

B 18 (Official Form 10) (04/07)

| | | |
|--|--|---|
| UNITED STATES BANKRUPTCY COURT <u>NORTHERN</u> DISTRICT OF <u>TEXAS</u> | | PROOF OF CLAIM |
| Name of Debtor Opus West Corporation, et al | | Case Number 09-34356-HDH-11 |
| NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503. | | |
| Name of Creditor (The person or other entity to whom the debtor owes money or property): Mutual Sprinklers, Inc. | | THIS SPACE IS FOR COURT USE ONLY |
| Name and address where notices should be sent: C/O Michael S. Mitchell, P.C. 18111 North Preston Road, Suite 810 Dallas, TX 75252 | | |
| Telephone number: Last four digits of account or other number by which creditor identifies debtor: | | |
| <input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court. | | |
| 1. Basis for Claim <input checked="" type="checkbox"/> Goods sold <input checked="" type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Other _____ | | <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed From _____ to _____ (date) (date) |
| 2. Date debt was incurred: 11/07/2007 | | 3. If court judgment, date obtained: |
| 4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time the case was filed. See reverse side for important explanations. | | |
| Unsecured Nonpriority Claim \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or c) none or only part of your claim is entitled to priority. | | Secured Claim <input checked="" type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Other _____ <input type="checkbox"/> Motor Vehicle Value of Collateral: \$ 3,671,025.00 Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ 24,835.30 |
| Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950),* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). | | <input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment. |
| 5. Total Amount of Claim at Time Case Filed: \$ 24,835.30 (unsecured) \$ 24,835.30 (secured) \$ 24,835.30 (priority) \$ 24,835.30 (total) | | |
| <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges. | | |
| 6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. | | THIS SPACE IS FOR COURT USE ONLY |
| 7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. | | |
| 8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim. | | |
| Date 08/05/2009 | Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): /s/ Michael S. Mitchell, co-counsel for Mutual Sprinklers, Inc. | |

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

OCT 02 2009
BMC GROUP





Two Addison Circle Spec Office / 10593.00
J30/15300 / Fire Protection
Mutual Sprinklers, Inc / Tom Williams
Contact Phone # 214.349.2221
Contact Fax # 214.349.2281
Payment Terms: Standard

SUBCONTRACT AGREEMENT (Labor and Materials)

This Subcontract Agreement ("Subcontract") is made as of this 08th day of October, 2007, by and between OPUS West Construction Corporation ("Contractor"), with its office located at 15455 N. Dallas Parkway - Suite 450, Addison, TX 75001, and Mutual Sprinklers, Inc ("Subcontractor") with its office located at 10935 Alder Circle, Dallas, TX 75238.

Contractor and Subcontractor agree as follows:

- Subcontract Documents.** The term "Subcontract Documents" is defined in Paragraph 1 of the attached Rider "A".
- Project.** Contractor is providing design and construction-related services to Owner (defined below) in connection with the project generally described as Two Addison Circle Spec Office ("Project"), located at Dallas North Tollway, Addison, TX 75001 ("Project Site"), and consisting of the total work provided by Contractor under contract documents between Owner and Contractor.
- Owner.** The Owner of the Project is Opus West Corporation ("Owner").
- Architect/Engineer.** The architect and engineers ("Architect/Engineer") of record for the Project are:

| | |
|--------------------------------|-----------------------------------|
| Architect of Record: | Opus Architects & Engineers |
| Civil Engineer: | Pachon Koch Consulting Engineers |
| Geotechnical Engineer: | Reed Engineering Group Inc |
| Structural Engineer of Record: | Opus Architects & Engineers, Inc. |
- Scope of Work.** Subcontractor's scope of work for the Project is described in the attached Rider "A" and is defined therein as the Work.
- Schedule.** Time is of the essence. Accordingly, all time limits and requirements for completion set forth in the Subcontract Documents, including any intermediate milestones (collectively referred to in the Subcontract Documents as the "Schedule"), are of the essence of this Subcontract. Subcontractor shall begin its Work as soon as the Project is ready for the Work or within three (3) calendar days after being notified orally or in writing to proceed by Contractor. The Substantial Completion of the Work (defined in the General Conditions of Subcontract) shall be achieved as required by job progress, so as to allow the entire Project to be substantially completed on or before 11/07/2008. Subcontractor shall conform to all progress and schedule requirements of the Subcontract Documents and as directed by Contractor's project manager, and must achieve the milestones (if any) as described in the attached Rider "A".
- Subcontract Sum.** Contractor shall pay Subcontractor the sum of \$ 241,618.00 ("Subcontract Sum"). The Subcontract Sum includes freight and delivery charges and all applicable state and local taxes including sales and use tax, and if required by law, these taxes must be separately stated on any payment applications, invoices or similar documents delivered by Subcontractor to Contractor for completion of the Work in accordance with the terms and conditions of the Subcontract Documents. A breakdown of the components of the Subcontract Sum is set forth in the attached Rider "A".
- Riders.** The following Riders are attached to and made a part of this Subcontract:
 - Rider A (Scope of Work)
 - Rider B (Indemnification)
 - Rider C (Insurance)

Contractor and Subcontractor sign as follows:

Approved by Contractor's project manager Brian Dotolo
Brian Dotolo

CONTRACTOR
Opus West Construction Corporation
By: [Signature]
Paul Hendricks
(Print Name)
Vice President of Construction, Texas
(Title)
11/7/07
(Date)

SUBCONTRACTOR
Mutual Sprinklers, Inc
By: [Signature]
D. Timothy Walsh
(Print Name)
President
(Title)
10/29/07
(Date)

Two Addison Circle Spec Office / 10593.00
 Fire Protection

RIDER A

This Rider A is attached to and made a part of the Subcontract between OPUS West Construction Corporation and Mutual Sprinklers, Inc dated 10/08/2007. All capitalized terms used, but not defined in this Rider "A" have the meaning ascribed to them in the Subcontract.

Subcontract Documents

Subcontractor shall furnish all necessary labor, materials, equipment, skills, services (including design and engineering, if applicable), supervision and apparatuses necessary to complete all Section Fire Protection work ("Work") for the Project, including but not limited to, strict compliance with the following documents (the "Subcontract Documents"):

Drawings and Specifications

| Description | Number | Last Revision |
|---|--------|---------------|
| Outline Specifications for the Design & Construction of Multi-Tenant Shell Base Building for Addison Spec Office Building | 100 | 12/29/2006 |

Field Bulletins

| Date | Number | Name |
|------|--------|------|
| N/A | | |

Supplemental Design Documents

| Description | Date |
|---|------------|
| General Conditions of Subcontract - Division 1 | 06/01/2005 |
| Supplemental General Conditions of Subcontract | 03/09/2006 |
| Special Conditions of Subcontract - Division 1 Section 1.2 | 06/01/2007 |
| Exhibit A - Unconditional Waiver and Release on Progress Payment | 06/01/2005 |
| Exhibit B - Unconditional Waiver and Release of Lien Upon Final Payment | 06/01/2005 |
| Exhibit C - Subcontract Agreement | 06/01/2005 |
| Exhibit D - Subcontractor Application for Payment | 06/01/2005 |
| Exhibit E - Certificate of Insurance | 06/01/2005 |
| Subcontractor Qualification Statement | 02/21/2006 |
| Bid Package #1.0 - MEP & Fire Protection Design/Build | 10/08/2007 |
| Bid Package #1.0 - Drawing Record | 08/16/2007 |
| Bid Package #1.0 - Design/Build Schedule | 08/17/2007 |
| Addendum #1 to Bid Package #1 | 08/24/2007 |
| Addendum #2 to Bid Package #1 | 08/28/2007 |
| Addendum #3 to Bid Package #1 | 08/28/2007 |
| Subcontractor Pre-Award Meeting Minutes | 09/13/2007 |

Other Documents

N/A

Subcontractor acknowledges that Contractor has made available to Subcontractor all of the Subcontract Documents, and Subcontractor shall be responsible for obtaining copies pertinent to its Work. Subcontractor represents that it has carefully examined the Subcontract Documents.

