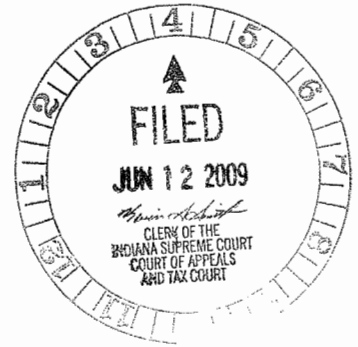


IN THE
SUPREME COURT OF INDIANA

No. _____



FOUNDATIONS OF EAST CHICAGO, INC., }
successor by merger to EAST CHICAGO }
COMMUNITY DEVELOPMENT }
FOUNDATION, INC. and TWIN CITY }
EDUCATION FOUNDATION, INC., }

Appellant (Plaintiff Below), }

v. }

CITY OF EAST CHICAGO and }
ATTORNEY GENERAL OF INDIANA, }

Appellees (Defendants Below). }

Court of Appeals No.
49A02-0711-CV-987

Appeal from the
Marion Superior Court

Trial Court No.
49D13-0705-PL-019348

The Honorable
S.K. Reid, Judge

**APPELLANT FOUNDATIONS' VERIFIED RESPONSE OPPOSING
ATTORNEY GENERAL'S MOTION TO STRIKE *AMICUS CURIAE* BRIEF OF
INDIANA GAMING COMMISSION IN SUPPORT OF PETITION TO TRANSFER**

This is the third of three related cases – in two of which this Court has granted transfer – involving Agreements approved by the Indiana Gaming Commission under which the East Chicago riverboat operator has distributed portions of gaming revenue to the City, the non-profit Foundations of East Chicago, and the for-profit East Chicago Second Century. *Amicus curiae* briefs supporting the Foundations' May 28, 2009 Petition to Transfer in this case included one by the Commission, advising that the majority opinions below usurp its regulatory authority, which encompasses local development agreements. On June 5, the Attorney General – involved in all three cases in different roles – moved to strike the Commission Brief, saying the Commission lacked authority to appear by its outside counsel, Hill, Fulwider, McDowell, Funk & Matthews; that the Attorney General did not “consent” to Hill, Fulwider representing the Commission; and

that the Attorney General had sole authority to decide Commission “litigation policy” based on what he “deems to be in the best interests of the State as a whole.” Motion 3.

The Motion to Strike should be denied. Saying that the Commission lacks authority to use Hill, Fulwider is inaccurate, as shown by Commission contracts with that firm, approved by the Attorney General and attached to this Verified Response. The Motion also omits that, with the Attorney General’s knowledge and consent, Hill, Fulwider has represented the Commission in the trial and appellate courts in the first of three related cases in this controversy. That first case is the one in which the judgment, though now subject to this Court’s exclusive jurisdiction on appeal, was effectively overruled here by the panel majority below. Foundations counsel also respectfully submit that the Attorney General has overlooked a conflict of interest that precludes his effectively representing the interests of the Commission in preserving its regulatory authority.

These reasons for denying the Motion to Strike are specifically shown by the following:

The Three Related *East Chicago* Cases

1. This is one of three cases involving the City’s ongoing effort to alter Agreements under which the local riverboat operator agreed to give 1% of gaming revenues to the City; 0.75% to Second Century, for economic development; and 1% each to the non-profit Twin City Education Foundation and East Chicago Community Development Foundation (now merged into the successor Foundations) for educational and community development. The Agreements, approved by the Commission in issuing the initial operator’s “Certificate of Suitability,” were honored by that operator and its successors. Since Mayor George Pabey took office in 2005, the City has sought to redirect to itself all amounts under the Agreements.

2. In *East Chicago I*, the Marion Superior Court (Bradford, J.) dismissed the City’s contract and other claims seeking to void or rewrite the Agreements. The Court of Appeals

affirmed, and this Court granted transfer. *City of E. Chi. v. E. Chi. Second Century, Inc.*, 878 N.E.2d 358 (Ind. Ct. App. 2007), *trans. granted*, 898 N.E.2d 1219 (Ind. 2008). Judge Bradford’s judgment, now on appeal to this Court, held the Agreements were valid, with implied durational terms concurrent with the gaming license; the Foundations were third-party beneficiaries, not “conduits”; the City could not “reform” the Agreements to redirect funds to itself; and City policy rationales for voiding the Agreements (alleged “lack of oversight”; calling the sums distributed “public funds”) were unfounded. *See* 878 N.E.2d at 370-78.¹

3. In *East Chicago II*, dismissal of the Attorney General’s “constructive trust” claims on amounts Second Century received was affirmed, and this Court again granted transfer. *Carter v. City of E. Chi.*, 881 N.E.2d 1114 (Ind. Ct. App.), *trans. granted*, 898 N.E.2d 1219 (Ind. 2008). In later ruling the Attorney General *could* allege constructive trust claims against Second Century, this Court held the Commission “incorporated” Agreement terms “as conditions to [the operator]’s receipt and maintenance of the license,” noting Commission authority to take “proposed economic development into consideration when granting riverboat licenses,” *Zoeller v. E. Chi. Second Century, Inc.*, 904 N.E.2d 213, 217-18 & n.1 (Ind. 2009).

4. This case (*East Chicago III*) involves the City’s attack on the *East Chicago I* judgment in the 2007 Legislature. On the final session day, Section 302 appeared in the Budget Act, authorizing the City to void Agreement terms and redirect payments to itself. The Foundations filed this action, challenging Section 302 under multiple constitutional provisions. The Attorney General intervened to defend Section 302. After a one-day bench trial, the Marion Superior Court (Reid, J.) entered a November 2007 judgment denying all constitutional claims and embracing City theories the *East Chicago I* judgment had rejected – *e.g.*, the Foundations are

¹ This *East Chicago I* opinion is cited not as precedent but as a convenient summary of City arguments and Judge Bradford’s decision, which binds the parties pending appeal (*see* Petition 5-6).

