

UNITED STATES BANKRUPTCY COURT

Northern District of Texas

PROOF OF CLAIM

Name of Debtor:  
Opus West Corporation, et al.

Case Number:  
09-34356-hdh-11

NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.

Name of Creditor (the person or other entity to whom the debtor owes money or property):  
Roy Lee Hardin, dba Roy Hardin Masonry

Check this box to indicate that this claim amends a previously filed claim.

Name and address where notices should be sent:  
Tom D. Jester, Jr., Atty. for Roy Lee Hardin, dba Roy Hardin Masonry  
P.O. Box 280  
Denton, TX 76202  
Telephone number:  
(940) 387-7585

Court Claim Number: \_\_\_\_\_  
(If known)

Filed on: \_\_\_\_\_

Name and address where payment should be sent (if different from above):

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.

Telephone number:

Check this box if you are the debtor or trustee in this case.

1. Amount of Claim as of Date Case Filed: \$ 8,030.00

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.

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.

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.

Specify the priority of the claim.

2. Basis for Claim: Services & Material  
(See instruction #2 on reverse side.)

Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).

3. Last four digits of any number by which creditor identifies debtor: 0592

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).

3a. Debtor may have scheduled account as: \_\_\_\_\_  
(See instruction #3a on reverse side.)

4. Secured Claim (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.

Contributions to an employee benefit plan - 11 U.S.C. §507 (a)(5).

Nature of property or right of setoff:  Real Estate  Motor Vehicle  Other

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).

Describe:  
Value of Property: \$ \_\_\_\_\_ Annual Interest Rate \_\_\_\_\_ %

Amount of arrearage and other charges as of time case filed included in secured claim,

Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).

if any: \$ \_\_\_\_\_ Basis for perfection: \_\_\_\_\_

Amount of Secured Claim: \$ 8,030.00 Amount Unsecured: \$ \_\_\_\_\_

Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(\_\_\_\_).

6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.

Amount entitled to priority:

\$ \_\_\_\_\_

7. Documents: 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 instruction 7 and 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: See Exhibits attached.

\*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.

Date:  
10/09/2009

Signature: 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.

FOR COURT USE ONLY

/s/Tom D. Jester, Jr.



# EXHIBIT A

MINOR & JESTER, P.C.

ATTORNEYS & COUNSELORS

515A SOUTH CARROLL BLVD.

P.O. BOX 280

DENTON, TEXAS 76202

E-MAIL - minor.jester@verizon.net

WEBSITE - www.lawyers.com/minor&jester

FRED H. MINOR (1888-1976)  
TOM D. JESTER JR.  
JOSEPH M. VACEK  
BRENT W. CHANDLER

PHONE 940.387.7325  
METRO 972.434.7111  
FAX 940.387.5073

May 21, 2009

CMRRR 7004 2510 0004 2915 2015

OPUS West LP, as Owner

2555 E. Camelback Rd.

Ste. 800

Phoenix, AZ 85016

CMRRR 7004 2510 0004 2915 2008

OPUS West Construction Corporation, as General Contractor

2555 E. Camelback Rd.

Ste. 800

Phoenix, AZ 85016

RE: Claims of Roy Hardin Masonry, for unpaid billings totaling \$8,030.00; Energy Crossing Spcc Office construction project located at 15021 Katy Freeway, Houston, TX 77094

Gentlemen:

Enclosed are copies of the Mechanics and Materialman's Lien filed in Harris County on behalf of Roy Hardin Masonry; for unpaid billings totaling \$8,030.00; Energy Crossing Spec Office construction project located at 15021 Katy Freeway, Houston, TX 77094.

Please contact Roy Hardin Masonry if you should have any questions or concerns regarding this lien.