Modifications and Clarifications

This Subcontract includes, but is not limited to, the following items:

- 1 Provide lien releases from all second and third tier subcontractors/suppliers.
- 2 Pump room will be located at the SW side of the building, adjacent to the access road off of Addison Circle Road.
- 3 The pump room will be located against the exterior wall.
- 4 Provide and install a vertical in-line pump.
- 5 Furnish and install the backflow preventor inside the pump room.
- 6 All piping in the garage to be black steel.
- 7 Installation to start 1'-0" above finished floor inside the pump room.
- 8 Furnish electric bell installed by Fox Electric

This Subcontract excludes the following:

Schedule

| Description | Planned Start | Planned End | Planned Duration |
|--|---------------|-------------|------------------|
| Building and garage fire protection design (ready for city submission) | 10/10/2007 | 11/12/2007 | 33 Calendar Days |

Schedule Notes

- 1) 8 to 10 week lead for pump after placement of order.
- 2) 1 to 2 weeks for pipe fabrication
- 3) 8 to 10 days per floor for sprinkler rough in
- 4) Building: Overall sprinkler scope duration is 60 days
- 5) Garage: Overall sprinkler scope duration is 5 days

Subcontract Summary

Subcontract Items

| Sub-Job Number | Sub-Job Name | Name | Rate |
|----------------|---|-----------------|----------------------|
| 10593 01 | Two Addison Circle Spec Office | Fire Protection | \$214,100.00 |
| 10593 02 | Two Addison Circle Spec Office - Parking Deck | Fire Protection | \$27,518.00 |
| Total | | | \$ 241,618.00 |

Subcontract Item Breakdown

| Name | Account Code | Amount |
|-----------------------------------|-------------------------|---------------------|
| Fire Protection Sys - Subcontract | 10593.01-J30-15300.00-S | \$214,100.00 |
| Fire Protection Sys - Subcontract | 10593.02-J30-15300.00-S | \$27,518.00 |
| Total | | \$241,618.00 |

Unit Pricing

If requested by Contractor, Subcontractor will provide additional units of work, as directed, at the unit prices set forth below. Unit prices will apply to all building construction and will include, without limitation, all material, labor, equipment, compensation, general conditions, benefits, overhead, clean-up, supervision, profit, parking, shop drawings, small tools and all sales, use and other applicable taxes. Unit prices do not include design. Unit prices will also apply to net quantity changes in the Work made pursuant to the Subcontract Documents.

The following unit prices shall be in effect for the duration of the project

Unit Price List

| <u>Name</u> | <u>Rate</u> | <u>Quantity UOM</u> |
|--|--------------|---------------------|
| Fire protection system for two levels below grade for parking garage | \$123,581.00 | Lump Sum |
| Jockey Pump | \$2,000.00 | Each |
| Labor rate - Apprentice straight time | \$40.00 | Hour |
| Labor rate - Foreman straight time | \$55.00 | Hour |
| Labor rate - Journeyman straight time | \$50.00 | Hour |
| Provide chrome flesh fire pump test header | \$2,130.00 | Lump Sum |
| Provide galvanized piping in lieu of black steel for the garage option with two levels below grade | \$20,066.00 | Lump Sum |
| Provide galvanized piping in lieu of steel for parking garage stand pipe | \$6,899.00 | Lump Sum |
| Relocate sprinkler heads | \$85.00 | Each |

Alternates

If requested by Contractor, Subcontractor will promptly provide the alternate work set forth below for the stated amount. When requested by Contractor, the alternate work will become part of the Work defined in Paragraph 1 above.

Alternates:

N/A

The alternate prices shall be in effect for the duration of the project.

Alternates Notes

END OF RIDER A

Two Addison Circle Spec Office / 10593.00
Fire Protection

RIDER B

This Rider B is attached to and made a part of the Subcontract between OPLS West Construction Corporation and Mutual Sprinklers, Inc dated 10/08/2007. All capitalized terms used but not defined in this Rider B have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable. To the extent of any conflict between the provisions of this Rider B and the provisions of any other Subcontract Document, this Rider B shall be controlling.

