



U.S. Department
of Transportation

**Federal Highway
Administration**

Memorandum

Subject: ACTION: Notification of Prompt Payment
Special Provision and Contract
Administration Issues (DOT #2009-0104)

Date: **MAR 12 2009**

From: *Brenda F. Armstead*
Brenda F. Armstead
Director, Investigations and Adjudications

In Reply Refer To: HCR-40

To: Mr. James J. Steele
Division Administrator (HDA-MI)
Lansing, MI

This memorandum is in reference to the complaint of discrimination filed by (b) (6) against the Michigan DOT (MDOT); (b) (6); the City of Ellsworth; and (b) (6). The complainant alleges violations of Title VI of the Civil Rights Act of 1964 (Title VI) while working on the Ellsworth Main Street – 76672A project (copy attached).

After reviewing the complaint, we have determined that it will not be accepted for investigation because: 1) the issues regarding (b) (6) being required to secure a contract with a bond, and his firm being replaced on the above-referenced project are untimely; 2) the FHWA does not have jurisdiction regarding (b) (6) FOIA request to the MDOT; and 3) (b) (6) submitted a lien claim to the MDOT regarding non-payment on the above-referenced project; therefore, the Surety is the appropriate entity to address his issue.

In addition, the FHWA previously investigated and rendered a decision regarding (b) (6) prompt payment issues. Your office is currently monitoring the MDOT to ensure compliance with the Prompt Payment Special Provision. Therefore, we are referring this issue to your office for appropriate handling.

Lastly, the issues outlined below involve contract administration rather than Title VI. Therefore, we are referring these issues to your office for appropriate handling.

1. Whether the MDOT violated its Special Provision for Prompt Payment by failing to reimburse (b) (6) legal fees; and
2. Whether the MDOT cleared the above-referenced project without resolving (b) (6) claim lien.

MOVING THE
AMERICAN
ECONOMY



The complainant has been advised of this referral (copy attached). If you have any questions, please contact Ms. Thalia Williams at 202-366-1595.

2 Attachments

cc:

Ms. Mary Finch, Civil Rights Specialist, FHWA (HDA-MI)

Mr. Kirk Steudle, Director, MDOT

Ms. Verna Miller, Title VI Specialist, MDOT



U.S. Department
of Transportation
**Federal Highway
Administration**

MAR 12 2009

1200 New Jersey Avenue, SE.
Washington, DC 20590

In Reply Refer To: HCR-40
DOT #2009-0104

(b) (6)

Dear (b) (6):

This is in reference to your complaint of discrimination, dated December 15, 2008, alleging violations of Title VI of the Civil Rights Act of 1964 (Title VI) by the Michigan Department of Transportation (MDOT); (b) (6) the City of Ellsworth; and (b) (6) while working on the Ellsworth Main Street – 76672A project.

After a thorough review of your complaint, the Federal Highway Administration's (FHWA) Office of Civil Rights has determined that your complaint will not be accepted for investigation. The decision regarding this determination is outlined below.

Issue 1: Whether (b) (6) required your firm to secure the contract for the above-referenced project with a bond based on your race, African American.

Issue 2: Whether the MDOT allowed (b) (6) to replace your firm on the above-referenced project without notifying you based on your race, African American.

The above-referenced issues are untimely and cannot be accepted for investigation. The U.S. Department of Transportation's regulation at Title 49, Code of Federal Regulations, Part 21.11(b) states that a complaint must be filed not later than 180 days after the date of the alleged discrimination. The incidents cited in your complaint occurred in 2006. Your complaint was received in this office long after the 180-day filing period. However, this does not preclude you from pursuing a private right of action by filing in the appropriate U.S. District Court.

Issue 3: Whether the MDOT failed to provide you documents under your Freedom of Information Act (FOIA) request.

The FHWA does not have jurisdiction regarding the above-referenced issue. The MDOT is the appropriate agency to address your request for documents.

**AMERICAN
ECONOMY**

Issue 4: Whether (b) (6) failed to pay your firm for work performed on the above-referenced project, based on your race, African American.

Section 109.10B., Non-Payment Claims, of the MDOT's Special Provision for Prompt Payment states in part that, "*The subcontractor has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimate payments are made.*" [Emphasis added.] Records show that you submitted a lien claim to the MDOT Contract Services Division and the Surety is processing your claim. Therefore, we recommend that you contact the Surety that is responsible for processing your lien claim regarding any non-payment issues.

Issue 5: Whether the MDOT and (b) (6) violated the MDOT's Special Provision for Prompt Payment by not paying you for work that was completed on the above-referenced project.

The FHWA has determined that the above-referenced issue is similar to a decision that was previously rendered by the FHWA. Please be advised that Section III, B. of the Department of Justice's "Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and Other Nondiscrimination Statutes" states in part that, "... an agency generally need not proceed with or continue a complaint investigation and attempts at resolution of an allegation under certain circumstances, which include:

- 4) The complaint allegations are foreclosed by *previous decisions* by Federal courts, the Department of Justice, or agency policy determinations."

Our records show that you filed a complaint of discrimination, dated March 9, 2007, alleging violations of Title VI against the MDOT and (b) (6). One of the issues in that complaint involved prompt payment.

In a letter dated January 15, 2008, you were informed that the FHWA determined that Title VI had been violated. The FHWA's investigation disclosed that the MDOT and (b) (6) Inc., violated the MDOT's Special Provision for Prompt Payment provision by failing to pay you within 10 calendar days and withholding retainage fees from you for work performed on a Federal-aid project, based on your race, African American. You were advised by letter dated November 13, 2008, that the FHWA's Michigan Division Office was monitoring MDOT to ensure compliance with the MDOT's Special Provision for Prompt Payment.

Based on the aforementioned, the FHWA's Office of Civil Rights will not reinvestigate the above-referenced issue. However, we are referring the above-referenced issue to the FHWA's Michigan Division Office for processing.

Furthermore, the issues outlined below are related to contract administration rather than Title VI. These issues will also be referred to the FHWA's Michigan Division Office for processing (copy enclosed).

Contract Administration Issues:

1. Whether the MDOT violated its Special Provision for Prompt Payment by failing to reimburse your legal fees.
2. Whether the MDOT cleared the above-referenced project without resolving your claim lien.

This concludes processing of this matter by the FHWA's Office of Civil Rights. However, the FHWA's Michigan Division Office will review the issues regarding the MDOT's Special Provision for Prompt Payment and contract administration as specified in this letter.

Sincerely yours,

A handwritten signature in black ink that reads "Brenda F. Armstead". The signature is written in a cursive style with a large initial "B".

Brenda F. Armstead
Director, Investigations and Adjudications

Enclosure

2009-0104

Williams, Thalia <FHWA>

From: (b) (6)
Sent: Monday, December 15, 2008 12:11 PM
To: Armstead, Brenda <FHWA>; Williams, Thalia <FHWA>; Williams, Thalia <FHWA>; Collins, Bernetta <FHWA>; Collins, Bernetta <FHWA>; Finch, Mary <FHWA>
Subject: Formal Discrimination Complaint State of Michigan; (b) (6)

Ms. Armistread,

Please find attached a formal complaint of discrimination. This is second case. I have enclosed a detail analysis of and outlined the claims as I see them. Thank you in advance for your assistance.

Sincerely,

(b) (6)

(b) (6)

December 15, 2008

Sent Via Email

Ms. Brenda Armistead
Federal Highway Administration
Office of Civil Rights
400 Seventh Street, SW
Room 4132
Washington, DC 20590

Subject: Ellsworth Main Street – 76672A

Dear Ms. Armistead:

I am (b) (6) (b) (6)
(b) (6) was certified as a disadvantaged business enterprise (DBE) by the State of Michigan. My company has discontinued operations due to discriminatory acts that have been directed toward my company. We have tried continually to resolve the issue of the approximately \$35,000.00 that is owed my company and legal fees due the company under the prompt pay provision of the rules and regulations. I have filed this claim previously, with the Michigan Department of Transportation previously; I have discussed this issue with your local unit but made no formal complaint because of the hopes of resolution at the local level.

Frankly the discrimination was inflicted by the by the Michigan Department of Transportation, (b) (6)
(b) (6) (Project Engineer), City of Ellsworth, and the general contractors, (b) (6)

Background

(b) (6) entered into a sub-contract with (b) (6) to complete State of Michigan site concrete work in October 2006, on the Ellsworth reconstruction project. The total contract was overseen by (b) (6) (b) (6) (project engineer) this was their first MDOT project for road reconstruction, they where subcontracted to do project oversight in place of the normal MDOT personal. One the conditions placed on (b) (6) was to secure the contract with a bond of \$30,000 (or 1/2 the total state contract). (Note: No other sub-contractor under the (b) (6) general contract was required to bond their work.) The State of Michigan work was completed and was inspected on a daily basis by (b) (6) in place of the State of Michigan. Never during the time the work was being completed did MDOT (b) (6) officials indicate problems or concerns with the work. (b) (6) completed the job on schedule in October 2006.

Ms. Brenda Armistead
Complaint- State of Michigan
December 15, 2008

Upon completion, (b) (6) submitted an invoice for payment to (b) (6) for payment of the sub-contract work done under the State of Michigan contract. Only partial payment was received. Just following the completion of work under the State of Michigan sub-contract, (b) (6) asked (b) (6) to enter into a second sub-contract agreement, this time for the City of Ellsworth. The City of Ellsworth work was completed in the first week of November 2006 and an invoice for this work was submitted. Payment for the City of Ellsworth was received in January 2007. Subsequent invoices were sent to (b) (6) for the original State of Michigan work; however, payment was never received. (b) (6) asked for assistance from the Michigan Department of Transportation under the Prompt Payment Guidelines but never acknowledge the request for assistance. (The Prompt Payment Law requires contractors pay sub-contractors within 2 weeks of satisfactory completion.) It should be noted that the Project Engineers of (b) (6) were at the work site daily overseeing the work being completed. We have tried continually to resolve the issue of the approximately \$35,000 that is owed my company and legal fees due the company under the Michigan Prompt Pay provisions. The inability to bring this issue to closure forced my company to lose a substantial amount of funds.

Count I

With the exception of (b) (6) all other (b) (6) sub-contractors were paid for work performed; (b) (6) was the only African-American sub-contractor on the job. The work was performed by my crew and there were no notes of unsatisfactory work. (See Attachment 1-Letter from (b) (6) (b) (6) General Forman, detailing that no concerns had arisen during the job.) Through a Freedom of Information Act request, I obtained the minutes from the Ellsworth's City Council from October 2006 through February 2007 and there is no notation of problems with the job as completed by (b) (6) (Attachment 1). As you can see from the letter from (b) (6) no one from the engineering firm ever contacted him about problems with the work completed by (b) (6). In January of 2007 (b) (6) (b) (6) received its first formal notification that there was a problem with the work through a correspondence from (b) (6). This correspondence included a request that (b) (6) agree to a 50% credit on the amount initially contracted. Which we never agreed to and wanted to be paid in full for all the work completed. The owner said that he was dissatisfied with the work but did not say why and noted poor workmanship but no specifics were outlined. The irony of the matter is that (b) (6) notes on its website that they do work for MDOT illustrated by a picture of the curb at the Ellsworth job completed by (b) (6) (b) (6)

Ms. Brenda Armistead
Complaint- State of Michigan
December 15, 2008

It is clear the State of Michigan DBE office never investigated the problem. (b) (6) was never contacted by the State of Michigan for the opposing side of the dispute. Moreover, The State of Michigan gave permission for (b) (6) to replace my firm without contacting me. Attachment 2 documents measurement completed by (b) (6) which is reflected in the billing from (b) (6) (b) (6). The City of Ellsworth granted us a second job while we where on site which included curb, these measurement where also attached. The invoice for this work was paid upon receipt. Measurements for the City work was also supplied by (b) (6) the engineer from (b) (6). Although, the measurements for the State work, given to me by the same engineer, remains unpaid. I have also attached a copy of the cost for the concrete showing the amount used for the total project.