“conduits,” not third-party beneficiaries; Agreement revenues are “public funds”; public “oversight” is lacking; and the Foundations lack “standing” on the theory that board membership differs from the Agreements’ contemplation. *See* Petition 3-4. The Foundations appealed.²

5. A divided panel below affirmed, over Judge May’s dissent. *Found. of E. Chi., Inc. v. City of E. Chi.*, 905 N.E.2d 30 (Ind. Ct. App. 2009). Chief Judge Baker and Judge Brown held in separate opinions that Section 302’s constitutionality need not be addressed because the City had inherent power to alter the Agreements and redirect payments to itself. The Chief Judge said the City “*always* retained the authority to modify” the Agreements, “regardless of Section 302.” *Id.* at 35 (original emphasis). He rejected the *East Chicago I* holding that the Agreements were “valid, binding, and enforceable,” saying “enforcing these agreements would be a patent violation of public policy” – “akin to permitting a corrupt public official to enter into an agreement that would bind his or constituency in perpetuity” and “bind a community to its current needs,” making it “profoundly unwise” to enforce the Agreements. *Id.* Judge Brown’s concurrence held that even if the Foundations had third-party beneficiary status and standing to challenge Section 302 (neither of which she believed), the Foundations could not enforce the Agreements because they lacked a durational term and were terminable at will by the City. *Id.* at 36-39. She also said the City “had a legal right” to terminate the Agreements “by setting forth new conditions to the continuation of the [gaming] license” – to wit, the operator “would have to pay the same amount of money but to different entities” (here, to the City itself). *Id.* at 39.

6. On May 28, 2009, the Foundations petitioned to transfer, on the grounds *inter alia* that the panel majority had usurped this Court’s exclusive jurisdiction (by deciding issues now subject to this Court’s sole jurisdiction on appeal of the *East Chicago I* judgment); violated *res*

² The appeal was briefed before and argued after the August 2008 grant of transfer in *East Chicago I* and *East Chicago II*, and decided after this Court’s April 13, 2009 *Zoeller* decision in the latter case.

judicata (by effectively overruling that judgment, which is binding on all parties pending appeal, unless and until overturned by this Court); and usurped the Commission's regulatory authority, which encompasses local development agreements, as confirmed in this Court's *Zoeller* decision (*East Chicago II*). The Commission, represented by Hill, Fulwider, moved to appear as *amicus curiae*, tendering its *amicus* Brief in support of the Petition on the ground that the majority opinions below have indeed usurped its regulatory authority. The Court granted the Commission motion, directing that its *amicus* Brief be filed as of May 28.³

**The Hill, Fulwider Firm's Representation Of The Commission
In The *East Chicago* Cases, With The Attorney General's Approval**

7. The Motion to Strike's statements that Hill, Fulwider lacks authority to represent the Commission here, and that the Attorney General has not consented to such representation, are mistaken. Hill, Fulwider has long been authorized, under contracts approved by the Attorney General, to represent the Commission in any and all litigation involving the Agreements at issue here and in the two related cases in which transfer has already been granted.

8. In August 2005, the Commission and Hill, Fulwider entered an "Agreement With Outside Counsel" (attached as *Exhibit A*) for the latter to advise the agency on bonding and insurance matters involving riverboat owners, suppliers and agents. That initial contract with Hill, Fulwider was approved by the Attorney General (with now-Attorney General Greg Zoeller signing on behalf of then-Attorney General Steve Carter). *Ex. A* at A-8.⁴

³ The Attorney General's criticism that the Commission motion was granted "only 5 days after it was filed, well before the Attorney General had an adequate opportunity to file its objection" (Motion 2-3), is misplaced. This Court's procedures explicitly contemplate that it may rule on motions before the time to respond has expired, stating that "[a] response filed after ruling on the motion will automatically be treated as a motion to reconsider" IND. APPELLATE RULE 34(B).

⁴ This and the other contract documents with Hill, Fulwider attached to this Verified Response were furnished by the Commission in compliance with a public records request.

9. In November 2005, the Commission and Hill, Fulwider amended their initial contract *via* “Amendment #1” (attached as *Exhibit B*), expanding Hill, Fulwider’s responsibilities to include defending the Commission in a public records action by the City. *See Ex. B* at B-1. This amendment was approved by the Attorney General. *Id.* at B-3.

10. In early 2007, the Commission and Hill, Fulwider further amended their initial contract *via* “Renewal/Amendment #2” (attached as *Exhibit C*), extending the contract through May 31, 2008 (*Ex. C* at C-1), and expanding Hill, Fulwider’s responsibilities. In addition to the City’s public records action, Hill, Fulwider was now also to represent the Commission in

any and all lawsuits regarding disputes over the local development agreements between Resorts East Chicago Casino [the licensee] and the City of East Chicago, Indiana, including but not limited to the cases numbered and styled as follows: 49D01-0504-PL-014394, East Chicago Second Century, Inc. v. RIH Acquisitions IN, LLC, et al.; 49D12-0606-PL-025540, East Chicago Second Century, Inc. v. Indiana Gaming Commission, et al.; both filed in Marion County Superior Court; and 49A02-0608-CV-00631, City of East Chicago v. East Chicago Second Century, Inc., et al.; filed in the Indiana Court of Appeals.

Id. at C-2 (emphasis added). The first suit is the initial *East Chicago I* trial court action; the second is Second Century’s judicial review action on the Commission’s order that it no longer receive payments under the Agreements, in which the City cross-petitioned (claiming the Commission had to disapprove the Agreements *in toto*), which suit was consolidated by Judge Bradford with the initial *East Chicago I* case; and the third involves City appeals of the *East Chicago I* consolidation order and judgment, which were consolidated and decided by the Court of Appeals (after which transfer was granted). This second amendment to the initial contract between the Commission and Hill, Fulwider was also approved by the Attorney General (with now-Attorney General Zoeller signing on behalf of then-Attorney General Carter). *Id.* at C-3.

11. In April 2008, the Commission and Hill, Fulwider extended their initial contract through May 31, 2009 via “Renewal #3” (attached as *Exhibit D*). *Ex. D* at D-1.⁵

12. In May 2009, the Commission and Hill, Fulwider entered a new “Professional Services Contract” (attached as *Exhibit E*) for the period from June 1, 2009 through May 31, 2011. *Ex. E* at E-1. As under the amended initial contract, Hill, Fulwider’s responsibilities include representing the Commission in the City’s initial public records case and in “*all lawsuits regarding disputes over the [East Chicago] local development agreements . . . including but not limited to*” the *East Chicago I* trial court action; the Second Century and City judicial review actions consolidated with that initial action by Judge Bradford; and the consolidated appeals in *East Chicago I* now before this Court on transfer. *Id.* (emphasis added). The new Professional Services Contract was approved by the Attorney General on May 21, 2009. *Id.* at E-12.

