

RESOLUTION 2004 - 7

A RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF RISING SUN TO EXECUTE A EXTENSION OR EXTENSIONS OF CONTRACT WITH L.M.S. CONTRACTING, INC. PROVIDING FOR THE PURPOSE OF EXTENDING THE CONTRACT KNOWN AS RIVERFRONT EROSION CONTROL, PHASE 3

WHEREAS, the City of Rising Sun and L.M.S. CONTRACTING, INC. are parties to a certain Contract for Riverfront Erosion Control, Phase 3 dated July 14, 2003; and

WHEREAS, The Original Contract has not been completed according to schedule and will end on January 10, 2004; and

WHEREAS, certain force majeure issues relating to weather have occurred during the execution of the contract making impossible the completion of the project on or before the original contract completion of January 10, 2004; and

WHEREAS, It is necessary for the Mayor of the City of Rising Sun to enter into one or more agreements for the extension of the contract to ensure its completion;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF RISING SUN, INDIANA THAT:

1. The Original Contract with L.M.S. CONTRACTING, INC. for Riverfront Erosion Control, Phase 3 dated July 14, 2003; has not been completed according to schedule and will end on January 10, 2004 and it is in the best interest of the City of Rising Sun to grant an extension or extensions of said contract ; and
2. The Mayor of Rising Sun is duly authorized to negotiate and execute said extension agreements on behalf of the City of Rising Sun, Indiana; and

3. That the Common Council shall be updated regularly on the status of the construction of the Riverfront Erosion Control, Phase 3.
4. This resolution shall be in full force and effect from and after its passage and signing by the Mayor.

ADOPTED AND PASSED BY THE COMMON COUNCIL of the City of Rising Sun, Indiana this 8th day of January 2004.

NAY

\_\_\_\_\_  
Michael Padgett

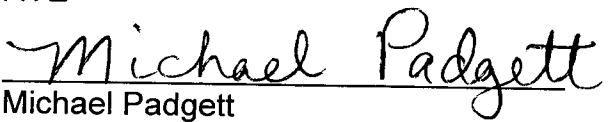
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Gerald L. Brown

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Gene Siekman

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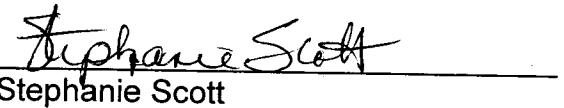
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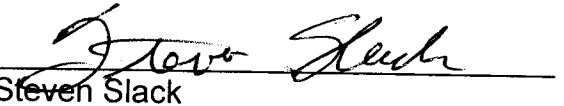
AYE

  
\_\_\_\_\_  
Michael Padgett

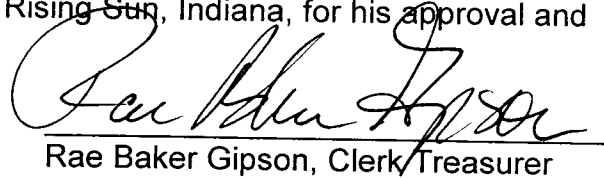
  
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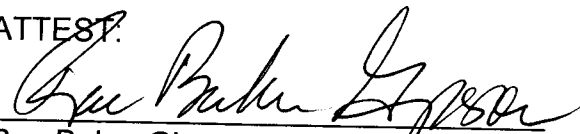
Presented by me to the Mayor of the City of Rising Sun, Indiana, for his approval and signature this 8th day of January 2004.

  
\_\_\_\_\_  
Rae Baker Gipson, Clerk/Treasurer

This Resolution approved and signed by me on this 8th day of January 2004.

  
William A. Marksberry, Mayor

ATTEST:

  
Rae Baker Gipson, Clerk Treasurer

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## EXTENSION OF CONTRACT

THIS EXTENSION OF CONTRACT ("Extension") is made this \_\_\_\_\_ day of January, 2004, for the purpose of extending the contract known as Riverfront Erosion Control, Phase 3 dated July 14, 2003 ("Original Contract") between THE CITY OF RISING SUN, INDIANA hereinafter referred to as "Owner" and L.M.S. CONTRACTING, INC. hereinafter referred to as "Contractor" (collectively referred to as the "Parties").