Yours very truly,



Brent W. Chandler

BWC/mo  
Enclosures  
Cc: Client

CMRRR 7004 2510 0004 2915 1995

OPUS West Construction Corporation, as General Contractor

OPUS West LP, as Owner

15455 N. Dallas Pkwy, Suite 450

Addison, Texas 75001

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: OPUS West Construction  
 Street, Apt. No. or PO Box No. OPUS West LP  
 City, State, ZIP+4 Addison, TX

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: OPUS West Construction Corp  
 Street, Apt. No. or PO Box No.  
 City, State, ZIP+4 Phoenix AZ

PS Form 3800, June 2002 See Reverse for Instructions

U.S. Postal Service  
**CERTIFIED MAIL RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent To: OPUS West LP, a Partner  
 Street, Apt. No. or PO Box No.  
 City, State, ZIP+4 Phoenix AZ

PS Form 3800, June 2002 See Reverse for Instructions

7004 2510 0004 2915 1995

7004 2510 0004 2915 2008

7004 2510 0004 2915 2015

# EXHIBIT B

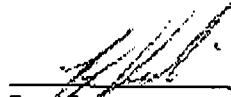
5. Claimant furnished the above-described labor and materials under a subcontract with OPUS West Construction Corporation whose last known address is 2555 E. Camelback Rd. Ste. 800, Phoenix, AZ 85016, and its Dallas Office is 15455 N. Dallas Pkwy, Suite 450, Addison, Texas 75001. | cl
6. The name and last known address of the original contractor on the above-referenced project is OPUS West Construction Corporation at 15455 N. Dallas Pkwy, Suite 450. Addison, Texas 75001.
7. The legal description of the real property improved by Claimant's above-described labor and materials, and which real property and improvements thereon are sought to be charged with Claimant's lien, is:

Legal Description: RES A BLK 1  
ENERGY CROSSING

Property Address: 15021 KATY FWY  
HOUSTON TX

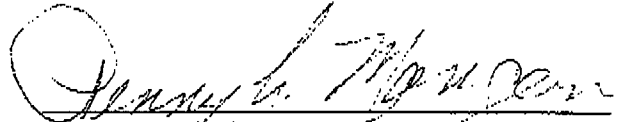
MORE PARTICULARLY DESCRIBED IN EXHIBIT "A" ATTACHED  
HERETO

8. Claimant claims a Mechanic's and Materialman's lien upon the above-described real property and improvements thereon to secure payment of its claim in the amount of \$8,030.00 in accordance with the Texas Property Code.
9. Claimant's physical address is 7472 C.R. 1126 B, Godley, Texas 76044. Claimant's mailing address is 7472 C.R. 1126 B, Godley, Texas 76044.
10. Claimant's notice of mechanic's lien was sent to the Owner identified above by United States, certified mail, return receipt requested, on the following 7004 2510 0004 2915 2077 and 7004 2510 0004 2915 2053 on May 8, 2009.
11. In compliance with the Texas Property Code, Claimant is sending one copy of this Affidavit to the above-referenced Owner, at its last known address, and also one copy to the above-referenced original contractor at its last known address. 2555 E. Camelback Rd. Ste. 800, Phoenix, AZ 85016, and its Dallas Office is 15455 N. Dallas Pkwy, Suite 450. Addison, Texas 75001.

  
\_\_\_\_\_  
Roy Lee Hardin

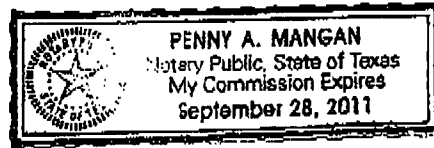
RECEIVED - 1736

SUBSCRIBED AND SWORN TO BEFORE ME by the said Roy Lee Hardin, this 8th  
Day of May, 2009, to certify which witness my hand and seal of office.

  
Notary Public for the State of Texas


PREPARED IN THE OFFICE OF:

MINOR & JESTER  
515 South Carroll Blvd., Suite A  
P.O. Box 280  
Denton, TX 76202  
Tel: (940) 387-7585  
Fax: (940) 387-5093



✓✓  
AFTER RECORDING RETURN TO:

MINOR & JESTER  
515 South Carroll Blvd., Suite A  
P.O. Box 280  
Denton, TX 76202  
Tel: (940) 387-7585  
Fax: (940) 387-5093

