

BOARD OF PUBLIC WORKS AND SAFETY
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 Board of Works meets on the 1st and 3rd Monday of each month at 5:00 p.m. in City Hall located at 70 E. Monroe Street.

Date Submitted:	Sept. 21, 2012	Requested Meeting Date:	October 1, 2012
Confirmed Meeting Date:			
Received by:			
Contact Information: Please provide all requested information in the fields below. (Print or Type)			
On Behalf of Organization or Individual:		Department of Planning	
Name:	Joanna Myers	Telephone:	317-736-3631
Title or Position:	Senior Planner		
E-Mail:	jmyers@franklin.in.gov		
Address:	70 E. Monroe Street		
City:	Franklin	State:	IN
ZIP:	46131		
Who will attend the meeting and present the request?			
Name:	Joanna Myers	Telephone:	317-736-3631
Title or Position:	Senior Planner		
E-Mail:	jmyers@franklin.in.gov		
Please describe the purpose or title of your presentation.			
Approval of Resolution Number 2012-05: Approving a Real Estate Transfer from the City of Franklin to Franklin Park & Recreation Board (Jefferson Street & Center Street Buyout) and execution of Real Estate Transfer Agreement.			
Supporting documents: All supporting documents should be submitted with the request form.			
1. Resolution Number 2012-05			
2. Exhibit A			
3. Exhibit B			
4. Real Estate Transfer Agreement between City of Franklin and Franklin Park & Recreation Board			

Questions about this application or the process described should be directed to the Clerk Treasurer's Office at 70 E. Monroe Street, Franklin Indiana 46131 or by email at jalexander@franklin.in.gov or call 317-736-3609.

**RESOLUTION NUMBER 2012-05
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 three (3) acres of unimproved real property located at 459, 481, 499, 501, & 525 E. Jefferson Street and 401 S. Main Street, 424, 425, 427, 446, 448, 449, & 456 Center Street ("Jefferson St. & Center St. Buyouts"), and legally described on Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, the parties desire that the Jefferson St. & Center St. Buyouts be transferred by deed from the City to the Franklin Park and Recreation Board for appropriate use consistent with the deed restrictions described on Exhibit B and 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 use the Jefferson St. & Center St. Buyouts consistent with the deed restrictions and the Board's duties and powers, the receipt and legal sufficiency of which the parties acknowledge, the City agrees to transfer the Jefferson St. & Center St. Buyouts 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 _____, 2012.

Voting Affirmative:

Mayor Joseph McGuinness

Steve Barnett

Bob Swinehamer

Voting Opposed:

Mayor Joseph McGuinness

Steve Barnett

Bob Swinehamer

Attest:

Janet P. Alexander, Clerk-Treasurer

EXHIBIT A
LEGAL DESCRIPTIONS

459 E. JEFFERSON STREET

Tract I:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East: Commencing 60 feet west of a point on the south line of Jefferson Street in the City of Franklin; which point is south and on a range with the west line of Hurricane Street in said City; thence west on the south line of said Jefferson Street 71 feet to the east line of the lands formerly owned by Payne and Ragsdale; thence south on the west line of the lands formerly owned by Isabella Ryker, 153 feet; thence east and parallel to the south line of said Jefferson Street 71 feet to the southwest corner of a tract of land owned by Lavina D. Depue; thence north on the west line of said Depue tract, 153 feet to the place of beginning.

ALSO:

Tract II:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East; Beginning Eighty-four (84) feet east of the northeast corner of Lot No. 14 in Morgan and Tilton's Addition to the Town now the City of Franklin, Indiana, and on the south line of Jefferson Street in said City; thence south One Hundred Forty-four (144) feet; thence east and parallel to the south line of said Jefferson Street Fifty (50) feet; thence north One Hundred Forty-four (144) feet to the south line of said Jefferson Street; thence west on said south line of said Jefferson Street Fifty (50) feet to the beginning.

Said real estate above known and designated as No. 4 on the Place by Receiver Fitzgibbon and recorded in Order Book No. 34, Page 430, of the Clerk's Office of the Johnson County Circuit Court.

