

## **VOLUME PAYMENT AND SETTLEMENT AGREEMENT**

This Volume Payment and Settlement Agreement (“Agreement”) is entered into by and between Western Mesquite Mines, Inc., a Nevada corporation, hereinafter referred to as “WMMI,” and County Sanitation District No. 2 of Los Angeles County, a county sanitation district organized and existing pursuant to the County Sanitation District Act, California Health and Safety Code Section 4700 *et seq.*, hereinafter referred to as “LACSD.” WMMI and LACSD are sometimes herein referred to collectively as the “Parties,” or individually as a “Party.” NOW, THEREFORE, in consideration of the promises made herein, the Parties agree as follows:

### **NATURE AND EFFECT OF AGREEMENT**

1. This Agreement contains an interim settlement of disputed claims. Each of the Parties’ claims arises from the Dispute (as defined and described in Paragraphs 4-6).
2. The Parties do not intend by this Agreement to extinguish, terminate, amend, revise, restate or alter any rights under the Lease (as defined and described in Paragraph 3), and the Parties affirm that the Lease shall remain in full force and effect.

### **NATURE OF DISPUTE**

3. WMMI and LACSD are parties, as successors in interest, to that certain Mineral Lease and Landfill Facilities Lease Agreement dated June 15, 1993, as amended April 25, 1995 and August 24, 1998 (the “Lease”).
4. WMMI contends that the Lease entitles WMMI to place Ore, as defined in the Lease, on the leach pads within the Landfill Footprint, as defined by the Lease, on lands leased from LACSD (“Leach Facility Site”) in such quantities as WMMI may determine and without the consent or approval of LACSD. WMMI further contends that the Lease entitles WMMI to LACSD’s cooperation in obtaining such licenses and permits as may be required to carry out the placement of Ore on property owned by LACSD.
5. LACSD contends that the Lease does not authorize WMMI to place Ore on property owned by LACSD if such placement would harm or interfere with LACSD’s planned operation of the Mesquite Regional Landfill (“MRL”) or if such placement is not authorized by the applicable licenses and/or permits WMMI is required to have to operate the Mesquite Mine, as described in the Lease.

6. WMMI's contentions and LACSD's contentions are referred to herein as the "Dispute." WMMI and LACSD enter into this Agreement solely to avoid the further expense of the Dispute and each of them expressly deny any wrongdoing. Nothing in this Agreement shall be construed as any admission of any liability or wrongdoing by the Parties, or either of them, for any purpose. Each Party reserves its rights as set forth in the Lease, and under law, with respect to the matters encompassed by the Lease.

### **RESOLUTION OF DISPUTE**

7. Agreement. The Parties desire to resolve the Dispute and do hereby enter into this Agreement for that purpose. The Parties' respective duties in this Section 7 are deemed compatible with the terms of the Lease. In consideration of the promises made herein, WMMI and LACSD agree as follows:

- A. Deposit of Ore. In exchange for payment of the Volume Amount (defined below) on the terms and conditions set forth herein, WMMI may deposit Ore at the Leach Facility Site and LACSD will reasonably and expeditiously cooperate in WMMI obtaining such licenses and permits as may be required, at WMMI's sole cost and expense, to deposit such Ore. The limits of the Leach Facility Site are described in Exhibit 1 attached. The Leach Facility Site has approximately 236.5 million cubic yards of Ore placed on it by WMMI as of the end of March 2022. Approximately 246.2 million cubic yards of Ore has been permitted and approved to be placed at the Leach Facility Site.
- B. Volume Payment. For Ore placed on and after the date on which the total volume of Ore placed at the Leach Facility Site by WMMI exceeds the currently-approved 246.2 million cubic yards, WMMI shall make a quarterly volume payment ("Quarterly Volume Payment") to LACSD as follows:
  - i. Rate. The rate shall be \$0.1718 per cubic yard of Ore.
  - ii. Payment. Determination of the Quarterly Volume Payment shall be made at the end of each calendar quarter by WMMI, and paid to LACSD within sixty (60) days of the end of the calendar quarter.
- C. Measurement.

