



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item J
July 23, 2007

SUBJECT: Approval of the final pay estimate to Galaxy Excavating, Inc. (subcontractor to assignor and prime contractor, Oakland Excavating, Inc.) for the 2003 Neighborhood Road improvement project in the amount of \$28,289.12.

SUBMITTING DEPARTMENT: Engineering *BA*

CITY MANAGER APPROVAL *[Signature]*

BACKGROUND INFORMATION:

The City's consulting engineer for this project (Stantec, Inc., formerly Ayres, Lewis, Norris & May, Inc.) administered the construction contract for reconstructing several asphalt streets in the city in 2003. Stantec has executed and submitted the attached documents verifying the final contract payment amount that would normally be due to the construction contractor, Oakland Excavating, Inc. of Pontiac, MI; however, it was determined that Oakland had failed to pay one of its major subcontractors, Galaxy Excavating. The City's Finance Department and City Attorney have been working with Oakland, which agreed to assign its final payment to Galaxy (Secret-Wardle letters dated June 13 and June 28, 2007, attached).

The close-out process for this project has been exceedingly long because City staff could not get any response from Oakland Excavating until just recently - even though Oakland was owed a final payment.

Stantec's Final Pay Estimate No. 3 is attached, and Stantec has determined that final payment in the amount of \$28,289.12 is appropriate.

RECOMMENDED ACTION: Approval of the final pay estimate to Galaxy Excavating, Inc. (subcontractor to assignor and prime contractor, Oakland Excavating, Inc.) for the 2003 Neighborhood Road improvement project in the amount of \$28,289.12.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

APPLICATION AND CERTIFICATE FOR PAYMENT

TO: Ayres, Lewis, Norris & May, Inc.
 3959 Research Park Drive
 Ann Arbor, MI 48108-2219

PROJECT: 2003 Neighborhood Rehabilitation Program
 City of Novi

FROM: The Oakland Excavating Company
 31 Oakland Ave, Ste. B
 Pontiac, MI 48342

VIA (ARCHITECT):

APPLICATION NO: 3
 PERIOD TO: 3/30/07
 ARCHITECTS: ARCHITECT
 PROJECT NO: CONTRACTOR

Application Date: 3/30/2007
 Distribution to: OWNER

CONTRACT FOR: 2003 Neighborhood Rehabilitation Program
 CONTRACT DATE: 08/28/03

Application is made for Payment, as shown below, in connection with the Contract.
 Continuation Sheet is attached.

1. ORIGINAL CONTRACT SUM..... \$515,121.65
 2. Net change by Change Orders..... \$50,661.85
 3. CONTRACT SUM TO DATE (line 1+- 2)..... \$565,783.50
 4. TOTAL COMPLETED & STORED TO DATE..... \$565,783.50
 (Column G on Continuation Sheet)
 5. RETAINAGE:
 a. 5% of Completed Work \$28,289.18
 (Column D + E on Continuation Sheet)
 b. 10% of Stored Material 0.00
 (Column F on Continuation Sheet)
 Total Retainage (Line 5a + 5b or Total in Column I on Continuation Sheet) \$28,289.18
 6. TOTAL EARNED LESS RETAINAGE..... \$537,494.32
 (Line 4 less Line 5 Total)
 7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate)..... \$537,494.32
 8. CURRENT PAYMENT DUE..... \$28,289.12
 9. BALANCE TO FINISH, PLUS RETAINAGE..... \$0.00
 (Line 3 less Line 6)

CONTRACTOR'S APPLICATION FOR PAYMENT

CHANGE ORDER SUMMARY		ADDITIONS	DEDUCTIONS
Change Orders Approved in previous months by Owner	TOTAL	\$0.00	\$0.00
Approved this Month	Date Approved	\$28,289.18	
Number			
Balance to Finish			
Plus Retainage			
Net change by Change Orders	TOTALS	\$28,289.18	\$0.00

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: The Oakland Excavating Company

By: *[Signature]* Date: 6/1/07

AMOUNT CERTIFIED..... \$28,289.12
 ARCHITECT: OWNER/CITY OF NOVI
 By: *[Signature]* City Engineer Date: 7/13/07

ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the above application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

This certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT, containing

Contractor's signed Certification is attached.

In tabulation below, amounts are stated to the nearest dollar.