This is clearly a case of discrimination. I was the only contractor on the job treated in this manner and the only one asked to provide a bond for the project. The engineering firm and the owner where on site each day--per their contract. Judy Browning, MDOT employee states it is not the engineer's or the state's job to ensure the work is done adequately. If these two entities are not responsible for ensuring work is completed adequately, and then who has the responsibility?

Count II

The rules state that work should be paid within two weeks of the work being completed. (b) (6) was the only contractor not to receive any funds for work until two months after the jobs completion. Even though a part of the sub-contractual work has been paid, the vast majority has not been paid.

Count III

I filed a claim lien and the State of Michigan cleared the project without resolving the lien contrary to their established policy and procedures. This is noted within the letter from the Michigan Attorney General's Office attached.

Count IV

The Department of Transportation discriminated against me by not giving me copies of the filed documents for the project under the FOIA request. MDOT states that they did not have access to the documents--although, they have supervisory responsibility over the project.

Ms. Brenda Armistead
Complaint- State of Michigan
December 15, 2008

Count V

The prompt payment provision states that if legal action or arbitration was enacted that reimbursement of legal fees will be given. I am requesting legal fees in the amount of \$14,000 for legal action against the Michigan Department of Transportation to provide documents in their control to pursue a case of prompt payment. There is a letter dated December 2007 from the Michigan Attorney General to my attorney (b) (6) which states that Michigan Department of Transportation told him that no one had ever filed a prompt payment claim- including (b) (6) MDOT was not accurate in this statement as (b) (6) had already filed a claim against (b) (6) prior to the Ellsworth claim.

Clearly, (b) (6) violated the prompt payment provision by not paying me for work that was accepted by the engineer for 9 months. Conversely, (b) (6) received payment from the State of Michigan May of 2007 while noting was given to (b) (6) until March of 2008. MDOT's Judy Browning was requested to investigate the matter, but to this date has provided no assistance. In an interview with the State Attorney General, an MDOT representative, my attorney (b) (6) and me, she stated that the oversight was not MDOT's responsibility.

Lastly, if you review the documents that I worked the payment out with the 50% credit and elimination of quantities, and other off-set where the total amount that we receive of \$34,144.97 which is attachment IV part 2 would equal the concrete amount of \$34,251.35(Attachment II part 2) . This clearly shows the intent of the parties noted above. I ask your assistance in righting this wrong. This is the right time because all documents should be filed because the Michigan Department of Transportation has signed off on the job. Therefore, obtaining the documents should take the time it did in my pervious complaint.

Thank you in advance for your assistance on obtaining these funds.

Sincerely,

(b) (6)

cc: Mr. Bernetta Collins, Administrator, FWWA

Mr. James J. Steele, Division Administrator, FHWA, HAD-MI

Mary Finch, Civil Rights Program Manager, FHWA, HAD-MI

Attachment I

1. Notification to Michigan Department of Transportation of potential problem. There was no assistance given. This also shows the general contractor had no knowledge of problems during the job.
2. Letter from (b) (6) 2 months after the job was completed.
3. FOIA Report
4. Contract for engineering service which involved day to day oversight of project.
5. Minutes from City Council meeting, there were no indication of problems.
6. Prompt payment request to Judy Browning.

Attachment I part 1

(b) (6)

(b) (6)

FASCIMILE COVER SHEET

Phone: (517) 371-7876

Fax: (517) 371-5616

PLEASE DELIVER THE FOLLOWING TO:

NAME: Tonya Bicy

COMPANY: MDOT

FAX NUMBER: 517-335-0945

FROM: (b) (6)

RE: Ellsworth

DATE: November 21, 2006

TOTAL NUMBER OF PAGES 3 (including cover sheet)

The information accompanying this transmittal sheet is confidential and protected by law. It is intended for and should only be used by the individual or entity named above. If you are not the intended recipient or an authorized employee or agent of the designated recipient or able to deliver it to such person, you are notified that any disclosure, copying, distribution or use of the attached information is strictly prohibited. If you have received this fax in error, please contact the person shown above immediately and return the original to us at our address. Costs of postage or the call will be reimbursed. Thank you for your cooperation.

(b) (6)

Attachment I Part I

(b) (6)

Fax

To:	(b) (6)	From:	(b) (6)		
Fax:	(b) (6)	Pages:	3 (Including Cover Sheet)		
Phone:		Date:	11/20/06	Time:	1:50pm
Re:	Village of Ellsworth Issues				
<hr/>					
<input type="checkbox"/> Urgent	<input checked="" type="checkbox"/> For Review	<input type="checkbox"/> Please Reply			
<hr/>					

Attachment I; Part I

(b) (6)

November 20, 2006

(b) (6)

RE: Village of Ellsworth #76672A

(b) (6)

This letter is being sent to address a few issues that have arisen on this project. My landscaper, (b) (6) came in and dormant seeded this project during the week of November 6th. They applied the required amount of mulch on the project for dormant seeding as they have done on numerous projects in the past.

A representative from your firm by the name of (b) (6) came out to the project and overrode the inspection after the landscaper had finished and required that they remove what he saw as excess mulch. This seemed extreme considering this was dormant seeding, it was being paid by the square yard, and your inspector on site did not have any objections.

At this point the landscaper is asking for additional compensation for the removal of the mulch, as well as not being held responsible for seed that does not come up in the spring because of inadequate winter protection.

The second issue is the curb on the project. It has come to my attention that you are unhappy with the final product and comments have been made that the curb be removed or a credit be required of the subcontractor for the poor workmanship. This curb, however, was placed over a duration of a month with full time inspection on the site. Any curb, sidewalk or approach that was deemed unacceptable by the inspector, or yourself, was marked out, removed and replaced. Approximately 250 LF of curb was removed and replaced on the project with no questioning coming from (b) (6)

"An Equal Opportunity Employer"

(b) (6)

(b) (6)

Attachment I part I

When all that curb was replaced, we were under the impression that all issues had been taken care of. This was also reinforced by no correspondence, from the engineer or inspector on site, saying there were additional issues. After speaking with my subcontractor, (b) (6) we believe it is unfair to come after the fact and require these penalties. You had inspectors on the project that could have stopped the concrete pouring at any time and required additional areas to be removed and replaced. Since this did not happen, we consider these areas to be acceptable. Please call me at (b) (6) if you have any questions or concerns.

Sincerely,

(b) (6)

Cc: Hugh Chapman, Village of Ellsworth

(b) (6)

Attachment 1 Part 2

VILLAGE OF ELLSWORTH
6520 CENTER ST.
P.O. BOX 265
ELLSWORTH, MICHIGAN 49729
villageofellsworth.com

Phone (231) 588-7411

Fax (231) 588-2079

December 29, 2006

(b) (6)

Subject: Ellsworth Main Street Curb

Dear (b) (6)

As we discussed, the Village Council is dissatisfied with the curb and gutter construction workmanship on Main Street. I understand that the curb does not meet the tolerance specifications for the project and we can require the contractor to remove and replace it.

The demonstration of poor workmanship by the curb contractor raises doubts that the Village will obtain better quality work if the curb is replaced by the same contractor. This, coupled with the disruption and potential damage to other facilities that will occur if the curb is replaced, makes us reluctant to demand replacement of the curb.

For the reasons stated above, we would prefer to receive a credit against the contract amount in lieu of curb replacement. However, if a different and more skilled contractor can be used for the replacement work, then we may reconsider our position.

Please advise me about how we can obtain an appropriate credit for the curb and gutter.

Sincerely,

VILLAGE OF ELLSWORTH

George Campbell



George Campbell
President

Attach Attachment 1 Part 3



ENNAFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

KIRK T. STEUDLE
DIRECTOR

January 29, 2007

(b) (6)

Dear (b) (6)

FOIA Request Received January 24, 2007 (FOIA #15351)

Due to the current high volume of FOIA requests, the Michigan Department of Transportation (MDOT) is unable to complete your request within five (5) business days. In accordance with Section 5(2)(d) of the Michigan Freedom Of Information Act, as amended, we are notifying you that we require an additional ten (10) business days and will respond to your request on or before February 14, 2007.

Sincerely,

A handwritten signature in cursive script, appearing to read "William Perod".

William Perod
Freedom Of Information Officer
Office of Communications

Attachment I Part 4

CONTRACT FOR SERVICES

It is hereby agreed between (b) (6) and the Client named below, that (b) (6) will perform the professional services as set forth in this Agreement, subject to the terms and provision of Exhibit "A"

CLIENT:

Village of Ellsworth
P.O. Box 265
Ellsworth, Michigan 49729

CLIENTS AGENT:

(b) (6)

SUBJECT:

Main Street Reconstruction - Construction Engineering

SERVICES TO BE PERFORMED BY GCES:

See attached exhibit "B" description of services.

TIME SCHEDULE:

The estimated starting date - September 1, 2006
The estimated completion date - June 30, 2007

FEES: The estimated fee is - \$ 57,950
Initial deposit to be applied to the total - \$ 0
Additional Fees - any additional work or services not specified on this agreement shall be given in writing and shall be billed at (b) (6) prevailing rates for such services and expenses.

This agreement is dated: 8-14-06

(b) (6)

Project Manager

Client / Authorized Agent

(b) (6)

Signature

Date: 8-15-06

Please sign and date both copies. Keep one copy for your records and return the other copy to Geating Crank.

