

REIMBURSEMENT DEVELOPMENT AGREEMENT FOR PUBLIC IMPROVEMENT COST RECOVERY

This **REIMBURSEMENT DEVELOPMENT AGREEMENT FOR PUBLIC IMPROVEMENT COST RECOVERY** (the “**Agreement**”) is entered into this _____ day of _____, 2023 (the “**Effective Date**”), by and between MMESA 319, LLC, a Nevada limited liability company (“**MMESA**”), PHI NORTHGATE 2 LAND, LLC, a Nevada limited liability company (“**PHI Northgate**”), and the CITY OF NORTH LAS VEGAS, a political subdivision of the State of Nevada (the “**City**”). MMESA, PHI Northgate, and the City are sometimes each referred to as a “**Party**” and are collectively referred to as the “**Parties.**”

RECITALS

A. MMESA is developing the Miners Mesa Industrial Park, which includes property that MMESA either currently owns or has sold to end users consisting of approximately 319 acres in the City (the “**MMESA Property**”). The MMESA Property is generally depicted on the site plan attached to this Agreement as **Exhibit A** (the “**Site Plan**”).

B. PHI Northgate is developing the Vantage North industrial project, which includes property that PHI Northgate currently owns consisting of approximately 350 acres in the City (the “**PHI Northgate Property**”). The PHI Northgate Property is generally depicted on the Site Plan.

C. MMESA has designed and installed a wastewater collection system in connection with the development of the MMESA Property (the “**Existing Wastewater System**”). As described below, the Existing Wastewater System as currently constructed and installed has limited capacity due to the point of connection to City’s backbone collection system and will require certain modifications to fully serve the PHI Northgate Property. When fully completed, the system will be the “**Ultimate Wastewater System**” and will be dedicated to and will be owned by the City.

D. The Existing Wastewater System was originally intended and sized to serve only the MMESA Property. After consultation with the City, and in light of the anticipated needs of surrounding development projects, MMESA agreed to increase the size of the Existing Wastewater System for a portion of its alignment to facilitate additional capacity in the line and allow the PHI Northgate Property to connect and to allow for future additional connections for developments located outside the MMESA Property and PHI Northgate Property (“**Additional Connections**”).

E. Approximately 9,184 lineal feet of the Existing Wastewater System was increased in diameter from a twelve inch line to a twenty-four inch line to accommodate Additional Connections (such portion of the Existing Wastewater System being the “**Oversized Line**”). The total costs and expenses incurred by MMESA in connection with the design, permitting, and installation of the Oversized Line (the “**Oversized Line Costs**”) were initially paid by MMESA.

F. In furtherance of the development of the PHI Northgate Property, PHI Northgate paid to MMESA one-half of the Oversized Line Costs, and in consideration of such payment, PHI Northgate has the right to connect to the Oversized Line (“**PHI Northgate Connection**”) and utilize one-half of the total capacity of the Oversized Line (the “**Oversized Line Capacity**”). The capacity of the Ultimate Wastewater System (the “**Total Capacity**”) is estimated to be three

million gallons per day (“GPD”), with one and one-half million gallons per day allocated to each of MMESA and PHI Northgate.

G. MMESA would not have agreed to oversize the Oversized Line portion of the Existing Wastewater System, and PHI Northgate would not have paid one-half of the Oversized Line Costs, but for the promise of being reimbursed by any owners or developers (each, a “**Potential Connecting Owner**”) that desire to obtain Additional Connections from the City to utilize the Ultimate Wastewater System.

H. MMESA and PHI Northgate anticipate that at least one Additional Connection to the Ultimate Wastewater System to serve property outside of the MMESA Property and the PHI Northgate Property can be accommodated by the Ultimate Wastewater System, and that additional capacity may become available in the future if flow estimates used by the City are revised to adjust how sewer capacity of industrial users is calculated and the Total Capacity is increased as a result of such revision.

I. In consideration of (i) the oversizing of the Oversized Line and the benefit to the City in the ownership of the Oversized Line, and (ii) if applicable, the design, construction, and permitting of the Extension Line (as defined in Section 2 below), the City has agreed to seek, as a condition to Potential Connecting Owners making Additional Connections to the Ultimate Wastewater System, pro rata (based on the capacity allocated to any such Potential Connecting Owner) reimbursements for the costs and expenses paid by (a) each of MMESA and PHI Northgate in connection with the Oversized Line and, (b) if applicable, PHI Northgate in connection with the Extension Line.

