

UNITED STATES BANKRUPTCY COURT

PROOF OF CLAIM

Name of Debtor: Opus West Construction Corporation

Case Number: 09-34360-11

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): RGH Geotechnical and Environmental Consultants

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

Name and address where notices should be sent: Robert L. Slaughter III, Atty. for RGH Geotechnical and Environmental Consultants 221 N. Figueroa Street, Suite 1200 Los Angeles, CA 90012 Telephone number: (213) 680-5028

Court Claim Number: (If known)

Filed on:

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

Telephone number:

FILED NOV 9 2009 LAWANA C. MARSHALL, CLERK U.S. BANKRUPTCY COURT NORTHERN DISTRICT OF TEXAS

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.

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

1. Amount of Claim as of Date Case Filed: \$ unknown

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.

RECEIVED

NOV 10 2009

BMC GROUP

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.

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

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).

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

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).

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

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

Amount entitled to priority:

\$

*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.

2. Basis for Claim: indemnity (See instruction #2 on reverse side.)

3. Last four digits of any number by which creditor identifies debtor: 275

3a. Debtor may have scheduled account as: RGH (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: Real Estate Motor Vehicle Other

Describe:

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 of Secured Claim: \$ 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: 11/06/2009

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.

Gary W. Russey, RGH Principal, 1305 N. Dutton Ave., Santa Rosa, CA 95401

FOR COURT USE ONLY





Opus West Construction Corporation
 6160 Stoneridge Mall Road, Suite 360
 Pleasanton, CA 94588
 Direct: (925) 463-9254
 Fax: (925) 460-6058

TRANSMITTAL

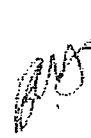
To: RGH Date: 09/25/03
1305 North Dutton Avenue Job Number: 275.00
Santa Rosa, CA 95401 Re: The Lakes
 Attention: Eric Chase Phone#: 707-544-1072
 Fax#: 707-544-1082

We are sending you: Attached Under Separate Cover Via: Fed Ex Overnight
 Shop Drawings Change Order Plans Specifications
 Submittals Samples Other:

No. of Copies	Dated	Description
1	08/25/03	Consulting Agreement for Geotechnical Consultant Services

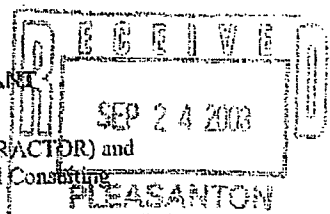
These are transmitted: Approved For Your Use
 For Approval Not Approved For Your Information
 For Review and Comment Approved As Noted As Requested
 Revise and Resubmit For Bids Due:

Notes:
 Enclosed is your fully executed consulting agreement, for your records.
 Thank you.


OPUS WEST CONSTRUCTION CORPORATION
 Beverly Heijn, Administrative Assistant, for
 Cristina Preciado
 Associate Project Manager

cc: 275.00 / GC.6

**TERMS OF AGREEMENT BETWEEN CONTRACTOR AND CONSULTANT
FOR GEOTECHNICAL CONSULTANTS, DATED AUGUST 25, 2003**



The following are Terms of Agreement Between Opus West Construction Corporation (CONTRACTOR) and RGH Geotechnical and Environmental Consultants (CONSULTANT), for providing Professional Consulting Services.

ARTICLE 1. TERMS OF PAYMENT

A. Invoicing
CONSULTANT may submit invoices to CONTRACTOR for progress payments on a periodic basis. Such invoices shall represent the value of the completed Scope-of-Services. See Attachment "A" for scope of services and compensation.

B. Progress Payments
Payments to CONSULTANT shall be made on or about the 30th day of each month for invoices received by the 25th day of the previous month for work performed and projected through the end of that previous month. Invoices received after that date will be processed as if received the next month and payment will be delayed. Insurance certificates must be received before CONSULTANT starts on the site and before payment will be issued.

Consultant invoices to be submitted per the attached Attachment "D".

C. Failure to Make Payment Provisions
If CONTRACTOR fails to make payment due to CONSULTANT for services and expenses within thirty (30) days after receipt of CONSULTANT'S invoice, the amount due CONSULTANT will be increased at the rate of Bank One Prime plus four percent (4%) from said thirtieth (30th) day, and in addition, CONSULTANT may, after giving seven (7) days notice to CONTRACTOR, suspend services under this Agreement

D. Fee Schedule Rate Adjustments
Per Attachment "B", the unit costs or hourly rates mentioned in the Agreement are to be valid six (6) months from the date of execution of the Agreement. CONSULTANT reserves the prerogative to review unit costs and adjust CONSULTANT'S compensation rate, taking into consideration changes in price indexes and pay scales applicable to the period when services are, in fact, being rendered.