1. The Original Contract, including all original exhibits and attachments, which is attached hereto as a part of this Extension, will end on January 10, 2004. (180 days following the Notice to Proceed which was issued on July 14, 2003.
2. The Parties agree that certain force majeure issues relating to weather have occurred during the execution of the contract making impossible the completion of the project on or before the original contract completion of January 10, 2004.
3. The Parties further agree that date to extend the Original Contract for an additional period of Sixty (60) days, which will begin immediately upon the expiration of the original time period and will end on March 13, 2004.
4. The Owner further agreed to waive liquidated damages during the period of this Extension.
5. This Extension binds and benefits both Parties and any successors or assigns. This document, including the attached Original Contract, is the entire agreement between the Parties.
6. All other terms and conditions of the Original Contract remain unchanged.

7. This Extension Agreement shall be governed by the laws of the State of Indiana.
8. This Extension Agreement may be executed in counterparts, and each counterpart shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

IN WITNESS WHEREOF, the Parties have executed this Extension Agreement on the respective dates set forth below.

L.M.S. CONTRACTING, INC.


Date: 1-22-04

By 

PRINTED: Chris Dornbusch

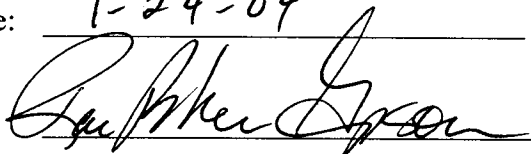
THE CITY OF RISING SUN, INDIANA

Date: 1-9-04

By   
William Marksberry, Mayor

ATTEST:

Date: 1-24-04

By   
Rae Baker Gipson, Clerk-Treasurer

## CONTRACT

THIS AGREEMENT, made this 14 day of July, 2003, by and between the City of Rising Sun, hereinafter called "OWNER", and LMS Contracting Inc., doing business as an individual, a partnership, a corporation, in the City of Madison County of Jefferson, State of Indiana, hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Owner, the Contractor hereby agrees to commence and complete the improvement, repair and construction of:

### RIVERFRONT EROSION CONTROL, PHASE 3

Hereinafter called "Work" for the sum stated in the Proposal, and for all extra work in connection therewith, under the terms as stated in the General Conditions of the Contract Document, and at Contractor's own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance and other accessories and services necessary to complete the said Work in accordance with the conditions and price stated in the Bid Form, Information and Instructions to Bidders, the General Conditions, Construction Specifications, Plans, Drawings, Prints and Addendum therefore as approved by the Owner, and all of which are a part hereof and collectively evidence and constitute the Contract.

The Contractor hereby agrees to commence work under this contract on or before a date to be specified in a written "Notice to Proceed" of the Owner and to finally complete the Contract work **180 calendar days** following the written "Notice to Proceed" date, or be subject to liquidated damages at the rate of five hundred dollars (500.<sup>00</sup>) per calendar day for each calendar day of delay until the contract Work is finally complete:

The Owner agrees to pay the Contractor in current funds for the performance of the Contract, subject to additions and deductions, and to make payments on account thereof, as provided in the General Conditions.

IN WITNESS WHEREOF, the parties to these presents have executed this Contract in two (2) counterparts, each of which shall be deemed as original, in the year and day first above mentioned.

ATTEST:

Michael W. Northrup

David B. [Signature]  
Witness

OWNER:  
CITY OF RISING SUN, INDIANA

By Steve A. Steward

Title Mayor

By [Signature]

Title Clerk -Treasurer

SEAL

ATTEST

Michael W. Northrup

David B. [Signature]  
Witness

CONTRACTOR

By Chris Dale

Title Project Manager

By

Title

SEAL

**Notice of Intent to Award**

Owner:

City of Rising Sun  
200 N. Walnut Street  
P.O. Box 172  
Rising Sun, Indiana 47040

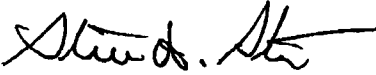
Date: **07 July 2003**

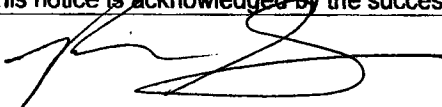
The successful Bidder, **LMS Contracting Inc.** of 515 W 500 N, Madison, IN 47250, is hereby given notice of the intent of the Project Owner, The City of Rising Sun Indiana, to award the Rising Sun Erosion Control Phase 3 project Contract to said successful Bidder.

Upon the successful Bidder's delivery of contract-required insurance certificates and bond instruments and upon the execution of the Contract, the successful Bidder will become the project Contractor. By or before At 1:00 PM (Local Time) on 14 July 2003, the successful Bidder shall deliver to the project Owner at the Rising Sun City Building the satisfactory insurance and bond documents. The successful Bidder shall also deliver to the Owner By or before at 1:00 PM (Local Time) on 14 July 2003 the Contractor-signed contract agreement. If the required insurance certificates, bonds and contract document submissions are satisfactory to the Owner, then the Owner is prepared to execute the Contract on 14 July 2003 shortly after 1:00 local time.

