



Delta Urban Renewal Authority
360 Main Street, Delta, CO 81416

A G E N D A

**Delta Urban Renewal Authority
Regular Meeting**

**April 4, 2018
5:30 p.m.**

DURA Agenda items:

- 1. Changes to the Agenda**
- 2. A Discussion for a Memorandum of Understanding Evidencing Selection and Direct DURA Staff to Begin Negotiations on Terms for a Public Finance and Redevelopment Agreement which Terms Shall be Brought Back to Board for Presentation**
- 3. Executive Session – Only if Needed**
For a conference with the Delta Urban Renewal Authority’s Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b).
- 4. Presentation from Scott Schaible for a Development Opportunity**
- 5. Other Business**
- 6. Adjourn**

Memorandum

DATE: April 2, 2018
TO: DURA Board
RE: Term Sheet for Public Finance and Redevelopment Agreement (PFRA)

Parties	Developer and DURA
Project	Approximately 70-room upper midscale hotel; conference center of approximately 2,500 – 3,000 sf of meeting space sufficient to accommodate 150-200 people
Area of Property	Need to discuss 9.4 acres? 6 acres that Mars is interested in? How would this be parsed between Developer and DURA?
Acquisition of Property	Need to discuss DURA acquires and then sells portion to Developer? Discuss conditions precedent to conveyance; ground lease during construction? Developer acquires and sells portion to DURA? Developer only acquires portion of Property? Simultaneous closing where DURA and Developer each buy their piece?
Property Zoning	Zoning is B-3; hotel as conditional use (is there a need to rezone?)
Eligible Public Improvements	PFRA shall contain an exhibit listing the general categories and estimated costs of the Eligible Public Improvements which may be reimbursed from the revenues set forth herein. Cost savings in one line item may be transferred to cost overruns in another line item. In general, Eligible Public Improvements will include, but are not limited to, the following: <ul style="list-style-type: none"> • Grading and site work • Relocation of public utilities • Offsite public improvements • Onsite public improvements

	<ul style="list-style-type: none"> • Public art • Public plaza(s), open spaces and greenways • Landscaping • Streetscape improvements • Parking • Street furniture and site amenities • Upgraded architecture and materials • Sustainability measures • Trail connections • Telecommunications/technology improvements • Ongoing maintenance of public areas • Impact and utility connection fees <p>Eligible Expenses shall also include eligible costs of bond issuance.</p>
<p>Financing Structure/Cash Flow</p>	<p>Need to discuss</p> <p>DURA pledges TIF to Developer to make up gap in Project</p> <p>DURA issues debt? (DURA as component unit of City budget; no municipal liability)</p> <p>Developer forms metro district and issues debt?</p> <p>Developer cash flows TIF with loan?</p> <p>Will Developer be required to impose PIF as well?</p>
<p>Public Improvements – Obligation to Construct</p>	<p>Will Developer construct and receive reimbursement from bond proceeds, or will metro district construct? Who will manage the actual construction?</p> <p>What role does DURA want to play, if any?</p>
<p>Public Financing – Developer Contribution</p>	<ul style="list-style-type: none"> • Property acquisition? • Mill levy (metro district)? • [Public Improvement Fee? (Add-On PIF)] • Additional Fees
<p>Public Financing – DURA Contribution</p>	<ul style="list-style-type: none"> • Lodging, Sales and Property Tax Increment • [Credit PIF?] • Property acquisition and conveyance? • Any city fee waivers or reimbursements?

Initial Public/Private Financing Component; Term of Finance Commitment	<ul style="list-style-type: none"> • The Initial debt to be issued to finance Eligible Public Improvements for the project will be a maximum of \$_____. Revenue to support this issuance will be generated from [revenue sources]. • Any surplus revenue beyond debt reserve shall be used to accelerate debt payment at the discretion of DURA. • Maximum term is [xx].
Deferred Public/Private Finance component	<ul style="list-style-type: none"> • Any Eligible Public Improvement costs greater than \$_____ can be repaid at a future date as determined by the Developer based on additional development on the Property and market conditions. This deferred amount of Eligible Public Improvement costs will not exceed \$_____. • Revenue to pay for the this deferred amount will be generated from the District Mill Levy [Add-on PIF, Credit PIF]
Underwriting Assumptions agreed to up front	<ul style="list-style-type: none"> • Rents • Exit Timing • Exit Cap Rates • Financing Assumptions (LTC and rate spreads) • Basic Operating Expense Assumptions
Covenants to be recorded against property	<ul style="list-style-type: none"> • PIF Covenant • Use covenants? e.g. no residential, pot shops, tattoo parlors, etc. • Minimum parking (over and above/separate from zoning?) • Non-discrimination? • Public art?
Indemnification	Developer agrees to indemnify for any claims or liability arising out of PFRA
Named Insured	Developer agrees to add DURA as a named insured on insurance policy(ies) related to the Project.
Term	PFRA will expire the earlier of 25 years from approval of Plan authorizing TIF or agreed upon \$ cap being reached
Schedule and Timing	Need to discuss Common to attach a schedule of performance; or

