

## RESTATED COOPERATIVE AGREEMENT

This Restated Cooperative Agreement is made and entered into this 19<sup>th</sup> day of November, 2008, by and between the City of Las Vegas, (the "CLV"), and Regional Transportation Commission of Southern Nevada, 600 S. Grand Central Parkway, Suite 350, Las Vegas, NV 89106-4512, (the "RTC").

### RECITALS

WHEREAS, CLV and the RTC entered into that certain Cooperative Agreement dated October 3, 2007; and

WHEREAS, a Cooperative Agreement is defined as an agreement between two or more public agencies for the "joint exercise of powers, privileges and authority;" and

WHEREAS, NRS 277.110 authorizes any two or more public agencies to enter into agreements for joint or cooperative action; and

WHEREAS, the parties to this Agreement are public agencies and authorized to enter into agreements in accordance with NRS 277.080 to 277.110; and

WHEREAS, CLV has a lease under the Recreation and Public Purposes Act (the "R&PP Act"), Serial #N-61839, with the United States Department of the Interior's Bureau of Land Management for a parcel of real property located near the intersection of U.S. 95 and Durango Drive described as Assessor's Parcel Number 125-17-801-001 (the "Site"); and

WHEREAS, CLV is entering into an Exclusive Negotiating Agreement (the "ENA") with the College of Southern Nevada (the "CSN") for the development of the majority of the Site as a college campus, and CLV and the RTC have considered how a portion of the Site can be used to accommodate the parking requirements of both CSN and RTC on the 5.18 acre parcel depicted on the map attached hereto as Exhibit B; and

WHEREAS, the purpose of this agreement is to allow the RTC to immediately acquire property for a park and ride and transit facility on the portions of the Site depicted in Exhibits A and B attached hereto, as well as providing for potential future joint parking needs of CSN and RTC on the above-referenced 5.18 acre parcel; and

WHEREAS, through this Agreement, CLV will agree to relinquish in favor of the RTC the aforementioned portions of the Site depicted in Exhibits A and B for the proposed uses; and

WHEREAS, the parties now desire to clarify and restate the Cooperative Agreement to amend the language within the Agreement, revise the acreage, and replace the exhibits;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, it is agreed as follows:

### ARTICLE I - RTC AGREES:

1. To submit an application package to BLM to obtain a lease pursuant to the R&PP Act, to lease the portions of the Site depicted in Exhibits A and B hereto (collectively the "Project Site") for the above referenced purposes (the "Project"), including the potential use of the parcel depicted in Exhibit B

for a joint parking structure for RTC and CSN. The application package shall include a letter from CLV to BLM relinquishing the Project Site for such Project.

2. To build a park and ride and transit facility on the Project Site to serve the Las Vegas Valley's public transportation system, including, but not limited to, the Citizens Area Transit (CAT) buses; express buses; rapid transit buses; Deuce double-deck buses; paratransit vehicles; and possible future fixed guideway systems such as the Regional Fixed Guideway rapid transit vehicles or light rail systems.

3. To be responsible for one hundred percent (100%) of all design costs, on-site and off-site improvement costs, incidental right-of-way acquisition costs, and all construction costs related to the Project as shown on the site layout in Exhibits A and B of this Agreement, and to include the realignment of Oso Blanca Frontage Road to intersect Grand Montecito Parkway. If the Project is phased, then the off-site improvements for the Project Site will be phased based on a mutually accepted plan by the RTC and the City of Las Vegas.

4. To use the Project Site solely for transportation purposes and supportive joint development. The development will conform to the CLV Town Center standards or any other standards stipulated by the CLV.

5. To obtain all necessary building permits and comply with all Clark County and/or CLV building codes.

6. To notify CLV in writing if it is not able to develop the Project.

7. To be responsible for the ongoing management of the Project during the term of this Agreement.

8. To not sublease or demise any part of the Project Site to a third party without the prior written consent of CLV.

9. To be responsible for maintenance of all facilities on Project Site during the term of this agreement.

10. To provide two (2) copies of the preliminary design plans and specifications to CLV for review and comment. The purpose of the design review is to ensure that the Project Site is being developed for its intended purpose.

11. The RTC will coordinate with the CSN in the development of this Project, and shall include the CSN in the planning of RTC's Project so that the CSN will be able to stay informed as to RTC's plans and development schedules, and so that RTC can work with the CSN in planning and coordinating the use of the 5.18 acre parcel depicted in Exhibit B for potential joint use, as well as considering other potential joint use opportunities on the Project Site. RTC shall negotiate with the CSN in good faith to reach an agreement concerning all of such joint use issues.