ALSO:

A strip of land 5 feet in width adjoining the east boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 94-21, dated July 11, 1994, and recorded July 12, 1994, as Instrument Number 94016344 as Miscellaneous Record 67, Page 466, in the Office of the Recorder of Johnson County, Indiana.

Subject to the Common Driveway Easement and Maintenance Agreement recorded October 12, 2004 as Instrument Number 2004-029606 and to any and all easements, agreements and restrictions of record.

481 E. JEFFERSON STREET

Part of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, described as follows:

Commencing on the South line of East Jefferson Street in the City of Franklin, Indiana, 10 feet West of a point where the West line Hurricane Street, in said City, if extended South, would intersect the same; thence West on the south line of said East Jefferson Street 59 feet; thence South 153 feet; thence East 59 feet; thence North 153 feet to the place of beginning.

Subject to any and all easements, agreements and restrictions of record.

499 E. JEFFERSON STREET

Part of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Franklin City, Franklin Township, Johnson County, Indiana, more particularly described as follows:

Commencing at the point of intersection of the east line of Hurricane Street with the south line of Jefferson Street in the City of Franklin; thence west and upon the south line of Jefferson Street 60 feet; thence south 153 feet; thence east 60 feet; thence north 153 feet to the place of beginning.

Also, part of the southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Franklin City, Franklin Township, Johnson County, Indiana, more particularly described as follows:

Commencing 140 feet west and 153 feet south of a point which point is south and on a range with the west line of Hurricane Street and on the south line of Jefferson Street in said City of Franklin; thence south on the west line of the land formerly owned by Isabel Riker 160 feet to the north line of Monroe Street; thence east 33 feet to the middle of Hurricane Creek; thence northeasterly with the middle of said Creek to a point 153 feet south of the south line of said Jefferson Street; thence west parallel to the south line of said Jefferson Street 214 feet to the point of beginning.

Subject to any and all easements, agreements and restrictions of record.

501 E. JEFFERSON STREET

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Johnson County, Indiana, described as follows:

Beginning at a point on the South line of Jefferson Street in the City of Franklin, Indiana and on the East line of Hurricane Street, if said Hurricane Street were extended South; thence East on the South line of said Jefferson Street 60 feet; thence due South 153 feet; thence due West 60 feet; thence due North 153 feet to the South line of said Jefferson Street to the place of beginning.

EXCEPTING THEREFROM the following part thereof, to-wit:

Beginning at the Southeast corner of the above described tract; thence West on the South line thereof to the middle line of Hurricane Creek; thence Northeasterly with the middle line of said creek to the East line of said tract; thence South on said East line of said tract to the Place of Beginning.

ALSO EXCEPTING the following part thereof, to-wit:

A part of the East half of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Johnson County, described as follows:

Beginning at a spike set on the South line of Jefferson Street, in the City of Franklin, Indiana, 60 feet of a point on said South line where the East line of Hurricane Street, in said City, if extended South, would intersect said South line of Jefferson Street; thence due South on and along a common property line 125.75 feet to the middle of Hurricane Creek; thence in a Northerly direction 125.33 feet to a railroad spike set on the said South line of Jefferson Street; thence East on and along said South line of Jefferson Street 10.00 feet to the Place of Beginning.

EXCEPTING THEREFROM:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East, in the City of Franklin, Johnson County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the right-of-way parcel plat, described as follows:

Beginning at a point on the southern line of Jefferson Street in the City of Franklin, Indiana and on the eastern line of Hurricane Street, if said Hurricane Street were extended south; said point being designated as "69" on said plat; thence North 0 degrees 00 minutes 00 seconds East 9.169 meters (30.08 feet) to the center line of Jefferson Street to a point designated as point "67" on said plat; thence North 85 degrees 44 minutes 05 seconds East 14.566 meters (47.79 feet) along said center line to a point designated as point "60" on said plat; thence South 4 degrees 33 minutes 40 seconds East 9.144 meters (30.00 feet) to a point on the southerly line of said street designated as point "33" on said plat; thence South 85 degrees 44 minutes 05 seconds West 15.296 meters (50.18 feet) along said southern line; to the point of beginning and containing 136.5 square meters (1,470 square feet), more or less. The portion of the above described real estate, which is not already embraced within the public right-of-way, contains 0.00 square meters (0 square feet), more or less.

