

Public Records Request #2456

The following materials have been gathered in response to public records request #2456. These materials include:

- Pre-Development Agreement – C4 Development, LLC – January 14, 2019

This information was provided as a response to a public records request on 6/17/19 and is current to that date. There is a possibility of more current information and/or documents related to the stated subject matter.

Further Information

For further information about this request or the Citywide Records Program, please contact:

Cheyenne Flotree
Citywide Records Program Manager
City of Charlotte/City Clerk's Office
600 East 4th Street, 7th Floor
Charlotte, NC 28202
Cheyenne.Flotree@charlottenc.gov

Amelia Knight
Public Records Specialist
City of Charlotte/City Clerk's Office
600 East 4th Street, 7th Floor
Charlotte, NC 28202
Amelia.Knight@charlottenc.gov

PRE-DEVELOPMENT AGREEMENT

This Pre-Development Agreement (this "**Agreement**") is entered into as of January 14, 2019 (the "**Effective Date**"), by and between **CITY OF CHARLOTTE**, a municipal corporation ("**City**"), and **C4 DEVELOPMENT, LLC**, a North Carolina limited liability company d/b/a Crosland Southeast ("**Crosland Southeast**").

RECITALS:

A. City owns certain property commonly known as the former Eastland Mall property in Charlotte, North Carolina, also known as Mecklenburg County Tax Parcels 103-041-99 and 103-041-40 (the "**Eastland Mall Property**"). The Eastland Mall Property formerly housed a regional shopping mall and is currently vacant.

B. Crosland Southeast is a real estate developer based in Charlotte, North Carolina with experience in re-developing defunct shopping malls.

C. City and Crosland Southeast, Inc. are discussing the terms of a contemplated re-development of the Eastland Mall Property (the "**Possible Transaction**"). During the Pre-Development Period (as defined below), City and Crosland Southeast mutually desire to assess the financial viability and shared vision of the Possible Transaction, which assessment will include the involvement and engagement of neighbors and other stakeholders in the immediate vicinity of the Eastland Mall Property.

D. In connection with the Possible Transaction, Crosland Southeast desires a license to enter upon the Eastland Mall Property to perform Pre-Development Activities (as defined below). City has agreed to grant Crosland Southeast the license to enter upon the Eastland Mall Property for such purpose in accordance with the terms and conditions of this Agreement.

E. Additionally, City and Crosland Southeast have agreed that City will reimburse Crosland Southeast for fifty percent (50%) of the Pre-Development Activities up to a maximum, aggregate reimbursement of \$250,000, as more particularly described in the Agreement.

AGREEMENTS:

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Crosland Southeast hereby agree as follows:

1. **Pre-Development.** City and Crosland Southeast acknowledge their mutual desire for Crosland Southeast to perform or cause to be performed the activities described on Exhibit A attached hereto in order for City and Crosland Southeast to mutually assess the financial viability and shared vision of the redevelopment of the Eastland Mall Property (the "**Pre-Development Activities**").

In recognition of Crosland Southeast's willingness to pursue the Pre-Development Activities without a purchase and sale agreement or other definitive agreement for the Possible Transaction having been executed by the parties, City agrees that City shall reimburse Crosland Southeast for fifty percent (50%) of all reasonable actual costs incurred by Crosland Southeast in connection with the Pre-Development Activities, up to a maximum, aggregate reimbursement of \$250,000.00. All such sums shall be payable by City to Crosland Southeast within thirty (30) days following receipt of an approved invoice and reasonable back-up documentation, which obligation shall survive the termination of this Agreement.

2. **Access to Perform Pre-Development Activities.** During the Pre-Development Period (defined below), City hereby grants to Crosland Southeast the right to enter upon the Eastland Mall Property to undertake the Pre-Development Activities. Crosland Southeast shall conduct all Pre-Development Activities strictly in accordance with the following:

(a) City shall permit access to the Eastland Mall Property by Crosland Southeast and Crosland Southeast's representatives, including, without limitation, Crosland Southeast's engineers, contractors and consultants (collectively, "**Crosland Southeast Representatives**"), for the purpose of conducting the Pre-Development Activities.

