

## RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (the "Agreement") is entered into this 12<sup>th</sup> day of August, 2016, by and between Friends of the White River ("Petitioner") and the City of Indianapolis ("City"), the United States Army Corps of Engineers, Louisville District ("Corps") and the State of Indiana, Department of Natural Resources ("DNR") (the City, Corps and DNR collectively referred to herein as "Respondents"). Petitioner and Respondents are collectively referred to herein by name or as "the Parties."

WHEREAS, a dispute has arisen between the Parties relating to the floodway construction permit #FW-27680 (the "Permit") issued by the DNR to the City and its agent, the Corps for the Indy North Flood Reduction Project (the "Project");

WHEREAS, the dispute resulted in the Petitioner filing a request for administrative review with the Division of Hearings of the Natural Resources Commission of the State of Indiana under Administrative Cause Number: 15-088W (the "Permit Challenge"); and

WHEREAS, the Parties desire to resolve and settle their disputes and forever put all of the claims to rest.

NOW, THEREFORE, in consideration of the covenants and promises contained herein, and in agreement with the "Louisville District's Vegetation Variance Request" [attached as Exhibit A] (the "Vegetation Variance") and the Project plans and specifications [attached as Exhibit B] (the "Project Plans"), both as approved by the United States Army Corps of Engineers Headquarters, the Parties agree as follows:

**1. Terms and Conditions:**

**A. The Corps commits to following the Vegetation Variance as set forth therein and additionally commits as follows:**

- a. In areas where trees and shrubs are removed as part of the Project, the Corps will utilize specific grass seed mixtures designed for use on earthen flood control levees and specific to the climate zone within which the Indianapolis levee at issue is located in accordance with published standards of the Corps, the Project Plans, and the Vegetation Variance in order to provide appropriate cover to reduce soil erosion.
- b. The Corps will prepare a Stormwater Pollution Prevention Plan (SWPPP), which will be submitted to the Indiana Department of Environmental Management for approval prior to tree clearing activities conducted as part of the Project. The approved SWPPP will include the use of widely-utilized best management practices for controlling erosion on and along construction sites and preventing off-site sedimentation in accordance with the Project Plans and the Vegetation Variance. The

Corps' contractor will be responsible for adjusting the practices as needed to address ongoing construction activities.

- c. The Corps will place limestone riprap including willow stakes shown in the Vegetation Variance plans along the levee and river bank in accordance with the Project Plans and the Vegetation Variance for the purpose of bank stabilization.
- d. After the tree removal area is surveyed and marked by its contractor and before tree removal activities are commenced, the Corps and the City will arrange an on-site walk-through with a representative of Petitioner who is knowledgeable of construction to examine the tree removal area boundaries. The Petitioner's representative shall wear appropriate clothing and follow all site safety requirements as directed by the Corps during this walk-through. The decision to remove trees outside the clearing area will be made in the sole discretion of the Corps but will be limited to only that vegetation which is deemed a threat to public health, safety, or the structural integrity of the levee because specific trees are dead, dying, or in threat of toppling.
- e. The Corps grading plan for the Project will minimize the potential for erosion and maximize the degree of compaction in accordance with the Project Plans, the Vegetation Variance, and sound engineering practices.
- f. The Corps will improve the carry-in watercraft public access point located at the Indianapolis Arts Center in Broad Ripple in accordance with the Project Plans, including the placement of anchored concrete pavers between the parking lot and the existing concrete pad at water's edge.
- g. The Corps will install a carry-in watercraft public access point near the City's Friedmann Park in accordance with the Project Plans utilizing the same type of anchored concrete pavers mentioned above in areas near water's edge and the installation of a sign bearing the universal symbol for public carry-in watercraft access. No additional clearing of trees greater than two inches (2") in diameter at breast height will be conducted in connection with the installation of this public access point.

**B. The City's Commitments:**

- a. The City will install signs at the public carry-in watercraft access points mentioned in Subsections 1.A.f. and 1.A.g., which will include the universal symbol for public canoe access points and wording which states: "Public Access." In addition, the City will install at each public access point its standard signage displaying rules and notices for public

parks. In the event of emergencies, any user of the public access points should call 9-1-1.