Use Column 1 on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2

APPLICATION DATE: 03/30/07

PERIOD TO: 03/30/07

ARCHITECTS PROJECT NO: 2003 Neighborhood Rehab

A ITEM NO.	B P.O. CODE	C DESCRIPTION OF WORK	D SCHEDULED VALUE	E		F MATERIALS PRESENTLY STORED (NOT IN D.O.R.E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H % (G/C)	I BALANCE TO FINISH (C-G)	J RETAINAGE
				D WORK COMPLETED FROM PREVIOUS APPLICATION (D+E)	E THIS PERIOD					
1.		Curb & Gutter, Remove	7,080.00	4,480	2,600.00		7,080	100.00%	0.00	354.00
2.		Pavement, Remove	46,042.50	15,925	30,117.50		46,042.50	100.00%	0.00	2,302.13
3.		Earth Excavation	30,050.00	8,500.00	21,550.00		30,050.00	100.00%	0.00	1,502.50
4.		Subgrade Undercutting, Type IV	2,910.00	0.00	2,910.00		2,910.00	100.00%	0.00	145.50
5.		Erosion Control	1,000.00	0.00	1,000.00		1,000.00	100.00%	0.00	50.00
6.		Aggregate Base, 8"	89,379.20	26,180.00	63,199.20		89,379.20	100.00%	0.00	4,468.96
7.		Drainage Structure Cover, Adjust, Case 1	1,200.00	800.00	400.00		1,200.00	100.00%	0.00	60.00
8.		Misc. Structure Cover, Adjust, Case 1	1,200.00	0.00	1,200.00		1,200.00	100.00%	0.00	60.00
9.		Sanitary Structure Cover, Adj, Case 1	0.00	0.00	-		0.00	#DIV/0!	0.00	0.00
10.		Underdrain, Subbase, 6"	46,550.00	16,500.00	30,050.00		46,550.00	100.00%	0.00	2,327.50
11.		Cold Milling HMA Surface	18,777.00	18,777.00	-		18,777.00	100.00%	0.00	938.85
12.		Pavement for Butt Joints, Remove	1,357.50	1,357.50	-		1,357.50	100.00%	0.00	67.88
13.		HMA, 13A	186,294.00	25,107.60	161,186.40		186,294.00	100.00%	0.00	9,314.70
14.		HMA, Approach	15,600.00	6,562.50	9,037.50		15,600.00	100.00%	0.00	780.00
15.		Joint, Contraction, Cp	616.50	616.50	-		616.50	100.00%	0.00	30.83
16.		Joint, Expansion, E2	4,104.00	4,104.00	-		4,104.00	100.00%	0.00	205.20
17.		Joint, Contraction, Crg	0.00	0.00	-		0.00	#DIV/0!	0.00	0.00
18.		Joint, Expansion, Erg	0.00	0.00	-		0.00	#DIV/0!	0.00	0.00
19.		Lave Tie, Epoxy Anchored	3,923.80	3,543.00	380.80		3,923.80	100.00%	0.00	196.19
20.		Pavement Repair Nonreinforced Concrete	10,115.00	9,415.00	700.00		10,115.00	100.00%	0.00	505.75
21.		Pavement Repair Nonreinforced 7"	15,767.50	15,767.50	-		15,767.50	100.00%	0.00	788.36
22.		Pavement Repair, Remove	5,546.25	0.00	5,546.25		5,546.25	100.00%	0.00	277.31
23.		Driveway Nonreinforced Concrete 6"	7,182.00	116.10	7,065.90		7,182.00	100.00%	0.00	359.10
24.		Curb and Gutter, Concrete, Det C6	14,144.75	13,245.75	899.00		14,144.75	100.00%	0.00	707.24
25.		Mailbox Remove and replace	110.00	0.00	110.00		110.00	100.00%	0.00	5.50
26.		Post, Mailbox	0.00	0.00	-		0.00	#DIV/0!	0.00	0.00
27.		Traffic Control	15,000.00	0.00	15,000.00		15,000.00	100.00%	0.00	750.00
28.		Fertilizer, Chemical Nutrient, Cl A	0.00	0.00	-		0.00	#DIV/0!	0.00	0.00

CONTINUATION SHEET

APPLICATION AND CERTIFICATE FOR PAYMENT, containing

Contractor's signed Certification is attached.

In tabulation below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 2

APPLICATION DATE: 03/30/07

PERIOD TO: 03/30/07

ARCHITECT'S PROJECT NO: 2003 Neighborhood Rehab

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D		E WORK COMPLETED THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G TOTAL COMPLETED AND STORED TO DATE (D+E+F)	H BALANCE TO FINISH (C - G)	I RETAINAGE
			FROM PREVIOUS APPLICATION (D+E)	WORK COMPLETED THIS PERIOD					
29	Sod, Class A	17,235.00	0.00	0.00	17,235.00		17,235.00	0.00	861.75
30	Topsoil Surface, Furnish, 3"	6,702.50	0.00	0.00	6,702.50		6,702.50	0.00	335.13
	Change Order #1								0.00
31	Asphalt Milling - Coral Lane	11,110.00	0.00	0.00	11,110.00		11,110.00	0.00	555.50
32	13A Asphalt Wearing Course - Coral Lane	6,786.00	0.00	0.00	6,786.00		6,786.00	0.00	339.30
	GRAND TOTALS	565,783.50	170,897.45	384,786.05	0.00	565,783.50	100.00%	0.00	25,289.16

Bond #6148269

**CONSENT OF SURETY
TO FINAL PAYMENT**

Conforms with the American Institute of
Architects, AIA Document G707

OWNER

ARCHITECT

CONTRACTOR

SURETY

OTHER

TO OWNER: City of Novi, Michigan
(Name and address)
45175 West 10 Mile Road
Novi, MI 48375

ARCHITECT'S PROJECT NO.:

CONTRACT FOR:
2003 Neighborhood Roadway Rehabilitation Program

PROJECT: 2003 Neighborhood Roadway
(Name and address)
Rehabilitation Program

CONTRACT DATED:
August 28 2003

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the
(Insert name and address of Surety)

SAFECO Insurance Company

P.O. Box 34526 Seattle, WA 98124-1526

, SURETY,

on bond of

(Insert name and address of Contractor)

Oakland Excavating Company

31 Oakland Ave. Lower Level, Suite B
Pontiac, MI 48342

, CONTRACTOR,

hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any
of its obligations to

(Insert name and address of Owner)

City of Novi, Michigan

45175 West 10 Mile Road
Novi, MI 48375

, OWNER,

as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this date: September 8 2004

(Insert in writing the month followed by the numeric date and year.)