(b) Pre-Development Activities shall be conducted during normal business hours, unless City otherwise approves in advance. Crosland Southeast shall contact City representative Todd DeLong (704-432-2989; tdelong@ci.charlotte.nc.us) prior to the intended date of entry with a description of the activities to be conducted.

(c) A representative of City shall have the right, but not the obligation, to be present during any Pre-Development Activity. Not less often than monthly during the Pre-Development Period, Crosland Southeast shall provide the City with a written summary of its meetings with potential development partners, builders, and tenants. Crosland Southeast shall notify the City of all meetings with City staff and elected officials, County staff and elected officials, community members, community associations, and any government related entities such as the Charlotte Regional Visitors Authority.

(d) Crosland Southeast agrees not to cause, permit or suffer any lien or encumbrance to be asserted against the Eastland Mall Property related to the Pre-Development Activities.

(e) Crosland Southeast shall comply with all federal, state and local laws, rules, regulations and ordinances which relate to the Pre-Development Activities.

(f) While conducting the Pre-Development Activities, Crosland Southeast shall maintain (or cause to be maintained) insurance, on an occurrence basis and from a reputable insurance company having a rating of at least "A-VII" by Best's Rating Guide (or a comparable rating service), in the amount of \$1,000,000 combined single limit/\$2,000,000 general aggregate for commercial general liability and workers compensation in accordance with statutory requirements. Such policy shall name City as an additional insured, which insurance shall provide coverage against any claim for liability caused by Crosland Southeast or Crosland Southeast Representatives in connection with such Pre-Development Activities. Crosland Southeast shall deliver to City a certificate evidencing the commercial general liability insurance before conducting any Pre-Development Activities on the Eastland Mall Property.

(g) With respect to any damage to the Eastland Mall Property caused by Crosland Southeast or a Crosland Southeast Representative, Crosland Southeast shall repair or restore the Eastland Mall Property to the condition existing immediately prior to the occurrence of such damage, reasonable wear and tear and casualty excepted.

3. **Pre-Development Period.** For purposes of this Agreement, the term "**Pre-Development Period**" means the period from the Effective Date until August 31, 2019. If City and Crosland Southeast have not mutually agreed upon a shared vision and the financial viability of the Possible Transaction on or before the end of the Pre-Development Period, the parties may agree in writing to extend this Agreement through December 31, 2019. Thereafter, if the City and Crosland Southeast have not mutually agreed upon a shared vision and the financial viability of the Possible Transaction, this Agreement shall terminate effective as of the end of the extended Pre-Development Period, and City and Crosland Southeast shall cease to have any rights or obligations hereunder except as expressly set forth herein.

4. **Indemnification.** Crosland Southeast shall indemnify, defend and hold harmless City from any and all losses, costs, liens, claims, causes of action, liability, damages, and expenses (including, without limitation, court costs and reasonable attorneys' fees) suffered by City that arises from any Pre-Development Activities performed by Crosland Southeast or Crosland Southeast Representatives on the Eastland Mall Property. For avoidance of doubt, the terms of this Section 4 shall not extend to, and City hereby releases Crosland Southeast from liability for, any claims, damages or other liability resulting from or related to any existing environmental contamination with respect to the Eastland Mall Property, or other deficiencies in the Eastland Mall Property, that may be merely discovered by (and not exacerbated by) Crosland Southeast as a result of the Pre-Development Activities. This indemnity provision shall survive termination or expiration of this Agreement.

5. **Documents and Items.** City has previously made, or will make, available to Crosland Southeast and Crosland Southeast Representatives within ten (10) days after execution hereof certain items and information pertaining to due diligence previously conducted at the Eastland Mall Property (collectively, the **"Due Diligence Materials"**). The Due Diligence Materials have been and shall be made available to Crosland Southeast without representation or warranty by, or recourse against, City. Crosland Southeast shall not rely on such documents and shall independently verify the truth, accuracy and completeness of said information and/or items contained therein. Upon completion of the Pre-Development Activities or the termination of this Agreement, Crosland Southeast shall deliver to City within ten (10) days all documents, deliverables, reports, data and other related material generated as a result of the Pre-Development Activities, provided that (i) such delivery shall be made without representation or warranty, (ii) Crosland Southeast shall not be required to provide any items which would cause Crosland Southeast to violate any written agreement of confidentiality with third parties, and (iii) Crosland Southeast shall not be required to disclose privileged materials with Crosland Southeast counsel.

