

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF TEXAS-DALLAS DIVISION		PROOF OF CLAIM
Name of Debtor: <b>Opus West Construction Corporation</b>		Case Number: <b>08-34356</b>
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): <b>Progressive Concrete Works</b>		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  Court Claim Number: _____ (If known)  Filed on: _____
Name and address where notices should be sent:  <div style="display: flex; justify-content: space-between;"> <div>c/o Richard B. Murphy, Esq., Holden Willits Murphy PLC Two N. Central Ave., Suite 1700, Phoenix, AZ 85004</div> <div style="text-align: center;"> <b>RECEIVED</b>   <b>OCT 05 2009</b> </div> </div> Telephone number: (602) 508-6245		
Name and address where payment should be sent (if different from above): <b>BMC GROUP</b>		
Telephone number:		<input type="checkbox"/> Check this 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 this box if you are the debtor or trustee in this case.
<b>1. Amount of Claim as of Date Case Filed:</b> \$ <u>55,548.00 plus accrued and accruing interest</u> If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.  If all or part of your claim is entitled to priority, complete item 5.  <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.		<b>5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.</b>  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)( ): _____  <b>Amount entitled to priority:</b> \$ _____  <i>*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.</i>
<b>2. Basis for Claim:</b> <u>New construction - labor, materials and equipment</u> (See instruction #2 on reverse side.)		
<b>3. Last four digits of any number by which creditor identifies debtor:</b> _____  <b>3a. Debtor may have scheduled account as:</b> _____ (See instruction #3a on reverse side.)		
<b>4. Secured Claim</b> (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.  <b>Nature of property or right of setoff:</b> <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <b>Describe:</b>  <b>Value of Property:</b> \$ _____ <b>Annual Interest Rate</b> ____ %  <b>Amount of arrearage and other charges as of time case filed included in secured claim,</b> <b>if any:</b> \$ _____ <b>Basis for perfection:</b> <u>Mechanic's Lien</u>  <b>Amount of Secured Claim:</b> \$ <u>53,753</u> <b>Amount Unsecured:</b> \$ <u>1,795.00</u>		
<b>6. Credits:</b> The amount of all payments on this claim has been credited for the purpose of making this proof of claim.  <b>7. Documents:</b> Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See definition of "redacted" on reverse side.)  DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.  If the documents are not available, please explain:		
<b>Date:</b> <u>10/1/09</u> <b>Signature:</b> The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.  <div style="display: flex; align-items: center;"> <div> <b>Attorney for Progressive Concrete Works, Inc.</b> </div> </div>		<b>FOR COURT USE ONLY</b>  <div style="display: flex; align-items: center; justify-content: center;"> <div> <b>OPUS WEST</b>  <b>00272</b> </div> </div>

Recorded at the Request of:  
Richard B. Murphy, Esq.  
HOLDEN WILLITS MURPHY PLC  
Two N. Central Avenue, Suite 1700  
Phoenix, AZ 85016

**MECHANICS' AND MATERIALMEN'S LIEN**

PROGRESSIVE CONCRETE WORKS, INC., an )  
Arizona corporation, )

Claimant, )

vs. )

PC-101, INC., a Delaware corporation; PIMA )  
CENTER 101, LLC, a Delaware limited liability )  
company, )

Owners or Reputed Owners, )

and )

OPUS WEST CONSTRUCTION )  
CORPORATION, INC., a Minnesota corporation, )

Contractor or Reputed )  
Contractor. )

**NOTICE AND CLAIM OF LIEN**

STATE OF ARIZONA )  
County of Maricopa ) ss.  
County of Maricopa )

Michael Riggs, being first duly sworn upon oath, deposes and says that:

1. I am the president of Progressive Concrete Works, Inc. ("Claimant"), and have personal knowledge of the facts hereafter set forth.

2. At all times material hereto Claimant held, and holds, a valid license as a contractor pursuant to Arizona Revised Statutes, Title 32, Chapter 10.

3. Claimant furnished labor, materials and equipment for construction of certain improvements on a project known as Pima Center I – Building E located in Maricopa County, Arizona (the "Project") described in Exhibit A hereto and sought to be charged, together with the improvements thereon, with the lien hereby claimed (the "Subject Property"). Upon information and belief, the street address for the Subject Property is 9180 E. Via de Ventura, Scottsdale, AZ 85258.

4. Upon information and belief, PC-101, Inc. and Pima Center, LLC were – and are – the Owners or Reputed Owners ("Original Owners or Reputed Owners") of the Subject Property when Claimant commenced on the Project.

5. Upon information and belief, Original Owners or Reputed Owners entered into an agreement with Opus West Construction Corporation, Inc., as general contractor ("Contractor"), wherein Contractor agreed to furnish certain labor and materials to the Subject Property for the construction of the Project.

6. Contractor, as general contractor, in turn entered into a subcontract agreement ("Subcontract Agreement") dated May 28, 2008 with Claimant, as subcontractor, for performance of certain concrete work on the Subject Property and the Project as more particularly described in the Subcontract Agreement. A true and correct copy of the Subcontract Agreement is attached hereto as Exhibit B and incorporated herein by reference. The terms and conditions are set forth therein.

7. Claimant performed certain services required of it under the Subcontract Agreement and as directed by Contractor.

8. As of this date, the total adjusted principal amount due for labor, materials and equipment furnished by Claimant to the Subject Property and Project, after deducting just credits and offsets, is \$53,753, together with all accrued and accruing interest on the principal amount at the rate of 18% per annum, and all reasonable expenses incurred including lien preparation and recording fees, costs and attorneys' fees. This amount is the reasonable value of the labor, materials and equipment furnished by Claimant for which Claimant has not been compensated.

9. Claimant last performed work on the Project on March 31, 2009 and completed its entire scope of work under the Subcontract Agreement. However, Claimant is unaware of the overall status of the Project. However, upon information and belief, Claimant believes that this lien is timely under A.R.S. § 33-993.

10. On or about February 11, 2009, Claimant served by certified mail, return receipt requested, a preliminary twenty-day notice, as required by A.R.S. § 33-992.01, upon: (a) Original Owners or Reputed Owners, as the owners or reputed owners; (b) Contractor, as the firm with whom Claimant contracted with for such improvements; and (c) Bank of America, N.A., as lender or reputed lender. A true and correct copy of the twenty-day notice is attached hereto as Exhibit C and incorporated herein by reference. None of the recipients returned the acknowledgement of receipt of the twenty-day notice to Claimant within 30 days from the date of mailing. Therefore, under A.R.S. § 33-992.02, proof of service is made by affidavit of Michael Riggs attached at Exhibit C and includes (a) the date and method of service; and (b) the names and addresses of the persons to whom a copy of the notice was sent. A copy of the Certified Mail Receipt, Return Receipts and returned mail (by Original Owners or Reputed Owners) is attached to Exhibit C.

11. Under the Subcontract Agreement, Claimant furnished labor, materials and equipment to the Project and the Subject Property in the total amount of \$53,753 of which \$53,753 remains unpaid. Claimant therefore claims a lien in the amount of \$53,753 against the Subject Property, together with interest at the highest legal rate and all reasonable expenses incurred including attorneys' fees and other professional services, to the fullest extent allowed under the laws of the State of Arizona relating to liens of mechanics, materialmen, laborers, and others.

12. For the sums due under the Subcontract Agreement and for the purposes of fixing this lien, Claimant has made this Notice and Claim of Lien and causes the same to be recorded as required by and pursuant to Arizona law, and causes a duplicate copy to be served upon the Original Owners or Reputed Owners.

DATED this 16th day of June, 2009.

PROGRESSIVE CONCRETE WORKS, INC., an Arizona corporation

By Michael Riggs  
Michael Riggs  
Its: Managing Member

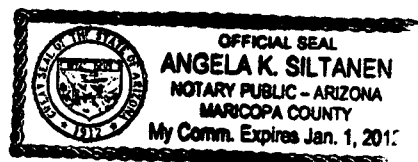
STATE OF ARIZONA       )  
                                  ) ss.  
County of Maricopa     )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 16<sup>th</sup> day of June, 2009, by Michael Riggs, President of Progressive Concrete Works, Inc., on behalf of the company.

Angela K. Siltanen  
Notary Public

My Commission Expires:

1/1/2012



# **EXHIBIT A**

## LEGAL DESCRIPTION

### Parcel 20

A portion of Section 31, Township 3 North, Range 5 East of the Gila and Salt River Meridian, Maricopa County, Arizona, more particularly described as follows:

COMMENCING at a GLO cap at the North Quarter corner of said Section 31; thence  $S00^{\circ}01'13''E$  (an assumed bearing), along the East line of the Northwest Quarter of said Section 31, for a distance of 2638.99 feet to a Brass Cap at the Center of said Section 31; thence  $N89^{\circ}48'40''W$ , along the South line of the Northwest Quarter of said Section 31, for a distance of 1700.85 feet; thence  $S00^{\circ}06'49''W$  for a distance of 1686.33 feet; thence  $S89^{\circ}53'17''E$  for a distance of 905.94 feet; thence  $S00^{\circ}00'00''W$  for a distance of 415.59 feet to the POINT OF BEGINNING;

Thence  $S90^{\circ}00'00''E$  for a distance of 493.07 feet; thence  $S00^{\circ}14'37''W$  for a distance of 482.58 feet to a point on the North right-of-way line of Via de Ventura; thence  $N89^{\circ}53'53''W$ , along said North right-of-way line, for a distance of 491.02 feet; thence  $N00^{\circ}00'00''E$  for a distance of 481.70 feet to the POINT OF BEGINNING.

