

<b>UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS</b>		<b>PROOF OF CLAIM</b>
Name of Debtor: (Check Only One): <input type="checkbox"/> Opus West Corporation <input checked="" type="checkbox"/> Opus West Construction Corporation <input type="checkbox"/> O.W. Commercial, Inc. <input type="checkbox"/> Opus West LP <input type="checkbox"/> Opus West Partners, Inc.		Case Number:  <div style="font-size: 24pt; text-align: center;">09-34360</div>
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. All other requests 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): <div style="font-size: 18pt;">Geocon West, Inc. (formerly Geocon Inland Empire, Inc.)</div>		<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: <i>Misha Kamadev, Esq.</i> <div style="font-size: 18pt; text-align: center;"><i>6960 Flanders Drive</i></div> <div style="font-size: 18pt; text-align: center;"><i>San Diego, CA 92121</i></div> Telephone number: (959) 559-6900 Email Address: <i>ramadev@geoconinc.com</i>		<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.
Name and address where payment should be sent (if different from above):  <div style="text-align: right; font-size: 24pt; font-weight: bold;">RECEIVED</div> <div style="text-align: right; font-size: 24pt; font-weight: bold;">NOV 06 2009</div> <div style="text-align: right; font-size: 24pt; font-weight: bold;">BMC GROUP</div> Telephone number:		
1. Amount of Claim as of Date Case Filed: <u>\$ 1,472.00</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.		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.  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)( ).  Amount entitled to priority: <div style="text-align: center;">\$</div>
2. Basis for Claim: <u>services performed</u> (See instruction #2 on reverse side.)		
3. Last four digits of any number by which creditor identifies debtor: <u>3201</u> 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. Nature of property or right of setoff: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other Value of Property: \$ _____ Annual Interest Rate _____ % Amount of arrearage and other charges as of time case filed included in secured claim, if any: \$ _____ Basis for perfection: _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim. 7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or 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: _____		
Date: <div style="font-size: 24pt;">11/05/09</div>	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.  <div style="font-size: 24pt; text-align: center;"><i>John Hoobs</i>, John Hoobs, Vice president</div>	

FOR COURT USE ONLY



00388

**UNITED STATES BANKRUPTCY COURT Northern District of Texas**

**Notice of**

**Chapter 11 Bankruptcy Cases, Meeting of Creditors, & Deadlines**

Chapter 11 bankruptcy cases concerning the debtors listed below were filed on 7/6/09.

You may be a creditor of the debtors. This notice lists important deadlines. You may want to consult an attorney to protect your rights. All documents filed in these cases may be inspected at the bankruptcy clerk's office at the address listed below.

NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

**See Reverse Side for Important Explanations**

Debtors (names used by the debtors in the last 8 years, including married, maiden, trade, and address):

**Opus West Corporation**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 86-0811533  
Case No.: 09-34356

~~Opus West Construction Corporation~~  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 41-0855917  
Case No.: 09-34360

**O. W. Commercial, Inc.**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 20-2789134  
Case No.: 09-34363

**Opus West LP**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 81-0545535  
Case No.: 09-34334

**Opus West Partners, Inc.**  
2555 E Camelback Road, Suite 800  
Phoenix, Arizona 85016  
Tax ID No.: 81-0545537  
Case No.: 09-34373

**Attorneys for Opus West Corporation, Opus West Construction Corporation, and O. W. Commercial, Inc. (names and addresses):**  
Clifton R. Jessup, Jr.  
Greenberg Traurig, LLP  
2200 Ross Avenue, Suite 5200  
Dallas, TX 75201  
Telephone: 214-665-3600  
Facsimile: 214-665-5938

**Attorneys for Opus West Partners, Inc., and Opus West LP: (names and addresses):**  
Peter Franklin  
Doug Skierski  
Franklin Skierski Lovall Hayward, LLP  
10501 N. Central Expressway, Suite 106  
Dallas, TX 75231  
Telephone: 214-702-4061  
Facsimile: 214-723-5345

**Meeting of Creditors**

Date: August 12, 2009

Time: 2:00 P.M.