E. Compensation Adjustment
If there are protracted delays for reasons beyond CONSULTANT'S control, within the customary period of time after six (6) months, CONSULTANT'S compensation shall be adjusted, taking into consideration changes in price indexes and pay scales applicable to the period when services are, in fact, being rendered.

F. Payment Upon Project Suspension
In the event of all or any portion of work prepared or partially prepared by CONSULTANT is suspended, canceled or abandoned, CONTRACTOR shall pay CONSULTANT for completed work on the basis of percentage of work complete, plus compensation for any extra work at rates set forth on the attached Hourly Rate Schedule.

ARTICLE 2. OBLIGATIONS OF CONSULTANT

A. Performance
The Standard of Care applicable to CONSULTANT'S service will be the degree of skill and care normally exercised by professionals of the consulting industry as observed by professional consultants performing similar services under like conditions.

B. Insurance
CONSULTANT will maintain throughout this Agreement the following insurance coverage if reasonably available at commercially affordable rates, and shall promptly notify in writing CONTRACTOR 30 days prior to any policy cancellation or termination:

1. General Liability Insurance
With limits of not less than \$2,000,000, combines single limit per occurrence.
2. Comprehensive Business Automobile Insurance
In an amount not less than \$1,000,000, combines single limit per occurrence.
3. Professional Liability Insurance --
With a limit not less than \$500,000 per occurrence, with an annual aggregate of no less than \$1,000,000.
4. See Attachment "C" for additional insurance requirements.

C. Liability
CONSULTANT agrees that its services will be performed, within the limits prescribed by CONTRACTOR, with the degree of skill and care normally exercised by professionals of the Consulting Industry as observed by professional consultants performing similar services under like conditions.

CONTRACTOR agrees to limit CONSULTANTS and its agents, employees, representatives and subconsultants liability to OWNER and all contractors and subcontractors on the Project arising from negligent acts, errors or omissions, such that the total aggregate liability to all those named shall not exceed \$1,000,000 or CONSULTANT'S total fee for services, whichever is greater.

D. Safety
CONSULTANT is responsible for the safety on-site of its own employees and subconsultants. Neither the professional activities of CONSULTANT'S employees nor of its subconsultants shall be construed to imply CONSULTANT has responsibility for any activities on-site performed by personnel other than CONSULTANT'S employees or subconsultants.

ARTICLE 3. OWNERS OBLIGATION

A. Information and Review
CONTRACTOR shall provide all criteria and full information as to CONTRACTOR'S requirements for the Project; designate a person to act with authority on CONTRACTOR'S behalf in respect to all aspects of the project, and respond promptly to CONSULTANT'S submissions; and give prompt written

notice to CONSULTANT whenever CONTRACTOR observes or otherwise becomes aware of any condition which may affect CONSULTANT'S performance of services.

B. Failure to Implement Recommendations

CONSULTANT will not be held liable for problems that may occur if CONSULTANT'S recommendations are not implemented. Accordingly, CONTRACTOR waives any claim against and agrees to defend and hold CONSULTANT harmless from any claim or liability for injury or loss that results from failure to implement CONSULTANT'S recommendation or from CONSULTANT recommendations in a manner that is not in strict accordance with them. CONTRACTOR also agrees to compensate CONSULTANT for any time spent and expenses incurred by CONSULTANT in defense of any such claim, with such compensation to be based upon CONSULTANT'S prevailing fee schedule and expense reimbursement policy.

C. Prompt Payment

CONTRACTOR shall promptly pay for all services as duly executed via this Agreement

D. Furnished Data

CONTRACTOR shall furnish to CONSULTANT geotechnical information and recommendations; environmental assessments and impact statements; property legal descriptions and recent title report identifying any encumbrances; and zoning and deed restrictions via appropriate licensed professionals as required; all of which CONSULTANT may rely upon in performing services hereunder.

E. Access Approval

Obtain approval for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to provide the services authorized via this Agreement.

F. Spectal Additional Services Provision

Provide any additional services via qualified personnel which may be required for the successful completion of this Project, which is not within CONSULTANT'S Scope-of-Services, including but not limited to, legal, accounting, independent, cost estimating and insurance consulting services.

ARTICLE 4. MISCELLANEOUS PROVISIONS

A. Controlling Law

This Agreement is to be governed by the law of the place of the project.