# **EXHIBIT B**



**OPUS**

Pima Center I - Building E / 10510.00

02530 /Hardscape Concrete

Progressive Concrete Works, Inc. / Mike Riggs

Contact Phone # 623-582-2274

Contact Fax # 623-582-1751

Payment Terms: Standard

**SUBCONTRACT AGREEMENT (Labor and Materials)**

This Subcontract Agreement ("Subcontract") is made as of this 28th day of May, 2008, by and between OPUS West Construction Corporation ("Contractor"), with its office located at 2555 East Camelback Road, Suite 800, Phoenix, AZ 85016, and Progressive Concrete Works, Inc. ("Subcontractor") with its office located at 2136 W. Melinda Lane, Phoenix, AZ 85021.

Contractor and Subcontractor agree as follows:

1. Subcontract Documents. The term "Subcontract Documents" is defined in Paragraph 1 of the attached Rider "A".
2. Project. Contractor is providing design and construction-related services to Owner (defined below) in connection with the project generally described as Pima Center I - Building E ("Project"), located at 9180 E. Via de Ventura, Scottsdale, AZ 85258 ("Project Site"), and consisting of the total work provided by Contractor under contract documents between Owner and Contractor.
3. Owner. The Owner of the Project is Pima Center 101, L.L.C. ("Owner").
4. Architect/Engineer. The architect and engineers ("Architect/Engineer") of record for the Project are:
 

Architect of Record:	Butler Design Group, Inc.
Civil Engineer:	Erickson & Meeks Engineering, LLC
Interior Designer:	McCarthy Nordburg, Ltd.
Landscape Architect:	Laskin & Associates, Inc.
Structural Engineer of Record:	Opus Architects & Engineers, Inc.
5. 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.
6. 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 08/05/2008. 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".
7. Subcontract Sum. Contractor shall pay Subcontractor the sum of \$ 50,392.00 ("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".
8. Riders. The following Riders are attached to and made a part of this Subcontract:
  - 8.1 Rider A (Scope of Work)
  - 8.2 Rider B (Indemnification)
  - 8.3 Rider C (Insurance)

Contractor and Subcontractor sign as follows:

Approved by Contractor's project manager Vincent Genetti 8-3-2008  
Vincent Genetti

**CONTRACTOR**

OPUS West Construction Corporation

By: [Signature]  
James Godwin  
(Print Name)  
Senior Director of Construction  
(Title)  
7-2-08  
(Date)

**SUBCONTRACTOR**

Progressive Concrete Works, Inc.

By: [Signature]  
Michael Riggs  
(Print Name)  
President  
(Title)  
6-20-08  
(Date)

**RIDER A**

This Rider A is attached to and made a part of the Subcontract between **OPUS West Construction Corporation** and **Progressive Concrete Works, Inc.** dated 05/28/2008. All capitalized terms used, but not defined in this Rider "A" have the meaning ascribed to them in the Subcontract.

**I. Work/Subcontract Documents.**

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

**Drawings and Specifications**

<b>Description</b>	<b>Number</b>	<b>Last Revision</b>
Pima I Building E Outline Specs		01/07/2008
General Conditions of Subcontract		06/01/2005
Special Conditions of Subcontract		05/02/2007
Supplemental General Conditions		06/01/2005
Cover Sheet	CS	11/07/2007
Grading & Drainage, Water Sewer & Fire Line Cover Sheet	C1	11/07/2007
Grading & Drainage Plan	C2	11/07/2007
Grading & Drainage Plan	C3	11/07/2007
Grading & Drainage Details & Sections	C4	11/07/2007
Water, Sewer & Fire Line Plan	C5	11/07/2007
Water, Sewer & Fire Line Plan	C6	11/07/2007
Site/Best Management Practices Map	Map	11/05/2007
Cover Sheet	LA01	11/07/2007
Planting Plans	LA02	11/07/2007
Planting Plans	LA03	11/07/2007
Irrigation Plans	LA04	11/07/2007
Irrigation Plans	LA05	11/07/2007
Landscape Detail Sheet	LA06	11/07/2007
Irrigation Detail Sheet	LA07	11/07/2007
Specifications	LA08	11/07/2007
Site Plan	A0.1	11/07/2007
Enlarged Site Plan	A0.2	11/07/2007
Site Details	A0.3	11/07/2007
Site Details	A0.4	11/07/2007
1st Floor Plan	A1.1	11/07/2007
1st Floor Plan - Edge of Slab	A1.1.1	11/07/2007
2nd Floor Plan	A1.2	11/07/2007
2nd Floor Plan - Edge of Slab	A1.2.1	11/07/2007
Roof Plan	A1.3	11/07/2007

Elevations	A2.1	11/07/2007
Enlarged Elevations	A2.2	11/07/2007
Enlarged Elevations	A2.3	11/07/2007
Window/Door Schedule	A2.4	11/07/2007
Window/Door Schedule	A2.5	11/07/2007
Building Sections	A3.1	11/07/2007
Wall Sections	A3.2	11/07/2007
Wall Sections	A3.3	11/07/2007
Wall Sections	A3.4	11/07/2007
Architectural Details	A4.1	11/07/2007
Architectural Details	A4.2	11/07/2007
Architectural Details	A4.3	11/07/2007
Architectural Details	A4.4	11/07/2007
Stair & Elevator Details	A5.1	11/07/2007
Stair & Elevator Details	A5.2	11/07/2007
First Floor - Floor Plan	IA2.01	11/07/2007
Second Floor - Floor Plan	IA2.02	11/07/2007
First Floor - Enlarged Lobby Plan	IA2.1	01/14/2008
First Floor - Enlarged Lobby RCP Plan	IA3.1	01/14/2008
Finish Plan Floor 1	IA5.1	01/14/2008
Finish Plan Floor 2	IA5.2	01/14/2008
Enlarged Restroom Plans	IA6.0	01/14/2008
Elevator Cab Interior	IA6.1	01/14/2008
Elevations	IA7.0	01/14/2008
Interior Architectural Details	IA8.0	01/14/2008
Interior Architectural Details	IA8.1	11/07/2007
Interior Architectural Details	IA8.2	01/14/2008
Details	IA8.3	01/14/2008
Title Sheet	S1	11/07/2007
Level 1 Foundation Plan	S2	11/07/2007
Level 2 Framing Plan	S3.1	11/07/2007
Level 2 Enlarged Plans & Schedules	S3.2	11/07/2007
Roof Framing Plan	S4.1	11/07/2007
Awning Framing Plans & Details	S4.2	11/07/2007
Braced Frame Sections & Details	S5	11/07/2007
Sections and Details	S6	11/07/2007
Sections and Details	S7	11/07/2007
Sections and Details	S8	11/07/2007
Sections and Details	S9	11/07/2007
Sections and Details	S10	11/07/2007
Mechanical Cover Sheet	M0.1	11/07/2007

First Floor Mechanical Plan	M1.1	09/04/2007
Second Floor Mechanical Plan	M1.2	11/07/2007
Mechanical Roof Plan	M1.3	11/07/2007
Enlarged Mechanical Core Plans	M1.4	11/07/2007
Mechanical Schedules	M2.1	11/07/2007
Mechanical Details	M2.2	11/07/2007
Mechanical Details	M2.3	11/07/2007
Plumbing Legend, Symbols and Fixture Schedules	P0.1	11/07/2007
Plumbing Specifications	P0.2	11/07/2007
Plumbing Specifications	P0.3	11/07/2007
Plumbing Plan - 1st Floor	P2.1	11/07/2007
Plumbing Plan - 2nd Floor	P2.2	11/07/2007
Enlarged Plumbing Floor Plan, 1st & 2nd Floor	P2.3	11/07/2007
Plumbing Riser Diagrams	P3.1	11/07/2007
Symbols and Schedules	E0.0	11/05/2007
Site Lighting Plan	E1.0	11/20/2007
Photometric Site Plan	E1.1	11/20/2007
Partial 1st Floor Lighting Plan	E2.0	11/05/2007
Partial 1st Floor Lighting Plan	E2.1	11/05/2007
Partial 1st Floor Lighting Plan	E2.2	11/05/2007
Partial 2nd Floor Lighting Plan	E3.0	11/05/2007
Partial 2nd Floor Lighting Plan	E3.1	11/05/2007
Partial 2nd Floor Lighting Plan	E3.2	11/05/2007
Partial 1st Floor Power Plan	E4.0	11/05/2007
Partial 1st Floor Power Plan	E4.1	11/05/2007
Partial 1st Floor Power Plan	E4.2	11/05/2007
Enlarged 1st/2nd Floor Power Plans	E4.3	11/05/2007
Partial 2nd Floor Power Plan	E5.0	11/05/2007
Partial 2nd Floor Power Plan	E5.1	11/05/2007
Partial 2nd Floor Power Plan	E5.2	11/05/2007
Partial Roof HVAC/SS Plan	E6.0	11/05/2007
Partial Roof HVAC/SS Plan	E6.1	11/05/2007
Partial Roof HVAC/SS Plan	E6.2	11/05/2007
Single Line Diagram	E7.0	11/05/2007
Details and Calculations	E7.1	11/05/2007
Panelboard Schedules	E8.0	11/05/2007
Panelboard Schedules	E8.1	11/05/2007
Panelboard Schedules	E8.2	11/05/2007
Final Clean Specifications - Pima Center I - Building E	01503	02/11/2008
Earthwork Specifications - Pima Center I - Building E	02200	12/06/2007
Termite Protection Specifications - Pima Center I - Building E	02280	11/19/2007