13. As authorized by these contracts, Hill, Fulwider (with Norman T. Funk as lead counsel) has appeared for the Commission, with the Attorney General’s knowledge and consent, in the trial and appellate courts in *East Chicago I* (now pending before this Court), including by filing a brief for the Commission in the Court of Appeals.

14. The Attorney General has appeared separately in the three related cases, in capacities other than representing the Commission. In *East Chicago I*, he intervened in the trial court (where he had also sought to appear as *amicus curiae*), and then was granted *amicus* status in the Court of Appeals. In *East Chicago II*, the Attorney General claimed he had official power to seek a constructive trust over amounts distributed to Second Century under the Agreements. In *East Chicago III*, the Attorney General appeared briefly in the trial court for the Commission

⁵ This renewal, which did not alter Hill, Fulwider’s responsibilities, was not separately approved by the Attorney General. Foundations counsel understand that such separate approval is not required for simple extension of a previously approved contract.

before it was voluntarily dismissed as a defendant, and then intervened himself to defend constitutionality of the 2007 Budget Act section authorizing the City to alter the Agreements as it wished and redirect payments to itself.

15. The Commission, which was dismissed from the *East Chicago III* action before trial and judgment, has taken no position on the constitutional issues in this case, including in its *amicus* submissions supporting transfer. That *amicus* involvement arose only after the majority opinions below, rather than addressing the constitutional issues briefed and argued by the parties, decided instead that the City always had power to alter the Agreements and redirect payments to itself (including, in one opinion's words, as part of "a legal right" by the City to set its own "new conditions to the continuation of the [gaming] license," 905 N.E.2d at 39). As shown by its *amicus* submissions, the Commission believes the panel majority opinions usurp its regulatory oversight authority over gaming, which encompasses local development agreements.

16. In all events, it is evident the instant case is one "regarding disputes over the local development agreements" involved in all these related cases (including *East Chicago I*, with which the Foundations are moving today to consolidate this case). Thus, Hill, Fulwider is authorized to represent the Commission here both under (a) their initial contract as amended (in effect when the Commission made its *amicus* submissions); and (b) the Professional Services Contract the Attorney General approved on May 21, 2009 (seven days before the submissions), which took effect June 1, 2009 (four days before the Attorney General's Motion to Strike).⁶

⁶ Though his approval of the Commission's representation by outside counsel here makes it unnecessary to reach the issue, it is dubious the Attorney General's Motion would be well-taken anyway in circumstances where the Commission is appearing as an *amicus* – a distinction noted in a case the Attorney General cites. See *State ex rel. Sendak v. Marion County Super. Ct.*, 268 Ind. 3, 7, 373 N.E.2d 145, 148 (1978) (stating that Attorney General's consent is not required when public official "only act[s] as an *amicus curiae*" (citing *State ex rel. Young v. Niblack*, 229 Ind. 596, 606, 99 N.E.2d 839, 843 (1951) (indicating public official could "employ his own counsel to act as *amicus curiae*")))).

The Attorney General Has Also Overlooked A Conflict Of Interest

17. Foundations counsel also respectfully submit the Attorney General has not recognized an inherent conflict of interest in the current posture of this case, which precludes his effective representation of the Commission's interests.

18. Specifically, the Attorney General is obligated to defend the constitutionality of Section 302 of the 2007 Budget Act, if he can do so in good conscience. This includes defending on appeal the trial court judgment rejecting the Foundations' constitutional challenges to that provision. That judgment has now been affirmed, but on the ground that Section 302's constitutionality need not be addressed because (in the view of the panel majority) the City has always had the power to alter the Agreements here and redirect payments to itself (including as part of the City's "legal right" to set its own "conditions" for continuing the gaming license).

19. As a consequence of this panel majority reasoning, the current posture of this case is (a) the result sought by the Attorney General as the lawyer charged with defending the constitutional validity of legislative enactments – to wit, affirmance of the trial court judgment – has been achieved, and the challenged statute has not been declared unconstitutional; (b) that result will be preserved by denial of the Foundations' Petition to Transfer; but (c) denial of transfer will also leave in place, as published Indiana precedent, a decision that the Commission believes improperly usurps its regulatory authority over local development agreements in riverboat gaming venues – authority recognized by this Court in *Zoeller (East Chicago II)*.

20. In these circumstances, Foundations counsel respectfully submit that the Attorney General's role as the lawyer defending the challenged statutory section (the role he has in fact assumed in this case) could not be reconciled with zealously representing the interests of the Commission – which would be his ethical obligation were he also serving as the Commission's

counsel in this case. This is a further reason that the Attorney General's Motion to Strike the Commission's Brief as *Amicus Curiae* is not well grounded.⁷

Conclusion

Hill, Fulwider's representation of the Commission in this action is authorized by contracts that the Attorney General has approved. The Attorney General is mistaken about the facts on which he rested his Motion to Strike. That Motion should be denied.

Respectfully submitted,



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Paul L. Jefferson [#23939-49]
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Counsel for Appellant
Foundations of East Chicago, Inc.

VERIFICATION

Pursuant to Indiana Appellate Rule 34(F), I verify that the facts set forth in the foregoing Verified Response are true and correct.



Peter J. Rusthoven [# 6247-98]

⁷ In addition, the Attorney General has appeared as counsel for the City – whose interests and positions here are contrary to the Commission's in several respects – in a federal action involving alleged wrongdoing by its former mayor and others. See Appearance of Thomas Fisher, then-Special Counsel, Attorney General's Office, for State of Indiana and City of East Chicago in *State of Ind. ex rel. Carter, et al. v. Pastrick, et al.* (N.D. Ind. Aug. 3, 2004) (attached as *Exhibit F*). This would pose further potential conflict and required consent issues that are avoided by the Commission's being represented by Hill, Fulwider (rather than the Attorney General) in the instant case.

CERTIFICATE OF SERVICE

Pursuant to Indiana Appellate Rule 24(D), I certify that on June 12, 2009 I caused copies of the foregoing Verified Response to be served on the following by United States mail, first-class postage prepaid:

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Peter J. Rusthoven [# 6247-98]

A

AGREEMENT WITH OUTSIDE COUNSEL

EDS# A414-5-033

THIS AGREEMENT ("this Agreement") is between the **Indiana Gaming Commission** (hereinafter referred to as the "State" or "Commission") and **Hill, Fulwider, McDowell, Funk, & Matthews, P.C.** whose address is One Indiana Square, Suite 2000, Indianapolis, IN 46204-2031, (hereinafter "Counsel" or "Contractor").