6. **Binding Effect.** The rights granted to Crosland Southeast under this Agreement are personal to Crosland Southeast and any entity affiliated with Crosland Southeast or any member or principal thereof (a **"Crosland Southeast Affiliate"**), and neither this Agreement nor the rights granted herein may be transferred or assigned by Crosland Southeast except to a Crosland Southeast Affiliate. Subject to the foregoing limitation, the benefits of this Agreement and burdens of this Agreement shall inure to the benefit of and be binding upon the heirs, successors, personal representatives, and assigns of City and Crosland Southeast.

7. **Notices.** All notices and other communications given pursuant to this Agreement shall be in writing and shall be (a) mailed by first class, United States mail, postage prepaid, certified, with return receipt requested, and addressed to the parties hereto at the address listed below, (b) hand delivered to the intended addressee, (c) sent by nationally recognized overnight courier or (d) sent by electronic mail to the e-mail address below. Notice shall be effective upon delivery to the address of the addressee. The parties may change their addresses by giving notice thereof to the other in conformity with this provision:

If to City: City of Charlotte
 Department of Economic Development
 Attn: Todd DeLong
 600 East Trade Street, Suite 300
 Charlotte, NC 28202
 Email: tdelong@charlottenc.gov

If to Crosland Southeast: c/o Timothy B. Sittema
 121 West Trade Street, Suite 2550
 Charlotte, NC 28202

Email: tsittema@csere.com

With a copy to:

Alexander Ricks PLLC
4601 Park Road, Suite 580
Charlotte, NC 28209
Attn: Jon Goldberg
Email: jon@alexanderricks.com

8. **Entire Agreement.** This Agreement is the entire agreement between City and Crosland Southeast with respect to the subject matter hereof, and no modification hereof or subsequent agreement shall be binding on either party unless reduced to writing and signed by the party to be bound.

9. **Multiple Counterparts.** This Agreement may be executed and delivered in any number of counterparts, each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina.

11. **Termination.** If either party breaches any provision of this Agreement and if such breach is not cured within thirty (30) days after receiving written notice from the other party specifying such breach in reasonable detail, the non-breaching party shall have the right to terminate this agreement by giving written notice thereof to the party in breach, which termination shall go into effect immediately. By giving written notice to Crosland Southeast, the City may also terminate this Agreement if at any time during the Pre-Development Period, work associated with the Pre-Development Activities described herein has ceased for a period of greater than thirty (30) consecutive days except for such circumstances where the delay is due to reasons beyond the reasonable control of Crosland Southeast or as a result of force majeure events.

12. **Exclusivity of Negotiations.** In consideration of the anticipated resources expended by Crosland Southeast during the Pre-Development Period, commencing on the Effective Date and continuing through the Pre-Development Period, City shall not solicit or pursue offers from, negotiate with or in any manner, accept any proposal of any other person relating to the prospective re-development or sale of the Eastland Mall Property. The City may receive unsolicited proposals during the Pre-Development Period and the receipt and consideration of such proposals shall not be considered a breach of this Agreement. Upon receiving unsolicited proposals, the City shall notify Crosland Southeast of unsolicited proposals, subject to requiring a confidentiality agreement as deemed appropriate by the City. The City shall work in good faith to engage Crosland Southeast as a partner of unsolicited proposals the City determines to be reasonable.

13. **E-Verify.** Crosland Southeast shall comply with the requirements of Article 25 of Chapter 64 of the North Carolina General Statutes (E-Verify), and shall require all of its contractors and subcontractors to do so as well.

14. **NC Prohibition on Contracts with Companies that invest in Iran or Boycott Israel (revised May, 2018).** The Crosland Southeast certifies that (i) it is not identified on the Final Divestment List or any other list of prohibited investments created by the NC State Treasurer pursuant to N.C.G.S. 147-86.58 (collectively, the "Treasurer's IDA List"); (ii) it has not been designated by the NC State Treasurer pursuant to N.C.G.S. 147-86.81 as a company engaged in the boycott of Israel (such designation being referred to as the "Treasurer's IB List"); and (iii) it will not take any action causing it to appear on the Treasurer's IDA List or the Treasurer's IB List during the term of this Contract. In signing

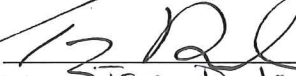
this Contract, the Crosland Southeast further agrees, as an independent obligation, separate and apart from this Contract, to reimburse the City for any and all damages, costs and attorneys' fees incurred by the City in connection with any claim that this Contract or any part thereof is void due to the Agency appearing on the Treasurer's IDA List or the Treasurer's IB List at any time before or during the term of this Contract.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, City and Crosland Southeast have executed this Agreement as of the day and date first written above.