Asphalt Paving Specifications - Pima Center I - Building E	02510	12/06/2007
Site Concrete Specifications - Pima Center I - Building E	02520	12/06/2007
Hardscape Concrete Specifications - Pima Center I - Building E	02530	05/28/2008
Site Utilities Specifications - Pima Center I - Building E	02600	11/07/2007
Drywell Specifications - Pima Center I - Building E	02720	11/13/2007
Landscaping and Irrigation Specifications - Pima Center I - Building E	02900	01/15/2008
Cast-In-Place Concrete System Specifications - Pima Center I - Building E	03300	11/14/2007
Concrete Unit Masonry Specifications - Pima Center I - Building E	04200	10/31/2007
Structural Steel Framing and Decks Specifications - Pima Center I - Building E	05100	09/20/2007
Cold-Form Metal Framing Specifications - Pima Center I - Building E	05400	03/05/2008
Metal Fabrications Specifications - Pima Center I - Building E	05500	09/20/2007
Glass & Stainless Steel Guardrails Specifications - Pima Center I - Building E	05720	02/29/2008
Architectural Woodwork Specifications - Pima Center I - Building E	06400	02/29/2008
Water Repellants Specifications - Pima Center I - Building E	07100	01/11/2008
Building Insulation Specifications - Pima Center I - Building E	07200	12/07/2007
Built Up Roofing Specifications - Pima Center I - Building E	07510	12/18/2007
Caulking and Sealants Specifications - Pima Center I - Building E	07900	12/19/2007
Hollow Metal Doors and Frames Specifications - Pima Center I - Building E	08100	04/08/2008
Wood Doors Specifications - Pima Center I - Building E	08200	04/08/2008
Aluminum Framing and Glazing Systems Specifications - Pima Center I - Building E	08400	01/15/2008
Door Hardware Specifications - Pima Center I - Building E	08700	04/08/2008
Gypsum Board Assemblies Specifications - Pima Center I - Building E	09250	03/05/2008
Ceramic Tile and Stone Tile Specifications - Pima Center I - Building E	09300	02/08/2008
Acoustical Ceilings Specifications - Pima Center I - Building E	09510	01/11/2008
Stone Countertops Specifications - Pima Center I - Building E	09630	01/11/2008
Carpet Specifications - Pima Center I - Building E	09680	02/08/2008
Painting Specifications - Pima Center I - Building E	09900	03/05/2008
Wall Coverings Specifications - Pima Center I - Building E	09950	03/05/2008
Toilet Partitions Specifications - Pima Center I - Building E	10150	01/11/2008
Toilet Accessories Specifications - Pima Center I - Building E	10160	02/20/2008
Horizontal Louver Blinds Specification - Pima Center I - Building E	12491	01/11/2008
Hydraulic Elevators Specifications - Pima Center I - Building E	14240	01/10/2008
Pima Center I - Building E Division 15 - Mechanical	15000	08/30/2007
Pima Center I - Building E Division 16 - Electrical	16000	07/03/2007
Electronic Security Systems Specifications - Pima Center I - Building E	16720	12/17/2007

#### Field Bulletins

Date	Number	Name
01/09/2008	FB-10510.00-1	Vertical Realignment @ Water/Storm as shown on C6
01/18/2008	FB-10510.00-2	Revised Partial Roof Framing Plan for Elevator Doghouse
01/28/2008	FB-10510.00-3	Masonry Block Schedule Update
02/01/2008	FB-10510.00-4	Revised Embed Plate Schedule, Canopy Plans and Details, and Beam Splice Schedule
02/14/2008	FB-10510.00-5	Revised Guardrail Connection @ Lobby Stair

02/18/2008

FB-10510.00-6

Revised Lobby Wall Coverings

02/22/2008

FB-10510.00-7

Lighting Revisions Adjacent to North Stairwell

**Supplemental Design Documents**

**Description**

**Date**

Report on Geotechnical Investigation on Pima Center I, submitted by Speedie and Associates, Project Number 041163SA

08/23/2004

**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. Subcontractor shall use Salt River Pima Maricopa Indian Community suppliers and laborers whenever possible.
2. Subcontractor shall endorse its Commercial General Liability, and Umbrella/Excess Liability policies (as defined in Rider C) to add the following names as "additional insureds": Opus West Construction Corporation, Opus West Corporation, PC 101, Inc., and Pima Center 101, L.L.C.
3. The following statement shall be added to Rider B, Section 3: Pay when and if paid is only valid if Subcontractor is listed with defective work or unsatisfactory job progress and it is determined that this is the reason the Owner has failed to pay Contractor.
4. If Subcontractor maintains all insurance coverages Subcontractor is required to maintain under this Subcontract, but still is not entitled to coverage thereunder (or under any other insurance Subcontractor may have) for an indemnification obligation assumed by Subcontractor above, then notwithstanding the foregoing provisions, Subcontractor is not obligated to indemnify an indemnified party for that portion of a claim (if any) which is ultimately determined, upon final adjudication, settlement or other resolution of the claim, to have been caused by the active negligence or willful misconduct of such indemnified party; provided, that this exception does not limit or relieve Subcontractor's defense obligations prior to such final resolution of the claim or Subcontractor's obligations to indemnify all other indemnified parties which did not participate in such negligence or misconduct.

**This Subcontract excludes the following:**

- 1 Gross receipts tax
- 2 Performance or payment bond
- 3 General building permit

**2. Schedule.** Subcontractor will achieve the following milestones (referred to as the "Schedule"):

N/A

**Schedule Notes**

1. In accordance with the attached Opus Pima Center I - Building E Construction Schedule dated September 24, 2007.
2. In accordance with mutually agreed requirements as described in periodic project schedules and Superintendent's two and three week schedules.

**3. Subcontract Sum Breakdown.** The breakdown of the Subcontract Sum is as follows:

**Subcontract Recap**

Sub-Job Number	Sub-Job Name	Name	Rate
10510.00	Pima Center I - Building E	Base Bid: Hardscape Concrete	\$47,617.00
10510.00	Pima Center I - Building E	Post Bid Adjustment: Adjust Hardscape Sections to Geotech Report	\$(1,709.00)
10510.00	Pima Center I - Building E	Post Bid Adjustment: Sawcut, Demo, Load, Haul, and stockpile asphalt edges adjacent to hardscape at location approved by Contractor onsite.	\$1,734.00
10510.00	Pima Center I - Building E	Post Bid Adjustment: Provide Three (3) 60" x 60" Mockups	\$2,250.00
10510.00	Pima Center I - Building E	Post Bid Adjustment: Provide Completed Operations insurance in compliance with Contract Documents.	\$500.00
Total			\$ 50,392.00

**Subcontract Sum Breakdown**

Name	Account Code	Amount
Concrete Hardscape - Subcontract	10510.00-B40-03120.00-S	\$50,392.00
Total		\$50,392.00

**4. 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 until :

**Unit Price List**

Name	Rate	Quantity UOM
C-1 (50 SF or more)	\$7.75	Sq Foot
C-2 (50 SF or more)	\$7.95	Sq Foot
C-3 (50 SF or more)	\$8.35	Sq Foot
Colored Concrete Curb	\$24.00	Lineal Foot
Mobilization	\$1,000.00	Each

**5. 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 until :

**Alternates Notes**

END OF RIDER A

## RIDER B

This Rider B is attached to and made a part of the Subcontract between OPUS West Construction Corporation and Progressive Concrete Works, Inc. dated 05/28/2008. All capitalized terms used but not defined in this Rider B have the meaning ascribed to them in the Subcontract or the 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. *See Rider A*

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 progress and final payments received from Owner. All payments to Subcontractor shall be made by the Contractor solely out of the progress and final payments 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 benefits 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.



(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 Indemnitees 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.