Section 1. Licensing.

Subcontractor represents and warrants that it and each of its Sub-subcontractors are and will remain duly and validly licensed to the full extent required under all applicable Laws for the performance by each such party of their respective portion of the Work under this Subcontract, and that each such party shall maintain such required license(s) in good standing throughout the full and complete performance of the Work by such party hereunder. Subcontractor will submit proof of such licensure to Contractor upon request.

Section 2. Change Orders.

Any "Change Order" shall be set forth in writing, on Contractor's form, signed by an authorized representative of Contractor, and shall be executed by Contractor prior to Subcontractor proceeding with the requested change in the Work under the applicable conditions of the Subcontract Documents.

Section 3. Pay When and If Paid.

At all times Subcontractor shall be paid only to the extent that Contractor has been paid by Owner for the Work performed by Subcontractor. Notwithstanding any other provision of this Subcontract, and notwithstanding any provisions between Contractor and Owner with respect to payment, the parties agree that payment by Owner to Contractor shall be an express condition precedent to Contractor's obligation to pay Subcontractor. The parties clearly and unambiguously agree that payment by Contractor to Subcontractor is expressly contingent upon Contractor receiving its funds from Owner. All payments to Subcontractor shall be made by the Contractor solely out of the funds actually received by the Contractor from the Owner, and from no other source whatsoever. Subcontractor acknowledges that it is sharing, to the extent of payments to be made to Subcontractor, in the risk that Owner may fail to make one or more payments to the Contractor for all or a portion of the Work.

Section 4. Title to Work.

Title to all Work, including materials, equipment, and systems, covered by an Application for Payment, whether incorporated in the Project or not, will pass to Contractor and Owner upon the earlier of (a) receipt of such payment (net of any retainage), or (b) incorporation of such Work into the Project.

Section 5. Indemnification.

(a) Subject to Subsections (b) and (c) below, Subcontractor will defend, indemnify and hold harmless Contractor, Owner and Architect/Engineer, and their respective officers, directors, partners, members, agents, and employees (each, an "Indemnitee" and collectively, the "Indemnitees") from and against any and all claims, demands, obligations, actions, causes of action, damages, costs, losses, liabilities and expenses (including, without limitation, attorneys' fees and costs and other litigation, mediation, arbitration, or dispute resolution expenses), arising from or in any way connected with Subcontractor's performance or non-performance of this Subcontract (all of the foregoing being referred to as "Claims"). Any such defense of an Indemnitee will be provided by Subcontractor by legal counsel reasonably satisfactory to such Indemnitee. Subject to Subsections (b) and (c) below, Subcontractor's obligations to defend and indemnify (i) include (without limitation) all Claims, whether occurring before, during or after the performance of this Subcontract, which arise from or relate to the activities, products, actions or omissions of Subcontractor, its Sub-subcontractors, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable (collectively, the "Subcontractor Parties"); (ii) shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any Subcontractor Party under workers' or workman's compensation acts, disability acts, other employee benefit acts, or any insurance required to be carried by Subcontractor under the Subcontract Documents; and (iii) specifically and expressly include (without limitation) any Claims caused in part by the negligence (whether active or passive) or other misconduct of any Indemnitee. Subcontractor's failure to procure specific contractual liability and other types of insurance for the benefit of any Indemnitee, as required under the Subcontract Documents, will not render the foregoing provisions unenforceable under any applicable law. **THE OBLIGATIONS OF SUBCONTRACTOR UNDER THE FOREGOING INDEMNIFICATION SHALL APPLY TO ALL MATTERS EXCEPT THOSE ARISING SOLELY FROM THE WILLFUL NEGLIGENCE OR MALICIOUS ACTS OR OMISSIONS OF THE INDEMNITEE, INCLUDING MATTERS CAUSED BY THE ORDINARY NEGLIGENCE OF THE INDEMNITEE.**

(b) Notwithstanding the provisions of Subsection (a) above, Subcontractor is not obligated to indemnify an Indemnitee for a Claim which is ultimately determined, upon final adjudication, settlement or other resolution of the Claim ("Finally Determined"), to have been caused solely by the active negligence or willful misconduct of that Indemnitee; provided, however, that this exception does not limit

or relieve Subcontractor's defense obligations prior to the Claim being so Finally Determined or Subcontractor's obligations to indemnify all other Indemnities which are not Finally Determined to have participated in such negligence or misconduct.