WHEREAS, the State desires to engage Counsel to provide legal services in connection with matters relating to types and amounts of bonds and insurance that the Commission shall require of riverboat licensees, and other related matters, as needed, (the "Legal Services"), and Counsel represents that it is qualified to provide the Legal Services.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, it is agreed by and between the State and Counsel as follows:

1. Duties of Counsel. Counsel shall perform the Legal Services as requested by the State from time to time, which shall include, but shall not be limited to the following:

Providing assistance to the Commission legal staff in determining the form, types, and amounts of bonds, and security therefore, that the Commission shall require of riverboat owner licensees, supplier licensees, and operating agents; providing assistance in determining the types and amounts of insurance the Commission shall require of riverboat owner licensees, supplier licensees and operating agents; reviewing documentation submitted to the Commission relating to bonds and/or insurance; reviewing contracts relating to bonds and/or insurance; performing necessary legal research relating to bonds and/or insurance; drafting related memoranda; assisting the Commission legal staff and Attorney General as needed in making claims against bonds and insurance policies, prosecuting related law suits, and defending the Commission, when appropriate, against claims and law suits arising out of bond and/or insurance related matters; and providing any other legal services requested by the Commission legal staff. The above-listed services define the Contractor's representation of the Commission.

Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.

2. Consideration. The Contractor will be paid at the following rates for performing the duties set forth above. For services provided by partners and those of counsel of Hill, Fulwider, McDowell, Funk, & Matthews, P.C. the rate shall be one hundred and ninety-five dollars per hour (\$195.00). For services provided by Paralegals and/or Legal Assistants of Hill, Fulwider, McDowell, Funk, & Matthews, P.C. the rate shall be fifty (\$50.00) per hour. The maximum amount payable under this Agreement in a single fiscal year shall not exceed one hundred

thousand dollars (\$100,000.00). Total remuneration under this Agreement shall not exceed two hundred thousand dollars (\$200,000.00).

Counsel shall submit monthly invoices to the State showing with particularity the date and description of the Legal Services rendered. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by Counsel in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20. In accordance with I.C. 4-13-2-20, the parties acknowledge that no retainer fee has been paid in connection with this Agreement.

3. Term. This Agreement shall be effective for a period of two (2) years. It shall commence on June 1, 2005 and shall terminate on May 31, 2007.

This Contract may be renewed under the same terms and conditions subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC 5-22-17-4. The term of the renewed contract may not be longer than the term of the original contract.

4. Access to Files and Records. The State shall have full, immediate, and unrestricted access to the work product of the Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at its offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment. Counsel shall not assign any part of the Legal Services to be performed under this Agreement to a third party without the State's prior written consent. Counsel may assign its right to receive payments to such third parties as it may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

6. Changes in Work. Counsel shall not change the scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on behalf of the State unless authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written agreement.

7. Compliance with Laws and Licensing Requirements.

A. Counsel and his partners and employees shall comply with all applicable registration and licensing requirements, rules, standards and codes of conduct governing the practice of law and the transaction of business in Indiana. Counsel shall immediately notify the State if any disciplinary actions are brought against him or any of his attorneys. Counsel certifies, by entering into this Agreement, that neither he nor any of his partners, associates or any other attorney associated with Counsel is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana.

B. As required by IC 5-22-3-7:

- (1) Counsel and any principals of Counsel certify that
 - (A) Counsel, except for de minimis and nonsystematic violations, has not violated the terms of
 - (i) IC 24-4.7 [Telephone Solicitation Of Consumers],
 - (ii) IC 24-5-12 [Telephone Solicitations] , or
 - (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) Counsel will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.
- (2) Counsel and any principals of Counsel certify that an affiliate or principal of Counsel and any agent acting on behalf of Counsel or on behalf of an affiliate or principal of Counsel:
 - (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC 24-4.7 for the duration of the Agreement, even if IC 24-4.7 is preempted by federal law.

8. Conflict of Interest.

A. Counsel represents and warrants that, after due and diligent inquiry, it is satisfied that it has no Conflict of Interest (as that term is defined in the *Indiana Rules of Professional Conduct*) that will preclude it from providing the Legal Services.

B. Counsel represents and warrants that it has reviewed and is familiar with the statutes and regulations relating to the ethical conduct of state employees. Counsel certifies that, after due inquiry, no partner or any spouse or unemancipated child of any partner (collectively, an "Interested Party"), is an employee of the State of Indiana. If an Interested Party is an employee of the State of Indiana, Counsel shall provide the State with an opinion by the State Ethics Commission indicating that the existence of this Agreement and the employment by the State of Indiana of the Interested Party does not violate any statute or regulation relating to the ethical conduct of state employees.

9. Continuity of Services. Counsel recognizes that the Legal Services provided under this Agreement are vital to the State and must be continued without interruption and that, upon

expiration or termination of this Agreement, a successor, either the State or another Counsel, may continue them. Counsel shall use its best efforts and cooperation to effect an orderly and efficient transition to a successor, and shall be reimbursed for all reasonable transition costs.

10. Disputes.

A. Counsel agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities as regards all non-disputed work, any additional costs incurred by the State or Counsel as a result of such failure shall be borne by Counsel, and Counsel shall make no claim against the State for such costs.

B. The parties agree to resolve disputes through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to Counsel and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration for a determination, or otherwise the dispute shall be submitted to an Indiana court of competent jurisdiction.

C. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State of one or more invoices not in dispute in accordance with the terms of this Agreement will not be cause for Counsel to terminate this Agreement, and Counsel may bring suit to collect these amounts without following the disputes procedure contained herein.

11. Drug-Free Workplace. As required by Governor's Executive Order No. 90-5 dated April 12, 1990, Counsel certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in Counsel's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and

B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any available drug consulting, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A), above, that as a condition of continued employment the employee will (1) abide by the terms of the statement; and (2) notify Counsel of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

12. Ethics. Counsel shall abide by all ethical requirements that apply to persons who have a business relationship with an agency, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Counsel is not familiar with these ethical requirements, Counsel should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<<<http://www.in.gov/ethics/>>>>. If Counsel or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to Counsel. In addition, Counsel may be subject to penalties under Indiana Code § 4-2-6-12."

13. Funding Cancellation. When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, it shall be canceled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

14. Governing Laws. This Agreement shall be construed in accordance with, and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

15. Indemnification. Counsel agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Counsel.

16. Independent Contractor. Counsel and the State are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party. Counsel shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees.