**END OF RIDER B**

RIDER C

This Rider C is attached to and made a part of the Subcontract between OPUS West Construction Corporation, and Progressive Concrete Works, Inc. dated 05/28/2008. 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 USL&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 "insured 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.

- /iv
- (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.

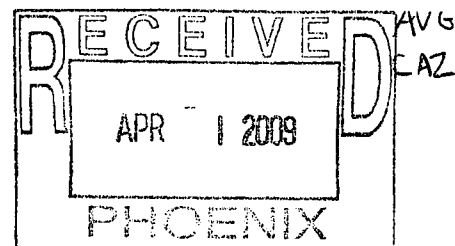
If (i) the Project suffers an insurable loss, (ii) the loss is due in part to the negligence of Subcontractor and (iii) an insurance deductible amount (not to exceed \$10,000.00) is applied to the loss payable under builder's risk or other property insurance applicable to the Project, Subcontractor will 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**



OPUS West Construction Corporation  
SUBCONTRACT CHANGE ORDER



Change Order Date: 03/18/2009

Change Order #: 2

To Subcontract Agreement dated: 05/28/2008

Hardscape Concrete

CON-10510.00-35

02530

TO: Progressive Concrete Works, Inc.  
2136 W. Melinda Lane  
Phoenix, AZ 85021

PROJECT: Pima Center I - Building E  
9180 E. Via de Ventura  
Scottsdale, AZ 85258

CHANGE DETAILS

Item	Description	Amount
1	Subcontractor shall eliminate the three (3) 60" X 60" mock-ups for the scope-of-work.	\$(2,250.00)
2	Subcontractor shall provide all labor, material, skill and equipment necessary or required to demolish approximately 336 SF of grey concrete including 3 ADA ramps and move debris to an on-site location as referenced in Subcontractor's Change Order Request #3, dated March 5, 2009.	\$1,044.00
3	Subcontractor shall provide all labor, material, skill and equipment necessary or required to install approximately 550 SF of 4" grey sidewalk including 3 ADA ramps over existing AB as referenced in Subcontractor's Change Order Request #3, dated March 5, 2009.	\$3,352.00
4	Subcontractor shall provide all labor, material, skill and equipment necessary or required to saw cut approximately 1,500 additional LF to a depth of 1-1/2" in the hardscape as referenced in Subcontractor's Change Order Request #4, dated March 9, 2009.	\$1,215.00
		<u>\$3,361.00</u>

SCHEDULE

Completion date of original contract will not be adjusted, unless noted herein.

CONTRACT SUMMARY

Cost Code	Previous Amount	This Change Order	Current Contract Amount
10510.00-B40-03100.00-S	\$0.00	\$4,396.00	\$4,396.00
10510.00-B40-03120.00-S	\$50,392.00	\$(1,035.00)	\$49,357.00
	<u>\$50,392.00</u>	<u>\$3,361.00</u>	<u>\$53,753.00</u>

Original Contract Amount.....	\$50,392.00
Previously Approved Change Orders.....	\$0.00
Amount this Change Order.....	\$3,361.00
Contract Amount to Date.....	\$53,753.00

ACKNOWLEDGEMENT

Please sign and return all original copies

Progressive Concrete Works, Inc.

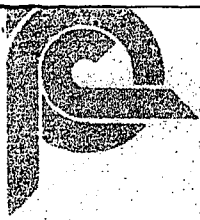
OPUS West Construction Corporation

MICHAEL RIGGS 3/27/09  
Printed Name Date

Vincent Genetti 4/1/09  
Printed Name Date

Reference this change order number on all Application for Payment documents.

The work covered by this Subcontract Change Order will be performed under the same terms and conditions as those in the Subcontract Agreement. Subcontractor agrees this Subcontract Change Order is inclusive of all Subcontractor's claims for additional compensation for work heretofore authorized or performed beyond the scope of the Subcontract Agreement as amended this date. No other claims will be accepted by Contractor.



**PROGRESSIVE  
CONCRETE  
WORKS  
INC.**

March 5, 2009

Vincent Genetti  
Opus West Corp / Pima Center 1 - Bldg E  
9180 E Via de Ventura  
Scottsdale, AZ 85258

Re: Pima Center 1 - Building E Change Order Request #03

Dear Vincent,

The following change order request #03 is for the additional labor, equipment and materials required to demo existing gray concrete walkways and ADA ramps and replace them with new gray concrete. The total amount of this change order request is \$4395.99

Description	Units			Unit Cost		Total
Mobilize, One (1) Included, Additional at		EA	@	\$ 1,000.00	=	
Demo, Load and Haul Concrete To Onsite Location - Approximately 336 sq. ft. (Includes 3 ADA Ramps)	1	LS	@	\$ 1,043.84	=	\$ 1,043.84
4" Natural Gray Concrete Over Existing AB - Approximately 550 sq. ft. (Includes 3 ADA Ramps)	1	LS	@	\$ 3,352.15	=	\$ 3,352.15
CHANGE ORDER TOTAL:						\$ 4,395.99

All terms and conditions in the original proposal are still valid.  
If you have any questions or if we can be of any further assistance please feel free to call.

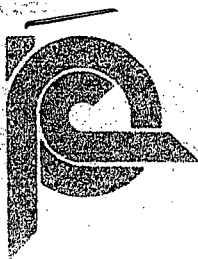
Thank you.  
Respectfully,

Acceptance,  
Opus West Corporation

Wade Wilson  
Project Manager

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date



**PROGRESSIVE  
CONCRETE  
WORKS  
INC.**

March 9, 2009

Vincent Genetti  
Opus West Corp / Pima Center 1 - Bldg E  
9180 E Via de Ventura  
Scottsdale, AZ 85258

Re: Pima Center 1 – Building E Change Order Request #04

Dear Vincent,

The following change order request #04 is for the additional equipment and labor that is required to saw cut additional control joints as directed. The total amount of this change order request is \$1215.00

Description	Units			Unit Cost		Total
Mobilize, One (1) Included, Additional at		EA	@	\$ 1,000.00	=	
Saw cut Control Joints 11/2" Deep Per Direction Of Contractor	1,500	LF	@	\$ 0.81	=	\$ 1,215.00
CHANGE ORDER TOTAL:						\$ 1,215.00

All terms and conditions in the original proposal are still valid.  
If you have any questions or if we can be of any further assistance please feel free to call.

Thank you.  
Respectfully,

Wade Wilson  
Project Manager

Acceptance,  
Opus West Corp.

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

# **EXHIBIT C**

## ARIZONA PRELIMINARY 20 DAY LIEN NOTICE

IN ACCORDANCE WITH ARIZONA REVISED STATUTES SECTION 33-992.01

THIS IS NOT A LIEN

THIS IS NOT A REFLECTION ON THE INTEGRITY OF ANY CONTRACTOR OR SUBCONTRACTOR

THE NAME AND ADDRESS OF THE OWNER OR REPUTED  
OWNER IS:Opus Job No.: 10510.00  
PC-101, Inc.; Pima Center 101, LLC  
9180 E. Via de Ventura  
Scottsdale, AZ 85258THIS PRELIMINARY LIEN NOTICE HAS BEEN COMPLETED  
BY:Progressive Concrete Works, Inc.  
2136 W. Melinda Lane  
Phoenix, AZ 85027

THE NAME AND ADDRESS OF THE ORIGINAL CONTRACTOR IS:

Opus Job No.: 10510.00  
Opus West Construction Corporation  
2555 E. Camelback Road, Ste #800  
Phoenix, AZ 85016YOU ARE HEREBY NOTIFIED THAT THE CLAIMANT HAS  
FURNISHED OR WILL FURNISH LABOR, PROFESSIONAL  
SERVICES, MATERIALS, MACHINERY, FIXTURES OR  
TOOLS OF THE FOLLOWING GENERAL DESCRIPTION:

Concrete Construction

THE NAME AND ADDRESS OF ANY LENDER OR REPUTED  
LENDER AND/OR ASSIGNS IS:Nancy Alonzo  
Bank of America, N.A.  
201 W. Washington Street, 2nd Floor  
Phoenix, AZ 85004IN THE CONSTRUCTION, ALTERATION, OR REPAIR OF  
THE BUILDING, STRUCTURE, OR IMPROVEMENT  
LOCATED AT:Opus Pima Center I - Building E  
9180 E. Via de Ventura  
Scottsdale, 85258THE NAME AND ADDRESS OF THE PERSON WITH WHOM  
THE CLAIMANT HAS CONTRACTED WITH:Opus Job No.: 10510.00  
Opus West Construction Corporation  
2555 E. Camelback Road, Ste #800  
Phoenix, AZ 85016AND SITUATED UPON THAT CERTAIN LOT(S) OR PARCEL  
OF LAND IN MARICOPA COUNTY, ARIZONA, DESCRIBED  
AS FOLLOWS:9180 E. Via de Ventura  
Scottsdale, 85258THE NAME OF THE SURETY COMPANY AND BONDING  
AGENT PROVIDING THE PAYMENT BOND

N/A

AN ESTIMATE OF THE TOTAL PRICE OF THE LABOR  
PROFESSIONAL SERVICES, MATERIALS, MACHINERY,  
FIXTURES OR TOOLS, FURNISHED OR TO BE FURNISHED  
IS:

\$48,141.94

AGENT

Notice to Property Owner:

If bills are not paid in full for the labor, professional services,  
material, machinery, fixtures or tools furnished or to be furnished, a mechanic's lien leading to the  
loss, through Court Foreclosure Proceedings, on all or part of your property being improved may be  
placed against the property. You may wish to protect yourself against this consequence by either:

1. Requiring your contractor to furnish a CONDITIONAL WAIVER AND RELEASE PURSUANT TO ARIZONA  
REVISED STATUTES SECTION 33-1008, SUBSECTION D, PARAGRAPHS 1 and 3 signed by the person or  
firm giving you this notice before you make payment to your contractor.
2. Requiring your contractor to furnish an UNCONDITIONAL WAIVER AND RELEASE PURSUANT TO ARIZONA  
REVISED STATUTES SECTION 33-1008, SUBSECTION D, PARAGRAPHS 2 and 4 signed by the person or  
firm giving you this notice after you make payment to your contractor.
3. Using any other method or device that is appropriate under the circumstances.