AGREEMENT

In consideration of the following mutual covenants and conditions and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Adoption of Recitals.** The Parties adopt and incorporate the foregoing Recitals.
2. **Description of Oversized Line.** The Oversized Line was constructed and installed in accordance with the plans and specifications prepared by Poggemeyer Design Group, Job No. PDG LV-19091, issued in November of 2020, as updated in the Delta 1 set dated February 23, 2021 (the “**Sewer Plans**”), which Sewer Plans were approved by the City. As constructed, the Oversized Line portion of the Existing Wastewater System discharges into a pre-existing existing twelve-inch sewer line at the intersection of Tropical Parkway and Mt. Hood Street (the “**Terminus**”), which is depicted in the attached **Exhibit B**. In order to complete the Ultimate Wastewater System, PHI Northgate will design, construct, and install an additional twenty-four inch sewer line (such additional sewer line being the “**Extension Line**”) from the Terminus to the intersection of Sloan Lane and Washburn Road along the route described in the Wastewater Master Plan from Miner’s Mesa dated March 2, 2021, prepared by Poggemeyer Design Group, Inc. (the “**Engineer**”), which is depicted in the attached **Exhibit C**.
3. **Moratorium on Connections.** Other than connections made by end users located within the MMESA Property and the PHI Northgate Property, no Additional Connections to the

Existing Wastewater System will be permitted until the date that the Extension Line is installed in accordance with plans and specifications approved by the City, unless permission is granted to the City, in writing, by MMESA. The Extension Line will be installed by PHI Northgate. The Parties acknowledge and agree that when the aggregate estimated wastewater flow into the Existing Wastewater System from each of the MMESA Property and the PHI Northgate Property exceeds 1,000,000 gallons per day (“**Existing Wastewater System Capacity**”), no additional certificates of occupancy will be issued by the City for improvements on either MMESA Property or the PHI Northgate Property until the Extension Line is installed in accordance with plans and specifications approved by the City. MMESA anticipates that MMESA Property end users will utilize the full Existing Wastewater System Capacity at ultimate build-out. PHI Northgate has caused the Engineer to prepare plans and specifications for the Extension Line (the “**Plans**”), and has submitted the Plans to each of Clark County and the City for review and approval. From and after the Effective Date, PHI Northgate will diligently and continuously pursue approval of the Plans, issuance of a permit, and construction of the Extension Line. As of the Effective Date, PHI Northgate anticipates that the Extension Line will be installed and operational on or about December 31, 2023.

4. **Reimbursement Amounts.** Attached to this Agreement as **Exhibit D** is a statement of the portion of the Oversized Line Costs paid by each of MMESA and PHI Northgate in connection with MMESA’s design, construction, and permitting of the Oversized Line. If and when the Extension Line is completed, PHI Northgate and the City will, without the requirement of joinder by MMESA, amend **Exhibit D** to include the costs and expenses incurred by PHI Northgate in connection with the design, construction, and permitting of the Extension Line (such costs and expenses being the “**Extension Line Costs**”). As a condition to any Potential Connecting Owner of real property in the City located outside of the MMESA Property and the PHI Northgate Property making an Additional Connection (assuming that Additional Connections are then permitted by this Agreement and that capacity is available for such Potential Connecting Owner’s use), each of MMESA and PHI Northgate shall be entitled to reimbursement of a pro rata percentage of the actual costs paid by each such Party as set forth on **Exhibit D** (as it may be amended) from the applicable Potential Connecting Owner. Each such Potential Connecting Owner’s pro rata share will be determined by dividing the capacity allocated to such owner by the Total Capacity of the Ultimate Wastewater System at the time of such Potential Connecting Owner’s connection to the Ultimate Wastewater System (in each case, a “**Pro Rata Share**”). The applicable Potential Connecting Owner will be obligated to pay a reimbursement amount equal to such Potential Connecting Owner’s Pro Rata Share of the Oversized Line Costs and the Extension Line Costs, together with interest on such sum at an annual rate of 7.5% from January 1, 2021 to the date of payment by such Potential Connecting Owner, with such reimbursement to be paid to each of MMESA and PHI Northgate as provided below.
5. **Allocation and Collection of Pro Rata Share.** Prior to allowing a Potential Connecting Owner to make an Additional Connection to the Ultimate Wastewater System, the City will, in each case:

- 5.1. Advise MMESA and PHI Northgate as to the portion of the Total Capacity to be allocated to such Potential Connecting Owner, which shall be calculated as described above using the capacity requested by the Potential Connecting Owner and the then-existing Total Capacity of the Ultimate Wastewater System.
- 5.2. Collect from the applicable Potential Connecting Owner such Potential Connecting Owner's Pro Rata Share. If a Potential Connecting Owner fails or refuses to pay the designated Pro Rata Share, then the City shall refuse to issue a will-serve letter or permit to such Potential Connecting Owner and preclude such Potential Connecting Owner from making any connection to the Ultimate Wastewater System. If the City fails to abide by this provision, either MMESA or PHI Northgate (or both of them) may pursue available legal remedies.
- 5.3. Within thirty calendar days following receipt by the City of the Potential Connecting Owner's Pro Rata Share, the City shall transmit the Pro Rata Share to MMESA. MMESA will promptly pay to PHI Northgate its portion of such Pro Rata Share pursuant to a separate agreement between MMESA and PHI Northgate.
- 5.4. Keep reasonably detailed records of the capacity allocated to MMESA, PHI Northgate, and each additional Potential Connecting Owner that obtains an Additional Connection and make such records available to MMESA and/or PHI Northgate from time to time upon request.

6. Miscellaneous Provisions.

- 6.1. All notices and communications provided for herein, or given in connection herewith, shall be validly made if in writing and delivered personally, sent by overnight courier or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

To MMESA: MMESA 319, LLC
 4129 W Cheyenne Avenue
 Suite #A
 North Las Vegas, NV 89032
 Attn: Weston Adams
 Email: wadams@westernstatesco.com

with a copy to: Land Development Associates, LLC
 7201 W. Lake Mead Blvd., Suite 245
 Las Vegas, NV 89128
 Attn: David Brown
 Email: dbrown@ldalv.com

To PHI Northgate: PHI Northgate 2 Land, LLC
2525 E Camelback Road, Suite 880
Phoenix, AZ 85012
Attn: Executive Vice President
Email: keith.earnest@vantrustre.com

With a copy to: PHI Northgate 2 Land, LLC
4900 Main Street, Suite 400
Kansas City, MO 64112
Attn: Manager
Email: dave.harrison@vantrustre.com

To the City: City of North Las Vegas
2250 Las Vegas Boulevard North, Suite 250
North Las Vegas, NV 89030
Attn: Utilities Director
Email: bradyt@cityofnorthlasvegas.com

With a copy to: City of North Las Vegas
2250 Las Vegas Boulevard North, Suite 810
North Las Vegas, NV 89030
Attn: City Attorney
Email: cityattorney@cityofnorthlasvegas.com

or to such other addresses as either Party may from time to time designate in writing and deliver in a like manner. Any such change of address notice shall be given at least ten days before the date on which the change is to become effective. Notices given by overnight courier shall be deemed delivered upon delivery or refusal to accept delivery. Notices given by mail shall be deemed delivered 72 hours following deposit in the United States Postal Service in the manner set forth above.

-
- 6.2. In the event any action is brought by or against the City arising from or related to the enforcement of this Agreement, then (i) the City shall within ten days give notice of such litigation to each of MMESA and PHI Northgate; and (ii) the City shall stipulate and shall not object to either or both of MMESA or PHI Northgate intervening or otherwise participating in such litigation as a party. Regardless of the outcome of any such litigation, the City shall not be liable as a guarantor of payment of reimbursements by any Potential Connecting Owners.
- 6.3. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

