INTERGOVERNMENTAL AGREEMENT BETWEEN LA PLATA COUNTY, COLORADO AND THE CITY OF DURANGO, COLORADO REGARDING JOINT LAND USE PLANNING

THIS AGREEMENT is made and entered into by and between LA PLATA COUNTY, COLORADO, a body politic organized under and existing by virtue of the laws of the State of Colorado, (the "County") and the CITY OF DURANGO, COLORADO, a home rule municipality (the "City") (collectively, the "Parties").

RECITALS

WHEREAS, pursuant to Title 29, Article 20, Colorado Revised Statutes, as amended, the General Assembly of the State of Colorado designated certain powers to local governments, among them the authority to regulate the location of activities and developments which may result in significant changes in population density, the authority to provide for phased development of services and facilities and the authority to regulate the use of land on the basis of the impact thereof on the community or surrounding areas in a manner consistent with constitutional rights; and

WHEREAS, pursuant to Title 29, Article 20, Colorado Revised Statutes, as amended, the General Assembly of the State of Colorado found and declared that in order to provide for planned and orderly development within Colorado and a balancing of the basic human needs of a changing population with legitimate environmental concerns, the policy of the State of Colorado is to clarify and provide broad authority to local governments to plan for and regulate the use of land within their respective jurisdictions; and

WHEREAS, pursuant to Title 30, Article 28, Colorado Revised Statutes, as amended, the General Assembly of the State of Colorado provided broad land use authority to counties and empowered them to plan and provide for the physical development of their unincorporated territory; and

WHEREAS, pursuant to Title 29, Article 20, Colorado Revised Statutes, as amended, the General Assembly of the State of Colorado authorized and encouraged local governments to cooperate or contract with other units of government for the purpose of planning and regulating the development of land, including but not limited to the joint exercise of planning, zoning, subdivision, building and related regulations; and

WHEREAS, concentrating urban development in areas designated for such development affords greater efficiency in the delivery of such services as water and sanitary sewage disposal systems, transportation, fire and police protection and other services and also affords predictability to landowners and residents concerning where future services may be provided and urban development will be permitted; and

WHEREAS, maintaining and enhancing areas of urban development in a thoughtful and deliberate way involves cooperation in land use planning; and

WHEREAS, the County legislatively adopted certain land use regulations, which are intended to apply appropriate design and development standards within transitional areas adjacent to the City, while helping facilitate greater efficiency in the delivery of municipal services should the City ultimately annex parcels or provide water or sewer facilities in these areas; and

WHEREAS, the County Planning Commission adopted the Durango District and La Posta Road Area District plans, which contain combined boundaries that are identical to the Joint Planning Area Map, attached hereto as Exhibit A;

WHEREAS, effective January 1, 2013, the Parties entered into the 2013 Temporary Intergovernmental Agreement Regarding Joint Land Use Planning Between the City of Durango, Colorado and La Plata County, Colorado (the "2013 Temporary IGA"); and

WHEREAS, subsequently, the Parties executed two amendments to the 2013 Temporary IGA and by the terms of the agreement, the 2013 Temporary IGA is set to expire on March 31, 2014; and

WHEREAS, it is in the best interests of the citizens of La Plata County and the City of Durango for the Parties to enter into an intergovernmental agreement for the purposes of establishing effective means of joint planning and urbanization within their jurisdictions and assuring that urban development occurs consistent with the level of facilities and services to be provided; and

WHEREAS, it is the intent of the parties through this Agreement to create a framework that will promote economic development, enhance community character and quality of design, and add value and opportunities to properties in areas adjacent to the City in the unincorporated County.

NOW, THEREFORE, in consideration of the covenants and obligations herein expressed, it is agreed by and between the Parties hereto as follows:

1. Purpose. The purposes of this Agreement and other legislative actions contemplated by the County are (a) to provide the framework for coordinated short term and long-range planning efforts; and (b) to foster and promote cooperation between the City and the County with respect to such efforts.

2. Definitions.

A. *Applicant.* Applicant shall mean the owner of the land subject to a land use permit for New Development or the owner's representative.

B. *Class II Land Use Permit.* Class II Land Use Permit shall mean a land use permit for a Class II development, as defined in Section 82-4 of the LPLUC.

C. *Eligible Person.* Eligible Person shall mean a property owner who is entitled to receive direct notice of the hearing for the Application under the LPLUC.

