

**RESOLUTION NO. 2014-52**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A REAL ESTATE SALES CONTRACT WHEREBY THE CITY OF PACIFIC WOULD PURCHASE PROPERTY KNOWN AS JENSEN POINT UPON THE SUCCESSFUL RECEIPT OF A GRANT FROM THE ST. LOUIS COUNTY PARKS AND RECREATION COMMISSION.**

**WHEREAS,** The City of Pacific owns and maintains public infrastructure which includes its parks and recreation facilities, and;

**WHEREAS,** The Mayor and Board of Alderman, deem it advisable to expand the parks of the City and to enter into a contract with the Winchester Family Trust to purchase a 2.28 acre parcel of land which borders the City of Pacific for the perpetual dedication to the public for recreational purposes, and;

**WHEREAS,** St. Louis County Parks Commission has grants available to cities within in its jurisdiction, to assist in the purchase of park grounds.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF ALDERMEN FOR THE CITY OF PACIFIC, MISSOURI AS FOLLOWS:**

- Section 1.** The Board of Aldermen hereby approves and authorizes the Mayor to execute on behalf of the City, a Real Estate Sales Contract with the owners, Winchester Family Trust, of the property known as Jensen Point;
- Section 2.** A copy of the Real Estate Contract in substantially the same form of Exhibit A which is attached hereto and incorporated by reference, and;
- Section 3.** The purchase of the property by the City is strictly contingent upon the City applying for and receiving a grant from the St. Louis County Parks Commission in the amount of Two Hundred Sixty-five Thousand Dollars (\$265,000) for the purchase of the ground, and;
- Section 4.** The grant application from The St. Louis County Parks Commission has a deadline of October 31, 2014 for the application to be received by the Commission, so time is of the essence in this matter, and;
- Section 5.** The balance of the funds would be paid from city resources, and;

**Section 6.** The City will dedicate the property for the public's use as recreation land in perpetuity, and;

**Section 7.** This Resolution shall be effective immediately upon its adoption by the Mayor and Board of Aldermen.

**Adopted by the Board of Aldermen and approved by the Mayor on this \_\_\_\_ day of October, 2014.**

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**Jeffrey M. Palmore, Mayor**

**ATTEST:**

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**City Clerk**

## REAL ESTATE SALES CONTRACT

This agreement made this 29<sup>th</sup> day of October, 2014, between

The City of Pacific, Missouri, its successors or assigns, "Purchaser", and

Wayne L Winchester and Teri L Winchester, Trustees of the Winchester Family Trust,  
P O Box 101; St. Albans, MO 63073, hereinafter "Vendor."

Whereby Purchaser agrees to purchase from the Vendor, AND Vendor agrees to sell to Purchaser, the following real property located in St. Louis County, Missouri, "as is, where is", with no warranties, commonly described as follows (legal description on Vendor's title to govern):

**Two parcels of land contiguous to the City of Pacific on its eastern boundary known as "Jensen Point" and listed in the St. Louis County Records as 31 Y440019 and 31Y440037 consisting of a parcels containing 2.28acres more or less.**

### 1. PURCHASE PRICE.

The total purchase price is the amount of Three Hundred Thousand Dollars (\$300,000.00) cash or its equivalent at closing.

The purchase price is payable as follows:

- (A.) The purchase price to be paid by Purchaser at closing upon first fulfilling the terms listed below in Section 2. CONTINGENCIES.
- (B.) This contract is null and void and cancelled if all of the CONTINGENCIES below are not fulfilled.

### 2. CONTINGENCIES.

A. Purchaser agrees to apply for grant from the St. Louis County Parks and Recreation Commission for land acquisition in the amount of Two Hundred and Sixty-five Thousand Dollars (\$265,000) within ten (10) days of the execution of this REAL ESTATE SALES CONTRACT, and to do all things necessary, including, but not limited to, and cooperate fully in order to obtain the grant.

B. The remaining balance of the purchase price in the amount of Thirty-five Thousand Dollars (\$35,000) will be paid from the Pacific Tourism Commission fund, if the \$265,000 grant is received by the city for this purchase.