- 6.4. The descriptive headings of the paragraphs of this Agreement are inserted for convenience only, and shall not control or affect the meaning or constriction of any of the provisions of the Agreement.
- 6.5. The Parties represent to each other that they have the power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement. MMESA represents and warrants that it is duly formed and validly existing under the laws of the State of Nevada and that it is in good standing under applicable state laws. PHI Northgate represents and warrants that it is duly formed and validly existing under the laws of the State of Nevada and that it is in good standing under applicable state laws. Each of MMESA, PHI Northgate, and the City represent and warrant to each other that the individuals executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf each individual is signing.
- 6.6. This Agreement, including any exhibits, constitutes the entire agreement between the Parties pertaining to the subject matter hereof. This provision applies to the entirety of the Agreement only; additional and separate planning approvals and agreements with the City may apply to the MMESA Property and the PHI Northgate Property, and this provision has no effect on thereon.
- 6.7. This Agreement may be amended or cancelled, in whole or in part, by mutual consent of the Parties, which shall be evidenced by written amendment executed by the City, MMESA, and PHI Northgate.
- 6.8. This Agreement will automatically and without further action terminate and be of no further force or effect on the earlier of (i) the date that all available capacity of the Ultimate Wastewater System is utilized and MMESA and PHI Northgate have been reimbursed for such amounts as may be due to them under this Agreement and as authorized by the North Las Vegas Municipal Code, or (ii) the date ten years following the acceptance of the Ultimate Wastewater System by the City, unless mutually extended by the Parties.
- 6.9. The laws of the State of Nevada shall govern the interpretation and enforcement of this Agreement. The parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Clark County, Nevada, and the Parties hereby waive any right to object to such venue.
- 6.10. If any Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs.
- 6.11. There are no third-party beneficiaries to this Agreement and no person or entity not a Party hereto shall have any right or cause of action hereunder.
- 6.12. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship among the Parties.

- 6.13.** Each of the Parties shall cooperate with the other and shall promptly and expeditiously execute and deliver any and all documents and perform any and all acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

[Signatures appear on next page]

IN WITNESS WHEREOF, the Parties have executed this Reimbursement Development Agreement for Public Improvement Cost Recovery as of the day and year first above written.

MMESA:

MMESA 319, LLC,
a Nevada limited liability company

By: 
Name: Weston Adams
Title: Manager

PHI NORTHGATE:

PHI Northgate 2 Land, LLC,
a Nevada limited liability company



David M. Harrison
Manager

CITY:

City of North Las Vegas,
a political subdivision of the State of Nevada

Pamela Goynes-Brown
Mayor

Attest:

Jackie Rodgers, City Clerk

Approved as to form:

Micaela Moore, City Attorney

EXHIBIT A

SITE PLAN

[see attached]