D. *Joint Planning Area (the "JPA").* Joint Planning Area shall mean the unincorporated area identified in the Joint Planning Area Map

E. *Joint Planning Area Map (the "JPAM").* Joint Planning Area Map shall mean the map attached hereto and incorporated herein as Exhibit A and as may be amended from time to time.

F. *Joint Planning Commission (the "JPC").* Joint Planning Commission shall mean the body appointed pursuant to Section 3 of this Agreement.

G. *LPLUC.* LPLUC shall mean the La Plata County Land Use Code, as the same may be amended from time to time.

H. *New Development.* New Development shall mean development located within the JPA that requires (1) a Class II Land Use Permit pursuant to the LPLUC; (2) a subdivision permit, including a minor exempt subdivision, as defined in Section 62-1 of the LPLUC; (3) a location and extent review pursuant to C.R.S. § 30-28-110(1) (a) and Section 82-9 of the LPLUC; (4) approval of planned unit developments subject to C.R.S. § 24-67-101 *et. seq.*; and (5) approval of a development agreement the Board of County Commissioners has determined to be subject to C.R.S. § 24-68-104(2).

I. *New Development Application.* New Development Application shall mean the application submitted to the County Planning Department by an Applicant for New Development.

J. *Owner.* Any person, firm, association, syndicate, partnership or corporation having sufficient proprietary interest to seek development of land.

K. *Public Water System.* Public Water System refers to a system that provides water for human consumption through pipes or other constructed appurtenances to at least 15 service connections or serves an average of at least 25 people for at least 60 days per year.

Terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in the LPLUC or state statute.

3. Joint Planning Commission Composition and Quorum. The JPC shall consist of six (6) members, three (3) of whom shall be current members of the City Planning Commission and three (3) of whom shall be current members of the County Planning Commission. The City and County may either independently designate the members from their respective planning commissions or may independently select members from their respective planning commissions for each JPC meeting. Four (4) members of the JPC shall constitute a quorum for the transaction of business by the JPC. If a quorum is present, the decision of one or more members of the JPC

to abstain from voting thereon shall not be deemed to constitute less than a quorum for the transaction of business. Action of the JPC shall be by majority vote of those voting at a meeting at which a quorum is present. A tie vote constitutes a denial of an application by the JPC.

4. Process for New Development Applications.

A. *Referral for Annexation Review.* Many of the properties within the JPA are becoming more urban in character and growth and the expansion of municipal boundaries through annexation may be reasonably anticipated. The JPA is intentionally co-extensive with the City's water service area because the City has a water service delivery system that is reliable with respect to quantity and quality and the capacity to provide the services and facilities necessary for sound development. One of the primary goals of this IGA is to encourage and promote the extension of and connection to the City's system and the properties within the JPA. Because the provision of water is intricately related to annexation, the City and the County recognize the need to administer annexations in a manner that will appropriately balance the benefits and the costs of annexation for the City and affected property owners.

Annexation within the JPA shall be encouraged through imposition of the prerequisite that every New Development Application submitted to the County for property within the JPA shall be referred by the County to the City for review of annexation eligibility and the provision of water. Except as provided in Section 4(A)(ii)(2), the City shall accomplish such review within thirty (30) calendar days of its receipt of the referral.

i. Annexation Required.

Except location and extent projects submitted pursuant to C.R.S. § 30-28-110(1)(a) and Section 82-9 of the LPLUC, all New Development within 400 feet[1] of the City's existing central water system or central sewer system shall be required to submit and process to completion a petition for annexation to the City if the City is desirous of annexation. The 400 foot requirement (the "Distance Requirement") shall be measured from the lot line of the property of the proposed project to the existing central water and/or sewer system's facilities.

ii. Annexation or Implied Consent to be Determined Based Upon Eligibility and Nature of Water Delivery.

The likelihood of annexation or an implied consent agreement is largely determined by annexation eligibility under state law, the City's willingness to serve and the proposed nature of water delivery. The following classifications of water delivery shall be treated as described below, each instance assuming the City's willingness to serve:

(1) *Applications Proposing City Water.* Annexation shall be required for New Development that proposes the use of City water for property that is eligible for

[1] La Plata County reserves the right to expand such distance through the legislative adoption of land use regulations without the necessity of amending this IGA. In such instance the defined term "Distance Requirement" described in this IGA shall be deemed to mean whatever distance has been adopted by the County. The Distance Requirement may not be reduced by the County without the consent of the City and an amendment to this IGA.

annexation. New Development that proposes the use of City water for property that is not eligible for annexation shall require an implied consent agreement between the Owner and the City.

