TRAVELERS TO RELEASE OF ALL RIGHTS TO COMPLETION FUNDS OF THE PROJECT**

Councilmember Leckstein introduced and offered for adoption the following Resolution; seconded by Councilmember Birdsall:

**WHEREAS**, the Borough of Sea Bright (Borough) entered into a contract for Kelso Construction Company, Inc. (Kelso) to construct a project known as the New Beach Pavilion; and

**WHEREAS**, Kelso defaulted on such project as they did not complete the work; and

**WHEREAS**, Municipal Mechanic Liens were filed by subcontractors and one such lien, by S&S Roofing, Inc., has become the subject of litigation; and

**WHEREAS**, Travelers has arranged with Unimak, LLC to complete work on the New Beach Pavilion project for a price of \$39,760.25; and

**WHEREAS**, after expenditure of same, remaining contract funds are present in the amount of \$60,883.04 ("Completion Funds"); and

**WHEREAS**, the Borough wishes to enter into an agreement with Travelers whereby the work defined on Exhibit A of said Agreement will be completed and Travelers will release all rights to Completion Funds; and

**WHEREAS**, Travelers will release the Borough from any other obligations, liabilities and/or claims of any type; and

**WHEREAS**, Travelers also agrees to satisfy or bond the Municipal Mechanics Liens filed in connection with the Project by any subcontractor and/or vendors retained by Kelso and that Travelers will defend, hold harmless and indemnify the Borough as to any suits or claims by lienholders that were subcontractors and/or vendors retained by Kelso.

**NOW, THEREFORE, BE IT RESOLVED,**

1. The Mayor is authorized to execute the Agreement in the form attached including the Exhibit A detailing the scope of work.
2. A certified copy of this Resolution be delivered
  - a. Travelers Casualty Insurance Company of America
  - b. Unimak, LLC
  - c. Borough Attorney

<b>Roll Call:</b>	Birdsall,	Booker,	Catalano,	Keeler,	Lamia,	Leckstein
	Yes	Absent	Yes	Absent	Yes	Yes

April 6, 2021

**CERTIFICATION**

I, Christine Pfeiffer, Borough Clerk do hereby certify that the foregoing is a Resolution adopted by the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey, at a Council meeting held on April 6, 2021.

  
Christine Pfeiffer, Borough Clerk

***EXHIBIT A***

Re:

Surety: Travelers Casualty and Surety Company of America

Principal: Kelso Construction Company, Inc.

Obligee: The Borough of Sea Bright

Project: New Beach Pavilion

Performance Bond No. 032-SB-106619171

Dear:

Travelers Casualty and Surety Company of America ("Travelers" or "Surety") issued a Statutory Performance – Labor and Material Bond ("Performance Bond") in connection with the above referenced matter. After a relatively extensive investigation, it has decided to undertake completion of the remaining work ("Remaining Work") on the Project, i.e. New Beach Pavilion, based upon the following terms and conditions. Please advise if this is agreeable. If it is, please so indicate by executing this letter on the last page where indicated. The parties hereto ("Parties", individually each is a "Party") consist of Travelers, The Borough of Sea Bright ("Owner" or "Obligee") and Unimak, LLC ("Unimak").

Surety is proposing to retain Unimak in order to complete the Remaining Work set forth on Exhibit A annexed hereto and incorporated herein. The Remaining Work is defined herein as the scope of work set forth on Exhibit A (highlighted in yellow) annexed hereto and incorporated herein. Unimak has agreed to complete all work set forth on Exhibit A for \$39,760.25 ("Unimak Price"). If Owner believes that any other work remains to be completed, the Parties agree that the remaining funds in excess of the Unimak Price far exceed the cost of same and said work will be performed by the Owner or by other means determined by the Owner.

The Surety will satisfy or bond the Municipal Mechanics' liens filed in connection with the Project by subcontractors and/or vendors retained by Kelso. Further, the Surety will defend, hold harmless and indemnify the Owner as to suits and claims by the lien holders as long as subcontractors and/or vendors retained by Kelso. This agreement to satisfy or bond the liens and/or to defend, hold harmless and indemnify the Owner does not apply to any person or entity retained by or on behalf of Owner to complete any work on the Project.

Completion of the scope of work on Exhibit A and releasing all of Surety's rights to the Completion Funds (as defined below) shall constitute full and complete fulfillment of all of Travelers' obligations pursuant to its Performance Bond and/or at law except as provided herein. Obligee hereby releases Travelers from any and all obligations, liabilities and/or claims of every type and/or manner, known and

unknown, with respect to the Performance Bond and/or the Project other than Travelers' obligations hereunder. Travelers releases the Obligee from any and all obligations, liabilities and/or claims of every type and/or manner, known and unknown, with respect to its Performance Bond and/or the Project, including but not limited to the Completion Funds (as defined below), other than Obligor's obligations hereunder.

Unimak agrees to perform the Remaining Work set forth on Exhibit A for payment in the amount of \$39,760.25; agrees to complete said Remaining Work within 45 days (weather permitting) of the date this Agreement is fully executed; agrees that it looks solely to Owner for payment and further agrees that it has no claim of any type whatsoever as against Travelers in connection with this agreement, its completion of the Remaining Work and/or the Project.

Travelers and Owner agree that Owner shall retain the remaining contract funds in the amount of \$60,883.04 ("Completion Funds") to pay to Unimak for completion of the Remaining Work and/or for any other purposes.

Payments from the Owner shall be made payable directly to Unimak .

This Agreement is solely for the benefit of the Owner, Travelers, and Unimak. Said Parties do not intend by any provision of this Agreement to create any third-party beneficiaries, nor to confer any benefit upon or enforceable rights under this Agreement or otherwise, upon anyone other than the Owner, Travelers and Unimak .

This Agreement constitutes the whole of the understanding and agreement by and between the Parties hereto. The Owner, Travelers and Unimak acknowledge and agree that there have been no oral, written or other agreements of any kind as a condition precedent to or to induce the execution and delivery of this Agreement. Any written or oral discussions conducted prior to the effective date of this Agreement shall not in any way vary or alter the terms of this Agreement and shall have been deemed to have merged into the Agreement. In the case of any conflict between the provisions of this Agreement and the Contract, this Agreement shall control. This Agreement may not be modified unless in writing and executed by the Parties hereto.

The Parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than any other.

The Parties agree to execute all such further instruments, and to take all such further actions as may be reasonably required by any Party to fully effectuate the terms and provisions of this Agreement and the transactions contemplated herein.

The Parties hereto acknowledge and agree that this Agreement shall be interpreted and construed in accordance with and governed by the Laws of the State of New Jersey.

No Party to this Agreement shall assign or transfer in any way whatsoever the rights of that party hereunder, without the written consent of the other Parties, and no Party has assigned any rights which one has against any other.

This Agreement may be executed in one or more counterparts, each of which, when executed and delivered, shall be deemed to be an original, but such counterparts shall together constitute one and the same instrument.

The individuals who execute this Agreement represent and warrant that they have full authority to execute this Agreement on behalf of the respective Parties.

**TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA**

**BOROUGH OF SEA BRIGHT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**UNIMAK,LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_