Location: Office of the U.S. Trustee, 1100 Commerce St., Room 976, Dallas, TX 75242

**Deadline to File a Proof of Claim**

Proof of claim must be received by the BMC Group, Debtors' Claims Agent, by the following deadline:

For all creditors (except a governmental unit) ~~11/9/09~~

For a governmental unit: \_\_\_\_\_

**Claims Should be Sent to:**

**IF BY MAIL:**

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

~~**IF BY HAND OR OVERNIGHT COURIER:**~~

Opus West Corporation, et al  
c/o BMC Group  
18750 Lake Drive East  
Chanhassen, MN 55317

**Creditors with a Foreign Address:**

A Creditor to whom this notice is sent at a foreign address should read the information under "claims" on the reverse side.

**Deadline to File a Complaint to Determine Dischargeability of Certain Debts:**

**Creditors May Not Take Certain Actions:**

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtors and the debtors' property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtors can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

**Address of the Bankruptcy Clerk's Office:**

1100 Commerce Street, Room 1254  
Dallas, Texas 75242  
Telephone number: 214-753-2000

**For the Court:**

Clerk of the Bankruptcy Court:  
Tawana C. Marshall

Hours Open: Monday – Friday 8:30 AM – 4:30 PM

OPUS CONSTRUCTION, INC.  
2050 MAIN STREET, SUITE 800  
IRVINE, CA 92614

Date: 11/5/2009

Attention: Mr. Jason Bent

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**Statement**

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Project: T24073201 -- OPUS WEST ONTARIO

Invoice Group: \*\*REGULAR TASKS

**Invoice**

<u>Number</u>	<u>Date</u>	<u>Amount</u>	<u>Balance</u>
701499	2/13/2007	1,472.00	1,472.00
			1,472.00

Total Due: Project: T24073201 -- OPUS WEST ONTARIO

Last Payment Date: 4/5/2007                      Amount: -1,472.00

**Aged Balances**

<u>1 - 30</u>	<u>31 - 60</u>	<u>61 - 90</u>	<u>Over 90</u>	<u>Unallocated</u>
0.00	0.00	0.00	1,472.00	0.00

Report Total

	<u>1,472.00</u>
Overdue Finance Charge	0.00
Report Total Due:	<u>1,472.00</u>

**Aged Balances**

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31 - 60	31 - 60	61 - 90	Over 90	Unallocated
0.00	0.00	0.00	1,472.00	0.00



T 2407-32-01

10441.00/0201000  
Ontario, CA  
Standard Insurance  
NO RETENTION  
Geocon Inland Empire, Inc.  
Robert Russell

2020 Main Street, Suite 800  
Irvine CA 92614-8201  
949-622-1950 Fax 949-622-1148  
CA Lic. #509591

November 1, 2006

Via Fax and Mail (951) 346-4258

Mr. Robert Russell  
Geocon Inland Empire, Inc.  
41571 Coming Place, Suite 101  
Murrieta, CA 92562-7065

Re: Geotechnical Consulting Services  
Ontario Business Park

Dear Bob:

Under the terms of the Master Agreement for Geotechnical Consulting Services dated March 25, 2004, and as required in Article 1 of said agreement, this letter shall serve as written acceptance of your proposal, dated September 14, 2006, specifically to provide Geotechnical Investigation Services as defined in said proposal for the amount not-to-exceed \$19,500.00 (Attachment "A"). Please note the following clarifications considered to be a part of this authorization:

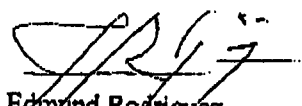
1. Work shall commence October 27, 2006, with the final written report and design recommendations provided to Opus not later than November 17, 2006.
2. Consultant shall name the property Owner, Cornell Kasbergen and Annette Therese Kasbergen, George Kasbergen and Kara Kasbergen, as trustees of the Kasbergen Living Trust, Jack Kasbergen and Ellie Mae Kasbergen, as additional insured on Opus' certificate required under the terms of the above-noted Master Agreement. Please note that Opus West Construction Corporation ("OWCC") and Opus West Corporation ("OWC") must be also listed as additional insureds. OWCC must be in receipt of your firm's insurance certificate prior to any site work. Please forward at least a facsimile of the certificate by close of business October 25, 2006.
3. If any terms or conditions identified in the referenced Consultant proposal letter are in conflict with the above-noted Master Agreement, the terms and conditions of the Master Agreement shall prevail.
4. It is our understanding that the Consultant has designated Robert Russell, GE as its authorized representative for the Project.
5. The project conceptual drawings and other pertinent documents are considered a part of this acceptance and are identified in Attachment "B" attached hereto.