(b) (6)

A Habitat II Part 4

EXHIBIT "A" To CONTRACT FOR SERVICES

1. **Definition of Services:** (b) (6) agrees to perform those professional services described in the attached Contract for Services which is incorporated herein by reference as if the same had been fully set forth.
2. **Payment for Services:** The estimated total fee for the services is set forth in the Contract for Services. Client understands and agrees that the aforementioned amount is an estimate for the scope of work described in the Contract. Additional fees may be billed if the scope of the work is changed. A statement for work done in a month will be billed in the following month, and that payment is to be made by the Client within 30 days of the date of invoice.
3. **Estimated Date of Completion:** (b) (6) will complete the performance of the services indicated in accordance with the dates provided in the Contract for Services, absent an act, condition, thing or event beyond the control of the parties herein.
4. **Ownership of Documents:** All original documents, drawings, computer files and survey notes represent the product of training, experience and professional skill. All such items are, and will remain, the property of (b) (6) regardless of the project or completion. Upon full payment of all amounts due hereunder, (b) (6) will furnish copies of available, original drawings and other final work products in the form required by applicable law to the Client. Such documents furnished to the Client are not intended or represented to be suitable for reuse by the Client or others on any other project or any other project. Any unauthorized reuse of documents will be at the Client's sole risk and without liability or exposure to (b) (6).
5. **Scope of Services Provided:** Client assumes full responsibility for determining the suitability of the described services to meet its needs. If indicated on the attached Contract for Services, such services may include preparation and attendance at public hearings or informational meetings, when as requested by the Client; but this Agreement does not include services that would pertain to the preparation or appearance on behalf of the Client in litigation.
6. **Assignment of Contract:** (b) (6) will be solely responsible for all services performed under this Agreement and will supervise and direct the work in accordance with applicable professional standards. Neither the Client nor (b) (6) may assign, subcontract or transfer their interest in this Agreement, without the prior written consent of the other.
7. **Lien for Services/Attorney's Fees:** (b) (6) reserves the right to file any statutorily authorized lien against the property which is the subject of this contract. Agreement in the event payment is not received for services rendered. Further, (b) (6) is required to file suit to secure payment. (b) (6) shall be entitled to recover its actual attorney's fees and costs incurred in such litigation.
8. **Limitation of Liability:** The Client agrees to limit the liability of (b) (6) on this project for claims, losses or damages and cleanup expense to a sum not to exceed \$25,000 or (b) (6) total fee for services on this project, whichever is greater.
9. **Entire Agreement:** This Agreement constitutes the entire Agreement of the parties and no alteration or amendment shall be effective until such time as it is reduced to writing and signed by both parties.

(b) (6)

Attachment I Part 4

EXHIBIT "B" To CONTRACT FOR SERVICES

Description of Services

Construction Staking

(b) (6) will provide construction staking for the Main Street reconstruction project. The staking includes concrete curb and gutter, road centerline, storm sewer, and sidewalks. The staking will probably require eight separate trips for the survey crew over the anticipated construction period of 10 to 12 weeks. Each of the required construction items will be staked once. If the Village or the contractor would like something re-staked, it can be done for an additional fee.

Construction Observation

(b) (6) will provide an engineering technician to observe the construction to verify that the work is performed in accordance with the contract documents. The technician will prepare daily reports of contract work that was performed, measure quantities of work items installed, and perform density testing on backfill, subgrade, and aggregate base materials. The technician's notes and records will be kept for the project's use; that will be completed by MDOT before the project funding can be closed. We anticipate that 10 to 12 weeks of construction observation will be required for the project.

Materials Testing

(b) (6) will provide MDOT certified technicians to perform materials testing on aggregates, concrete, and bituminous materials incorporated in the project to verify that they are in accordance with MDOT and contract documents.

Construction Administration

(b) (6) will provide construction engineering and administration services for the project. This includes conducting a preconstruction meeting, responding to contractor's questions, resolving construction issues, maintaining project files and records according to MDOT standards, processing pay applications, and closing out the project with MDOT. The project engineer will also make periodic visits to the site during construction and attend the Village Council meetings to provide progress reports. It is anticipated the construction administration services will require 16 to 18 weeks to complete because much of the close-out paperwork and the MDOT records audit takes place weeks or months after construction has concluded.

6 Attachment I Part 5

**VILLAGE OF ELLSWORTH
6520 CENTER ST.
P.O. BOX 265
ELLSWORTH, MICHIGAN 49729**

Phone (231) 588-7411

Fax (231) 588-2079

John P. ...

Village of Ellsworth is a Equal Opportunity Employer and Provider

Attachment I Part 5

VILLAGE OF ELLSWORTH COUNCIL MINUTES
REGULAR MEETING
SEPTEMBER 11, 2006

Present: Campbell, M. Drenth, Boss, Olach, BJ Peters, M. Peters and J. Skeel

Absent: Cindy Ruis

Others: (b) (6)

Meeting called to order by Campbell at 7:10 p.m.

1. Motion by Olach/Skeel to accept the August 2006 minutes as presented. CARRIED. 6-0

Public Input

(b) (6) ask about information on how wide and where the new sidewalk will be located compared to the old sidewalk and also about removing the flower pots for the winter.

(b) (6) Asked there be another 25 mph sign after the Tapawingo property going to East Jordan.

(b) (6) ask for information on water hookup to the (b) (6) pole barn ((b) (6) property)

Departmental Reports

Police

Streets: Estimate from H&D to pave High St. is \$12,548.00.

DPW:

Committee / Board Reports

Planning Commission: Ed Petter Variance for is garage

Parks and Recreation: Discussion on camping fees; the following was discussed and will be acted upon next meeting.

Proposed prices for next camping season are :

Tent from \$10.00 to \$15.00

Daily from \$16.00 to \$20.00

Weekly from \$85.00 to \$140.00

Monthly from \$300.00 to \$350.00 to \$400.00

Park revenue is down about \$ 3000.00 this year.

Discussion Items:

Rural Arts & Culture Grant update: Campbell updated the council on the grant

Campbell informed the council that the Water System extension and update on Main St. was completed and past the water tests.

Action Items:

Tree's and stump removal: Est. from Fodd's Tree Service was \$5460.00 and \$1260.00 for stub removal;

Tex to get est. from Jim's Tree Service in Harbor Springs.

2. Motion by Olach/Boss in accordance with Village of Ellsworth Sidewalks Ordinance (#8 section 6 and 7) that Resolution # 91106A be adopted. See attached Resolution # 91106A

3. Motion by Olach/Boss in accordance with Village of Ellsworth Sidewalks Ordinance (#8 section 6 and 7) that Resolution # 91106B be adopted. See attached Resolution # 91106B

4. Motion by Olach/ BJ Peters in accordance with Village of Ellsworth Sidewalks Ordinance (#8 section 6 and 7) that Resolution # 91106C be adopted. See attached Resolution # 91106C

5. Motion by Boss/Skeel to adopt the Resolution to impose Property Tax Administrative fee. CARRIED. See attached Resolution

6. Motion by Olach/BJ Peters to approve the Bond Authorizing Resolution for 2006 Michigan Transportation Fund Bonds (Miller & Canfield)CARRIED: Campbell, Boss, Olach, BJ Peters, M. Peters and J. Skeel. Yes: No -0-

2. Motion by Campbell/Olach to pay the bills. CARRIED. 6-0

3. Motion to adjourn by Campbell/Boss. 8:10 p.m.

Hellen Allen

Village Clerk

Attachment J Part 5

VILLAGE OF ELLSWORTH COUNCIL MINUTES
REGULAR MEETING
SEPTEMBER 11, 2006

Present: Campbell, M. Drenth, Boss, Olach, BJ Peters, M. Peters and J. Skeel

Absent: Cindy Ruis

Others: (b) (6)

Meeting called to order by Campbell at 7:10 p.m.

1. Motion by Olach/Skeel to accept the August 2006 minutes as presented. CARRIED. 6-0

Public Input

(b) (6) ask about information on how wide and where the new sidewalk will be located compared to the old sidewalk and also about removing the flower pots for the winter.

(b) (6) Asked there be another 25 mph sign after the Tapawingo property going to East Jordan.

(b) (6) ask for information on water hookup to the (b) (6) pole barn ((b) (6) property)

Departmental Reports

Police

Streets: Estimate from H&D to pave High St. is \$12,548.00.

DPW:

Committee / Board Reports

Planning Commission: Ed Petter Variance for is garage

Parks and Recreation: Discussion on camping fees; the following was discussed and will be acted upon next meeting:

Proposed prices for next camping season are :

Tent from \$10.00 to \$15.00

Daily from \$16.00 to \$20.00

Weekly from \$85.00 to \$140.00

Monthly from \$300.00 to \$350.00 to \$400.00

Park revenue is down about \$ 3000.00 this year.

Discussion Items:

Rural Arts & Culture Grant update: Campbell updated the council on the grant

Campbell informed the council that the Water System extension and update on Main St. was completed and past the water tests.

Action Items:

Tree's and stump removal: Est. from Todd's Tree Service was \$5460.00 and \$1260.00 for stub removal. Tex to get est. from Jim's Tree Service in Harbor Springs.

2. Motion by Olach/Boss in accordance with Village of Ellsworth Sidewalks Ordinance (#8 section 6 and 7) that Resolution # 91106A be adopted. See attached Resolution # 91106A

3. Motion by Olach/Boss in accordance with Village of Ellsworth Sidewalks Ordinance (#8 section 6 and 7) that Resolution # 91106B be adopted. See attached Resolution # 91106B

4. Motion by Olach/ BJ Peters in accordance with Village of Ellsworth Sidewalks Ordinance (#8 section 6 and 7) that Resolution # 91106C be adopted. See attached Resolution # 91106C

5. Motion by Boss/Skeel to adopt the Resolution to Impose Property Tax Administrative fee. CARRIED. See attached Resolution

6. Motion by Olach/BJ Peters to approve the Bond Authorizing Resolution for 2006 Michigan Transportation Fund Bonds (Miller & Canfield)CARRIED. Campbell, Boss, Olach, BJ Peters, M. Peters and J. Skeel -Yes / - No -0-.

2. Motion by Campbell/Olach to pay the bills. CARRIED. 6-0

3. Motion to adjourn by Campbell/Boss/ 8:10 p.m.

Hellen Allen

Village Clerk

Attachment I Part 5

Increase Salary & Wages (536-70200) \$3000 from \$8000 to \$11,000

Increase Operating Supplies (536-72700) \$1500 from \$2000 to \$3500.

General Fund:

Decrease Fund Balance (000-40100) \$22,333.80 from \$130,200 to \$107,666.20 and increase Transfers Out (965-99900) \$22,333.80 from \$0 to \$22,333.80.

Major Street:

Increase Transfers In (000-69910) \$22,333.80 from \$0 to \$22,333.80 and Increase Sidewalks (450-80240) \$14333.80 from \$0 to \$14333.80 and Increase Contracted Service (450-80220) \$8000 from \$0 to \$8000. \$ 10.63 to \$ 10.98. CARRIED 7-0

3. Motion by BJ Peters/Olach to approve UP Engineers as the project engineer on the Community Park Project at the cost of 28,896. CARRIED 7-0.

4. Motion by Vollmer/Skeel to approve the use of the village backhoe, use of Lake St and the Community Park area for clean-up day May 19, 2007. CARRIED 7-0.

Summer Rec. Director: BJ Peters presented (b) (6) for the Summer Recreation Director for 2007. BJ Peter is to do the preseason meeting and the sign-up.

5. Motion by Vollmer/Skeel to approve (b) (6) as the 2007 Summer Recreation Director CARRIED 7-0

6. Motion by Olach/Vollmer to approve the 2006-2007 Village Officers and Committees. CARRIED

7. Motion by BJ Peters/Skeel to pay the bills. CARRIED

8. Motion by BJ Peters/Skeel to adjourn at 7:50 p.m.

Hellen Allen

Village Clerk

Attachment I Part 5

VILLAGE OF ELLSWORTH COUNCIL MINUTES
REGULAR MEETING
BANKS TOWNSHIP HALL
AUGUST 14, 2006

Present: Campbell, M. Drenth, Boss, M. Peters, and J. Skeel.

