



Legislation Text

File #: 74311, Version: 1

Fiscal Note

Legistar File 70640 enacted April 25, 2022 authorized the City to engage in redevelopment activities in support of the Centro Hispano redevelopment project. This support includes transferring several City-owned lots to Centro for little to no consideration, purchasing Centro's existing property, and leasing the existing property back to Centro until its new facility is ready for occupancy. These efforts are achieved through three separate resolutions being considered simultaneously. Legistar File 74311 authorizes the sale of City-owned properties to Centro. Legistar File 74309 authorizes \$2.2m from Economic Development's Land Banking capital program to purchase Centro's existing property (\$1.7m) and for any related costs (\$500k). Legistar File 74312 leases the existing property back to Centro for little to no consideration.

Title

Authorizing the City's execution of a Purchase and Sale Agreement between the City of Madison and Centro Hispano, Inc. for the sale of City-owned properties located at 825, 833 and 837 Hughes Place and 2405 Cypress Way in the City of Madison. (14th AD)

Body

WHEREAS, Centro Hispano of Dane County ("Centro") is a leading social service provider for the Latinx community of Dane County, providing a range of programs for youth and families, workforce and career training services, and numerous community events and workshops; and

WHEREAS, City staff have worked closely with Centro to secure a site that will provide Centro sufficient space to expand its programs through the construction of an estimated \$20 million, 25,000 square foot facility (the "Centro Redevelopment Project"), replacing its existing space at 810 W. Badger Road; and

WHEREAS, the City purchased a vacant commercial property at 833 Hughes Place in December 2021 (Enactment No. RES-21-00805, File I.D. No. 68333) that is adjacent to two vacant City-owned lots at 2405 Cypress Way and 837 Hughes Place, with the stated intention of combining and conveying all three lots with a portion of the MPD South Station parking lot (825 Hughes Place) to Centro for redevelopment (together, the "City Parcels"); and

WHEREAS, the City also intends to purchase Centro's existing property at 810 W. Badger Road to replace MPD parking and support additional redevelopment activities consistent with the South Madison Plan; and

WHEREAS, the Common Council previously authorized City staff to proceed with reasonable and necessary due diligence and real estate activities supporting the Centro Redevelopment Project, including negotiation of an agreement to sell the City Parcels to Centro (Enactment No. RES-22-00311, File I.D. No. 70640).

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Madison hereby authorizes the execution of a Purchase and Sale Agreement ("Agreement") between the City ("Seller") and Centro Hispano, Inc. and/or its assigns ("Buyer"), for the purchase of the Property on substantially the following terms and conditions:

1. Property. The City is the owner of the parcels legally described in Exhibit A ("City Parcels"), located at 825, 833 and 837 Hughes Place, and 2405 Cypress Way in the City of Madison Wisconsin. At Closing, Buyer shall purchase and City shall sell and convey by Quit Claim Deed (the "Deed") fee simple ownership

of a newly platted lot, having the area, dimensions, and boundaries shown as Lot 1 in Exhibit B for the Property (defined below), comprised of the City Parcels in whole or in part pursuant to a Certified Survey Map (“CSM”) to be furnished and recorded with the Dane County Register of Deeds prior to Closing in a form substantially consistent with Exhibit B.

Attached in Exhibit B is a draft of the CSM depicting the newly platted Lot 1 (“Property”) to be conveyed to Buyer, including all rights, easements and appurtenances pertaining thereto and all improvements, trees, bushes, landscaping, foliage, and, to the extent such rights exist, all mineral, oil, gas, hydrocarbon substances, development rights, air rights, water rights, and water stock thereon.