10441.00/0201000  
Ontario, CA  
Standard Insurance  
NO RETENTION  
Geocon Inland Empire, Inc.  
Robert Russell

- 6. Consultant's invoices shall be submitted monthly utilizing AIA Form G-703. Consultant shall reference Opus 10441.00 and cost code 0201000 on all invoices and correspondence.
- 7. This acceptance letter confirms authorization for the Consultant's Right of Entry at the Project Site in accordance with the terms of the Agreement.

We look forward to the opportunity to work with your firm again on this project.

Sincerely,  
**Opus West Construction Corporation**



Edmund Rodriguez  
Project Manager

wb/

Attachments

cc: Jeff Dickerson  
Victoria Rockel, OWC-AZ  
File

G:\Master Forms\Design\Consultant Agreements\Geotechnical\Geotech Authorization letter-master.doc

10441.00/0201000  
Ontario, CA  
Standard Insurance  
NO RETENTION  
Geocon Inland Empire, Inc.  
Robert Russell

**Attachment "A"**

**Hourly Rate Schedule  
for Geotechnical Services**

<u>SCOPE ITEM</u>	<u>RATE</u>
<b>Professional Staff</b>	
Principal Engineer .....	\$ 195.00/hr.
Associate Engineer.....	\$ 175.00/hr.
Staff Engineer.....	\$ 95.00/hr.
Designer .....	\$ .00/hr.
CADD Technicians .....	\$ 0.00/hr.
Draftsperson/Technical Typist .....	\$ 0.00/hr.
Coordinate Meeting Attendance.....	\$ 00.00
Reimbursable Expenses (reproduction, printing, messenger, delivery and travel expenses outside <insert area> metropolitan area).....	\$/Cost

**End Hourly Rate Schedule**

10441.00/0201000  
Ontario, CA  
Standard Insurance  
NO RETENTION  
Geocon Inland Empire, Inc.  
Robert Russell

**Attachment "B"**  
**Project Document List**

**Concept or Schematic Design Drawings:**

<u>Sheet No.</u>	<u>Description</u>	<u>Prepared by</u>	<u>Date</u>
	Preliminary Site Plan	Lee & Sakahara Architects	10/27/06

**Specification/Data:**

1. Project Title Report as prepared by Chicago Title Company dated September 11, 2006.

**Project Schedule:**

1. Completion Dates:
  - Drilling completed by November 3, 2006.
  - Draft Report completed by November 10, 2006.
  - Final Report completed by November 17, 2006.



**MASTER AGREEMENT  
FOR GEOTECHNICAL CONSULTING SERVICES**

**THIS MASTER AGREEMENT FOR GEOTECHNICAL CONSULTING SERVICES ("Agreement")** is made and entered into effective as of the 25th day of March, 2004, by and between Geocon Inland Empire, Inc., a California Corporation ("**Consultant**"), and Opus West Construction Corporation, a Minnesota Corporation ("**Opus**").

**RECITALS:**

**A.** Opus desires to engage Consultant to provide professional geotechnical consulting services, and Consultant desires to provide such services for Opus.

**B.** The parties intend that the terms and conditions set forth in this Agreement will govern all services performed by Consultant for Opus during the term hereof, unless otherwise expressly agreed in writing.