SAFECO Insurance Company

(Surety)

(Signature of authorized representative)

James S. Kurowski Attorney in Fact

(Printed name and title)

Attest:
(Seal):



POWER OF ATTORNEY

SAFECO Insurance Company
PO Box 34528
Seattle, WA 98124-1526

No. 12698

KNOW ALL BY THESE PRESENTS:

That SAFECO INSURANCE COMPANY OF AMERICA, a Washington corporation, does hereby appoint
.....JAMES S. KUROWSKI; GAIL A. KUROWSKI; Grand Ledge, Michigan.....

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind SAFECO INSURANCE COMPANY OF AMERICA thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, SAFECO INSURANCE COMPANY OF AMERICA has executed and attested these presents

this 9th day of November, 2001

R.A. Pierson

R.A. PIERSON, SECRETARY

Mike McGavick

MIKE MCGAVICK, PRESIDENT

CERTIFICATE

Extract from the By-Laws of SAFECO INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of
SAFECO INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,
(i) The provisions of Article V, Section 13 of the By-Laws, and
(ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
(iii) Certifying that said power-of-attorney appointment is in full force and effect,
the signature of the certifying officer may be by facsimile, and the seal of the Company may be facsimile thereof."

I, R.A. Pierson, Secretary of SAFECO INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 08 day of SEP 2004



R.A. Pierson

R.A. PIERSON, SECRETARY

Sworn Statement

State Of: Michigan
County: Oakland

Paul McIntosh Being duly sworn, deposes and says or affirms that The Oakland Excavating Company is the contractor for an improvement to the following described property situated in Oakland County, Michigan described as follows:

2003 Neighborhood Rehabilitation Program
City of Novi

That the following is a statement of each subcontractor or end supplier and laborer (for which laborer the payment of wages and/or fringe benefits and withholdings may be due), with whom the ~~(contractor)~~ (subcontractor) has (contracted) ~~(subcontracted)~~ for performance under a contract for the benefit of an owner or lessee, and that the amounts due to the persons as of the date hereof are correctly and fully set forth opposite their names as follows:

*(Some columns are not applicable to all persons listed)

Name of Subcontractor, supplier, or laborer (list items over \$1000 only)	MC*	Type of Improvement or material furnished	Initial Contract Price	Change Order to Contract	Total Contract Amount (A+B)	Amount Previously Paid	Amount Previously Invoiced but Not Paid	Amount Currently Owing (C-D)	Balance to Complete (incl. Ret.)
L & L Construction	S	Pulverizing	\$4,447.20	\$0.00	\$4,447.00	\$4,447.00	\$0.00	\$0.00	\$0.00
GM & Sons	S	Concrete work	\$55,780.00	\$673.55	\$56,453.55	\$56,453.55	\$0.00	\$0.00	\$0.00
Cadillac LLC	S	Asphalt work	\$217,491.10	\$21,072.40	\$238,563.50	\$238,563.50	\$0.00	\$0.00	\$0.00
Galaxy Excavating	S	Exc., underground	\$156,731.42	\$35,055.20	\$191,786.62	\$191,786.62	\$0.00	\$0.00	\$0.00
Don's Trucking, Inc.	S	restoration	\$30,043.75	\$0.00	\$30,043.75	\$30,043.75	\$0.00	\$0.00	\$0.00
Total			\$460,046	\$56,801	\$516,847	\$516,847	\$0	\$0	\$0

All items NOT specifically listed are under \$1000 and have been paid in full.

Contractor states that all supplies used, except those specifically provided for this project and listed above, have been taken from inventory and payments to these suppliers are current.

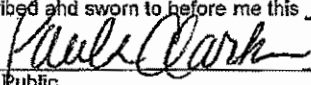
Contractor further states that no money is owed for labor for said contract other than the sums above set forth and that contractor has not employed or procured material from or subcontracted with any person other than those mentioned on this statement and that the amount of payment requested will be applied to satisfy obligations to subcontractor, material suppliers and laborers of their union if such obligations have not satisfied previously.

Dependent further says that he or she makes the foregoing statement as the Secretary of the contractor


Paul McIntosh

WARNING TO OWNER: ANOTHER OWNER OR LESSEE OF THE PROPERTY DESCRIBED ABOVE MAY NOT RELY ON THIS SWORN STATEMENT
WARNING TO DEPONENT: A PERSON, WHO WITH INTENT TO DEFRAUD, GIVES A FALSE SWORN STATEMENT MAY BE SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE MICHIGAN CONSTRUCTION LIEN ACT, NO 497 OF THE PUBLIC ACTS OR 1980, AS AMENDED, BEING SECTION 570,1110 OF THE MICHIGAN COMPILED LAWS OR AS PROVIDED UNDER COMPARABLE LAWS OF OTHER STATES.