C. If Purchaser fails to receive said grant, this sales contract is null and void and is cancelled without prejudice or penalty.

D. This purchase is subject to Purchaser obtaining acceptable results of a Phase 1 Environmental Site Assessment of the subject property which will be performed only after Purchaser has been notified of the award of the grant outlined in Subparagraph A above and prior to closing.

E. Purchaser shall agree that the deed will include a covenant that the property will be dedicated to public recreational use as a park of the City of Pacific.

### **3. PERSONAL PROPERTY and IMPROVEMENTS.**

The purchase price to include all existing buildings and improvements "as is", (if any) on the real estate described above, and appurtenances, but shall not include any personal property of the Vendor located on the premises.

### **4. TITLE.**

Vendor shall transfer title to Purchaser by general warranty deed, subject to existing easements, zoning regulations, and all other encumbrances of record which do not adversely affect the use of the property as it exists at the time of the contract.

Purchaser may, at his own expense, obtain the necessary abstract of title to the premises and have it extended to date by a competent Abstractor. Purchaser may at its expense obtain an attorney's opinion within ten days after the date the abstract of title is delivered to Purchaser. Purchaser shall within said period of time object to any defects shown on the attorney's opinion, other than standard exceptions, and Vendor shall have five days from the receipt of notice of such defect to correct the same, provided that if such defects cannot be corrected within said time and the parties do not agree to an extension of time to correct the said defects, said extension to be in writing, then this contract shall be void and the money paid by Purchaser herewith shall be returned to them and the documents of title to Vendor. In lieu of an abstract of title, Purchaser may at his expense obtain a commitment for title insurance in the amount of the purchase price.

Prior to Twenty (20) days before any scheduled closing of this contract, Purchaser, at its option and expense, may obtain a Surveyor's Real Property Report or boundary survey of the property. Prior to Twenty (20) days before any scheduled closing, Purchaser shall furnish a copy of the Surveyor's Real Property Report, or boundary survey of the property to the Vendor, stating in writing any defects that adversely affect the use of the property as it exists at the time of the contract. Failure of Vendor to correct the defects within thirty (30) of receipt of said notice of defects, will render this contract null and void, unless Purchaser agrees in a writing, that it will accept the title "as is". If the contract terminates under this paragraph, Purchaser's earnest money deposit is to be refunded, subject to other terms in this contract. Vendor is responsible for clearing any such defects between date of this contract and closing.

### **5. NO LIENS NOT DISCLOSED.**

Vendor covenants that Vendor will cause no liens or encumbrances to be placed on the above described real estate during the executory term of this contract and further covenant and agree to hold Purchaser harmless from any such liens or encumbrances so incurred.

### **6. INSPECTIONS.**

Upon reasonable advance notice to Vendor, Vendor agrees to provide access for appraiser(s) and other professionals as may be provided for in the contract or required by the Purchaser's lender. Purchaser or its agents may be present. Vendor grants Purchaser the right to enter and inspect the property and right to have utilities turned on or transferred, at Purchaser's expense, within five (5) days prior to any scheduled closing.

### **7. RISK OF LOSS.**

The risk of loss of any improvements on the property shall be borne by the Vendor until title is transferred at closing. If any improvements covered by this contract shall be damaged or destroyed, Vendor shall immediately notify Purchaser in writing of the damage or destruction, the

amount of insurance proceeds payable, if any, and whether Vendor will, prior to closing, restore the property to its original condition. In the event the property is not to be restored to its original condition by Vendor before the closing date, Purchaser may proceed with the transaction and will be entitled to all insurance money, if any, payable to Vendor under all policies insuring the improvements or rescind the contract and thereby release all parties from liability hereunder by giving written notice of their election to Vendor within ten days after Purchaser has received written notice of such damage or destruction and the amount of insurance proceeds payable. Failure by Purchaser to notify Vendor within such time period after the receipt of the notice shall constitute an election for rescinding the contract. In the event Vendor advises the property will be restored to its original condition by the Vendor before the closing date, and if Vendor fails to complete such restoration as required herein, Vendor shall be in default and Purchaser shall have the remedies provided for herein.