Subject to any and all easements, agreements and restrictions of record.

525 E. JEFFERSON STREET

Tract I:

A part of the East half of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian; described as follows:

Beginning on the South line of Jefferson Street, in the City of Franklin, Indiana, 60 feet East of a point on said South line where the East line of Hurricane Street, in said City, if extended South, would intersect said South line of Jefferson Street; thence due South to the middle of Hurricane Creek; thence in a northeasterly direction with the middle line of said Creek to a point in line with the West line of Lot Number 26 in John S. Hougham's Addition to East Franklin, now a part of the City of Franklin; thence North to the South line of said Jefferson Street; thence West with said South line to the place of beginning.

Tract II:

A part of the East half of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian; described as follows:

Beginning at a spike set on the South line of Jefferson Street, in the City of Franklin, Indiana, 60 feet East of a point on said South line where the East line of Hurricane Street, in said City, if extended South, would intersect said South line of Jefferson Street; thence due South on and along a common property line 125.75 feet to the Middle of Hurricane Creek; thence in a Northerly direction 125.33 feet to a railroad spike set on the said South line of Jefferson Street; thence East on and along said South line of Jefferson Street 10.00 feet to the Place of Beginning, containing 626 square feet (0.0144 acre), more or less.

EXCEPTING THEREFROM:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East, in the City of Franklin, Johnson County, Indiana and being that part of the grantor's land lying within the right-of-way lines described as follows:

Beginning on the southern boundary of Jefferson Street, in the City of Franklin, Indiana, 18.344 meters (60.18 feet) east of a point on said southern boundary where the eastern boundary of Hurricane Street, in said City, if extended south, would intersect the southern boundary of Jefferson Street; said point being designated as "87" on right-of-way parcel plat, thence South 85 degrees 44 minutes 05 seconds West 3.048 meters (10.00 feet) along said southern boundary to the intersection with the prolonged western line of the grantor's land designated as "33" on said plat; thence North 04 degrees 33 minutes 40 seconds West 9.144 meters (30.00 feet) along said prolonged line to the center line of Jefferson Street designated as "60" on said plat; thence North 85 degrees 44 minutes 05 seconds East 26.315 meters (86.34 feet) along said center line to the intersection with the prolonged eastern line of the grantor's land designated as "61" on said plat; thence South 04 degrees 59 minutes 46 seconds East 9.145 meters (30.00 feet) along the said prolonged line to the southern boundary of said Street designated as "46" on said plat; thence South 85 degrees 44 minutes 05 seconds West 23.337 meters (76.56 feet) along said southern boundary to the point of beginning and containing 240.9 square meters (2,593 square feet), more or less. The portion of the above described real estate, which is not already embraced within the public right-of-way, contains 0.00 square meters (0 square feet), more or less.

Subject to any and all easements, agreements and restrictions of record.

401 S. MAIN STREET

Lot Number 1 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

424 CENTER STREET

Lot Number 2 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the south boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-12, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011978 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

425 CENTER STREET

Lot Number 27 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana, except fifty (50) feet by parallel lines off the entire East end of said lot.

ALSO:

Part of Lot Number 27 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana described as follows, to-wit:

Beginning at a point on the South line of said lot, thirty-two (32) feet and six (6) inches West of the Southeast corner thereof; thence West and along said South line, seventeen (17) feet and six (6)

inches; thence North, twenty-five (25) feet and ten (10) inches; thence East, seventeen (17) feet and six (6) inches; thence South, twenty-five (25) feet and ten (10) inches to the Place of Beginning.

ALSO:

Lot Number 28 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana, except fifty (50) feet by parallel lines off the entire East end of said lot.

Subject to any and all easements, agreements and restrictions of record.