- i. WMMI shall determine, at its own cost, the quantity of Ore subject to the Quarterly Volume Payment by survey conducted by WMMI personnel. The volume of Pads 1 through 8 shall be determined by the results of the survey and the use of the heap boundary, the 1983 surface survey data, and the survey control points as defined in the attached Exhibit 1. The results shall be provided to LACSD one month before the date of each quarterly payment. WMMI's surveyed quantity of Ore will be used to set the Quarterly Volume Payment amount.
- ii. LACSD shall also have the right, but not the obligation, at its own cost, to obtain its own determination of quantity of Ore subject to the Quarterly Volume Payment by a survey. The results of LACSD's survey shall be shared with WMMI upon request by WMMI.
- iii. Annual Trueup. On an annual basis, within 60 days from the start of the calendar year, LACSD, at its own cost, may conduct its own survey of quantity of Ore subject to each Quarterly Volume Payment by a survey conducted by a surveyor licensed by the State of California. If the LACSD survey varies from WMMI's survey that WMMI used to calculate the prior calendar year's Quarterly Volume Payments by more than 5%, at LACSD's request, the parties shall meet and in good faith attempt to resolve the difference. If the parties fail to settle their dispute, the parties shall agree on a licensed surveyor to calculate the amount of Ore subject to the relevant Quarterly Volume Payments. The agreed on licensed surveyor shall select which of the LACSD's or WMMI's volume determinations for the relevant period is most accurate, and this determination shall be binding on the parties as to the determination of such Quarterly Volume Payments. The costs of the licensed surveyor in making this determination shall be borne solely by the party whose volume calculation was not adopted by the surveyor.
- iv. Permit Compliance. WMMI must comply with all permit conditions related to the placement of Ore on the Leach Facility Site and shall be solely responsible for any liability, including fines, penalties or

assessments, from any violation by WMMI or its agents of any said permit condition. Additionally, WMMI shall ensure that the pads within the Leach Facility Site do not extend beyond the final fill elevations depicted in the Site Development Plan for MRL, as required by MRL Conditional Use Permit No. 06-0003.

D. Limitation on Quarterly Volume Payment Obligation. WMMI shall not be obligated to pay the Quarterly Volume Payment set forth in this Agreement on Ore placed outside the Landfill Footprint as identified in Amended Exhibit A to the Lease.

E. Further Cooperation. LACSD shall execute all documents, and take all actions, as may be reasonably necessary to carry out the terms of this Agreement.

8. Term of Quarterly Volume Payment and Settlement Agreement. The price per volume agreed to by the Parties in this Agreement expires four (4) years from the Effective Date of this Agreement. After that time, the price per volume will increase annually on each anniversary of the Effective Date based on the change in the Consumer Price Index (CPI) during the immediately preceding 12-month period ending October 31. For purposes of this Agreement, the CPI is the All Urban Consumers (CPI-U): Selected areas, all items index [1982-84=100, unless otherwise noted] for the Los Angeles-Long Beach-Anaheim, California area promulgated by the Bureau of Labor Statistics, U.S. Department of Labor Consumer Price Index.

9. No Amendment to Lease. This Agreement does not extinguish, terminate, amend, revise, restate or alter any rights under the Lease, and the Parties acknowledge that the Lease shall remain in full force and effect despite the terms set forth in this Agreement.

### **ADVICE OF COUNSEL AND TAX PROFESSIONALS**

10. Each Party warrants and represents that in executing this Agreement, they have relied solely upon legal advice from their respective legal counsel and that the terms of this Agreement have been read and consequences (including risks, complications and costs) have been completely understood and that each Party understands the terms of this Agreement. Each Party further acknowledges and represents that, in executing this Agreement, they have not relied on any inducements, promises, or representations made by the other Party or any attorney

representing the other Party which promises or representations are not expressly provided in this Agreement. Further, each Party acknowledges, understands, and agrees that any settlement may have tax implications and that each Party is advised to consult a tax professional of their choice before executing this Agreement.

### **CONDITIONS OF EXECUTION**

11. Each Party represents and warrants that their execution of this Agreement is free and voluntary. Each signatory to this Agreement represents and warrants that they are specifically authorized to execute this Agreement on behalf of the Party which they represent.

### **EXECUTION OF OTHER DOCUMENTS**

12. Each Party to this Agreement shall cooperate fully in the timely execution of any and all other documents and in the timely completion of any additional actions that may be necessary or appropriate to give full force to the terms and intent of this Agreement. Each Party acknowledges and agrees that this Agreement is specifically enforceable.