The successful Bidder, should he become the Contractor, is hereby notified to attend a pre-construction conference at the Rising Sun City Building on 14 July 2003 immediately following Contract execution.

The successful Bidder shall acknowledge receipt of this Notice of Intent to Award document by signing the form in the space provided below and then expediting return of this form to the attention of Mr. Mike Northcutt at the address noted above,

This notice is authorized by the project Owner,	
	7-8-03
Mayor, the City of Rising Sun, Indiana	Date

This notice is acknowledged by the successful Bidder,	
	07-08-03
Corporate Officer, <u>SEC.</u>	Date



**Notice of Intent to Award**

Owner:

City of Rising Sun  
200 N. Walnut Street  
P.O. Box 172  
Rising Sun, Indiana 47040

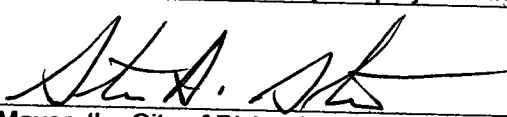
Date: **07 July 2003**

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The successful Bidder shall acknowledge receipt of this Notice of Intent to Award document by signing the form in the space provided below and then expediting return of this form to the attention of Mr. Mike Northcutt at the address noted above,

This notice is authorized by the project Owner,	
	7-8-03
Mayor, the City of Rising Sun, Indiana	Date

This notice is acknowledged by the successful Bidder,	
Corporate Officer,	Date

**Notice to Proceed**

**Owner:**

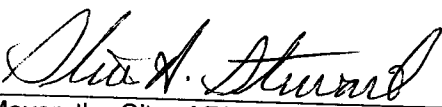
City of Rising Sun  
200 N. Walnut Street  
P.O. Box 172  
Rising Sun, Indiana 47040


Date: **14 July 2003**

The Contractor, **LMS Contracting Inc.** of 515 W 500 N, Madison, IN 47250, is hereby given notice to proceed under Contract with Construction of the Rising Sun Erosion Control Phase 3 project in Rising Sun Indiana. This notice to proceed is given by the authority of the project Owner, the City of Rising Sun Indiana.

The specified date upon which the Contractor shall commence work is **24 July 2003**. This date, **24 July 2003**, is the Notice to Proceed date and is the date that effectively begins Contract time. Per the project Contract, the Contractor shall finally complete the Contract work by or before **180 calendar days** following the written "Notice to Proceed" date.

The Contractor shall acknowledge receipt of this Notice to Proceed document by signing the form in the space provided below and then expediting return of this form to the attention of Mr. Mike Northcutt at the address noted above,

This notice is authorized by the project Owner,	
	7-14-03
Mayor, the City of Rising Sun, Indiana	Date

This notice is acknowledged by the Contractor,	
	7-14-03
Corporate Officer, <u>Project Manager</u>	Date



## CONTRACTING, INC.

EXCAVATING • DREDGING • EQUIPMENT RENTAL • DUMP TRUCKS • EQUIPMENT HAULING • CRANES • SITE PREPARATION

December 22, 2003

City of Rising Sun  
Attn: Mike Northcutt  
200 N. Walnut Street  
P.O. Box 172  
Rising Sun, IN 47040

### Re: Riverfront Erosion Control Phase 3

Dear Mike,

During our meeting on December 18<sup>th</sup> we discussed a revised schedule. I would like to confirm our position of completing this project on a timely and cost effective schedule.

However, as we all know, the weather and river has not been cooperative this year. Historically the late summer-fall season river level is stable and at pool stage. This year has been the exception. This year since this project commenced we have been plagued with high water levels. Water levels that were approaching flood stage and enough rain both here and upstream to keep the river at levels high enough to prevent our work from being completed. Now that winter is upon us, new problems present themselves. Freezing and thawing, snow, ice & rain severely limits our excavation and compaction of materials required to complete this project. We believe waiting for favorable weather is the path to follow for a quality project. Our remaining scope of work, under good conditions, should take six weeks.

It is our intention to complete this project as soon as weather permits. It is an inconvenience for all parties involved but a must for a quality job. We ask for an extension of project time restraints at this time. We are open to any discussion on this matter.

Please inform me of future plans regarding the schedule.

Sincerely,

Chris Dornbusch  
Project Manager