Absent: V. Olach, C. Ruis and BJ Peters Others: (b) (6)

Meeting called to order by Campbell at 7:10 p.m.

1. Motion by Boss/Skeel to accept the July 2006 minutes as presented. CARRIED.

Public Input: (b) (6) the possibility of a flower site near the GTE building where the tree was removed. The consensus was to wait until the Main reconstruction was completed.

Departmental Reports

Police:

2. Motion by M. Peters/J. Skeel to accept John Bush as the new Village Police part-time Officer. CARRIED. 4-0

DPW:

3. Motion by Boss/M. Peters to approve (b) (6) as project engineer for the Main Street Reconstruction Project at a total cost \$ 57,950.00. CARRIED. 4-0

(b) (6) gave an update on the Main Street water project and answered question from Council.

Discussion Items:

President Campbell went over the 1st payment of the water project...

Extension \$28,285.50 - Withheld \$2,828.55 - Paid \$ 25,456.95

Village - \$5,051.50 Withheld \$ 505.14 - paid \$ 4,546.36

Campbell reviewed the NRTF Grant for the Community Park. The preliminary evaluation summary was very good with a total of 320 points. President to send a letter to the DNR about the possibility of the village acquiring the DNR boat launch site to be part of the Community Park.

Action Items:

4. Motion by J. Skeel/Boss to approve MC Planning for the Master Plan update at a total cost of \$3,500.00 CARRIED. 4-0
5. Motion by Boss/M. Peters that the Village of Ellsworth authorize Hellen Allen, Clerk and Hugh Campbell, President to sign a loan contract with Charlevoix State Bank for a loan for the Main Street Reconstruction Project. CARRIED 4/0
6. Motion by Boss/J. Skeel to pay one half of the side walk replacement in front the Ellsworth Grocery. \$997.00 CARRIED 4-0
7. Motion by J. Skeel/Boss to purchase the propane pre buy from the Ellsworth Farmers Exchange at a cost of \$3,920.00. CARRIED.
8. Motion by J. Skeel Boss to renew the Village of Ellsworth's membership in the East Jordan Chamber of Commerce at a cost of \$230.00 CARRIED 4-0
9. Motion by Boss/M. Peters That the Village of Ellsworth authorize Hellen Allen, Clerk and Hugh Campbell, President to sign the MDOT Contract # 06-5347 with the Michigan Department of Transportation for the Main St Reconstruction Project. CARRIED 4-0
10. Motion by J. Skeel/Boss to pay the bills. CARRIED 4-0
11. Motion by Boss/J. Skeel to adjourn. CARRIED. 7:55 p.m.

Hellen Allen

Village Clerk

Attachments I Part 5

VILLAGE OF ELLSWORTH COUNCIL MINUTES
REGULAR MEETING
OCTOBER 9, 2006
BANKS TOWNSHIP HALL

Present: Campbell, M. Drenth, Boss, Olach, J. Skeel, M. Peters and BJ Peters.

Absent: Ruis

Others: (b) (6)

Meeting called to order by Campbell at 7:05 p.m.

1. Motion by Olach/Boss to accept the September 2006 minutes as presented. CARRIED. 6-0

Public Input:

(b) (6) from the Ellsworth High School Journalism Class to observe the Village Council meeting.

(b) (6) made Council aware of the tree removal and sidewalk replacement along there property.

Park / Recreation:

2. Motion by Boss/Olach to have (b) (6) for the Wooden Shoe Park attendants for the 2007 camping season. CARRIED. 6/0

3. Motion by Olach/BJ Peters to approve the Wooden Park Rates as follows:

Tent \$15.00 / Daily \$20.00 / Weekly \$110.00 / Monthly \$ 350.00 CARRIED 6-0.

Police:

Streets:

Bids on paving High St. from Main St. to Forest Hill Dr. as follows H&D \$16,355.00 / Payne and Dolan Inc. \$15,750.00

4. Motion by Olach/BJ Peters to accept the bid of Payne and Dolan Inc for the paving of High St. CARRIED 6-0.

Action Items:

5. Motion by Skeel/BJ Peters to have the Halloween hours for the Village of Ellsworth from 5:00 p.m. to 8:00 p.m. on Tuesday October 31, 2006. CARRIED 6-0.

6. Motion by BJ Peters/Olach to cover the \$200.00 for Mr. Twister at the Fall Fest on October 28, 2006. CARRIED 6-0 and will contact Banks Township on splitting 1/2 of the cost. (\$100.00)

7. Motion by Olach/Boss to raise the Zoning Permit fees from \$25.00 to \$30.00. CARRIED 6-0.

8. Motion by Olach/Skeel for the Village to send a letter to the DNR that they transfer ownership back to the Village for the DNR Site on Ellsworth Lake. Letter to be reviewed by the Village Attorneys. CARRIED 6-0

BJ Peters submitted her resignation as the Village of Ellsworth Recreation Director to the Village Council.

Campbell updated the council on the Main Street Reconstruction Project.

The Village of Ellsworth didn't receive the Arts and Culture Grant

9. Motion by Skeel/BJ Peters to pay the bills. CARRIED 6-0.

10. Motion by Skeel/BJ Peters to adjourn. CARRIED 8:15 p.m.

Hellen Allen

Village Clerk

Attachment I Part 5

VILLAGE OF ELLSWORTH COUNCIL MINUTES
BANKS TOWNSHIP HALL
REGULAR MEETING
NOVEMBER 13, 2006
7:00 PM

Present: Boss, Campbell, M. Peters, BJ Peters and Olach, M. Drenth.
Absent: J. Skeel
Others: (b) (6)

Hellen Allen (Clerk) was sworn into office by Donna Heeres, Banks Township Clerk.
Ron Boss, BJ Peters and Matt Peters (Three Village Trustee) Marlene Drenth (Treasurer) Hugh
Campbell (President) were sworn into office by Village Clerk, Hellen Allen.

Meeting called to order by Campbell at 7:00 p.m.

1. Motion by BJ Peters / Boss to accept the minutes from the October 2006 meeting.
CARRIED 6-0

Police: Police car is in need of some repairs, new battery etc.

Streets: High Street has been paved.

DPW

Planning Commission: Zoning Ordinance # Z-3 update, Master Plan update. : Zoning Ordinance
Z-3 to be voted on at next meeting.

2. Motion by Olach/M. Peters to amend the budget as follows:

BUDGET AMENDMENTS/WATER NOVEMBER 13, 2006

Increase 591-000-6700 Hillman Hills Lot Sales (\$3000) from \$0 to \$3000 and Increase
591-536-80100 (\$3000) Professional Service from \$1000 to \$4000.

Increase 591-536-9300 Repairs and Maintenance (\$18,466) from \$13,500 to \$31, 966 and
Increase 591-000-69900 Other (\$18,466) from 0 to \$18,466.

Increase 591-000-67900 Main St. Water Main Extension \$58,233 from \$0 to \$58,233 and
Increase 536-97000 Capital Outlay (\$51,049) from \$1000 to \$52,049 and Increase
591-536-8000 Profession Service Ext (\$6184) from \$0 to \$6184.

Increase 591-000-60700 New Service Fees (\$4000) from \$500 to \$4500 and Increase 591-
536-9700 Capital Outlay (\$4000) from \$52,049 to \$56,049.

CARRIED 5-0

Wooden Shoe Holiday Fest is set for December 13th from 5pm to 8pm.

3. Motion by BJ Peters/Olach to support the Holiday Fest for an amount up to \$100.00.
CARRIED

4. Motion by BJ Peters/Boss to hire Dudley Stevens to assist with snow removal (\$10.63 per
hr.) CARRIED

Attachment I Part 5

5. Motion by Boss/Olach to have UPEA apply for a MDOT Enhancement Grant for street lamps for Main Street and possible Center Street. The grant application to also include trees, benches, trash receptacles and possibly some directional signage. CARRIED.

Discussion:

- a. Committees & Rosters were updated and to be voted on at the December meeting.
 - b. Street Projects Updated
 - c. Color: ADA Ramps & Decorative corners on Center and Main Streets (Stamped) Sidewalk.
 - d. Pattern Decorative Sidewalk
 - e. Christmas Decorations
 - f. Drenth Memorial Endowment Fund
 - g. Trustee Vacancy must be filled by the December Council meeting.
 - h. Transfer Station, Letter to be sent to (b) (6) on the up keep of the transfer station area and the past due rental amount.
6. Motion by BJ Peters/Boss to pay the bills. CARRIED.
 7. Motion by BJ Peters/Boss to Adjourn. 7:50 p.m.

Hellen Allen

Village Clerk

Attachment I Part 5

VILLAGE OF ELLSWORTH COUNCIL MINUTES
DECEMBER 11, 2006
REGULAR MEETING
BANKS TOWNSHIP HALL

Present: Campbell, Skeel, M. Drenth, Boss and M. Peters.

Absent: Olach and HJ Peters.

Other: (b) (6)

Meeting called to order by Campbell at 7:00 a.m.

1. Motion by Ruis/Skeel to approve the November 2006 minutes as presented. CARRIED. 4 -0

Public Response:

Departmental Reports:

DPW:

Police: Police car has been repaired.

Streets:

Committee Reports

Planning Commission:

Finance Committee: Budget meeting will be held at 7:00 p.m. Tuesday, January 9, 2007 at the Banks Township Hall.

Recreation Report: No Report

Discussion Items:

(b) (6) from (b) (6) gave a short report on the Main St. Project and brought season greetings.

Wooded Shoe Holiday Fest is December 13th 2006 at the Banks Township Hall.

MDOT Enhancement Grant for Main St. and Center St.: Campbell updated the Council.

(b) (6) Concerns on Sledding Hill w/snowmobiles.

Updated council on acquiring a long term lease for a pathway through the DNR boat launch site.

Discussed the invoice from (b) (6) on the work done on Center Street.

Discussed MDOT'S invoice for the Village portion of construction cost on the Main Street reconstruction project.

Action Items:

2. Motion by Skeel/Boss to have (b) (6) fill the trustee vacancy which will expire 2008. CARRIED. 5-0

3. Motion by Boss/Skeel to approve the transfer of \$22,333.80 from General fund to Major Street. CARRIED. 5-0

4. Motion by Skeel/Boss to appoint (b) (6) as Village Ordinance Enforcer. CARRIED. 5-0

5. Motion by Skeel (b) (6) to approve Zoning Ordinance amendment Z-3. CARRIED. 5-0

6. Motion by Skeel/Boss to pay the bills. CARRIED. 5-0

7. Motion by Skeel/Boss to adjourn. CARRIED. 7:45 PM.

Hellen Ailen, Village Clerk

Attachment I Part 5

VILLAGE OF ELLSWORTH COUNCIL MINUTES
JANUARY 8, 2007
REGULAR MEETING
BANKS TOWNSHIP HALL

Present: Campbell, Olach, Boss, Vollmer, M. Peters and J. Skeel and BJ Peters.