  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2009 MAY 14 PM 12:00

FILED

2009 MAY 14 PM 12:00



10/22/2005 15:24 211077002 TX\_BRO300021 PAGE 03

**EXHIBIT "A"**

16.898 ACRES  
736,065 SQUARE FEET  
DAVID MIDDLETON SURVEY  
ABSTRACT 535  
HARRIS COUNTY, TEXAS

FIELD NOTE DESCRIPTION of a 16.898 acre (736,065 square feet) tract of land located in the David Middleton Survey, Abstract Number 535, Harris County, Texas, said 16.898 acre tract of land being all of a called 12.000 acre tract described deed to KT6-A Corporation, recorded under Harris County Clerk's File Number (H.C.C.F. No.) J299042, and all of a called 4.982 acre tract described in deed to KT6-B in H.C.C.F. No. J299040, said 16.898 acre tract being more particularly described by metes and bounds as follows (The bearings described herein are based on the western line of said called 4.982 acre tract):

BEGINNING at a 1/2-inch iron rod found at the southern corner of said called 12.000 acre tract, being the southwest corner of a called 3.98212 acre tract described in deed to M. Hassan Kazemini and Mohammad Ali Mollaei Mehrjerdi, recorded under H.C.C.F. No. J515174, and being on a northwest line of Barker Reservoir;

THENCE, North 47° 32' 58" West, along the common line of said called 12.000 acre tract and said Barker Reservoir, and the common line of aforesaid called 4.982 acre tract and said Barker Reservoir, a distance of 831.58 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking an interior corner of the herein described tract, from which a U.S. Corps of Engineers disk set in concrete bears South 33° 30' 46" East, a distance of 1.82 feet;

THENCE, South 88° 27' 00" West, continuing along the common line of said 4.982 acre tract and said Barker Reservoir, a distance of 421.62 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking the southwest corner of the herein described tract;

THENCE, North 01° 23' 09" West, at a distance of 60.00 feet passing a 5/8-inch iron rod found marking the southeast corner of a called 1.4014 acre tract described in deed to Nasy Lodging Group, Inc., recorded under H.C.C.F. No. U600708, and continuing for a total distance of 490.91 feet to an "X" set in concrete and marking the northwest corner of the herein described tract and the northeast corner of said called 1.4014 acre tract, and being in the southerly Right-of-Way line of Interstate Highway 10 (width varies);

WEST BOUNDARY

D

NP DE 4-7-8-1719

THENCE, South 87° 21' 06" East, along said southerly Right-of-Way line of Interstate Highway 10, a distance of 132.02 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set;

THENCE, continuing along said southerly Right-of-Way line in a easterly direction, along the arc of a curve to the left, having a radius of 5,769.58 feet, a central angle of 04° 00'00" (chord bears, South 89° 21' 06"

East, 402.71 feet) and an arc distance of 402.79 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set marking an interior corner of the herein described tract;

THENCE, North 88° 38' 54" East, continuing along said southerly Right-of-Way line, a distance of 486.55 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking the most northerly northeast corner of the herein described tract, being the northwest corner of a called 2.5391 acre tract described in deed to Motel 6-Site No. 1139 recorded under Volume 350, Page 30 of the Harris County Map Records;

THENCE, South 01° 26' 15" East, continuing along the common line of said called 12.000 acre tract and said called 2.5391 acre tract, a distance of 535.31 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking an interior corner of the herein described tract, being the southwest corner of said called 2.5391 acre tract;

THENCE, North 88° 35' 13" East, along the common line of said called 12.000 acre tract and said called 2.5391 acre tract, a distance of 414.78 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking the most easterly northeast corner of the herein described tract, being on the westerly Right-of-Way line of State Highway 6 (width varies);

THENCE, South 02° 25' 44" East, along said westerly Right-of-Way line, a distance of 89.65 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking an exterior corner of the herein described tract;

THENCE, North 47° 01' 45" West, continuing along said westerly Right-of-Way line, a distance of 14.27 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking an interior corner of the herein described tract;

THENCE, South 88° 36' 30" West, continuing along said westerly Right-of-way line, a distance of 55.30 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking an interior corner of the herein described tract;

THENCE, South 47° 40' 00" East, continuing along said westerly Right-of-Way line, a distance of 59.14 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking an exterior corner of the herein described tract;

