

AGENDA RESERVATION REQUEST

CITY OF FRANKLIN BOARD OF PUBLIC WORKS AND SAFETY

Please type or print

Date Submitted:	November 15, 2011	Meeting Date:	November 22, 2011
Requested by:	Rob H. Schafstall		
On Behalf of Organization or Individual:	City of Franklin		
Telephone:	(317) 736-7146		
Email address:	robhschafstall@gmail.com		
Mailing Address:	98 N. Jackson Street, Franklin, IN 46131		
Approval of Resolution No. 2011-04 (Approving a Real Estate Transfer from the City of Franklin, Indiana to the Franklin Park and Recreation Board).			
Copy of Resolution No: 2011-04 of the Board of Public Works and Safety			
Copy of Resolution No: 2011-01 of the Franklin Park and Recreation Board			
Copy of the Real Estate Transfer Agreement			
Name:	Rob H. Schafstall	Telephone	(317) 736-7146

The Franklin Board of Works meets on the 1st and 3rd Tuesday of each month at 9:00 a.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.

**RESOLUTION NUMBER 2011-04
OF THE BOARD OF PUBLIC WORKS AND SAFETY
CITY OF FRANKLIN, INDIANA**

**APPROVING A REAL ESTATE TRANSFER
FROM THE CITY OF FRANKLIN, INDIANA TO THE
FRANKLIN PARK AND RECREATION BOARD**

WHEREAS, the City of Franklin, Indiana ("City") owns fee simple title to approximately fifteen (15) acres of unimproved real property (the "Farm Ground") generally located south of Young's Creek on the western side of the City, and legally described on Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, the parties desire that the Farm Ground be transferred by deed from the City to the Franklin Park and Recreation Board for redevelopment and/or other appropriate use consistent with the Franklin Park and Recreation Board's statutory duties and powers.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, including the Franklin Park and Recreation Board's continuing statutory duty to redevelop and/or otherwise use the Farm Ground consistent with the Board's duties and powers, the receipt and legal sufficiency of which the parties acknowledge, the City agrees to transfer the Farm Ground to the Franklin Park and Recreation Board and the Franklin Park and Recreation Board agrees to accept the transfer pursuant to the terms and conditions of a Real Estate Transfer Agreement attached hereto and approved in substantially final form.

This resolution shall be in full force and effect from and after its adoption.

INTRODUCED & APPROVED by the Board of Public Works and Safety of the City of Franklin, Johnson County, Indiana, this ____ day of _____, 2011.

Voting Affirmative:

Mayor Fred Paris

Dan Murray

Joseph R. Ault

Voting Opposed:

Mayor Fred Paris

Dan Murray

Joseph R. Ault

Attest:

Janet P. Alexander, Clerk-Treasurer

**RESOLUTION NUMBER 2011-01
OF THE FRANKLIN PARK AND RECREATION BOARD
CITY OF FRANKLIN, INDIANA**

**APPROVING A REAL ESTATE TRANSFER
FROM THE CITY OF FRANKLIN, INDIANA TO THE
FRANKLIN PARK AND RECREATION BOARD**

WHEREAS, the City of Franklin, Indiana ("City") owns fee simple title to approximately fifteen (15) acres of unimproved real property (the "Farm Ground") generally located south of Young's Creek on the western side of the City, and legally described on Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, the parties desire that the Farm Ground be transferred by deed from the City to the Franklin Park and Recreation Board for redevelopment and/or other appropriate use consistent with the Franklin Park and Recreation Board's statutory duties and powers.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, including the Franklin Park and Recreation Board's continuing statutory duty to redevelop and/or otherwise use the Farm Ground consistent with the Board's duties and powers, the receipt and legal sufficiency of which the parties acknowledge, the City agrees to transfer the Farm Ground to the Franklin Park and Recreation Board and the Franklin Park and Recreation Board agrees to accept the transfer pursuant to the terms and conditions of a Real Estate Transfer Agreement attached hereto and approved in substantially final form.

This resolution shall be in full force and effect from and after its adoption.

