

RAILROAD MUSEUM AND MINIATURE RAILROAD DEVELOPMENT AND MANAGEMENT AGREEMENT

This Development And Management Agreement (the "Agreement") is entered into this _____ day of _____, 2007 by and between the City of Las Vegas, a municipal corporation of the State of Nevada (the "City"), and the Las Vegas Railroad Society, a Nevada nonprofit organization (the "Railroad"), for the development and management of a railroad museum and miniature railroad (the "Railroad Project" or "Project") on City park property.

RECITALS

WHEREAS, Railroad is a 501 c3 nonprofit organization, dedicated to the education, preservation and demonstration of our nation's railroad heritage, and in furtherance of such purpose, desires to develop and manage a railroad museum and miniature railroad on City park property; and

WHEREAS, the City has acquired the parcels of Federal land depicted in Exhibit A hereto (the "Park Property") pursuant to leases and patents under the Recreation and Public Purposes Act (43 U.S.C. §869 *et seq.*) (the "R&PP Act"), and is required to utilize said properties for public recreation purposes; and said Park Property currently embraces Angel Park, the Angel Park Golf Course, the Las Vegas Sports Park, the Kellogg Zaher Sports Complex, the Darling Tennis Center, together with a Detention Basin Area; and

WHEREAS, utilization of portions of the Park Property for the development and management of a railroad museum and miniature railroad for the benefit of the general public, as set forth in this Agreement, could be consistent with the requirements of the R&PP Act, and the parties desire to enter into this Agreement to accomplish such ends;

NOW THEREFORE, in consideration of the above recitals and the mutual covenants and conditions set forth herein, the parties do hereby agree as follows:

ARTICLE I PERMIT TO DEVELOP AND MANAGE RAILROAD PROJECT

Subject to the covenants and conditions set forth herein, the City hereby grants to Railroad, the right to develop and manage the Railroad Project on the City Park Property. Railroad agrees to develop, operate, manage and maintain the Railroad Project subject to the terms of this Agreement and the requirements of the R&PP Act, and at Railroad's sole cost and expense. This permit shall continue in perpetuity unless terminated pursuant to Article VII herein.

ARTICLE II
DESIGN AND PERMITTING OF RAILROAD PROJECT

Railroad shall design the Railroad Project, and obtain City approvals and permits for the design and development of the Project, in the following manner:

1. **Approval Process for Conceptual Plans.** Railroad shall secure the services of design and engineering professionals, licensed in the State of Nevada, to create the conceptual design and operation plans for the overall Railroad Project as Railroad intends to ultimately develop on the Park Property, indicating the phases in which the Railroad Project will be developed and the general timelines for such development. The conceptual plans shall also include the details of the development process, indicating the construction methods that will be utilized to insure minimal interference with existing uses on the Park Property. Railroad's design and engineering professionals shall coordinate their planning activities with the City's Facilities Management Division, Real Estate Section, to insure that the plans for the various elements of the Project and locations thereof are acceptable to the City's Departments of Field Operations, Public Works and Leisure Services. The Real Estate Section shall organize a review group among such Departments to review the conceptual plans as they are being developed so that by the time such conceptual plans are completed, the City Departments charged with the responsibility of managing City parks will be satisfied with the design, development and operation concepts. The conceptual plans must meet the requirements of, and be approved in writing by, the City's Real Estate Section prior to Railroad's preparation and submission of final plans to the City's Departments of Planning & Development and Building & Safety ("Planning and Building Departments" respectively) to begin the actual construction of the Project. The review and approval required by this Section 1 are independent of any approvals required by the Planning and Building Departments. Prior to beginning the process to create such conceptual plans, Railroad shall contact the Real Estate Section and organize pre-planning sessions, together with the design professionals, so that all parties shall be advised of the issues involved and the requirements for the conceptual plans at the outset of the design process. The Real Estate Section shall condition its approval of the Project on compliance with written criteria which must be followed in the development of the Project to insure Project completion and compatibility with existing uses on the Park Property. Such criteria may be modified by the Real Estate Section during the development process if conditions develop which interfere or adversely impact the existing uses on the Park Property.