Absent: M. Drenth

Others: (b) (6)

Meeting called to order by Campbell at 7:00 p.m.

1. Motion by Olach/Skeel to accept the December 2006 minutes as presented. CARRIED.

Departmental Reports:

Police: Terry Johnson, Antrim County Sheriff, gave information on new radios that will be used county wide and also in the village police car. The new radios will be provided to the village by the county at no cost and the county will pay for the first year mike fees. The mike fees could range from \$50.00 to \$200.00 per mike for every year after that and the village would have 2 radios. Johnson and Office Daunter will provide us with more information within the next month. This new radio system will give the county better coverage for police departments.

DPW:

Streets:

Planning Commission: The Planning Commission will be viewing the updated draft of the Village Master Plan Thursday, January 11.

Finance Committee: Budget Committee to meet Wednesday night 7:00 p.m. January 10, 2007 at the Banks Township Hall.

Action Items:

Council recommended to the finance committee that Village employee's wages to have a 3.3% increase. Wages to be as follows for 2007 / 2008:

Tex Drenth from \$ 14.83 to \$ 15.32
Al Donaldson from \$ 10.63 to \$ 10.98
Andy Ross \$ 10.63 to \$ 10.98
Police from \$ 11.17 to \$ 11.54
Clerk from \$11,279.00 to \$11,652.00
Treasurer from \$ 3183.00 to \$ 3288.00
Dudley Stevens \$ 14.83

2. Motion by Boss/M. Peters to accept the Budget Amendments as follows.

Water Fund:

Increase Interest Income (000-66500) \$1000 from \$1000 to \$2000.

Increase Sales (000-6010) \$4000 from \$58,000 to \$62,000

Increase Repairs & Maintenance (536-9300) \$4034 from \$31,966 to \$36,000

Increase Capital Outlay (536-94010) \$3951 from \$56,049 to \$60,000

Attachment I: Part B

(b) (6)

FACSIMILE COVER SHEET

PLEASE DELIVER THE FOLLOWING TO:

NAME: Judy Browning

COMPANY: State of Michigan

FAX NUMBER: 231.941.1512

FROM: (b) (6)

RE: Prompt Payment Request

DATE: February 8, 2008

TOTAL NUMBER OF PAGES 2 (including cover sheet)

The information accompanying this transmittal sheet is confidential and protected by law. It is intended for and should only be used by the individual or entity named above. If you are not the intended recipient or an authorized employee or agent of the designated recipient or able to deliver it to such person, you are notified that any disclosure, copying, distribution or use of the attached information is strictly prohibited. If you have received this fax in error, please contact the person shown above immediately and return the original to us at our address. Costs of postage or the call will be reimbursed. Thank you for your cooperation.

IF YOU DON'T RECEIVE ALL PAGES, CALL BACK AS SOON AS POSSIBLE.

PHONE: (b) (6)

FAX: (b) (6)

Attachment II

1. Contract between (b) (6) and (b) (6)
2. Prompt Payment Provisions
3. Outstanding invoices and supporting documentation
4. Rules for bi-weekly progress payments

Attachment II

Part

- 1 Contract (b) (6)
- 2 Prompt Payment Provisions
- 3 Invoice on what is still outstanding
- 4 Progress payment each 2 weeks

Attachment II Part 1

(b) (6)

(b) (6)

FASCIMILE COVER SHEET

Phone: (b) (6)
Fax: (b) (6)

PLEASE DELIVER THE FOLLOWING TO:

NAME: (b) (6)

COMPANY: Attorney at Law

FAX NUMBER: (b) (6)

FROM:

RE Ellsworth job – attached are invoices & a subcontract
Beginning date is 10/1/06 & ending date is 10/31/06

DATE: December 4, 2006

TOTAL NUMBER OF PAGES 8 (including cover sheet)

The information accompanying this transmittal sheet is confidential and protected by law. It is intended for and should only be used by the individual or entity named above. If you are not the intended recipient or an authorized employee or agent of the designated recipient or able to deliver it to such person, you are notified that any disclosure, copying, distribution or use of the attached information is strictly prohibited. If you have received this fax in error, please contact the person shown above immediately and return the original to us at our address. Costs of postage or the call will be reimbursed. Thank you for your cooperation.

IF YOU DON'T RECEIVE ALL PAGES, CALL BACK AS SOON AS POSSIBLE.

PHONE: (b) (6)

FAX: (b) (6)

Attachment II Part 1

Michigan Department
of Transportation
1302A (03/05)

CONTRACT ID 05555-76672
FEDERAL PROJECT NO (if applicable) STP 0605(005)

SUBCONTRACT

Complete and return to MDOT, Transportation Service Center

CONTRACTOR CODE 987	PRIME CONTRACTOR (b) (6)
CONTRACTOR CODE 5661	SUBCONTRACTOR (b) (6)
CONTRACTOR CODE	SUB-SUBCONTRACTOR

TOTAL DOLLAR VALUE OF SUBCONTRACT \$ 61,593.23	*TOTAL DOLLAR VALUE OF SAME BID ITEMS IN CONTRACTOR'S PROPOSAL <small>(This amount is used to calculate the 60% contract maximum allowable to subcontract)</small> \$ 61,593.23 <small>*In case of a "Partial Item of Work" or "Lump Sum", only include that portion to be performed by the subcontractor</small>
--	---

In the event of a discrepancy in the contract between the Contractor and the Michigan Department of Transportation covering this project, and this subcontract, the contract between the Contractor and the Michigan Department of Transportation will govern and be the basis for any and all decisions.

PRIME CONTRACTOR

(b) (6)

I hereby certify that this subcontract is complete and accurate as executed between the parties shown above and that all attachments, including but not limited to required wage rates and addenda to the proposal are included. I have provided copies of the attachments to the subcontractor listed above. I have reviewed the information on this form and it is a complete and accurate statement of the work to be performed under the attached subcontract. This subcontract is in accordance with the current requirement of Section 1 08.01 of the Standard Specifications for Construction that not less than 40% of the work under the prime contract be performed by my own forces, and is also in accordance with the DBE Participation Plan submitted for this project, if applicable.

SIGNATURE (b) (6)	NAME & TITLE (b) (6)	DATE 9/29/06
----------------------	-------------------------	-----------------

SUBCONTRACTOR

(b) (6)

I, as the subcontractor, certify that I am prequalified or certified, as required, with the Michigan Department of Transportation to perform these items of work to be performed under this subcontract. I have received from the prime contractor all copies of attachments, including but not limited to required wage rates and addenda to the proposal.

SIGNATURE (b) (6)	(b) (6)	DATE 9/27/06
----------------------	---------	-----------------

SUB-SUBCONTRACTOR

SIGNATURE	NAME & TITLE	DATE
-----------	--------------	------

ADMINISTRATING ENGINEER USE ONLY

DATE RECEIVED BY ENGINEER

5910P2 LMI

(b) (6)

Attachment II Part I

SCHEDULE A

JOB : 404475 Ellsworth Main Street
VENDOR: 788366

ORDER NUMBER: 13816
Phone
FAX

(b) (6)

(b) (6)

PAY ITEM	ITEM DESCRIPTION	QUANTITY	U/M	UNIT PRICE	AMOUNT
270	Driveway, Nonreinf Conc, 6 inc	249.00	SY	34.0000	8466.00
280	Curb and Gutter, Conc, Det B2	82.00	FT	13.5000	1107.00
290	Curb and Gutter, Conc, Det F4	1816.00	FT	10.3800	18850.08
300	Driveway Opening, Conc, Det M	68.00	FT	15.0000	1088.00
310	Sidewalk, Conc, 4 inch	8495.00	SF	2.3500	19963.25
320	Sidewalk, Conc, 6 inch	940.00	SF	3.1000	2914.00
330	Sidewalk Ramp, ADA	442.00	SF	3.4500	1524.90
340	_ Sidewalk, Conc, 4 inch Decor	960.00	SF	8.0000	7680.00
-- TOTAL SUBCONTRACT --					61593.23

THIS AMOUNT IS 16.80 % OF THE TOTAL CONTRACT

- ** SEND ALL APPLICABLE CERTIFICATIONS TO OUR OFFICE
- ** AND ORIGINALS TO THE PROJECT ENGINEER
- ** SUBJECT TO 1% BOND DEDUCTION

Attachment II Part I

MDOT 1302A (03/06)

THIS AGREEMENT* MADE THIS 21st DAY OF August, 2006, BY AND BETWEEN

PRIME CONTRACTOR

(b) (6)

ADDRESS Street City State Zip Code

(b) (6)

AND

SUBCONTRACTOR

(b) (6)

ADDRESS Street City State Zip Code

(b) (6)

AND

SUB-SUBCONTRACTOR

ADDRESS Street City State Zip Code

The subcontractor, in consideration of the payment or payments hereinafter specified, agrees to furnish all necessary machinery, tools, apparatus and other means of construction, do all the work, furnish all materials except as otherwise specified and to complete in strict accordance with the contract between the Michigan Department of Transportation and/or airport owner and the prime contractor, the work herein described.

DESCRIPTION OF WORK - General statement of the location and type of work to be performed by the subcontractor

TYPE OF WORK:

Concrete, Curb & Gutter, Sidewalk

LOCATION

Main Street

from 950 feet north of the south village limits to Church Street
Village of Ellsworth, Antrim County

OWNER:

Village of Ellsworth

PROGRESS SCHEDULE

It is further understood and agreed that the timely completion of work tasks is a crucial element of this contract, and that the work shall be so conducted and supervised by the subcontractor as to insure its completion in accordance with the following schedule. Each item of work to be completed on or before the date indicated below:

As per Progress Schedule

* If this subcontract is received and reviewed prior to award of the prime contract, this subcontract will be considered void if for whatever reason, the prime contract is not awarded.

Attachment II Part I

MDOT 1302A (03/06)

Authorization and payment for unforeseen contingencies shall be as provided by that Resolution of the State Administrative Board relating to Department of Transportation Construction and Maintenance Contracts in effect when bids were received for this project

In connection with the performance of this contract, the prime contractor and the subcontractor agree to comply with the provisions of the State of Michigan "Prohibition of Discrimination In State Contracts" as set forth in Appendix A, attached and made a part hereof. In the event the project work covered by this contract involves the use of any Federal funds the prime contractor and the subcontractor further agree to comply with the Civil Rights Act of 1964 (78 Stat. 252) and the Regulations of the U.S. Department of Transportation (49 C.F.R. Part 21) issued pursuant to that Act. Further, the prime contractor and subcontractor agree to comply with the provisions of Appendix B (Aeronautics Federal Requirements) which shall be attached and made a part hereof for all Federally assisted Michigan Department of Transportation, Bureau of Aeronautics projects

All work will be to the complete satisfaction of the Michigan Department of Transportation, Bureau of Aeronautics projects work shall be done under the direct supervision of the owner and to the complete satisfaction of the owner and the Michigan Aeronautics Commission, for the Michigan Department of Transportation

It is specifically understood and agreed that the subcontractor will present satisfactory evidence to the prime contractor prior to the beginning of work, that Workmen's Compensation Insurance has been obtained and is in full force and effect covering all employees performing work hereunder, and Comprehensive General Liability Insurance is in full force and effect covering bodily injury and property damage, and that both will be kept in full force and effect until the work herein contracted for has been fully completed.