427 CENTER STREET

Lot Number 26 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

446 CENTER STREET

Lot Number 3 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the north boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-12, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011978 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

448 CENTER STREET

Lot Number 4 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the south boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-13, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011976 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

449 CENTER STREET

Lot Number 25 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

456 CENTER STREET

Lot Number 5 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the north boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-13, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011976 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

EXHIBIT B DEED RESTRICTIONS

In reference to the property or properties ("Property") conveyed by the Deed between City of Franklin, Indiana, herein after referred to as the Grantor, participating in the federally-assisted acquisition project and the City of Franklin Park and Recreation Board, its successors and assigns, herein after referred to as the Grantee:

WHEREAS, the Flood Mitigation Assistances program ("FMA"), as authorized by Section 1323 of the National Flood Insurance Act of 1968 (42 USC §§ 4030), as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264, identifies the use of FMA funds for reducing flood damages to individual properties for which one or more claim payments for losses have been made under flood insurance coverage and that will result in the greatest savings to the National Flood Insurance Fund in the shortest period of time;

WHEREAS, the FMA provides a process for a local government, through the State, to apply for federal funds for flood mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, the State of Indiana, Department of Homeland Security has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA"), and has entered into an FMA Project Grant Agreement dated June 10, 2008 with FEMA and herein incorporated by reference;

WHEREAS, the Property is located in City of Franklin, Indiana, and City of Franklin, Indiana participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the City of Franklin, Indiana, acting by and through the City of Franklin Common Council, has applied for and been awarded federal funds pursuant to an agreement with the State of Indiana, Department of Homeland Security dated November 5, 2009 ("State-Local Agreement"), and herein incorporated by reference;

WHEREAS, the terms of the FY 2007 FMA Program Guidance, consistent with FEMA Hazard Mitigation Grant Program guidance involving acquisition for open space, the FEMA-State Grant Agreement and the State-Local Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

NOW, THEREFORE, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to Paragraph 1, the terms of the FMA Guidance, and any applicable FEMA-State Grant Agreement, and the State-Local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by the Grantee pursuant to FMA Guidance providing for acquisition:
 - a. Compatible uses. The Property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved permeable parking lots and other uses consistent with FEMA FMA Guidance for open space acquisition.
 - b. Structures. No new structures or improvements shall be erected on the Property other than:
 - i. A public facility that is open on all sides and functionally related to the open space use;

- ii. A public rest room; or
 - iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure. Any structures built on the Property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.
- c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the Property may be sought, nor will such assistance be provided;
- d. Transfer. The Grantee shall convey any interest in the Property only if the Regional Director of FEMA gives prior approval of the transferee in accordance with this paragraph. The Grantee may only convey an interest in the Property to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease or an easement to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, with the prior approval of the Regional Director, and so long as the conveyance does not include authority to control and enforce these terms and conditions. If title to the Property is transferred to a public entity that is not a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:
 - i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to an entity other than the title holder, or
 - ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.
- 2. Inspection. FEMA, its representatives, and assigns, including the State of Indiana, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of the grant.
- 3. Monitoring and Reporting. Every three years from November 5, 2009, the Grantee, through the State of Indiana, shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of the grant.
- 4. Enforcement. If the subject Property is not maintained according to the terms of the grant, the Grantee, the State of Indiana, and FEMA, its representatives, and assigns are responsible for taking measures to bring the Property back into compliance.
 - a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.
 - b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
 - c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

**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 _____, 2012 (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 ("Park Board" or "Receiving Party").

WHEREAS, the City owns fee simple title to approximately three (3) acres of unimproved real property located at 459, 481, 499, 501, & 525 E. Jefferson Street and 401 S. Main Street, 424, 425, 427, 446, 448, 449, & 456 Center Street ("Jefferson St. & Center St. Buyouts" or "Property"), and legally described on Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, the parties desire that the Property be transferred by deed from the City to the Park Board for appropriate use consistent with the deed restrictions described on Exhibit B and 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 duty to use the Property consistent with the deed restrictions and the Board's duties and powers, the receipt and legal sufficiency of which the parties acknowledge, the City agrees to transfer the Property to the Park Board and the Park Board agrees to accept the transfer pursuant to 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 Jefferson St. & Center St. Buyouts, 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 to obtain all approvals.
2. **Closing.** The closing of the Property transfer (the "Closing") will occur at the time and place that is mutually agreeable to the parties.
3. **Insurance and Risk of Loss.** Transfer of insurance on the Property will be coordinated by the Clerk-Treasurer.
4. **Closing Documents.** At the Closing, Transferring Party will execute and deliver to Receiving Party a quit claim deed conveying the Property to Receiving Party.
5. **Possession.** Possession of the Property 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
396 Branigin Boulevard
Franklin, IN 46131

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

8. **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 closing.
 - d. 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, with the exception of those referenced in Exhibit A and Exhibit B.
 - e. 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, attorney's 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.