2. **Approval by BLM.** Upon approval of the foregoing conceptual plans by the City's Real Estate Section, said Section shall submit such plans to the Bureau of Land Management ("BLM") for review and approval with respect to compliance with the R&PP Act. This Agreement and any actions taken in furtherance thereof are subject to full compliance with the requirements of the R&PP Act, and the parties shall at all times conform any such actions to such requirements.

3. **Approval by Planning and Building Departments.** Following BLM approval of the Project, Railroad shall comply with all requirements of the Planning and Building Departments, as well as the foregoing requirements of the Real Estate Section, in developing the Project. To begin such approval process, Railroad shall attend a pre-application session with the Planning Department and thereafter file applications for amendments to the City's site plans for the Park Property in conformance with the approved conceptual plans. The Real Estate Section shall sign such applications on behalf of the City, as property owner. The fact that the City signs such applications as property owner shall have no impact on the approval process, such as that the City approves the applications; it merely indicates that the City approves of Railroad filing the applications. Following approval of the site plan amendments, Railroad shall obtain and pay for building permits from the Building Department for the construction of the Project and comply with all conditions and requirements of the Planning and Building Departments in developing the Project, as well as the requirements of the Real Estate Section. Any building permits must be conditioned on Railroad's posting of payment and completion bonds with the City in the amount of the total cost of construction, and in the form and from a surety approved by the City Attorney. All of the foregoing requirements must be met with respect to each phase of development.

ARTICLE III
CONSTRUCTION AND OPERATION OF PROJECT

In addition to the requirements set forth above, Railroad shall construct and operate the Project in compliance with the following:

1. **Liens.** Railroad shall not allow any liens to be filed or recorded against the City or the Park Property as a result of this Agreement, and shall immediately take all necessary steps to remove same in the event that any appear. Railroad shall have the right to contest the legitimacy of any such lien, but if such challenges are filed in any court, or in any event, are recorded against the Park Property for more than 6 months, Railroad shall bond over said liens by posting a bond with the City in the amount of the lien, and in the form and from a surety approved by the City Attorney, which shall guaranty that the lien shall either be removed within two years from said date or be paid off and removed by the surety.
2. **Revenue.** Any fees charged by Railroad to ride the miniature trains or received from concessions or other matters related to the Project are subject to prior approval by the City's Department of Leisure Services ("Leisure Services"), which shall be responsible for oversight of the operation and management of any phase of the Project following completion thereof. All revenues from the Project that are realized as a result of operating the Project on the Park Property shall be utilized to operate and maintain Railroad and the Project or for further

improvements of the Project. No revenues received from operating the Project on Park Property may be used for any other purpose. Railroad shall submit annual statements to Leisure Services detailing all of Railroad's receipts and expenses for the year, beginning one year after actual operation of the initial phase of the Project is initiated.

3. **Audits.** Railroad shall maintain, in Clark County, Nevada, financial records pertaining to all matters relative to this Agreement in accordance with standard accounting principles and procedures, and shall retain all records and supporting documentation applicable thereto for a period of three years after submission of each annual statement referred to above, except that records subject to audit findings shall be retained for three years after such findings have been resolved. In the event Railroad goes out of operation then it shall deliver to City all of its records relating to this Agreement to be retained by City for the above required periods of time.

Railroad agrees to permit City, BLM, or their designated representatives to inspect and/or audit Railroad's records and books relative to this Agreement at any time during normal business hours and under reasonable circumstances and to copy there from any information desired. Railroad shall be provided written notice at least three days prior to the exercise of this provision.

4. **Leisure Services Rules and Regulations.** Railroad agrees to abide by all rules, regulations and directives of Leisure Services, whether now in existence or later implemented, in the operation and management of any phase of the Project upon completion of such phase. This compliance is in addition to compliance with other requirements set forth above.

