

AGENDA RESERVATION REQUEST

CITY OF FRANKLIN
BOARD OF PUBLIC WORKS AND SAFETY
Please type or print

Date Submitted:	January 20, 2012	Meeting Date:	February 6, 2012
Contact Information:			
Requested by:	Lynn Gray, City Attorney		
On Behalf of Organization or Individual: City of Franklin			
Telephone:	(317) 738-3365		
Email address:	lynng@embarqmail.com		
Mailing Address:	63 East Court Street, Franklin, IN 46131		
Describe Request:			
Request approval of the easement for the former Fire Station and Street Garage			
List Supporting Documentation Provided:			
Non-Barrier Access Easement & Maintenance Agreement			
Exhibit "A" - Boundary Retracement			
Who will present the request?			
Name:	Lynn Gray, City Attorney	Telephone:	(317) 738-3365

The Franklin Board of Works meets on the 1st and 3rd Monday of each month at 5:15 p.m. in the Council Chambers of City Hall located at 70 E. Monroe Street. In order for an individual and/or agency to be considered for new business on the agenda, this reservation form and supporting documents must be received in the Mayor's office no later than 12:00 p.m. on the Wednesday prior to the Board of Works meeting.

EASEMENT CROSS REFERENCE:

1. The Boundary Retracement document recorded on December 9th, 2011 and received for record as File H, page A-121, File 2011-025221 in the Office of the Recorder of Johnson County, Indiana.

NON-BARRIER ACCESS EASEMENT & MAINTENANCE AGREEMENT

THIS NON-BARRIER ACCESS EASEMENT & MAINTENANCE AGREEMENT is made as of the _____ day of January, 2012 by and between The City of Franklin, by its duly authorized representative and Michael R. Wood which may be referred to individually as "Grantor" and collectively as "Grantors".

RECITALS

- A. The City of Franklin is the owner of certain real estate which is commonly known as _____ Hamilton Avenue, the legal description which is attached hereto and incorporated herein by reference as Tract 2 on Exhibit "A" (The Franklin Property);
- B. Michael R. Wood is the owner of certain real estate which is commonly known as 999 Hamilton Avenue, Franklin, Indiana and is contiguous to the City of Franklin Parcel, legal description which is attached hereto and incorporated herein by reference as Tract 1 on attached Exhibit "A" (The Wood Parcel);
- C. Grantors desire to enter into an agreement whereby individuals utilizing the respective Parcels will have free and unencumbered access to the respective parcels.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Grantors hereby grant to each other and their respective employees, agents and invitees, the non-exclusive right to use the entrances and driveways constructed in or on the Parcel known as "the ingress/egress easement" from time to time without charge, for the purpose of providing pedestrian and vehicle access to and for the benefit of each Parcel and more specifically described as "the ingress/egress easement" as follows:

A PART OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 13, TOWNSHIP 12 NORTH; RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE CENTERLINE OF HAMILTON AVENUE SAID POINT BEING 190.00 FEET WEST OF THE WEST RIGHT-OF-WAY LINE OF FORSYTH STREET IN THE CITY OF FRANKLIN, INDIANA; THENCE SOUTH 00 DEGREES 05 MINUTES 30 SECONDS EAST PARALLEL TO THE WEST RIGHT-OF-WAY LINE OF FORSYTH STREET 150.00 FEET; THENCE NORTH 88 DEGREES 33 MINUTES 19 SECONDS WEST PARALLEL TO SAID CENTERLINE 58.58 FEET; THENCE NORTH 00 DEGREES 05 MINUTES 30 SECONDS WEST PARALLEL TO THE WEST RIGHT-OF-WAY OF FORSYTH STREET 150.00 FEET TO A POINT IN THE CENTERLINE OF HAMILTON AVENUE; THENCE SOUTH 88 DEGREES 33 MINUTES 19 SECONDS EAST ALONG SAID CENTERLINE 58.58 FEET TO THE POINT OF BEGINNING, CONTAINING 0.20 ACRES, MORE OR LESS.

2. Each Grantor shall maintain the entrances currently existing at their locations and these entrances shall at all times remain open. Toward that end, no Grantor or any other party shall be allowed to place barriers, otherwise block or restrict traffic over these entrances. Each Grantor shall maintain these entrances on its Parcel, to facilitate that access contemplated in paragraph 1 above. Grantors agree not to construct or permit construction of a fence or barrier of any kind which interferes with the flow of traffic between the Parcels or entrances.
3. Each Grantor shall provide entrances on its Parcel, at locations as currently exist, to facilitate the access contemplated by this agreement; provided, however, that if an entrance lies on the common boundary line of the Parcels, then the location of such entrance shall be determined by agreement of the Grantors. Grantors agree not to construct or permit construction of a barrier of any kind which interferes with the flow of traffic between the Parcels through the approved entrances or through any other driveways whose location has been approved by such Grantor. Subject to the terms of this agreement, each Grantor may from time to time add, remove and relocate entrances on its individual Parcel so long as such action does not diminish or materially interfere with the access rights granted to any party herein.

