

RESOLUTION 2004 - 6

A RESOLUTION AUTHORIZING THE MAYOR OF RISING SUN TO EXECUTE A SETTLEMENT AGREEMENT WITH LARRY SMITH CONTRACTORS INC. PROVIDING FOR THE RESOLUTION OF OUTSTANDING CONTRACT OVERPAYMENT ISSUES

WHEREAS, the City of Rising Sun and Larry Smith Contractors, Inc.. are parties to a certain Contract for the Construction of Drainage Improvements Services dated June 18, 2002 (the "Contract"); and

WHEREAS, the City of Rising Sun inadvertently made an overpayment to Larry Smith Contractors, Inc. on the Contract for the Construction of Drainage Improvements Services by issuing a duplicate draw which was accepted by Larry Smith Contractors, Inc. on February 19, 2003; and

WHEREAS, The City is entitled to repayment of the overpayment and the parties have agreed to a settlement of the matter for reimbursement to the City; and

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

1. The proposed Settlement agreement is in the best interests of the City of Rising Sun; and
2. The Mayor of Rising Sun is duly authorized to execute said agreement on behalf of the City of Rising Sun, Indiana.
3. 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


Gerald L. Brown

Gene Siekman


Stephanie Scott

Steven Slack


AYE



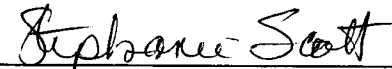
Michael Padgett



Gerald L. Brown



Gene Siekman

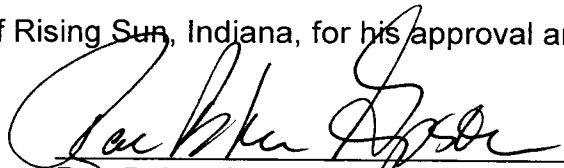


Stephanie Scott




Steven Slack

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

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is entered into as of January 8, 2004, by and among The City of Rising Sun, Indiana, ("City") and Larry Smith Contractors, Inc. ("Contractor").

WITNESSETH:

WHEREAS, the City and the Contractor are parties to a certain Contract for the Construction of Drainage Improvements Services dated June 18, 2002 (the "Contract"); and

WHEREAS, the City inadvertently made an overpayment to the Contractor by issuing a duplicate draw of \$73,123.26 which was accepted by the Contractor on February 19, 2003 and deposited by the Contractor to the account of T Luckey Sons, Inc. on February 24, 2003; and

WHEREAS, The City is entitled to repayment of the \$73,123.26 and the parties have agreed on a reasonable payment schedule for reimbursement of the same; and

WHEREAS, the execution and delivery of this Settlement Agreement has been duly authorized by the Common Council of the City of Rising Sun, Indiana and the Board of Directors of Larry Smith Contractors, Inc.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

NOW, THEREFORE, it is agreed as follows:

1. The Contractor shall pay The City the sum of 73,123.26 , in full and final settlement of all claims arising from the overpayment. The aforesaid settlement amount shall be paid in the following manner by check to the Clerk/Treasurer of the City of Rising Sun, Indiana:
 - a) The sum of \$15,000.00 shall be paid on or before February 8, 2004;
 - b) The sum of \$15,000.00 shall be paid on or before March 8, 2004;

- c) The sum of \$15,000.00 shall be paid on or before April 8, 2004;
 - d) The sum of \$15,000.00 shall be paid on or before May 8, 2004;
 - e) The sum of \$13,123.26 shall be paid on or before June 8, 2004.
2. As consideration for this payment, The City shall deliver to The Contractor a signed and approved original of this Settlement Agreement, thereby fully and forever releasing The Contractor from any and all liability with respect to the overpayment of the inadvertent draw of \$73,123.26 accepted by the Contractor on February 19, 2003 and deposited to the account of T Luckey Sons, Inc. on February 24, 2003.
3. The City, on behalf of itself and its predecessors, successors, parents, subsidiaries, affiliates, heirs, beneficiaries, representatives, and assigns on the one hand and The Contractor, on behalf of itself, its predecessors, successors, parents, subsidiaries, affiliates, heirs, beneficiaries, representatives, and assigns on the other hand, hereby release, discharge, and promise not to sue each other and/or their employees, officers, agents, lawyers, heirs, beneficiaries, predecessors, successors, assigns, and business entities on all rights, claims, lawsuits, charges, and actions, whether known or unknown, which all parties may have against each other from the overpayment of the inadvertent draw of \$73,123.26 accepted by the Contractor on February 19, 2003 and deposited to the account of T Luckey Sons, Inc. on February 24, 2003.
4. Each party represents and warrants that it is represented by separate legal counsel of its own choice in connection with this Settlement Agreement, has read this Settlement Agreement and understands the terms used herein. Each party has had the opportunity to investigate this matter, determine the advisability of entering into this Settlement

- Agreement and has entered into this Settlement Agreement freely and voluntarily.
5. This Settlement Agreement constitutes the entire understanding of the parties. It is intended to and does cover the parties' expenses, costs, and attorney fees incurred as of the date of this Settlement Agreement arising out of or connected with the claims hereby released, all of which shall be borne by the party who incurred such expenses, costs, and fees. Should any proceeding of any kind be instituted to enforce this Settlement Agreement, the court shall award to the prevailing party its costs, expenses and fees, including attorney fees. *In the event the aforesaid settlement payment is not received in the amounts or timely manner as specified in Paragraph 1 hereinabove, the terms of this Settlement Agreement shall be null and void.*
 6. This Settlement Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns. The parties each represent and warrant to one another that they have not sold, assigned, transferred, conveyed or otherwise disposed of any claim or demand covered by this Settlement Agreement.
 7. There shall be no amendment or modification of any of the terms of this Settlement Agreement unless it is reduced to writing and signed by the parties hereto.
 8. Severability. In the event that any provision hereof becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said provision.
 9. Governing Law. This Agreement shall be governed by the laws of the State of Indiana.
 10. Counterparts. This 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 Agreement on the respective dates set forth below.

LARRY SMITH CONTRACTORS, INC.

Date: 1-6-04

By [Signature]

PRINTED: LARRY SMITH

THE CITY OF RISING SUN, INDIANA

Date: 1-9-04

By [Signature]
William Marksberry, Mayor

ATTEST:

Date: 1/8/04

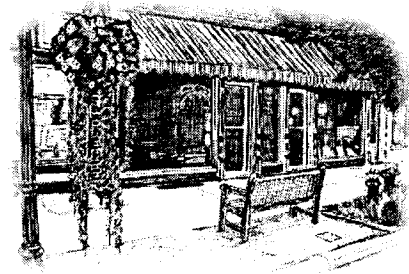
By [Signature]
Rae Baker Gipson, Clerk-Treasurer

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January 9, 2004

Mr. Darrell T. Day
Larry Smith Contractors Inc.
5737 Dry Fork Road
Cleves, OH 45002

Re: City of Rising Sun

Dear Darrell:

Thank you for your prompt return of the settlement agreement. Council gave the Mayor the authority to execute it last evening. I have enclosed a copy of the signed agreement for your records. Please make your payments through the Clerk-Treasurer's office at the following address:

City of Rising Sun
Office of the Clerk/Treasurer
Rising Sun City Bldg Administration
200 North Walnut Street
P.O. Box 172
Rising Sun Indiana 47040

If there are any questions, please feel free to contact me.

Yours very truly,

Lane A. Siekman

LAS/cfs

() enclosures if checked

CC: file, Mayor, Clerk/Treasurer

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