

## Settlement Agreement and Mutual Release

This Settlement Agreement and Mutual Release ("Agreement") is dated as of January 30, 2006, and is entered into by and among: (i) the State of Indiana ("State"), (ii) the City of East Chicago ("City" or "East Chicago"), (iii) the Attorney General of Indiana ("Attorney General"), and (iv) the Indiana Department of Transportation ("INDOT") (collectively, the "Government Settling Parties"), on the one hand, and (v) Rieth-Riley Construction Co., Inc. ("Rieth-Riley"), on the other hand, all of which are collectively the "Settling Parties."

For valuable consideration, the sufficiency of which is hereby expressly acknowledged, the Settling Parties agree as follows:

1. In addition to any other terms defined elsewhere in this Agreement, the following terms shall have the following meanings in this Agreement:

- a. "Agreement" means this Agreement and all Exhibits attached to it.
- b. "Government Releasees" means each of the following persons (in the capacities indicated below) and entities, jointly and severally, and in the capacities indicated below: each of the Government Settling Parties and each of their respective past, present, and future subsidiaries, affiliates, divisions, officials, officers, directors, employees, shareholders, members, agents, attorneys, representatives, instrumentalities, assignors, assignees, predecessors, successors, transferors, transferees, and each person and entity that owns or controls, or is owned or controlled by, or is under common ownership or control with, any of the Government Settling Parties.
- c. "Government Settling Parties" means the State, the City, the Attorney General, and INDOT.

d. "INDOT Matter" means the Attorney General's investigation into Rieth-Riley's fitness to serve as a qualified INDOT contractor, specifically and exclusively as it pertains to the RICO Lawsuit, per the letter (attached as Exhibit A) from Mark G. Ahearn, INDOT's chief legal counsel and deputy commissioner, to Charles J. Todd of the Attorney General's office dated November 18, 2005.

e. "RICO Lawsuit" means the action styled *State of Indiana, ex rel. Steve Carter, Attorney General of Indiana, et al. v. Robert A. Pastrick, et al.*, pending in the United States District Court for the Northern District of Indiana, South Bend Division, Cause No. 3:04-cv-506-AS-CAN.

f. "Rieth-Riley Releasees" means each of the following persons (in the capacities indicated below) and entities, jointly and severally, and in the capacities indicated below: Rieth-Riley and each of its respective past, present, and future subsidiaries, affiliates, divisions, officials, officers, directors, employees, shareholders, members, agents, attorneys, representatives, instrumentalities, assignors, assignees, predecessors, successors, transferors, transferees, and each person and entity that owns or controls, or is owned or controlled by, or is under common ownership or control with, Rieth-Riley.

g. "Settling Parties" means the Government Settling Parties (State, City, Attorney General, and INDOT) and Rieth-Riley.

2. To avoid the expense, time demands, and uncertainty of ongoing litigation, and without admitting or denying liability, the Settling Parties all desire to resolve, compromise, and settle all actual and potential litigation and claims among them concerning the RICO Lawsuit and the INDOT Matter, including without limitation all claims that were asserted or could have

been asserted in the RICO Lawsuit and the claims that were asserted or could have been asserted in connection with the INDOT Matter.

3. Rieth-Riley or its designee shall deliver by wire transfer the aggregate amount of Six Hundred Twenty-Five Thousand Dollars (\$625,000) (“Settlement Amount”) to an account designated and controlled by the Attorney General (“Settlement Account”), and in accordance with written wire transfer instructions from the Attorney General designating the Settlement Account (“Payment Instructions”). The Settlement Amount shall be transferred to the Settlement Account on or before the date (“Payment Date”) that is three business days after the date on which the last of all of the following occurs:

a. The execution of this Agreement by the Attorney General, on behalf of the State and the City; INDOT; and Rieth-Riley (the date on which the last of the Settling Parties has executed this Agreement shall be referred to as the “Effective Date.”);

b. The district court’s dismissal, with prejudice, all of the claims that the Attorney General asserted against Rieth-Riley in the RICO Lawsuit;

c. INDOT’s full compliance, as provided in Section 16, as to each of the withheld INDOT contracts for which Rieth-Riley submitted the lowest and best bid;

d. The receipt by Rieth-Riley or its counsel of the Payment Instructions from the Attorney General;

provided, however, that Rieth-Riley shall be deemed to have satisfied its payment obligation under this Agreement upon the receipt of the Settlement Amount into the Settlement Account.

4. Claims asserted in the RICO Lawsuit shall be dismissed as follows:

a. The State and the City shall dismiss with prejudice all claims that each of them, jointly or severally, has asserted or could have asserted in the RICO Lawsuit against Rieth-Riley, with the parties to bear their respective costs and attorneys' fees.

b. Rieth-Riley shall dismiss with prejudice all claims it has asserted or could have asserted against the State and/or the City in the RICO Lawsuit, with the parties to bear their respective costs and attorneys' fees.

c. On behalf of the State and the City, the Attorney General shall execute and deliver to Rieth-Riley's counsel a Stipulation of Dismissal substantially in the form attached to this Agreement as Exhibit B for execution by Rieth-Riley's counsel and filing in the RICO Lawsuit. Rieth-Riley's counsel shall also submit in the RICO Lawsuit an Order of Dismissal substantially in the form included in Exhibit C.