If the premises is damaged by a hazard in part or whole, and is not repaired prior to closing, Purchaser, at its sole option and discretion, may opt to purchase the premises at a reduced amount after deduction for the cost to repair said damage.

#### **8. DEFAULT PROVISIONS.**

If any party defaults in the performance of any obligation provided by this contract, the party claiming a default shall notify the other party in writing of the nature of the default, the time allotted for curing the default (if not otherwise specified herein) and their election of remedy if the default is not cured by the specified time.

In the event either party performs their part of this contract up to the date of closing or tenders performance of their part of this contract to close, and the other party materially defaults in his part of the contract, the non-defaulting party shall be entitled to any remedy at law or in equity or in addition to any equitable relief or actual damages, the non-defaulting party shall be entitled to his costs, expenses and reasonable attorney's fees incurred in connection with any litigation under this contract, including equitable relief or collection of damages.

#### **9. CLOSING.**

(A.) This transaction shall be closed on or before the 60<sup>th</sup> day after the Purchaser is awarded the purchase money grant, at Hansen Franklin Title Company in Union, Missouri, or at such other time and place as may be agreed upon after giving the parties at least thirty (30) days written notice.

(B.) In the event of title defects requiring corrective work on the part of the Vendor, this transaction shall be closed within ten days after the correction of said title defects at the above place and at a date and hour to be selected by Vendor.

(C.) At closing, all monies and papers shall be delivered and transferred to the respective parties and possession of the property shall be delivered to Purchaser as herein provided. At the closing, real estate and property taxes for the then current year shall be paid by the parties on a pro-rata share.

#### **10. CLOSING COSTS.**

Purchaser shall pay for the expense of any title work requested. Purchaser shall pay for the preparation and recording of the deed, owners and lender's title insurance and preparation and filing on the W-9 Form. Vendor shall pay for the preparation and recording of the warranty deed. Taxes shall be prorated between the parties as of the date of the closing. Vendor shall be responsible for all liens on property, if any.

**11. WORDS AND PHRASES.**

The words and phrases herein contained shall be construed to be in the singular or plural and as masculine, feminine or neuter, according to the context. Any numbers, titles, or phrases introducing terms or paragraphs of this instrument are for reference only and do not compose any part of the agreement itself.

**12. ENTIRE AGREEMENT.**

The contract constitutes the entire agreement between the parties hereto and there are no other understandings, written or oral, relating to the subject matter hereof and this agreement may not be changed, modified or amended, in whole or in part, except in writing signed by all parties.

**13. ASSIGNMENT OF RIGHTS.**

This contract shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives and assigns, such that Purchaser has the right to assign its entitlements under this agreement without the consent of the Vendor.

**14. NOTICE.**

**TIME IS OF THE ESSENCE IN THE PERFORMANCE OF ALL OBLIGATIONS**

**15. NO WARRANTY.**

The Purchaser acknowledges that the Purchaser has not been influenced to enter into this transaction nor has relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing, except for the following additional warranties and representations, if any, made by Vendor: NONE, property is sold AS IS.

**16. REAL ESTATE BROKERAGE DISCLOSURE.**

Purchaser and Vendor confirm that neither is represented by any real estate agent or broker and that no commissions are to be paid in this transaction.

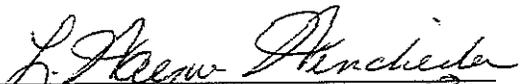
IN WITNESS WHEREOF, the parties have hereunto subscribed their names in duplicate the day and year first above written.

Purchaser:  
CITY OF PACIFIC, MISSOURI:

BY:

\_\_\_\_\_  
Jeffrey M Palmore, Mayor

Vendor:  
WINCHESTER FAMILY TRUST

  
Wayne L Winchester, Trustee

  
Teri L Winchester, Trustee