

**COMMON COUNCIL**  
**Agenda Request Form**

(Form B-01-2012)

*Organizations and individuals are asked to submit a request form and supporting documents to be placed on the agenda. You will be contacted by the City confirming the date of the meeting in which your request will be heard.*

*Please make sure that your contact information is accurate in case we need to get in touch with you. The Common Council meets on the 1st and 3rd Monday of each month at 6:30 p.m. in City Hall located at 70 E. Monroe Street.*

Date Submitted:	08/10/2015	Requested Meeting Date:	08/17/2015
		Confirmed Meeting Date:	
Received by:			
<b>Contact Information: Please provide all requested information in the fields below. (Print or Type)</b>			
On Behalf of Organization or Individual:			
Name:	Lynnette Gray	Telephone:	(317) 738-3365
Title or Position:	City Attorney		
E-Mail:	<a href="mailto:lynng@jgmlawfirm.com">lynng@jgmlawfirm.com</a>		
Address:	63 E. Court Street		
City:	Franklin	State:	IN
ZIP:	46131		
<b>Who will attend the meeting and present the request?</b>			
Name:	Lynnette Gray	Telephone:	(317) 738-3365
Title or Position:	City Attorney		
E-Mail:	<a href="mailto:lynng@jgmlawfirm.com">lynng@jgmlawfirm.com</a>		
<b>Please describe the purpose or title of your presentation.</b>			
Request a confirming Resolution authorizing the purchase of property and authorization of the Mayor of the City of Franklin to serve as purchasing agent.			
<b>Supporting documents: All supporting documents should be submitted with the request form.</b>			
1. Resolution Confirming and Authorizing the Purchase of Real Property			
2. Conditional Offer to Purchase (Exhibit "B")			
3.			
4.			

**RESOLUTION NO.: 2015-17**  
**OF THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA**

A RESOLUTION CONFIRMING AND AUTHORIZING THE PURCHASE OF REAL PROPERTY

**WHEREAS**, the City of Franklin by and through its Franklin Board of Public Works and Safety has authorized the purchase of certain real estate all as set forth in Resolution No. 2015-09 of the Board of Public Works and Safety of the City of Franklin, Indiana;

**WHEREAS**, the terms of the purchase are set forth in a certain Conditional Offer to Purchase authorizing the purchase of property commonly known as 260 S. Main Street in the City of Franklin, County of Johnson and State of Indiana for the purchase price of \$19,000.00 with a copy of the Conditional Offer to Purchase which is attached as Exhibit "B";

**WHEREAS**, the proposed purchase price is less than \$25,000.00 and therefore the terms of IC 36-1-10.5 are not applicable; and

**WHEREAS**, the Common Council of the City of Franklin is in favor of the proposed purchase as outlined in the Resolution Number 2015-09 of the Board of Public Works and Safety approved on August 17<sup>th</sup>, 2015;

**NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF FRANKLIN, INDIANA, RESOLVES:**

- 1) **Approval & Acknowledgment of Purchase.** The Common Council of the City of Franklin, Indiana approves and acknowledges the proposed purchase of property commonly known as 260 S. Main Street in the City of Franklin, County of Johnson, State of Indiana, all as outlined in the Conditional Offer to Purchase.
- 2) **Approval of Authorization.** The Common Council of the City of Franklin, Indiana further approves the authorization of the Mayor of the City of Franklin to serve as purchasing agent for the purposes of completing all steps necessary to purchase and close upon the property referenced above.
- 3) **Effective Date.** This Resolution shall be in full force and effect from and after its passage and as provided for by applicable law.

Introduced and Filed on the 17<sup>th</sup> day of August, 2015. A motion to consider same on the First Reading or day of introduction was [not offered] [sustained by a vote of \_\_\_\_ in Favor and \_\_\_\_ Opposed, pursuant to Indiana Code § 36-4-6-13.]

DULY PASSED on this 17<sup>th</sup> day of August, 2015 by the Common Council of the City of Franklin, Johnson County, Indiana, having been passed by a vote \_\_\_\_ in Favor and \_\_\_\_ Opposed.