- b. The City will be responsible for maintenance of the two (2) carry-in watercraft access points mentioned in Subsections 1.A.f. and 1.A.g., and will prepare a written standard operating procedure for the inspection and maintenance of these public access points.
- c. The City will increase its stormwater education public outreach through social media and other outlets to attempt to increase public knowledge and understanding of the effects of illegal dumping on water resources.

**C. The DNR's Commitment:**

- a. The DNR will issue an amendment letter to document in its Permit file that the Permit is amended to incorporate the "Louisville District's Vegetation Variance Request" limits as approved by the United States Army Corps of Engineers Headquarters. A copy of the letter will be provided to Petitioner as soon as the amendment letter is issued, and no later than five business days before any vegetation clearing in Section 3A and 3 C is commenced.

**D. The Petitioner's Commitments:**

- a. Petitioner agrees to execute and file a stipulation dismissing with prejudice all of its claims asserted in the Permit Challenge within five (5) calendar days of receipt of signatures by Respondents to this Agreement. The Parties shall each bear their own respective costs and attorneys' fees related to the Permit Challenge incurred up to the date of this Agreement. Unless and until Petitioner timely files this dismissal the signed Mediation Agreement dated November 17, 2015 shall remain in full force and effect as if the parties never entered into this Agreement. For the avoidance of doubt, the Respondents are not obligated by their commitments in this Agreement and not covered in the Mediation Agreement unless and until Petitioner timely files the dismissal required in this paragraph.
- b. The Petitioner will cooperate with the Corps in scheduling the on-site walk-through mentioned in Subsection 1.A.d. No more than three (3) representatives of Petitioner may attend the walk-through, and at least one such representative shall be knowledgeable of construction. The Petitioner agrees that its representative(s) shall wear appropriate clothing, including long pants, sturdy shoes, hardhats, and reflective vests, and follow all site safety requirements as directed by the Corps during this walk-through. The Petitioners' representatives shall accept

all risk of injury and indemnify Respondents with respect to any injuries or other damages they may sustain participating in the walk-through.

**2. Release.** Petitioner hereby fully and completely releases and forever discharges Respondents from any and all known or unknown claims, demands, rights of action, damages, costs, loss of services, expenses (including attorneys' fees), or liabilities that arise out of or relate to the facts, transactions, or occurrences underlying any of the claims asserted or that could properly have been asserted in the Permit Challenge or otherwise related to the removal of vegetation so long as all clearing is conducted in accordance with the Project Plans and the Vegetation Variance covering Sections 3A and 3C of the Project. For the avoidance of doubt, Petitioner waives its right to challenge, in court, administrative proceeding, or otherwise, the application for or issuance of a Clean Water Act ("CWA") Section 401 Water Quality Certification or CWA Section 402 National Pollution Discharge Elimination System permit related to the removal of vegetation so long as all clearing is conducted in accordance with the Project Plans and the Vegetation Variance covering Sections 3A and 3C of the Project. The beneficiaries of this release shall be referred to herein as "Released Parties." For the avoidance of doubt, the State of Indiana, the United States Army Corps of Engineers and the Consolidated City of Indianapolis and Marion County and all of their departments, agencies, boards, directors, officers, employees, agents, heirs, executors, assigns, insurers, and successors in interest are Released Parties.

**3. Non Admission.** Petitioner acknowledges that this Agreement represents a compromise and settlement of disputed claims and that Respondents deny any liability on all claims asserted. This Agreement should not be construed as an admission of any liability or wrongdoing.

**4. No Third Party Beneficiaries.** The Parties agree that no provision of this Agreement is intended to establish any other person as a third-party beneficiary except as stated explicitly herein or to authorize any non-party to this Agreement to maintain any action under its terms.

**5. Public Disclosure Obligations.** Nothing in this Agreement shall be construed to relieve the Respondents of their legal duties to provide access to public records as required and/or permitted by law. For the avoidance of doubt, nothing in this Agreement shall be construed to limit the Respondents' authority or discretion to release public records.