(c) The parties intend that Subcontractor's indemnity and defense obligations under this Subcontract will be enforced to the fullest extent allowable under applicable law, and agree that if any of the provisions of this Section are, to any extent, held to be invalid, illegal or unenforceable for any reason, any remaining portion thereof and all other provisions of this Section will not be affected by such holding, but will remain valid and in force to the fullest extent permitted by law.

Section 6. Payments Withheld.

Notwithstanding anything to the contrary in this Subcontract, Contractor shall retain ten percent (10%) of the entire Subcontract Sum until thirty (30) days following Final Completion of the entire Project by withholding ten percent (10%) of each progress payment.

Section 7. Payment Bond.

Any payment bonds required by Contractor under this Subcontract will fully comply with all requirements of Section 53.204 et. seq. of the Texas Property Code.

Section 8. Limitations.

If any limitation of time applicable to Subcontractor contained in this Subcontract for the bringing of any action, the enforcement of any remedy, or the recovery of any claim is prohibited or invalid by or under applicable law, then such provision shall be reformed and in that event no suit or action shall be commenced or maintainable in respect of such action, remedy or claim unless commenced within two years and one day after such cause of action, remedy or claim accrues.

END OF RIDER B

Two Addison Circle Spec Office / 10593.00

Fire Protection

RIDER C

This Rider C is attached to and made a part of the Subcontract between OPUS West Construction Corporation, and Mutual Sprinklers, Inc dated 10/08/2007. All capitalized terms used but not defined in this Rider "C" have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable.

1. **Liability/Worker's Compensation Insurance.** Prior to commencing the Work, Subcontractor shall purchase and maintain during the progress of the Work and any periods of warranty and additional work performed by Subcontractor, insurance that will protect against claims for bodily injury, death, damage to property or other damages arising out of or in connection with the performance of the Work (including warranty and additional work) by Subcontractor, Sub-subcontractor or by anyone employed by any of them, or by anyone for whose acts any of them may be liable. Subcontractor's liability insurance may be maintained in a combination of primary and umbrella policies, and the cost of such insurance shall be included in the Subcontract Sum. Subcontractor's policies of insurance shall have the following minimum limits, coverage and requirements:

- | | |
|--|---|
| (a) Workers' Compensation | Statutory Limits |
| Employer's Liability, including "Stop Gap" coverage and L/SL&H if applicable | \$1,000,000 each accident \$1,000,000 disease-policy limit \$1,000,000 disease-each employee |
| Commercial General Liability (Electrical, HVAC, Plumbing, Fire Protection Sprinkler, Steel Erection, Elevator, Excavating, Roofing, Foundation and Curtain Wall Subcontractors) | \$5,000,000 each occurrence \$5,000,000 products/completed operations aggregate \$5,000,000 general aggregate (minimum \$2,000,000 per project) |
| Commercial General Liability (All Other Subcontractors) | \$2,000,000 each occurrence \$2,000,000 products/completed operations aggregate \$2,000,000 general aggregate (per project) |
| Commercial Automobile Liability | \$1,000,000 any one accident or loss |
| Professional Liability (to the extent required of Subcontractor under the Subcontract Documents) | \$1,000,000 each claim \$1,000,000 annual aggregate |
- (b) The Commercial General Liability insurance required under Paragraph 1(a) will (i) be on ISO Form CG 00 01 or its equivalent, (ii) include coverage for products/completed operations, (iii) be maintained for a period of three (3) years after completion of the Work, (iv) specifically cover as "assured contracts" the Subcontractor's indemnity obligations as set forth in this Subcontract and other contractual indemnities assumed by the Subcontractor under the Subcontract Documents and (v) provide a \$2,000,000 minimum general aggregate limit of liability on a per project basis.
- The Commercial Automobile Liability insurance required under Paragraph 1(a) will include coverage for all owned, hired and non-owned automobiles. Professional Liability, if applicable to the Subcontractor's Work, shall be maintained for a period of three (3) years after completion of the Work. Any retroactive date on such Professional Liability policy shall be prior to the commencement of any Work under this Subcontract.
- (c) Employer's Liability, Commercial General Liability and Automobile Liability insurance may be arranged under separate policies for the full minimum limits required, or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability policy.
- (d) The Subcontractor shall endorse its Commercial General Liability, Commercial Automobile Liability, and Umbrella/Excess Liability policies to add the Contractor and the Owner (and others as specifically required by the Subcontract Documents) as "additional insureds". Such insurance afforded to the Contractor and the Owner as "additional insureds" under the Subcontractor's policies will be primary insurance and not excess over, or contributing with, any insurance purchased or maintained by the Contractor or the Owner. The "additional insured" endorsement to Subcontractor's Commercial General Liability policy will be on ISO Form 20 10 07 04 and 20 37 07 04 or their equivalent and will include coverage for ongoing and completed operations.
- (e) All insurance policies required under Paragraph 1 or the Subcontract Documents will (i) be issued by insurance companies that have an A.M. Best rating of A- VII or better and (ii) contain a provision that coverage afforded thereunder shall not be cancelled or restrictive modifications added, without thirty (30) days prior written notice by certified mail to the Contractor. If Subcontractor fails to purchase and maintain the insurance coverage required herein, Contractor may, but shall not be obligated to, obtain such insurance and either charge all costs for such insurance to the Subcontractor or offset the costs of such insurance against amounts due Subcontractor under the Subcontract.
- (f) Certificates of insurance will be filed with the Contractor prior to the start of the Subcontractor's Work on the Project Site. Such Certificates of Insurance will be in a form and substance acceptable to the Contractor and will provide satisfactory evidence that the Subcontractor has complied with all insurance requirements, including Contractor's, Owner's and any other required parties status as "additional insureds".
- (g) Contractor may exclude Subcontractor from the Project Site and withhold payments to Subcontractor until a properly executed certificate of insurance evidencing the insurance required herein is received by Contractor.
- (h) It is understood and agreed that the insurance coverages and limits required by this Subcontract shall not limit the extent of Subcontractor's responsibilities and liabilities specified within the Subcontract documents or under law.

2 Contractor's Builder's Risk Insurance.

2.1 Unless otherwise provided in the Subcontract Documents, Contractor will cause builder's risk insurance to be purchased and maintained with a "causes of loss" or equivalent policy form covering work to be performed by Contractor (including those working for or under Contractor) at the Project Site to the full insurable value thereof, on a replacement cost basis and subject to reasonable deductibles. Covered "causes of loss" means risks of direct physical loss or damage to covered property unless specifically excluded or limited under the policy. This insurance will include the interests of Owner, Contractor, Subcontractor and Sub-subcontractors in respect to the work to be performed by Contractor at the Project, and shall insure against perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, temporary falsework, shoring and forms and debris removal, and such other matters as are insured against in the form of the policy maintained by Contractor. Unless specifically provided in writing, such insurance will not include coverage for any property, structure(s) and contents (whether real or personal) owned by the Owner or third parties existing as of commencement of Contractor's work or otherwise. Contractor will carry earthquake and flood insurance if Contractor deems it appropriate.

To the extent of coverage afforded by builder's risk or any other property or equipment floater insurance applicable to the Work or the Project or equipment used in the performance of the Work or Project, regardless of whether such insurance is owned by or for the benefit of Subcontractor, Contractor or Owner or their respective subcontractors and agents, Contractor and Subcontractor agree to waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Owner and any of its contractors, subcontractors, agents and employees, whether under subrogation or otherwise, for loss or damage to the extent covered by such insurance, except such rights as they may have to the proceeds of such insurance. If policies of insurance referred to in this paragraph require an endorsement to provide for continued coverage where there is a waiver of subrogation, then the owners of such policies will cause them to be so endorsed. A waiver of subrogation shall be effective as to a party even though that party would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the party had an insurable interest in the property damaged.