B. Dispute Resolution

CONTRACTOR and CONSULTANT agree that they shall attempt to settle any claim or controversy arising out of this Agreement through consultation and negotiation in the spirit of mutual friendship and cooperation. If any such attempt should fail, then the dispute shall first be submitted to a mutually acceptable neutral advisor for initial fact finding and mediation. Neither party shall unreasonably withhold acceptance of such an advisor, and selection of such advisor shall be made within 45 days after written

notice by one of the parties for such fact finding and mediation. The cost of such fact finding and mediation, and of any other subsequent alternative dispute resolution agreed upon by the parties, shall be shared equally by CONTRACTOR and CONSULTANT. Any dispute which the parties cannot so resolve between themselves in good faith within six months of the date of the initial demand by either party for such fact finding shall be finally determined by a court within the State of California.

C. Ownership of Instruments of Service

All reports, plans, specification, field data and notes an other documents, including all documents on electronic media, prepared by CONSULTANT are instruments of service and shall remain the property of CONSULTANTS.

D. Delays in Work

CONSULTANT is not responsible for delays caused by factors beyond CONSULTANT'S reasonable control. Including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of any governmental or other regulatory agency to act in a timely manner, failure of CONTRACTOR to furnish timely information or approve or disapprove of CONSULTANT'S services or work product promptly, or delays caused by faulty performance by CONTRACTOR or by contractors of any level. When such delays beyond CONSULTANT'S reasonable control occur, CONTRACTOR agrees CONSULTANT is not responsible for damages, nor shall CONSULTANT be deemed to be in default of this Agreement.

E. Termination

OWNER may terminate the Agreement at any time upon giving CONSULTANT five (5) working days prior written notice. CONSULTANT may terminate this Agreement upon giving CONTRACTOR thirty (30) calendar days prior written notice for any of the following reasons:

1. Breach by CONTRACTOR of a material term of this Agreement including but not limited to Payment Terms.
2. Transfer of ownership of the project by CONTRACTOR to any other persons or entities not a party to this Agreement without the prior written consent of CONSULTANT.
3. Material changes in the conditions under which this Agreement was entered into, coupled with the failure of the parties hereto to reach accord on the fees and changes for any Additional Services required because of such changes.
4. Loss or incapacitation of key personnel of the CONSULTANT.

CONTRACTOR shall within five (5) working days of termination pay CONSULTANT for all services rendered and all costs incurred up to the date of termination, in accordance with the compensation provisions of this contract.

Attachment "A"
Scope of Services and Compensation

1. General Description

Provide professional Geotechnical consulting services for design and construction of The Lakes at Fountain Grove Project. The Lakes is a multi family rental project to be constructed on a 11.79 acre parcel of undeveloped land in Santa Rosa, California. The legal description of the property is located in Exhibit A.

The project is briefly described as 124 residential units, constructed in ten buildings on the site. The ten buildings are wood framed over a concrete structure which generally serves as garage area under each of the buildings. Each building, the public amenity spaces and public areas on site shall include connections to public utilities, which are in the general area of the site.

2. Scope of Work

- A. Review the Geotechnical-related portions of the plans and specifications.
- B. Provide intermittent on-site observation with field and laboratory testing during the following work activities:
 - A. Clearing and stripping
 - B. Excavation and backfilling of exploration trenches
 - C. Excavation of weak surface soils and old fills within, and adjacent to, the buildings, exterior concrete slab and pavement areas
 - D. Placement and compaction of fills
 - E. Excavation of footings
 - F. Placement and compaction of utility trench backfills (spot checking only)
 - G. Preparation of subgrade for concrete slabs-on-grade and pavement
 - H. Placement and compaction of pavement subgrade and aggregate base
 - I. Measure length of geogrid for retaining wall system
 - J. Backfill compaction for retaining wall system
- C. Issue Progress and Final reports.

3. Fee Summary

• Preconstruction consultation (10 hours)	\$1,000.00
• Finding/backfilling fault trenches	\$14,500.00
• Site Grading	\$24,000.00
• Installation of Utilities – 20 4 hour visits	\$7,200.00
• Subgrade Testing – 10 3 hour visits	\$2,700.00
• Base Rock Testing – 10 3 hour visits	\$2,700.00
• Nuclear Density Tests – 500 tests	\$5,000.00
• Laboratory Testing Allowance	\$3,000.00
• Footing Excavation – 20 3 hour visits	\$5,400.00
• Project Administration, Final Report (4 hours)	\$4,400.00
• Backfill compaction for retaining wall system (Crib and Keystone) – 80 hours	\$7,200.00

Total Cost \$77,100.00

Please note that it is understood and agreed that although certain portions of the scope of services described above may have previously been completed by this Consultant and this Consultant's consultants, such prior completion, and/or payment by others for such prior completion, in no way relieves Consultant or its consultants from their obligations to provide [Contractor] with full and satisfactory performance, completion and delivery of any and all scope described herein."