**AGREEMENT**

Consultant and Opus agree as follows:

1. **Scope of Services.** Upon request by Opus from time-to-time, Consultant will provide to Opus a written proposal ("**Proposal**") for such geotechnical consulting services as may be requested by Opus (a "**Project**") relating to certain real property to be identified by Opus in the request for Proposal (the "**Project Site**"). Each Proposal will recite (a) a detailed description of the scope of services which comprise the Project to be performed by Consultant, (b) the location of the Project Site, (c) Consultant's designated project manager, (d) the schedule for performance, including the expected start and completion dates, (e) the cost estimate for the Project, or a price quote on a fixed-price or "not-to-exceed" basis if so requested by Opus, (f) Consultant's fee and rate schedule applicable to the services requested ("**Rate Schedule**") and (g) other relevant information about the Project and Project Site. Unless expressly excluded or limited in the Proposal, Consultant will furnish all labor, materials, tools, supplies, equipment, licenses, permits, transportation, supervision, technical, professional, and other services necessary for and incident to the performance of a Project. If Opus elects to accept the Proposal, Opus will deliver a written acceptance to Consultant. Consultant is not authorized to begin a Project for Opus unless and until such written acceptance has been received by Consultant. The Proposal and written acceptance are collectively referred to in this Agreement as the "**Project Documents**."

2. **Term.** The term of this Agreement will be for one year from the date of this Agreement. This Agreement will then automatically renew for successive terms of one year each unless either party gives written notice of non-renewal at least 60 days before the end of the then-current term.

3. **Payment.** Consultant will be paid for its services on the basis established in the Project Documents for each Project. Unless otherwise directed by Opus in the Project Documents, Consultant will submit its invoices monthly to the Opus office that accepts the Proposal, and payment will be due to Consultant on the 30<sup>th</sup> day of the month for invoices received by Opus by the 25<sup>th</sup> day of the previous month. All invoices shall be based on a schedule of values as agreed upon between Opus and Consultant and shall be invoiced on a percent complete basis similar to the structure of AIA form G-703.

4. **Disclosures and Discovery of Project Site Conditions.** Opus, to the extent of the actual knowledge of the Opus project manager for a particular Project, will upon the written request of Consultant provide to Consultant information in Opus' possession pertaining to a Project Site which Opus reasonably believes is relevant to Consultant's performance of a Project. Prior to commencing a Project, Consultant will review all such information and will inform Opus in writing if any additional data or information is required by Consultant to perform the Project. Consultant will promptly notify Opus in writing of any unusual conditions discovered by Consultant at or pertaining to a Project Site differing materially from those disclosed to or reasonably anticipated by Consultant. If conditions materially differ, causing an increase in Consultant's costs or time required to perform a Project, the parties will execute a Project Amendment (defined in Section 22 below) modifying the scope of services and equitably adjusting Consultant's compensation and time for performance of the Project. Consultant will use due care to avoid any known, assumed or suspected structures, tanks, utilities, pipelines, or other surface or subsurface hazards at the Project Site and will comply with all statutory, regulatory and customary requirements and procedures to identify and locate such matters prior to beginning any work which might cause any damage or disturbance thereto.

5. **Termination or Suspension of Project.** Opus, in its sole discretion, may terminate or suspend a Project, with or without cause, by giving Consultant written notice. Upon receipt of a notice of termination or suspension of a Project, Consultant will immediately stop or suspend its work and the work of all its subcontractors and suppliers. If Opus terminates a Project (a) Consultant will promptly deliver to Opus all records, reports, investigations, analyses, data, documents or work product, whether complete or in progress, prepared in connection with the terminated Project through the date Consultant receives the notice and (b) Consultant will be paid on an equitable basis for all acceptable authorized work performed for a Project up to the date of termination, based upon time and material costs accruing prior to termination, in accordance with the Rate Schedule.

6. **Delays and Force Majeure.** Time is of the essence of each party's performance of its obligations under this Agreement. However, neither Opus nor Consultant will be liable for delays in or failures to perform services caused by circumstances beyond their individual control, including, but not limited to, acts of God, acts or omissions of federal, state and local governmental authorities and regulatory agencies, strikes, riots, civil unrest, war and lockouts. If a Project is delayed due to the

foregoing force majeure causes or the actions or inactions of Opus, including a suspension under Section 5 above, Consultant's Project schedule, as set forth in the Project Documents, will be equitably adjusted. If the delay or suspension of a Project continues for a period exceeding 90 days, Consultant may terminate the Project after the 90<sup>th</sup> day by delivering written notice of the termination to Opus. Consultant's right to terminate a suspended or delayed Project expires if Opus does not receive the written notice of termination prior to Consultant receiving written notice from Opus to recommence the Project.