(2) *Applications Proposing a Public Water System.* Without regard to eligibility for annexation, any New Development in the JPA that proposes a Public Water System must meet and confer with the City and allow the City sixty (60) calendar days to determine whether it will agree to allow the extension of water service for the proposed New Development. If the City determines that it is willing to allow the extension of water service to the proposed New Development but the Applicant or Owner does not desire annexation or an implied consent agreement, annexation or an implied consent agreement with the City will be required, subject to Section 4(G) below, unless the Applicant can demonstrate that the Public Water System satisfies the requirements of Sections 82-183 and 82-186 of LPLUC relating to adequate proof of water quantity and quality and that the use of a well is compatible under the compatibility standards set forth in Sections 82-191 and 82-192 of the LPLUC. The lack of such compatibility shall be a basis for denial of the project.

In all other instances, annexation is not required unless desired by the Owner but the County agrees to encourage connection to the City's water system where the City is willing to serve. The City shall be under no obligation to agree to provide water service for any proposed New Development.

B. *New Development Application Submittal.* An Applicant shall submit a New Development Application to the County Planning Department. The New Development Application shall be accepted by the County for processing if it receives written notice from the City that: (1) the Owner does not desire annexation and there is no other basis for voluntary annexation under C.R.S. § 31-12-107; (2) the property is ineligible for annexation; (3) the City does not presently desire to annex the subject property; or (4) the annexation of the subject property has been denied.

C. *New Development Application Review Process.* New Development Applications shall be reviewed pursuant to the process and standards for a Class II Land Use Permit or location and extent as set forth in the LPLUC.

D. *Joint Planning Commission Review.* The JPC shall review New Development Applications and either continue, approve, deny or conditionally approve such applications pursuant to the requirements and standards adopted in the LPLUC. The JPC shall make a determination on New Development Applications after holding a public meeting and providing notice as required in the LPLUC.

E. *New Development Application Call-Up Procedures.* The JPC's determination for New Development Applications, except those involving location and extent applications subject to C.R.S. § 30-28-110(1)(a), is subject to a call-up hearing before the Board of County Commissioners. Within twenty (20) calendar-days following the determination by the JPC, the Applicant, an Eligible Person, the City Council, or the Board of County Commissioners

may request review of the JPC's determination by submitting a written request to the County Planning Department. Upon receipt of a request for a call-up hearing by the County Planning Department Director, the JPC's determination shall be reviewed by the Board of County Commissioners no later than twenty (20) calendar days from the date of the County Planning Department's receipt of such request. At the call-up hearing, the Board of County Commissioners shall conduct a *de novo* review of the New Development Application and may either continue the project, approve the project, conditionally approve the project, deny the project or remand the project to the JPC for further consideration pursuant to the requirements and standards adopted in the LPLUC.

F. *Final Action.* A determination on a New Development Application shall be deemed final after either:

(i) The expiration of the twenty (20) day call-up period following the JPC's determination where there was no request to call-up the New Development Application to the Board of County Commissioners; or

(ii) If a call-up is requested, the Board of County Commissioners' final decision on a New Development Application, unless remanded to the JPC.

G. *Annexation Review.* When a determination is made that annexation or an implied consent agreement is required under Section 4(A)(ii)(2) where the Applicant initially proposed a Public Water System and did not desire annexation or an implied consent agreement, such Applicant may request an annexation review if the Applicant is unable to agree to the terms proposed by the City in an annexation agreement or implied consent agreement. The annexation review shall be achieved by the Applicant submitting a review request to the County Planning Director, for referral to the JPC. Upon notice from the County Planning Director, the City Planning Director and the Applicant shall, within twenty-one (21) calendar days of such notice, submit a letter to the JPC explaining the key provisions of the City's requirements for annexation or an implied consent agreement and an explanation as to why agreement cannot be achieved. The JPC shall review such submittals and shall make a determination of whether the City is imposing requirements that exceed the then current City Development Standards and Land Use Code. The Applicant or the City shall have the right to appeal the determination of the JPC to the La Plata County Board of Adjustment pursuant to Section 66-22 of the La Plata County Code.

