CITY COMMISSION MEMORANDUM 16-149  
FEBRUARY 22, 2016 AGENDA

To: Honorabe Mayor and Members of the City Commission
Prepared by: Tom George, Deputy City Manager
Submitted by: Norton Bonaparte, City Manager
Subject: Catalyst Site Memorandum Of Understanding With Torre Construction And Development, LLC

Strategic Priorities:

☐ Unify Downtown & the Waterfront
☐ Promote the City’s Distinct Culture
☐ Update Regulatory Framework
☐ Redevelop and Revitalize Disadvantaged Communities

Synopsis:

Approval of a Memorandum Of Understanding (MOU) with Torre Construction And Development, LLC (Torre) is requested.

Fiscal/Staffing Statement:

The proposed MOU will result in costs to the City relative to environmental audits/environmental site assessments of the Catalyst Site and may result in additional costs should the development of the Catalyst Site be determined to be unfeasible after steps under the MOU have been implemented. These costs, expected and contingent, are costs that are normatively associated with the assessment of potential development capacity and viability with regard to any site of any complexity. Collaborative actions between the City and the Sanford Lake Monroe Waterfront and Downtown Community Redevelopment Agency are contemplated.

Background:

The City Commission has long awaited a development project which has a critical mass and synergy that would serve to be a catalyst to an array of development activities and redevelopment activities in the City’s Downtown area. The City has established the Lake Monroe Waterfront Downtown Sanford Community Redevelopment Area (CRA) and adopted the associated Lake Monroe Waterfront Downtown Sanford Community Redevelopment Plan (Redevelopment Plan) to facilitate redevelopment of vacant and blighted parcels within the CRA. The City Commission has also supported the efforts of City staff as parcels have been acquired and assembled within the Downtown area of the City that could serve as the site for the Catalyst Site development. Development of these properties will facilitate the continued economic development of the City.

In order to facilitate the development of the Catalyst Site, the City issued RFQ 14/15-21 to solicit qualifications from interested parties regarding the potential redevelopment of the Catalyst Site. The City has ranked Torre as the most qualified developer to work with the City in collaborating
to develop the Catalyst Site in a high quality manner that will drive the economic vibrancy of the Downtown area of the City long into the future.

The MOU will set forth the terms and conditions under which the City and Torre will work together to develop the fundamental framework for the ultimate development of the Catalyst Site.

The MOU provides for collaboration of the parties in the context of accomplishing a real estate market & financial analysis, engaging in community planning charrettes, development and presentation of a conceptual master plan and the formulation and approval of a final conceptual master plan and a Development Agreement. The ultimate goal is the approval of a statutory Development Agreement under the provisions of the *Florida Local Government Development Agreement Act* (Sections 163.3220 through 163.3243, *Florida Statutes*) by the City Commission. This Development Agreement will address an array of matters as may be agreed upon by the City and Torre such as:

(a). commitments of the Agency to the Catalyst Site project;
(b). commitments of the City and Torre;
(c). prioritization of streetscape, roadway and utility improvements;
(d). land use and zoning approvals including site plan approval which will be timed to be obtained prior to closing(s);
(e). processes for and timing of City actions relative to development approval processes and procedures;
(f). public benefits resulting to the City and the citizens of the City;
(g). potential economic development incentives;
(h). matters relating to the permitting, impact and concurrency fees;
(i). the establishment and funding of a marketing program with Agency participation for the Catalyst Site and downtown Sanford; and
(j). the terms and conditions upon which Torre shall acquire fee simple title to the Catalyst Site, which may be in phases.

Deliverables, time frames, reimbursement of out of pocket costs, right to terminate, purchase of deliverables, assignment and other terms, conditions and provisions are part of the MOU.

**LEGAL REVIEW:**

The City Attorney has drafted the attached proposed MOU which results from significant negotiations between the City's team of staff and consultants and the representatives of the Torre development team.

**RECOMMENDATION:**

City Staff recommends that the City Commission approve the attached proposed MOU.

**SUGGESTED MOTION:**

"I move to approve the proposed Memorandum of Understanding with Torre Construction and Development, LLC."