7. **Right of Entry and Project Site Responsibility.** Opus will grant, or cause to be granted to Consultant, access to any Project Site owned by Opus or its affiliates. Opus will secure permission necessary to allow Consultant access to a Project Site not owned by Opus or its affiliates. Consultant will be responsible for all of its activities at a Project Site, including the safety of its employees. Consultant agrees to abide by reasonable conditions or restrictions of Opus and a Project Site owner, if such are communicated to Consultant. Consultant will use reasonable efforts to minimize any disturbance of a Project Site and any persons present or activities taking place thereon. Unless otherwise agreed in the Project Documents, Consultant will promptly, upon completion of a Project, fill in all excavations and otherwise restore and repair any damage it causes to the Project Site in an environmentally sound and responsible manner and in accordance with all good geotechnical industry standards and practices.

8. **Assignments and Subcontractors.** Consultant will not assign or otherwise transfer any rights, duties or obligations under this Agreement without the prior written consent of Opus. Nevertheless, Consultant may subcontract for those services which Consultant ordinarily or customarily obtains from others or which are necessary to prevent or minimize danger to persons, property or equipment. Consultant may charge Opus its cost of any subcontracted services, plus Consultant's mark up (which may not exceed 10% of the subcontractor's charge for services), and such charge will be included with Consultant's invoice for services.

9. **Standard of Care.** Consultant will perform each Project with the degree of care and skill exercised by qualified professional geotechnical consulting firms performing similar services. All services will be performed in an environmentally sound and responsible manner and in accordance with all good geotechnical industry standards and practices. If the failure to meet these standards results in deficiencies in Consultant's services, Consultant will correct or revise, at its own cost and expense, those services. If the failure to meet these standards results in any liability or damage being incurred by Opus, Consultant will be liable to Opus for all such liability and damages in accordance with this Agreement. Regardless of where a Project is performed, Consultant, its affiliates, and representatives will at all times comply with any and all applicable federal, state, and local government laws, ordinances, statutes, standards, rules, regulations, and guidelines, including but not limited to those relating to working hours, working conditions, safety and health, and environment.

10. **Insurance.** In addition to any other insurance which Consultant may choose to carry, Consultant, at its sole expense, will maintain in effect during the term of this Agreement the following minimum insurance coverages ("**Consultant's Insurance**") with insurers licensed to do business in each state where the Project is performed:

- (a) Commercial general liability insurance in the amount of \$1,000,000 each occurrence and \$1,000,000 general aggregate for bodily injury or death and property damage, including loss of use thereof, with products/completed operations coverage for a period of three (3) years after completion of all Projects under this Agreement, written on a 1986 or newer ISO occurrence form.
- (b) Business automobile liability insurance covering all owned, non-owned and hired vehicles in the amount of \$1,000,000 combined single limit of liability each accident.
- (c) Umbrella liability insurance in the amount of \$4,000,000 per occurrence and \$4,000,000 combined single limit and aggregate liability limit for claims under the policies described in subsections 10(a) and (b), above.
- (d) Workers' compensation insurance as required by law and employer liability insurance in the amount of \$1,000,000 each accident.
- (e) Errors and omissions insurance in the amount of \$2,000,000 each claim and \$5,000,000 in the aggregate with respect to claims made against Consultant for negligent errors or omissions of Consultant in the performance of a Project under this Agreement. The retroactive date of such coverage will be prior to the start of any Project hereunder and the policy will be maintained during this Agreement and for three (3) years following the completion of all Projects under this Agreement.
- (f) Contractor's pollution liability insurance, including contingent liability, covering liability arising out of the work performed by Consultant or on Consultant's behalf (including the transportation of hazardous materials), in the amount of \$1,000,000 each claim and \$2,000,000 general aggregate. If Consultant will not be self-performing any environmental remediation or subterranean work, or otherwise handling hazardous materials, Consultant need only maintain "contingent" insurance coverage meeting the foregoing requirements of this Subsection 10(f).

