

TENDER & SETTLEMENT AGREEMENT (“Agreement”)

PARTIES:

Owner/Obligee:

Williamson County
710 Main Street, Suite 200
Georgetown, Texas 78626

Contractor:

Texas Fifth Wall Roofing Systems, Inc
3300 Duke Rd.
Austin, TX 78724

Surety:

Continental Casualty Company
151 N. Franklin St.
Chicago, Illinois 60606

The parties above may be referred to herein as “Party” or, collectively, “Parties”.

This Agreement shall be effective on the date executed by Williamson County (“Effective Date”).

ACKNOWLEDGMENTS:

1. Owner and Contractor entered into a Contract for Construction (the “Prime Contract”) effective October 24, 2023 for the CJC North Roof Replacement (the “Project”). Surety issued a Statutory Performance Bond No. 30184823 (“Performance Bond”) identifying Owner as Obligee with a penal sum of \$494,379.00.
2. Contractor commenced performance and disputes arose regarding the quality of the work, as defined in the Prime Contract. Following inspections and evaluation of the Contractor’s work, the Owner rejected the Work and required removal and replacement of nonconforming work.
3. Ultimately, the Owner terminated Contractor’s right to continued performance on August 21, 2024. The Owner made demand on the Performance Bond to Surety on August 28, 2024.
4. Following said termination and demand, the Owner, Contractor and Surety have engaged in discussions to resolve all disputes and obligations by and between them pursuant to the terms of this Tender and Settlement Agreement.
5. The Owner has obtained a proposal from a replacement contractor for completion of the Project following a public procurement process.

6. The replacement contractor's proposal to complete the Project is \$650,715.00.
7. Contractor has obtained insurance proceeds in an amount of \$567,506.24 which shall be tendered to Owner.
8. The contract balance as of the date of termination, August 21, 2024, equaled \$161,687.34.
9. Owner has incurred expenses to repair damages sidewalk and irrigation in the amounts of \$15,305.62 and \$562.37, respectively.
10. Owner has incurred expenses for additional architectural design services for the work associated with the solicitation by the County for replacement contractor services in an amount of \$11,500.
11. Owner has incurred attorney's fees arising from Contractor's default in an amount of \$25,654.50 of which \$15,000 will be reimbursed to the Owner pursuant to the terms of this Agreement.

AGREEMENT:

12. Contractor agrees to pay the Owner five hundred sixty-seven thousand, five hundred six dollars and twenty-four cents (\$567,506.24) ("Contractor's Payment") within fifteen (15) business days following the Effective Date of this Tender and Settlement Agreement. The County agrees that the Contractor's payment of \$567,506.24 is inclusive of, and satisfies and completes the Surety's obligation to tender the penal sum of the Performance Bond.
13. The County agrees that receipt of Contractor's Payment of at least \$494,379.00 releases the claim against the Surety on the Performance Bond.
14. The total available funds for the replacement contractor shall be the combined total of the contract balance, identified in item 8, along with the payment from item 12.
15. Following offsets for the expenses detailed in items 9, 10, and 11, the remaining contract funds will be paid by the Owner to the Contractor.

The following table memorializes the monetary component of this Agreement.

Owner Costs:	Replacement Contractor Proposal	(\$650,715.00)
	Sidewalk Repair	(\$ 15,503.00)
	Irrigation Repair	(\$ 562.37)
	Additional Design Fees for rebid	(\$ 11,500.00)
	Attorneys' Fees	(\$ 15,000.00)
	Total	(\$ 693,280.37)
Allocable Funds	Contractor Payment	\$567,506.24
	Contract Balance	\$161,687.34
	1. Total	\$729,193.58

16. The total funds remaining after all allowable offsets as shown is \$35,943.21 which shall be paid by the Owner to the Contractor within fifteen (15) days following receipt of the item 12 payment.
17. The Owner acknowledges that the receipt of the Contractor Payment and the mutual assent to apply remaining contract funds per this Agreement represents full performance and satisfaction by the Surety pursuant to its obligations under the bond and hereby releases and discharges Performance Bond No. 30184823.
18. The Owner acknowledges that the receipt of the Contractor Payment and the mutual assent to apply remaining contract funds per this Agreement represents full satisfaction by the Contractor of the disputed claim, including any and all duties owed to Owner by Contractor, including any obligations of any additional insured or subcontractor.
19. The Owner, Contractor and Surety agree to the following mutual release:

Upon the Effective Date of this Agreement, the Owner expressly releases, acquits, and forever discharges the Contractor and Surety, their successors, assigns and insurers from any and all claims, rights, demands and causes of action which the Owner has or may ever claim to have against the Contractor and/or Surety, whether known or unknown, arising by or through the Prime Contract and Performance Bond, including claims for liquidated damages, indemnity, attorneys fees, costs or other expenses.

Upon the Effective Date of this Agreement, the Contractor and Surety expressly release, acquit, and forever discharge the Owner, its successors, assigns and insurers from any and all claims, rights, demands and causes of action which the Contractor and Surety has or may ever claim to have against the Owner, whether known or unknown, arising by or through the Prime Contract and Performance Bond.

20. The Parties, together with their respective attorneys, participated in the drafting and preparation of this Agreement. Therefore, the Agreement shall not be construed in favor of or against any Party on the basis that such party did or did not draft this Agreement or any attachment to it. If any covenant, term, or condition of this Agreement is illegal, invalid, or unenforceable for any reason, the illegality, invalidity, or unenforceability shall not affect the legality, validity, or enforceability of the remaining terms, covenants, conditions, or provisions of this Agreement.
21. The Parties agree that this Agreement is not an admission of liability by any Party but is rather a compromise of disputed liability, the express purpose of which is to settle existing claims, preclude any additional claims and avoid the uncertainties and costs of litigation.
22. The Parties hereto warrant that they are authorized to execute this Agreement on behalf of their respective entities.
23. The Parties hereby stipulate and agree that if it becomes necessary for either Party to file any action in connection with this Agreement including, without limitation, to enforce any breach of this Agreement, that such action shall be brought in Williamson County, Texas.

24. This Agreement shall be governed by and controlled by the laws of the State of Texas, without giving effect to the principles of conflict of laws of that state. The Parties expressly waive any right to a trial by jury.

25. This Agreement may be executed in counterparts each of which shall be deemed an original.

Signed by Texas Fifth Wall Roofing Systems, Inc. on the 25th day of November, 2024.

Williamson County

Continental Casualty Company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Texas Fifth Wall Roofing Systems, Inc.

By: s/ William D. Smith, Jr./

Name: William D. Smith, Jr.

Title: President and CEO

24. This Agreement shall be governed by and controlled by the laws of the State of Texas, without giving effect to the principles of conflict of laws of that state. The Parties expressly waive any right to a trial by jury.

25. This Agreement may be executed in counterparts each of which shall be deemed an original.

Signed by Williamson County on the ____ day of November, 2024.

Williamson County

Continental Casualty Company

By: _____

By: Mark S McKibbin

Name: _____

Name: Mark S McKibbin

Title: _____

Title: Authorized Representative

Texas Fifth Wall Roofing Systems, Inc.

By: _____

Name: _____

Title: _____