THENCE, South 02° 40' 00" East, continuing along said westerly Right-of-Way line, a distance of 88.14 feet, to a 5/8-inch iron rod with an orange plastic cap stamped "West Belt Surveying Inc" set and marking an exterior corner of the herein described tract, being the northeast corner of aforesaid 3.98212 acre tract;

THENCE, South 88° 41' 35" West, along the common line of aforesaid 12.000 acre tract and said 3.98212 acre tract, a distance of 395.65 feet, to a 1/2-inch iron rod found and marking an interior corner of the herein described tract, being the northwest corner of said 3.98212 acre tract;

THENCE, South 01° 26' 53" East, continuing along said common line, a distance of 298.55 feet, to the POINT OF BEGINNING and containing a computed area of 16.898 acres (736,065 square feet) of land as depicted on the ALTA\ACSM Land Title Survey dated: May 3, 2007, prepared by West Belt Surveying, Inc., Project No. S546-0064A.

HP 06-9-74-1728

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW.  
THE STATE OF TEXAS  
COUNTY OF HARRIS  
I hereby certify that this instrument was FILED in the number Sequence on the date and at time specified herein by me and was duly RECORDED in the Official Public Records of Real Property of Harris County, Texas on

MAY 14 2009



*Brendy L. Hubbard*

COUNTY CLERK  
HARRIS COUNTY, TEXAS

8,030

MS  
A



Energy Crossing Spec Office / 10592.00  
03130/04380 /Masonry  
Roy Hardin Masonry / Roy Hardin  
Contact Phone # ~~713-281-2200~~  
Contact Fax # ~~713-281-2200~~  
Payment Terms: Standard

Opus West-Dallas

**SUBCONTRACT AGREEMENT (Labor and Materials)**

This Subcontract Agreement ("Subcontract") is made as of this 17th day of July, 2008, by and between OPUS West Construction Corporation ("Contractor"), with its office located at 15455 N. Dallas Parkway, Suite 450, Addison, TX 75001, and Roy Hardin Masonry ("Subcontractor") with its office located at 7472 CR 1126B, Godley, TX 76044.

Contractor and Subcontractor agree as follows:

- Subcontract Documents.** The term "Subcontract Documents" is defined in Paragraph 1 of the attached Rider "A".
- Project.** Contractor is providing design and construction-related services to Owner (defined below) in connection with the project generally described as Energy Crossing Spec Office ("Project"), located at 15021 Katy Freeway, Houston, TX 77094 ("Project Site"), and consisting of the total work provided by Contractor under contract documents between Owner and Contractor.
- Owner.** The Owner of the Project is Opus West Corporation ("Owner").
- Architect/Engineer.** The architect and engineers ("Architect/Engineer") of record for the Project are:  
 Architect of Record: Opus Architects & Engineers  
 Civil Engineer: Kimley-Horn and Associates, Inc.  
 Geotechnical Engineer: Terrason Consultants Inc  
 Structural Engineer of Record: Opus Architects & Engineers
- Scope of Work.** Subcontractor's scope of work for the Project is described in the attached Rider "A" and is defined therein as the Work.
- Schedule.** Time is of the essence. Accordingly, all time limits and requirements for completion set forth in the Subcontract Documents, including any intermediate milestones (collectively referred to in the Subcontract Documents as the "Schedule"), are of the essence of this Subcontract. Subcontractor shall begin its Work as soon as the Project is ready for the Work or within three (3) calendar days after being notified orally or in writing to proceed by Contractor. The Substantial Completion of the Work (defined in the General Conditions of Subcontract) shall be achieved as required by job progress, so as to allow the entire Project to be substantially completed on or before 01/09/2009. Subcontractor shall conform to all progress and schedule requirements of the Subcontract Documents and as directed by Contractor's project manager, and must achieve the milestones (if any) as described in the attached Rider "A".
- Subcontract Sum.** Contractor shall pay Subcontractor the sum of \$ 25,700.00 ("Subcontract Sum"). The Subcontract Sum includes freight and delivery charges and all applicable state and local taxes including sales and use tax, and if required by law, these taxes must be separately stated on any payment applications, invoices or similar documents delivered by Subcontractor to Contractor for completion of the Work in accordance with the terms and conditions of the Subcontract Documents. A breakdown of the components of the Subcontract Sum is set forth in the attached Rider "A".
- Riders.** The following Riders are attached to and made a part of this Subcontract:  
 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: Monek' Smith  
Monek' Smith