INTRODUCED & APPROVED by the Franklin Park and Recreation Board of the City of Franklin, Johnson County, Indiana, this ____ day of _____, 2011.

Voting Affirmative:

-, President

-, Vice President

-, Member

-, Member

Voting Opposed:

-, President

-, Vice President

-, Member

-, Member

**REAL ESTATE TRANSFER AGREEMENT
BETWEEN
CITY OF FRANKLIN, INDIANA
AND THE
FRANKLIN PARK AND RECREATION BOARD**

This Agreement is entered into as of the ____ day of _____, 2011 (the "Agreement Date") by and between the City of Franklin, Indiana, by and through its Board of Public Works and Safety ("City" or "Transferring Party"), and the Franklin Park and Recreation Board ("Parks Board" or "Receiving Party").

WHEREAS, the City owns fee simple title to approximately fifteen (15) acres of unimproved real property (the "Farm Ground" or "Property") generally located south of Young's Creek on the western side of the City, and legally described on Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, the parties desire that the Farm Ground be transferred by deed from the City to the Parks Board for redevelopment and/or other use consistent with the Park Board's statutory duties and powers.

NOW, THEREFORE, in consideration of the foregoing and other valuable consideration, including the Park Board's continuing statutory duties, the receipt and legal sufficiency of which the parties acknowledge, the City agrees to transfer the Farm Ground to the Parks Board and the Parks Board agrees to accept the transfer on the terms and conditions set forth below:

1. **Cooperation of Transferring Party.** Transferring Party will cooperate with Receiving Party and its representatives in obtaining information about the Farm Ground, and will furnish same to Receiving Party and its representatives, whenever reasonably requested by Receiving Party. Transferring Party will further cooperate with and furnish Receiving Party with all information necessary to obtain all approvals.
2. **Closing.** The closing of the parcel transfer (the "Closing") will occur at a time and place that is mutually agreeable to the parties.
3. **Insurance and Risk of Loss.** Insurance on the Farm Ground, if any, will be cancelled as of the Closing.
4. **Closing Documents.** At the Closing, Transferring Party will execute and deliver to Receiving Party a general warranty deed conveying the City Parcels to Receiving Party subject free and clear of all liens and encumbrances except such as have been approved in writing by Receiving; a Vendor's Affidavit in a form satisfactory to the Receiving Party; a closing statement; and such other instruments, certificates or

affidavits as may be provided herein or as Receiving Party or Title Insurer may reasonably request to effect the intention of the parties hereunder.

- 5. Possession.** Possession of the Farm Ground will be delivered to Receiving Party on the Closing Date, free and clear of the claims of any other party, except as provided otherwise in this agreement. Notwithstanding the foregoing, Receiving Party or its designee will be entitled to enter the property on and after the date hereof for the purpose of making all tests and inspections deemed necessary by Receiving Party to determine the condition of the Property.
- 6. Rights and Obligations.** The rights and obligations of Transferring Party and Receiving Party herein contained will inure to the benefit of and be binding upon the parties hereto and their respective personal representatives, heirs, successors, and assigns.
- 7. Notices.** All notices required or permitted to be given hereunder will be in writing and delivered either in person or by certified first-class prepaid mail, return receipt requested, or by a nationally-recognized overnight courier, to Transferring Party or Receiving Party at their respective addresses set forth below, or at such other address, notice of which may have been given to the other party in accordance with this paragraph. Any notice given in accordance with paragraph will be deemed to have been duly given or delivered on the date the same is personally delivered to the recipient or received by the recipient as evidenced by the return receipt.

To the Franklin Park Board: Franklin Park and Recreation Board
70 East Monroe Street
Franklin IN 46131

To the City: Franklin Board of Public Works and Safety
70 East Monroe Street
Franklin IN 46131

10. Further Representations and Warranties of Transferring Party.

Transferring Party represents and warrants that:

- a) The execution, delivery, and performance by Transferring Party of its obligations under this Agreement will not conflict with or result in a breach of, or constitute a default under, any of the provisions of any law, governmental rule, regulations, judgment, decree, or order by which the Transferring Party is bound, or by any of the provisions of any contract to which the Transferring Party is bound, or, if Transferring Party is not an individual, by the Transferring Party's declaration of trust, certificate

of incorporation, bylaws or partnership agreement, as the case may be.