	<p>specific milestones could be identified within PFRA.</p> <p>Can either party terminate if certain milestones not met by certain dates?</p>
Transfer or Assignment	<p>Discuss assignability. Developer commonly desires maximum flexibility; DURA commonly wants approval rights. Discuss different assignment approvals depending on project completion; discuss severance of TIF from property.</p>
Successors	<p>PFRA will be binding on Developer's successors and assigns. [Required covenants necessary to implement the Credit PIF, Add-On PIF, and additional fees will run with the land.]</p>
Non-Competition	<p>Addressed in MOU</p>
Breach and Remedies	<p>Typically, non-payment of revenue streams cannot be a remedy or will not be bondable</p>
Miscellaneous	<p>PFRA will contain industry-standard boiler plate language regarding representations and warranties, default and remedies, and similar issues</p>

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (this “**MOU**”) is entered into effective as of _____, 2018 (“**Effective Date**”), by and between the Delta Urban Renewal Authority, a Colorado urban renewal authority (“**DURA**”), and MARS Hospitality, LLC, a Colorado limited liability company, and MARS Development, LLC, a Colorado limited liability company (together, “**Developer**”). DURA and Developer are hereinafter collectively referred to as the “**Parties**.”

RECITALS

- A. DURA seeks development of all or a portion of an approximately 9.4 acre site known as the TK Mining parcel (the “**Property**”), located immediately east of Main Street (Highway 50), along the south side of the Gunnison River. The Property is currently privately owned and is not owned by DURA.
- B. DURA desires to see the Property redeveloped as an upper midscale hotel (the “**Project**”).
- C. On January 18, 2018, DURA issued a Request for Proposal (“**RFP**”), soliciting proposals from developers to construct the Project consistent with the land use standards set forth in the City of Delta City Code, the policies and provisions of the City of Delta Comprehensive Plan (2008) and the Delta Downtown Urban Renewal Plan (2017).
- D. On March 6, 2018, Developer timely submitted its Response to the RFP (the “**Response**”).
- E. On March 27, 2018, upon review of the Response by DURA, the DURA Board approved a motion to select Developer as the preferred master developer of the Project and authorized the DURA Executive Director to execute this MOU to evidence the selection of Developer and the exclusive negotiating period between DURA and Developer.
- F. On March 27, 2018, DURA also directed DURA staff to commence negotiations with Developer regarding Developer’s proposed development of the Project and for the purpose of reaching agreement on a Public Finance and Redevelopment Agreement (“**PFRA**”), whose terms and conditions would govern the terms and conditions regarding potential acquisition, disposition, and development of all or a portion of the Property, and the development of the Project. DURA directed DURA staff to provide the DURA Board with regular updates regarding the status of negotiations.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Good Faith Efforts to Negotiate. The Parties shall use their good faith efforts to successfully negotiate a PFRA which shall describe the terms and conditions governing

acquisition and disposition of all or a portion of the Property, and development of the Project. The Parties shall diligently and in good faith pursue such negotiations. This MOU does not impose a binding obligation on DURA to acquire or convey all or a portion of the Property to Developer, nor does it obligate DURA to grant any approvals or authorizations required for the Project. Without limiting the generality of the foregoing, Developer expressly acknowledges that a PFRA resulting from negotiations contemplated hereby shall become effective only if the PFRA is approved by the DURA Board, following any notice and public meeting that may be required by applicable law and compliance with all other requirements of law.

1.1 Public Finance and Redevelopment Agreement. Subject to the approval of a definitive agreement by DURA and Developer, the Parties preliminarily agree that the PFRA will include the terms and conditions contained in the RFP, as provided in the Response.

