

ORDINANCE NO. 264

AN ORDINANCE TO ACCEPT A RELEASE FROM VIC DAVIS CONSTRUCTION COMPANY, INC. FROM ANY AND ALL CLAIMS ARISING OUT OF THE BROOKSHIRE HILLS SEWER EXTENSION; TO RECEIVE A FINAL JUDGMENT OF THE CHANCERY COURT FOR HAWKINS COUNTY ORDERING THE DISMISSAL, WITH FULL PREJUDICE, OF THE CAUSE OF ACTION BROUGHT BY VIC DAVIS CONSTRUCTION COMPANY, INC. AGAINST THE TOWN OF MOUNT CARMEL; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.

BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF The Town of Mount Carmel, Tennessee, as follows:

SECTION I. That the Release dated August 12, 2003, executed by Vic Davis Construction, Inc. by its President, Vic Davis, is hereby accepted; and the Recorder is directed to affix a copy thereof to this Ordinance.

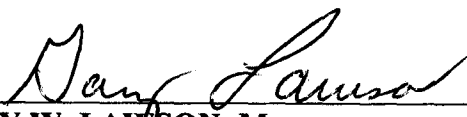
SECTION II. That the final judgment of the Chancery Court entered August 13, 2003, ordering the dismissal, with full prejudice, of the cause of action brought by Vic Davis Construction Company, Inc. against the Town of Mount Carmel is hereby accepted; and the Recorder is directed to affix a copy thereof to this Ordinance.

SECTION III. LEGAL STATUS PROVISIONS.

A. Conflict With Other Ordinances. In case of conflict between this ordinance or any part thereof, and the whole or part of any existing or future ordinance of the Town of Mount Carmel, the most restrictive shall in all cases apply.

B. Validity. If any section, clause, provision or portion of this ordinance shall be held to be in doubt or unconstitutional by any court of competent jurisdiction, such holding shall not affect any other section, clause, provision, or portion of this ordinance which is not of itself invalid or unconstitutional.

C. Effective Date. This Ordinance shall become effective upon passage and publication, the public welfare requiring it.



GARY W. LAWSON, Mayor

ATTEST:

Nancy Carter
NANCY CARTER, Recorder

APPROVED AS TO FORM:

Joe May
LAW OFFICES OF MAY & COUP

FIRST READING	AYES	NAYS	OTHER
Alderman Henry Bailey	✓		
Vice-Mayor Eugene Christian	✓		
Alderman Paul Hale	✓		
Mayor Gary Lawson	✓		
Alderman Tresa Mawk	✓		
Alderman Thomas Wheeler	✓		
Alderman Wanda Worley	✓		
TOTALS	7	0	0

PASSED FIRST READING 10-28-03

SECOND READING	AYES	NAYS	OTHER
Alderman Henry Bailey	✓		
Vice-Mayor Eugene Christian	✓		
Alderman Paul Hale	✓		
Mayor Gary Lawson	✓		
Alderman Tresa Mawk	✓		
Alderman Thomas Wheeler	✓		
Alderman Wanda Worley	✓		
TOTALS	7	0	0

PASSED SECOND READING 11-25-03

PUBLISHED ON: <u>11-29-03</u>
NEWSPAPER: <u>Kingsport Times News</u>

**IN THE CHANCERY COURT FOR HAWKINS COUNTY
AT ROGERSVILLE, TENNESSEE**

VIC DAVIS CONSTRUCTION, INC.,

Plaintiff

VS.

TOWN OF MOUNT CARMEL, TENNESSEE,

Defendant

*
*
*
*
*
*
*
*
*

CIVIL ACTION NO. 12735

RELEASE

For and in consideration of the payment to plaintiff of the sum of \$151,720.03 previously paid into the registry of the Court by the defendant, and the receipt of twelve (12) capital outlay notes issued by the defendant to the plaintiff, as pay or, and entitled Brookshire Hills Sewer Extension Capital Outlay Notes, Series 2003, each note due and payable annually over a period of twelve (12) years, the plaintiff, Vic Davis Construction, Inc., does hereby release the Town of Mount Carmel from any and all claims, demands, damages, actions, and causes of action, hereinafter or heretofore accrued, on account of any claim of plaintiff which has been made in this cause of action or could have been made arising out of or in any way in connection with the contract between the parties, and the work performed pursuant thereto, said contract being more fully described in the pleadings filed in this cause.

It is understood and agreed by the parties hereto that this release is a full and final release of all claims of every nature and kind whatsoever, and that this instrument releases claims that are known and unknown and suspected and unsuspected, except those claims

arising or which may arise from the defendant's obligations under the Brookshire Hills Sewer Extension Capital Outlay Notes, Series 2003. It is acknowledged by the undersigned that the cause of action set forth above shall be dismissed by plaintiff with an Order of Dismissal executed contemporarily initially herewith, said dismissal to be with prejudice.

This 12th day of August, 2003.

VIC DAVIS CONSTRUCTION, INC.

By:



Vic Davis
President

Witness:

Mark S. Dessauer

DESSAUER: U - W
VIC DAVIS:MOUNT CARMEL
DAVI.63621

IN THE CHANCERY COURT FOR HAWKINS COUNTY
AT ROGERSVILLE, TENNESSEE

ENTERED August 13, 2003

MINUTE BK 84

PAGE 427

VIC DAVIS CONSTRUCTION, INC.,

Plaintiff

VS.