It is understood and agreed that the prequalification of the subcontractor pursuant to 1933 P.A. 170, or the certification of the subcontractor pursuant to 49 C.F.R. Part 23 does not constitute a guarantee or warranty of the subcontractor's ability to perform or complete the work contained herein.

The subcontractor agrees to irrevocably assign its rights to pursue any claims for relief or causes of action for damages sustained by the State of Michigan or the Michigan Department of Transportation, with regard to claims based on goods or services that were used to meet its obligations to the Contractor and/or the Contractor's obligation to the Michigan Department of Transportation under this contract, due to any violation of 15 USC §§ 1-15 or 1984 PA 274, MCL 445.771-788, excluding § 4a, to the State of Michigan as a third-party beneficiary.

The subcontractor shall notify the Michigan Department of Transportation if it becomes aware that an antitrust violation, with regard to claims based on goods or services that were used to meet its obligations to the Contractor and/or the Contractor's obligation to the Michigan Department of Transportation under this contract, may have occurred, or is threatened to occur. The subcontractor shall also notify the Michigan Department of Transportation if it becomes aware of any person's intent to commence, or commencement of, an antitrust action with regard to claims based on goods or services that were used to meet the Contractor's obligation to the Michigan Department of Transportation under this contract

Attachment II Part I

Michigan Department
of Transportation
1302A (03/06)

SUBCONTRACT CHECK SHEET

SUBCONTRACTORS MUST HAVE ON FILE WITH CONTRACT SERVICES:

- PREQUALIFICATION AND/OR CERTIFICATION, AS REQUIRED. EXCEPTION: PROJECT OR SPECIFIC ITEM OF WORK IS "PREQUALIFICATION WAIVED".

SUBCONTRACT AND SUB-SUBCONTRACT FORM PREPARATION:

- USE ONLY MDOT SUBCONTRACT FORM 1302A. THIS FORM MAY BE ACCESSED AT MDOT'S PUBLIC FORMS PAGE VIA THE FOLLOWING URL: <http://mdotwas1.mdot.state.mi.us/public/webforms/>
- SUBMIT COVER SHEET AND LINE ITEM SHEET OF EACH SUBCONTRACT OR SUB-SUBCONTRACT TO MDOT TRANSPORTATION SERVICE CENTER.

COVER SHEET:

- ENTER CONTRACT ID AND FEDERAL PROJECT NUMBER.
- ENTER PRIME, SUBCONTRACTOR AND SUB-SUBCONTRACTOR CODE NUMBER AND PREQUALIFIED OR CERTIFIED NAME.
- ENTER TOTAL DOLLAR VALUE OF SUBCONTRACT OR SUB-SUBCONTRACT
- ENTER DOLLAR VALUE OF SAME BID ITEMS IN CONTRACTOR'S PROPOSAL. IN CASE OF A "PARTIAL ITEM OF WORK" OR "LUMP SUM" ONLY INCLUDE THAT PORTION TO BE PERFORMED BY THE SUBCONTRACTOR. (THIS AMOUNT IS USED TO CALCULATE THE 60% CONTRACT MAXIMUM ALLOWABLE TO SUBCONTRACT.)

ITEM PAGE:

- ENTER LINE NUMBER, ITEM CODE, ITEM OF WORK, QUANTITY, UNIT PRICE AND TOTALS.
- DESIGNATE ON THE SPECIFIC LINE ITEM IF THE SUBCONTRACTOR OR SUB-SUBCONTRACTOR IS PERFORMING ONLY PARTIAL WORK FOR THAT ITEM. DESIGNATE WHAT WORK THE "PARTIAL" REPRESENTS.

SIGNATURE PAGES:

- ORIGINAL SIGNATURE OF PRIME, SUBCONTRACTOR AND SUB-SUBCONTRACTOR.

Attachment # Part 2

MICHIGAN
DEPARTMENT OF TRANSPORTATION

SPECIAL PROVISION
FOR
PROMPT PAYMENT

FIN:CRR

1 of 2

C&T APPR:JAR:DBP 12-27-05

The following is added to Section 109 of the Standard Specifications for Construction.

109.10 Prompt Payment. The prime Contractor agrees to pay each subcontractor for the satisfactory completion of work associated with the subcontract no later than ten (10) calendar days from the receipt of each payment the prime Contractor receives from the Department. Any delay or postponement of payment from this time frame may occur only upon receipt of written approval from the Engineer. This requirement is also applicable to all sub-tier subcontractors and shall be made a part of all subcontract agreements.

This prompt payment provision is a requirement of 49 CFR 26.29 and does not confer third-party beneficiary right or other direct right to a subcontractor against the Department. This provision applies to both DBE and non-DBE subcontractors.

- A. **Satisfactory Completion.** Satisfactory completion is defined for the purpose of this prompt payment provision as when:
1. the Engineer finds the work completed in accordance with the contract, plans and specifications;
 2. all required paperwork, including material certifications, payrolls, etc., has been received and approved by the Engineer; and,
 3. the Engineer has inspected and approved the work and has determined the final quantities.
- B. **Non-Payment Claims.** All notifications of failure to meet prompt payment provisions shall be referred by the subcontractor to the prime Contractor and must be made in writing within thirty (30) calendar days of the date the payment was to be received. **The subcontractor has the option of submitting a lien claim to the MDOT Contract Services Division in order to notify the project Surety of the non-payment issue. It is the responsibility of the Surety to ensure that all legitimate payments are made.**

The prime Contractor must include in all subcontract agreements notice to subcontractors of their right to prompt payment, and of the Department's prohibiting prime Contractors from holding retainage from subcontractors under 49 CFR 26.29.

The prime Contractor must include in all subcontracts, language providing that the Contractor and Subcontractor will use an approved alternative dispute resolution process to resolve prompt

Attachment II Part 2

FIN:CRR

2 of 2

12-27-05

payment differences. The arbitration of the dispute will be handled through a member of the American Arbitration Association, 1 Town Square, Southfield, Michigan (248-352-5500), or another third party agreed to by both the prime Contractor and the subcontractor. The parties must agree on a mediator or arbitrator within twenty five (25) calendar days after a written complaint has been sent by the subcontractor. The cost of mediation or arbitration will be borne by the parties involved or as determined by the mediator. Qualified costs of mediation, for certified DBE's, will be paid by the Department based on current procedures. The DBE must contact the Small Business Liaison Section for information on current procedures and to receive reimbursement.

Copies of all documents related to prompt payment claims will be provided to the Engineer to be included in the project files.

Continued failure of the prime Contractor to comply with prompt payment provisions may result in sanctions, which shall be applied progressively. Sanctions may include, but are not limited to: a review of the firm by representatives of the Department as appropriate for the type of work performed by the prime Contractor; reduction of prequalification ratings; and/or withdrawal of bidding privileges.

Attachment # II Part 3

(b) (6)

From: (b) (6)

Sent: Monday, November 20, 2006 1:59 PM

To: (b) (6)

(b) (6) #231-878-8550 w/ Ellsworth:
Here's the # you wanted:

694 sq yds of concrete approach
1824 ft of curb & gutter
6653 sq ft of sidewalk
388 sq ft of ADA ramp
120 ft of M opening

(b) (6)

--
No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.430 / Virus Database: 268.14.10/541 - Release Date: 11/20/2006 6:48 AM

Attachment # Part 03

(b) (6)

Customer Ledgers

For the Period From Jan 1, 2007 to Dec 31, 2008

Filter Criteria includes: 1) IDs from 6 to 6 Report order is by ID Report is printed in Detail Format

Customer ID Customer	Date	Trans No	Type	Debit Amt	Credit Amt	Balance
6	1/1/07	Balance Fwd				72,603.13
(b) (6)	1/3/07	01/03/2007-04	CRJ		19,335.70	53,267.43
	1/16/07	01/03/2007	CRJ		9,169.13	44,098.30
	6/20/07	06/20/07	CRJ		6,612.76	37,485.54
	12/31/07	123107	CRJ		122.49	37,363.05
Report Total					35,240.08	37,363.05

Attachment I Amt 3

(b) (6) -06

Customer Ledgers

For the Period From Feb 1, 2006 to Dec 31, 2006

Filter Criteria includes: 1) IDs from 6 to 6 Report order is by ID. Report is printed in Detail Format.

Customer ID Customer	Date	Trans No	Type	Debit Amt	Credit Amt	Balance
6	11/10/06	2006-1012	SJ	9,588.11		9,588.11
(b) (6)	11/21/06	2006-1013	SJ	63,015.02		72,603.13
Report Total				72,603.13		72,603.13

(b) (6)

-06

44 Attachment # Part 2

INVOICE

Invoice Number: 2006-1013
Invoice Date: Nov 21, 2006
Page 1
Duplicate

Voice: (b) (6)
Fax: (b) (6)

Bill To:

(b) (6)

Ship to:

(b) (6)

Customer ID	Customer PO	Payment Terms	
6	Elworth Main Street	Net 15 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	US Mail		12/6/06

Quantity	Item	Description	Unit Price	Amount
694.00		Driveway Nonreinf. Conc, 6"	34.00	23,596.00
82.00		Curb and Gutter B2	13.50	1,107.00
1,824.00		Curb and gutter F4	10.38	18,933.12
6,653.00		Sidewalk 4"	2.35	15,634.55
388.00		ADA ramp	3.45	1,338.60
120.00		M opening	16.00	1,920.00
1.00		Additional cost of high early	485.75	485.75

Subtotal	63,015.02
Sales Tax	
Total Invoice Amount	63,015.02
Payment/Credit Applied	25,948.46
TOTAL	37,066.58

Check/Credit Memo No: Multiple Payments Received

Attachment II Part 3

Charles Moore

From: (b) (6)
Sent: Monday, November 20, 2006 10:28 AM
To: (b) (6)
Subject: voicemails

(b) (6) #268-1265 call him on Tuesday afternoon

Call (b) (6) for meeting times

Call (b) (6) property

Call calendar people

(b) (6) in Ellsworth: 4" sidewalk; curb 301, 1750 sq ft; approaches 618

(b) (6)

--
No virus found in this outgoing message.
Checked by AVG Free Edition.
Version: 7.5.430 - Virus Database: 268.14.10.541 - Release Date: 11/20/2006 6:48 AM

(b) (6)

INC.-06

INVOICE

Invoice Number: 2006-1012
Invoice Date: Nov 10, 2006
Page 1
Duplicate

Attachment # Part 3

Voice
Fax

(b) (6)

Bill To:

(b) (6)

Ship to:

(b) (6)

Customer ID	Customer PO	Payment Terms	
6	City of Ellsworth	Net 60 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	Airborne		1/9/07

Quantity	Item	Description	Unit Price	Amount
68.67		Approachs 6' Inch	34.00	2,334.78
1,757.00		Sidewalk 4' Inch	2.35	4,128.95
301.00		Curb & Gutter, Det F4	10.38	3,124.38