**CONTRACTOR**  
Opus West Construction Corporation  
By: [Signature]  
Paul Legatke  
(Print Name)  
Vice President of Construction, Texas  
(Title)  
8/12/08  
(Date)

**SUBCONTRACTOR**  
Roy Hardin Masonry  
By: [Signature]  
Roy Hardin  
(Print Name)  
SECRETARY  
(Title)  
7-27-08  
(Date)

## RIDER A

This Rider A is attached to and made a part of the Subcontract between OPUS West Construction Corporation and Roy Hardin Masonry dated 07/17/2008. 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 Masonry work ("Work") for the Project, including but not limited to, strict compliance with the following documents (the "Subcontract Documents"):

#### Drawings and Specifications

Description	Number	Last Revision
Striping	02580	05/27/2007
CMU	04200	05/27/2008
Misc. Metals - Site & Garage	05501	05/27/2008
Specialties	10000	05/29/2008
Blinds	12200	05/27/2008
Project Schedule	9.3	05/27/2008
Cover Sheet	CS	04/24/2008
Cover Sheet - Garage	CS	03/26/2008
Title Sheet	T1	04/24/2008
Title Sheet - Garage	T1	03/26/2008
Sections - Garage	A4.2	04/18/2008
Sections - Garage	A4.3	03/26/2008
Details - Garage	A5.1	05/02/2008
Paving, Striping and Signage Plan	C9.0	05/15/2008
Paving, Striping and Signage Details	C9.1	04/15/2008
Plan Details	A5.2	04/24/2008
Architectural Site Plan	A1.1	04/24/2008
Floor Plan - Level 1	A2.1	04/24/2008
Floor Plan - Level 2	A2.2	04/24/2008
Floor Plan - Level 3-5	A2.3	04/24/2008
Floor Plan - Level 6	A2.4	04/24/2008
Exterior Elevations - North & South	A3.1	04/24/2008
Exterior Elevations - East & West	A3.2	04/24/2008
Enlarged Elevations	A3.3	04/24/2008
Sections	A4.1	04/24/2008
Energy Crossing	A5.5	04/24/2008
Partition Types and Details	A6.1	04/24/2008
Interior Elevations	A7.1	04/24/2008
Reflected Ceiling Plan	A9.1	04/24/2008
Code Data, Life Safety Plans	AC1.1	04/24/2008
Fire Assembly Details	AC1.2	04/24/2008

Fire Assembly Details	AC1.3	04/24/2008
Floor Plan Level 1 - Garage	A2.1	04/18/2008
Floor Plan - Level 2 - Garage	A2.2	03/26/2008
Floor Plan - Level 3 - Garage	A2.3	03/26/2008
Floor Plan - Level 4 - Garage	A2.4	03/26/2008
Enlarged Floor Plans - Garage	A2.5	03/26/2008
Garage - Exterior Elevations	A3-1	03/26/2008
Garage - Enlarged Elevations	A3-2	03/26/2008
Code Data, Life Safety Plans - Garage	AC1.1	03/26/2008
Outline Specifications	7.6	12/11/2007
Site Details	A1.2	05/16/2008
Enlarged Floor Plans	A2.7	04/24/2008
Monument Sign Drawings	M1	12/20/2007
Monument Sign Drawings	M2	12/20/2007
Monument Sign Drawings	M3	12/20/2007
Monument Sign Drawings	M4	12/20/2007
Walkway Design Drawings	W1	12/21/2007
Walkway Design Drawings	W2	12/21/2007
Walkway Design Drawings	W3	12/21/2007
Walkway Design Drawings	W4	12/21/2007
Walkway Design Drawings	W5	12/21/2007
Walkway Design Drawings	W6	12/21/2007
Walkway Design Drawings	W7	12/21/2007