If (i) the Project suffers an insurable loss, (ii) the loss is due in part to the negligence of Subcontractor and (iii) an insurance deductible amount (not to exceed \$25,000.00) is applied to the loss payable under builder's risk or other property insurance applicable to the Project, Subcontractor will be liable to Contractor for the deductible amount; however, Contractor may, in its discretion, apportion the deductible amount among other parties responsible for the loss. Subcontractor will promptly pay Contractor, upon demand, for any such deductible amount, and Contractor may offset the deductible amount against any amounts due Subcontractor under the Subcontract. Neither Contractor nor Owner represents that builder's risk or property insurance, if any, applicable to the Project or the Work is adequate to protect the interests of Subcontractor. It is Subcontractor's obligation to determine whether it should purchase and maintain supplementary property insurance to protect its interests in the Work.

2.2 Any insured loss is to be adjusted by Owner and Contractor and made payable to Contractor, as trustee, or to Owner and Contractor, as joint trustees for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage or loss payable clause.

2.3 Subcontractor hereby releases and agrees to defend and indemnify Contractor and Owner from all claims for loss or damage to or loss of use of Subcontractor's property in or about the Project Site and shall purchase such insurance in respect thereto as Subcontractor deems appropriate. Subcontractor shall require a similar release and indemnity by Sub-subcontractors.

END OF RIDER C



PL AFF 200900130720
3 PGS

STATE OF TEXAS §
 § **AFFIDAVIT FOR MECHANIC'S AND**
COUNTY OF DALLAS § **MATERIALMAN'S LIEN**

BEFORE ME, the undersigned authority, personally appeared Timothy Walsh, who upon his oath, deposed and stated the following:

1. "My name is Timothy Walsh. I am the President of Mutual Sprinklers, Inc., hereinafter sometimes referred to as 'Claimant.' I am over 18 years of age, have personal knowledge of the facts set forth below and am competent and authorized to make this affidavit.

2. "Claimant's physical and mailing address is located at 10935 Alder Circle Dallas, Texas 75238.

3. "Claimant furnished all labor, materials, equipment, skills, services, supervision, and appurtenances necessary to complete the installation of an automatic sprinkler system, standpipe system, and fire pump for the Project located at 15725 N. Dallas Parkway, Addison, Dallas County, Texas 75002, that being commonly called Two Addison Circle Spec Office, sometimes more specifically referred to as that 3.371 acres, described in the G W Fisher Abstract 482, Page 731, Tract 35.2, Addison, Dallas County, Texas, hereinafter referred to as 'the Property,' all of which is sought to be charged with a lien.

4. "The names and last known addresses of the owners and/or reputed owners and persons to whom the labor and/or materials were furnished are: Opus West Construction Corporation, 10353 Bren Road W., Hopkins, MN 55343-9014; and/or Opus West Construction Corporation, c/o Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232; and/or Opus West, LP, 2555 E. Camelback Road, Suite 800, Phoenix, Arizona 85016-9267; and/or Opus West, LP, 15455 Dallas Parkway, Suite 450, Addison, Texas 75001-6759; and/or Opus West, LP, c/o Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232; and/or Opus West, LP c/o Opus West Corporation, 2555 E. Camelback Road, Suite 800, Phoenix, Arizona 85016-9267 (its general partner); and/or Opus West Corporation, c/o Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232.

5. "The labor and materials furnished by Claimant are generally described as follows: furnishing all labor, materials, equipment, skills, services, supervision, and appurtenances necessary to complete the installation of an automatic sprinkler system, standpipe system, and fire pump for the Project referenced above.