If a determination is made that the requirements of the City do not exceed City Development Standards and Land Use Code, to pursue the New Development Application, the Applicant shall be required to either annex or enter into the proposed implied consent agreement according to the terms required by the City. If it is determined that such standards have been exceeded, the JPC's determination shall set forth in writing and with specificity the nature and extent of the proposed requirements that exceed the current Development Standards and Land Use Code. The City shall have twenty one (21) calendar days thereafter to determine if it is willing to bring the requirements into compliance with the then current City Development Standards and Land Use Code. If the City is unwilling to do so, annexation or an implied consent agreement will no longer be required and the New Development Application may be

processed with the removal of the requirement that the proposed Public Water System demonstrate compatibility pursuant to Sections 82-191 and 82-192 of the LPLUC. However, the Applicant must still demonstrate the Public Water System satisfies the requirements of Sections 82-183 and 82-186 of LPLUC relating to adequate proof of water quantity and quality.

H. *Judicial Appeal.* As a prerequisite to seeking judicial review of a determination on a New Development Application, consideration of the New Development Application must have been called up by the Applicant, an Eligible Person, the City Council, or the Board of County Commissioners pursuant to Paragraph 4.E. of this Agreement.

5. Amendment of Land Use Plans. The County and City desire to maintain consistency between the County's district plans and the City's Comprehensive Plan and area plans within the JPA, but recognize the County Planning Commission's independent statutory authority under C.R.S. § 30-28-106 to adopt and amend district plans for the unincorporated portions of the County, as well as the City Council's authority to adopt or amend the City's Comprehensive Plan and area plans. In an effort to provide consistency between the County's district plans and the City's Comprehensive Plan and area plans within the JPA, requests for amendments to the County's district plans that affect properties within the JPA and requests for amendments to the City's Comprehensive Plan and area plans that affect lands within the JPA shall be submitted concurrently to the County Planning Department and to the City Planning and Community Development Department. Such applications for amendments shall be processed concurrently by the City and the County and shall be considered during a joint public hearing held before the County Planning Commission and the City Planning Commission. The planning commissions shall hear the request for amendment of the plans jointly but shall make their respective determinations independently. The determination of the City Planning Commission shall be forwarded as a recommendation to the City Council for final determination. The County Planning Commission's decision shall become final on the date such decision is made, as shall the decision of the City Council.

6. Effect of Amendment of Land Use Plans to the JPAM. The parties acknowledge that the Board of County Commissioners and City Council must agree to any amendment of the JPAM but also desire to provide an efficient mechanism for amendment. In an effort to accommodate both of these interests, the parties agree that the County Planning Commission's approval of an amendment to the boundaries of the Durango District or La Posta Road Area District, subsequent to the joint public hearing process described in Section 5 above, shall not only amend the district plan(s), but shall also have the effect of amending the boundaries of the JPAM, unless either the Board of County Commissioners or the City Council, within twenty-eight (28) calendar days from the date of the County Planning Commission's approval of the amendment, provide written notice of objection to the amendment of the JPAM. If such objection is received within twenty-eight (28) calendar days by the non-objecting party, the County Planning Commission's approval of the resolution shall not have the effect of amending the JPAM. Nothing herein is intended to abrogate the County Planning Commission's authority to amend district plans and the County Planning Commission's decision to amend a district plan(s) shall not be affected by an objection by either the City Council or the Board of County Commissioners.

7. Amendment of Certain Land Use Regulations. The County has legislatively adopted certain land use regulations that apply specifically to the area within the JPAM and the City has participated in the development of such regulations. The parties recognize that the adopted standards may be amended from time to time by the County. The County Planning Department shall forward all draft amendments to such land use regulations to the City Planning Department for comment at least twenty-eight (28) calendar days prior to consideration of the amendments by the County Planning Commission. The County Planning Department and the City Planning Departments shall confer with one another relative to the City's comments. In the event, the City has no comments to the proposed amendments the City may waive the advance noticing afforded to the City pursuant to this section.