Subtotal	9,588.11
Sales Tax	
Total Invoice Amount	9,588.11
Payment/Credit Applied	9,169.13
TOTAL	418.98

Check/Credit Memo No: 01/03/2007

Attachment II Part 3

Tic' et #	Description	Yards	Difference	Total
45654	Concrete	9	\$ 4 00	\$ 36.00
	W.R.			\$ 40.50
45657	Concrete	8.5	\$ 4 00	\$ 34.00
	W.R.			\$ 38.25
45670	Concrete	6	\$ 4 00	\$ 24.00
	W.R.			\$ 27.00
45674	Concrete	9	\$ 4 00	\$ 36.00
	W.R.			\$ 40.50
45718	Concrete	8	\$ 4 00	\$ 32.00
	W.R.			
45725	Concrete	8	\$ 4 00	\$ 32.00
	W.R.			
45731	Concrete	5	\$ 4 00	\$ 20.00
	W.R.			
45831	Concrete	8.5	\$ 4 00	\$ 34.00
	W.R.			
45809	Concrete	9	\$ 4 00	\$ 36.00
	W.R.			
45784	Concrete	7	\$ 4 00	\$ 28.00
	W.R.			
	Subtotal		\$	458.25
	Sales Tx 6%		\$	27.50
	Total		\$	485.75

(b) (6)

(b) (6)

Attachment # Part 3

STATEMENT

Statement Date: 12/31/2006

3075

TO:

(b) (6)

PAST DUE: \$33,745.17

Invoice#	Inv Date	Due Date	Description	Job/Work Order	Amount	Paid/Credit	Balance
45585	10/03/06	11/30/06	concrete 9yds	45585	759.23		759.23
45587	10/03/06	11/30/06	concrete 9yds	45587	759.23		759.23
45594	10/03/06	11/30/06	concrete 9yds	45594	759.23		759.23
45596	10/03/06	11/30/06	concrete 6yds	45596	509.60		509.60
45601	10/04/06	11/30/06	concrete 9yds	45601	759.23		759.23
45602	10/04/06	11/30/06	concrete 3yds	45602	259.97		259.97
45604	10/04/06	11/30/06	concrete 9yds	45604	759.23		759.23
45614	10/05/06	11/30/06	concrete 9yds	45614	759.23		759.23
45628	10/05/06	11/30/06	concrete 9yds	45628	759.23		759.23
45634	10/05/06	11/30/06	concrete 9yds	45634	759.23		759.23
45636	10/06/06	11/30/06	concrete 9yds	45636	759.23		759.23
45642	10/06/06	11/30/06	concrete 9yds	45642	759.23		759.23
45644	10/06/06	11/30/06	concrete 4yds	45644	343.18		343.18
45652	10/09/06	11/30/06	concrete 9yds	45652	755.25		755.25
45654	10/09/06	11/30/06	concrete 9yds	45654	263.94		263.94
45656	10/09/06	11/30/06	concrete 9yds	45656	755.25		755.25
45657	10/09/06	11/30/06	concrete 8 5yds	45657	790.23		790.23
45662	10/10/06	11/30/06	concrete 9yds	45662	755.25		755.25
45666	10/10/06	11/30/06	concrete 9yds	45666	755.25		755.25
45670	10/10/06	11/30/06	concrete 6yds	45670	559.68		559.68
45673	10/10/06	11/30/06	concrete 9yds	45673	755.25		755.25
45674	10/10/06	11/30/06	concrete 9yds	45674	836.34		836.34
45696	10/16/06	11/30/06	concrete 9yds	45696	755.25		755.25
45698	10/16/06	11/30/06	concrete 9yds	45698	755.25		755.25
45705	10/18/06	11/30/06	concrete 9yds	45705	755.25		755.25

Current 506.18	1-30 Days 0.00	31-60 Days 33,745.17	61-90 Days 0.00	91 + Days 0.00
-------------------	-------------------	-------------------------	--------------------	-------------------

Please Pay This Amount

34,251.35

Terms are net amount due 30 days from date of statement with 1 1/2% interest on any overdue balance. If concrete statements are not paid in full within 60 days from date of statement the account will go to a C.O.D basis. Please make checks payable to (b) (6).
Thank you for your prompt payment.

Attachment II Part 4

The rental rate for idled Contractor owned equipment will be one-half the rate established in subsection 109.07. No payment will be allowed for operating costs.

Payment will be limited to the difference between the hours used and 8 hours in any one day and to the difference between the hours used and 40 hours in any one week. No additional compensation for overhead will be allowed.

3. **Payment for Increased Cost of Materials.** For unreasonable delays caused by the conditions listed in subsection 109.03.A, payment for increased cost of materials will be based on differences in the invoice costs before and after the delay period. When requesting an increase in cost of materials, the Contractor shall document both the cost of materials during the week immediately preceding the delay and the cost when the work commences again.

109.04 Payments for Increased or Decreased Quantities. Whenever the quantity of any item of work as given in the contract is increased or decreased, payment for the item of work will be based on the quantity completed. The payment will be authorized at the unit price for the item named in the contract, except as otherwise provided in subsection 103.02.

109.05 Adjustments for Eliminated Items. The Engineer may eliminate the performance or the completion of any contract item. A fair and equitable amount, representing all direct costs incurred on the item prior to the elimination, shall be agreed upon in writing and paid to the Contractor.

109.06 Progress and Partial Payments. Progress payments will be made for units of work completed and partial payments for fabricated or processed nonperishable materials delivered for use on the project. Payments will be made in a timely manner, however, no claim will be considered for delayed payment of estimates.

A. Completed Work.

1. Progress payments will be based upon estimates prepared by the Engineer of the work items completed. The estimates are subject to final balancing according to subsection 109.09. Progress payments will be made biweekly if all of the following occur:
 - a. The work is progressing according to the progress schedule;

Attachment III

1. Lien on project which was released by the state and the project closed out.
2. Attorney General letter stating there were not prompt payment actions.
3. Attorney General's letter detailing Department procedures to clear-up lien.

Attachment III Part I



STATE OF MICHIGAN
DEPARTMENT OF TRANSPORTATION
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

November 18, 2008

(b) (6)

CONTRACT ID: 05555-76672

Your work in connection with the above numbered project was formally accepted by the Michigan Department of Transportation under date of November 10, 2008

If you have any questions please contact the Project Engineer.
The Project Engineer for this project is

(b) (6)

05554
01653
05661
08239
01584
05130

(b) (6)

Attachment III Part I



STATE OF MICHIGAN

DEPARTMENT OF TRANSPORTATION
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

September 30, 2008

(b) (6)

REVISION

BOND NO: 929402773 DATE LIEN RECEIVED: 09/12/06
LIEN REVISION DATE: 09/30/08

CONTRACT - 05555-76672 PROJECTS - 76672A

CONTRACTOR - (b) (6)

SUBCONTRACTOR -

SUB/SUBCONTRACTOR -

CLAIMANT - (b) (6)

AMOUNT OF CLAIM - \$ 37,363.05

To whom it may concern:

Transmitted herewith is Notice of Lien Claim submitted by (b) (6), for materials and/or labor furnished on the above described contract. By copy of this letter we are advising all parties concerned of this transmittal. Please keep this office advised of any change in the status of this claim.

If you have any questions, please contact the Contractor Payment Unit at 517/335-2318.

Enclosure

cc: (b) (6)

Attachment III Part I



STATE OF MICHIGAN

DEPARTMENT OF TRANSPORTATION
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KIRK T. STEIGLE
DIRECTOR

September 22, 2008

FAX: 517-371-7876

(b) (6)

BOND NO - 929402773
CONTRACT - 05555-76672 PROJECTS - 76672A

CONTRACTOR - (b) (6)
SUBCONTRACTOR -
SUB/SUBCONTRACTOR -

AMOUNT OF CLAIM - \$ 72,603.13

To whom it may concern:

Michigan Department of Transportation records indicate that you filed a lien on contract 05555-76672 on September 12, 2006.

Please provide the status of this lien:

___ Lien has been satisfied and a full unconditional waiver of lien is enclosed.

___ Lien has not been satisfied.

___ I have not yet had any contact with the Bonding Company.

___ I have contacted the Bonding Company regarding this claim.
___ I'm working with the Bonding Company and am confident the claim can be resolved.

___ The Bonding Company does not agree with my claim or has not been responsive to it.

X Lien amount has changed and is now \$ 37,363.05

Other _____

Please sign and return this letter to the Contract Services Division at the address below, or fax to 517-373-0403.

If you have any questions, please contact Sue Powers, Payments Specialist, at 517/335-3076.

(b) (6)

Signature of Lien Claimant

MURRAY D. VAN WAGONER BUILDING P.O. BOX 30060 LANSING, MICHIGAN 48909
www.michigan.gov (517) 373-2090

Attachment III Part I

(b) (6)

(b) (6)

FASCIMILE COVER SHEET

PLEASE DELIVER THE FOLLOWING TO:

NAME:

(b) (6)

COMPANY:

FAX NUMBER:

FROM:

RE: Attached letter dated 12/4/06

DATE: December 4, 2006

TOTAL NUMBER OF PAGES ___ (including cover sheet)

The information accompanying this transmittal sheet is confidential and protected by law. It is intended for and should only be used by the individual or entity named above. If you are not the intended recipient or an authorized employee or agent of the designated recipient or able to deliver it to such person, you are notified that any disclosure, copying, distribution or use of the attached information is strictly prohibited. If you have received this fax in error, please contact the person shown above immediately and return the original to us at our address. Costs of postage or the call will be reimbursed. Thank you for your cooperation.

IF YOU DON'T RECEIVE ALL PAGES, CALL BACK AS SOON AS POSSIBLE.

PHONE: (b) (6)

FAX: (b) (6)

Attachment III Part I

(b) (6)

(b) (6)

VIA FACSIMILE ONLY

December 4, 2006

(b) (6)

RE: Ellsworth

Dear (b) (6)

This letter serves as notice of my intent to file a claim per lack of payment as described in Section 109.6 (a).

If you have any questions, please do not hesitate to contact me.

Sincerely,

(b) (6)

cc:

(b) (6)

Attachment III Part I



STATE OF MICHIGAN

DEPARTMENT OF TRANSPORTATION
LANSING

JENNIFER M. GRANHOLM
GOVERNOR

KIRK T. STEUDLE
DIRECTOR

December 15, 2006

(b) (6)

BOND NO: 929402773

DATE LIEN RECEIVED: 12/11/06

CONTRACT - 05555-75672

CONTRACTOR - (b) (6)

SUBCONTRACTOR -

SUB/SUBCONTRACTOR -

AMOUNT OF CLAIM - \$ 72,603.13

To whom it may concern:

We have received your Notice of Lien Claim for the subject contract and have forwarded it to Western Surety for their action. A copy of the transmittal letter is enclosed for your records. Western Surety should contact you to get the necessary documentation of your claim. However, if they don't, we suggest that you contact them at the address on the transmittal letter and ask what additional paperwork you need to provide to get your claim processed.