17. Nondiscrimination. As required by IC 22-9-1-10 and the federal Civil Rights Act of 1964, Counsel shall not discriminate against any employee or applicant for employment in the performance of this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or in any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Acceptance of this Agreement signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

18. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses by U.S. first class mail, postage prepaid.

A. Notice to the State shall be sent to:

Philip Sicuso
Chief Counsel
Indiana Gaming Commission
115 W. Washington Street
South Tower, Suite 950
Indianapolis, IN 46204

B. Notice to Counsel shall be sent to:

Norman T. Funk
Attorney at Law
Hill, Fulwider, McDowell, Funk, & Matthews, P.C.
One Indiana Square, Suite 2000
Indianapolis, IN 46204-2031

19. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, finance charges, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5-1 *et seq.*, IC 34-54-8-5, and IC 34-13-1-6.

20. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

21. Taxes. The State of Indiana is exempt from state, federal and local taxes. The State will not be responsible for any taxes levied on Counsel as a result of this Agreement.

22. Termination. This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to the Counsel of a Termination Notice at least

fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The State will not be liable for legal services performed after effective date of termination. Counsel may terminate this Agreement as provided by Rule 1.16, *Indiana Rules of Professional Conduct*.

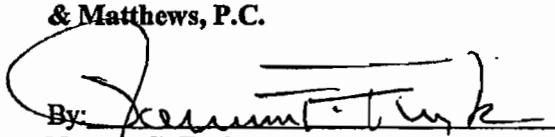
23. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.


24. Binding Authority; Non-Collusion and Acceptance. The undersigned attests, subject to the penalties for perjury, he/she has been duly authorized to execute this Agreement on behalf of the entity designated below, and that he/she has not, nor has any other partner, associate, member, employee, representative, agent, or officer of the entity designated below, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion, or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Agreement, other than that which appears upon the face of this Agreement.

In Witness Whereof, Contractor and the State of Indiana, through duly authorized representatives, have entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

**Hill, Fulwider, McDowell, Funk,
& Matthews, P.C.**

Indiana Gaming Commission

By: 
Norman T. Funk


Ernest E. Yelton, Executive Director

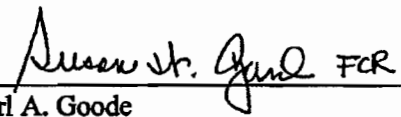
Attorney #: 7021-99

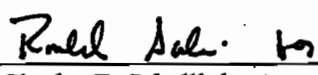
Date: Aug 16, 2005

Date: August 19, 2005

Approved by:
Department of Administration

Approved by:
State Budget Agency

 FCR
Earl A. Goode
Commissioner

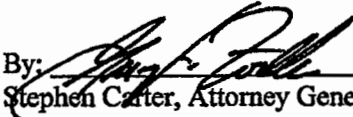

Charles E. Schalliol
Director

Date: 9-23-05

Date: 9/26/05

Approved as to Form and Legality:

Office of the Attorney General

By:  (for)
Stephen Carter, Attorney General

Date: October 31, 2005

B

AMENDMENT #1
EDS# A414-5-033

This is an amendment to the Contract entered into by and between the **Indiana Gaming Commission** (the "State" or "Commission") and **Hill, Fulwider, McDowell, Funk, & Matthews, P.C.** (hereinafter "Counsel" or "Contractor") in August 2005.

WHEREAS, pursuant to the Contract, Counsel shall provide legal services in connection with matters relating to types and amounts of bonds and insurance that the Commission shall require of riverboat licensees, and other related matters, as needed; and,

WHEREAS, the State desires to engage Counsel to provide legal services in relation to the cause **City of East Chicago v. Indiana Gaming Commission, Cause No. 49D06 0510 MI 039983**, (the "Legal Services"), which are in addition to the services originally described in the Contract; and,

WHEREAS, Counsel represents that it is qualified to provide the Legal Services and is willing to provide such services in accordance with the terms and conditions set forth herein;

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, it is agreed by and between the State and Counsel as follows:

A. Amendment to Clause 1. Clause 1 of the Contract shall be stricken and replaced with the following:

Duties of Counsel. Counsel shall perform the Legal Services as requested by the State from time to time, which shall include, but shall not be limited to the following:

Providing assistance to the Commission legal staff in determining the form, types, and amounts of bonds, and security therefore, that the Commission shall require of riverboat owner licensees, supplier licensees, and operating agents; providing assistance in determining the types and amounts of insurance the Commission shall require of riverboat owner licensees, supplier licensees and operating agents; reviewing documentation submitted to the Commission relating to bonds and/or insurance; reviewing contracts relating to bonds and/or insurance; performing necessary legal research relating to bonds and/or insurance; drafting related memoranda; assisting the Commission legal staff and Attorney General as needed in making claims against bonds and insurance policies, prosecuting related law suits, and defending the Commission, when appropriate, against claims and law suits arising out of bond and/or insurance related matters; and providing any other legal services requested by the Commission legal staff. Counsel shall perform Legal Services as requested by the State in relation to Cause No. 49D06 0510 MI 039983, **City of East Chicago v. Indiana Gaming Commission** filed in Marion County Superior Court. The above-listed services define the Contractor's representation of the Commission.

Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.

B. Amendment to Clause 2. Clause 2 of the Contract shall be stricken and replaced with the following:

Consideration. The Contractor will be paid at the following rates for performing the duties set forth above. For services provided by partners and those of counsel of Hill, Fulwider, McDowell, Funk, & Matthews, P.C. the rate shall be one hundred ninety-five dollars per hour (\$195.00). For services provided by an attorney of Hill, Fulwider, McDowell, Funk, & Matthews, P.C. who is not a partner or of counsel, the rate shall be one hundred twenty five dollars per hour (\$125.00). For services provided by Paralegals and/or Legal Assistants of Hill, Fulwider, McDowell, Funk, & Matthews, P.C. the rate shall be fifty dollars per hour (\$50.00). The maximum amount payable under this Agreement in a single fiscal year shall not exceed one hundred thousand dollars (\$100,000.00). Total remuneration under this Agreement shall not exceed two hundred thousand dollars (\$200,000.00).

Counsel shall submit monthly invoices to the State showing with particularity the date and description of the Legal Services rendered. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by Counsel in writing unless a specific waiver has been obtained from the Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC 4-13-2-20. In accordance with I.C. 4-13-2-20, the parties acknowledge that no retainer fee has been paid in connection with this Agreement.