2. Term. The Term of this MOU shall commence on the Effective Date, and shall terminate six (6) months thereafter (the “**Term**”), unless extended or earlier terminated as provided herein.

3. Exclusive Right to Negotiate. During the Term of this MOU, DURA agrees that it will not, directly or indirectly, through any DURA Commissioner, employee, agent, or otherwise, solicit, initiate or encourage the submission of bids, offers or proposals by any person or entity with respect to the acquisition of any interest in the Property or the development of the Project outside of its discussions with, and on behalf of, Developer. During the Term of this MOU, Developer agrees that it will not, directly or indirectly, through any officer, employee, agent, or otherwise, solicit, initiate or encourage the submission of bids, offers or proposals by any person or entity with respect to an acquisition or development of a hotel project within a sixty (60) mile radius of the Property, or a project which would necessitate Developer not being able to commit the time necessary to participate in good faith negotiations with DURA on the PFRA.

4. Relationship of Parties. The Parties agree that nothing in this MOU shall be deemed or interpreted to create between them the relationship of lessor and lessee, of buyer and seller, or of partners or joint venturers.

5. Developer’s Studies; Right of Entry. During the Term, Developer shall use its good faith efforts to prepare any studies, surveys, plans, proformas, budgets, specifications and reports (collectively, “**Developer’s Studies**”), Developer deems necessary or desirable in Developer’s sole discretion, to determine the suitability of the Property for the Project. Such studies may include, without limitation, title investigation, marketing, feasibility, soils, seismic and environmental studies, financial feasibility analyses and design studies. Notwithstanding the foregoing, Developer shall only have the right to access the Property on the earlier to occur of (i) DURA enters into an access agreement with the current owner of the Property, or (ii) DURA purchases the Property. In connection with entry onto the Property, Developer shall and hereby agrees to indemnify, defend and hold harmless the Indemnitees (defined in Section 11) from and against all Claims (defined in Section 11) resulting from or arising in connection with entry upon the Property by Developer or Developer’s agents, employees, consultants, contractors or subcontractors.

Developer’s inspection, examination, survey and review of the Property shall be at Developer’s sole expense. Developer shall provide DURA with copies of all reports and test results within

ten (10) days following completion of such reports and testing, whether or not such reports and test results are completed prior to or after the expiration or earlier termination of this MOU. Developer shall repair, restore and return the Property to substantially the same condition as existed immediately preceding Developers entry thereon. Developer shall at all times keep the Property free and clear of all liens and encumbrances affecting title to the Property. Developer's indemnification obligations, obligations to provide reports and studies, and obligations to discharge liens that attach to the Property as set forth in this Section 5 shall survive the expiration or earlier termination of this MOU.

6. DURA's Reports and Studies. DURA shall make available to Developer for review or copying all non-privileged studies, surveys, plans, specifications, reports, and other documents with respect to the Property that DURA has in its possession or control.

7. Confidentiality; Dissemination of Information. Beyond the selection of Developer by DURA as described in this MOU, during the Term, each Party shall obtain the consent of the other Party prior to issuing or permitting any of its officers, employees or agents to issue any press release or other information to the press with respect to this MOU or the negotiation of the PFRA; provided, however, no Party shall be prohibited from supplying any information to its representatives, agents, attorneys, advisors, financing sources and others to the extent necessary to accomplish the activities contemplated hereby so long as such representatives, agents, attorneys, advisors, financing sources and others are made aware of the terms of this Section. Nothing contained in this MOU shall prevent either Party from furnishing any required information to any governmental entity or authority pursuant to a legal requirement or from complying with its legal or contractual obligations or as required under Colorado open records or open meetings laws.

8. Termination. This MOU may be terminated at any time by mutual consent of the Parties. DURA or Developer shall have the right to terminate this MOU upon its good faith determination that the other Party is not proceeding diligently and in good faith to carry out its obligations pursuant to this MOU. The non-defaulting Party shall exercise such right by providing at least ten (10) days' advance written notice to the defaulting Party which notice shall describe the nature of the default. Notwithstanding the foregoing, if the defaulting Party commences to cure such default within such 10-day period and diligently prosecutes such cure to completion within the earliest feasible time but not later than thirty (30) days following the date of the notice, this MOU shall remain in effect. Neither Party shall have the right to seek an award of damages as a result of the termination of this MOU pursuant to this Section.