CITY:


CITY OF CHARLOTTE, a municipal corporation

By: 
Name: Tracy Dodson
Title: Assistant City Manager
Date: 1/14/19

By: _____
Name: _____
Title: _____
Date: _____

CROSLAND SOUTHEAST:

C4 DEVELOPMENT, LLC,
a North Carolina limited liability company

By: 
Name: Timothy B. Sittema
Title: Manager
Date: January 1, 2019

This instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

BY: _____
(signature)

DATE: _____

EXHIBIT A

SCOPE OF ACTIVITIES

1. Community Engagement
 - a. Public Relations – develop neighborhood outreach program to engage the community
2. Physical Site Investigation
 - a. Stormwater / PCCO compliance- Review with City the stormwater/PCCO requirements for site and options for waiver or buyout of the PCCO requirements. If a regional facility is required then review potential cost sharing with the City (Stormwater Services)
 - b. Planning Review – meet with City Planning Staff to review subdivision ordinance requirements with block lengths to establish street network. Also review buffer and screening requirements to define developable area of site
 - c. Initial Master Planning – studies for overall master planning with road network to determine scope of work for the Initial Civil & Additional Civil Engineering
 - d. CDOT -Review project with CDOT to determine potential need for TIA and scope of TIA (if required)
 - e. Will serve review (Public and private utilities and public transportation)
 - i. Meet with Charlotte Water to discuss project and make sure there are no capacity issues in this area. Obtain a Willingness to Serve letter
 - ii. Obtain updated fire flow test
 - iii. Public Transportation Review - meet with CATS to review requirements/options for site
 - iv. Charlotte Fire Department - meet with fire department to review access requirements for the site
 - v. Private Utilities - secure Willingness to Serve letters from private utilities
 - f. Environmental (assumes no environmental issues given City acquired parcel)
 - i. Phase I will be needed
 - ii. Phase II – TBD based on Phase I
 - g. Geotechnical
 - i. Geotechnical borings to determine quality of existing soils
 - ii. Geotechnical review of footing and foundations and slabs left in place after demolition of the mall to determine ability to grind and use for base material either under future slabs and/or paving. Once determined, quantify volume of material for either haul off or reuse
 - h. Survey/Title Review (assumes no title issues given City acquired parcel)
 - i. Topographical Survey
 - ii. ALTA Survey
 - iii. Title

3. Project Envisioning
 - a. Advanced Master Planning- develop planned final overall site master plan with advanced details based on review of Initial Civil Engineering
 - b. Architectural imaging – develop architectural images to convey intent and spirit of proposed project

 4. Additional Civil Engineering
 - a. Grading Studies – develop grading plan options based on proposed master plan to ensure scope of grading with import and/or export to review roadway and utility grades across site
 - b. Public Utilities
 - i. Waterline/Sewer relocation requirements (if needed) – review existing utilities within the site from the Eastland Mall development to understand the scope, schedule and cost to relocate any lines based on proposed site plan.
 - ii. Obtain Capacity Assurance from Charlotte Water as soon the site plan is finalized and can be submitted to Charlotte Water (requires the layout of water and sewer infrastructure with flow projections). With a Capacity Assurance the developer will have capacity allocated to project for 2 years and will have to purchase meters within that 2 years or re-apply for the capacity. Plan and Capacity Assurance may need to be phased
 - c. Street Network requirements (cross sections/right of way) – advanced CDOT planning for all internal and external streets (if any) to determine required cross sections and right of way
 - d. Traffic Impact Analysis (if required) – Perform traffic impact analysis to determine scope of offsite roadway improvements required by NCDOT/CDOT based on planned development density
- *Total estimated costs = \$550,000 to \$600,000*
 - *Please note that the cost of work and schedule of work outlined above are estimates without the benefit of hard contracts at this point in time.*