5. **Insurance.** Prior to beginning construction on any phase of the Project, the Real Estate Section shall determine the amount and types of liability insurance Railroad needs to secure to protect Railroad, the City and the public from injury or damages arising from said construction activities. Railroad shall secure such insurance as a condition of any entry onto the Park Property to begin construction and shall name the City as an additional insured thereon, providing certificates of such insurance to the Real Estate Section. The policies must provide that they cannot be canceled without 30-days prior written notice to the City.

Prior to beginning operation following completion of construction of any phase of the Project, Railroad shall provide the types and amounts of liability insurance coverage required by Leisure Services, naming the City as an additional insured and providing certificates of such insurance to Leisure Services. Such policies must provide that they cannot be canceled without 30-days prior written notice to the City.

6. **Indemnification.** Railroad shall indemnify, defend and hold the City, its officers and employees (collectively the "Indemnitees"), harmless from and against any and all claims, demands, actions, liabilities, losses, damages, judgments, costs, expenses, including attorney and expert witness fees, for any injury to or death of

any person or any damage or destruction of any property, which is in any manner based upon or arises out of the alleged acts or omissions of Railroad, its officers, employees, agents, and contractors in the performance of this Agreement or use or presence on the Park Property. As part of this obligation, Railroad shall at its expense defend the Indemnitees against such claims, and failing or refusing to do so, the Indemnitees shall have the right, but not the obligation, to defend the same and charge all costs thereof to Railroad.

7. **Utilities.** Railroad shall install, as necessary, and provide, at its sole cost and expense, all utility services needed for the operation of the Project, and shall install separate meters for all such utilities.
8. **Maintenance.** Railroad shall provide, at its sole cost and expense, maintenance and repair services and other services as may be necessary in order to keep the Project and Park Property utilized for the Project, and all of the structures, fixtures, furnishings and equipment involved in the Project, in a good, clean, safe and sanitary condition at all times.

ARTICLE IV ASSIGNMENT

Railroad shall not, either voluntarily or by operation of law, assign or transfer this Agreement or any rights hereunder, without the prior written consent of the City. Any attempt to do so shall be void and of no force or effect.

ARTICLE V DISPUTE RESOLUTION

In the event Railroad disputes any rules, regulations or directives of the Real Estate Section or Leisure Services, Railroad shall attempt to resolve such matters up the City's chain of command through informal discussions with Department Directors and finally, with the City Manager's Office. In the event a particular issue cannot be resolved to Railroad's satisfaction through such discussions, Railroad shall have the right to appeal the final decision of the City Manager to the City Council by setting forth its claim in writing and filing the same with the City Clerk. The written appeal shall specify the ruling or directives of City staff, shall indicate the decision of the City Manager with respect thereto, shall explain in detail Railroad's position or request and any supporting facts, and shall be signed by Railroad's management. Upon receipt of an appeal which complies with such requirements, City Clerk shall place such matter on the next available City Council agenda to be heard and considered. The rules of evidence shall not apply at any such hearing, but the parties shall be under the duty to present only accurate and truthful information. The City Council may take any action with respect to the issue it deems appropriate, by a majority vote of the Council members in attendance at the hearing that vote on the issue, including but not limited to remanding the matter to the

City Manager or City staff with additional directives, upholding the appeal and/or modifying the prior positions of City staff, or denying the appeal with or without further directives. The decision of the City Council is final and cannot be appealed further or taken to any Court for review or relief.

ARTICLE VI BREACH AND DEFAULT

Any of the following events shall constitute a breach of this Agreement:

1. The City or Railroad fails to perform or observe any covenant, term, or condition of this Agreement on its part to be performed.
2. Railroad fails or refuses to perform or observe the rules, regulations or directives of the Real Estate Section or Leisure Services.
3. Railroad is adjudicated bankrupt or makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency or failure of management.
4. Railroad persistently and repeatedly fails or refuses to provide sufficient and competent staffing for the efficient and professional operation of the Project, or the operation of the Project is abandoned.
5. Railroad fails to make timely payments to its contractors, subcontractors, suppliers or utilities.
6. Railroad fails to adhere to time requirements imposed by the City concerning the development and operation of the Project.