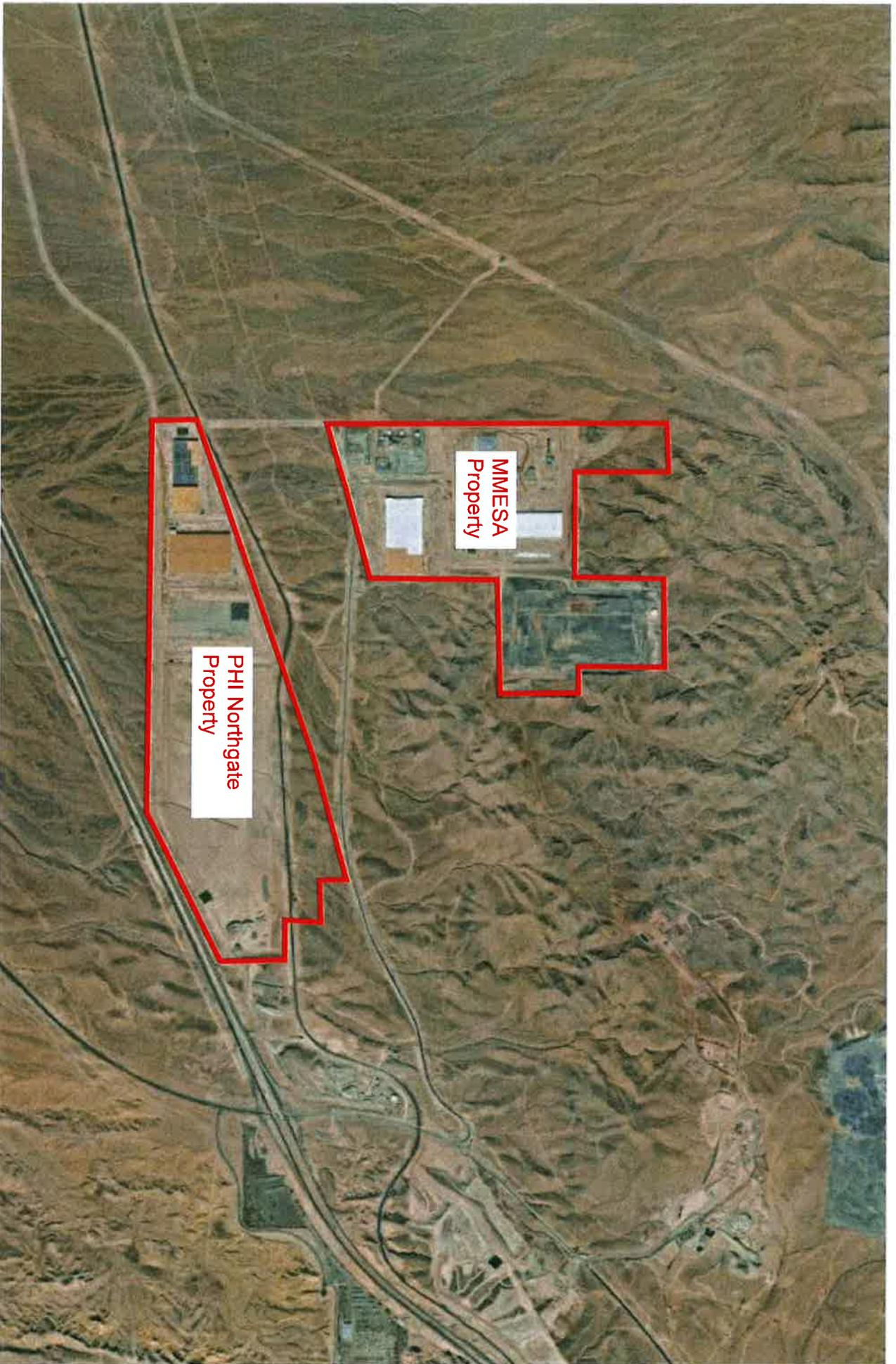


EXHIBIT B

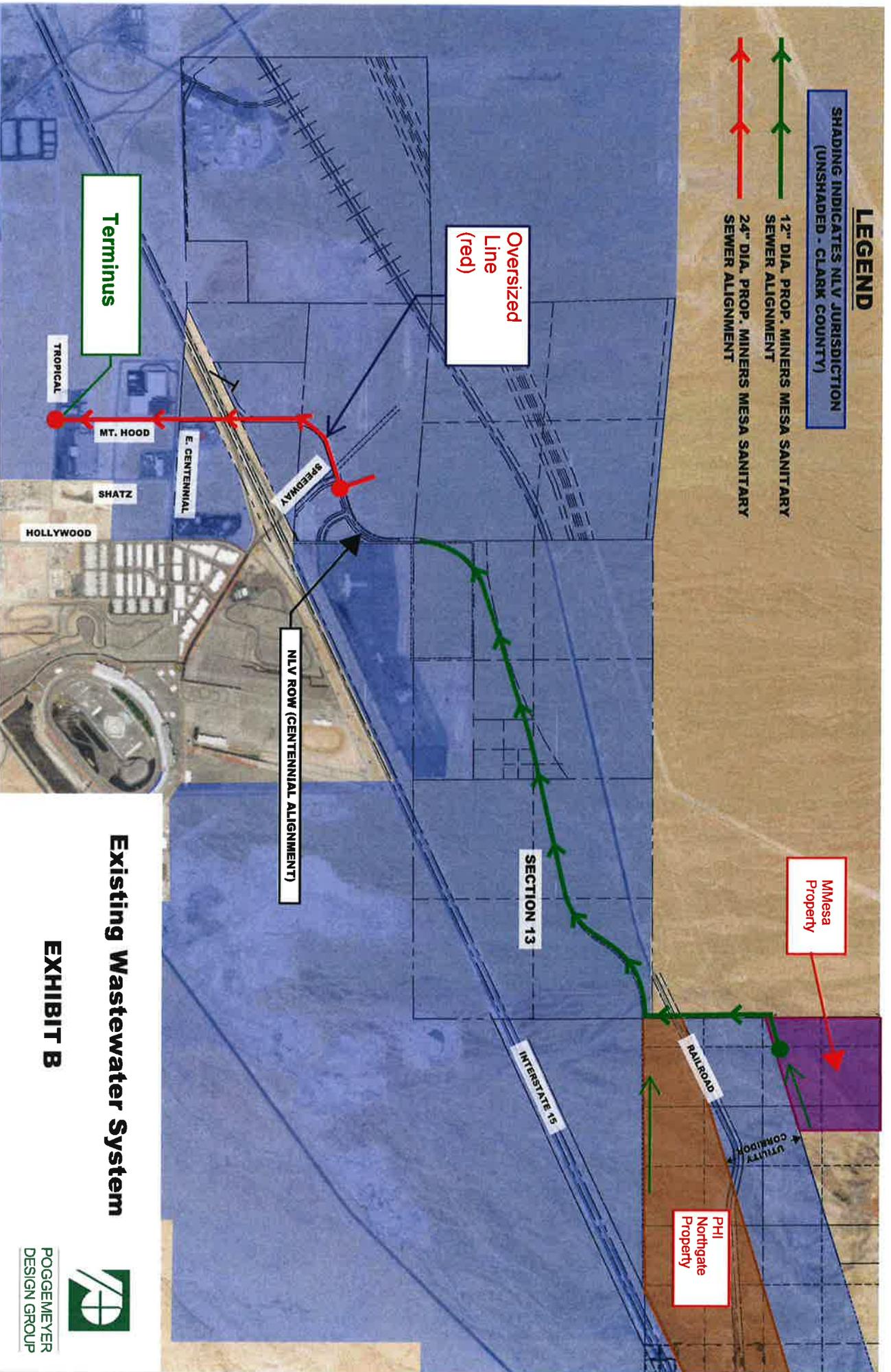
TERMINUS

[see attached]

LEGEND

SHADING INDICATES NLV JURISDICTION
(UNSHADED - CLARK COUNTY)