5. Each of the Settling Parties shall act in good faith to effect the timely dismissal of its respective claims or counterclaims against any other Settling Party.

6. The Government Releasing Parties hereby completely release, forever discharge, and covenant not to sue each of the Rieth-Riley Releasees as to any and all possible past, present, and future claims of any kind or nature whatsoever, known or unknown, that arise out of or are related to any facts or circumstances existing on or before the Effective Date concerning the RICO Lawsuit and the INDOT Matter, including without limitation all claims that were or could have been asserted in the RICO Lawsuit and the INDOT Matter. The release provided for in this Section 6 shall not bar any claim for breach of this Agreement.

7. Rieth-Riley hereby completely releases, forever discharges, and covenants not to sue each of the Government Releasees as to any and all possible past, present, and future claims of any kind or nature whatsoever, known or unknown, that arise out of or are related to any facts

or circumstances existing on or before the Effective Date concerning the RICO Lawsuit and the INDOT Matter, including without limitation all claims that were or could have been asserted in the RICO Lawsuit. The release provided for in this Section 7 shall not bar any claim for breach of this Agreement.

8. Each of the Settling Parties represents and warrants that it has not heretofore assigned or transferred (or purported to assign or transfer) to any person or entity any of the claims such Settling Party has released in Sections 6 or 7 of this Agreement, as the case may be.

9. Each of the Settling Parties acknowledges and agrees that each of its promises, obligations, actions, and undertakings pursuant to this Agreement is supported by good and sufficient consideration.

10. Rieth-Riley neither admits nor denies liability. Rieth-Riley agrees that except to comply with legal obligations or to respond to civil, criminal, administrative or other proceedings, it shall not make any public statement or file any document that either admits or denies liability. This Agreement does not in any way restrict or limit Rieth-Riley from testifying truthfully in the event testimony is given on matters related to the RICO Lawsuit.

11. Rieth-Riley agrees to cooperate with the Attorney General by making its relevant documents available to the Attorney General for inspection and copying, and by making its officers and employees having knowledge of any of the relevant facts of the RICO Lawsuit available as witnesses to provide interviews, sworn statements, and testimony.

12. As part of its cooperation in Section 11, and for the sole benefit of the Attorney General, Rieth-Riley agrees to waive any applicable attorney-client privilege concerning any of the relevant facts as to which Rieth-Riley provides testimony or documents to the Attorney

General in the RICO Lawsuit. Rieth-Riley also agrees to provide letters necessary to effectuate such waiver.

13. The Attorney General agrees that he will oppose any attempt by any party in the RICO Lawsuit to join Rieth-Riley as a party in the RICO Lawsuit.

14. The Government Settling Parties agree that none of the claims or factual allegations that were asserted or might have been asserted against Rieth-Riley in the RICO Lawsuit shall be used against Rieth-Riley or its successor in any future attempt to be prequalified as a contractor entitled to do business with East Chicago or with INDOT or any other governmental entity or agency in the State of Indiana.

15. The Government Settling Parties agree that they will respond to any inquiry concerning Rieth-Riley's fitness or qualification by stating that Rieth-Riley remains a contractor qualified to do business with INDOT and other state and local governmental entities within Indiana.

16. The Government Settling Parties agree (i) that the Attorney General will immediately release, and that INDOT will in due course and ordinary business practice issue a notice to proceed to Rieth-Riley concerning, INDOT Contract No. B-28065A (first entry below); and (ii) that upon the filing in the district court of a fully executed (by all Settling Parties) stipulation of dismissal as provided in Section 4(c), the Attorney General will immediately release, and that INDOT will in due course and ordinary business practice enter into contracts with Rieth-Riley concerning, all other withheld INDOT contracts (including the remaining entries listed below) for which Rieth-Riley submitted the lowest and best bid, including:

<u>INDOT Contract Number</u>	<u>Letting Date</u>	<u>Rieth-Riley Bid Amount</u>
B-28065A	May 25, 2005	\$694,702.66
RS-28312A	October 19, 2005	\$1,144,605.16
RS-28061B	December 14, 2005	\$2,680,600.00
RS-28323A	December 14, 2005	\$1,383,132.20
RS-28480A	December 14, 2005	\$789,352.29

17. The Attorney General may bring to INDOT's attention Rieth-Riley's substantive non-compliance with the terms of this Agreement as a factor in determining Rieth-Riley's future fitness to have its status as a qualified INDOT contractor renewed. The Attorney General agrees, however, that he shall advise Rieth-Riley in writing of any alleged substantive non-compliance with this Agreement and give Rieth-Riley fourteen (14) days after notification to remedy or cure any alleged substantive non-compliance before INDOT may use such non-compliance against Rieth-Riley's application for renewal as a qualified INDOT contractor.