- b) Transferring Party will have as of the date of the Closing, good, marketable, and indefeasible title to the Property.
- c) There are no liens or other encumbrances against the Property which will remain after the Closing.
- d) All necessary rights-of-way for all roads referenced on the Survey delivered to Receiving Party or obtained by Receiving Party have been (or will prior to the Closing be) provided to Receiving Party and have been (or will prior to the Closing be) dedicated to public use and accepted by the appropriate governmental authority for public use and maintenance.
- e) There are no covenants, agreements, restrictions, or other arrangements or understandings (whether or not in writing or of record) respecting the Transferring Party, the Property, or the use or possession of the Property which would impose any obligation or expense on Receiving Party or require payment by Receiving Party to any person, owners' association, or other entity of or for shared easements, improvements, utilities or services.
- f) Transferring Party will indemnify, defend, and hold Receiving Party harmless from and against any and all claims, demands, liabilities, damages, suits, actions, judgments, fines penalties, loss, costs, and expense (including, but not limited to, attorneys' fees) arising or resulting from, or suffered, sustained, or incurred by Receiving Party as a result (direct or indirect) of the untruth or inaccuracy of any of the foregoing matters represented and warranted by Transferring Party, which indemnity will survive the Closing hereof.

11. **Survival of Representations, Warranties and Covenants.** Each of the obligations, covenants, representations, and warranties of the parties hereto set forth in this Agreement will survive the Closing and will not be merged in the deed or other instruments of conveyance.

12. **Complete Agreement.** This Agreement represents the entire agreement between Transferring Party and Receiving Party covering everything agreed upon or understood in this transaction. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition will be made to this Agreement except by a written agreement executed by Transferring Party and Receiving Party.

13. **Authorized Signatories.** The persons executing this Agreement for and

on behalf of Receiving Party and Transferring Party each represent that they have the requisite authority to bind the entities on whose behalf they are signing.

14. **Partial invalidity.** If any term, covenant, or condition of this Agreement is held to be invalid or unenforceable in any respect, such invalidity or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid or unenforceable provision had never been contained herein.

15. **Use of Brokers.** Neither party has used a broker during the negotiation of this Agreement.

16. **Miscellaneous.**

- a) This Agreement will be construed, interpreted, and enforced in accordance with the laws of the State of Indiana. The parties agree that the State and Federal Courts of Indiana will have jurisdiction over the parties and the subject matter with respect to enforcement of this agreement.
- b) In the event that either party will bring an action or legal proceeding for an alleged breach of any provision of this Agreement or any representation, warranty, covenant, or agreement herein set forth, or to enforce, protect, determine, or establish any term, covenant, or provision of this Agreement or the rights hereunder of either party, the prevailing party will be entitled to recover from the nonprevailing party, as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and costs, expert witness fees, and court costs fixed by the court.
- c) All headings and sections of this Agreement are inserted for convenience only and do not form part of this Agreement or limit, expand, or otherwise alter the meaning of any provisions hereof.
- d) This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which will constitute one and the same agreement.
- e) The provisions of this Agreement are intended to be for the sole benefit of the parties hereto, and their respective successors and assigns, and none of the provisions of this Agreement are intended to be, nor will they be construed to be, for the benefit of any other party.
- f) The parties agree that if any judicial interpretation and/or construction of this agreement is required, the drafting party should be of no

consequence to the interpretation or construction that occurs.

IN WITNESS WHEREOF, the parties have entered into this Agreement as the date set forth above.

Agreed:

**CITY OF FRANKLIN, INDIANA by and through its
Board of Public Works and Safety**

By: _____
Fred L. Paris, Mayor/Member

By: _____
Joe Ault, Member

By: _____
Dan Murray, Member

Attest: _____
Janet P. Alexander, Franklin Clerk-Treasurer

FRANKLIN PARK AND RECREATION BOARD

-, President

-, Vice President

-, Secretary

-, Member