12. To apply with the Nevada Department of Transportation for the vacation of the old Oso Blanca Frontage Road alignment through the Project Site that is no longer necessary due to the realignment of Oso Blanca.

13. To provide unrestricted access with an eighty foot wide access easement through the Project Site, from Grand Montecito Parkway, to the adjacent Assessor's Parcel Number 125-17-801-003,

as required under the property settlement agreement between the CLV and the parcel property owner (Case # A480945 in the Eighth Judicial District Court, Clark County, Nevada). RTC shall assume and perform all obligations of CLV to such property owner pursuant to the provisions of such settlement agreement under the headings Grand Montecito Parkway Access, Elkhorn Road Access, and Oso Blanco Access, except for those provisions requiring roadway maintenance by CLV, and shall hold CLV harmless therefrom.

ARTICLE II - CLV AGREES:

1. To provide a relinquishment letter from CLV to BLM in favor of the RTC for the Project Site for RTC to include in its lease application to BLM.
2. To review and comment on the preliminary design plans and specifications provided by the RTC within thirty (30) days of receipt.
3. To attempt to negotiate a Development Agreement with the CSN for the relinquishment of the remainder of the Project Site to the CSN for the development of a college campus, which contains provisions which satisfy both the RTC and CSN with respect to the use of the Project Site for joint parking and transportation purposes. CLV shall not enter into any such Development Agreement that impacts RTC's use of the Project Site unless RTC approves such Development Agreement in writing.

ARTICLE III - IT IS MUTUALLY AGREED:

1. The term of this Agreement shall be for a primary term of thirty (30) years beginning from the date of the execution of this Agreement, plus the option to renew for five (5) extended terms of five (5) years each, the first of such extended terms to begin on the expiration of the initial term and each successive extended term to begin on the expiration of the term immediately preceding.
2. This Agreement may be terminated by either party prior to the date set forth above, provided that a termination shall not be effective until one hundred and twenty (120) days after a party has served written notice upon the other party. This Agreement may be terminated by mutual consent of both parties or unilaterally by either party without cause. The parties expressly agree that this Agreement shall be terminated immediately if for any reason Federal and/or State Legislature funding ability to satisfy this Agreement is withdrawn, limited, or impaired.
3. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally in hand, by telephonic facsimile or electronic mail with simultaneous regular mail, or mailed certified mail, return receipt requested, postage prepaid on the date posted, and addressed to the other party at the address set forth below:

For CLV:

Field Operations  
Attn.: Larry Haugsness  
City of Las Vegas  
400 Stewart Avenue, 4<sup>th</sup> Floor  
Las Vegas, Nevada 89101  
Phone: (702) 229-1021  
Fax: (702) 464-2522  
E-mail: [lhaugsness@lasvegasnevada.gov](mailto:lhaugsness@lasvegasnevada.gov)

For RTC:

Jacob L. Snow, General Manager  
Attn: Bill Tsiforas  
Regional Transportation Commission of Southern Nevada  
600 S. Grand Central Parkway, Suite 350  
Las Vegas, NV 89106-4512  
Phone: (702) 676-1568  
Fax: (702) 676-1579  
E-mail: tsiforas@rtcsonv.com

4. The RTC will ensure that any reports, materials, studies, photographs, negatives, drawings or other documents prepared in the performance obligations under this Agreement shall be the exclusive property of the RTC and CLV. The RTC will ensure any consultant will not use, willingly allow or cause to have such documents used for any purpose other than performance of obligations under this Agreement without the written consent of the RTC and the CLV. The RTC shall not utilize (and shall ensure any consultant will not utilize) any materials, information or data obtained as a result of performance of this Agreement in any commercial or academic publication or presentation without the express written permission of the CLV. The RTC (and any consultant) shall not reference an opinion of an employee or agent of the CLV obtained as a result of performance of this Agreement in any publication or presentation without the written permission of the employee or agent to whom the opinion is attributed, in addition to the permission of the CLV.

5. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's right to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party), to serve the other party (indemnifying party) with written notice of actual or pending claim, within 30 days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate with legal counsel.