Subscribed and sworn to before me this 1st day of June 20 07


Notary Public
Oakland County, Michigan

My Commission Expires: 1/8/12

INSTRUCTION/INFORMATION

1. A Sworn Statement in the preceding form must be provided before any contractor or subcontractor can file a Complain of Cross-Claim or Counter-Claim to enforce a construction lien under certain State laws including Michigan.
2. An owner or lessee may withhold payment to a contractor or subcontractor who has not provided a Sworn Statement. An owner or lessee withhold from a contractor or subcontractor who has provided a Sworn Statement, the amount sufficient to pay all sums shown on the statement as owing subcontractors, suppliers and laborers, or the amount shown to be due to lien claimants who have provided Notices of Furnishing pursuant to the Michigan Construction Lien Act of 1980 or similar notices under othe state laws.
3. An owner or lessee may rely on a Sworn Statement to avoid a lien claim unless the lien claimant has provided the owner or lessee with a Notice of Furnishing pursuant to the Michigan Construction Lien Act of 1980. Similar provision may apply under laws of other states.
4. Under certain laws, including Michigan, if the contract provides for payment by the owner to the general contractor, if any, in the normal course of construction, but the owner elects.



June 28, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48335-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Jeff Hall
Senior Financial Manager
City of Novi
45175 West Ten Mile Road
Novi, Michigan 48375

**Re: 2003 Neighborhood Roads Project
Oakland Excavating – Closing Documents
Our File No. 55142 NOV**

Dear Mr. Hall:

We have reviewed the following documents in connection with the contract for the above-referenced matter:

- Final Pay Estimate No. 3
- Maintenance and Guarantee Bond
- Contractor's Sworn Statement
- Consent of Surety
- Waivers of Lien

The following minor issues should be addressed with respect to the above documentation:

1. It appears the City Engineer has not yet signed and approved Final Pay Estimated No. 3 confirming the amount of the Final Pay Estimate.
2. It appears that the contract amount increased to \$565,783. The Maintenance and Guarantee Bond is not consistent with the final contract amount. It remains at the proposed contract price of \$ 515,121.65, and should be updated.

We also reviewed and followed up on the correspondence you received from Jeffrey Gallant, attorney for Galaxy Excavating, indicating that the contractor owes them an outstanding amount of \$133,521.00 for work on this project. Even though Galaxy Excavating has signed a full unconditional waiver of lien, Oakland Excavating has agreed to assign its remaining contract proceeds to Galaxy Excavating. We have received and reviewed an, "Assignment of Contract Proceeds," signed by Oakland Excavating and a letter from Paul McIntosh of Oakland Excavating, both of which are enclosed confirming the proposed assignment.

Jeff Hall, Senior Financial Manager

June 25, 2007

Page 2

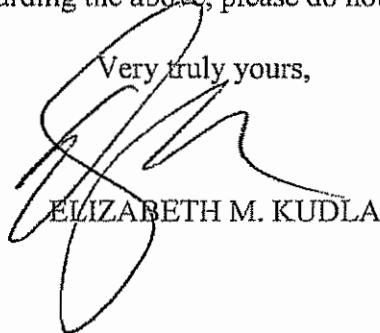
Mr. Gallant has also acknowledged that he and his client are aware that the City is holding substantially less money than Galaxy Excavating asserts it is owed and that Galaxy will not try to seek the deficiency from the City. A copy of this letter has also been enclosed.

Based on our discussion with Oakland Excavating, and the documentation provided confirming the assignment of monies owed, we have no objection to the City making final payment to the subcontractor in place of the contractor.

Once the minor issues with the closing documents have been addressed as set forth above, the City may process the final payment in its usual manner, making the check payable to Galaxy Excavating Company, Inc.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosures

cc w/Encl:

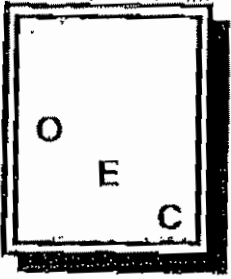
Clay Pearson, City Manager

Kathy Smith-Roy, Finance Director

Jeffrey Gallant, Esq.

Paul McIntosh, Oakland Excavating

Thomas R. Schultz, Esquire



The Oakland Excavating Company

June 27, 2007

Elizabeth M. Kudla
SECRET WARDLE
30903 Northwestern Highway
PO Box 3040
Farmington Hills, MI 48333-3040

Dear Ms. Kudla:

It is my intent to assign the remaining contract funds for the 2003 Neighborhood Roads Program of twenty eight thousand two hundred eighty nine dollars and nineteen cents (\$28,289.18) to Galaxy Excavating.

Sincerely,

Paul McIntosh
President

31 Oakland Avenue, Lower Level, Ste. B, Pontiac, MI 48342
PH: 248-332-2632 Fax: 248-332-4886
equal opportunity employer

LAW OFFICES
THOMAS M. KERANEN & ASSOCIATES, P.C.