City of Franklin, Indiana, by its Common Council:

Voting Affirmative:

\_\_\_\_\_  
Stephen Barnett, President

\_\_\_\_\_  
Joseph P. Abban, Vice President

\_\_\_\_\_  
Joseph R. Ault, Member

\_\_\_\_\_  
Kenneth Austin, Member

\_\_\_\_\_  
Dr. William T. Murphy, Member

\_\_\_\_\_  
Stephen Houghland, Member

\_\_\_\_\_  
Richard Wertz, Member

Attest:

\_\_\_\_\_  
Janet P. Alexander,  
City Clerk Treasurer

Voting Opposed:

\_\_\_\_\_  
Stephen Barnett, President

\_\_\_\_\_  
Joseph P. Abban, Vice President

\_\_\_\_\_  
Joseph R. Ault, Member

\_\_\_\_\_  
Kenneth Austin, Member

\_\_\_\_\_  
Dr. William T. Murphy, Member

\_\_\_\_\_  
Stephen Houghland, Member

\_\_\_\_\_  
Richard Wertz, Member

Presented by me to the Mayor of the City of Franklin for his approval or veto pursuant to Indiana § 36-4-6-15, 16 this \_\_\_\_\_ day of \_\_\_\_\_, 2015 at \_\_\_\_\_ o'clock \_\_\_\_\_M.

\_\_\_\_\_  
Janet P. Alexander  
City Clerk Treasurer

This Resolution having been passed by the legislative body and presented to me was Approved by me and duly adopted, pursuant to Indiana Code § 36-4-6-16a)(1) Vetoed pursuant

to Indiana code § 36-4-6-16(a)(2), this \_\_\_\_\_ day of \_\_\_\_\_, 2014 at \_\_\_\_\_  
o'clock \_\_\_\_\_.M.

\_\_\_\_\_  
Joseph E. McGuinness, Mayor

Attest:

\_\_\_\_\_  
Janet P. Alexander,  
City Clerk Treasurer

Approved as to Form:

\_\_\_\_\_  
Lynnette Gray, City Attorney

## OFFER TO PURCHASE

The undersigned, CITY OF FRANKLIN INDIANA, an Indiana Municipality (hereinafter called "Buyer" or "Grantee"), whose address is 70 East Monroe Street, Franklin, Indiana 46131, hereby offers to purchase from MARATHON PETROLEUM COMPANY LP (hereinafter called "Seller" or "Grantor"), whose address is c/o Real Estate Department, Room 1604, 539 South Main Street, Findlay, Ohio 45840 at the price and upon the terms and conditions set forth below, that parcel of land with the building and improvements thereon, excluding all subsurface and mineral rights of Seller, if any, and known for numbering purposes as Unit #3498, situated at 260 South Main Street in the City of Franklin, County of Johnson, and State of Indiana, the premises (hereinafter referred to as "Premises" or "premises") being more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN

### 1. PURCHASE PRICE AND METHOD OF PAYMENT:

(A) Purchase price for said Premises shall be the sum of Nineteen Thousand Dollars and No Cents (\$19,000.00) (the "Purchase Price").

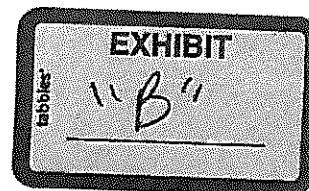
(B) Buyer herewith deposits with Seller or with Seller's designated escrow agent, Land Services USA, Inc. ("Escrow Agent"), the sum of Two Thousand Dollars and No Cents (\$2,000.00) as earnest money to be held by Seller pending closing (the "Earnest Money").

If the Earnest Money deposit is paid to Seller, it is expressly authorized to deposit Buyer's Earnest Money check and to hold the funds in its account until such time as Seller's Management takes final action either approving or rejecting this Offer to Purchase (the "Offer").

(C) Balance due of Seventeen Thousand Dollars and No Cents (\$17,000.00) (or such greater or lesser amount as may be required to complete payment of the Purchase Price after credits, adjustments or prorations) shall be paid by Certified Check or Bank Cashier's Check or wire transfer of immediately available funds, as directed by Seller, upon closing and delivery of the deed.

2. ACCEPTANCE OF OFFER: This Offer shall be open for written acceptance by Seller through the forty-fifth (45) day from the date of Buyer's execution hereof. If the Offer is not accepted, the sum delivered with this Offer and specified in section 1(B) shall be returned to Buyer. Any acceptance that is postmarked on or before said forty-fifth (45) day shall be deemed a valid acceptance by Seller. After acceptance of this Offer, Buyer shall have thirty (30) days to obtain the necessary and required approvals from its Board of Public Works and Safety.