- 12" DIA. PROP. MINERS MESA SANITARY SEWER ALIGNMENT
- 24" DIA. PROP. MINERS MESA SANITARY SEWER ALIGNMENT



Existing Wastewater System

EXHIBIT B

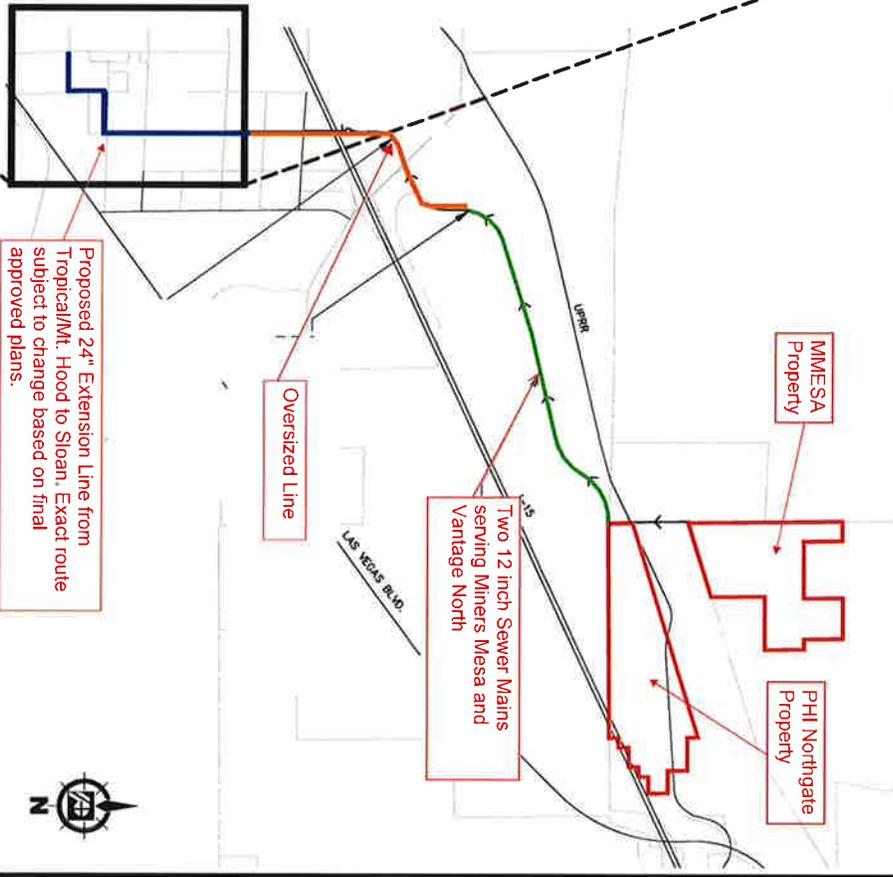
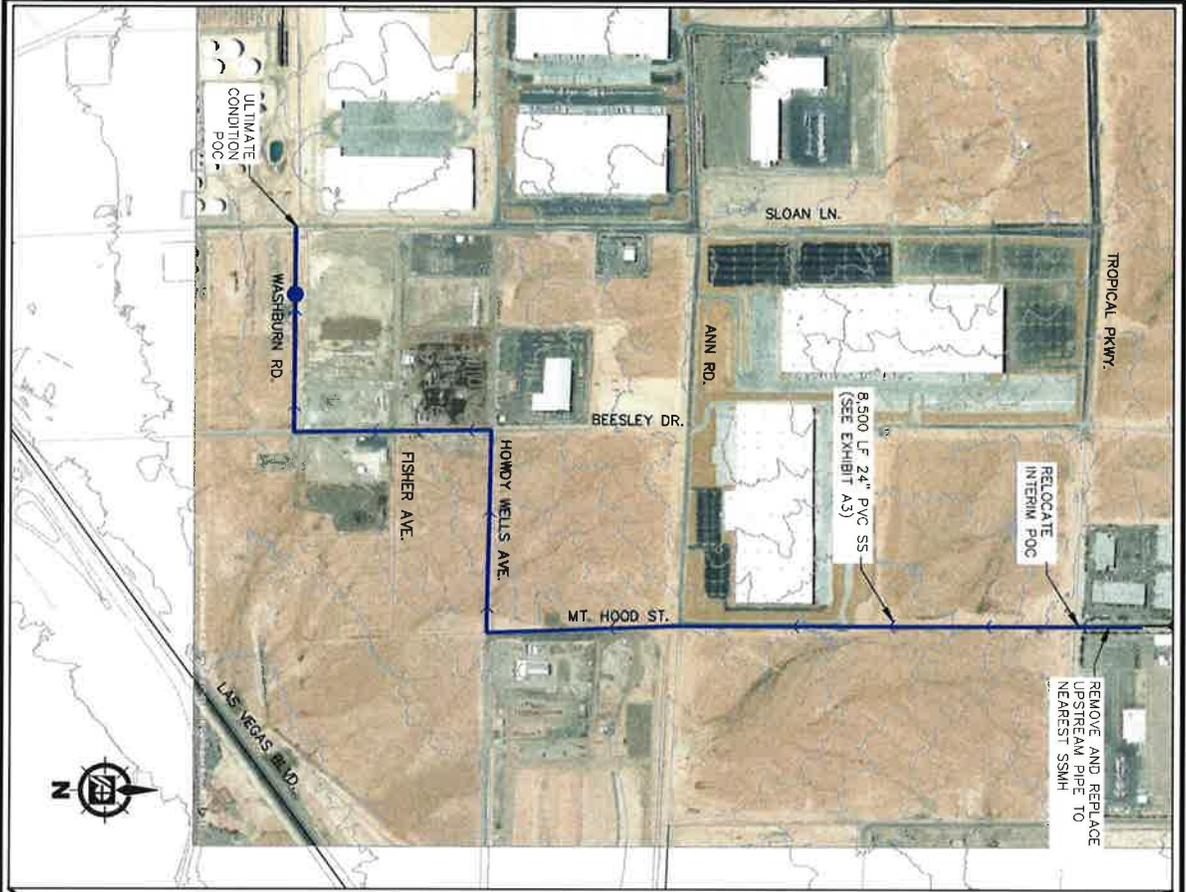
POGEMEYER
DESIGN GROUP



EXHIBIT C

EXTENSION LINE

[see attached]



MINERS MESA INDUSTRIAL PARK
 MINERS MESA SS
 ULTIMATE CONDITION OVERALL
EXHIBIT A2

POGEMEYER DESIGN GROUP

6960 Smoke Ranch, Suite 110
 Las Vegas, Nevada 89128
 P) 702.255.8100
 F) 702.255.8375
 www.pogemeyer.com

EXHIBIT D

COSTS OF OVERSIZED LINE AND EXTENSION LINE

Costs of Oversized Line:

Portion Paid by MMESA 319, LLC	\$2,895,709.42
Portion Paid by PHI Northgate 2 Land, LLC	\$2,895,709.42
<hr/>	
Oversized Line Cost	\$5,791,418.83

Costs of Extension Line:

To be added in accordance with **Section 4.**