6895 TELEGRAPH ROAD
BLOOMFIELD HILLS, MICHIGAN 48301-3138
(248) 647-9653
FAX: (248) 647-9683
www.tmklawpc.com

JEFFREY M. GALLANT

E-MAIL: jgallant@tmklawpc.com

June 27, 2007

Via E-mail and First Class Mail

Elizabeth M. Kudla
Secret Wardle Lynch Hampton Truex & Morley PC
30903 Northwestern Highway
P.O.Box 3040
Farmington Hills, MI 48333-3040

Re: Galaxy Excavating Company, Inc. / General
The Oakland Excavating Company
2003 Neighborhood Roadway Rehabilitation Program
(Bituminous Pavement), City of Novi

Our Client: Galaxy Excavating Company, Inc.
Our File No.: B1388.02

Dear Ms. Kudla:

We represent Galaxy Excavating Company. As you know, Galaxy was a subcontractor to the City of Novi's prime contractor, The Oakland Excavating Company, on the above referenced Project. Galaxy received an assignment of any and all unpaid contract proceeds owed to the Oakland Excavating Company, which we understand is approximately \$23,000, and will be paid by the City to Galaxy shortly. While Galaxy is owed more than the balance of the unpaid contract proceeds on the Project, it will not take any action against the City for monies not covered by the assignment. Rather, it will look to the Payment Bond obtained by Oakland Excavating, and/or and/or any legal remedies it may have against Oakland Excavating for this deficiency.

We appreciate your assistance, and the City processing the assignment in the near future. If you have any questions, please feel free to contact me.

Very truly yours,


Jeffrey M. Gallant

cc: Client

ASSIGNMENT OF CONTRACT PROCEEDS

For value received, The Oakland Excavating Company, a Michigan corporation located at 31 Oakland Ave., Lower Level, Suite B, Pontiac, MI 48342 ("Assignor"), hereby assigns to Galaxy Excavating Company, Inc., a Michigan corporation located at 32969 Hamilton Court, Suite 201, Farmington Hills, MI 48334, all of its right, title and interest in any and all monies due or to become due to Assignor from the City of Novi, up to \$133,521.00, on contract proceeds for the project known as "2003 Neighborhood Roadway Rehabilitation Program (Bituminous Pavement), City of Novi".

The City of Novi is hereby directed to pay any monies owed up to \$133,521.00, in check or checks, to Galaxy Excavating Company, Inc., as sole payee, and mail such check(s) to the attention of Galaxy's attorneys: Jeffrey M. Gallant (P57090), Keranen & Associates, P.C., 6895 Telegraph Road, Bloomfield Hills MI 48301-3138.

Assignor represents and warrants to Galaxy Excavating Company, Inc. that it has present title and right to the assigned funds; that they have not been previously assigned; and that they are not subject to any other claim including any arising from a pre-existing security interest or set off. Assignor hereby holds Galaxy Excavating Company, Inc., and the City of Novi harmless from present or future claims and will defend and indemnify Galaxy Excavating Company, Inc. and the City of Novi against any present or future claims, arising out of this assignment.

Date: June 15, 2007

THE OAKLAND EXCAVATING COMPANY

By: Paul McIntosh
Its:

ACCEPTANCE OF ASSIGNMENT

The City of Novi hereby accepts the assignment of account and agrees to pay said sums to Galaxy Excavating Company, Inc., care of its attorneys, as it or any portion of it becomes due and payable.

Date: June 15, 2007

CITY OF NOVI

By:
Its:

June 13, 2007

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-
3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Jeffrey M. Gallant, Esquire
Thomas M. Keranen & Associates, PC
6895 Telegraph Road
Bloomfield Hills, MI 48301-3138

**Re: 2003 Neighborhood Roadway Rehabilitation Program
Galaxy Excavating
Our File No: 55142 NOV**

Dear Mr. Gallant:

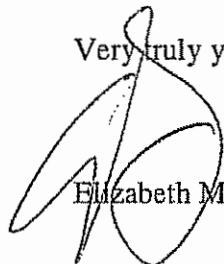
Enclosed please find the following documents relating to the above-named project:

1. Labor and Material Payment Bond
2. Full Unconditional Waiver (Galaxy Excavating, December 28, 2004)
3. Sworn Statement (Oakland Excavating, June 1, 2007)

Please keep us apprised of your progress in regard to this matter. We will not close out the project at this time, based on the information we currently have.

Please contact me with any questions or concerns in regard to this matter.

Very truly yours,



Elizabeth M. Kudla

EMK

Enclosures

- C: Maryanne Cornelius, Clerk (w/Enclosures)
Pam Antil, Assistant City Manager (w/Enclosures)
Rob Hayes, City Engineer (w/Enclosures)
Jeff Hall, Senior Financial Manager (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

C:\N\Portb\lmanage\BKUDLA\945845_1.DOC

Sworn Statement

State Of: Michigan

County: Oakland

Paul McIntosh

Being duly sworn, deposes and says or affirms that The Oakland Excavating Company is the contractor for an improvement to the following described property situated in Oakland County, Michigan described as follows:

2003 Neighborhood Rehabilitation Program
City of Novi

That the following is a statement of each subcontractor or end supplier and laborer (for which laborer the payment of wages and/or fringe benefits and withholdings may be due), with whom the ~~(contractor)~~ (subcontractor) has (contracted) (~~subcontracted~~) for performance under a contract for the benefit of an owner or lessee, and that the amounts due to the persons as of the date hereof are correctly and fully set forth opposite their names as follows:

*(Some columns are not applicable to all persons listed)