9. **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.
10. **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.
11. **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.
12. **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.
13. **Use of Brokers.** Neither party has used a broker during the negotiation of this Agreement.
14. **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 consequences 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**

Mayor Joseph McGuinness

Steve Barnett

Bob Swinehamer

Attest:

Janet P. Alexander, Clerk-Treasurer

FRANKLIN PARK AND RECREATION BOARD

Michael Auger, President

Pam Ault, Vice President

Debbie Gill

John Shafer

EXHIBIT A
LEGAL DESCRIPTIONS

459 E. JEFFERSON STREET

Tract I:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East: Commencing 60 feet west of a point on the south line of Jefferson Street in the City of Franklin; which point is south and on a range with the west line of Hurricane Street in said City; thence west on the south line of said Jefferson Street 71 feet to the east line of the lands formerly owned by Payne and Ragsdale; thence south on the west line of the lands formerly owned by Isabella Ryker, 153 feet; thence east and parallel to the south line of said Jefferson Street 71 feet to the southwest corner of a tract of land owned by Lavina D. Depue; thence north on the west line of said Depue tract, 153 feet to the place of beginning.

ALSO:

Tract II:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East; Beginning Eighty-four (84) feet east of the northeast corner of Lot No. 14 in Morgan and Tilton's Addition to the Town now the City of Franklin, Indiana, and on the south line of Jefferson Street in said City; thence south One Hundred Forty-four (144) feet; thence east and parallel to the south line of said Jefferson Street Fifty (50) feet; thence north One Hundred Forty-four (144) feet to the south line of said Jefferson Street; thence west on said south line of said Jefferson Street Fifty (50) feet to the beginning.

Said real estate above known and designated as No. 4 on the Place by Receiver Fitzgibbon and recorded in Order Book No. 34, Page 430, of the Clerk's Office of the Johnson County Circuit Court.

ALSO:

A strip of land 5 feet in width adjoining the east boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 94-21, dated July 11, 1994, and recorded July 12, 1994, as Instrument Number 94016344 as Miscellaneous Record 67, Page 466, in the Office of the Recorder of Johnson County, Indiana.

Subject to the Common Driveway Easement and Maintenance Agreement recorded October 12, 2004 as Instrument Number 2004-029606 and to any and all easements, agreements and restrictions of record.

481 E. JEFFERSON STREET

Part of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, described as follows:

Commencing on the South line of East Jefferson Street in the City of Franklin, Indiana, 10 feet West of a point where the West line Hurricane Street, in said City, if extended South, would intersect the same; thence West on the south line of said East Jefferson Street 59 feet; thence South 153 feet; thence East 59 feet; thence North 153 feet to the place of beginning.

Subject to any and all easements, agreements and restrictions of record.

499 E. JEFFERSON STREET

Part of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Franklin City, Franklin Township, Johnson County, Indiana, more particularly described as follows:

Commencing at the point of intersection of the east line of Hurricane Street with the south line of Jefferson Street in the City of Franklin; thence west and upon the south line of Jefferson Street 60 feet; thence south 153 feet; thence east 60 feet; thence north 153 feet to the place of beginning.

Also, part of the southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Franklin City, Franklin Township, Johnson County, Indiana, more particularly described as follows:

Commencing 140 feet west and 153 feet south of a point which point is south and on a range with the west line of Hurricane Street and on the south line of Jefferson Street in said City of Franklin; thence south on the west line of the land formerly owned by Isabel Riker 160 feet to the north line of Monroe Street; thence east 33 feet to the middle of Hurricane Creek; thence northeasterly with the middle of said Creek to a point 153 feet south of the south line of said Jefferson Street; thence west parallel to the south line of said Jefferson Street 214 feet to the point of beginning.

Subject to any and all easements, agreements and restrictions of record.