8. Notice of Land Use Actions within the JPA.

A. *County Notice to the City.* The County shall provide written notice to the City, within the timeframes noted, of the following:

Action to be taken	Notice to be given to the City
Proposed adoption or amendment of land use standards affecting properties within the JPA	Twenty-eight (28) calendar days prior to Planning Commission hearing
Requests to amend a district plan or comprehensive plan affecting properties within the JPA	Three (3) business days after receipt of request
New Development Applications and applications for a development permit as required by the LPLUC, including location and extent review applications within three (3) miles of the City's boundaries	Three (3) business days after receipt of completed application

B. *City Notice to the County.* The City shall provide written notice to the County, within the timeframe noted, of the following:

Action to be taken	Notice to be given to the County
Review of New Development Applications for annexation eligibility and the provision of water	Thirty (30) calendar days of City's receipt of the referral

Determination by City whether it is willing to bring its annexation or implied consent requirements into compliance with the then current City Development Standards and Land Use Code after annexation review	Twenty-one (21) calendar days after JPC's determination
Request to amend an area plan or comprehensive plan affecting properties within the JPA	Three (3) business days after receipt of a completed application
Applications to obtain central water or sewer services from the City within the JPA	Three (3) business days after receipt of a completed application
Petitions for annexation of properties within the JPA	Three (3) business days after receipt of a completed application
Purchases of property by the City within the unincorporated portions of the County	Three (3) business days after date of closing

9. Annexations.

A. *General.* The City agrees to consider and timely and properly process the annexation of property subject to a New Development Application eligible for annexation pursuant to the provisions of Title 31, Article 12 of the Colorado Revised Statutes.

B. *Impact Reports.* The City shall prepare and deliver to the County annexation impact reports for annexation requests concerning properties greater than 10 acres in size within the JPA unless this requirement is waived in writing by the County Planning Department Director.

C. *City Property.* The City shall make good faith efforts to annex existing and future City-owned property that is located within the unincorporated County and eligible for annexation within a reasonable timeframe. The County understands that annexation of City-owned property is subject to budget approval by the City Council.

10. Subdivision Plat Execution. After final action, as defined in Section 4.F. herein, on a New Development Application for a subdivision, the final subdivision plat shall be signed and dated by the Chair of the Board of County Commissioners and attested by the Clerk to the Board, regardless of whether the project was called-up to the Board of County Commissioners.

11. Enforcement and Legal Actions. The County shall be responsible for enforcement of violations of the LPLUC in the JPA and shall provide legal representation for civil actions that arise from land use related activities in the JPA. When requested by the

County, the City agrees to provide assistance in investigating violations of the LPLUC in the JPA and providing legal support for civil actions that arise from land use related activities in the JPA, subject to the availability of City resources. Nothing herein shall prevent the City and County from entering into a separate agreement to allow for the joint use and funding of resources in the JPA.

12. Effective Date. This Agreement shall be effective on the date of the last of the Parties to execute this Agreement as signified below or April 1, 2014 whichever date is later (the "Effective Date"). This Agreement shall not apply to a New Development Application that was deemed complete by the County prior to the Effective Date.

13. Termination. This Agreement shall be terminated upon written notice from either party. The notice shall provide the effective date of the termination, but in no event shall the termination be effective any earlier than one hundred eighty (180) days from receipt of the notice, unless the Parties mutually agree in writing to an earlier effective date for termination.

14. General Provisions.

A. *Entire Agreement*. This Agreement embodies the entire agreement between the parties regarding the subject matter herein and supersedes all prior agreements and understandings, if any.

B. *Interpretation*. Subject only to the express limitations set forth herein, this Agreement shall be liberally construed to permit the parties to exercise all powers that may be exercised by them with respect to the subject matter of this Agreement and pursuant to applicable law.

C. *No Third Party Beneficiaries*. The parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

D. *Signatory Authority*. Each person signing this Agreement in a representative capacity, expressly represents the signatory has the subject party's authority to so sign and that the subject party will be bound by the signatory's execution of this Agreement. Each party expressly represents that except as to the approval specifically required by this Agreement; such party does not require any third party's consent to enter into this Agreement.

E. *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one original Agreement.

F. *Severability*. If any term or provision of this Agreement shall be adjudicated to be invalid, illegal or unenforceable, this Agreement shall be deemed amended to delete therefrom the term or provision thus adjudicated to be invalid, illegal or unenforceable and the validity of the other terms and provisions of this Agreement shall not be affected thereby.

G. *Notices*. Except as otherwise provided in this Agreement, all notices or other communications by any party hereto shall be in writing; shall be sufficiently given and shall be deemed given when actually received.