2. Project Description. Buyer intends to construct an approximately 25,000 gross square foot commercial building on the Property principally containing office, classroom, and event spaces; an outdoor plaza; and surface and underground parking areas (“Project”).
3. Effective Date. The “Effective Date” shall be the later of execution of this Agreement by City or Buyer, as indicated on the signature page herein.
4. Purchase Price. The purchase price for the City’s ownership interest in the Property shall be One and no/100 Dollar (\$1.00) (“Purchase Price”). The Purchase Price shall be payable in cash at Closing, as described in Paragraph 14, subject to the adjustments and prorations provided in this Agreement.
5. Delivery of Documents. Within ten (10) business days of the Effective Date, City will send to Buyer copies of all available Property related documents (if applicable) including: plans/drawings, service contracts, leases, any environmental studies, soil reports, permits, applications, existing title insurance policy, and remediation plans or assessments of the Property in City’s possession or control. At any time prior to Closing, City shall provide any additional or supplemental documents at Buyer’s reasonable request.
6. Due Diligence Period.
 - a. Within one hundred and eighty (180) calendar days following the Effective Date (“Due Diligence Period”) Buyer may perform the following: (i) obtain, at Buyer’s sole cost, acceptable financing, appraisal, and Certified Survey Map; (ii) conduct any physical and/or environmental tests, studies, or investigations deemed necessary by Buyer, and (iii) confirm whether Buyer is able to obtain any and all municipal, state, and federal approvals, permits, licenses, consents of use, and zoning approvals from all governmental or private bodies/agencies having jurisdiction over Buyer’s intended use of the Property. In the event that municipal approvals are delayed or stalled due to unforeseen events out of the control of either party, then the Due Diligence Period shall be extended a commensurate period of time.
 - b. If within the Due Diligence Period Buyer determines, in its sole discretion, that it does not desire to purchase the Property, Buyer may provide written notice to City of such desire to terminate this Agreement, and the parties shall have no further obligation or liability under this Agreement, except for any which survive the Closing or early termination of this Agreement.
 - c. Buyer agrees that if it terminates this Agreement, as provided for herein, or fails to close the transaction contemplated hereby for any reason, then, Buyer shall deliver to City, at no cost to City, but without representation or warranty with respect to the findings or information provided therein about the Property, complete copies of all third party consultant produced of Buyer’s due diligence reports other than any attorney work product or attorney-client privileged documents.

- d. Buyer shall keep the Property free of all liens arising through its inspection of the Property, and shall cause all such liens to be removed immediately upon being notified of the same.
 - e. If Buyer does not provide written notice to City terminating this Agreement on or prior to the end of the Due Diligence Period, this Agreement shall remain in full force and effect.
 - f. Should Buyer desire to close prior to the end of the Due Diligence Period, Buyer may provide City with written notice of its intent to do so. The provision of such notice by Buyer shall not affect the terms contemplated in this Agreement, except that the closing date shall occur on or before thirty (30) days from the date City receives such notice, unless the parties agree in writing to another date.
7. Construction Contingency. Buyer agrees to commence construction, defined as the pouring of the footings and the foundation for the Project, on the Property within eighteen (18) months of the Closing Date ("Construction Deadline"). In the event Buyer fails to commence construction in that timeframe, City shall have the right, but not the obligation, exercisable by written notice to Buyer given prior the commencement of construction by Buyer to the extent required above to purchase the Property back from Buyer at the Purchase Price plus any reasonable out-of-pocket costs and expenses incurred by Buyer with respect to site planning and due diligence associated with the purchase described in this Agreement, but less any closing fees, title fees, and transfer costs incurred by the City associated with the sale described in this Agreement ("Repurchase Option"). Buyer shall provide City with invoices of the aforementioned out-of-pocket costs. The City shall provide written notice to Buyer of its election to exercise the Repurchase Option of the Property. The Repurchase Option shall be documented and recorded at Closing. This paragraph shall survive the approved assignment or transfer of this Agreement. The Repurchase Option shall terminate upon the earlier of (i) Buyer's timely commencement of construction of the Project, or (ii) 5 years after the Closing Date. Within 30 days after the Repurchase Option has terminated, the parties shall cooperate in executing and recording a release of the Repurchase Option.
8. Access to the Property. Buyer and 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 (and thereafter if Buyer does not terminate 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 at reasonable times with at least twenty-four (24) hours' prior written notice to City. Buyer's and Buyer's authorized agents, engineers, consultants, appraisers, and contractors seeking access to, and inspection of, the Property shall be at Buyer's sole risk and expense, and City shall have no responsibility therefor. Buyer shall, at Buyer's sole cost, repair all damage caused by its inspections or testing so that the condition of the Property is returned to substantially the same condition that existed prior to the inspections or testing.
9. Assignment/Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, executors, administrators and legal representatives. Buyer shall not assign this Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed.
10. Insurance. Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors performing work on the Property (the "Contractors") shall carry commercial general liability insurance, including but not limited to bodily injury, property damage, personal injury, covering as insured as applicable Buyer or the applicable Contractors and name the City as additional insured, with a minimum limit of one million dollars (\$1,000,000) per occurrence. These policies shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide City

thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Agreement. As evidence of this coverage, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall furnish City with a certificate of insurance on a form approved by City not to be unreasonably withheld, and, if requested in writing by the City Risk Manager, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall also provide copies of additional insured endorsements or policy to City prior to the performance of any work on the Property. If the coverage required above expires while this Agreement is in effect, Buyer and any of its authorized agents, engineers, consultants, appraisers, and contractors shall provide a renewal certificate to City for approval.

11. Survey. Buyer will be responsible at its cost for the preparation of a CSM for the creation of the Property as a separate legal parcel consistent with Exhibit B. If Buyer chooses to obtain an ALTA survey of the Property the Buyer will pay for the ALTA survey. Without binding any discretionary commission or Common Council of the City, the City shall provide reasonable cooperation with respect to the preparation, recording, and approval of the CSM and will cooperate to have the CSM recorded prior to Closing so that the Property will be a legally existing separate parcel of land as of Closing.
12. Title Insurance. City shall provide to Buyer, at City's expense, within 15 days after the Effective Date a commitment ("Title Commitment") from Title Company to issue an ALTA Owner's Title Insurance Policy in the amount of the Purchase Price ("Title Policy"). The commitment shall show the title condition of the Property as of a date no more than thirty (30) days before such title proof is provided to Buyer; however, the title shall be updated for Closing as may be required by the Title Company. The title commitment shall be subject only to liens, which will be paid out of the proceeds of the Closing and to any exceptions acceptable to Buyer ("Permitted Exceptions"). Buyer shall notify City of any objection to title, in writing, no later than forty-five (45) days of receipt of the title commitment from City. City shall have a reasonable time, but not to exceed thirty (30) days, to remove the objections and Closing shall be extended as necessary for this purpose. Should City be unable or unwilling to remove an objection and which Buyer is unwilling to waive, this Agreement shall be void. City shall ensure that all mortgages and other monetary liens to which the Property is subject are released and discharged at or prior to Closing.
13. Limited Representations and Warranties: AS-IS Condition. Except as otherwise provided herein, and in the Deed, Buyer shall purchase the Property in "AS-IS, WHERE-IS" condition and "with all faults," and shall agree that it relied upon no warranties, representations, or statements by City, its agents or employees, in entering into this Agreement or in closing the transaction described therein. Except as provided below, Buyer's closing on the acquisition of the Property shall constitute conclusive evidence that Buyer is satisfied with the condition of and title to the Property and has waived or satisfied the due diligence requirement provided in Paragraph 6 above.
14. Closing.
 - a. Closing shall occur on or before thirty (30) days from: (a) the expiration of the Due Diligence Period; or (b) the date of the Seller's receipt of notice from the Buyer requesting an earlier date of Closing; or (c) such other date agreed to in writing by the Parties, at the office of the Title Company issuing the commitment for title insurance, unless the Parties agree in writing to an alternate Closing location.
 - b. City agrees to execute and deliver to Buyer at Closing the Deed conveying the Property to Buyer subject only to Permitted Exceptions.
 - c. Buyer shall pay all recording/filing fees, except that City shall pay the recording/filing fees for such documents as are required to be recorded/filed in order to cause title to the Property to be in the

condition called for per Paragraph 13 above.

- d. City shall be responsible for any and all special assessments against the Property existing as of the date of Closing, including any accrued interest. Buyer shall be responsible for any future special assessments against the Property assessed or levied on or following the date of Closing. City has disclosed or will disclose during the Due Diligence Period anticipated special assessments upon the Property from and after the Effective Date.
 - e. City shall complete a Wisconsin Real Estate Transfer Return and pay any Wisconsin Real Estate Transfer fee due in connection with the conveyance of the Property.
 - f. City agrees to execute and deliver to the Title Company any affidavits required to issue an owner's policy in the condition called for by this Agreement.
 - g. City shall pay all costs of providing the title commitment, Owner's Policy of Title Insurance and a GAP endorsement to Buyer. Buyer shall be responsible for any simultaneous issue premium for a Lender's Policy, and any endorsements requested by Buyer or its Lender. Buyer shall also pay all of its Lender's fees due at Closing, if any.
 - h. Buyer and City shall share equally the closing fee charged by the Title Company.
 - i. There are no general real estate taxes that are payable with respect to the Property. Buyer is responsible for all taxes assessed as a result of the acquisition of the Property subsequent to Closing.
 - j. The final storm water bill for the Property as of the date of Closing shall be paid by City.
15. Fees. Buyer will be responsible for any future fees related to any development on the Property after Closing including, but not limited to: MMSD fees, installation of all private utilities and utility hook-up charges, and any work in the right of way required by City Engineering (if any), connection fees, impact fees, interceptor fees, curb-cut/driveway apron fees, CARPC fees, etc. If the City needs to pay any MMSD fees or any municipal fees to record the CSM prior to Closing, then these costs will be added to the Closing settlement statement and paid for by the Buyer at Closing.
16. Simultaneous Closing. Notwithstanding anything to the contrary set forth elsewhere herein: (i) each party's obligation to proceed with the closing of the transaction contemplated by this Agreement is conditioned upon the simultaneous closing of the transaction contemplated in that certain Purchase and Sale Agreement between the parties, executed as of an even date herewith, concerning the City's acquisition of Centro's interest in Lot 2 of the CSM from Centro (the "City Purchase Agreement"); and (ii) the deadline for the closing of the transaction contemplated by this Agreement shall be extended if necessary to accommodate the simultaneous closing of the transaction contemplated by the City Purchase Agreement.

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