501 E. JEFFERSON STREET

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Johnson County, Indiana, described as follows:

Beginning at a point on the South line of Jefferson Street in the City of Franklin, Indiana and on the East line of Hurricane Street, if said Hurricane Street were extended South; thence East on the South line of said Jefferson Street 60 feet; thence due South 153 feet; thence due West 60 feet; thence due North 153 feet to the South line of said Jefferson Street to the place of beginning.

EXCEPTING THEREFROM the following part thereof, to-wit:

Beginning at the Southeast corner of the above described tract; thence West on the South line thereof to the middle line of Hurricane Creek; thence Northeasterly with the middle line of said creek to the East line of said tract; thence South on said East line of said tract to the Place of Beginning.

ALSO EXCEPTING the following part thereof, to-wit:

A part of the East half of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian, Johnson County, described as follows:

Beginning at a spike set on the South line of Jefferson Street, in the City of Franklin, Indiana, 60 feet of a point on said South line where the East line of Hurricane Street, in said City, if extended South, would intersect said South line of Jefferson Street; thence due South on and along a common property line 125.75 feet to the middle of Hurricane Creek; thence in a Northerly direction 125.33 feet to a railroad spike set on the said South line of Jefferson Street; thence East on and along said South line of Jefferson Street 10.00 feet to the Place of Beginning.

EXCEPTING THEREFROM:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East, in the City of Franklin, Johnson County, Indiana, and being that part of the grantor's land lying within the right-of-way lines depicted on the right-of-way parcel plat, described as follows:

Beginning at a point on the southern line of Jefferson Street in the City of Franklin, Indiana and on the eastern line of Hurricane Street, if said Hurricane Street were extended south; said point being designated as "69" on said plat; thence North 0 degrees 00 minutes 00 seconds East 9.169 meters (30.08 feet) to the center line of Jefferson Street to a point designated as point "67" on said plat; thence North 85 degrees 44 minutes 05 seconds East 14.566 meters (47.79 feet) along said center line to a point designated as point "60" on said plat; thence South 4 degrees 33 minutes 40 seconds East 9.144 meters (30.00 feet) to a point on the southerly line of said street designated as point "33" on said plat; thence South 85 degrees 44 minutes 05 seconds West 15.296 meters (50.18 feet) along said southern line; to the point of beginning and containing 136.5 square meters (1,470 square feet), more or less. The portion of the above described real estate, which is not already embraced within the public right-of-way, contains 0.00 square meters (0 square feet), more or less.

Subject to any and all easements, agreements and restrictions of record.

525 E. JEFFERSON STREET

Tract I:

A part of the East half of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian; described as follows:

Beginning on the South line of Jefferson Street, in the City of Franklin, Indiana, 60 feet East of a point on said South line where the East line of Hurricane Street, in said City, if extended South, would intersect said South line of Jefferson Street; thence due South to the middle of Hurricane Creek; thence in a northeasterly direction with the middle line of said Creek to a point in line with the West line of Lot Number 26 in John S. Hougham's Addition to East Franklin, now a part of the City of Franklin; thence North to the South line of said Jefferson Street; thence West with said South line to the place of beginning.

Tract II:

A part of the East half of the Southeast quarter of Section 14, Township 12 North, Range 4 East of the Second Principal Meridian; described as follows:

Beginning at a spike set on the South line of Jefferson Street, in the City of Franklin, Indiana, 60 feet East of a point on said South line where the East line of Hurricane Street, in said City, if extended South, would intersect said South line of Jefferson Street; thence due South on and along a common property line 125.75 feet to the Middle of Hurricane Creek; thence in a Northerly direction 125.33 feet to a railroad spike set on the said South line of Jefferson Street; thence East on and along said South line of Jefferson Street 10.00 feet to the Place of Beginning, containing 626 square feet (0.0144 acre), more or less.