3. CLOSING OF TRANSACTION: If this Offer is accepted by Seller, and authorized by the City Board of Public Works, the contract shall be completed within thirty (30) days from the date of such acceptance, subject, however, to the provisions of sections 8, 9 and 20 herein below and special conditions contained in section 21, if any. In the event the last day of the period for closing of the transaction described above shall fall on a Saturday, Sunday, or United States holiday, then the period of time for closing of the transaction shall automatically be extended through the next business day.



4. **ESCROW:** (a) It is contemplated that this transaction, at the option of either party, may be concluded through an escrow agent, and, in such event, all funds and documents pertaining to this transaction shall be placed in escrow on or before the closing date, with each party sharing the escrow agent's fee equally.

(b) Buyer and Seller acknowledge and agree that either of them may engage in a deferred exchange of like-kind property utilizing a qualified intermediary pursuant to Section 1031 of the Code. Notwithstanding any provision herein to the contrary, in the event either party elects to engage in a deferred like-kind exchange, the other party agrees to consent to the assignment of such party's rights under this Offer to a qualified intermediary in order to facilitate the deferred like-kind exchange. The parties agree to execute any and all documents necessary to consummate the purposes of this section. Any actions taken by Buyer and Seller in conformance with this section shall be at the cost of the party electing such exchange, and such documents shall not relieve the electing party of any of its obligations or liabilities under this Offer.

5. **DEED:** Said Premises shall be conveyed to Buyer by a good and sufficient limited warranty deed, or its equivalent for the state involved, representing said Premises to be free and clear of all encumbrances except the following:

- (a) Taxes and assessments (both general and special), not then due and payable;
- (b) Zoning ordinances, subdivision and planning laws and regulations and building code restrictions and all laws, rules and regulations relating to land and structures and their use, including but not limited to governmental regulations relating to buildings, building construction, building line and use and occupancy restrictions, and violations of any of the foregoing;
- (c) Easements, conditions, reservations, agreements and restrictions of record, if any, and the restriction specified in section 6 below;
- (d) Such a state of facts as an accurate survey might show; and
- (e) All legal roads and highways.

6. **DEED RESTRICTION:** Said Premises shall be conveyed subject to the following restriction to be contained in the deed:

"By acceptance hereof, Grantee agrees that for a period of twenty-five (25) years from and after the date of this conveyance, the premises shall not be used for a convenience store or for the sale, marketing, storage or advertising of petroleum fuels, motor oils or tobacco products, and that this restriction shall be a covenant running with the land and shall be contained in and made a part of every deed, mortgage, lease or other instrument affecting the title to said premises."

7. **REAL ESTATE TAXES:** All general and special real estate taxes and assessments shall be prorated as of the date of closing pursuant to local custom based on the last available County Treasurer's tax duplicate and such adjustments shall be final. Seller shall pay the cost of the real estate transfer tax, if any. Buyer shall pay the cost of recording the deed.

8. **EVIDENCE OF TITLE:** Seller's only obligation to provide evidence of title shall be to make available to Buyer whatever evidence of title (abstract of title, title insurance policy, etc.), if any, Seller may have in its possession. It shall be Buyer's responsibility at its sole cost to obtain title insurance or a title opinion, if so desired by Buyer. If the title to the Premises cannot be conveyed as provided in

section 5 herein, then there shall be refunded to Buyer any part of the Purchase Price paid or deposited by Buyer hereunder and Buyer shall promptly return the evidence of title sent to Buyer by Seller and this Offer shall terminate and both parties shall be released from any obligations hereunder. Buyer shall have fifteen (15) days after receipt of Seller's evidence of title within which to notify Seller in writing of any title defects by virtue of which title cannot be conveyed as provided in section 5 herein. Upon receipt of such written notification, Seller shall have fifteen (15) days within which to correct the same; provided, however, that Seller shall be under no obligation to correct the same. If Seller is unwilling or unable to correct the same within fifteen (15) days after receipt of notification, this Offer shall terminate upon Seller's written notice in which event Seller shall promptly refund the deposit with no further liability on the part of either party. Buyer shall have the right to waive such defects and accept such title as Seller is able to convey without reduction or abatement of the Purchase Price, provided that Buyer must make such election within ten (10) days of receipt of notice that Seller either cannot or will not cure such defects.

9. **CONDITION OF PREMISES:** See Exhibits "B" and "C" attached hereto and incorporated herein.

10. **ASSIGNMENT BY CONSENT OF SELLER:** This Offer shall be binding upon and inure to the benefit of the respective heirs, representatives, executors, administrators and successors and assigns of the parties hereto. It shall not, however, be assigned by the Buyer without the prior written consent of the Seller.