15. Amendment. This Agreement may be amended or supplemented only by an instrument in writing executed by both parties to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year set forth below.

(SEAL)

Deputy Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
LA PLATA COUNTY, COLORADO

Julie Westendorff, Chairperson
Date:

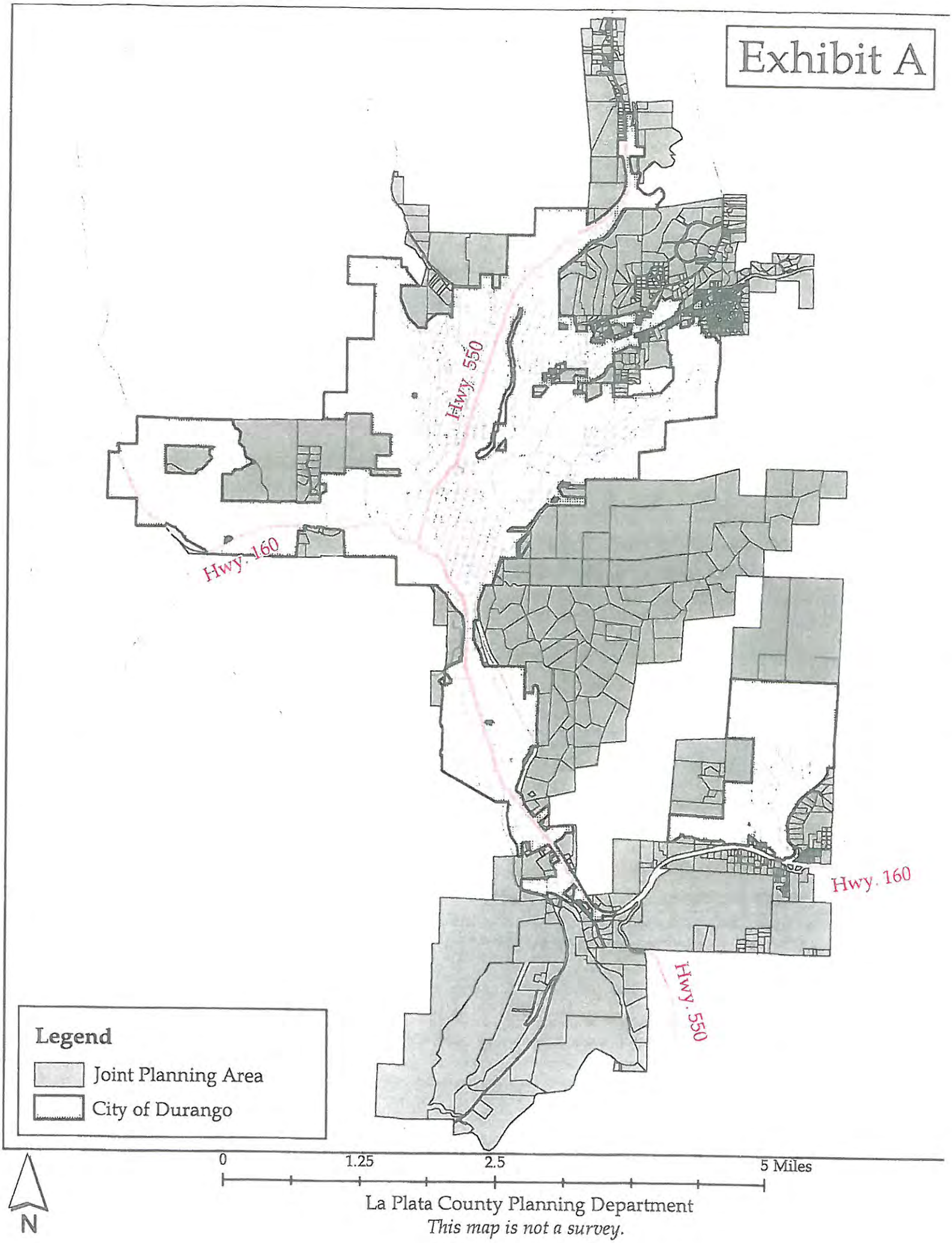
(SEAL)

City Clerk

CITY OF DURANGO, COLORADO

Dick White, Mayor
Date:

Exhibit A



La Plata County Planning Department

This map is not a survey.