EXCEPTING THEREFROM:

A part of the Southeast quarter of Section 14, Township 12 North, Range 4 East, in the City of Franklin, Johnson County, Indiana and being that part of the grantor's land lying within the right-of-way lines described as follows:

Beginning on the southern boundary of Jefferson Street, in the City of Franklin, Indiana, 18.344 meters (60.18 feet) east of a point on said southern boundary where the eastern boundary of Hurricane Street, in said City, if extended south, would intersect the southern boundary of Jefferson Street; said point being designated as "87" on right-of-way parcel plat, thence South 85 degrees 44 minutes 05 seconds West 3.048 meters (10.00 feet) along said southern boundary to the intersection with the prolonged western line of the grantor's land designated as "33" on said plat; thence North 04 degrees 33 minutes 40 seconds West 9.144 meters (30.00 feet) along said prolonged line to the center line of Jefferson Street designated as "60" on said plat; thence North 85 degrees 44 minutes 05 seconds East 26.315 meters (86.34 feet) along said center line to the intersection with the prolonged eastern line of the grantor's land designated as "61" on said plat; thence South 04 degrees 59 minutes 46 seconds East 9.145 meters (30.00 feet) along the said prolonged line to the southern boundary of said Street designated as "46" on said plat; thence South 85 degrees 44 minutes 05 seconds West 23.337 meters (76.56 feet) along said southern boundary to the point of beginning and containing 240.9 square meters (2,593 square feet), more or less. The portion of the above described real estate, which is not already embraced within the public right-of-way, contains 0.00 square meters (0 square feet), more or less.

Subject to any and all easements, agreements and restrictions of record.

401 S. MAIN STREET

Lot Number 1 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

424 CENTER STREET

Lot Number 2 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the south boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-12, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011978 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

425 CENTER STREET

Lot Number 27 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana, except fifty (50) feet by parallel lines off the entire East end of said lot.

ALSO:

Part of Lot Number 27 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana described as follows, to-wit:

Beginning at a point on the South line of said lot, thirty-two (32) feet and six (6) inches West of the Southeast corner thereof; thence West and along said South line, seventeen (17) feet and six (6)

inches; thence North, twenty-five (25) feet and ten (10) inches; thence East, seventeen (17) feet and six (6) inches; thence South, twenty-five (25) feet and ten (10) inches to the Place of Beginning.

ALSO:

Lot Number 28 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana, except fifty (50) feet by parallel lines off the entire East end of said lot.

Subject to any and all easements, agreements and restrictions of record.

427 CENTER STREET

Lot Number 26 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

446 CENTER STREET

Lot Number 3 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the north boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-12, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011978 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

448 CENTER STREET

Lot Number 4 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the south boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-13, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011976 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

449 CENTER STREET

Lot Number 25 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

456 CENTER STREET

Lot Number 5 in John Traub's, an addition to the City of Franklin as recorded in Plat Book 2, Page 47, in the Office of the Recorder of Johnson County, Indiana.

ALSO:

A strip of land 6 feet in width adjoining the north boundary of the above described real estate being a part of a vacated alley by the Common Council of the City of Franklin, Indiana, under Ordinance Number 2012-13, dated June 4, 2012, and recorded June 6, 2012, as Instrument Number 2012-011976 in the Office of the Recorder of Johnson County, Indiana.

Subject to any and all easements, agreements and restrictions of record.

EXHIBIT B DEED RESTRICTIONS

In reference to the property or properties ("Property") conveyed by the Deed between City of Franklin, Indiana, herein after referred to as the Grantor, participating in the federally-assisted acquisition project and the City of Franklin Park and Recreation Board, its successors and assigns, herein after referred to as the Grantee:

WHEREAS, the Flood Mitigation Assistances program ("FMA"), as authorized by Section 1323 of the National Flood Insurance Act of 1968 (42 USC §§ 4030), as amended by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108-264, identifies the use of FMA funds for reducing flood damages to individual properties for which one or more claim payments for losses have been made under flood insurance coverage and that will result in the greatest savings to the National Flood Insurance Fund in the shortest period of time;

WHEREAS, the FMA provides a process for a local government, through the State, to apply for federal funds for flood mitigation assistance to acquire interests in property, including the purchase of structures in the floodplain, to demolish and/or remove the structures, and to maintain the use of the Property as open space in perpetuity;

WHEREAS, the State of Indiana, Department of Homeland Security has applied for and been awarded such funding from the Department of Homeland Security, Federal Emergency Management Agency ("FEMA"), and has entered into an FMA Project Grant Agreement dated June 10, 2008 with FEMA and herein incorporated by reference;