6. The parties do not waive and intend to assert available NRS Chapter 41 liability limitations in all cases. Agreement liability of both parties shall not be subject to punitive damages. Actual damages for any CLV breach shall never exceed the amount of funds that have been appropriated for payment under this Agreement, but not yet paid, for the fiscal year budget in existence at the time of the breach.

7. Failure to declare a breach or the actual waiver of any particular breach of the Agreement or its material or nonmaterial terms by either party shall not operate as a waiver by such party of any of its rights or remedies as to any other breach.

8. An alteration ordered by CLV which substantially changes the services provided for by the expressed intent of this Agreement will be considered extra work, and shall be specified in an Amendment which will set forth the nature and scope thereof. The method of payment for extra work shall be specified at the time the amendment is written.

9. This Agreement and the rights and obligations of the parties hereto shall be governed by, and construed according to, the laws of the State of Nevada. The parties consent to the jurisdiction of the Nevada district courts for enforcement of this Agreement.

10. The illegality or invalidity of any provision or portion of this Agreement shall not affect the validity of the remainder of the Agreement and this Agreement shall be construed as if such provision did not exist. The unenforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable.

11. All or any property presently owned by either party shall remain in such possession upon termination of this Agreement, and there shall be no transfer of property between the parties during the course of this Agreement.

12. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third party beneficiary status hereunder, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

13. Each party agrees to keep and maintain under generally accepted accounting principles full, true and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit and copying at any office where such records and documentation is maintained. Such records and documentation shall be maintained for three (3) years after final payment is made.

14. The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is and shall be a public agency separate and distinct from the other party and shall have the right to supervise, manage, operate, control and direct performance of the details incident to its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

15. In connection with the performance of work under this Agreement, the parties agree not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, sexual orientation or age, including, without limitation, with regard to employment, upgrading, demotion or transfer, recruitment or recruitment advertising layoff or termination, rates of pay or other forms of compensation, and selection for training, including, without limitation, apprenticeship. The parties further agree to insert this provision in all subcontracts hereunder, except subcontracts for standard commercial supplies or raw materials.

16. Neither party shall assign, transfer or delegate any rights, obligations or duties under this Agreement without the prior written consent of the other party.

17. The parties hereto represent and warrant that the person executing this Agreement on behalf of each party has full power and authority to enter into this Agreement and that the parties are authorized by law to engage in the cooperative action set forth herein.

18. Pursuant to NRS 239.010, information or documents may be open to public inspection and copying. The parties will have the duty to disclose unless a particular record is confidential by law or a common law balancing of interests.

19. Each party shall keep confidential all information, in whatever form, produced, prepared, observed or received by that party to the extent that such information is confidential by law or otherwise required by this Agreement.

20. This Agreement shall not become effective until and unless approved by appropriate official action of the governing body of each party.

21. This Agreement constitutes the entire agreement of the parties and such is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistent with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto and approved by the Attorney General.

22. Counterparts; Electronic Delivery. This Contract may be executed in counterparts, all such counterparts will constitute the same contract and the signature of any party to any counterpart will be deemed a signature to, and may be appended to, any other counterpart. Executed copies hereof may be delivered by facsimile or e-mail and upon receipt will be deemed originals and binding upon the parties hereto, regardless of whether originals are delivered thereafter.

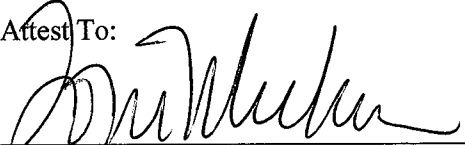
IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