4. Each Grantor shall cause the paved areas and the storm water drainage and associated drainage facilities on its respective parcel to be continuously maintained in good order and condition and, as and when necessary, repaired and replaced to a good order and condition. The parties agree that any maintenance or repair which is done for the mutual benefit of both Grantors shall be shared equally between the parties. Prior to incurring the cost and expense, the parties shall mutually agree upon the division of these costs and absent a mutual agreement, in writing, the costs of said maintenance and repair shall be borne by the party performing such maintenance or repair. Nothing in this agreement permits the Grantor or subsequent heirs or owners of Tract 1 the right to undertake, without the written consent of the owner of Tract 2, any alterations, maintenance, repairs or changes to the barrier with an ingress and egress easement.
5. The covenants herein provided shall be for the benefit of and binding upon both Parcels and shall run with the land and shall be for the benefit and binding upon Grantors' successors and assigns.
6. This agreement may be executed in several counterparts, each of which, when executed, shall be deemed an original; and all such counterparts shall together constitute one and the same instrument.
7. This agreement constitutes the entire agreement among the parties hereto related to the subject matter hereof and no other representations or statements, verbal or written, have been made modifying, adding to or changing any term or condition of this Agreement.
8. This agreement may be amended or terminated only by a written instrument executed by the parties or their successors in interest or by an Order of competent judicial authority.
9. If any provision of this agreement is held to be illegal, in valid or unenforceable under any present or future statute or judicial decision, the legality, validity and enforceability of the remaining provisions of the agreement shall not be affected thereby and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible while remaining legal, valid and enforceable.
10. The laws of the State of Indiana shall govern all aspects of this agreement and its exhibits, including without limitation, execution, interpretation, performance and enforcement.
11. In the event of a breach or threatened breach of this agreement, each party shall be entitled to all legal and equitable rights and remedies available under this agreement and applicable law, including but not limited to specific performance and injunctive relief.

12. Each undersigned person signing on behalf of any party that is a corporation, partnership, limited liability company, or other entity certifies that (a) he or she is fully empowered and duly authorized by any and all necessary action or consent required under any applicable articles of incorporation, bylaws, partnership agreement, or another agreement to execute and deliver this agreement for and on behalf of said party, (b) that said party has full capacity, power and authority to enter into and carry out its obligations under this agreement and (c) that this agreement has been duly authorized, executed and delivered and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.
13. This agreement shall be recorded with the Office of the Johnson County Recorder and be binding upon the personal representative, heirs, tenants, licensees, invitees, successors and assigns of the parties.
14. Each of the parties to this agreement specifically agree to execute such other and future instruments and documents as may be reasonably required to effectuate the terms, conditions and objectives of this agreement.

IN WITNESS WHEREOF, this agreement has been executed by Grantors as of the date first written above.

Grantors:

City of Franklin

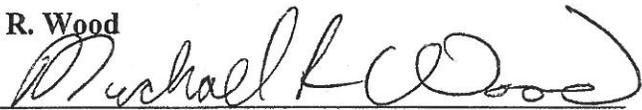
By: _____
Mayor Joseph E. McGuinness

Board of Works

By: _____
Member, Bob Swinehammer

By: _____
Member, Steve Barnett

Michael R. Wood

By: 
Michael R. Wood

STATE OF INDIANA)
)
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Joseph E. McGuinness, as Mayor of the City of Franklin, being first duly sworn upon his oath, and acknowledged the execution of the foregoing and the facts therein set forth are true and correct.

WITNESS MY HAND AND NOTARIAL SEAL THIS _____ DAY OF _____, 2012.

Notary Public
Printed: _____
Resident of _____ County

My Commission Expires:

STATE OF INDIANA)
)
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Bob Swinehammer, as Member of the Board of Works, being first duly sworn upon his oath, and acknowledged the execution of the foregoing and the facts therein set forth are true and correct.

WITNESS MY HAND AND NOTARIAL SEAL THIS _____ DAY OF _____, 2012.

Notary Public
Printed: _____
Resident of _____ County

My Commission Expires:

STATE OF INDIANA)
)
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Steve Barnett, as Member of the Board of Works, being first duly sworn upon his oath, and acknowledged the execution of the foregoing and the facts therein set forth are true and correct.

WITNESS MY HAND AND NOTARIAL SEAL THIS _____ DAY OF _____, 2012.

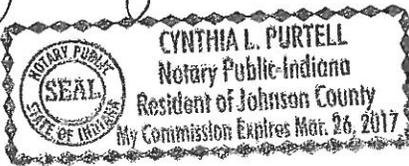
Notary Public
Printed: _____
Resident of _____ County

My Commission Expires:

STATE OF INDIANA)
)
COUNTY OF JOHNSON)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared Michael R. Wood being first duly sworn upon his oath, and acknowledged the execution of the foregoing and the facts therein set forth are true and correct.

WITNESS MY HAND AND NOTARIAL SEAL THIS 20 DAY OF January, 2012.



Cynthia L. Purcell
Notary Public
Printed: _____
Resident of _____ County

My Commission Expires:

“I affirm under the penalties for perjury that I have taken reasonable care to redact each social security number in this document, unless required by law.”

Lynnette Gray, #11567-41

Prepared by Lynnette Gray, Johnson Gray & MacAbee, 63 E. Court Street, Franklin, IN 46131

