

RESOLUTION NO. 2014-04

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF  
SPEEDWAY, INDIANA APPROVING A MEDIATED SETTLEMENT ON  
THE LAWSUITS INVOLVING RIETH-RILEY CONSTRUCTION AND  
HOWELL CONTRACTORS AND RELATED MATTERS**

WHEREAS, the Town of Speedway, Indiana (the "Town") entered into a contract for the construction of a storm sewer system within a certain area of the Town (the "Project") with Howell Contractors, (hereafter "Howell") the prime contractor on the project and that Howell subsequently hired and directed the work of subcontractors, including Rieth-Riley Construction (hereafter the "Subcontractor") (jointly "the Parties") to perform certain work on the Project; and

WHEREAS, conditions developed on the Project that resulted in lawsuits and countersuits filed with the Marion County Courts by the Parties; and

WHEREAS, the Parties desired to settle the lawsuit and avoid additional legal expense and therefore participated in mediation to resolve the disputes among the Parties and that the mediation resulted in a preliminary agreement subject to the approval of the Town Council of the Town of Speedway (the "Town Council") as outlined at Attachment A.

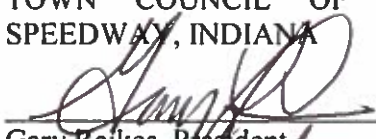
NOW THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SPEEDWAY, INDIANA:

1. The Council approves and authorizes the actions outlined in the Mediated Settlement Agreement as included at Attachment A hereto.

2. The Council instructs the Town Manager to undertake the steps necessary to execute the Agreement and is hereby authorized to sign the document to be attested by the Town Council President.

PASSED BY the Speedway Town Council this 27<sup>th</sup> day of January, 2014.

TOWN COUNCIL OF THE TOWN OF  
SPEEDWAY, INDIANA

  
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Gary Raikes, President

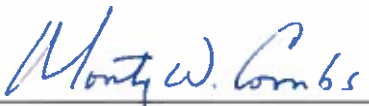
  
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David Lindsey, Vice President

  
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Eileen Fisher, Member

  
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Jeff S. Hartman, Member

  
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William Suffel, Member

ATTEST

  
\_\_\_\_\_  
Monty W. Combs, Clerk-Treasurer

## MEDIATION AGREEMENT

In full compromise of all claims brought or that could be brought in the Marion County, Indiana Superior Court, Cause No. 49D05-1301-PL-003112 (the "Lawsuit"), the parties agree to the following mediated terms. Subject to the approval of the Speedway Town Council as noted below, the parties enter into this settlement intending it to be binding and to comply with ADR Rule 2.7E.

1. The parties agree to retain, at the expense of Speedway, the services of such a third party independent engineer as they may agree to (the "Peer Review Engineer") to perform a peer review of the binder of repairs identified by the Peer Review Engineer, as well as the 15<sup>th</sup> and Allison Street intersection, and determine the scope of corrective work to be performed based upon applicable laws, regulations and guidelines, utilizing INDOT specifications and standards as a point of reference.
2. The parties agree that Rieth-Riley and the Peer Review Engineer shall conduct a kickoff meeting to discuss the above-referenced repairs.
3. Once completed, the parties shall be entitled to review the scope of work identified by the Peer Review Engineer. If any one of the parties rejects the scope of work, then the Mediation Agreement is null and void. If the parties agree to the scope of work, then Rieth-Riley will determine the anticipated cost of correction, utilizing INDOT pricing guidelines.
4. Rieth-Riley shall thereafter provide the cost of repairs to Howell who shall escrow one-half of the costs of repairs, to be paid to Rieth-Riley upon completion of said work, or void the terms of this Mediation Agreement.
5. The parties shall complete each of the steps 1-3 above by no later than March 1, 2014.
6. On or before March 15, 2014, Speedway shall then pay to Rieth-Riley the total of \$704,689.97 less a repair escrow of \$150,000.00 and Howell shall pay to Rieth-Riley the sum of \$127,238.00. Howell shall also pay the sum of \$28,000.00 to Speedway on or before March 15, 2014.
7. Beginning on or about April 1, 2014, Rieth-Riley shall begin performing all corrective work identified by the Peer Review Engineer and agreed upon by the parties pursuant to the above terms. Rieth-Riley shall complete the work and the Peer Review Engineer shall inspect the work not later than May 1, 2014, subject to weather delays and other matters beyond the control of Rieth-Riley.
8. Upon completion of the corrective work and approval by the Engineer, Speedway shall release the remaining \$150,000.00 repair escrow to Rieth-Riley within fifteen days thereafter. In addition, the repair funds contributed by Howell and held in escrow, up to one-half of the total costs of the corrective work, shall be released from escrow and paid to Rieth-Riley within fifteen days from completion and approval of the corrective work. Any escrow funds not utilized to pay Howell's one-half costs of the corrective work shall be returned to Howell.
9. In exchange for the foregoing, upon completion of the items set forth above, the parties shall dismiss with prejudice all claims raised in the Lawsuit and shall release and waive all claims against each other, including the surety, for any and all matters, whether known or unknown, relating to this project.

10. The parties agree to execute a full Settlement Agreement and Mutual Release consistent with the terms of this Mediation Agreement and to execute such other documents as may be necessary to effectuate the terms of this Mediation Agreement.
11. In the interim, the parties further agree to file with the Court, on or before January 27, 2014, a notice of tentative settlement and request to extend any pre-trial dates occurring on or before March 20, 2014 and further to file with the Court, on or before March 20, 2014, a motion to vacate the trial date pending completion of the agreed-upon scope of work and ultimate filing of a Motion to Dismiss with Prejudice.
12. Each party shall be responsible for its own legal fees and costs incurred in this Lawsuit.
13. The parties shall share equally in the mediator's fees.
14. This Mediation Agreement, in addition to the foregoing terms and conditions, is expressly made subject to the approval of the Speedway Town Council.

Rieth-Riley Construction Co., Inc.

Tobias Z. Kasper  
Signature

Robert L. Karpinski  
Printed Name and Title *Secretary/General Counsel*

Date: 1-22-2014

Howell Contractors, Inc.

P. Bickel  
Signature

Paul Bickel, Vice President  
Printed Name and Title

Date: 1/22/14

Town of Speedway

Barbara A. Lawrence  
Signature

Barbara Lawrence *Town Manager*  
Printed Name and Title

Date: 1/22/14