11. **SURVIVAL AFTER CLOSING:** This Offer shall survive all documents of closing and is enforceable despite the exchange of deed and other documents of title as called for herein.

12. **DEFAULT BY BUYER:** If Buyer fails to perform any of the covenants of this Offer, the Earnest Money paid by the Buyer shall be retained by or for the account of the Seller as consideration for the execution of this Offer and as agreed and liquidated damages in full settlement of any claims for damages.

13. **DEFAULT BY SELLER:** If Seller shall default in its obligations hereunder and shall refuse to perform this Offer, the Earnest Money paid by the Buyer shall be returned to the Buyer on demand in full settlement of any claims for damages. Buyer waives any claims that the Premises is unique and the Buyer acknowledges that a return of the Earnest Money can adequately and fairly compensate Buyer.

14. [INTENTIONALLY DELETED]

15. **NOTICES:** All notices and demands herein required or permitted shall be in writing and shall not be deemed sufficient unless given by mailing the same by registered, certified or express United States mail, or express delivery service, postage prepaid, return receipt requested, addressed to the party to receive same at the address of such party shown above or such other address as such party may hereafter furnish to the other party in writing. The date of posting, provided it is by means of one of the methods set forth above, shall be deemed the effective date of service.

16. **POSSESSION:** Possession of the Premises shall be delivered to the Buyer on the date of closing.

17. **COMMISSION OBLIGATIONS:** Except for the broker named in the attached Commission Agreement, if any, each party represents to the other that neither has contacted a broker, finder or other agent who is seeking or soliciting a commission or other similar charge with reference to this transaction.

18. **NO REPRESENTATIONS OR WARRANTIES OUTSIDE THIS OFFER:** Seller is not liable or bound by any warranties, guarantees, statements or representations made by any broker, agent, employee or other person representing or purporting to represent Seller unless herein expressly set forth. It is understood and agreed that any understandings and agreements heretofore had between the parties hereto are merged in this Offer which alone fully and completely expresses their agreement and that the same is entered into after full investigation, neither party relying on any statement or representation not embodied in this Offer made by the other. This Offer may not be changed or terminated orally. The Buyer acknowledges that, unless and until this Offer is accepted in writing by Seller, Seller shall have no obligation or liability whatsoever with respect to this Offer or with respect to selling the Premises to the Buyer. The Buyer further understands and acknowledges that unless and until this Offer is accepted in writing by Seller, Seller may receive, solicit, consider and accept or not accept other offers from any other person or persons to purchase the Premises without incurring any obligation or liability whatsoever to the Buyer.

19. **TIME OF ESSENCE:** Time is of the essence of this Offer.

20. **FURTHER ASSURANCES:** Buyer agrees to execute and deliver to Seller at or after closing, or otherwise as requested by the Seller, the necessary documents and/or take such other action as reasonably necessary to further the purpose of this Offer. Buyer also agrees to execute any documents necessary upon Seller's request, at or after closing to correct administrative error or omissions.

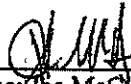
21. **ADDITIONAL CONDITIONS:** To the best of Seller's knowledge, Seller warrants and represents that it is in compliance with the terms and obligations of the Environmental Restrictive Covenant recorded on October 26, 2005.

22. **COMPLIANCE WITH APPLICABLE LAWS:** Buyer is a Municipal Corporation and represents and warrants that Buyer and its authorized representatives are and shall remain in compliance with any and all United States federal, state and local laws, rules and regulations including, but not limited to, the USA PATRIOT Act, Homeland Security Act and Executive Order No. 13224 dated 9/24/01 and the sanctions, regulations and executive orders administered by the Office of Foreign Assets Control of the U.S. Treasury Department ("OFAC"). Additionally, Buyer agrees that it shall comply with any reasonable requests made by Seller to certify continued compliance in the future with any such laws, rules and regulations. Finally, Seller shall have the right to take any and all steps necessary to comply with applicable federal, state and local laws, rules and regulations, including but not limited to turning over any money paid by Buyer to Seller under this Offer to a blocked account at a U.S. financial institution as required by the applicable government agency with jurisdiction.

23. **CAPTIONS:** The parties agree that the headings and captions contained herein are inserted for convenience and reference only and are not to be deemed part of or to be used in construing this Offer.



BUYER: CITY OF FRANKLIN INDIANA

By:   
Name: Joe McGuinness  
Title: Mayor  
Date: 7/17/2015

[SELLER SIGNATURE APPEARS ON THE NEXT PAGE]

MARATHON PETROLEUM COMPANY LP,  
By: MPC Investment LLC, its General Partner  
as SELLER, hereby accepts the above Offer.