Attachment: Memorandum of Understanding Between the City of Sanford and Torre Construction and Development, LLC
MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF SANFORD FLORIDA AND TORRE CONSTRUCTION AND DEVELOPMENT, LLC FOR THE POTENTIAL DEVELOPMENT OF CERTAIN CITY OWNED PARCELS LOCATED WITHIN THE LAKE MONROE WATERFRONT DOWNTOWN SANFORD COMMUNITY REDEVELOPMENT AREA

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made and entered into as of this __ day of __________, 2016, by and between the CITY OF SANFORD, FLORIDA, a municipality of the State of Florida (the "City"), whose mailing address is 300 North Park Avenue, Sanford, Florida 32771, and TORRE CONSTRUCTION AND DEVELOPMENT, LLC, a limited liability company of the State of Florida (the "Developer"), whose mailing address is 208 Andalusia Avenue, Coral Gables, Florida 33134.

WHEREAS, the City has established the Lake Monroe Waterfront Downtown Sanford Community Redevelopment Area (the "CRA") and adopted the associated Lake Monroe Waterfront Downtown Sanford Community Redevelopment Plan (the "Redevelopment Plan") to facilitate redevelopment of vacant and blighted parcels within the CRA; and

WHEREAS, the City has acquired certain parcels within the downtown in order to facilitate the continued economic development of the downtown and waterfront district; and

WHEREAS, the Redevelopment Plan provides for the development of the waterfront Catalyst Site more particularly described on Attachment "A" hereto (the "Catalyst Site"), as one of the City's and the Sanford Lake Monroe Waterfront and Downtown Community Redevelopment Agency's (a dependent special district of the City (hereinafter referred to as the "Agency"), primary development and redevelopment objectives; and

WHEREAS, the City has issued RFQ 14/15-21 (the "RFQ") to solicit qualifications from interested parties regarding the potential redevelopment of certain City-owned properties within the CRA; and

WHEREAS, the City has received, reviewed and prioritized submittals from qualified development teams in response to the RFQ and the City has selected Developer as the most qualified submitter; and

WHEREAS, the Developer is a Florida limited liability company, its status is active and it is duly authorized to transact business in the State of Florida; and

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WHEREAS, the City seeks to utilize this MOU to set forth the terms and condition upon which the City and Developer shall proceed in connection with the development of the Catalyst Site.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING RECITALS, which are made part of this MOU, and the mutual agreements set forth below, the City and the Developer hereby agree to the following:

SECTION 1. RESPONSIBILITIES OF THE DEVELOPER:

During the course of the following activities, the Developer shall have primary responsibility as to the actions proposed to be accomplished:

(a). **Real Estate Market & Financial Analysis.**

In order to better understand the nuances of the City’s downtown real estate market, the Developer agrees to complete, at the Developer’s expense, a real estate market analysis and financial analysis prepared by Miami Economic Associates, Inc. (the “Market Analysis”) to evaluate potential development scenarios for the Catalyst Site.

(b). **Community Planning Charrettes.**

In consultation with the City, the Developer agrees to (i) determine the schedule and format for community meetings, including the appropriate format for design workshops and (ii) facilitate and administer community workshops and meetings with City residents and representatives of the City to obtain community input and to determine community preferences regarding the development of the Catalyst Site, at the Developer’s expense (collectively, the “Community Planning Charrettes”). This will include (i) a "food for thought" presentation to educate participants on best practices in traditional neighborhood design, sustainable waterfront development strategies, and preliminary goals for the Catalyst Site and (ii) a “hands-on” design session in which a short introduction will be given to explain the challenge for participants, orient participants to base maps, and set ground rules and goals and participants will then draw on base maps to illustrate their ideas for the Catalyst Site by describing desired land uses, building design and sustainability features, and public space design concepts. Information from the Market Analysis and input gathered at the Community Planning Charrettes will be evaluated by the Developer when creating a conceptual master plan for the Catalyst Site (the “Conceptual Master Plan”). Developer anticipates that the Conceptual Master Plan will be illustrated in color, and will designate development intensity based on an interconnected network of streets and blocks, will include illustration of existing and future building types/footprints; streets, alleys, parking areas, and other means of vehicular, pedestrian, and bicycle circulation; and public open spaces such as plazas, squares, or greens and will include preliminary calculations of unit types and quantities, non-residential square footage to be accommodated, and rough parking calculations. The

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Developer has retained, and will utilize, the firm of Dover, Kohl & Partners and R.J. Heisenbottle Architects, PA to prepare the Conceptual Master Plan.