Name of Subcontractor, supplier, or laborer (list items over \$1000 only)	MC*	Type of Improvement or material furnished	Initial Contract Price	Change Order to Contract	Total Contract Amount (A+B)	Amount Previously Paid	Amount Previously Invoiced but Not Paid	Amount Currently Owing (C-D)	Balance to Complete (Incl. Ret.)
L & L Construction	S	Pulverizing	\$4,447.20	\$0.00	\$4,447.00	\$4,447.00	\$0.00	\$0.00	\$0.00
GM & Sons	S	Concrete work	\$55,780.00	\$673.55	\$56,453.55	\$56,453.55	\$0.00	\$0.00	\$0.00
Cadillac LLC	S	Asphalt work	\$217,491.10	\$21,072.40	\$238,563.50	\$238,563.50	\$0.00	\$0.00	\$0.00
Galaxy Excavating	S	Exc., underground	\$156,731.42	\$35,055.20	\$191,786.62	\$191,786.62	\$0.00	\$0.00	\$0.00
Don's Trucking, Inc.	S	restoration	\$30,043.75	\$0.00	\$30,043.75	\$30,043.75	\$0.00	\$0.00	\$0.00
Total			\$460,046	\$56,801	\$516,847	\$516,847	\$0	\$0	\$0

All items NOT specifically listed are under \$1000 and have been paid in full.

Contractor states that all supplies used, except those specifically provided for this project and listed above, have been taken from inventory and payments to these suppliers are current.

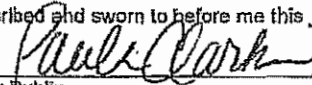
Contractor further states that no money is owed for labor for said contract other than the sums above set forth and that contractor has not employed or procured material from or subcontracted with any person other than those mentioned on this statement and that the amount of payment requested will be applied to satisfy obligations to subcontractor, material suppliers and laborers of their union if such obligations have not satisfied previously.

Dependent further says that he or she makes the foregoing statement as the Secretary of the contractor


Paul McIntosh

WARNING TO OWNER: ANOTHER OWNER OR LESSEE OF THE PROPERTY DESCRIBED ABOVE MAY NOT RELY ON THIS SWORN STATEMENT
WARNING TO DEPONENT: A PERSON, WHO WITH INTENT TO DEFRAUD, GIVES A FALSE SWORN STATEMENT MAY BE SUBJECT TO CRIMINAL PENALTIES AS PROVIDED IN SECTION 110 OF THE MICHIGAN CONSTRUCTION LIEN ACT, NO 497 OF THE PUBLIC ACTS OR 1980, AS AMENDED, BEING SECTION 570.1113 OF THE MICHIGAN COMPILED LAWS OR AS PROVIDED UNDER COMPARABLE LAWS OF OTHER STATES.

Subscribed and sworn to before me this 1st day of June 20 07


Notary Public
Oakland County, Michigan

My Commission Expires: 1/8/12

INSTRUCTION/INFORMATION

1. A Sworn Statement in the preceding form must be provided before any contractor or subcontractor can file a Claim of Cross-Claim or Counter-Claim to enforce a construction lien under certain State laws including Michigan.
2. An owner or lessee may withhold payment to a contractor or subcontractor who has not provided a Sworn Statement. An owner or lessee withhold from a contractor or subcontractor who has provided a Sworn Statement, the amount sufficient to pay all sums shown on the statement as owing subcontractors, suppliers and laborers, or the amount shown to be due to lien claimants who have provided Notices of Furnishing pursuant to the Michigan Construction Lien Act of 1980 or similar notices under other state laws.
3. An owner or lessee may rely on a Sworn Statement to avoid a lien claim unless the lien claimant has provided the owner or lessee with a Notice of Furnishing pursuant to the Michigan Construction Lien Act of 1980. Similar provision may apply under laws of other states.
4. Under certain laws, including Michigan, if the contract provides for payment by the owner to the general contractor, if any, in the normal course of construction, but the owner elects.

FULL UNCONDITIONAL WAIVER

My/our contract with The Oakland Excavating Company to provide **Subcontract work** for the improvement to the property described as:

**2003 NEIGHBORHOOD REHABILITATION PROGRAM (OEC #303)
CITY OF NOVI**

has been fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are waived and released.

If the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

**GALAXY EXCAVATING, INC.
32969 Hamilton Court, Suite 201
Farmington Hills, MI 48334**

By: WALTER PAWLUCZEKDate: Dec 28 2004Its: President

DO NOT SIGN BLANK OR INCOMPLETE FORMS
RETAIN A COPY FOR YOUR RECORDS

Please sign and return form to: The Oakland Excavating Company
31 Oakland Ave., Lower Level, Suite B
Pontiac, MI 48342

LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that The Oakland Excavating Co.
as Principal, hereinafter called CONTRACTOR, and SAFECO Insurance Company

as Surety, hereinafter called Surety, are held and firmly bound unto

CITY OF NOVI, MICHIGAN

as Obligee, hereinafter called the OWNER for the use and benefit of claimants hereinbelow defined, in the amount of

Five Hundred Fifteen Thousand One Hundred Twenty One and 65/100 Dollars (\$515,121.65)
(Amount shall be shown in both words and figures).

for the Payment whereof CONTRACTOR and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, CONTRACTOR has, by a written Agreement dated August 28, 2003, entered into a Contract with the OWNER for the construction of

2003 NEIGHBORHOOD ROADWAY
REHABILITATION PROGRAM
(BITUMINOUS PAVEMENT)

in accordance with Plans and Specifications prepared by AYRES, LEWIS, NORRIS & MAY, INC., which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the CONTRACTOR shall promptly make payment to all claimants as hereinafter defined, for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

A. A claimant is defined as one having a direct contract with the CONTRACTOR or with a subcontractor of the CONTRACTOR for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service, or rental of equipment directly applicable to the Contract.

