File #: 63906, **Version:** 1

Fiscal Note

The proposed resolution authorizes the sale of eight vacant residential lots from the City to Tri-State Custom Construction, LLC for the sale and construction of owner-occupied homes. The anticipated total settlement price to be paid to the City is $239,680 minus real estate costs for title work and miscellaneous closing costs. Net proceeds to the City will be deposited into the General Land Acquisition Fund.

Title

Authorizing the execution of a Purchase and Sale Agreement between the City of Madison and Tri-State Custom Construction LLC, for the City's disposal of eight vacant residential lots located in the Owl's Creek Subdivision. (16th A.D.)

Body

WHEREAS, in 2014 the City of Madison ("City") purchased one outlot and 50 vacant residential lots within the Owl's Creek Subdivision ("Owl Creek Lots") on Madison's south-east side, in the general area depicted on the attached Locator Map, for the settlement amount of $510,000, as authorized by File ID No. 34538, Resolution Enactment No. RES-14-00574, adopted by City Common Council on August 5, 2014 ("Authorizing Resolution"); and

WHEREAS, per the Authorizing Resolution, rationale for the City's purchase of the Owl Creek Lots included mitigating challenges in the neighborhood and providing the City with "the opportunity to have a significant impact on the timing and quality of the development in the Owl's Creek neighborhood"; and

WHEREAS, on November 11, 2017, Common Council accepted a Report, File ID #48236, containing the Owl Creek Assessment and Strategic Plan ("Plan") along with the Racial Equity and Social Justice Initiative assessment of the Plan; and,

WHEREAS, following guidance in the Plan to complete the build out of the neighborhood, in 2020 Economic Development Division staff completed a Request for Proposals process, City RFP #8966-0-2020-BG, and three buyer-developers were selected to which the City intends to sell approximately half of the Owl Creek Lots; and,

WHEREAS, the sale of and construction of owner-occupied homes on a portion of the Owl Creek Lots is intended to provide stability to the Owl Creek neighborhood, construction jobs in a time of economic challenge, and provide the City with revenue to reinvest in affordable housing; and,

WHEREAS, Tri-State Custom Construction LLC ("Buyer") agrees, in accordance with an executed Purchase and Sale Agreement ("Agreement"), to purchase the portion of the Owl Creek Lots legally described on Exhibit A ("Property").

NOW, THEREFORE, BE IT RESOLVED that the City's Common Council hereby authorizes the City's execution, as Seller, of the Agreement with the Buyer for the purchase of the Property, subject to materially, though not exclusively, the following terms and conditions:

1. Property. The Buyer shall purchase, and the Seller shall sell and convey by Special Warranty Deed ("Deed") fee simple ownership in the real property as generally addressed and legally described in attached Exhibit A ("Property"). The Property shall be conveyed at two closings of four parcels each

("Closing One" and "Closing Two"; collectively, "Closings").

2. Effective Date. The "Effective Date" shall be the later date of execution of the Agreement by the Seller or the Buyer, as indicated on the signature page.

3. Purchase Price. The total purchase price for the Seller's interest in the Property ("Purchase Price") shall be Two Hundred Thirty-Nine Thousand Six Hundred Eighty Dollars ($239,680), payable in cash at the Closings, subject to the adjustments and prorations herein provided. The purchase price at Closing One is anticipated to be One Hundred Sixteen Thousand Two Hundred Seventy Dollars ($116,270), and the purchase price at Closing Two is anticipated to be One Hundred Twenty-Three Thousand Four Hundred Ten Dollars ($123,410). The anticipated closing prices may be changed based on the combination of lots in Exhibit A sold at the Closings. However, the sum of the price paid at each of the Closings shall not exceed the Purchase Price, and the entirety of the Property must be conveyed.

4. Earnest Money. Within ten (10) business days from the Effective Date, the Buyer shall pay to the Seller, Fifteen Thousand Dollars ($15,000) ("Earnest Money").

5. Delivery of Documents. Within ten (10) days of the Effective Date and throughout the Due Diligence Period as described in Paragraph 6, the Seller will reproduce at the Seller's expense and send to the Buyer copies of the following documents in the Seller's possession or control: all environmental studies, reports, permits, applications and remediation plans or assessments of the Property.

6. Due Diligence Period. The Buyer shall have sixty (60) days from the Effective Date ("Due Diligence Period") to review, test and inspect all aspects of the Property, at its sole cost and expense. If within the Due Diligence Period the Buyer determines, in its sole discretion, that it does not desire to purchase the Property, the Buyer may provide written notice to the Seller of such desire and the Agreement shall terminate immediately. If the Buyer timely terminates the Agreement as provided in this paragraph, the Earnest Money shall be immediately refunded to the Buyer.

7. Access to Property. The Buyer and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors shall be permitted access to the Property for the purpose of conducting the inspections and testing during the Due Diligence Period including, but not limited to, a Phase 1 or 2 environmental assessment of the Property and/or a physical inspection of the Property and any building and related improvements located on the Property at reasonable times with at least twenty-four (24) hour notice to the Seller. The Buyer's and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors access to, and inspection of, the Property shall be at the Buyer's sole risk and expense and the Seller shall have no responsibility therefor. The Buyer will repair, at the Buyer's and the Buyer's authorized agents, engineers, consultants, appraisers, and contractors cost, all damages caused by its inspections or testing so that the condition of the Property is returned to as good or better.

8. Closings.

   a. Closing One shall occur within thirty (30) days from: (a) the expiration of the Due Diligence Period; or (b) the date of Seller's receipt of notice from Buyer requesting an earlier date for Closing One; or (c) on such other date agreed to in writing by the Parties.

      Closing Two shall occur: (a) on or before the date sixty (60) days after the date of Closing One; or (b) on such other date agreed to in writing by the Parties.

   b. The Seller shall provide, and the Buyer shall execute at the Closings, Land Use Restriction Agreements ("LURA"), to be recorded at the Dane County Register of Deeds, containing the following terms and conditions:

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i) The LURA will be in effect for a period of ten (10) years from the date it is executed by the Buyer ("LURA Term"), and shall be binding on any and all future owners of the property during the LURA Term;
ii) The LURA will require the Buyer to construct single-family, owner-occupied homes on the Property;
iii) The LURA will require any and all future owners of the Property during the LURA Term to use the property exclusively as an owner-occupied principal residence, and not for rental housing purposes;
iv) If the Property is used for purposes other than owner-occupied principal residence, or is used for rental housing purposes during the LURA Term, the then-owner of the Property shall pay liquidated damages to the Seller in the amount of Fifty Thousand Dollars ($50,000);
v) The LURA shall not terminate except at the sole discretion of the Seller.

c. The Seller shall provide, and the Buyer shall execute at the Closings, Option to Purchase documents to be recorded at the Dane County Register of Deeds, containing, but not limited to, the following terms and conditions:

i) The Buyer must obtain a Certificate of Occupancy within one (1) year of the date of the respective Closings;
ii) If a Certificate of Occupancy is not obtained within one (1) year, the Seller shall have, at the Seller's sole discretion, the option to require the Buyer to deed the impacted lot and any improvements located thereon back to the Seller ("Option");
iii) Any transfer back to the Seller shall be completed within sixty (60) days of the date the Seller provides notice to the Buyer of the Seller's intent to exercise the Option;
iv) The Buyer shall pay all costs related to exercising the Option;
v) In the event the Option is exercised, the Buyer shall compensate the Seller One Dollar ($1.00) for the portion of the Property so transferred.

d. The Buyer shall provide a one (1) year Basic Universal Home Protection warranty ("Warranty") for the future purchaser, effective beginning the date of the deed of the completed home to the future purchaser. Failure to provide the Warranty shall make the Buyer liable to future purchasers to provide the same one (1) year coverage as detailed in the Warranty and pay for all costs related thereto. This Warranty provision shall survive the Closings and be included in purchase and sales agreements or offer to purchase contracts with future purchasers.

e. The Seller shall obtain approval from the City's Common Council for the execution of the Agreement.

9. Default. If the Seller defaults in the full and timely performance of any of its obligations hereunder, the Buyer shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to terminate this Agreement or seek specific performance. If this Agreement is terminated due to the default of the Seller the Earnest Money shall be promptly refunded to the Buyer. If the Buyer defaults in the full and timely performance of any of its obligations hereunder, the Seller shall be entitled to all remedies available hereunder or otherwise at law or in equity, including, without limitation, the right to retain all Earnest Money as liquidated damages, the right to terminate this Agreement or seek specific performance.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to sign, accept, and record any and all documents and legal instruments required to complete the transactions contemplated in this resolution, on a form and in a manner that has been approved by the City Attorney.