(c). Presentation Of The Conceptual Master Plan.

The Developer will present the Conceptual Master Plan to the City Commission for comments and direction at a regularly scheduled City Commission meeting (the "City Commission Workshop Meeting").

(d). Formulate Preliminary Development Agreement.

The Developer and the City will use good faith efforts to prepare the mutually agreeable terms and conditions of the preliminary development agreement (the "Preliminary Development Agreement") for consideration by the parties during the master planning process.

(e). Presentation Of The Revised Conceptual Master Plan And Development Agreement.

The Developer will revise the Conceptual Master Plan to incorporate the comments from the City Commission received at the City Commission Workshop Meeting that it believes to be appropriate (the "Revised Conceptual Master Plan"). The Revised Conceptual Master Plan shall then be presented to the City Commission for approval at a regularly scheduled City Commission meeting (the "Revised Conceptual Master Plan Meeting") and the statutorily required hearings for adoption of the Preliminary Development Agreement.

SECTION 2. RESPONSIBILITIES OF THE CITY:

As set forth in this Section, there are matters relative to which the City must act in order to accomplish the overall goals of this MOU and those actions are detailed within the following:

(a). Place a Hold on Development Of Catalyst Site.

During the term of this MOU, the City: (i) will not develop or perform any construction, site development work or demolition on the Catalyst Site; (ii) will not, directly or indirectly, evaluate, engage in, initiate, solicit or encourage any discussions, negotiations or offers from other parties for the acquisition, lease or development of all or portions of the Catalyst Site or otherwise cooperate with, assist, participate in or facilitate any such discussions, negotiations or offers; and (iii) will not enter into any leases or other occupancy agreements with respect to the Catalyst Site. The City shall promptly notify the Developer of the names and contact information of any parties, to the extent obtained, that may make contact with the City regarding any matters pertinent to the Catalyst Site.
development, including, without limitation, any inquiries from third parties regarding the sale, lease or development of all or portions of the Catalyst Site.

(b). \textit{Facilitate Planning Activities.}

The City shall facilitate the Developer's planning of the Community Planning Charrettes through the timely provision of City data as requested by the Developer. The City shall also make City facilities available, free of charge, for the hosting of the Community Planning Charrettes.

(c). \textit{Review of Conceptual Master Plan.}

The City Commission shall evaluate and provide comments to the Conceptual Master Plan at the City Commission Workshop Meeting, including the design objectives presented therein in a timely manner.

(d). \textit{Formulate Preliminary Development Agreement.}

The City and the Developer will use good faith efforts to prepare the mutually agreeable terms and conditions of the Development Agreement for consideration by the parties during the master planning process.

(e). \textit{Presentation Of Revised Conceptual Master Plan And Development Agreement For Approval.}

The City Commission shall decide whether or not to approve the Revised Conceptual Master Plan and Preliminary Development Agreement at the Revised Conceptual Master Plan Meeting and statutorily required hearings. The City shall be responsible for the public hearing notices and advertisements that are required to adopt the Preliminary Development Agreement by means of the enactment of an ordinance (the approved Preliminary Development Agreement is herein called the "Development Agreement").