Consultant's Insurance may carry commercially reasonable deductibles, but may not have self-insured retentions exceeding (i) \$25,000 for the insurance coverages in Subsection 10(a) and (ii) \$100,000 for the insurance coverages in Subsection 10(e) and (f). Consultant will pay any and all deductibles or self-insured retentions under Consultant's Insurance. Consultant's Insurance will be primary to, and non-contributing

with, any insurance maintained by Opus or any additional insured required to be named under this Agreement. Consultant's Insurance may not be cancelled or allowed to expire without 30 days prior written notice to Opus. Opus and the owner of the Project Site will be named as additional insureds on the insurance coverages described in Subsections 10(a), (c) and (f) above, with respect to all matters arising out of this Agreement. Within seven days after the date of this Agreement, but prior to commencing the first Project, Consultant will deliver to Opus a certificate or certificates of insurance evidencing Consultant's Insurance is in effect. Consultant will renew or update such certificates prior to expiration of, and promptly following any modifications to, Consultant's Insurance and otherwise upon Opus' reasonable request.

11. **Indemnity.** To the fullest extent permitted by law, Consultant agrees to defend, indemnify, and hold harmless Opus and Opus' members, partners, shareholders, directors, officers, agents, affiliates and employees ("**Indemnitees**") from and against any and all actual or alleged loss, cost, damage, suits, claims, demands, expense and liability (including reasonable attorneys' fees, expert fees, and other costs of defense and/or settlement), including, but not limited to, claims for bodily injury (including death), property damage and economic loss, and fines or penalties ("**Claims**") arising out of the performance of services by Consultant and allegedly caused, in whole or in part, by the negligent acts, errors or omissions, or willful misconduct of Consultant, its officers, employees, agents or subcontractors, or any person or organization for whom Consultant is legally liable, subject to the limitations in Section 12 below. Consultant's obligations to defend a Claim under this Section 11 shall be triggered by the mere assertion of a Claim that is, either on its face or by reasonable inference from the allegations, within the scope of the foregoing provision. It is not a condition to Consultant's obligation to defend that it first be determined (judicially or otherwise) that the Claim is in fact within the scope of such provision, that the Claim has merit, or that Consultant was negligent or otherwise at fault in any respect. Notwithstanding the foregoing, Consultant is not obligated to indemnify and hold harmless an Indemnitee 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 negligence or willful misconduct of such Indemnitee; provided, however, that this exception does not limit or relieve Consultant of its obligation to defend the Indemnitees prior to such final resolution of the Claim.

12. **Limitation of Liability.** In recognition of the relative risks and benefits of each Project to both Opus and Consultant, the risks have been allocated such that Opus agrees, to the fullest extent permitted by law, to limit the liability of Consultant to Opus for any and all Claims arising from a Project which are insured under insurance policies carried by Consultant so that the liability of Consultant to Opus for any such Claim will not exceed the amount of the respective limits, (including umbrella coverages) of Consultant's Insurance required to be carried by Consultant in Section 10 with respect to the Claim in question. The foregoing limitation of liability does not (a) include or limit any costs of defense for which Consultant or its insurer(s) may be liable under this Agreement or (b) limit the obligations of any insurer under any policy of insurance naming Opus as an additional insured. Opus may accept, or agree in the Project

Documents to accept, insurance coverage from Consultant with limits less than those set forth in Section 10, but for purposes of the foregoing limitation of liability the dollar amounts set forth in Section 10 will in all events be controlling, and shall not be reduced by any agreement by Opus to accept, or any acceptance by Opus of, any lesser amount of insurance coverage. This Section 12 does not limit liability to available insurance coverage, but instead only limits the total monetary amount Opus may recover from all available sources for any Claim to which the limitation applies.

13. **Ownership of Documents.** Consultant grants and conveys to Opus all right, title and interest, including copyrights, in all documents and materials prepared by Consultant for a Project, including all records, reports, investigations, analyses, data, documents or work product, whether complete or in progress. All such documents and materials will be delivered to Opus upon request.