WITHIN TEN DAYS OF THE RECEIPT OF THIS PRELIMINARY TWENTY DAY NOTICE THE OWNER OR OTHER INTERESTED  
PARTY IS REQUIRED TO FURNISH ALL INFORMATION NECESSARY TO CORRECT ANY INACCURACIES IN THE NOTICE  
PURSUANT TO ARIZONA REVISED STATUTES SECTION 33-992.01, SUBSECTION 1 OR LOSE AS A DEFENSE ANY  
INACCURACY OF THAT INFORMATION.WITHIN TEN DAYS OF THE RECEIPT OF THIS PRELIMINARY TWENTY DAY NOTICE IF ANY PAYMENT BOND HAS BEEN  
RECORDED IN COMPLIANCE WITH ARIZONA REVISED STATUTES SECTION 33-1003, THE OWNER MUST PROVIDE A COPY OF  
THE PAYMENT BOND INCLUDING THE NAME AND ADDRESS OF THE SURETY COMPANY AND BONDING AGENT PROVIDING THE  
PAYMENT BOND TO THE PERSON WHO HAS GIVEN THE PRELIMINARY TWENTY DAY NOTICE. IN THE EVENT THAT THE  
OWNER OR OTHER INTERESTED PARTY FAILS TO PROVIDE THE BOND INFORMATION WITHIN THAT TEN DAY PERIOD, THE  
CLAIMANT SHALL RETAIN LIEN RIGHTS TO THE EXTENT PRECLUDED OR PREJUDICED FROM ASSERTING A CLAIM AGAINST  
THE BOND AS A RESULT OF NOT TIMELY RECEIVING THE BOND INFORMATION.

DATED: 11-Feb-09

COMPANY NAME: Progressive Concrete Works, Inc.

BY:

  
Diane Pittman

TITLE: Project Coordinator

Upon receipt of this notice, please detach and sign this acknowledgment and return to same sender.

ACKNOWLEDGMENT OF RECEIPT OF PRELIMINARY TWENTY DAY NOTICE  
(Arizona Revised Statutes Section 33-992.01 and 33-992.02)

This acknowledges receipt on

of a copy of this Preliminary Twenty Day Notice at

(Address where notice received)

Date:

(Date this acknowledgment is executed)

Company Name (Signature and title of individual acknowledging receipt)



- Complete items 1, 2, and 3. Also, complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

8857

Onis West Coast Auction Co  
 2555 E Camelback Rd. Ste 200  
 Phoenix, Az 85016

A. Signature

*[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

*[Signature]*

C. Date of Delivery

2/2/04

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7006 2760 0003 5112 4693

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**COMPLETE MAIL SECTION**

- Complete items 1, 2, and 3. Also, complete item 4 if Restricted Delivery is desired.  
 Print your name and address on the reverse so that we can return the card to you.  
 Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

8857

Nancy Abuzo  
 Bank of America, N.A.  
 201 W Washington St, 2nd Floor  
 Phoenix, Az 85004

A. Signature

*[Signature]*

☐ Agent

☐ Addressee

B. Received by (Printed Name)

*[Signature]*

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes  
 If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number

(Transfer from service label)

7006 2760 0003 5112 4707

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

# SEND TO COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

PC-101/Pma Castle 101, 100  
9130 E. Underhill  
Scottsdale, Az 85258

# COMPLETE THIS SECTION ONLY

- A. Signature ☐ Agent ☐ Addressee
- B. Received by (Printed Name): C. Delivery Delivery
- D. Is delivery address different from item 1? ☐ Yes ☐ No  
If YES, enter delivery address below: ☐ No

- 3. Service Type: ☐ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ O.D.D.
- 4. Restricted Delivery? (Extra Fee): ☐ Yes ☐ No

2. Article Number 7006 2760 0003 5112 4686  
Transfer from service label)  
PS Form 3811, February 2004 Domestic Return Receipt 162595-02-01-1540

STANDARD RECEIPT

DATE	5-30
TIME	
BY	
FOR	
AMOUNT	5.30

Quesada Construction Co.  
2555 E. Chandler Rd, Suite 100  
Phoenix, Ar 85016

STANDARD RECEIPT

DATE	5-30
TIME	
BY	
FOR	
AMOUNT	5.30

Allyson - Bank of America, N.A.  
201 W. Madison St, Suite 110  
Chicago, IL 60601

7006 2760 0003 5112 4686

STANDARD RECEIPT

DATE	5-30
TIME	
BY	
FOR	
AMOUNT	5.30

Quesada Construction Co.  
2555 E. Chandler Rd, Suite 100  
Phoenix, Ar 85016

PC WORK  
2136 west melinda lai



7006 2760 0003 5112 4686

PC-101, Pima Center 101, LLC  
9180 E. Via de Ventura  
Scottsdale, AZ 85258

PC-101  
PC-101  
PC-101  
PC-101

PC-101, Pima Center 101, LLC

PC-101, Pima Center 101, LLC

**AFFIDAVIT AND PROOF OF SERVICE  
RE: ARIZONA TWENTY DAY PRELIMINARY LIEN NOTICE**

PROGRESSIVE CONCRETE WORKS ,INC., an )  
Arizona corporation, )

Claimant, )

vs. )

OPUS WEST CONSTRUCTION )  
CORPORATION, an Arizona corporation, )

Contractor; )

PC-101, INC.; PIMA CENTER 101, LLC, an )  
Arizona limited liability company, )

Owners, )

BANK OF AMERICA, N.A., )

Lender. )  
\_\_\_\_\_ )

**AFFIDAVIT OF MICHAEL RIGGS**

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

Michael Riggs, being first duly sworn upon his oath, deposes and states:

1. That he is the President for Progressive Concrete Works, Inc (the "Company").
2. That he is authorized to make this affidavit on behalf of the Company.

3. That the Arizona Twenty Day Preliminary Lien Notice prescribed by A.R.S. § 33-992.01 attached hereto was served as required therein on February 11, 2009 with respect to the project located at Opus Pima Center I, Building E, 9180 E. Via De Ventura, Scottsdale, Arizona 85258.

4. That the mailing of the Twenty Day Preliminary Lien Notice was made by first class mail with a Certified Mail Receipt on the following persons on the above-referenced date:

**Owner:**

PC-101, Inc; Pima Center 101, LLC  
9180 E. Via de Ventura  
Scottsdale, AZ 85258

**Contractor:**

Opus West Construction Corporation  
2555 E. Camelback Road, Ste. 800  
Phoenix, AZ 85016

**Lender:**

Bank of America, N.A.  
201 W. Washington Street, 2<sup>nd</sup> Floor  
Phoenix, AZ 85004

5. True and correct copies of the Domestic Return Receipts signed by Opus West and Bank of America, and the postmarked envelope for the PC-101/Pima Center 101 mailing are attached hereto as Exhibit 1.

DATED this 8th day of June, 2009.

PROGRESSIVE CONCRETE WORKS, INC.

  
By: Michael Riggs  
Its: President

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )

The foregoing instrument was subscribed, sworn to and acknowledged before me this 8th day of June, 2009, by Michael Riggs.

Notary Public

My Commission Expires: 1/1/2012

Angela K Siltanen



**OWCC P.O. No. 30662**



**Opus West Construction Corporation**

**Camelback Esplanade  
2555 East Camelback Road, Suite 800  
Phoenix, Arizona 85016-4201**

**602-468-7000**

**Fax 602-468-7010**

Bill To

## PURCHASE ORDER

№ 30662

DATE: March 16, 2009

JOB NUMBER: 97352.25

VENDOR:

Progressive Concrete Works Inc.