(f). \textit{Inspection Rights/Delivery Of Property Information.}

During the term of this MOU, the Developer and its designees shall have the right, from time-to-time, to enter upon and perform inspections and tests of the Catalyst Site, as reasonably determined by Developer to be appropriate including, environmental audits and testing, performing land surveys, geo-technical testing and environmental testing (e.g., water and soil testing). In addition, within ten (10) business days after the Effective Date, the City shall provide the Developer with copies all information, reports, evaluations, tests and pro formas that the City has in its possession with respect to the Catalyst Site including environmental audits and reports, soil boring tests and feasibility studies.
SECTION 3. JOINT ASPIRATIONAL GOALS OF THE PARTIES:

It is the aspirational goal of the parties to have the statutory development agreement considered for approval under the provisions of the Florida Local Government Development Agreement Act (Sections 163.3220 through 163.3243, Florida Statutes) by the City Commission at the same time as the Revised Conceptual Master Plan is being considered for approval. The City and Developer contemplate that the Development Agreement will address the matters, among other things, as may be agreed upon by the City and the Developer: (a) commitments of the Agency to the Catalyst Site project; (b) commitments of the City and the Developer; (c) prioritization of streetscape, roadway and utility improvements; (d) land use and zoning approvals including site plan approval which will be timed to be obtained prior to closing(s); (e) processes for and timing of City actions relative to development approval processes and procedures; (f) public benefits resulting to the City and the citizens of the City; (g) potential economic development incentives; (h) matters relating to the permitting, impact and concurrency fees; (i) the establishment and funding of a marketing program with Community Redevelopment Agency participation for the Catalyst Site and downtown Sanford; and (j) the terms and conditions upon which Developer shall acquire fee simple title to the Catalyst Site, which may be in phases. The parties will make every effort to schedule the Revised Conceptual Master Plan and Development Agreement adoption hearing within twenty-eight (28) days after the completion of the Revised Conceptual Master Plan.

SECTION 4. ACKNOWLEDGEMENT OF GOOD FAITH:

The parties agree to act in good faith, with the shared long term development objective of redeveloping the Catalyst Site in a mutually agreeable design and financially feasible development plan. The parties are not partners and there is no legal partnership established by this MOU; provided, however, that the parties agree to work diligently in a collaborative and cooperative manner to implement the terms and conditions of this MOU and arrive at the Development Agreement as prescribed herein.

SECTION 5. BINDING EFFECT OF MOU:

The parties agree that this MOU shall be binding upon them.

SECTION 6. EFFECTIVE DATE, TERMS, AMENDMENTS, TERMINATION:

This MOU shall commence on the date of full execution as evidenced by the last date this MOU is executed by a party (the "Effective Date"), and shall remain effect for two hundred and forty (240) days, subject to extension as provided in Section 9(a) below (the "Term"). This MOU may be amended by the parties.

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SECTION 7. CATALYST SITE:

(a). Value of Catalyst Site.

For the purposes of this MOU and as the purchase price of the Catalyst Site under the Development Agreement only, the parties agree that the value and purchase price of the Catalyst Site is $2,376,176.00 or such lesser amount as agreed upon by both parties.

(b). Status of Catalyst Site.

The City represents and warrants to the Developer that during the term of this MOU there are, and there will be no, leases, licenses and other occupancy agreements in effect with respect to the Catalyst Site and that the City shall not allow any instruments or other agreements or documents to be recorded against the Catalyst Site. Also, the City represents and warrants to the Developer that the City is not aware of any code violations pending as to the Catalyst Site. Also, the City represents and warrants to the Developer that the City is reviewing the environmental status of the Catalyst Site. The City agrees, at its costs, to perform Phase I environmental audits/environmental site assessments of the Catalyst Site and, as the need is demonstrated from the Phase I environmental audits/environmental site assessments, Phase II environmental audits/environmental site assessments. The City agrees to provide to the Developer any documents that may be in the records of the City, or placed in the records of the City, that relate to the environmental status of the Catalyst Site as well as to provide copies of any test and environmental audit/environmental site assessment results relating thereto. The Developer shall conduct, at its costs, geotechnical tests/investigations as may be deemed necessary and prudent by the Developer as to the Catalyst site.

SECTION 8. REPRESENTATIVE CONTACTS:

The representative contacts for each party shall be:

For the Developer:

Mr. Venny Torre, CEO
Torre Development and Construction, LLC
208 Andalusia Avenue
Coral Gables, Florida, 330134

For the City:

Mr. Norton Bonaparte, City Manager
City of Sanford
300 North Park Avenue
Sanford, Florida, 32771
SECTION 9. RIGHTS AND REMEDIES:

(a). Purchase of Deliverables.