14. **Samples.** Consultant will retain all soil, rock, water, and other samples removed from a Project Site as it deems necessary for the Project, but is not required to retain any such samples longer than 45 days after the delivery to Opus of the final written report that includes the data obtained from those samples unless other arrangements are mutually agreed upon in writing. At any time after such 45 days, Consultant will notify Opus in writing if Consultant desires to dispose of any or all such samples. If Opus delivers a written objection to such disposal within 10 days of receiving Consultant's notice, Consultant will retain such samples as Opus may request provided that Opus will thereafter pay the reasonable cost of their continued storage. If Opus does not so object, Consultant may dispose of such samples in accordance with applicable law.

15. **Right of Inspection and Audit.** Except as provided in Section 14, Consultant will retain all records, data, and other relevant information relating to a Project for a period of three years after the date Consultant completes services for a Project, unless law requires a longer period of time. Consultant will provide Opus access, at reasonable times and upon reasonable notice during the term of this Agreement and for three years after Project completion, to all pertinent Consultant records, data and other relevant information arising out of a Project.

16. **Independent Contractor Status.** Consultant acknowledges that it is an independent contractor and not an employee of Opus, and Opus will not exercise any control or direction over the means and manner of performance of a Project by Consultant. This Agreement does not create, between Opus and Consultant, the relationship of partners, joint venturers, or agent and principal.

17. **Confidentiality.** Consultant will hold confidential all business or technical information obtained from Opus under this Agreement and all work product generated with respect to any Project for a period of three years after obtaining such information or providing such services, and during that period will not disclose such information without Opus' prior written consent except to the extent required for (a) performance of services under this Agreement, (b) compliance with professional standards of conduct

for preservation of the public safety, health and welfare, (c) compliance with any court order or other governmental directive or (d) protection of the disclosing party against claims or liabilities arising from performance of services under this Agreement. Consultant's confidentiality obligations hereunder will not apply to information in the public domain or information lawfully acquired from others on a non-confidential basis. If Consultant is requested or ordered to disclose any business or technical information obtained from Opus or work product generated for a Project, Consultant will give prompt written notice of such request and in the absence of a written waiver or other written decision by Opus, Consultant will diligently seek appropriate confidentiality protection, including a protective order if necessary.

**18. Dispute Resolution.** (a) If Opus and Consultant are unable to reach a settlement of any dispute arising out of a Project under this Agreement involving an amount of less than \$100,000, then such dispute will be settled by binding arbitration by an arbitrator to be mutually agreed upon by the parties, and will (except as modified by this Section 18) proceed in accordance with the Construction Industry Rules of the American Arbitration Association (the "Rules") utilizing the "fast track" procedures thereunder. If the parties cannot agree on an arbitrator, then each party will select a person who qualifies under the Rules to serve as an arbitrator in the dispute (and who has no material financial or business interest in common with either of the parties), and those two persons will mutually select a similarly qualified third person who will serve as the sole arbitrator. The parties' agreement to have the Rules govern the arbitration and the qualifications of the arbitrator does not obligate the parties to use the American Arbitration Association to arbitrate the dispute. With respect to each issue in dispute, each party must submit a written statement to the arbitrator specifying the substantive determination or relief such party is seeking on that issue in the arbitration. The arbitrator will only be empowered to order the determination or relief so specified by one of the parties with respect to each issue in dispute. The arbitrator may so order in favor of one party on some issues and for another party on other issues, but each issue must be decided in accordance with either the position advocated by Opus or the position advocated by Consultant with respect to that issue. Any decision rendered by the arbitrator on an issue that is not in accordance with the position advocated either by Opus or Consultant on that issue will be beyond the scope of authority granted to the arbitrator, and, consequently, will not be binding on either party as to that issue (but such decision will be binding as to all other issues which are decided in accordance with the position advocated either by Opus or Consultant). Except as stated in the previous sentence, all decisions made by the arbitrator will be conclusively binding upon all parties hereto and judgment may be rendered thereon.

(b) If Opus and Consultant are unable to reach a settlement of any dispute arising out of a Project under this Agreement involving an amount of \$100,000 or more, then Opus and Consultant may, but are not required to, agree that the dispute be submitted to nonbinding mediation.