9. Effect of Termination. Upon termination as provided herein, or upon the expiration of the Term and any extensions thereof without the Parties having successfully negotiated a PFRA, this MOU shall forthwith be void, and there shall be no further liability or obligation on the part of either of the Parties or their respective officers, employees, agents or other representatives; provided, however, the provisions of Section 7 (Confidentiality), Section 11 (Indemnification), Section 14 (No Brokers), and any other provisions that expressly so state, shall survive such termination.

10. Notices. Except as otherwise specified in this MOU, all notices to be sent pursuant to this MOU shall be made in writing, and sent to the Parties at their respective addresses specified

below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iii) electronic mail transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by electronic mail shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

DURA: DURA
Attn: David Torgler, Executive Director
360 Main Street
Delta, CO 81416

w/ copy to: Brownstein Hyatt Farber Schreck, LLP
Attn: Caitlin Quander
410 Seventeenth Street, Suite 2200
Denver, CO 80202

Developer: Attn: Michael May
19284 Cottonwood Drive, Suite 203
Parker, CO 80138

11. Indemnification. Developer hereby covenants, on behalf of itself and its permitted successors and assigns, to indemnify, hold harmless and defend DURA and its elected and appointed officials, officers, agents, legal counsel, representatives and employees (all of the foregoing, "**Indemnitees**") from and against all liability, loss, cost, claim, demand, action, suit, legal or administrative proceeding, penalty, deficiency, fine, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) (all of the foregoing, collectively hereinafter "**Claims**") arising out of or in connection with this MOU; provided, however, Developer shall have no indemnification obligation with respect to the negligence or willful misconduct of any Indemnitee. Developer's indemnification obligations set forth in this Section 11 shall survive the expiration or earlier termination of this MOU.

12. Entire Agreement; Amendments In Writing; Counterparts. This MOU contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral and written, between the Parties with respect to such subject matter. This MOU may be amended only by a written instrument executed by the Parties or their successors in interest. This MOU may be executed in multiple

counterparts, each of which shall be an original and all of which together shall constitute one MOU.

13. Successors and Assigns; No Third-Party Beneficiaries. This MOU shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that neither Party shall transfer or assign any of such Party's rights hereunder by operation of law or otherwise without the prior written consent of the other Party, which may be withheld in that Party's sole discretion, and any such transfer or assignment without such consent shall be void.

14. Brokers. Each Party warrants and represents to the other that no brokers have been retained or consulted in connection with this transaction. DURA shall not be liable for any real estate commission or brokerage fees that may arise as a consequence of any transaction involving this MOU, the Property, or the proposed PFRA.

15. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Colorado.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding as of the date first written above.

DELTA URBAN RENEWAL AUTHORITY

By: _____

ATTEST:

By: _____

MARS HOSPITALITY, LLC,
a Colorado limited liability company

MARS DEVELOPMENT, LLC,
a Colorado limited liability company

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Below are the questions received from the DURA Board members regarding the hotel proposal from MARS. The Board will review these questions at the meeting.

1. Estimated time of project completion.
2. What is included in the \$1.9 mil estimated cost to the DURA?
3. Who currently owns the project land and who will ultimately own the land? What is the total acreage of the proposed site? Are there other uses planned for the site? By Whom?
4. It is stated that the “project” will cost approx. \$12 mil. What would be the cost for the resort concept?
5. Does the \$12mil plus the \$1.9 mil equal the total cost of the project as currently anticipated?
6. Page 5, Sec. 1a States that the project will provide safe walkability and bicycle access to the 2 mile riverfront area along the Gunnison. Who will develop and pay for that trail and when?
7. Page 7, Sec. 1e. Is the \$830,000 infrastructure discussed here in addition to the \$12 mil and the \$1.9 mil
8. Who covers the marketing firm expenses?
9. On page 14 there is reference to the Maverick Teaching Hotel. Is this an erroneous inclusion to our RFP?
10. What is the marketing plan to attract guests to the hotel?
11. Would the marketing plan include additional revenue sources benefiting existing businesses and the community as a whole?
12. What would be offered by the City/DURA for the project to proceed?
13. What are the projected costs to the City/DURA? (purchase of property, demolition, infrastructure)?
14. How are the costs (purchase of land, demolition, infrastructure) going to be funded?
15. What is the projected timeline of actual TIF revenue?
16. What is the projected revenue to the City?
17. Will there be provisions in a contract with Mars addressing their ability to flip the property, taking advantage of the City/DURA investment in the project?