18. In the event of any litigation arising out of or relating to this Agreement, the prevailing Settling Party(ies) shall recover from the non-prevailing Settling Party(ies) all costs and expenses paid or incurred by the prevailing Settling Party(ies) in such proceeding, including but not limited to reasonable attorneys' fees, expert witness fees, and any arbitration fees or expenses initially paid or shared by, or initially allocated to, such prevailing Settling Party(ies).

19. Except as otherwise provided herein, all notices required or permitted by this Agreement shall be delivered both by facsimile transmission and by first class United States Mail, as follows, or to such other recipients, facsimile numbers and/or locations designated by a Settling Party in accordance with this Section 19:

For Rieth-Riley:

Francis J. Gantner  
General Counsel and Secretary  
Rieth-Riley Construction Co., Inc.  
P.O. Box 477  
Goshen, IN 46527  
Fax: (574) 875-8405

With a copy to:

Linda L. Pence  
Sommer Barnard, PC  
One Indiana Square, Suite 3500  
Indianapolis, IN 46204  
Fax: (317) 713-3699

For the Government Settling Parties:

Charles J. Todd  
Office of Attorney General  
302 West Washington Street, Fifth Floor  
Indianapolis, IN 46204  
Fax: (317) 232-7979

With a copy to:

Douglas J. Webber  
Office of Attorney General  
302 West Washington Street, Fifth Floor  
Indianapolis, IN 46204  
Fax: (317) 232-7979

20. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Indiana, without regard to conflicts-of-law principles.

21. Each of the Settling Parties represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations, causes of action, or defenses referred to in this Agreement; and that the signatory for each party signing this Agreement has the right and authority to execute this Agreement.

22. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement.

23. This Agreement shall be binding upon and inure to the benefit of the Settling Parties and each of their respective predecessors, successors, and assigns, as well as any entities with which any of them have merged or consolidated, or with which any of them may merge or consolidate in the future. None of the provisions of this Agreement are intended to be, nor shall they be deemed to be, for the benefit of any other person or entity.

24. If any provision of this Agreement is unlawful, invalid, or unenforceable for any reason that does not affect the remaining provisions of this Agreement, then all such remaining provisions shall be valid and enforceable as if the unlawful, invalid, or unenforceable provision or provisions had not been included in this Agreement.

25. No rights under this Agreement may be waived or varied except by an express waiver or variation made in writing and signed by the Settling Party against whom the waiver or variation is asserted.

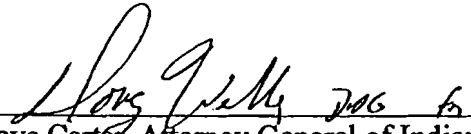
26. For purposes of construing this Agreement, the Settling Parties agree that this Agreement is to be deemed to have been drafted equally by all Settling Parties and shall not be construed strictly for or against any Settling Party.

27. Each of the Settling Parties understands, agrees and intends that this Agreement shall completely and finally resolve, compromise, and settle all actual and potential litigation and claims between and among them concerning the RICO Lawsuit and the INDOT Matter. The Settling Parties further agree after execution of this Agreement each will, upon reasonable request of the other or its counsel, execute and deliver such other documents and instruments and

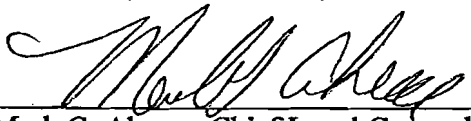
take such other actions as may be required or reasonably necessary to carry out the provisions or intent of this Agreement.

28. With respect to the subject matters contained in this Agreement, this Agreement and the Exhibits attached to it: (a) supersede any and all prior discussions, understandings and agreements between and among the Settling Parties; (b) contain the sole and entire understanding of the Settling Parties; and (c) constitute the final and complete expression of the intent of the Settling Parties. The terms of this Agreement may not be amended, modified, or otherwise altered except by means of a subsequent written document signed by all of the Settling Parties or their designees.

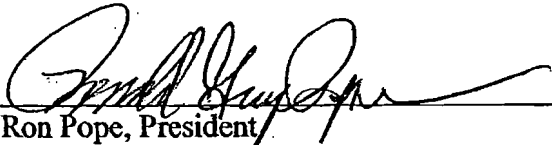
29. Each of the persons executing this Agreement on behalf of a Settling Party represents that he/she is expressly authorized to do so by such Settling Party.

  
Steve Carter, Attorney General of Indiana

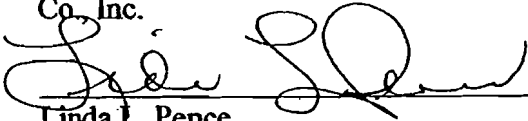
On Behalf of Himself, the State of Indiana  
and the City of East Chicago

  
Mark G. Ahearn, Chief Legal Counsel and  
Deputy Commissioner, Indiana Department  
of Transportation

On Behalf of Indiana Department of  
Transportation

  
Ron Pope, President  
Rieth-Riley Construction Co., Inc.

On Behalf of Rieth-Riley Construction  
Co., Inc.

  
Linda L. Pence  
Sommer Barnard, PC

Counsel for Rieth-Riley Construction Co., Inc.  
APPROVED AS TO FORM