By: \_\_\_\_\_  
Name: Cynthia J. Clark  
Title: Real Estate Manager  
Date: \_\_\_\_\_

**COMMISSION AGREEMENT**

**NO BROKER / REALTOR INVOLVED WITH THIS DEAL.**

**EXHIBIT "A" (Legal Description)**

to  
Offer To Purchase  
between

CITY OF FRANKLIN BOARD OF PUBLIC WORKS AND SAFETY (Buyer)  
and  
MARATHON PETROLEUM COMPANY LP (Seller)

The following real estate in Johnson County, in the State of Indiana, to wit:

Part of Lot Numbered Eighty-Seven (87) in the Original Plat of the Town, now City of Franklin, Indiana, described as follows:

Beginning on the east line of said lot at a point, two hundred thirty-two (232) feet south of the northeast corner thereof; thence west, one hundred forty-four (144) feet to the west line of said lot numbered eighty-seven (87); thence south on said west line, three hundred sixteen (316) feet to the middle line of Young's Creek; thence north 55 degrees east, with the middle line of said creek. Two hundred eleven (211) feet to the east line of said lot; thence north on said east line, two hundred twelve (212) feet to the place of the beginning, containing one and two one-hundredths (1.02) acres, more or less.

**EXHIBIT "B" (Condition of Premises)**

to  
Offer to Purchase  
between

CITY OF FRANKLIN BOARD OF PUBLIC WORKS AND SAFETY ("Buyer")  
and  
MARATHON PETROLEUM COMPANY LP ("Seller")

**FORMER MARKETING PROPERTY  
UST System Removal Complete  
Corrective Action Complete**

1. **ACKNOWLEDGMENTS:** Buyer hereby acknowledges that the Premises have been used in connection with the storage and sale of petroleum products, that underground storage tanks as well as related piping and other equipment and fixtures for such storage and sale have been present on the Premises, and that such underground storage tanks as well as related piping and other equipment and fixtures have contained flammable, explosive or toxic materials or vapors. To the best of Seller's knowledge, it has removed the known underground storage tanks and related piping which were on the Premises. Seller and Buyer expressly recognize and agree that there was a release (or releases) of petroleum hydrocarbons into the soils and/or the groundwater at the Premises prior to Buyer's possession, and, to the best of Seller's knowledge, it has completed Corrective Action (as defined below) at the Premises to address such release(s) sufficient to satisfy the minimum requirements of the governmental agency with jurisdiction ("Agency"). Documentation of such completed Corrective Action is included in Exhibit "C" to the Offer, attached hereto and incorporated herein. As used herein, the term "Corrective Action" shall refer to one or more of the following activities: investigation, assessment, monitoring, sampling, analysis, cleanup, removal, disposal, on-site treatment, off-site treatment, active remediation, passive remediation, remediation alternatives including but not limited to risk-based corrective action ("RBCA"), if applicable, and/or other activities approved, concurred in or required by the Agency. Buyer agrees to all terms, conditions and covenants contained in the deed language in section 8, below, as if such terms, conditions and covenants were fully set forth in this section.

2. **BUYER'S RIGHT TO INSPECT PREMISES:**

a. For a period of twenty-five (25) days after the final execution of the Offer by both parties (the "Inspection Period"), Buyer and its agents are hereby granted access to the Premises and shall have the right to undertake a complete site investigation (the "Investigation") including, but not limited to, an environmental audit (which may include a physical inspection of the Premises, a review of environmental records, and such tests as are customarily undertaken to complete an environmental audit), determination of any zoning and building restrictions or regulations, soil compaction tests, survey work, wetlands analyses, and other such physical inspections or tests. Buyer agrees that prior to Buyer's Investigation that Buyer shall provide notification to Seller by notice to Environmental Technical Services Supervisor, Marathon Petroleum Company LP, 539 South Main Street, Findlay, Ohio 45840-3295 [Phone: (419) 421-4592 and Fax: (419) 421-4026] (hereinafter, "Seller's Environmental Supervisor"), with a site plan denoting the proposed soil boring locations, if any, for Seller's prior review and approval, which approval shall not be unreasonably withheld. Buyer further agrees that Seller or Seller's representative shall be present during said Investigation and Seller shall have the right to take