When the lien is satisfied, please complete the enclosed "Full Unconditional Waiver of Lien" form (or you may use your own form) and return to:

Michigan Department of Transportation
Contract Services Division
Contractor Payment Unit
P O Box 30050
Lansing, MI 48909

If you have any questions, please contact the Contractor Payment unit at 517/335-2318.

(b) (6)

Attachment III Part 2

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

December 19, 2007

(b) (6)

Dear Mr. Reid:

Re: (b) (6) v. Michigan Dep't of Transportation, et al
Ingham County Circuit Court No. (b) (6)
(Hon. Joyce Draganchuk)

A copy of your December 5, 2007, letter (copy attached) received by defense counsel on December 11, 2007, was provided to Defendant Michigan Department of Transportation (MDOT) for responses (see below) to the questions contained in the letter:

- To the best of its knowledge, information, and belief, MDOT possesses no "further documents" that fall within the scope of Plaintiff's Freedom of Information Act (FOIA) requests at issue in Plaintiff's instant FOIA action, specifically concerning the placement of concrete for the Village of Ellsworth project.
- In regards to "prompt payment," MDOT reiterates that the Prompt Payment Provision has never been exercised by any entity, including Plaintiff. Plaintiff's inquiry into what it describes as "MDOT's next step . . . if the prompt payment request was not resolved immediately as all the other files have been," is based on an incorrect premise, and, therefore, the question is not subject to an answer.

I have enclosed a proposed order of dismissal to be entered by stipulation of the parties. Please note that the document includes dropping the individual Defendants, which would constitute a part of Defendants' dispositive motion if necessary. The proposed order includes Plaintiff's costs and fees of \$650.00, which is offered in the spirit of compromise. Finally, in order to approve the payment, my office requires a dismissal with prejudice.

(b) (6)

Attachment III Part 2

Page 2
December 19, 2007

Please let me know if this matter can be finalized before the January 28, 2008, pretrial conference.

Very truly yours,



Thomas Quasarano
Assistant Attorney General
(517) 373-1162

TQ:bb
Encs.

c: William Perod, MDOT, w/ encs.

(b) (6)

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL

Attachment III Part 3



P.O. Box 30774
LANSING, MICHIGAN 48209

MIKE COX
ATTORNEY GENERAL

January 18, 2008

(b) (6)

Dear (b) (6)

Re: (b) (6) Michigan Dep't of Transportation, et al
Ingham County Circuit Court No. (b) (6)
(Hon. Joyce Draganchuk)

I forwarded a copy of your January 7, 2008, letter to the Michigan Department of Transportation (MDOT) for review. MDOT informed me that after a job has been completed by a Michigan Disadvantaged Business Enterprise (DBE) certified firm, MDOT sends a letter to the DBE requesting confirmation of payment for the completed job. If a DBE were to respond to MDOT's letter by informing MDOT that the DBE had not been paid, MDOT can refer the DBE to the DBE technical unit to file a claim under the Special Provision for Prompt Payment. Special Provision for Prompt Payment, however, has never been exercised by any entity, including (b) (6). If a DBE does not respond to MDOT's letter, MDOT considers the matter closed because there is no claim of non-payment.

Additionally, Special Provision for Prompt Payment would not apply to (b) (6) because MDOT was notified by the Village of Elsworth that, according to the Village of Elsworth, the concrete installed by (b) (6) was not completed within the proper specifications and the job, therefore, was not finalized. MDOT notified (b) (6) of its options of either fixing the work or receiving a payment for the degree of work that was performed.

In response to (b) (6) FOIA request and other request for information, MDOT provided copies of the only records in MDOT's possession. These records may not have fit (b) (6) exact description of records but were, nevertheless, provided in an effort to assist (b) (6).

(b) (6)

Page 2
January 18, 2008

Attachment III Part 3

I hope that this letter clarifies (b) (6) remaining question. In lieu of the January 24, 2008, pretrial conference, I again ask that (b) (6) stipulate to the proposed order of dismissal with prejudice and with payment of Plaintiff's costs and fees of \$650.00 offered in the spirit of compromise. A copy of the proposed order was attached to defense counsel's December 19, 2007, letter.

Finally, your letter appears to say that (b) (6) is hesitant to resolve this case with prejudice because (b) (6) may wish in the future to request alleged MDOT records based on what your letter describes as "new information (that) is discovered that alleges documents are under the control of MDOT." Is it (b) (6) belief that it would be forestalled from making subsequent FOIA requests to MDOT if it stipulates to the proposed order? Please call to discuss.

Very truly yours,



Thomas Quasarano
Assistant Attorney General
(517) 373-1162

TQ:bb

cc: William Perod, MDOT

Attachment IV

1. Letter to Judy Browning requesting assistance.
2. Document showing the (b) (6) received funds from State and in violation of prompt payment provision did sent me the funds for nine months.

Attachment VT Part 1

(b) (6)

January 19, 2007

Sent via fax to 231-941-1512

Judy Browning
State of Michigan
2084 U.S. 51 South, Suite B
Traverse City, MI 49684

Dear Ms. Browning:

Please find attached letter dated December 4, 2006 in reference the prompt payment statute of the contract. Please note that we still remain unpaid for substantial portions of work that has not been contested by anyone. Please assist us in resolving this issue immediately. This has become detrimental to the ongoing operations of my business enterprise. Please assist me before I have to shut my doors. Lastly, please note there will be further correspondence related to the curb that is currently in dispute. Please respond to it promptly. From all indications, you appear to have an excellent relationship with the engineering firm. Thank you in advance for your assistance.

Sincerely,

(b) (6)

Attachment # IV Part 2

(b) (6)

(b) (6)

(b) (6)

February 25, 2008

(b) (6)

Re: (b) (6)

Dear (b) (6)

I have received and reviewed your February 21, 2008 letter. I have enclosed a revised Partial Unconditional Waiver of Lien reflecting the technical change that you requested. The Sworn Statement is correct at the present time until all amounts due and owing by your client are paid. It actively reflects the statement regarding each subcontractor and supplier.

(b) (6) remains in violation of the prompt payment provisions for failing to provide (b) (6) payment for amounts due and owing. It is interesting that your client continues to acknowledge that it owes \$8,196.63 of the amount claimed but refuses to forward that amount to my client. We are uncertain at this time why your client continues to refuse to pay (b) (6) since there is no legal basis. This part will be dealt directly with MDOT and USDOT.

This is obviously just a delay tactic but additional damages continue to be incurred by my client as a result of the prompt payment violations.

It is once again requested that you remit payment to (b) (6) in the acknowledged amount of \$8,196.63.

Sincerely,

(b) (6)

(b) (6)

Attachment IV Part 2

(b) (6)

(b) (6)

(b) (6)

February 29, 2008

(b) (6)

Re: (b) (6)

Dear (b) (6):

Enclosed please find the revised Partial and Unconditional Waiver that was inadvertently omitted from the February 25, 2008 letter to you. It is once again requested that you remit payment in the amount of \$8,196.63, of which the majority is in your personal possession as you stated in your letter.

I am uncertain why you sent a three page letter regarding some history of this matter. The chronological history is brief. (b) (6) provided labor and materials for (b) (6) and (b) (6) refuses to pay. I simply want to receive the payment that has been acknowledged as due and owing by (b) (6) for the past year and we will proceed accordingly on the remaining balance as we have repeatedly stated. I would expect that (b) (6) has received more money, but in either event, they continue to be in violation of the prompt payment provisions and that will be dealt with separately.

I would hope that you and your client would release funds that MDOT has paid that are my client's. I do not need another three page letter response but would simply like payment and if you continue to withhold payment then I would expect that you are more than aware of the penalties pursuant to the prompt payment provisions.

Sincerely,

(b) (6)

(b) (6)

Attachment IV Part 2

PARTIAL UNCONDITIONAL WAIVER OF LIEN

We have a contract with: (b) (6)
To Provide: Labor and Materials

For the improvement of the property described as: MDOT Project : 05555 - 76672

and hereby waive our construction lien in the amount of: Elsworth-Main Street- village of Ellsworth
\$34,145.39
for labor and materials provided through the date of: 2/25/2008

This waiver, together with all previous waivers, if any, (circle one) **does/does not** cover all amounts due to me/us for contract improvements provided through the date shown above.

BY: (b) (6)
(signature of lien claimant)

Address: (b) (6)

Telephone: (b) (6)

Signed on: 2/25/2008
(date)

DO NOT SIGN BLANK OR INCOMPLETE FORMS. RETAIN A COPY.

(b) (6)

Attachment IV Part 2

(b) (6)

April 3, 2008

(b) (6)

RE: (b) (6)
MDOT Project: 05555-76672

Dear (b) (6)

In accordance with the written consent of (b) (6) by their counsel (b) (6) we are remitting directly to you on behalf of our client (b) (6) a check payable to (b) (6) representing subcontract earnings on MDOT Project 05555-76672, Ellsworth Main Street as follows: Check No. (b) (6) for \$6,823.93. This remittance is in accordance with the provisions of the Letter of Credit No. 1720 issued by Capitol National Bank on September 22, 2006. One more payment is expected in the amount of \$1,372.70 as final payment.

Should you have any questions, feel free to contact me.

Very truly yours,

(b) (6)

(b) (6)

Enclosures

cc:

(b) (6)

(b) (6)

Check Date: 02/06/08
Stub 1 of 1

788366 (b) (6)

Invoice		Description	Gross	Deductions	Amount Paid
Number	Date				
404475-09	012408	Attachment VI Part 2	6,823.93		6,823.93
Totals					

RETAIN THIS COPY FOR YOUR RECORDS

(b) (6)

(b) (6)

Check Number: (b) (6)

79-1160
759

Date	Amount
02/06/08	\$*****6,823.93

Void If Not Cashed In 90 Days

Pay: SIX THOUSAND EIGHT HUNDRED TWENTY THREE AND 93/100

To The Order Of:
(b) (6)

BY (b) (6)

(b) (6)

531601 08/28/07
 Date: (b) (6)
 (b) (6)
 Automobile LIA Ins. Explics On 04/04/08
 Workman's Comp Ins. Explics On 04/04/08
 General LIA Ins. Explics On 04/04/08
 Unbralle Insurance Explics On 04/04/08
 Qualified

PAY ITEM NO DESCRIPTION QUANTITY UNIT CONTRACT QUANTITIES AMOUNT
 UNIT PRICE

34,245.27
 25,948.40
 8,196.51
 8,196.51

VEHICLE NUMBER: 788346
 ORDER NUMBER: 11816
 VOUCHER NUMBER: 219809
 EIS NUMBER: 404845
 PROJECT: Main Street
 PROJECT NUMBER:
 COUNTY/STATE:
 INVOICE NUMBER:
 INVOICE DATE: 08/24/07
 STATE PROJECT: 03555 76872 STP 04080051

ANTWERP
 4041109
 08/24/07

8,196.51
 8,196.51

APPROVED FOR PAYMENT DATE

This funds
 still have not
 been paid to me
 since May of 2007.

FINAL QUANTITIES ACCEPTED

BY: _____
 DATE: _____

All work on IV Part 2