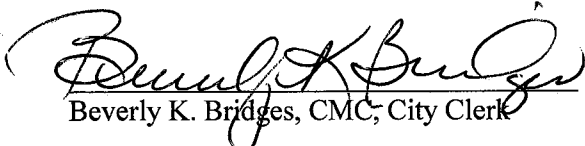
REGIONAL TRANSPORTATION COMMISSION

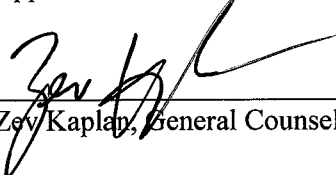
CITY OF LAS VEGAS

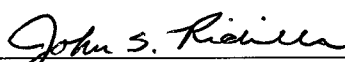
  
\_\_\_\_\_  
Lawrence L. Brown III, Chairman

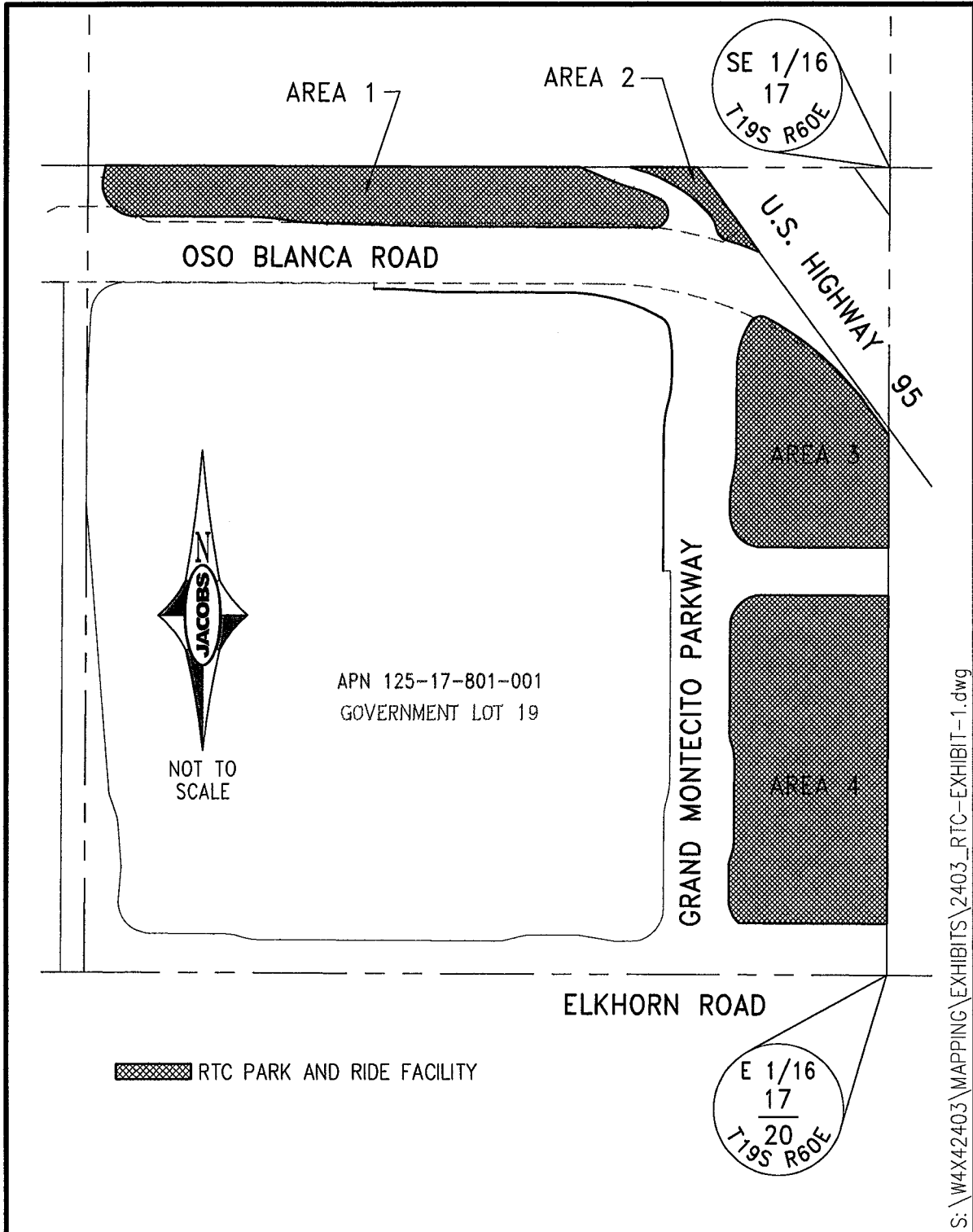
  
\_\_\_\_\_  
Oscar B. Goodman, Mayor

Attest To:  
  
\_\_\_\_\_  
Title

Attest To:  
  
\_\_\_\_\_  
Beverly K. Bridges, CMC, City Clerk

Approved as to Form:  
  