B. The above named CONTRACTOR and Surety hereby jointly and severally agree with the OWNER that every claimant as herein defined, who has not been Paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.

C. No suit or action shall be commenced hereunder by any claimant:

1. Unless claimant, other than one having a direct contract with the CONTRACTOR, shall have given written notice to any two of the following: The Principal, the OWNER, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the CONTRACTOR, OWNER, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid Project is located, save that such service need not be made by a public officer.

2. After the expiration of one (1) year following the date on which CONTRACTOR ceased work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof; such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law county or other political subdivision of the State in which the Project, or any part thereof, is situated; or in the United States District Court for the district in which the Project, or any part thereof, is situated; and not elsewhere.

D. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and Sealed This 4th day of September, 2003.

In the Presence of:

WITNESS

Shawna Gray

OAKLAND EXCAVATING

[Signature]

Principal

Marla L. MacDonald

Corporate Secretary

Title

WITNESS

[Signature]

SAFECO Insurance Company
Surety

[Signature]
Title James S. Kurovski Attorney in Fact

6148269
Bond No.

Address of Surety

P.O. Box 34526

Seattle, WA 98124-1526

City

Zip Code



RECEIVED

FtB 11 2004

FULL UNCONDITIONAL WAIVER

I /we have a contract with The Oakland Excavating Company to provide subcontract work for the improvement to the property described as

**Novi 2003 Rehabilitation Project (OEC # 303)
City of Novi**

having been fully paid and satisfied, all our construction lien rights against subject property are hereby waived and released.

L & L Construction Company, Inc.

Emily Harnasch
(signature of lien claimant) OFFICE MGR

Signed on: 2-10-04

Address: 4195 Willoughby Rd.
Holt, Mi 48842
Telephone: 517-694-9979

DO NOT SIGN BLANK OR INCOMPLETE FORMS

RETAIN A COPY FOR YOUR RECORDS

Please sign and return form to: **The Oakland Excavating Company
31 Oakland Ave., Lower Level, Suite B
Pontiac, MI 48342**

FULL UNCONDITIONAL WAIVER

MAR 20 2007

My/our contract with The Oakland Excavating Company to provide **Subcontract work** for the improvement to the property described as:

**2003 NEIGHBORHOOD REHABILITATION PROGRAM (OEC #303)
CITY OF NOVI**

has been fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are waived and released.

If the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

**GM & SONS, INC.
6784 Whitmore Lake Road
Whitmore Lake, MI 48189**

By: Heather Schweitzer

Date: 3/19/07

Its: Heather Schweitzer, Office Mgr.

**DO NOT SIGN BLANK OR INCOMPLETE FORMS
RETAIN A COPY FOR YOUR RECORDS**

**Please sign and return form to: The Oakland Excavating Company
31 Oakland Ave., Lower Level, Suite B
Pontiac, MI 48342**

FULL UNCONDITIONAL WAIVER

My/our contract with The Oakland Excavating Company to provide **Subcontract work** for the improvement to the property described as:

**2003 NEIGHBORHOOD REHABILITATION PROGRAM (OEC #303)
CITY OF NOVI**

has been fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are waived and released.

If the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

Cadillac Asphalt, L.L.C.
51777 West 12 Mile Road
Wixom, MI 48393

By: Dale R. McIntireDate: 3-14-07Its: DALE R. MCINTIRE
AREA MANAGER

DO NOT SIGN BLANK OR INCOMPLETE FORMS
RETAIN A COPY FOR YOUR RECORDS

Please sign and return form to: The Oakland Excavating Company
31 Oakland Ave., Lower Level, Suite B
Pontiac, MI 48342

FULL UNCONDITIONAL WAIVER

My/our contract with The Oakland Excavating Company to provide **Subcontract work** for the improvement to the property described as:

**2003 NEIGHBORHOOD REHABILITATION PROGRAM (OEC #303)
CITY OF NOVI**

has been fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are waived and released.

If the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

**GALAXY EXCAVATING, INC.
32969 Hamilton Court, Suite 201
Farmington Hills, MI 48334**

By: _____


WALTER PAWLUCZEK

Date: _____

Dec 28 2004

Its: _____

President

**DO NOT SIGN BLANK OR INCOMPLETE FORMS
RETAIN A COPY FOR YOUR RECORDS**

Please sign and return form to: The Oakland Excavating Company
31 Oakland Ave., Lower Level, Suite B
Pontiac, MI 48342

FULL UNCONDITIONAL WAIVER

My/our contract with The Oakland Excavating Company to provide **Subcontract work** for the improvement to the property described as:

**2003 NEIGHBORHOOD REHABILITATION PROGRAM (OEC #303)
CITY OF NOVI**

has been fully paid and satisfied. By signing this waiver, all my/our construction lien rights against the described property are waived and released.