2136 W. Melinda Lane

Phoenix, AZ 85007

693-582-2274

Wade Wilson

## SHIP TO:

Opus West Construction Corporation

Prime Center VCHD - Building 1

9200 E. Pinn Center Parkway

Scottsdale, AZ 85258

c/o Scott Stiles

602-763-5921

[illegible]

## IMPORTANT

1. This order NOT VALID UNLESS ACKNOWLEDGED. Please sign and return the acknowledgment copy.
2. Do not bill more than one order on each invoice.
3. THIS PURCHASE ORDER IS PLACED SUBJECT TO CONDITIONS AND TERMS, ON BOTH SIDES HEREOF. Additional costs to purchaser resulting from deviations from such conditions will be deducted from seller's invoice.
4. Order must be signed to be valid.

VENDOR:

Acknowledged By [Signature] Date 3-17-09

**OPUS WEST CONSTRUCTION CORP:**

By James G. Smith

**Authorized Signature**

White - CUSTOMER

**Yellow - ACCOUNTING**

Pink - SITE COPY

# PLEASE READ: CONDITIONS OF CONTRACT

(Ship as directed, shippers are held responsible for failure to comply)

## 1. ACCEPTANCE

This order must be accepted in writing promptly and is HEREBY EXPRESSLY LIMITED TO THE TERMS HEREIN, INCLUDING THOSE SET FORTH ON THE REVERSE SIDE, or in any document attached hereto or incorporated by reference herein. No other terms or conditions altering this order will be binding upon the Purchaser unless contained in a writing signed by an authorized agent of Purchaser, and PURCHASER HEREBY GIVES NOTICE OF OBJECTION TO ANY TERMS SET FORTH IN ANY OTHER WRITING WHICH ARE IN ADDITION TO OR DIFFERENT THAN THE TERMS SET FORTH HEREIN. Any delivery made in accordance with this order shall also constitute an acceptance hereof.

## 2. DELIVERIES

It is of the essence of this order that deliveries be made both in quantities and at times specified herein or in schedules furnished by Purchaser. Purchaser will have no liability for payment for material or items delivered to Purchaser which are in excess of quantities so specified. If Seller's deliveries fail to meet schedule, Purchaser, without limiting its other rights or remedies, may direct expedited routing and any excess costs incurred thereby shall be charged to Seller's Account. Goods which are delivered in advance of schedule may, at the Purchaser's option, either (1) be returned at Seller's round-trip expense for proper delivery, (2) have payment therefor withheld by Purchaser until the date that the goods are actually scheduled for delivery, or (3) be placed in storage for Seller's account until delivery date specified herein. Purchaser reserves the right to route at its shipments. Any deviation from a specified route which results in excess transportation charges, delays or claims, will be at the expense of Seller.

## 3. INSPECTION AND REJECTION

All materials shall be moved subject to Purchaser's rights of inspection and rejection. Defective material or material not in accordance with Purchaser's specifications will be held for Seller's inspection and at Seller's risk and if Seller so directs, will be returned to Seller at Seller's expense. No goods returned as defective shall be replaced without a new order and shipping schedule. Payment for material covered by the Purchase Order prior to inspection shall not constitute an acceptance of material. Seller shall be responsible for Patent defects or for fulfillment of its warranties. Upon failure of Seller to effect disposition of rejected goods, Buyer may dispose of the same by its option in any manner provided by law. Goods which have been delivered and rejected may be returned at Seller's round-trip expense to Seller for reimbursement, credit, replacement or correction as Purchaser may direct or may be corrected and/or replaced by Purchaser with cost of correction or replacement at the expense of the Seller. Purchaser may, at its option, inspect the goods ordered hereunder at the Seller's place of manufacture and Seller agrees to cooperate with Purchaser in connection therewith. Final inspection and acceptance or rejection of the material covered hereby shall nevertheless be at the place of destination, unless otherwise agreed.

## 4. CHANGES

Purchaser reserves the right to make changes within the scope of this Purchase Order at any time in drawings and specifications, methods or quantities of shipment, packaging, performance schedules or places of delivery. Any increase or decrease in price or time for performance resulting from such changes shall be equitably adjusted in writing, provided, however, that Seller shall not be entitled to any adjustment in compensation or required performance as a result of any such change unless claim therefor, is submitted to and approved by Purchaser in writing prior to the time Seller proceeds with the change. Upon failure to agree on any claim for equitable adjustment under this clause, Seller may thereupon pursue any remedy which it may have in a Court of competent jurisdiction, but, pending the resolution of any such action, Seller shall diligently pursue the performance of the order as changed if so requested by Purchaser.

## 5. WARRANTY

Seller, by accepting this order, expressly warrants, in addition to any other warranties implied by law, that all material and work covered by this order will conform to the specifications, drawings, samples or other descriptions furnished or specified by the Purchaser and will be of good material and workmanship free from defects and of good and merchantable quality and fit for their intended purposes, which intended purposes are known to the Seller. This warranty shall run to the Purchaser and its customers and users. Any materials not conforming to this warranty, whenever discovered may be treated by Purchaser at its option in the same fashion as rejected materials under Section 3. Seller will indemnify Purchaser against all loss or damages or liability for loss, damage or injuries, including all attorneys fees incurred by Purchaser resulting from breach of the foregoing warranty.

## 6. PACKING, ETC.

Unless otherwise specified herein, no charge shall be made to Purchaser for boxing, casing, packing, cartage, drayage or storage of the articles covered by this Purchase Order. All items covered by this Purchase Order shall be packed in accordance with good commercial practice to assure against damage from weather, storage, handling and transportation and Seller shall be liable for damage to materials or articles described herein caused by improper boxing, casing or packing.

## 7. TAXES

Except as otherwise may be noted on the face of this Purchase Order, the price of any items includes all applicable federal, state and local taxes.

## 8. PURCHASER'S PROPERTY

Unless otherwise agreed in writing, all tools, equipment, plans, blueprints or material of every description furnished to Seller by Purchaser or specifically paid for by Purchaser, shall be and remain the personal property of Purchaser and Seller shall not utilize such property in any manner except in doing Purchaser's orders. The Seller assumes all liability for loss or damage to such property while in its possession and for Seller's failure to return all such property to Buyer promptly upon request. Seller at its own expense shall maintain and re-deliver to Purchaser when required said property in the same condition as originally received by Seller, reasonable wear and tear excepted, at all Seller's expense.

## 9. MECHANICS LIENS

Seller hereby expressly waives and releases any and all rights of mechanics or other liens in connection with performance hereunder and agrees to promptly furnish or cause to be furnished to Purchaser on Purchaser's request, a waiver or waivers of such liens in form acceptable to Purchaser.

## 10. COMPLIANCE WITH LAWS

In fulfilling the terms of this Purchase Order, Seller shall comply with all applicable federal, state, and local laws, rules, regulations and ordinances and specifically agrees to comply with all applicable provisions of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of this United States Department of Labor issued under Section 14 thereof. All invoices must carry the following Certificate in order to be approved for payment.

"We hereby certify that these goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act of 1938, as amended, and of regulations and orders of the Administrator of the Wage and Hour Division issued under Section 14 thereof."

Seller, shall indemnify and hold Purchaser harmless from any liability resulting from failure of compliance as set forth in this Section 10.

## 11. EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Contract, the Seller agrees as follows:

(a) The Seller will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Seller will take affirmative action to ensure that applicants are employed, and that employees are treated during the employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Seller agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The Seller will, in all solicitations or advertisements for employees placed by or on behalf of the Seller, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Seller will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract of understanding, a notice to be provided advising the said labor union or workers' representatives of the Seller's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Seller will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Seller will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations and orders of the Secretary of Labor, or pursuant hereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Seller's noncompliance with the nondiscrimination clauses of this Contract, or with any of the said rules, regulations or orders, the contract may be cancelled, terminated or suspended in whole or in part and the Seller may be declared ineligible for further Government Contracts or Federally Assisted Construction Contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor or as otherwise provided by law.

(g) The Seller will include this Section 11, including subsections (a) hereto, in every subcontract or Purchase Order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Seller will take such action with respect to any subcontract or Purchase Order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance. Provided, however, that in the event a subcontract is involved in, or is threatened with, litigation with a subcontractor or vendor upon receipt of such direction by the administering agency, the Seller may request the United States to enter into such litigation to protect the interest of the United States.

Seller certifies that it does not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Seller certifies further that it will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. Seller agrees that a breach of this certification is a violation of the Equal Opportunity Clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated on the basis of race, color, religion or national origin because of habit, local custom or otherwise. Seller further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods). Seller will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of Equal Opportunity Clause, that Seller will retain such certifications in its files and that Seller will forward the following notice to such proposed subcontractors:

(except where the proposed subcontractors have submitted identical certifications for specific time periods). NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATION OF NONSEGREGATED FACILITIES. A Certificate of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of Equal Opportunity Clause. A certification may be submitted either for each subcontract or for all subcontracts during a period (i.e. quarterly, semiannually or annually).