\_\_\_\_\_  
Zev Kaplan, General Counsel

Approved as to Form:  
 9/19/08  
\_\_\_\_\_  
Deputy City Attorney

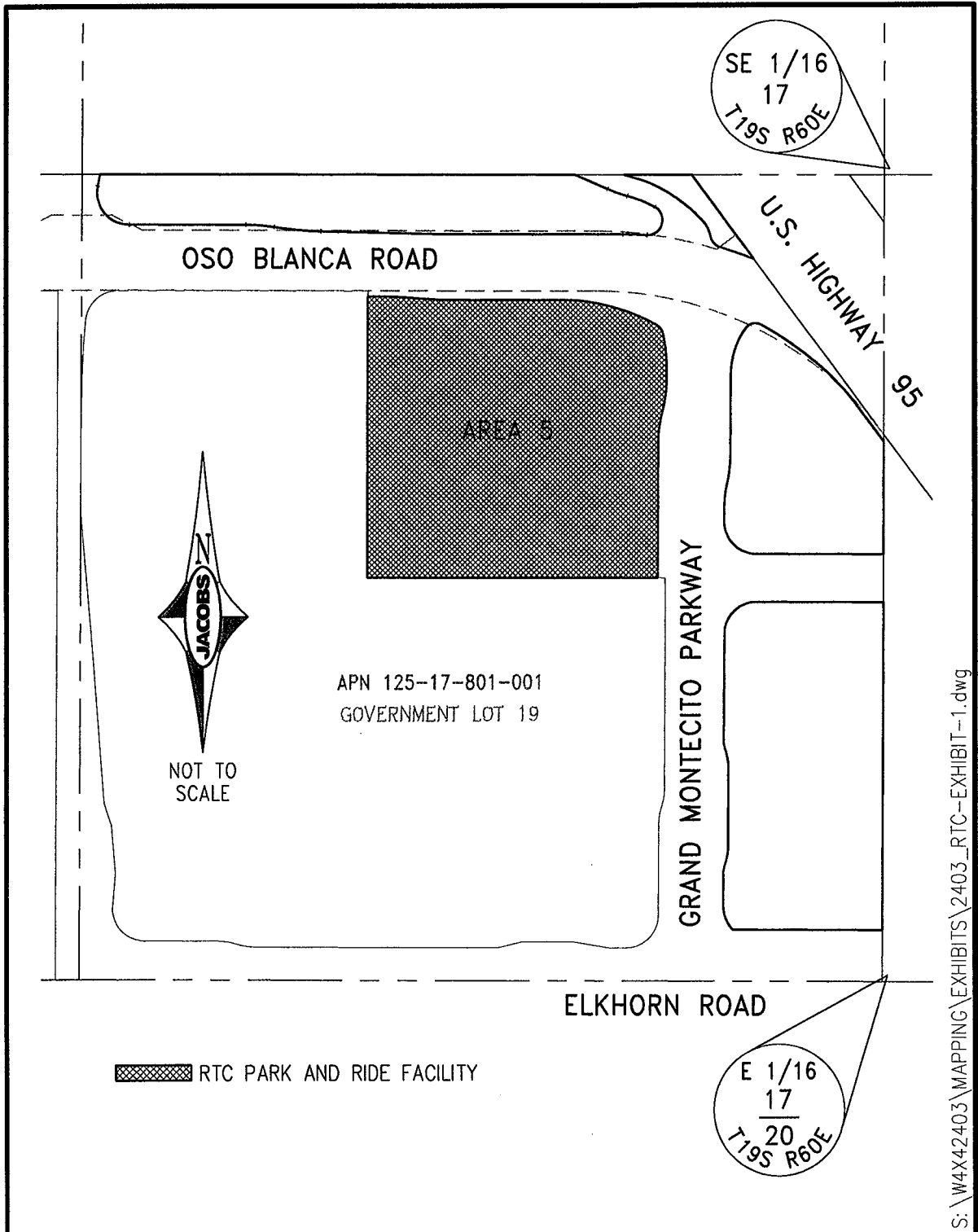


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**EXHIBIT A**  
**AREAS 1, 2, 3 AND 4**

JOB NO: W4X42403  
 DATE: 9/09/08  
 DRAWN BY: CW  
 CHECKED BY: CW

**JACOBS**  
 6655 Bermuda Road  
 Las Vegas, Nevada 89119  
 (702) 938-5400



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<p><b>EXHIBIT B</b> <b>AREA 5</b></p>	<p>JOB NO: W4X42403</p>	<p><b>JACOBS</b> 6655 Bermuda Road Las Vegas, Nevada 89119 (702) 938-5400</p>
	<p>DATE: 9/09/08</p>	
	<p>DRAWN BY: CW</p>	
	<p>CHECKED BY: CW</p>	