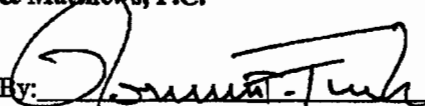
C. All other matters previously agreed to and set forth in the original agreement and not affected by this amendment shall remain in full force and effect.

D. Non-Collusion and Acceptance. The undersigned attests, subject to the penalties of perjury, that he/she is the contracting party, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the firm, company, corporation or partnership represented by him/her, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this agreement other than that which appears upon the face of the agreement.

In Witness Whereof, Contractor and the State of Indiana, through duly authorized representatives, have entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

Hill, Fulwider, McDowell, Funk,
& Matthews, P.C.

Indiana Gaming Commission

By: 
Norman C. Funk


Ernest E. Yelton, Executive Director

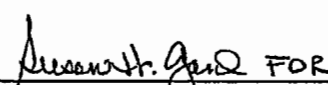
Attorney #: 7021-49

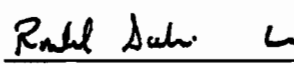
Date: November 2, 2005

Date: 11/10/05

Approved by:
Department of Administration

Approved by:
State Budget Agency

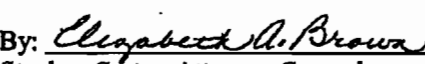
 FOR
Earl A. Goode
Commissioner


Charles E. Schalliol
Director

Date: 11-17-05

Date: 11/18/05

Approved as to Form and Legality:
Office of the Attorney General

By:  (for)
Stephen Carter, Attorney General

Date: 12-5-05

C

RENEWAL/AMENDMENT #2
EDS # A414-5-033

This is an amendment to the Contract (EDS # A414-5-033) entered into by and between the **Indiana Gaming Commission** (hereafter referred to as the "State" or the "Commission") and **Hill, Fulwider, McDowell, Funk, & Matthews, P.C.** (hereinafter "Counsel" or "Contractor") dated August 19, 2005.

WHEREAS, pursuant to the Contract, Counsel has provided legal services as bond counsel and regarding Cause No. 49D06-0510-MI-039983, and the Commission wishes to expand its relationship with Counsel to include additional claims involving the Commission, namely Cause Nos. 49D01-0504-PL-014394, 49D12-0606-PL-025440, and 49A02-0608-CV-00631;

WHEREAS, Counsel represents that it is qualified to provide the additional legal services and is willing to provide such services in accordance with the terms and conditions set forth herein;

WHEREAS, the parties now wish to amend the Contract to include the additional legal services;

NOW THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, it is agreed by and between the State and Counsel as follows:

The Contract is hereby renewed for an additional period of twelve (12) months. It shall terminate on May 31, 2008.

The hourly rate for this term is one hundred ninety-five dollars (\$195.00) per hour for services provided by partners and those of counsel of Contractor; one hundred twenty-five dollars (\$125.00) per hour for services provided by an attorney of Contractor who is not a partner or of counsel; and fifty dollars (\$50.00) per hour provided by paralegals and legal assistants of Contractor. The maximum amount payable under the Contract in a single fiscal year is one hundred thousand dollars (\$100,000.00). Total remuneration under the Contract is not to exceed three hundred thousand dollars (\$300,000.00).

The following clause in the Contract is amended as follows:

Duties of Counsel. Paragraph 1 relating to duties of counsel is hereby amended to read as follows:

Counsel shall perform the Legal Services as requested by the State from time to time, which shall include, but shall not be limited to the following:

Providing assistance to the Commission legal staff in determining the form, types, and amounts of bonds, and security therefore, that the Commission shall require of riverboat owner licensees, supplier licensees, and operating agents; providing assistance in determining the types and amounts of insurance the Commission shall require of riverboat owner licensees, supplier licensees and operating agents; reviewing documentation submitted to the

Commission relating to bonds and/or insurance; reviewing contracts relating to bonds and/or insurance; performing necessary legal research relating to bonds and/or insurance; drafting related memoranda; assisting the Commission legal staff and Attorney General as needed in making claims against bonds and insurance policies, prosecuting related law suits, and defending the Commission, when appropriate, against claims and law suits arising out of bond and/or insurance related matters; and providing any other legal services requested by the Commission legal staff.

Counsel shall perform legal services as requested by the State in relation to the case numbered and styled 49D06-0510-MI-039983, City of East Chicago v. Indiana Gaming Commission, filed in Marion County Superior Court.

Counsel shall perform legal services as requested by the State in relation to any and all lawsuits regarding disputes over the local development agreement between licensee Resorts East Chicago Casino and the City of East Chicago, Indiana, including but not limited to the cases numbered and styled as follows: 49D01-0504-PL-014394, East Chicago Second Century, Inc. v. RIH Acquisitions IN, LLC, et al.; 49D12-0606-PL-025440, East Chicago Second Century, Inc. v. Indiana Gaming Commission, et al.; both filed in Marion County Superior Court; and 49A02-0608-CV-00631, City of East Chicago, Indiana v. East Chicago Second Century, Inc., et al.; filed in the Indiana Court of Appeals.

The above-listed services define the Contractor's representation of the Commission.

Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work on this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.

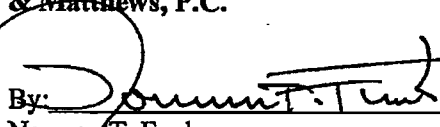
All other matters previously agreed to and set forth in the original agreement and not affected by this renewal/amendment shall remain in full force and effect.

Non-Collusion and Acceptance.

The undersigned attests, subject to the penalties of perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid any sum of money or other consideration for the execution of this Renewal/Amendment other than that which appears upon the face hereof.

In Witness Whereof, Contractor and the State of Indiana, through duly authorized representatives, have entered into this Renewal/Amendment. The parties having read and understand the foregoing terms of this Renewal/Amendment do by their respective signatures dated below hereby agree to the terms thereof.