If Seller has 50 or more employees and is required under Section 50-17 of Title 41 of the Code of Federal Regulations to file an employer information report (EEO-1 standard form 100) Seller hereby certifies that it has done so, or, if not, agrees that it will file such report in accordance with the applicable instructions and will continue to file such report unless or until Seller is not required by law or regulation to do so.

Seller may be required under Section 60-1.40 of Title 41 of the Code of Federal Regulations to develop a written affirmative action compliance program if Seller has 50 or more employees and the purchase amounts to \$50,000 or more. If Seller is so required, it agrees to do so no later than 120 days after the effectiveness of the first of the purchase orders and maintain such Program until such time as it no longer is required by law or regulations.

In respect to contracts in excess of \$10,000, Seller shall be bound by and agrees to the provisions of 28 U.S.C. Sec. 5012 and all regulations, rules and orders promulgated thereunder.

In respect to all purchases in excess of \$500,000, the Seller agrees to establish and conduct a program which will enable minority business enterprises as defined in 41 CFR 1-1.1302(b) to be considered fairly as subcontractors and suppliers under this contract. In this connection, the Seller shall (a) take all action as is required in 41 CFR 1-1.1302(b), and (b) further agrees to insert in any subcontract hereunder which may exceed \$500,000 provisions which shall conform substantially to the language of this clause including this paragraph (b) and to notify the contracting officer of the names of such subcontractors.

Seller shall be bound by and agrees to the provisions of Section 503 of the Rehabilitation Act of 1973, and all regulations, rules and orders promulgated thereunder.

## 12. INDEMNITY

Seller is to protect, defend, hold harmless and indemnify Purchaser from and against any and all claims, actions, liabilities, losses, costs and expenses arising out of any actual or alleged infringement of any patent, trademark, or copyright by any merchandise sold to Purchaser hereunder, or arising out of any actual or alleged death of or injury to any person, damage to any property or any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged defect in such merchandise, whether latent or patent, including actual or alleged improper construction or design of said merchandise or defects under the law or the failure of said merchandise to comply with specifications or with any express or implied warranties of Seller, or arising out of any actual or alleged violation by such merchandise, or its manufacture, possession use or sale, of any law, statute or ordinance or any governmental administrative order rule or regulation. These agreements and obligations of Seller shall not be affected or limited in any way by Purchaser's extension of express or implied warranties to Purchaser's customers or consumer, except to the extent that any such warranties of Purchaser's expressly extend beyond the scope of the Seller's warranties, express or implied, to Purchaser.

## 13. INDEMNIFICATION AND INSURANCE

If Seller's work under this Order involves operations by Seller on the premises of Purchaser or one of its customers, Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and except to the extent that any such injuries are due solely and exclusively to Purchaser's or its customers' negligence, as the case may be, shall indemnify Purchaser against all loss, including attorney's fees, which may result in any way from any act or omission of the Seller, its agents, employees or subcontractors, and Seller shall maintain such public liability, property damage and employees liability and compensation insurance as will protect Purchaser from said risks from any claims under any applicable Workers' compensation or similar acts. Seller shall provide evidence of such insurance in such form and amounts as Purchaser may require.

## 14. INSOLVENCY

Purchaser shall have the right to cancel and terminate this Contract forthwith upon the happening of any one or more of the following events: (a) Seller's insolvency or cessation of any act of bankruptcy, (b) Filing of a voluntary or involuntary Petition in Bankruptcy by or against the Seller, (c) The execution by the Seller of an assignment for the benefit of creditors, (d) Appointment of a receiver or trustee for the Seller by any Court of competent jurisdiction, or (e) If at any time in the reasonable judgment of the Purchaser, the Seller's financial condition shall be such as to endanger its performance hereunder. The acceptance of goods or performance after the occurrence of any of the above events shall not waive Purchaser's right to cancel and terminate this Order, nor shall cancellation hereunder waive the Purchaser's rights to any damages to which the Purchaser is otherwise entitled.

## 15. DEFAULT CANCELLATION

Purchaser may at its election by delivery to Seller or written notice of termination, cancel this Purchase Order or any part hereof if Seller (1) fails to perform in accordance with the performance schedule specified in this Purchase Order, or (2) fails to comply with any of the other provisions of this Purchase Order and does not cure such failure to so comply within a period of ten days after notice thereof sent to it by Seller, or such longer period as Purchaser may authorize in writing. In the event of any such failure by Seller and whether or not the Purchase Order shall be cancelled, Purchaser may purchase similar items elsewhere or secure like performance and Seller shall be liable to Purchaser for all loss and damages suffered or incurred by Purchaser and arising or resulting from such failure or failure by Seller, provided, however, that Seller shall not be so liable for failure to perform in accordance with said performance schedule when such failure is due to causes beyond the control and without the fault or negligence of Seller and Seller has exercised due diligence in promptly notifying Purchaser in writing of the existence of such causes or causes. Purchaser shall not be liable to Seller in any respect resulting from cancellation of the order covered hereby or any part thereof pursuant to the provisions of this section, except for the payment of the contract price for materials furnished prior to notice of cancellation.

## 16. CANCELLATION

Seller acknowledges that Purchaser is ordering the materials and performance covered hereby for use in a construction project for which it has contracted. Purchaser shall have the right to cancel this order in the following events: (1) That it is prevented or unreasonably delayed from performing such contract by disaster or natural disaster, strikes, or labor disputes or acts, wars or civil commotion, conditions, restrictions or regulations of governmental authorities or any similar causes beyond its control. (2) Failure or inability of the owner or other party to said construction contract to perform its agreement with Purchaser resulting in Purchaser's discontinuance of work on said construction project. (3) Cancellation of or material change to said construction contract by the owner or other party to the contract with Purchaser resulting in the reduction or elimination of Purchaser's need for Seller's performance hereunder. Upon such cancellation, Seller shall immediately discontinue production and shipment of undelivered materials. In the event of termination under this Section, Seller shall be entitled to receive payment of the contract price for materials furnished to the date of cancellation and to an equitable adjustment for actual losses properly incurred on work in process and finished work on hand, provided, however, that Seller shall not recover lost profit on materials or work not completed.

Purchaser shall have the right to cancel this order or any part thereof, if merchandise conforming to specifications shall not arrive at destination at the times and in the quantities herein set forth, or if it should be alleged that the merchandise sold to Purchaser infringes any patent, trademark or copyright or was manufactured or sold to Purchaser in violation of any statute, ordinance or administrative order, rule or regulation, or if Seller shall refuse to furnish appropriate guarantees to protect Purchaser as permitted by any law, rule or regulation.

## 17. ASSIGNMENT AND SUBCONTRACTING

Assignment of this Order or any interest therein, or any payment due to become due thereunder, without the written consent of Purchaser shall be void. Any payment to any assignee of any claim under this Purchase Order, in consequence of Purchaser's written consent, shall be subject to set off, recoupment or other reduction for any claim which Purchaser may at the time of payment have against Seller or its assignees.

## 18. REMEDIES

All remedies and damages provided herein shall be cumulative and not exclusive and are in addition to any other remedies that may be provided Purchaser by law, including, but not limited to, the right of Purchaser to set off amounts payable to Seller hereunder against any amounts otherwise owed to Purchaser by Seller.

## 19. WAIVER

No waiver by Purchaser of any breach by the Seller in the performance of the terms and conditions of the Purchase Order shall constitute a waiver of any subsequent breach. Any waiver by the Purchaser may be retracted when permitted by law.

## 20. COMPLETE AGREEMENT

The terms and conditions contained in this Order are a complete and exclusive statement of the terms of the agreement of the parties any may not be contradicted or supplemented by evidence of any prior agreement or of any contemporaneous oral agreement.

## 21. APPLICABLE LAW

The terms and conditions herein and the agreement resulting therefrom shall be governed by the laws of the State of Arizona in all respects without reference to the laws of any other jurisdiction.

## 22. TRANSPORTATION CHARGES

Transportation charges on all shipments must be fully prepaid by Seller. Where shipment is f.o.b. Seller's plant, transportation charges are to be included on invoice with freight bill attached thereto.

## 23. BILLING AND SHIPPING INSTRUCTIONS

Seller shall place this Purchase Order number on all invoices, bills of lading, memoranda and packages, and send original bills of lading, shipping, memoranda and invoices to Purchaser at the address on the reverse side of this form. Failure to do so will delay payment of invoice. All shipments must be accompanied by packing slips showing packaging slip number, contents, and weight. When invoicing, Seller shall refer to packing slip number and refer a separate invoice for each order and specify each discount.

## 24. PAYMENT AND DISCOUNT

The Seller agrees to allow the Purchaser to make payment of invoices rendered by Seller for the goods and/or services covered by this Order as follows: (a) Discount Invoices (i) received by the Purchaser first through fifth of month, payable on the fifteenth day of said month (approximate), (ii) received by Purchaser sixth through fifth of month, payable on the fifteenth of the following month (approximate), (iii) Net Invoices (i) received by Purchaser first through fifth of month, payable on the twenty-fifth (approximate), (ii) received by Purchaser sixth through fifth of month, payable on the twenty-fifth of the following month (approximate). For the purpose of calculating the payment date under this paragraph, the controlling date shall be the date the invoice is received in acceptable form by the Purchaser or the date the goods or services are received, whichever last occurs.