(1) Subject to any rights or remedies available to a non-defaulting party as a result of a default by the other party hereto, this MOU does not obligate the City or the Developer for the reimbursement of any costs that may have been incurred by either party that are related to the satisfaction of the terms and responsibilities outlined herein; provided, however, that if the Developer submits the Revised Conceptual Master Plan and the Preliminary Development Agreement to the City for consideration or approval and the same is not submitted to the City Commission for consideration or approval, as applicable, or, if the same is submitted to the City Commission for approval at the Revised Conceptual Master Plan Meeting and the same is not so approved thereby, then the Developer or the City may elect to terminate this MOU, and the City shall purchase, for an amount of exactly $225,000.00, and retain ownership of all documents produced in association with this effort including, but not limited to, the Market and Financial Analysis Reports, the Master Plan and the Development Agreement, including, without limitation all, architectural, planning, engineering, financial and real estate market documents. Purchase of documents shall occur within ninety (90) days after such termination or expiration of the term hereof, as applicable.

(2) To the extent that the foregoing amount is not paid timely, then interest shall accrue thereon at the rate of eight percent (8%) per annum.

(3) In the event that, upon the expiration of the initial Term of this MOU, the Revised Conceptual Master Plan and Preliminary Development Agreement having been submitted to the City within seven (7) months of the effective date of this MOU, and the City has not yet approved the same, then, the Developer may elect to extend the Term hereof on a day-for-day basis until the Revised Conceptual Master Plan and the Preliminary Development Agreement are approved or disapproved by the City. The City may elect to extend the Term of this MOU for up to thirty (30) days in order to accommodate public hearing requirements.

(b). City Default.

In the event that the City does not perform its obligations or breaches any representation, warranty or covenant under this MOU, the Developer, as its sole and exclusive remedy, all other remedies being waived thereby, shall have the right to: (i) terminate this Agreement and receive reimbursement of its out of pocket costs, the value of the time that Developer's employees, agents and representatives (including Mr. Venny Torre and Mr. Richard Heisenbottle) have spent on the transaction described in this MOU and their expenses so incurred from the City up to a maximum reimbursement amount not to exceed $225,000.00 in the aggregate; provided, however, that the City shall retain...
ownership of all documents produced in association with the effort as set forth above including, but not limited, to the Market and Financial Analysis Reports, the Master Plan and the Development Agreement, including, without limitation all, architectural, planning, engineering, financial and real estate market documents.

(c).  **Developer Default.**

In the event that the Developer does not perform its obligations or breaches any representation, warranty or covenant under this MOU, including, without limitation, those set forth in Section 1, above, then the City shall have the right, as its sole and exclusive remedy, all other remedies being waived thereby, to terminate this Agreement and receive reimbursement of its out of pocket costs, the value of the time that City employees, agents or representatives have spent on this transaction incurred in connection with this MOU up to a maximum amount of $225,000.00 in the aggregate; provided, however, that the City shall retain ownership of all documents produced in association with the effort as set forth above including, but not limited, to the Market and Financial Analysis Reports, the Master Plan and the Development Agreement, including, without limitation all, architectural, planning, engineering, financial and real estate market documents.

(d).  **Notice of Default.**

Neither the City nor the Developer shall be deemed to be in default under this MOU unless (i) the non-defaulting party shall have first provided written notice of the default to the defaulting party, and (ii) the defaulting party shall have failed to cure the default within a period of thirty (30) days after receiving notice of such default.

(e).  **Developer Right to Terminate.**

In the event that, at any time during the term of this MOU, upon completion of the Market Analysis, but prior to engaging in any activity beyond the Market Analysis, the Developer determines that the development of the Catalyst Site is not economically feasible, then the Developer may elect to terminate this MOU by providing written notice of such termination election to the City. In such event, (i) this MOU shall be deemed to be terminated and of no further force or effect (except for the provisions that expressly survive any such termination) and the City shall not be obligated to reimburse the Developer for any of its costs and expenses incurred in connection with this MOU and the transaction contemplated thereby, and (ii) the Developer shall deliver to the City the Market Analysis and all reports generated by third parties in connection therewith all without cost to the City.