6. "The amount unpaid for such work which is now overdue and owing to Claimant is \$24,835.30, which amount is true, correct, and just, with all just and lawful

offsets, payments, and credits known to Claimant allowed. The above-referenced amount includes a claim for unpaid retainage, which has been earned on the Project.

7. "Claimant claims a lien on said Property and improvements under the provisions of TEXAS PROPERTY CODE Section 53.001, et. seq., and Article 16, Section 37 of the Texas Constitution, to secure payment of said amount, and makes this sworn statement of claim in support thereof.

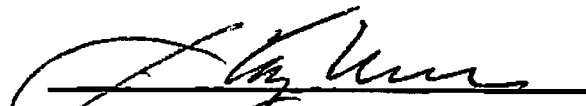
8. "Claimant performed the work on the Property for which it seeks payment through this affidavit during the months of April and May of 2009, as well as unpaid retainage.

9. "Claimant expressly claims a first lien on all removables and claims a Constitutional mechanic's and materialman's lien to the extent that Claimant may be deemed an original contractor. Claimant may be considered an original contractor for the work referenced above which is the basis of this lien. Alternatively, the original contractor is Opus West Construction Corporation, whose last known address is 10353 Bren Road W., Hopkins, MN 55343-9014; and/or 701 Brazos Street, Suite 1050, Austin, Texas 78701-3232, c/o Corporation Service Company d/b/a CSC - Lawyers Incorporating Service Company (its registered agent).

10. "Notice of the claim was sent to all parties set forth in section four (4) above, by certified mail return receipt requested and standard first class mail, on May 6, 2009. One copy of this Affidavit is today being sent to all parties set forth in section four (4) above, by certified mail return receipt requested and via standard first class mail.

"Further affiant sayeth naught."

Mutual Sprinklers, Inc. ("Claimant")


By: Timothy Walsh, President

BEFORE ME, the undersigned authority on this day personally appeared Timothy Walsh, President and duly authorized agent of Mutual Sprinklers, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged and swore to me that he executed the same for the purposes and the consideration therein expressed, and as the act and deed of said corporation, and in the capacity therein stated, and that the facts contained therein are true and correct and based upon his personal knowledge.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 27th day of May 2009.

Brenda J. Rodriguez

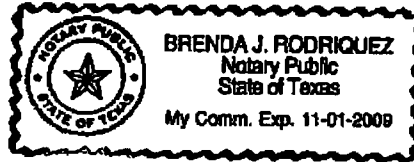
Notary Public for the State of Texas

Brenda J. Rodriguez

(printed name of notary)

My Commission Expires:

11 01 09



AFTER RECORDING, PLEASE RETURN TO:

Mark A. Walsh
GAY, MCCALL, ISAACKS, GORDON & ROBERTS, P.C.
777 East 15th Street
Plano, Texas 75074

FILED AND RECORDED



OFFICIAL PUBLIC RECORDS

JFW

John F. Warren, County Clerk
Dallas County TEXAS

May 07, 2009 03:36:11 PM

FEE: \$24.00

200900130720

Northern District of Texas Claims Register

09-34356-hdh11 Opus West Corporation

Judge: Harlin DeWayne Hale

Chapter: 11

Office: Dallas

Last Date to file claims: 11/09/2009

Trustee:

Last Date to file (Govt):

| | | |
|--|--|---|
| <i>Creditor:</i> (12454158) Mutual Sprinklers, Inc. 10935 Alder Circle Dallas, TX 75238 | Claim No: 3 <i>Original Filed</i> Date: 08/05/2009 <i>Original Entered</i> Date: 08/05/2009 | <i>Status:</i> <i>Filed by:</i> CR <i>Entered by:</i> Mitchell, Michael <i>Modified:</i> |
|--|--|---|

Secured claimed: \$24835.30

Total claimed: \$24835.30

History:

Details 3-1 08/05/2009 Claim #3 filed by Mutual Sprinklers, Inc., total amount claimed: \$24835.3
(Mitchell, Michael)

Description: (3-1) Claim secured by mechanic's/materialman's lien

Remarks: (3-1) re real property located at 15455 N. Dallas Parkway

Claims Register Summary