TOWN OF MOUNT CARMEL, TENNESSEE,

Defendant

*
*
*
*
*
*
*
*
*

CIVIL ACTION NO. 12735

AGREED ORDER

Upon agreement of the plaintiff, Vic Davis Construction, Inc., and the defendant, Town of Mount Carmel, Tennessee, **IT IS HEREBY ORDERED:**

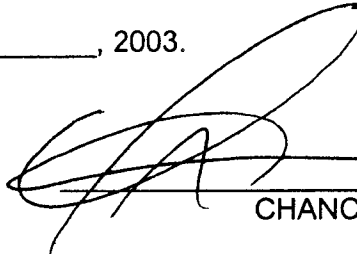
1. That the Clerk and Master is directed to pay to Plaintiff Vic Davis Construction, Inc. the sum of \$151,720.03 previously deposited in the registry of the Court by the defendant together with any interest earned thereon;

2. That, upon payment of such monies to the plaintiff, the action of the plaintiff, Vic Davis Construction, Inc., against the defendant, Town of Mount Carmel, Tennessee, is dismissed with full prejudice to the refiling of same;

3. That the counterclaim of the defendant, Town of Mount Carmel, Tennessee, against the plaintiff, Vic Davis Construction, Inc., is dismissed with full prejudice to the refiling of same; and

4. That the costs of this action are taxed to the defendant, Town of Mount Carmel, Tennessee, for which execution shall issue if not sooner paid.

ENTER: This the 13 day of Aug, 2003.


CHANCELLOR

APPROVED FOR ENTRY:

Mark S. Dessauer
Mark S. Dessauer, Esq.
TN BPR NO. 010421
HUNTER, SMITH & DAVIS, LLP
Attorney for Plaintiff Vic Davis Construction, Inc.
Post Office Box 3740
Kingsport, Tennessee 37664
(423) 378-8840; Fax: (423) 378-8801

William E. Phillips By: Mark S. Dessauer
William E. Phillips, Esq. per telephone authorization 8/12/03
TN BPR NO. 04235
Attorney for Defendant, Town of Mount Carmel, Tennessee
Citizens Bank Building
210 Main Street
Rogersville, Tennessee 37857
(423) 272-7633

STATE OF TENNESSEE, COUNTY OF HAWKINS
I HEREBY CERTIFY THE WITHIN TO BE A TRUE COPY OF
THE ORIGINAL Agreed Order
AS APPEARS OF RECORD ON FILE IN MY OFFICE.

THIS 25 DAY OF August, 2003

Shirley Graham
SHIRLEY GRAHAM, CLERK AND MASTER

DESSAUER: U - W
VIC DAVIS: MOUNT CARMEL
DAVI.63621

KINGSPORT TIMES-NEWS

PUBLICATION CERTIFICATE

Kingsport, TN December 1, 2003

This is to certify that the Legal Notice hereto attached was published in the Kingsport Times-News, a daily newspaper published in the City of Kingsport, County of Sullivan, State of Tennessee, beginning in the issue of 11-29-03, and appearing 1 consecutive weeks/times, as per order of _____

Town of Mt. Carmel

Signed Raven C. Mulberry

THE FOLLOWING
ORDINANCE
was passed by the Mount
Carmel Board of Mayor
and Aldermen on Novemb-
er 25, 2003: Ordinance 264.
To accept a release from
Vic Davis Construction,
Inc. from any and all
claims arising out of the
Brookshire Hills Sewer
Extension; To receive a
final judgement of the
Chancery Court for Haw-
kins County ordering the
dismissal, with full preju-
dice, of the cause of action
brought by Vic Davis
Const. against the Town of
Mt. Carmel.

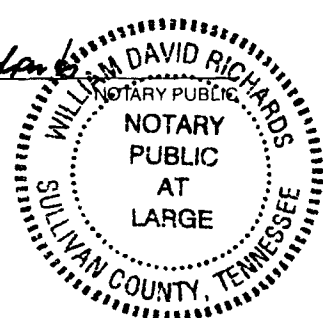
Pub 1T: 11/29/2003.

STATE OF TENNESSEE, SULLIVAN COUNTY, TO-WIT:

Personally appeared before me this 1st day of December
2003, Raven C. Mulberry
of the Kingsport Times-News and in due form of law made oath that the foregoing
statement was true to the best of my knowledge and belief.

William David Richards

My commission expires 6-26-07



KINGSPORT TIMES-NEWS

PUBLICATION CERTIFICATE

Kingsport, TN December 1, 2003

This is to certify that the Legal Notice hereto attached was published in the Kingsport Times-News, a daily newspaper published in the City of Kingsport, County of Sullivan, State of Tennessee, beginning in the issue of 11-29-03, and appearing 1 consecutive weeks/times, as per order of _____

Town of Mt. Carmel

Signed Karen C. Mulkey

THE FOLLOWING
ORDINANCE
was passed by the Mount
Carmel Board of Mayor
and Aldermen on Novemb-
er 25, 2003: Ordinance 264.
To accept a release from
Vic Davis Construction,
Inc. from any and all
claims arising out of the
Brookshire Hills Sewer
Extension; To receive a
final judgement of the
Chancery Court for Haw-
kins County ordering the
dismissal, with full preju-
dice, of the cause of action
brought by Vic Davis
Const. against the Town of
Mt. Carmel.

Pub 1T: 11/29/2003.

STATE OF TENNESSEE, SULLIVAN COUNTY, TO-WIT:

Personally appeared before me this 1st day of December
2003, Karen C. Mulkey
of the Kingsport Times-News and in due form of law made oath that the foregoing
statement was true to the best of my knowledge and belief.

William David Richards

My commission expires 6-26-07