BUYER'S INITIALS 

split samples at Seller's sole cost. Buyer shall be responsible for all soil cuttings and other materials generated in the soil boring event and Buyer shall restore the Premises after such boring event to substantially the same state as was the Premises prior to such event. Upon Buyer's receipt of any written report of said Investigation, Buyer shall furnish a copy of said report and copies of all analytical data to Seller's Environmental Supervisor within 24 hours of receipt of the lab reports in order to permit Seller to satisfy regulatory reporting requirements, if necessary. However, notwithstanding the foregoing, in the event free petroleum products or strong vapors are discovered on the Premises or within storm drains on the Premises during said Investigation, Buyer shall immediately, but no later than one (1) hour after such discovery, notify Seller's Environmental Supervisor. In the event that Buyer's Investigation reveals contamination at the Premises at levels such that the Premises cannot be used for Buyer's intended use, then Buyer shall have the right to cancel this Offer by providing written notice to Seller: (1) stating that Buyer is terminating the Offer as a result of Buyer's dissatisfaction with the condition of the Premises; (2) briefly itemizing the specific environmental or other matters deemed unsatisfactory by Buyer; and (3) including any and all reports received by Buyer in the course of the Investigation. Said written notice must be received by Seller no later than the last day of said Inspection Period. If Buyer terminates the Offer pursuant to the terms of this section, then all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder. If Seller fails to receive a written notice of termination from Buyer on or before the last day of the Inspection Period, Buyer shall be deemed to have elected to purchase the Premises in its existing "as is" condition subject to the terms and conditions of the Offer, including this Exhibit "B".

b. Buyer must utilize a contractor approved by Seller to conduct the Investigation. The approved contractor must have Contractor Environmental Liability Insurance to cover losses from pollution conditions that arise from the ongoing operations and completed operations of the contractor hereunder, including bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed; and defense costs. Said policy shall be written on an occurrence basis, with limits of One Million Dollars (\$1,000,000) per occurrence. Furthermore, the contractor must have in effect Commercial General Liability and Business Automobile Liability policies, both of which shall have at least One Million Dollars (\$1,000,000) per occurrence coverage, in addition to Worker's Compensation and Employer's Liability policies at the statutory rate of coverage. The Worker's Compensation and Employer's Liability policies shall provide a waiver of subrogation in favor of Seller. Prior to entering the Premises, Buyer must provide Seller with certificates of insurance which document that all coverage and the endorsements as required and referenced above have been obtained and naming Seller as an additional insured on all policies identified above, except Worker's Compensation and Employer's Liability, with said notice to Seller's Environmental Manager.

c. If this transaction proceeds through closing, the written report(s) of the Investigation, including but not limited to any environmental audit conducted by Buyer, shall be included in Exhibit "C".

d. Buyer expressly agrees to defend, indemnify and hold Seller harmless from any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties arising out of Buyer's exercise of its right to conduct said Investigation. Whenever the exercise of these Investigation rights results in the disturbing of the surface of the Premises, said surface shall, as soon as reasonably possible, be restored by Buyer at Buyer's cost and expense and returned to substantially its same condition which existed prior to the exercise of said Investigation rights.

BUYER'S INITIALS: 

e. Notwithstanding anything herein to the contrary, if the Investigation reveals the existence of an unacceptable environmental condition, in Seller's sole reasonable judgment, then Seller shall have the right to cancel this Offer, in which case all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder.

3. **BUYER'S RESPONSIBILITIES:** Buyer shall be responsible for any and all environmental contamination at the Premises which occurs after the date of closing, including the migration of said environmental contamination that occurs after the date of closing and including but not limited to additional petroleum hydrocarbons or hazardous substances, hazardous wastes or solid wastes (all as defined in the Environmental Laws) (the "Future Contamination") and shall defend (with counsel reasonably acceptable to Seller), indemnify and hold Seller harmless from any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties incurred by or asserted against Seller, including but not limited to claims arising under the Environmental Laws, resulting from the occurrence, existence or presence of any Future Contamination. The term, "Environmental Laws", shall refer to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act, the state law equivalents of such acts, state and federal underground storage tank laws and regulations and all other environmental laws and regulations, all as amended.

4. **SELLER'S RESPONSIBILITIES:** If the Agency requires Seller to perform additional Corrective Action subsequent to the date of closing in connection with a release of petroleum hydrocarbons on the Premises resulting from Seller's former operations thereon, Seller will be responsible for, and bear the costs of, such activities only if, when and as required by the Agency. Seller reserves its legal appeal rights with respect to any orders, directives or requests from the Agency concerning, but not limited to, any Corrective Action at the Premises.