SECTION 10. MISCELLANEON:

(a).  Except as expressly and to the extent provided in this MOU, the provisions of this MOU are for the exclusive benefit of the parties and no other party shall have any
right or claim against the City and Developer, or either of them, by reason of those provisions or be entitled to enforce any of those provisions against both or either of the parties hereto. The provisions of this Section shall survive the termination of this MOU.

(b). This MOU will be governed and construed in accordance with the laws of the State of Florida. Any dispute arising out of or under this MOU will be litigated in the appropriate court of the State of Florida located within Seminole County.

(c). The captions of this MOU are inserted for convenience or reference only and not to define, describe or limit the scope or the intent of this MOU or any term hereof.

(d). This MOU may be executed in any number of counterparts, each of which will be deemed to be an original but all of which together will constitute one and the same instrument. Facsimile signatures of any party executing this MOU shall be deemed originals and be binding on such party.

(e). This MOU may not be orally changed, modified or terminated; it supersedes any and all prior, written or oral, understandings or agreements between the City and Developer, and other matters of similar nature, all of which shall be deemed to be of no force or effect, including, without limitation, in connection with the interpretation of this MOU, it being intended that this MOU represents the entire understanding of the parties. No waiver of any provision hereof will be valid unless in writing and signed by a party against whom it is to be enforced.

(f). No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, will constitute a waiver of any party's right to demand exact compliance with the terms hereof, provided, however, that any party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such party without affecting any of the other provisions of this MOU.

(g). The parties agree to execute and deliver to the other such further documents and instruments as may be reasonable and necessary in furtherance of and to effectuate the intent of the parties as expressed by the terms and conditions hereof.

(h). If any date herein set forth for the performance of any obligations by the City or Developer or for the delivery of any instrument or notice as herein provided should be on a Saturday, Sunday or legal holiday, the compliance with such obligations or delivery shall be deemed acceptable on the next business day following such Saturday, Sunday or legal holiday. As used herein, the term "legal holiday" means any state or federal holiday for which financial institutions or post offices are generally closed in the State of Florida for observance thereof.

(i). If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the covenants, terms or conditions herein, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. The parties may continue to meet and negotiate in good faith to resolve any disputes that may arise.

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conditions hereof, the losing or defaulting party will pay to the prevailing party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution and defense of such action.

(j). Each party acknowledges that it has been advised by its own counsel with respect to the transaction governed by this MOU.

(k). In any civil action, counterclaim, or proceeding, whether at law or in equity, which arises out of, concerns, or relates to this MOU, any and all transactions contemplated hereunder, the performance hereof, or the relationship created hereby, whether sounding in contract, tort, strict liability, or otherwise, trial shall be to a court of competent jurisdiction and not to a jury. Each party hereby irrevocably waives any right it may have to a trial by jury. Any party may file an original counterpart or a copy of this MOU with a court of competent jurisdiction in Seminole County, Florida, as written evidence of the consent of the parties hereto of the waiver of their right to trial by jury. Neither party has made or relied upon any oral representations to or by any other party regarding the enforceability of this provision. Each party has read and understands the effect of this jury waiver provision. The parties agree to use alternative dispute resolution processes and procedures to the maximum extent practicable.

(l). The interest of the Developer under this MOU may not be assigned or otherwise transferred, unless such assignment or transfer is to an affiliate thereof, in which event the prior Developer (i.e., the assignor) shall deliver to the City an executed assignment and assumption of the Developer's rights and obligations under this MOU between the prior Developer and its affiliate, and upon approval by the City, which shall not be unreasonably delayed or withheld, the prior Developer hereunder (i.e., the assignor) shall be deemed to be released from all obligations under this MOU. It is recognized by the City that the entity which is the contemplated assignee of this MOU will be a single-purpose development entity created for the purpose of developing the Catalyst Site.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]