(c) Notwithstanding the foregoing, the provisions of this Section 18 will not apply and the parties will not be required to arbitrate a dispute if (a) either party is bankrupt,

insolvent or under any other legal restriction or disability which would preclude such party from being bound by or able to perform the arbitrator's decision; or (b) either party becomes a party to any action or proceeding with a third party that deals with a matter related to or arising out of the performance of services under this Agreement and it is necessary or appropriate to join the other party (to this Agreement) in that action or proceeding. Further, the provisions of this Section 18 do not preclude a party from filing a concurrent judicial action if such filing is necessary to (i) prevent the expiration of any statute of limitation applicable to the matters in dispute or (ii) obtain injunctive relief.

(d) The prevailing party with respect to each issue in any arbitration or litigation arising from or related to this Agreement will be entitled to recovery of all reasonable costs incurred, including fees and costs of the arbitration and the arbitrator, court costs, attorney fees, and other related expenses related to that issue; provided that if the parties cannot agree on an arbitrator and the arbitrator is appointed by two other qualified persons as provided above, each party will separately pay the cost of the person it selected to appoint such arbitrator.

19. **Notices.** All notices, demands and requests which may be or are required to be given, demanded or requested by either party to the other will be in writing. All notices, demands and requests will be sent by United States registered or certified mail, postage prepaid or by an independent overnight courier service, addressed as follows:

**If to Consultant:**

**Geocon Inland Empire, Inc.**  
6970 Flanders Drive  
San Diego, CA 9212  
Attn: Mike Chapin

**If to Opus:**

[Contact person named in the Proposal]  
Opus West Construction Corporation  
2020 Main Street, Suite 800  
Irvine CA 92614

**With a copy to:**

Jeff Dickerson  
Opus West Construction Corporation  
2020 Main Street, Suite 800  
Irvine CA 92614

Opus West Corporation  
Attn: Legal Department  
2415 East Camelback Road, Suite 800  
Phoenix AZ 85016-4201

or at such other place as the parties may designate by written notice. Notices, demands and requests which are served upon Consultant by Opus, or upon Opus by Consultant, as provided in this Section will be deemed to be sufficiently served or given



for all purposes hereunder at the time such notice, demand or request is mailed or delivered to a courier.

20. **Integration.** This Agreement and the Project Documents (including any Project Amendment) for a Project constitute the final and complete understanding of Consultant and Opus with respect to that Project. This Agreement and the Project Documents for a Project supersede all prior or contemporaneous communications, whether oral or written, concerning that Project. The terms of this Agreement control the relationship between Opus and Consultant, and replace and supersede any terms of the Proposal that do not describe the scope, timing or performance of, or payment for, the Project. Further, this Agreement will take precedence over any conflicting terms, conditions or provisions contained in any Project Document, in any invoice, or in any other communication between the parties except for a written amendment to this Agreement which is expressly labeled as such as provided in Section 22. The express terms of any written acceptance by Opus will likewise take precedence over any conflicting terms of a Proposal.

21. **Severability.** The provisions of this Agreement will be deemed severable, and the invalidity or unenforceability of any provision will not affect the validity and enforceability of the other provisions hereof. If any provision of this Agreement is unenforceable for any reason whatsoever, such provision will be appropriately limited and given effect to the extent that it may be enforceable.

22. **Amendments; No Waiver.** This Agreement may not be amended, changed or modified except by a written amendment executed by the parties hereto and expressly labeled as an amendment to this Agreement. Without limiting the foregoing, this Agreement may not be modified or amended in any manner by any Project Documents. Project Documents may only be changed, amended, modified, supplemented or supplanted by a further written document executed by both Opus and Consultant (a "**Project Amendment**"). No waiver of any provision of this Agreement will be valid unless in writing signed by the party charged.

23. **Survival and Successors.** The obligations and agreements of Opus and Consultant will bind their respective successors and assigns and will survive the expiration or other termination of this Agreement for a period of ten years from the date of termination.

24. **Governing Law.** With respect to a Project, this Agreement will be performed and construed under the laws of the State in which the Project Site is located, without regard to that State's conflict of law provisions.

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This Agreement is executed and delivered by duly authorized representatives of Opus and Consultant.

Geocon Inland Empire, Inc.

By Michael S. Chapin  
Name Michael S. Chapin  
Title President

Opus West Construction Corporation

By Jeff Dickerson  
Name Jeff Dickerson  
Title Vice President of Construction

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