5. **CONDITION OF PREMISES:** Except as set forth in section 1 above, Buyer expressly agrees that: (i) Seller has not made and makes no representations as to the condition of said Premises, including, but not limited to, the condition of the soil or groundwater, as they relate to environmental contamination or otherwise, zoning, building code violations, building lines, building construction, use and occupancy restrictions (and violations of any of the foregoing), and availability of utilities; and (ii) Buyer assumes all responsibility for any damages caused by the condition of or conditions on the Premises upon transfer of title. Buyer also expressly agrees that, except for claims of breach of this Offer (including this Exhibit "B") by Seller, Buyer shall never institute litigation against Seller alleging damages to Buyer resulting from any condition of the Premises, and Buyer expressly waives any right which it may now have or may ever acquire against Seller for any condition of said Premises.

6. **BUILDING LOSS:** If the building on said Premises, if any, is destroyed prior to the date of closing, Buyer may terminate the Offer by written notice to Seller. On such termination, all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder. If Buyer fails to give such notice of termination to Seller within fifteen (15) days of Buyer's receipt of notice of said destruction, then the Offer, including this Exhibit "B", shall continue in full force without any reduction in the purchase price by reason of such destruction or damage.

7. **PARTIAL BUILDING LOSS:** In the event of partial loss to the building on said Premises, if any, prior to closing, Seller shall have a reasonable time to repair the damage and if Seller fails or refuses to do so, Buyer may take the Premises "as is" subject to the terms and conditions of the Offer, including this Exhibit "B", or Buyer may cancel the Offer, in which case all earnest money paid by Buyer shall be disbursed to Buyer and neither party shall have any further obligations hereunder. If

BUYER'S INITIALS: 

Buyer fails to give written notice of cancellation to Seller within fifteen (15) days from receipt of written notice from Seller that Seller will not repair the damage, then the Offer, including this Exhibit "B", shall continue in full force without any reduction in the purchase price by reason of such partial loss.

8. **DEED LANGUAGE:** The following language shall be incorporated in the deed of conveyance to Buyer:

"This deed is subject to the following reservations, restrictions and conditions which shall be covenants running with the land and shall be binding upon Grantee, its successors, assigns and all future owners of the premises, and their respective directors, officers, employees, contractors, agents, representatives, lessees, licensees, invitees, and any user or occupant of all or any portion of the premises (collectively, "Grantee", for purposes of these reservations, restrictions and conditions):

a. **MARATHON PETROLEUM COMPANY LP**, its successors and assigns ("Grantor") reserves the right to enter upon the premises, at no cost to Grantor, at reasonable times to conduct any Corrective Action only as and when required by the governmental agency with jurisdiction (the "Agency") in connection with a release of petroleum hydrocarbons at the premises. As used herein, the term, "Corrective Action", shall refer to one or more of the following activities: investigation, assessment, monitoring, sampling, analysis, cleanup, removal, disposal, on-site treatment, off-site treatment, active remediation, passive remediation, remediation alternatives including but not limited to risk-based corrective action ("RBCA"), if applicable, and/or other activities approved, concurred in or required by the Agency. In performing any Corrective Action at the premises, Grantor will have the right to rely on and use any current, future or revised or amended state cleanup/remediation standards, guidelines or criteria or revised federal cleanup/remediation standards, if applicable, including without limitation any site-specific risk-based soil and groundwater cleanup objectives or other similar RBCA policies administered by the Agency. In performing any Corrective Action at the premises, Grantor may also rely on and implement institutional controls as provided for in applicable laws, regulations and policies to ensure the protection of public health, safety or welfare and the environment. Grantee acknowledges that such institutional controls may require deed recordation running with the land at the premises. Such deed recordation would contain certain restrictions based on site-specific exposure such as prohibiting the use of groundwater at the premises, requiring that the use of the premises remain commercial/industrial, or requiring the premises, or a portion of the premises, to be paved or that existing pavement remain in place and be properly maintained. Grantee agrees to permit reasonable institutional controls regarding the premises in connection with Grantor's performance of any Corrective Action thereon. Grantee agrees to provide Grantor, at no cost to Grantor, with Grantee's written consent and signature as needed in connection with the preparation, execution and recording of any necessary documents relating to any institutional controls which are to be recorded on the premises as part of Grantor's performance of Corrective Action. Such institutional controls, if necessary, would not prohibit the use of the premises for industrial/commercial purposes. Grantor reserves its legal appeal rights with respect to any orders, directives or requests of the Agency concerning but not limited to Corrective Action at the premises. Grantee agrees that, without prior written approval from Grantor, Grantee will not engage in any activity which would interfere with Grantor's performance of any Corrective Action at the premises. Such approval shall not be unreasonably withheld by Grantor. In the event that