4. **Reports**

- a. OWCC Field Superintendent will fax a request for Geotechnical Services with 24 hour minimum notice.
- b. Consultant to submit progress reports at the end of the inspection day with the inspection request form attached to the report.
- c. Consultant shall follow up and confirm that the issues noted on their report were corrected.
- d. Delay by the Consultant in providing timely review and reporting of testing data may result in back charges to Consultant, due to costs associated with ongoing work put in place.
- e. Consultant's final affidavit must comply with City of Santa Rosa standards.

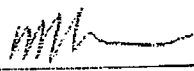
5. **Clarifications**

- a. **Samples:**
Consultant will dispose of all remaining soil and rock samples forty-five (45) calendar days after submission of the report covering those samples. Further storage or transfer of samples can be made at Contractor's expense upon Contractor's written request. Should any of these samples be contaminated by hazardous substances or suspected hazardous substances, it is the Contractor's responsibility to select and arrange for lawful disposal procedures; that is, procedures which encompass removing the contaminated samples, from Consultant's custody and transporting them to a disposal site. Contractor is advised that, in all cases, prudence and good judgment should be applied in selecting and arranging for lawful disposal procedures.
- b. **Notification of Hazardous Materials:**
When hazardous materials are known, assumed or suspected to exist at a site, Consultant is required to take appropriate precautions to protect the health and safety of all personnel, to comply with applicable laws and regulations and to follow procedures that Consultant deems prudent to minimize risk to employees and the public. Contractor hereby warrants that if he knows or has any reason to assume or suspect that hazardous materials may exist at the project site, he has so informed Consultant. Contractor also warrants that he has done his best to inform Consultant of such known or suspected hazardous materials' type, quantity and location.
- c. **Observation and Testing:**
If Consultant is retained to provide a site representative to observe and test specific portions of construction work or other field services as set forth in the proposal, then the following applies: For the specified assignment, Consultant representatives will report observations and professional opinions to Contractor or his designated representative. No action of Consultant can be construed as altering any agreement between Contractor and others. Consultant will report to Contractor any observed Consultant related work which, in Consultant's professional opinion, does not conform with plans and specifications. Consultant has no right to reject or stop work of any agent of the Contractor. Such rights are reserved solely for Contractor. Furthermore, Consultant's presence on site does not in any way guarantee the completion or quality of the performance of the work of any party retained by Client to provide field or construction related services. However, if Consultant observes lack of quality, they are to inform Contractor immediately. Consultant does not direct or take responsibility for the Contractor's or others' activities or for the safety of the Contractor or others.
- d. **Indemnity:**
To the fullest extent permitted by law, Consultant will defend (in a manner reasonably acceptable to Opus) and indemnify Opus and Opus' members, partners, shareholders, directors, officers, employees and agents against all claims, damages, liabilities, losses and expenses, including court costs, expert fees, attorneys fees and other costs of defense, arising out of Consultant's performance of a Project, but only to the extent caused by the negligence or willful misconduct of Consultant, its officers, employees, agents, subcontractors or any person or organization for whom Consultant is legally liable.

6. Exclusions

- A. Evaluation of:
 - 1) Soil contamination
 - 2) Soil chemistry
 - 3) Corrosivity
 - 4) Groundwater contaminations
 - 5) Potential hazardous materials
 - 6) Presence or absence of wetlands
- B. Approval of or observation of the installation of construction materials
- C. Establishing or verifying construction lines and grades

This Agreement entered into as of the day and year first written above.