**6. Severability & Precondition to Effectiveness.** Petitioner shall not allege or challenge, in court, administrative proceeding or otherwise, the legality of any provision or obligation in Section 1 of this Agreement. The Corps, the City, and the DNR represent that they have consulted with counsel and been advised that they have legal authority to enter into the terms and commitments in this Agreement. Notwithstanding the above, in the event that any provision of this Agreement is otherwise held invalid, the Parties shall immediately meet and confer to negotiate a further resolution in accordance with the intent and spirit of this Agreement. This Agreement is specifically conditioned upon the City (and/or Corps) obtaining all additional required permits, authorizations and funding to

conduct the vegetation removal in accordance with the Project Plans and the Vegetation Variance covering Sections 3A and 3C of the Project.

7. **Negotiation & Joint Drafting.** The Parties acknowledge and agree that this Agreement is the result of negotiations between them and that no party shall be deemed the drafter of the Agreement. The language of the Agreement shall in all cases be construed according to its fair meaning, not strictly for or against any Party.

8. **Voluntary Execution.** Each Party acknowledges that it has voluntarily executed this Agreement after having an opportunity to (1) read and carefully study the entire Agreement and (2) consult with counsel if so inclined. Each Party further acknowledges that it enters into this Agreement of its own free will and volition.

9. **Authority; Signature.** Petitioner represents and warrants that the person executing this Agreement on its behalf has authority to do so. Petitioner further agrees to execute this Agreement before a notary public. No term or condition shall take effect until the executed and notarized Agreement is returned. Respondents represent and warrant that the persons signing on their behalves are representatives authorized to bind the Party for which he or she signs. Those representatives sign on behalf of Respondents and not their individual capacities.

10. **Applicable Law and Forum Selection.** This Agreement shall be construed in accordance with the laws of the State of Indiana. The Parties agree that any action brought to enforce any term or terms of this Agreement shall be brought and exclusively maintained in t situated in Marion County, Indiana. Petitioner consents to the personal jurisdiction and venue of those courts.

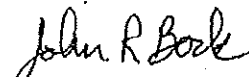
11. **Copies.** A copy of this fully executed Agreement shall have the full force and effect of the original signed Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed and such signature transmitted by facsimile, electronic mail, or other electronic means, with the same binding effect as original ink signatures.

12. **ENTIRE AGREEMENT.** IT IS EXPRESSLY WARRANTED THAT THIS AGREEMENT CONSTITUTES THE COMPLETE AND FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND, UPON THE SIGNATURES AND STIPULATION OF DISMISSAL AS SET FORTH IN SUBSECTION 1.D.a OF THIS AGREEMENT, SUPERSEDES AND CANCELS ALL PRIOR OR CONTEMPORANEOUS AGREEMENTS, UNDERSTANDINGS, DISCUSSIONS, OR REPRESENTATIONS REGARDING THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER ORAL OR WRITTEN. EACH PARTY REPRESENTS AND WARRANTS THAT NO PROMISE OR INDUCEMENT NOT CONTAINED HEREIN HAS BEEN OFFERED TO IT, THAT THIS AGREEMENT IS EXECUTED WITHOUT RELIANCE UPON ANY STATEMENT OR REPRESENTATION NOT EXPLICITLY SET FORTH HEREIN,

AND THAT IT HAS HAD THE OPPORTUNITY, IF SO INCLINED, TO SEEK THE ADVICE OF AN ATTORNEY REGARDING THE MEANING AND LEGAL EFFECT OF ALL CONDITIONS AND TERMS CONTAINED IN THIS AGREEMENT, INCLUDING THIS SECTION. THIS AGREEMENT MAY NOT BE MODIFIED OR AMENDED, NOR ANY OF ITS TERMS WAIVED, EXCEPT BY WRITTEN INSTRUMENTS SIGNED BY EACH OF THE PARTIES.

This Release and Settlement Agreement is executed on this 11<sup>th</sup> day of August, 2016.