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Grantee interferes with Grantor's performance of Corrective Action, Grantee agrees to pay Grantor for the reasonable costs incurred by Grantor as a result of any such interference, including, but not limited to, costs to replace monitoring wells that are damaged or destroyed by Grantee's activities.

b. The use of the premises shall be restricted solely to industrial/ commercial use.


c. The installation and/or existence of potable wells on the premises is prohibited. The groundwater underneath the premises shall not be used for any purpose whatsoever. This restriction, however, does not prohibit the installation or use of any compliance wells, or any groundwater monitoring, recovery or extraction wells or similar devices, used for or related to the performance of any Corrective Action.

d. Grantee shall not have any claim against Grantor, or Grantor's parent companies, affiliates, predecessors, successors, assigns, subsidiary companies or their respective past, present and future officers, employees, agents and/or representatives (collectively, the "Released Parties"), based upon, related to or arising out of the presence of any contamination on, under or at the premises. The Released Parties are hereby forever released from any and all such claims including, but not limited to, any and all claims and statutory causes of action under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Resource Conservation and Recovery Act (RCRA), the Clean Water Act, the state law equivalents of such acts, state and federal underground storage tank laws and regulations and all other environmental laws and regulations, all as amended. This release shall not apply to claims of breach of that certain Offer to Purchase (including Exhibit "B") dated \_\_\_\_\_ between Grantor and Grantee that may arise in the future.

e. Grantee agrees to adhere to, and comply with, the terms of any closure or no further action/remediation letter or determination from the Agency regarding Grantor's performance of Corrective Action.

f. Grantee hereby agrees to defend (with counsel reasonably acceptable to the Released Parties), indemnify and hold the Released Parties (as defined above) harmless from and against any and all liabilities, claims, losses, suits, actions, judgments, damages, costs (including reasonable attorneys' fees) or penalties that result from, arise out of or relate in any way to Grantee's violation of the reservations, restrictions and/or conditions contained in this deed.

g. In case any one or more of the reservations, restrictions or conditions (or portions thereof) contained in this deed shall, for any reason, be held to be invalid, illegal or legally unenforceable, in any respect, such invalidity, illegality or unenforceability shall not affect any other portion of that provision or any other provision hereof (whether or not clearly divisible from such provision or portion thereof), and the above reservations, restrictions and conditions shall be construed and interpreted in the manner which is valid, legal and legally enforceable, and which is most nearly consistent with the intention of Grantor and Grantee as evidenced by the above reservations, restrictions and conditions."

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9. **RETENTION OF RIGHTS:** Buyer agrees that Seller retains all its rights from the applicable State underground storage tank fund for eligible costs incurred by Seller (both prior to and after the sale of the Premises) in connection with Seller's performance of any Corrective Action at the Premises. Additionally the parties agree that any money expended by Seller for Corrective Action which is later reimbursed by a state fund or recovered from a third party shall be paid over to Seller by Buyer if and when such funds are received by Buyer. Any money expended by Buyer for Corrective Action which is later reimbursed by a state fund or recovered from a third party shall be paid over to Buyer by Seller if and when such funds are received by Seller. Each party shall give all reasonable cooperation to the other party in connection with all applications for such reimbursement, including any assignment of the proceeds of such reimbursement to the other party, where such an assignment is executed pursuant to this section 9.

If the Environmental Laws governing the state reimbursement fund prohibit the assignment of reimbursement rights, Seller shall, if eligible to do so, at Buyer's option and sole expense, make application for reimbursement in Seller's own name and remit to Buyer any such reimbursement funds received for monies expended by Buyer for Corrective Action.

BUYER'S INITIALS: 

**EXHIBIT "C" (Condition of Premises)**

to  
Offer To Purchase  
between

CITY OF FRANKLIN BOARD OF PUBLIC WORKS AND SAFETY (Buyer)  
and  
MARATHON PETROLEUM COMPANY LP (Seller)

Report(s) of tests and investigations conducted  
prior to closing, incorporated herein:

**Attached:**

- No Further Action Letter dated November 30, 2005
- Environmental Restrictive Covenant dated October 26, 2005