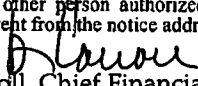



<b>UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF TEXAS</b>		<b>PROOF OF CLAIM</b>
<b>Name of Debtor: (Check Only One):</b> <input type="checkbox"/> Opus West Corporation <input checked="" type="checkbox"/> Opus West Construction Corporation <input type="checkbox"/> O.W. Commercial, Inc. <input type="checkbox"/> Opus West LP <input type="checkbox"/> Opus West Partners, Inc.		<b>Case Number:</b> 09-34356
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.		
<b>Name of Creditor (the person or other entity to whom the debtor owes money or property):</b> Midstate Mechanical, Inc. 1850 E. Riverview Drive Phoenix, Arizona 85034		<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim.  <b>Court Claim Number:</b> <i>(If known)</i>  <b>Filed on:</b>
<b>RECEIVED</b>  <b>NOV 09 2009</b>		
<b>Name and address where notices should be sent:</b> Midstate Mechanical, Inc. 1850 E. Riverview Drive Phoenix, Arizona 85034 Telephone number: 602-470-1920 Email Address: kcarroll@midstatemechanical.com		<b>BMC GROUP</b>
<b>Name and address where payment should be sent (if different from above):</b>  <b>Telephone number:</b>		<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> \$63,851.01, plus interest, attorney's fees and costs 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).</b> 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)( ).  <b>Amount entitled to priority:</b>  \$
<b>2. Basis for Claim:</b> Breach of contract/non-payment (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 (See instruction #4 on reverse side.)</b> 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 type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Equipment <input type="checkbox"/> Other <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, if any:</b> \$ _____ <b>Basis for perfection:</b> _____ <b>Amount Unsecured:</b> \$ _____		
<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 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.)  <b>DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.</b>  If the documents are not available, please explain: _____		
<b>Date:</b>  11/06/2009	<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.   Kevin Carroll, Chief Financial Officer, Midstate Mechanical, Inc.	<b>FOR COURT USE ONLY</b>   OPUS WEST 00433

Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.  
 Modified B10 (CGC) (12/08)

**EXHIBIT "1"**



07-244 FILE COPY  
Fully Executed Contract

AVE  
CAZ

SEP 25 2007

Pima Center I - Building E / 10510.00  
15500 / Design-Build HVAC  
Midstate Mechanical, Inc. / Marco Sordian  
Contact Phone # 602-470-1920  
Contact Fax # 402-438-2340  
Payment Terms: Standard

**SUBCONTRACT AGREEMENT (Labor and Materials)**

This Subcontract Agreement ("Subcontract") is made as of this 27th day of July, 2007, by and between OPUS West Construction Corporation ("Contractor"), with its office located at 2555 East Camelback Road - Suite 800, Phoenix, AZ 85016, and Midstate Mechanical, Inc. ("Subcontractor") with its office located at 3618 E. LaSalle Street, Phoenix, AZ 85040.

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 Pima Center I - Building E ("Project"), located at 90th Street and Via de Ventura, Scottsdale, 85258 ("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 PC-101, Inc. ("Owner").
- 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  
 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 08/29/2008. Subcontractor shall conform to all progress and schedule requirements of the Subcontract Documents and as directed by Contractor's project manager, and must achieve the milestones (if any) as described in the attached Rider "A".
- Subcontract Sum.** Contractor shall pay Subcontractor the sum of \$ 512,452.00 ("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 Vincent Genetti 07SEP07

**CONTRACTOR**  
OPUS West Construction Corporation

By: James Godwin  
James Godwin  
(Print Name)  
Senior Director of Construction  
(Title)  
9-28-07  
(Date)

**SUBCONTRACTOR**  
Midstate Mechanical, Inc.

By: Dave Jones  
Dave Jones  
(Print Name)  
President  
(Title)  
09/19/07  
(Date)

# Fully Executed Contract

AVG

Pima Center I - Building E # 10510.00

Design-Build HVAC

## RIDER A

This Rider A is attached to and made a part of the Subcontract between OPUS West Construction Corporation and Midstate Mechanical, Inc. dated 07/27/2007. All capitalized terms used, but not defined in this Rider "A" have the meaning ascribed to them in the Subcontract.