(Job Name) / [REDACTED]

Work #: [REDACTED]

Fax #: [REDACTED]

(Payment Terms: Standard)

## RIDER C

### (Insurance)

*PROGRESSIVE CONCRETE WORK'S INC.*

This Rider C is attached to and made a part of the Subcontract between Opus West Construction Corporation and [REDACTED] dated [REDACTED]. 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. Subcontractor's 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-subcontractors 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 USL&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 "insured 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.



(Job Name) / [REDACTED]

[REDACTED]

Work #: [REDACTED]

Fax #: [REDACTED]

(Payment Terms: Standard)

- (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, 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 Forms CG 20 10 07 04 and CG 20 37 07 04 or their equivalent and will include coverage for ongoing and completed operations.
- (e) All insurance policies required under this 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, 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.



(Job Name) / [REDACTED]  
[REDACTED] / [REDACTED]  
[REDACTED] / [REDACTED]  
[REDACTED] / [REDACTED]  
Work #: [REDACTED]  
Fax #: [REDACTED]

(Payment Terms: Standard)

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 \$10,000.00) 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

#### RIDER "D"

Subcontractor agrees to indemnify and hold harmless the Indemnified Parties but only proportionate to the degree an arbitrator or court of competent jurisdiction determines Subcontractor is negligent. Subcontractor shall not have a duty to defend however Subcontractors shall be responsible for its prorated share of defense cost.



**Invoice # 16906**  
**\$1,795**



**PROGRESSIVE  
CONCRETE  
WORKS  
INC.**

SOLD TO: OPUS  
Opus West Construction Corporation  
2555 E. Camelback Rd. #800  
Phoenix, AZ. 85016-4201

**INVOICE Nº 16906**

ATTN:

DATE: 03/20/09

CONTRACT NO.	CUST. ORDER NO.	JOB NO.	REF.
	PO #30662	8734F1	Pima Center V (III) – Building A

Additional Concrete Hardscape 100% \$ 1,795.00

Total Completed To Date 100% \$ 1,795.00

**Total Due This Invoice** \$ 1,795.00



# S CONTRACT APPLICATION FOR PAYM T

Project Name :	Pima Center V (III) - Building A	Project Number :	97352.25
Subcontractor :	Progressive Concrete Works, Inc.	Date of Application	3/20/2009
Supplier # :	1007569	Application Number :	One (1)
Address :	2136 W. Melinda Lane	Period From :	3/1/09 - 3/31/09
	Phoenix, AZ. 85027		
Phone :	623-582-2274		
Remittance Address :	OPUS West Construction Corporation		
	Attn : Accounts Payable		
	2555 East Camelback Road, Suite 800		
	Phoenix, AZ 85016		

## CONTRACT INFORMATION

ITEM	SALES TAX(\$)(if applicable)	TOTAL(\$)
ORIGINAL CONTRACT AMOUNT		\$0.00
OPUS APPROVED CHANGE ORDER THRU # 1		\$1,795.00
CONTRACT AMOUNT TO DATE TOTAL		\$1,795.00

## APPLICATION INFORMATION

A Total Completed & Stored to Date	\$ 1,795.00	
B Less Retainage 0.00%	\$ .00	
C Total Earned Less Retainage (A - B)		\$ 1,795.00
D Less Previous Billings (previous req's line C)	\$ .00	
E Current Payment Due (C - D)		\$ 1,795.00
F Balance to Finish, Plus Retainage (H - A + B)	\$ .00	
G Current Gross Amount Completed This Period	\$ 1,795.00	

SUBCONTRACTOR :

Progressive Concrete Works, Inc.

Supplier #: 1007569

BY :

*Roy Horton*

DATE :

3/20/2009

## APPLICATION BREAKDOWN

THIS SECTION MUST BE COMPLETE IN ORDER FOR THIS PAYMENT TO BE PROCESSED BY OPUS

Account Code	Description	Current Contract Amount	From Previous Application	This Period	Total Work Complete	Percent Complete	Retainage This Application	Net Payment
					I + G	A/H		G - K
97352.25-B40-03120.00-M	Additional Concrete Hardscape (PO #30662)	\$1,795.00	\$0.00	\$1,795.00	\$1,795.00	100.00%	\$0.00	\$1,795.00
	<b>TOTAL</b>	\$1,795.00	\$0.00	\$1,795.00	\$1,795.00	100.00%	\$0.00	\$1,795.00
		H	I	G	A	J	K	E

SHADED AREA FOR OPUS ACCOUNTING USE ONLY

Vendor ID	Vendor Inv. #	Date	G/L Exp

CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT  
(Pursuant to A.R.S. 33-1008)

**Project:**      **Pima Center V (III) – Building A**

**Job No:**      **97352.25**      **PCW Job #8734F1**

On receipt by the undersigned of a check from **Opus West Construction Corporation** in the sum of \$1,795.00 payable to **PROGRESSIVE CONCRETE WORKS, INC.** and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any Mechanic's Lien, any state or federal statutory bond right, any private bond right, any claim for payment and rights under any similar ordinance, rule or statute related to claim or payment rights for persons in the undersigned's position that the undersigned has on the job of **Pima Center V (III) – Building A** located at **9200 E. Pima Center Parkway; Scottsdale, Arizona** to the following extent. This release covers a progress payment for all labor, services, equipment or materials furnished to the jobsite or to **Opus West Construction Corporation** through **3/31/09** only and does not cover any retention, pending modifications and changes or items furnished after that date. Before any recipient of this document relies on it, that person should verify evidence of payment to the undersigned.

The undersigned warrants that he either has already paid or will use the monies he receives from this progress payment to promptly pay in full all of his laborers, subcontractors, material-men and suppliers for all work, materials, equipment or services provided for or to the above referenced project up to the date of this waiver.

Date: 3/20/09

PROGRESSIVE CONCRETE WORKS

By: Roy Horton

Title Project Manager

# Holden|Willits|Murphy

PLC LAWYERS

Richard B. Murphy  
Direct Phone: 602-508-6245  
Rmurphy@holdenwillits.com

Two North Central Avenue, Suite 1700  
Phoenix, Arizona 85004  
Phone: 602-508-6210 Fax: 602-508-6211

October 1, 2009

Opus West Corporation, et al.  
c/o BMC Group  
P.O. Box 3020  
Chanhassen, MN 55317-3020

Re: In re Opus West Construction Corporation, Case No. 09-34356  
(Northern District of Texas – Dallas Division)  
Subject: Proof of Claim  
Claimant: Progressive Concrete Works, Inc.

Dear Gentlemen:

This firm represents Progressive Concrete Works, Inc. ("Progressive") with respect to its claim against Debtor Opus West Construction Corporation, Inc. This correspondence and the enclosed documentation constitutes Progressive's proof of claim in the total amount of \$55,548, of which \$53,753 is secured and \$1,795 is unsecured.

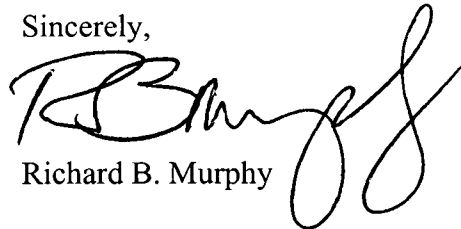
We enclose Progressive's Notice and Claim of Lien recorded June 17, 2009 in the official records of the Maricopa County Recorder at Document No. 2009-0549038. The Notice and Claim of Lien is rather self-explanatory but is summarized as follows:

- Progressive furnished labor, materials and equipment on Opus West Construction Corporation's Pima Center I – Building E project located in Scottsdale, Arizona.
- Progressive is owed the sum of \$53,753 for such labor, materials and equipment it furnished to the Project.
- As noted above, on June 17, 2009, Progressive recorded its Notice and Claim of Lien against the Project in the principal amount of \$53,753.
- Copies of the lien, legal description, Opus West/Progressive Construction Contact and Change Orders, Progressive's 20-day Preliminary Lien Notice and Proof of Service are all attached to the Lien.

- Progressive is also due \$1,795 for work performed under a purchase order (No. 30622) on Opus West Construction Corporation's Pima Center V (III) – Building "A" project.

Progressive hereby formally submits its Proof of Claim against Debtor Opus West Construction Corporation in the amount of \$55,548, plus all accrued and accruing interest, attorney's fees and lien and recording fees, all as allowed by or pursuant to applicable law.

Sincerely,

A handwritten signature in black ink, appearing to read "RBM", followed by a large, stylized flourish that extends to the right.

Richard B. Murphy

RBM/ilh  
Enclosures

cc: Michael Riggs (Progressive Concrete Works, Inc.)