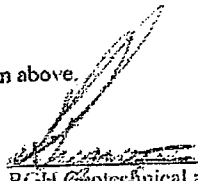


Opus West Construction Corporation

~~Michael T. Quinn~~

(Printed Name and Title)

SR. PROJECT MANAGER



RGH Geotechnical and Environmental Consultants

~~Robert L. Grogan~~

(Printed Name and Title)

Attachment "B"
Hourly Rate Schedule for Geotechnical and Environmental Consultants

PROFESSIONAL SERVICES	\$110.00/hour
Principal Geologist/Engineer/Hydrogeologist	
Project Geologist/Engineer/ Hydrogeologist	\$65.00 to 100.00/hour
Staff Geologist/Engineer/ Hydrogeologist	\$65.00 to 90.00/hour
Field Engineer	\$55.00 to 80.00/hour
Field Technician/Technical Assistant	\$45.00 to 75.00/hour
Graphics	\$52.00/hour
Report Typing/Reproduction	\$42.00/hour
Court appearance/Expert witness testimony/Deposition	\$200.00/hour
(By Principal and/or Project level professional)	
Court appearance/Expert witness testimony/Deposition	\$150/hour
(By All others)	

EQUIPMENT	\$10.00/hour
Vehicle	
Soil Sampler	\$5.00
Nuclear Density Gauge	\$10.00/test
Organic Vapor Meter \$50.00/day or \$150.00/week	
Water Level Indicator	\$35.00/day
Conductivity/PH Meter	\$30.00/day
Bailer	\$10.00/day
Air Photo Purchase	\$Cost + 20%
35 mm Photography \$2.00/frame	

MILEAGE	\$0.36/hour
Travel time rate	

OUTSIDE SERVICES	\$Cost + 20%
Laboratory analysis/ Consultants/ Subcontractors/	
Equipment not listed above/ Outside reproduction/meals/	
Lodging/ shipping/ Special equipment or services not listed above	

Attachment "C"
Additional Insurance Requirements

1. Prior to starting the Work, Consultant will procure, maintain and pay for such insurance as will protect it against claims for injury or death, or for damage to property, which may arise out of or result from Consultant's operations under the Contract Documents, whether such operations be by self or by any subcontractors or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Such insurance will include, but not be limited to, the minimum coverages and limits of liability specified in the Contract Documents, or if greater, any coverages or limits of liability required by law.

Comprehensive or commercial general liability insurance required will include coverage for products/completed operations (extending two (2) years after completion of the Work), broad form property damage including completed operations, personal injury with employment exclusion deleted, blanket XCU, incidental malpractice, host liquor liability, and blanket contractual liability insurance applicable to Consultant's indemnity obligations under Attachment A, Paragraph 5.d. and other contractual indemnities assumed by Consultant under the Contract Documents.

The comprehensive general liability, auto liability and umbrella/excess liability insurance policies required will be endorsed to add the Owner and Contractor as additional insureds "for liability arising out of Consultant's scope of work. The insurance afforded by the "additional insured" endorsement will be primary insurance and will not contribute with or be excess over any other insurance available to the Owner or Contractor.

Comprehensive automobile liability insurance required will include coverage for all owned, hired and non-owned vehicles.

Employer's liability, comprehensive general liability and automobile liability insurance may be arranged under single 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.

Two (2) copies of Certificates of Insurance issued by companies and in form acceptable to Contractor will be filed with Contractor prior to commencement of the Work. Such Certificates will contain a provision that coverages afforded under the policies will not be canceled until at least thirty (30) days' prior written notice has been given to Contractor. In the event Consultant fails to procure or maintain any insurance coverage required under the Contract Documents, Contractor may purchase such coverage and deduct the cost thereof from any monies due or to become due to Consultant or will be entitled to any other remedies available.

2. The following are the minimum insurance coverages to be carried by all Consultants.

- a. Workmen Compensation Insurance - As required by law.

Workmen's Compensation Coverage: \$100,000/\$500,000/\$100,000

- b. Commercial Liability - Provide Commercial General Liability including Business Auto Liability.

Coverage limits required:

- i) Contractors Operations
- ii) Independent Contractor's Contingent Liability
- iii) Broad Form Contractual Liability
- iv) Completed Operations

Invoice No.	
Invoice Date	

Attachment "D"

Consultant Invoice form

To: **Opus West Construction Corporation**
 6160 Stoneridge Mall Road, Suite 360
 Pleasanton, CA 94588
 Phone (925) 463-9254
 Fax (925) 460-6058

Attention: Barbara Johnson

Project No.: 275.00 Cost Code: _____

Consultant Project Manager:

Invoice Date From: _____ To: _____

Contract Fee: \$ _____

Phase	Phase Fee	Percent of Total Fee	Percent Complete	Fee Earned This Period	Prior Billing	Balance to Complete

This Period Subtotal: \$ _____

This Period Total: \$ _____

Reimbursable	Charge

Reimbursable Total: \$ _____

Total Invoice Amount: \$ _____