**Hill, Fulwider, McDowell, Funk,
& Matthews, P.C.**

By: 
Norman T. Funk

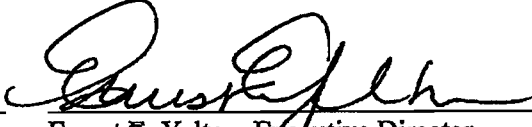
Attorney #: 7021-99

Date: 2/5/07

State Budget Agency


 FOR
Charles E. Schalliol
Director
Date: 2/20/07

Indiana Gaming Commission


Ernest B. Yelton, Executive Director

Date: January 23, 2007

Department of Administration

 FOR
Carrie Henderson
Commissioner
Date: 2.15.07

Office of the Attorney General


Steven Carter
Attorney General

Date: 4/4/07

D

**RENEWAL #3
EDS # A414-5-033**

Pursuant to Indiana Code 5-22-17-4 and the terms of the Contract, the **Indiana Gaming Commission** (the "State" or the "Commission") exercises its option to renew its Contract with **Hill Fulwider McDowell Funk & Matthews, P.C.** (the "Contractor") under the same terms and conditions of the original Contract signed by Contractor on June 26, 2006, as amended. The entire Contract shall commence on June 1, 2005 and shall terminate on May 31, 2009.

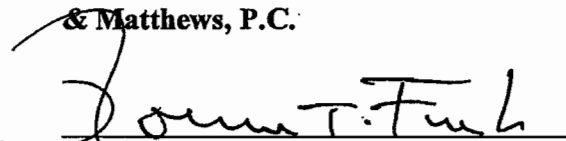
Total amount of this Renewal is one hundred thousand dollars (\$100,000). Total remuneration of this Contract is not to exceed four hundred thousand dollars (\$400,000).

Non-collusion and Acceptance: The undersigned attests, subject to the penalties for perjury, that he is the Contractor, or that he is the representative, agent, member or officer of the Contractor, that he has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he has not received or paid any sum of money or other consideration for the execution of this Renewal, other than that which appears upon the face hereof.

All other matters previously agreed to and set forth in the original Contract shall remain in full force and effect.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of the Contract do by their respective signatures dated below hereby agree to the terms thereof.

**Hill Fulwider McDowell Funk
& Matthews, P.C.**



Norman T. Funk, Partner
Attorney # 7021-49

Date: April 29, 2008

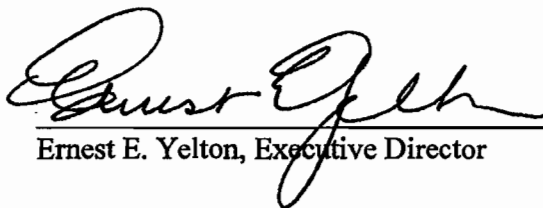
Department of Administration



(for) Carrie Henderson
Commissioner

Date: 5/15/08

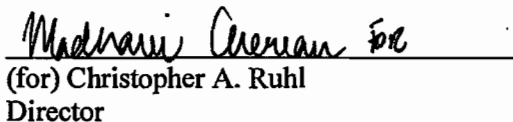
Indiana Gaming Commission:



Ernest E. Yelton, Executive Director

Date: 4. 29. 08

State Budget Agency



(for) Christopher A. Ruhl
Director

Date: 5/16/08

E

PROFESSIONAL SERVICES CONTRACT
EDS # A414-9-001

This Contract ("this Contract"), entered into by and between the Indiana Gaming Commission (the "State") and Hill, Fulwider, McDowell, Funk, & Matthews, P.C. whose address is One Indiana Square, Suite 2000, Indianapolis, IN 46204-2031, (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor.

The Contractor shall provide the following services relative to this Contract:

Counsel shall perform Legal Services as requested by the IGC from time to time, which may include, but not be limited to the following: Providing assistance to the Commission legal staff in determining the form, types, and amounts of bonds, and types and amounts of insurance the Commission shall require of riverboat licensees, supplier licensees, and operating agents; and providing any other legal services requested by the Commission legal staff.

Counsel shall perform legal services as requested by the State in relation to the ongoing case 49D06-0510-MI-039983, *City of East Chicago v. Indiana Gaming Commission* and all lawsuits regarding disputes over the local development agreement between licensee Resorts East Chicago Casino (now Ameristar Casino East Chicago) and the City of East Chicago, Indiana including but not limited to the following cases: 49D01-0504-PL-014394, *East Chicago Second Century Inc. v. RIH Acquisitions IN, LLC, et al.*; 49D12-0606-PL-025440, *East Chicago Second Century, Inc. v. Indiana Gaming Commission, et al.*; both filed in Marion County Superior Court; and 49A02-0608-CV-00631, *City of East Chicago, Indiana v. East Chicago Second Century, Inc., et al.*; filed in the Indiana Court of Appeals.

2. Consideration

The Contractor will be paid at the following rates for performing the duties set forth above. For services provided by partners and those of counsel of Contractor, the rate is two hundred fifty dollars per hour (\$250.00). For services provided by associate attorneys of Contractor, the rate is one hundred twenty-five dollars per hour (\$125.00). For services provided by paralegals and/or legal assistants of Contractor, the rate is fifty dollars per hour (\$50.00). Billing increments will be tenths of an hour.

Total remuneration under this Contract shall not exceed one hundred fifty thousand dollars (\$150,000.00).

3. Term

This Contract shall be effective for a period of twenty-four (24) months. It shall commence on June 1, 2009 and shall remain in effect through May 31, 2011.

This Contract may be renewed for one (1) additional term under the same terms and conditions, subject to the approval of the Commissioner of the Indiana Department of Administration and the State Budget Director. The renewal term may not be longer than the term of the original contract.

4. Access to Records. The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. Contractor shall make such materials available at its offices at all reasonable times during this Contract, and for three (3) years from

the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, *et seq.* and audit guidelines specified by the State.

7. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

8. Changes in Work. The Contractor shall not change the scope of the legal services to be performed under this Contract or undertake additional work on behalf of the State unless authorized in writing by the State. No claim for additional compensation may be made in the absence of a prior written agreement.

9. Compliance with Laws

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 *et seq.*, IC § 4-2-7, *et seq.*, the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State. *Authority to withhold payments is found in IC 4-13-2-14.5.*

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work

under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations], or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

I. Unless specifically exempted, Contractor hereby certifies that it does not employ or contract with an unauthorized alien, pursuant to IC 5-22-1.7.

10. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of and federal, state or local statute, ordinance, rule or regulation.

11. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this contract may require or allow access to data, materials, and information containing Social Security numbers

maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

12. Continuity of Services. Intentionally Omitted.

13. Debarment and Suspension. The Contractor certifies by entering into this Contract that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

14. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

15. Disputes.

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.
- B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor.
- C. If a party to the contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
 - 1. The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party, may submit the dispute to an Indiana court of competent jurisdiction.

2. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

16. Drug-Free Workplace Certification. The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the State of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

17. Employment Option. Intentionally Omitted.

18. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

19. Funding Cancellation. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

20. Governing Laws. This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

21. Indemnification. The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

22. Independent Contractor. Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

23. Information Technology Enterprise Architecture Requirements. Intentionally Omitted.

24. Insurance. Intentionally Omitted.

25. Key Person(s)

A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.

- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- C. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Key person to this Contract is Norman T. "Tom" Funk.

26. Licensing Standards. The Contractor and its employees shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor and/or its employees are not in compliance with such applicable standards, laws, rules or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

27. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented or amended, except by written agreement signed by all necessary parties.

28. Minority and Women's Business Enterprises Compliance. The Contractor agrees to comply fully with the provisions of 25 IAC 5 and the Subcontractor Commitment submitted to the State. No changes may be made to the commitment without the written approval of the Minority and Women's Enterprises Division of IDOA.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

<u>MBE/WBE</u>	<u>PHONE</u>	<u>COMPANY NAME</u>	<u>SCOPE OF PRODUCTS and/or SERVICES</u>	<u>UTILIZATION DATE</u>	<u>AMOUNT</u>
None					

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

29. Nondiscrimination

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

30. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

**Philip Sicuso
General Counsel
Indiana Gaming Commission
101 W. Washington Street
Suite 1600 – East Tower
Indianapolis, IN 46204**

B. Notices to the Contractor shall be sent to:

**Norman T. Funk
Hill, Fulwider, McDowell, Funk, & Matthews, P.C.
One Indiana Square, Suite 2000
Indianapolis, IN 46204-2031**

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

31. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract, (2) attachments prepared by the State, (3) attachments prepared by the Contractor. All of the foregoing are incorporated fully by reference. All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

32. Ownership of Documents and Materials. All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor

shall be responsible for any loss of or damage to these materials developed for or supplied by the State and used to develop or assist in the services provided while the materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract.

33. Payments. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.

34. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

35. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

36. Renewal Option. Intentionally Omitted. See Clause 3.

37. Security and Privacy of Health Information. The Contractor agrees to comply with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in all activities related to this Contract, to maintain compliance throughout the life of this Contract, to operate any systems used to fulfill the requirements of this Contract in full compliance with HIPAA and to take no action which adversely affects the State's HIPAA compliance.

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time, on the Standards for Privacy of Individually Identifiable Health Information, as required by HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor covenants that it will appropriately safeguard Protected Health Information (PHI), as defined by the regulations, which is made available to or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State as required by the final regulations.

38. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

39. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

40. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

41. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. Contractor may terminate this Contract under Rule 1.16 of the *Indiana Rules of Professional Conduct*.

42. Termination for Default.

A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

43. Travel. No expenses for travel will be reimbursed unless specifically permitted under the scope of services or consideration provisions. Expenditures made by the Contractor for travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

44. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

45. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request

46. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the 2009 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses:

- | | | |
|-----|---|---|
| #3 | Term | (Amended, added renewal language) |
| #4 | Access to Records | (Amended, deleted reference to subcontractors) |
| #8 | Changes to Work | (Amended, customized for this contract) |
| #9 | Compliance with Laws | (Amended, deleted references to subcontractors) |
| #12 | Continuity of Services | (Omitted, not necessary) |
| #13 | Debarment and Suspension | (Amended, deleted reference to subcontractors) |
| #17 | Employment Option | (Omitted, not desirable) |
| #23 | IT Enterprise Architecture Requirements | (Omitted, not necessary) |
| #24 | Insurance | (Omitted, not necessary) |
| #26 | Licensing Standards | (Amended, deleted references to subcontractors) |
| #33 | Payments | (Amended, deleted payments for equipment) |
| #36 | Renewal Option | (Omitted, covered in earlier clause) |

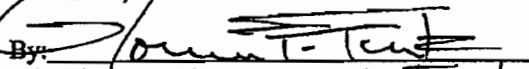
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Non-Collusion and Acceptance

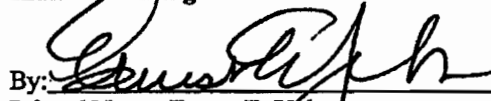
The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.


Hill, Fulwider, McDowell, Funk, & Matthews, P.C.

By: 
Printed Name: NORMAN T. FUNK
Title: Member
Date: 5-8-09


Indiana Gaming Commission

By: 
Printed Name: Ernest E. Yelton
Title: Executive Director
Date: 5.12.09

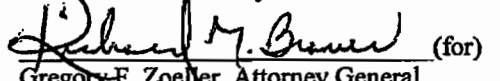
Department of Administration

 (for)
Mark W. Everson, Commissioner
Date: 5.15.09

State Budget Agency

 (for)
Christopher A. Ruhl, Director
Date: 5/19/09

**APPROVED as to Form and Legality:
Office of the Attorney General**

 (for)
Gregory F. Zoeller, Attorney General
Date: May 21, 2009

F

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA

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APPEARANCE

STEPHEN J. ... CLERK
U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT
OF INDIANA

STATE OF INDIANA,)
ex rel. Steve Carter, Attorney General of Indiana,)
 and the CITY OF EAST CHICAGO,)
ex rel. Steve Carter, Attorney General of Indiana,)
)
 Plaintiffs,)
)
 vs.)
)
 ROBERT A. PASTRICK, *et al.*)
)
 Defendants.)

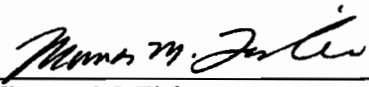
Cause No. **3:04CV 506AS**

To the clerk of this court and all parties of record:

I, the below-signed, state that pursuant to N.D. Ind. L.R. 83.5(g), I have read and will abide by the Local Rules of the U.S. District Court for the Northern District of Indiana, including Appendix B: Standards for Professional Conduct Within the Seventh Federal Judicial Circuit. I declare under penalty of perjury that the foregoing is true and correct.

Enter my appearance as counsel in this case for **STATE OF INDIANA, *ex rel.* Steve Carter, Attorney General of Indiana, and the CITY OF EAST CHICAGO, *ex rel.* Steve Carter, Attorney General of Indiana,**

August 2, 2004



 Thomas M. Fisher
 Special Counsel
 Indiana Attorney General's Office
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 Indianapolis, Indiana 46204
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