### 1. 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 Design-Build HVAC 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
Pima I Building E Outline Specs		01/21/2007
General Conditions of Subcontract	General Conditions of Subcontract	06/01/2005
Special Conditions of Subcontract	Special Conditions of Subcontract	05/02/2007
Supplemental General Conditions	Supplemental General Conditions	06/01/2005
Preliminary Site Plan and Building Layout	N/A	05/17/2007
Pima Center I - Building E Division 15 - Mechanical	Division 15	07/03/2007
Pima Center I - Building E Division 16 - Electrical	Division 16	07/03/2007

#### Field Bulletins

Date	Number	Name
		N/A

#### Supplemental Design Documents

Description	Date
Report on Geotechnical Investigation on Pima Center I, submitted by Speedie and Associates, Project Number 04163SA	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:

- 1.0 Subcontractor must have written approval from Contractor to proceed with procurement and construction activities.
- 2.0 Subcontractor shall endorse its Commercial General Liability and Umbrella/Excess Liability policies to add Opus West Construction Corporation, Opus West Corporation, and PC 101, Inc. as "additional insureds."

This Subcontract excludes the following:

- 1.0 Gross receipts tax
- 2.0 Performance or payment bond
- 3.0 General building permit
- 4.0 Development fees

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

N/A

#### Schedule Notes

1. In accordance with attached Opus Pima Center I - E Development Schedule dated May 8, 2007.
2. In accordance with mutually agreed requirements as described in periodic project schedules and Superintendent's two and three week schedules.

# Fully Executed Contract

AVC

## 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	Design Engineering Fees	\$26,975.00
10510.00	Pima Center I - Building E	Split System for First Floor	\$113,506.00
10510.00	Pima Center I - Building E	DX/electric cooled rooftop air handling unit system for 2nd floor	\$120,348.00
10510.00	Pima Center I - Building E	Piping	\$47,218.00
10510.00	Pima Center I - Building E	Ductwork	\$52,244.00
10510.00	Pima Center I - Building E	Exhaust/ventilation	\$11,386.00
10510.00	Pima Center I - Building E	EMS System	\$65,239.00
10510.00	Pima Center I - Building E	ERV Units	\$39,940.00
10510.00	Pima Center I - Building E	Post Bid Adjustment: Add Rubber Isolation Pads at Mechanical Units	\$12,311.00
10510.00	Pima Center I - Building E	Post Bid Adjustment: Furnish and Install Duct Detectors for all HVAC units operational in the Shell Building; Stockpile all Duct Detectors for HVAC units to be installed with the Tenant Improvement phase.	\$5,375.00
10510.00	Pima Center I - Building E	Post Bid Adjustment: Condensate Piping System as defined in Specification Section 15	\$17,910.00
<b>Total</b>			<b>\$ 512,452.00</b>

### Subcontract Sum Breakdown

Name	Account Code	Amount
HVAC Systems - Subcontract	10510.00-J20-15500.00-S	\$512,452.00
<b>Total</b>		<b>\$512,452.00</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 08/28/2009:

### Unit Price List

Name	Rate	Quantity UOM
01. Furnish and install one (1) 8" neck 24" x 24" supply air diffuser with balancing damper and 6' of flexible ductwork.	\$144.10	Each
02. Furnish and install one (1) 4' long 2-slot linear supply diffuser with balancing damper and 6' of flexible ductwork.	\$165.90	Each
03. Furnish and install one (1) 24" x 24" aluminum return air grille.	\$79.00	Each
04. Furnish and install one (1) 24" x 24" x 4' long lined transfer duct.	\$209.60	Each
05. Furnish and install one (1) 24" x 24" fire damper and access panels for penetration of rated partitions.	\$880.00	Each
06. Furnish and install one (1) 300 CFM roof-mounted exhaust fan and ductwork to exhaust two (2) toilet rooms.	\$2,708.00	Each
07. Furnish and install one (1) 5 KW electric cabinet unit heater (electrical connection by others).	\$980.00	Each
08. Furnish and install one (1) 2 KW electric baseboard unit heater (electrical connection by others).	\$660.00	Each
09. Relocate one (1) supply air diffuser.	\$70.00	Each
10. Relocate one (1) return air grille.	\$63.00	Each
11. Relocate one (1) thermostat/sensor.	\$450.00	Each
12. Labor Rate - Apprentice	\$39.31	Hour
13. Labor Rate - Foreman	\$53.36	Hour
14. Labor Rate - Journeyman	\$59.23	Hour
15. Engineering services for tenant improvements.	\$0.31	Sq Foot

# Fully Executed Contract

AVG

## 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

Line Number	Name	Amount
1	Cancellation of procurement and construction of HVAC systems.	\$(485,477.00)
2	Install all 1st floor HVAC units stockpiled in Shell Building Construction.	\$ 20,652.00
3	Install Duct Detectors for all HVAC units in Future Tenant space.	\$ 5,375.00
4	Furnish and install a complete condensate piping system for all HVAC units stockpiled in Shell Building Construction; Condensate system to connect to stub-in provided with Shell Building.	\$ 18,344.00

### Alternates Notes

Alternate #1: The alternate price shall be in effect until Contractor provides written authorization to Subcontractor to proceed with procurement and construction activities.

Alternate #2, #3, #4: The alternate prices shall be in effect for one (1) year from substantial completion of the Project.

**END OF RIDER A**

# Fully Executed Contract

AVG

Pima Center I - Building E / 10510.00

Design-Build HVAC

## RIDER B

This Rider B is attached to and made a part of the Subcontract between OPUS West Construction Corporation and Midstate Mechanical, Inc. dated 07/27/2007. 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.

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.

# Finally Executed Contract

(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**



# Fully Executed Contract

AVG

Pima Center Building Ex. 10S10.00

Design-Build HVAC

## RIDER C

This Rider C is attached to and made a part of the Subcontract between OPUS West Construction Corporation, and Midstate Mechanical, Inc. dated 07/27/2007. All capitalized terms used but not defined in this Rider "C" have the meaning ascribed to them in the Subcontract or General Conditions of Subcontract, as applicable.

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

- | (a) Workers' Compensation  | Statutory Limits  |
|--|---|
| Employer's Liability, including "Stop Gap" coverage and USL&H if applicable  | \$1,000,000 each accident<br>\$1,000,000 disease-policy limit<br>\$1,000,000 disease-each employee  |
| Commercial General Liability<br>(Electrical, HVAC, Plumbing, Fire Protection Sprinkler, Steel Erection, Elevator, Excavating, Roofing, Foundation and Curtain Wall Subcontractors) | \$5,000,000 each occurrence<br>\$5,000,000 products/completed operations aggregate<br>\$5,000,000 general aggregate (minimum \$2,000,000 per project) |
| Commercial General Liability<br>(All Other Subcontractors)   | \$2,000,000 each occurrence<br>\$2,000,000 products/completed operations aggregate<br>\$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<br>\$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 Fully Executed Contract

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**

**EXHIBIT "2"**

**Pima Center 1 Building E**  
 Opus West Construction  
 Job #10510  
 Midstate Mechanical, Inc.  
 Job #07-844

Contract Amount \$512,452.00  
 Change Order #1 \$0.00 \$512,452.00  
 Change Order #2 \$5,795.00 \$518,247.00  
 Change Order #3 \$5,594.00 \$523,841.00  
 Total \$11,389.00  
 Total Contract Amount \$523,841.00

Invoice #	Date	Gross Amount	Retention Amount	Net Amount	Balance Due	Amount Paid	Check #	Date Paid
SD0011709	09/30/07	\$26,975.00	\$2,697.50	\$24,277.50	\$0.00	\$24,277.50	123458	11/02/07
SD0014180	04/30/08	\$8,420.50	\$842.05	\$7,578.45	\$0.00	\$7,578.45	104872	06/11/08
SD0014910	06/30/08	\$34,246.00	\$3,424.60	\$30,821.40	\$0.00	\$30,821.40	107902	08/27/08
SD0016053	09/30/08	\$270,464.55	\$27,046.46	\$243,418.09	\$0.00	\$243,418.09	112429	11/07/08
SD0016442	10/31/08	\$84,837.85	\$8,483.79	\$76,354.06	\$0.00	\$76,354.06	113917	12/04/08
SD0016818	11/30/08	\$67,709.70	\$6,770.97	\$60,938.73	\$0.00	\$60,938.73	115499	01/05/09
SD0017164	12/31/08	\$6,426.20	\$642.62	\$5,783.58	\$0.00	\$5,783.58	116535	02/23/09
SD0017807	01/31/09	\$12,020.20	\$1,202.02	\$10,818.18	\$0.00	\$10,818.18	2123	05/09/09
SD0017962	02/28/09	\$12,741.00	\$1,274.10	\$11,466.90	\$11,466.90			
SD0018321	03/31/09	\$0.00	(\$52,384.11)	\$52,384.11	\$52,384.11			

Totals \$523,841.00

\$0.00

\$63,851.01 Balance

**Midstate Mechanical, Inc.**  
**Aged A/R - Detail by Days Past Due**  
 Period: 11-09 As of 11-5-09

Type	Ref Nbr	Terms	Project ID	Doc Date	Current	1 To 30	31 To 60	61 To 90	Over 90	Total	Avg Days To Pay 66
<b>Company ID: MIDSTATE</b>											
AZOPUS	Opus West Corporation			(602) 488-7000							
IN	SD0017982	Net 60	07-844	2/23/2009	\$0.00	\$0.00	\$0.00	\$0.00	\$11,486.90	\$11,486.90	
IN	SD0018321	Net 60	07-844	3/23/2009	\$0.00	\$0.00	\$0.00	\$0.00	\$52,384.11	\$52,384.11	
<b>Customer Total</b>					\$0.00	\$0.00	\$0.00	\$0.00	\$63,851.01	\$63,851.01	