If the owner or lessee of the property or the owner's or lessee's designee has received a notice of furnishing from me/one of us or if I/we are not required to provide one, and the owner, lessee, or designee has not received this waiver directly from me/one of us, the owner, lessee, or designee may not rely upon it without contacting me/one of us, either in writing, by telephone, or personally, to verify that it is authentic.

**DON'S TRUCKING, INC.
31781 NORRID CIRCLE
WARREN, MI 48092**

By: Donna C Robert

Date: Dec 29 2005

Its: President

**DO NOT SIGN BLANK OR INCOMPLETE FORMS
RETAIN A COPY FOR YOUR RECORDS**

Please sign and return form to: The Oakland Excavating Company
31 Oakland Ave., Lower Level, Suite B
Pontiac, MI 48342

LAW OFFICES
THOMAS M. KERANEN & ASSOCIATES, P.C.

6895 TELEGRAPH ROAD
BLOOMFIELD HILLS, MICHIGAN 48301-3138
(248) 647-9653
FAX: (248) 647-9683
www.tmklawpc.com

JEFFREY M. GALLANT

E-MAIL: jgallant@tmklawpc.com

April 2, 2007

Via First Class Mail

Mr. Aaron Staup
City of Novi – City Hall
Engineering
45175 West 10 Mile Road
Novi, Michigan 48375

Re: 2003 Neighborhood Roadway Rehabilitation Program
(Bituminous Pavement).

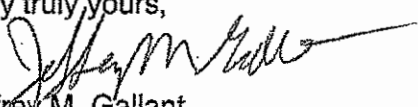
Our Client: Galaxy Excavating Company, Inc.
Our File No.: B1388.02

Dear Mr. Staup:

Please be advised that our office represents Galaxy Excavating Company, Inc. ("Galaxy"). Galaxy was a subcontractor to The Oakland Excavating Company (the prime contractor) on the above referenced Project. To date, Galaxy is currently owed \$133,521.00 for its work on the Project. We understand you are still holding retainage and/or the final payment on the Project. We would ask that you continue to hold these monies until Galaxy is paid.

Thank you for your anticipated cooperation in this matter. If you have any questions, please do not hesitate to contact me.

Very truly yours,


Jeffrey M. Gallant
/nmr

cc: Client
Oakland Excavating

RECEIVED BY
ENGINEERING DIVISION

APR 04 2007

CITY OF NOVI

MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that we The Oakland Excavating Co.
hereinafter called the "Principal," and SAFECO Insurance Company

hereinafter called the "Surety," are held and firmly bound unto

CITY OF NOVI, MICHIGAN

as Obligee, for the just and full sum of

Five Hundred Fifteen Thousand One Hundred Twenty One and 65/100 Dollars (\$515,121.65)
to the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors,
administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above named Principal was awarded a Contract by the Owner

dated the 28th day of August, 2003, for the construction of

2003 NEIGHBORHOOD ROADWAY
REHABILITATION PROGRAM
(BITUMINOUS PAVEMENT)

AND WHEREAS, this Contract was awarded upon the express condition that the Principal
would furnish a one (1) year Maintenance Bond to repair or replace any deficiencies in Labor or Material.

NOW, THEREFORE, the condition of this obligation is such that if the above Principal
shall replace such defective material and shall repair all defects due to defective workmanship which shall
occur on or before the first anniversary of final acceptance by OWNER, then this obligation shall be void,
otherwise to be and remain in full force, effect and virtue.

Signed and Sealed this 4th day of September, 20 03.

In the Presence of:

WITNESS

Shawna Gray

The Oakland Excavating Co.

[Signature]

Principal
Maria L. MacDonald

Title *Corporate Secretary*

[Signature]

Surety: SAFECO Insurance Company

Title: James S. Kuroski Attorney in fact

Address of Surety

P.O. Box 34526
Seattle, WA 98124-1526

6148269

Bond No.

City

Zip Code



POWER OF ATTORNEY

SAFECO Insurance Company
PO Box 34528
Seattle, WA 98124-1528

No. 12698

KNOW ALL BY THESE PRESENTS:

That SAFECO INSURANCE COMPANY OF AMERICA, a Washington corporation, does hereby appoint

.....JAMES S. KUROWSKI; GAIL A. KUROWSKI; Grand Ledge, Michigan.....

its true and lawful attorney(s)-in-fact, with full authority to execute on behalf of the company fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind SAFECO INSURANCE COMPANY OF AMERICA thereby as fully as if such instruments had been duly executed by its regularly elected officers at its home office.

IN WITNESS WHEREOF, SAFECO INSURANCE COMPANY OF AMERICA has executed and attested these presents

this 9th day of November, 2001

R.A. Pierson

R.A. PIERSON, SECRETARY

Mike McGavick

MIKE MCGAVICK, PRESIDENT

CERTIFICATE

Extract from the By-Laws of SAFECO INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of
SAFECO INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

- (i) The provisions of Article V, Section 13 of the By-Laws, and
- (ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
- (iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be facsimile thereof."

I, R.A. Pierson, Secretary of SAFECO INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of this corporation, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 04 day of SEP 2003



R.A. Pierson

R.A. PIERSON, SECRETARY