WHEREAS, the Property is located in City of Franklin, Indiana, and City of Franklin, Indiana participates in the National Flood Insurance Program ("NFIP") and is in good standing with NFIP as of the date of the Deed;

WHEREAS, the City of Franklin, Indiana, acting by and through the City of Franklin Common Council, has applied for and been awarded federal funds pursuant to an agreement with the State of Indiana, Department of Homeland Security dated November 5, 2009 ("State-Local Agreement"), and herein incorporated by reference;

WHEREAS, the terms of the FY 2007 FMA Program Guidance, consistent with FEMA Hazard Mitigation Grant Program guidance involving acquisition for open space, the FEMA-State Grant Agreement and the State-Local Agreement require that the Grantee agree to conditions which are intended to restrict the use of the land to open space in perpetuity in order to protect and preserve natural floodplain values;

NOW, THEREFORE, the grant is made subject to the following terms and conditions:

1. Terms. Pursuant to Paragraph 1, the terms of the FMA Guidance, and any applicable FEMA-State Grant Agreement, and the State-Local Agreement, the following conditions and restrictions shall apply in perpetuity to the Property described in the attached deed and acquired by the Grantee pursuant to FMA Guidance providing for acquisition:
 - a. Compatible uses. The Property shall be used only for purposes compatible with open space, recreational, or wetlands management practices; in general, such uses include parks for outdoor recreational activities, nature reserves, unimproved permeable parking lots and other uses consistent with FEMA FMA Guidance for open space acquisition.
 - b. Structures. No new structures or improvements shall be erected on the Property other than:
 - i. A public facility that is open on all sides and functionally related to the open space use;

- ii. A public rest room; or
 - iii. A structure that is compatible with the uses described in Paragraph 1(a), above, and approved by the Director in writing prior to the commencement of the construction of the structure. Any structures built on the Property according to this paragraph shall be floodproofed or elevated to the Base Flood Elevation plus one foot of freeboard.
- c. Disaster Assistance. No future disaster assistance from any Federal source for any purpose related to the Property may be sought, nor will such assistance be provided;
- d. Transfer. The Grantee shall convey any interest in the Property only if the Regional Director of FEMA gives prior approval of the transferee in accordance with this paragraph. The Grantee may only convey an interest in the Property to another public entity or to an organization qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and applicable regulations promulgated thereunder. However, the Grantee may convey a lease or an easement to a private individual or entity for purposes compatible with the uses described in Paragraph 1(a), above, with the prior approval of the Regional Director, and so long as the conveyance does not include authority to control and enforce these terms and conditions. If title to the Property is transferred to a public entity that is not a qualified state or federal agency with a conservation mission, it must be conveyed subject to a Conservation Easement that shall be recorded with the deed and shall incorporate all terms and conditions set forth herein, including the easement holder's responsibility to enforce the easement. This shall be accomplished by one of the following means:
 - i. The Grantee shall convey, in accordance with section (d), above, a conservation easement to an entity other than the title holder, or
 - ii. At the time of title transfer, the Grantee shall retain such conservation easement, and record it with the deed.
- 2. Inspection. FEMA, its representatives, and assigns, including the State of Indiana, shall have the right to enter upon the Property, at reasonable times and with reasonable notice, for the purpose of inspecting the Property to ensure compliance with the terms of the grant.
- 3. Monitoring and Reporting. Every three years from November 5, 2009, the Grantee, through the State of Indiana, shall submit to the FEMA Regional Director a report certifying that the Grantee has inspected the subject Property within the month preceding the report, and that the Property continues to be maintained consistent with the provisions of the grant.
- 4. Enforcement. If the subject Property is not maintained according to the terms of the grant, the Grantee, the State of Indiana, and FEMA, its representatives, and assigns are responsible for taking measures to bring the Property back into compliance.
 - a. The State will notify the Grantee in writing and advise the Grantee that it has 60 days to correct the violation.
 - b. If the Grantee fails to demonstrate a good faith effort to come into compliance with the terms of the grant within the 60-day period, the State shall enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to bringing an action at law or in equity in a court of competent jurisdiction.
 - c. FEMA, its representatives and assigns may enforce the terms of the grant by taking any measures it deems appropriate, including but not limited to the following:

