



**Roll Call Number**

\_\_\_\_\_

**Agenda Item Number**

42

**Date** November 7, 2016

Request from James Swanstrom, Children and Family Urban Movement, to speak regarding the purchase of City-owned property at 915 College Avenue.

Moved by \_\_\_\_\_ to

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MOORE				
WESTERGAARD				
TOTAL				
MOTION CARRIED		APPROVED		

**CERTIFICATE**

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

42  
REGISTRATION FORM TO SPEAK AT CITY COUNCIL MEETING

To: The Honorable Mayor  
And  
Members of the City Council  
City of Des Moines, Iowa  
c/o City Clerk

FILED  
2016 NOV -1 PM 3:50  
CITY CLERK  
DES MOINES, IA

I/We JAMES SWANSTROM / CFUM  
(Please Print)

hereby request permission to speak at the Des Moines City Council

meeting of NOV. 7th 2016, regarding  
PURCHASE OF CITY-OWNED PROPERTY  
AT 915 COLLEGE AVENUE

Have you contacted any City Staff regarding the subject matter of your request? If so, please advise which department or individual.

Name: James A Swanson  
(Signature)

Address: 1548 8th ST, DM

Daytime Phone: 515-490-9097

**PROCEDURAL RULES OF DES MOINES CITY COUNCIL:**

Part III. Agenda

Rule 16. Citizen Agenda Requests. Any citizen may request the right to have an item placed on the Agenda (including a request to speak) by filing such request in writing with the City Clerk prior to noon on the Wednesday preceding the Council meeting.



42

1 November 2016

Mayor and City Council  
City of Des Moines  
602 Robert D. Ray Drive  
Des Moines, IA 50309

**Re: Supplement to Letter of Intent to Purchase 915 College Avenue**

Ladies and Gentlemen:

This Supplement to Letter of Intent is intended to supplement the original Letter of Intent dated August 16, 2016 from Children and Family Urban Movement ("CFUM") to the City of Des Moines, Iowa ("City") regarding CFUM's potential purchase of a tract of land locally known as 915 College Avenue, Des Moines, Iowa, consisting of approximately 2.183 acres and legally described as follows:

Lots 2 & 3, Old Dowling Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

(the "Property"). A copy of the original Letter of Intent is enclosed for your reference. Neither this Supplement nor the original Letter of Intent shall be considered an agreement or offer to purchase the Property. Rather, they are intended to set forth the terms which CFUM will consider in making or accepting a formal agreement or offer, if any (the "Purchase Agreement"). Specifically, this Supplement is intended to provide the City with further details as to CFUM's present intentions with respect to the proposed development of the Property (the "Development") and the associated timeline.

A. Development Plan. CFUM's present intentions for the Development include construction of a new building to house CFUM's headquarters and operations, and thereafter to work with a housing developer to pursue construction of housing on the remainder of the Property. Both uses will be appropriate within the 9<sup>th</sup> Street Historic District and the broader neighborhood development patterns. CFUM intends to retain appropriate architectural, engineering, and other design and development professionals (collectively, the "Development Professionals") in connection with the Development.

B. Timeline. CFUM acknowledges that the City expects CFUM to develop a site plan for the entire Property and to work in coordination with the chosen developer regarding final ownership of the various portions of the Property. CFUM understands that the City does not intend to sell a portion of the Property to CFUM without being presented with a proposal for housing that is in the beginning stages of development and financial approvals. Accordingly, following acceptance of CFUM's Letter of Intent, as supplemented herein, and prior to execution of a Purchase Agreement or Development Agreement, CFUM proposes the following steps and schedule for the Development:

**Within 3 months**

1. CFUM will secure a development consultant to assist CFUM with the following:
  - a. Development of a draft site plan that maximizes the use of the Property but retains usable green space.
  - b. Determination of basic costs and size of the commercial building and the feasibility of a two-story building that can utilize a smaller footprint and/or provide space for additional commercial/office/nonprofit agency usage.



- c. Identification of the interest in the Property of housing developers that provide different types, tenures and densities of housing and can access funding from several sources.

#### **Within 6 months**

2. CFUM will meet with potential housing developers and ensure that all developers consult with City staff before proceeding beyond early stages of costs and design.
3. CFUM will identify an architect to proceed with layout of the Property and design for the commercial building.
4. CFUM will propose an ownership structure for the Property.

#### **Within 9 months**

5. CFUM, the architect and/or developer for the commercial building, and the proposed housing developer will hold a pre-application meeting with City staff to discuss rezoning, zoning relief, and City approvals from all applicable bodies. Applicable City bodies may include, as appropriate:
  - a. Historic District Commission.
  - b. Urban Design Review Board.
  - c. Planning and Zoning Commission.
  - d. Zoning Board of Adjustment.

#### **Within 12 months**


6. Following receipt of all applicable City approvals, the City Council will hold a public hearing to consider approval of the City's entry into a Purchase Agreement and, as applicable, Development Agreement for the Development. The City may enter into one or more agreements with CFUM and/or the housing developer for development of the entire Property or applicable portions thereof.
7. Any Purchase Agreement or Development Agreement will expire one year after City Council approval, with possibility for a one year extension.

#### **Ongoing**

8. CFUM will meet and communicate with the River Bend and King-Irving Neighborhood Associations to provide updates and seek input with respect to the Development from time to time.
9. CFUM will meet and communicate with City planners as necessary.

As stated above, neither this Supplement nor the original Letter of Intent is an Offer to purchase the Property, but are simply intended to guide formal negotiations with respect to the purchase and development of the Property. We look forward to continuing a strong working relationship with the City and the neighborhood as we proceed with this transaction.

#### **CHILDREN AND FAMILY URBAN MOVEMENT**

By:   
James A. Swanstrom, Executive Director

cc: Mary L. Neiderbach, Community Development Dept., via email



August 16, 2016

Mary L. Neiderbach  
Community Development Department  
City of Des Moines  
602 Robert D. Ray Drive  
Des Moines, IA 50309

**Re: Letter of Intent to Purchase 915 College Avenue**

Dear Ms. Neiderbach:

This Letter of Intent is intended to request formal negotiations between Children and Family Urban Movement ("CFUM") and the City of Des Moines, Iowa ("City") for CFUM's potential purchase of a tract of land locally known as 915 College Avenue, Des Moines, Iowa, consisting of approximately 2.183 acres and legally described as follows:

Lots 2 & 3, Old Dowling Place, an Official Plat, now included in and forming a part of the City of Des Moines, Polk County, Iowa

(the "Property"). This letter shall not be considered an agreement or offer to purchase the Property. Rather, it is intended to set forth the terms which CFUM will consider in making or accepting a formal agreement or offer, if any (the "Purchase Agreement"). Accordingly, CFUM proposes the following terms for negotiation of the purchase and sale of the Property:

1. Development Plan. Following acceptance of this Letter of Intent and prior to execution of the Purchase Agreement, the City and CFUM shall work in cooperation on a plan for CFUM's development of the Property following the purchase (the "Development"). CFUM's present intentions for the Development include construction of a new building to house CFUM's headquarters and operations, and thereafter to pursue construction of residential housing to the extent feasible and viable in appropriate portions of the remainder of the Property. CFUM intends to retain appropriate architectural, engineering, and other design and development professionals (collectively, the "Development Professionals") to develop conceptual drawings for the Development, which drawings are expected to include such details as appropriate and available as to the amount of land to be purchased and the purpose, use, and layout of proposed improvements. CFUM intends to seek appropriate input on its Development plan from the River Bend Neighborhood Association and the King Irving Neighborhood Association. CFUM and the Development Professionals will participate in a pre-application meeting with City staff to discuss the Development plan prior to any formal approval requests before the Urban Design Review Board, Historic Preservation Commission, Planning and Zoning Commission, Board of Adjustment, or other applicable City body, and thereafter intend to seek approval from all applicable bodies. Following receipt of all such approvals, the City Council shall hold a public hearing to consider approval of the City's entry into the Purchase Agreement. The preceding steps reflect CFUM's understanding of the expected procedures as previously outlined by the City and reflect CFUM's planned Development as currently envisioned; however, CFUM reserves the right to alter such procedures and its planned Development as necessary and appropriate as market conditions, discussions with City staff, or other appropriate factors may dictate.

2. Purchase Price; Appraisal. The purchase price for the Property shall be the fair market value as determined according to a new qualified third party appraisal. The appraisal shall be completed at



CFUM's expense by an appraiser mutually agreeable to CFUM and the City. In the event either party disputes the initial appraisal, then each party shall obtain an additional appraisal at its expense, and the purchase price shall be equal to the average of the three appraisals.

3. Closing Date. The Closing Date shall be on such date as the parties may mutually agree and shall be set promptly following satisfaction of all of CFUM's desired due diligence; receipt of all required City approvals with respect to the City's sale of the Property and approval of the Development, including but not limited to all building, site plan, subdivision, and zoning permits and approvals; receipt of suitable financing commitments for acquisition and development of the Property; and satisfaction of any and all other contingencies for the purchase and sale as set forth in the Purchase Agreement. The Closing Date shall in no event occur later than one year after City Council approval of entry into the Purchase Agreement, unless a one year extension is exercised pursuant to the terms to be set forth in the Purchase Agreement.

5. Possession. The date of possession shall be the Closing Date.

6. Due Diligence; Right of Entry and Restoration. Upon execution of the Purchase Agreement and continuing until the Closing Date or earlier termination of the Purchase Agreement, the City shall give CFUM, at its cost, a continuing right of access to and entry on the Property to conduct surveys, soil suitability, and other testing as needed. CFUM may perform all such studies and evaluations as desired to determine whether the Property is suitable for the Development, and whether CFUM has the means and resources to complete the Development, all in CFUM's sole and absolute discretion. If CFUM's testing, studies, and evaluations reveal any deficiencies in the Property, or otherwise indicate CFUM's proposed development is infeasible or undesirable for any reason whatsoever, in CFUM's sole discretion, CFUM shall have the right to void the Purchase Agreement, upon notice to the City, in which event, the City shall refund to CFUM any earnest money and neither party shall have any further obligation to the other.

7. Authorization for Zoning and Regulatory Approvals. The City agrees to execute such authorizations as necessary to allow CFUM to file any applications necessary with any United States Government agencies, the State of Iowa, Polk County, or the City of Des Moines for development or use of the Property. CFUM shall seek all necessary zoning and regulatory approvals for the Development, including final Site Plan/Concept Plan approvals. If CFUM believes it will be unable to secure any necessary approvals in CFUM's sole discretion, CFUM shall have the right to void the Purchase Agreement, upon notice to the City, in which event, the City shall refund to CFUM any earnest money and neither party shall have any further obligation to the other.

8. Environmental Matters.

(a) Definitions. For purposes of this Letter of Intent, "Hazardous Material" means:

(i) "hazardous substances," as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq.;

(ii) "hazardous wastes," as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6903 et seq.;

(iii) "hazardous substances" or "hazardous waste" under Chapter 455B, Iowa Code;

(iv) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended;

(v) petroleum and petroleum products;

(vi) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. 2011 et seq., as amended or hereafter amended;

(vii) asbestos in any form or condition;

(viii) any "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act, 42 U.S.C. §6991 et. seq.;

(ix) any "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. § 1321).

(b) Representations and Warranties. The City shall represent and warrant to CFUM that, to the best of the City's knowledge, as of the date of the Purchase Agreement and as of the Closing Date:

(i) The Property and the use and operation thereof, are currently in compliance with all applicable laws, ordinances, requirements and regulations relating to public health and safety and protection of the environment ("Environmental Laws"). All governmental permits and licenses required by the business heretofore conducted by the City are in material compliance therewith. All Hazardous Materials generated or handled on the Property by the City have been disposed of in a lawful manner and the Property is free of Hazardous Materials.

(ii) No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has occurred or is occurring on or from the Property. No environmental or public health or safety hazards currently exist with respect to the Property or the business or operations conducted thereon. No underground storage tanks (including petroleum storage tanks) are present on or under the Property, except as has been disclosed in writing to and approved by Purchaser.

(iii) There have been no past, and there are no pending or threatened: (a) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Property, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (b) liens or governmental actions, notices of violations, notices of noncompliance or other proceedings of any kind that could impair the value of the Property.

(c) Right of Entry and Investigation. CFUM and its agents and representatives shall have the right, but not the obligation, to enter upon the Property at any time prior to the Closing Date to undertake sampling and/or site assessments of the Property. The City shall, upon request of CFUM, provide to CFUM a description of all known operations, past and present, undertaken at the Property and any existing maps and diagrams designating the location of past and present operations and past and present storage and/or disposal of Hazardous Material, above and below ground, on the Property. The City shall cooperate with reasonable requests for interviews with knowledgeable personnel. In the event that CFUM undertakes site assessments and/or sampling of the Property, then such site assessments and/or sampling shall be completed at CFUM's expense.

(d) Cancellation. If CFUM's site assessments and/or sampling reveal that there has been a spill or discharge of a Hazardous Material on the Property or that the Property does not comply with all Environmental Laws, CFUM shall have the right to void the Purchase Agreement, upon notice to the City, in which event, the City shall refund to CFUM any earnest money and neither party shall have any further obligation to the other.



(e) Indemnification. The City shall indemnify, defend and hold harmless CFUM from and against any and all claims, liabilities, losses, damages and costs, foreseen and unforeseen, including, without limitation, attorney fees, engineering and other professional or expert fees, arising out of or in any manner directly or indirectly connected with (i) Hazardous Materials existing on the Property on or before the time of Closing; (ii) a breach of the City's representations and warranties set forth above; (iii) the City's obligations under this Agreement and/or corrective work performed by CFUM (iv) any and all penalties, fines, charges and response costs threatened, sought or imposed on account of a violation or noncompliance with any law, regulation, ordinance or rule pertaining to Hazardous Materials existing on the Property on or before the Closing Date; (v) any diminution of the value of the Property which may result from any of the foregoing.

9. Insurance and Care of Property. The City shall preserve the Property in its present condition until Closing. The City shall bear the risk of loss or damage to the Property prior to Closing or possession, whichever occurs first. The City agrees to maintain existing insurance upon Property until the Closing Date and CFUM may purchase additional insurance. In the event of substantial damage or destruction prior to Closing, the Purchase Agreement shall be null and void; provided, however, CFUM shall have the option to complete the Closing and receive insurance proceeds regardless of the extent of damages. The Property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition on or before the Closing Date. No other easements, leases, or other agreements shall be entered into by the City during the term of the Purchase Agreement.

10. Abstract and Title. The City shall furnish to CFUM an abstract of title in accordance with the title standards of the Iowa State Bar Association. Title shall be made free and clear of all liens and encumbrances not herein specifically waived or agreed to be assumed by CFUM. The City's abstract of title shall be submitted to CFUM's attorney for examination as soon as is reasonably possible following execution of the Purchase Agreement. Any objections to title raised by CFUM's attorney shall be made in writing as soon thereafter as reasonably possible so that the same shall be cured on or before the Closing Date. The City shall make every reasonable effort to resolve any title objections. If requested, the City shall pay for additional abstracting to continue the abstract a second time to a date within 30 days of the Closing Date. After Closing, the abstract shall be the property of CFUM. If the City is unable to convey marketable title on the Closing Date, CFUM shall have the right to void the Purchase Agreement, upon notice to the City, in which event, the City shall refund to CFUM any earnest money and neither party shall have any further obligation to the other.

11. Survey. CFUM may obtain a survey, to be completed at CFUM's cost, for the Property. Any encroachments of improvements located on the Property onto adjoining land or encroachments of improvements located on adjoining land onto the Property revealed by the survey shall be treated as encumbrances upon title.

12. Deed. Upon payment of the Purchase Price, the City shall convey the Property to CFUM, or its assignee, by warranty deed free and clear of all leases, liens, encumbrances, taxes and assessments, which warranty deed shall evidence that the City has duly approved the conveyance in accordance with all applicable statutes, ordinances, and regulations.

13. Time is of the Essence. Time shall be of the essence of the Purchase Agreement.

14. Warranties and Obligations to Survive Closing. All warranties and obligations of the parties contained in the Purchase Agreement shall survive the Closing Date.

15. Termination of Tenants. The City shall terminate any tenant interests in any portion of the Property in accordance with law or applicable agreement prior to the Closing Date so that the Property is conveyed to CFUM free and clear of any lease.



16. Successors and Assigns. The Purchase Agreement shall be binding upon the respective legal representatives, successors, and assigns of CFUM and the City. CFUM shall have a right to assign the Purchase Agreement, in whole or in part, to any entity as part of any approved plan for the Development.

As stated above, this letter is not an Offer to purchase the Property, but is simply intended to initiate formal negotiations with respect to potential terms. We look forward to a strong working relationship with the City in connection with this transaction and beyond.

#### **CHILDREN AND FAMILY URBAN MOVEMENT**

By: James A. Swanstrom

James A. Swanstrom, Executive Director



The mission of CFUM is to create a community that supports the potential of children, youth, and families through educational success, healthy living, and community engagement.

#### Our Parents Say:

"Children and Family Urban Movement is a second home for my kids! I could not get to my job without the support of CFUM. They've done it all there from Breakfast Club, the Haven, Backyard Boys, and Whyld Girls and we so appreciate all the good work they do!" —Mary Bayles Avila



#### By the Numbers:

- 101 families benefitted from out of school programming
- 161 children and youth attend quality programming
- 56,227 meals were served in 2015
- 4252 volunteers gave of their time and resources in 2015



CFUM's middle and high school programs maintain a 100% high school graduation rate.



A 2014 assessment found that **87% of CFUM** children read at or above grade level as compared with 56% at the local elementary school.

#### FUNDING SOURCES