**Field Bulletins**

Date	Number	Name
N/A		

**Supplemental Design Documents**

Description	Date
Project Spec Books dated 07/15/2008	07/15/2008
General Conditions of Subcontract - Division 1 - June 2005	06/01/2005
Sample Subcontract	06/01/2005
Supplemental General Conditions of Subcontract - Modified for Texas - March 9, 2006	03/09/2006
Special Conditions of Subcontract	06/01/2005
Exhibit A - Lien Waivers (Pages I - IV)	06/01/2005
Exhibit B - Sample Subcontractor Application for Payment (Pages I - II)	06/01/2005
Exhibit C - Certificate of Insurinee Sample	06/01/2005
Subcontractor Prequalification Statement	02/21/2006
Instructions to Bidders	05/29/2008
Bid Forms (Pavement Markings, CMU, Misc. Metals - Site & Garage, Specialties, Blinds)	05/29/2008
Project Schedule	05/27/2008
Drawing Log	05/29/2008

**Other Documents**

N/A

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

**Modifications and Clarifications**

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

- 1 Provide lien releases from all second and third tier subcontractors/suppliers.
- 2 Includes CMU walls at garage (wall, elevator & electrical rooms), setting door frames, rebar, and any additional materials needed for a complete installation.
- 3 Includes dumpster enclosure walls with precast concrete cap.

This Subcontract excludes the following:

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

N/A

**Schedule Notes**

All work to be performed in accordance with latest project schedule as distributed in weekly subcontractor meetings.

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

**Subcontract Recap**

Sub-Job Number	Sub-Job Name	Name	Rate
10592.10	Energy Crossing Phase 1 - Site/Shell/GCs	Masonry Trash Enclosures	\$9,900.00
10592.11	Energy Crossing Phase 1 - Garage	Exterior 8" CMU	\$15,800.00
<b>Total</b>			<b>\$ 25,700.00</b>

**Subcontract Sum Breakdown**

Name	Account Code	Amount
Masonry Trash Encl - Subcontract	10592.10-B40-04880.00-S	\$9,900.00
Exterior 8" CMU - Subcontract	10592.11-E10-04830.00-S	\$15,800.00
<b>Total</b>		<b>\$25,700.00</b>

**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**

N/A

**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 by 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 Roy Hardin Masonry dated 07/17/2008. All capitalized terms used but not defined in this Rider B have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable. To the extent of any conflict between the provisions of this Rider B and the provisions of any other Subcontract Document, this Rider B shall be controlling.

Section 1. Licensing.

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

Section 2. Change Orders.

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

Section 3. Pay When and If Paid.

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

Section 4. Title to Work.

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

Section 5. Indemnification.

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

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

Section 6. Payments Withheld.

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



Section 7. Payment Bond.

Any payment bonds required by Contractor under this Subcontract will fully comply with all requirements of Section 53.201 et. seq. of the Texas Property Code.

Section 8. Limitations.

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

**END OF RIDER B**

## RIDER C

This Rider C is attached to and made a part of the Subcontract between OPUS West Construction Corporation, and Roy Hardin Masonry dated 07/17/2008. 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.
- (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 formwork and debris removal, and such other matters as are insured against in the form of the policy maintained by Contractor. Unless specifically provided in writing, such insurance will not include coverage for any property, structure(s) and contents (whether real or personal) owned by the Owner or third parties existing as of commencement of Contractor's work or otherwise. Contractor will carry earthquake and flood insurance if Contractor deems it appropriate.

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

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

- 2.2 Any insured loss is to be adjusted by Owner and Contractor and made payable to Contractor, as trustee, or to Owner and Contractor, as joint trustees for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage or loss payable clause.
- 2.3 Subcontractor hereby releases and agrees to defend and indemnify Contractor and Owner from all claims for loss or damage to or loss of use of Subcontractor's property in or about the Project Site and shall purchase such insurance in respect thereto as Subcontractor deems appropriate. Subcontractor shall require a similar release and indemnity by Sub-subcontractors.

END OF RIDER C