In the event of any breach of this Agreement, the party seeking corrective action from the other party shall provide written notice of the breach to that party and shall specify the reasonable time period for said party to cure the breach, also indicating the actions required to correct the breach. In the event the breaching party fails to take the corrective actions to cure the breach, the breaching party shall then be in default of this Agreement. Any determination of breach or default is subject to the Dispute Resolution provisions of Article V, above.

ARTICLE VII TERMINATION

Railroad may terminate this Agreement at any time by giving 90-days prior written notice to the Real Estate Section and Leisure Services.

The City may terminate this Agreement for any reason or no reason, any time after 10 years from the date hereof, by giving Railroad 180-days prior written notice thereof. The City may also terminate this Agreement for any or no reason at any time prior to the ten-year period if the City is willing to pay for Railroad's reasonable and actual costs in dismantling and removing the Project components from the Park Property

as required below. The City may also terminate this Agreement at any time in the event Railroad is in default of the Agreement, by giving Railroad 5-days prior written notice.

Any termination of this Agreement by the City staff or City Manager is subject to the Dispute Resolution provisions of Article V, above.

In the event this Agreement is terminated for any reason, Railroad shall remove all components of the Project from the Park Property and shall restore the Park Property to its original condition prior to the development of the Project at its sole cost and expense (except when City is willing to pay for such removal costs, in which case Railroad shall perform the removal and be reimbursed by City).

Prior to Railroad beginning its actual operation of the Project, Railroad and City shall make an accurate estimate of the foregoing costs for the potential removal of the Project components and the restoration of the Park Property, and shall update said cost estimate regularly so that the parties shall be satisfied with the accuracy of the estimate. Said estimate shall be utilized by the parties in the event the City needs to terminate the Agreement, and the City shall not be responsible for any actual removal costs that exceed the estimate of removal costs by more than 25%. Additionally, prior to beginning the operation of the Project, Railroad shall post a bond with the City in the amount of such estimate, and in the form and from a surety acceptable to the City Attorney, to guarantee that in the event Railroad terminates the Agreement or the Agreement is terminated under circumstances where Railroad must pay such costs, the City will be secured for the payment of such costs.

ARTICLE VIII GENERAL PROVISIONS

1. In the event this Agreement is terminated, any right of either party that accrued against the other shall survive such termination.
2. Any waiver of any breach of this Agreement must be in writing to be considered valid.
3. This Agreement shall not be construed in such a manner as to establish a partnership, joint venture, express or implied agency or employer-employee relationship between Railroad and City.
4. This Agreement shall be construed according the laws of the State of Nevada. In the event any permitted action hereunder is filed in a court, the parties shall bear their own costs and attorneys fees, except as provided in Article III, paragraph 6 herein.
5. Any amendment to this Agreement shall be in writing and signed by the parties hereto.

6. This Agreement may be executed in any number of counterparts, and when so executed, each counterpart shall be deemed to be an original and together shall constitute but one and the same document.

7. Whenever specific time requirements are set forth in this Agreement or are otherwise specified in writing pursuant to the terms of this Agreement, such times are of the essence of the Agreement.

8. The effective date of this Agreement shall be the date that the Agreement is approved by the City Council following the approval and execution of the Agreement by Railroad, which date shall be inserted at the top of the first page hereof upon the Mayor's execution hereof.

WHEREFORE, the parties have executed this Agreement, effective on the date first above written.

ATTEST:

Beverly K. Bridges, CMC, City Clerk

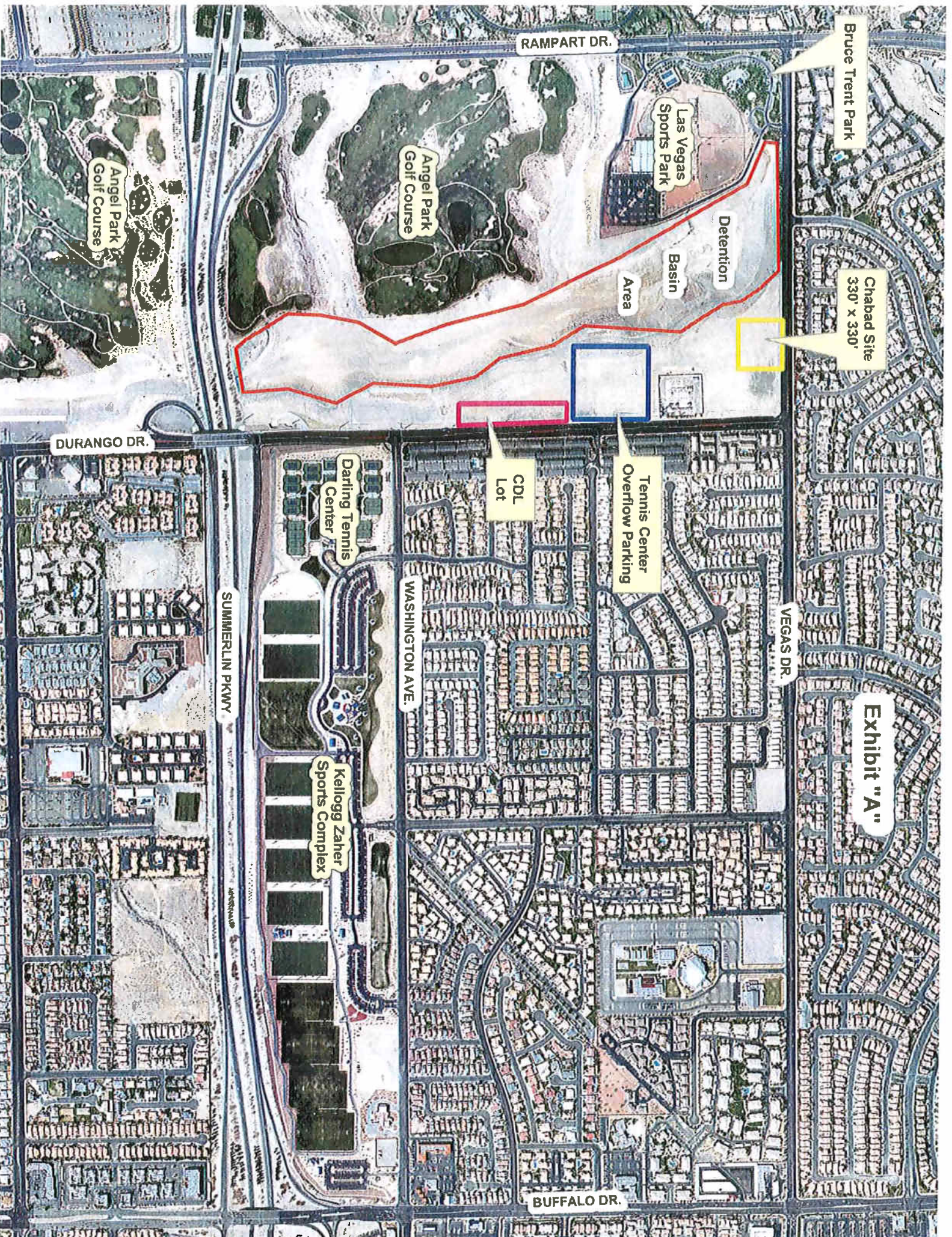
Approved as to form:
Thomas R. Green 12/11/07
Deputy City Attorney Date

CITY OF LAS VEGAS

OSCAR B. GOODMAN, Mayor

LAS VEGAS RAILROAD SOCIETY

By:



RAMPART DR.

Bruce Trent Park

Las Vegas Sports Park

Angel Park Golf Course

Angel Park Golf Course

Detention Basin Area

Chabad Site
330' x 330'

DURANGO DR.

CDL Lot

Tennis Center
Overflow Parking

Darling Tennis
Center

VEGAS DR.

Exhibit "A"

SUMMERLIN PKWY.

WASHINGTON AVE.

Kellogg Zaher
Sports Complex

BUFFALO DR.