\_\_\_\_\_  
Name  
Friends of the White River



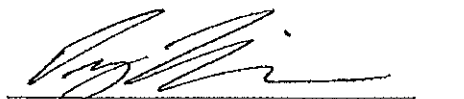
John R. Bock, Chief Engineering Div.  
Name (on behalf of the  
United States Army Corps of Engineers,  
Louisville District)

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Lori Miser (on behalf of the City of  
Indianapolis)  
Director Department of Public Works

\_\_\_\_\_  
Name (on behalf of the State of Indiana)  
Indiana Department of Natural Resources

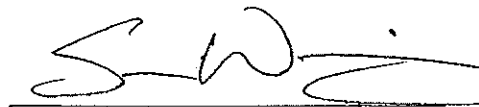
Matt Buffington

\_\_\_\_\_  
W. William Weeks  
(Agreed as to Form Only)



\_\_\_\_\_  
Traylor Richardson  
United States Army Corps of Engineers,  
Louisville District  
(Agreed as to Form Only)

\_\_\_\_\_  
Donald E. Morgan  
Office of Corporation Counsel  
Chief Litigation Counsel  
(Agreed as to Form Only)



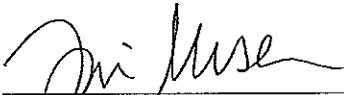
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Name Sean Wooding  
Indiana Department of Natural Resources  
(Agreed as to Form Only)

[Acknowledgement(s) of Notary Public Appear on Following Page(s)]

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This Release and Settlement Agreement is executed on this 11<sup>th</sup> day of August, 2016.


\_\_\_\_\_  
Name  
Friends of the White River

  
\_\_\_\_\_  
Lori Miser (on behalf of the City of Indianapolis)  
Director Department of Public Works

\_\_\_\_\_  
Name (on behalf of the United States Army Corps of Engineers, Louisville District)

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Name (on behalf of the State of Indiana) Indiana Department of Natural Resources

\_\_\_\_\_  
W. William Weeks  
(Agreed as to Form Only)

  
\_\_\_\_\_  
Donald E. Morgan  
Office of Corporation Counsel  
Chief Litigation Counsel  
(Agreed as to Form Only)

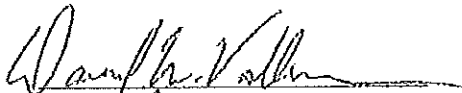
\_\_\_\_\_  
Traylor Richardson  
United States Army Corps of Engineers, Louisville District  
(Agreed as to Form Only)

\_\_\_\_\_  
Name  
Indiana Department of Natural Resources  
(Agreed as to Form Only)

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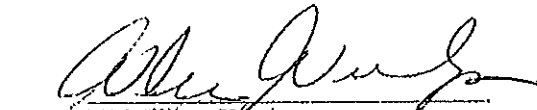
This Release and Settlement Agreement is executed on this 15 day of August, 2016.

  
Name P.R.E.S.  
Friends of the White River

\_\_\_\_\_  
Lori Miser (on behalf of the City of Indianapolis)  
Director Department of Public Works

\_\_\_\_\_  
Name (on behalf of the United States Army Corps of Engineers, Louisville District)

\_\_\_\_\_  
Name (on behalf of the State of Indiana) Indiana Department of Natural Resources

  
W. William Weeks  
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United States Army Corps of Engineers, Louisville District  
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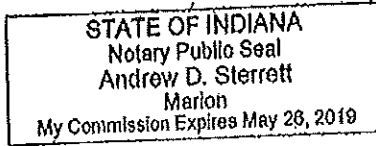
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ACKNOWLEDGEMENT OF NOTARY PUBLIC

State of Indiana

County of Marion



I am a Notary Public in and for the County and State identified above, Daniel W. Valleskey, known to me to be the party granting the release described in the foregoing Release and Settlement Agreement, personally appeared before me on August 15, 2016 and executed and/or acknowledged executing the foregoing Release and Settlement Agreement for the purposes stated therein.

A handwritten signature in black ink, appearing to be "A. Sterrett", written over a horizontal line.

Signature of Notary Public

My commission expires on May 26, 2019

County of residence: Marion