### **DISPUTE RESOLUTION**

13. WMMI and LACSD agree to mediate through JAMS with respect to any claim or dispute arising out of or relating to this Agreement, before resorting to court action. Either Party may commence mediation by providing to JAMS and the other Party a written request for mediation, setting forth the subject of the claim or dispute and the relief requested (the "Mediation Notice"). The mediation shall be conducted in Los Angeles pursuant to the JAMS rules. The parties will cooperate in selecting a mediator from the JAMS panel of neutrals, and in scheduling the mediation proceedings. If the Parties do not select a mediator within fifteen days of the Mediation Notice, the Parties agree that either Party may request that JAMS in Los Angeles facilitate the choice of mediator by applying the "strike and rank" process used for appointment of arbitrators in arbitration proceedings, or to appoint a mediator, if necessary, and both Parties agree to the appointment of such mediator as so selected. The Parties agree to share equally in the cost of the mediation. The mediation proceeding shall be confidential to the extent provided by law. If JAMS should no longer exist at the time the claim or dispute arises, the matter shall be submitted to its successor entity, or if there is no such successor entity, to the American

Arbitration Association or other similar organization mutually agreed upon by the Parties, and except as provided herein or by mutual agreement of the Parties, the mediation rules of such successor or alternate organization shall apply. Except as may be expressly set forth in any written settlement agreement, should the matter be settled by negotiation or mediation prior to commencing court action, each Party shall pay its own attorneys' fees and costs. Except as provided below, neither Party may commence an action arising out of or relating to this Agreement until completion of the initial mediation session in accordance with this Section 13. If either Party commences an action with respect to a claim or dispute covered by this Section 13 without first attempting to resolve the matter through mediation, or refuses to mediate after a Mediation Notice has been issued, then that Party shall not be entitled to recover attorneys' fees and costs, even if such fees and costs would otherwise be available to that Party in such action. Either Party may seek equitable relief in court to preserve the status quo prior to participating in the negotiation and mediation proceedings required pursuant to this Section 13. Matters that are within the jurisdiction of probate, small claims, or bankruptcy court are excluded from mediation hereunder.

#### **BINDING NATURE; NO ASSIGNMENT**

14. This Agreement will inure to the benefit of and will be binding upon the Parties and their respective successors and assigns. WMMI may not assign this Agreement or any rights or obligations hereunder without the prior written consent, which consent may not be unreasonably withheld, of LACSD.

#### **ATTORNEY'S FEES AND COSTS**

15. Each Party to this Agreement shall bear its own attorney's fees and costs in connection with the Dispute. Notwithstanding the foregoing, the attorney's fee provision of the Lease shall apply as stated in the Lease for all purposes other than the Dispute.

#### **INTEGRATION CLAUSE**

16. This Agreement contains the entire agreement between the Parties with respect to the Dispute. No modification or waiver of any terms of this Agreement shall be given any force and effect, unless such modification or waiver shall be in the form of a subsequent written document executed by all Parties herein.

**EFFECTIVE DATE OF AGREEMENT**

17. This Agreement shall become effective upon the date of execution of the last Party executing this agreement (the “Effective Date”).

**GOVERNING LAW; COUNTERPARTS**

18. This Agreement is entered into and shall be construed and interpreted in accordance with the laws of the State of California. This Agreement may be executed electronically or by facsimile, each of which shall be deemed an original signature. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed an original, but all of which together shall constitute one and the same instrument.

The Parties are signing this Agreement as of the Effective Date.

**COUNTY SANITATION DISTRICT NO. 2  
OF LOS ANGELES COUNTY**

By \_\_\_\_\_  
Chairperson, Board of Directors

**ATTEST:**

By \_\_\_\_\_  
Secretary to the Board

**APPROVED AS TO FORM:**

Lewis Brisbois Bisgaard & Smith, LLP

By \_\_\_\_\_  
District Counsel

DATED: \_\_\_\_\_

**WESTERN MESQUITE MINES, INC.**

By BILL MARTINICH

Name BILL MARTINICH

Title SVP US Operations

Date 1/27/2023 | 12:59:06 PM PST

**APPROVED AS TO FORM:**

DATED 1/30/2023 | 12:44:50 PM PST

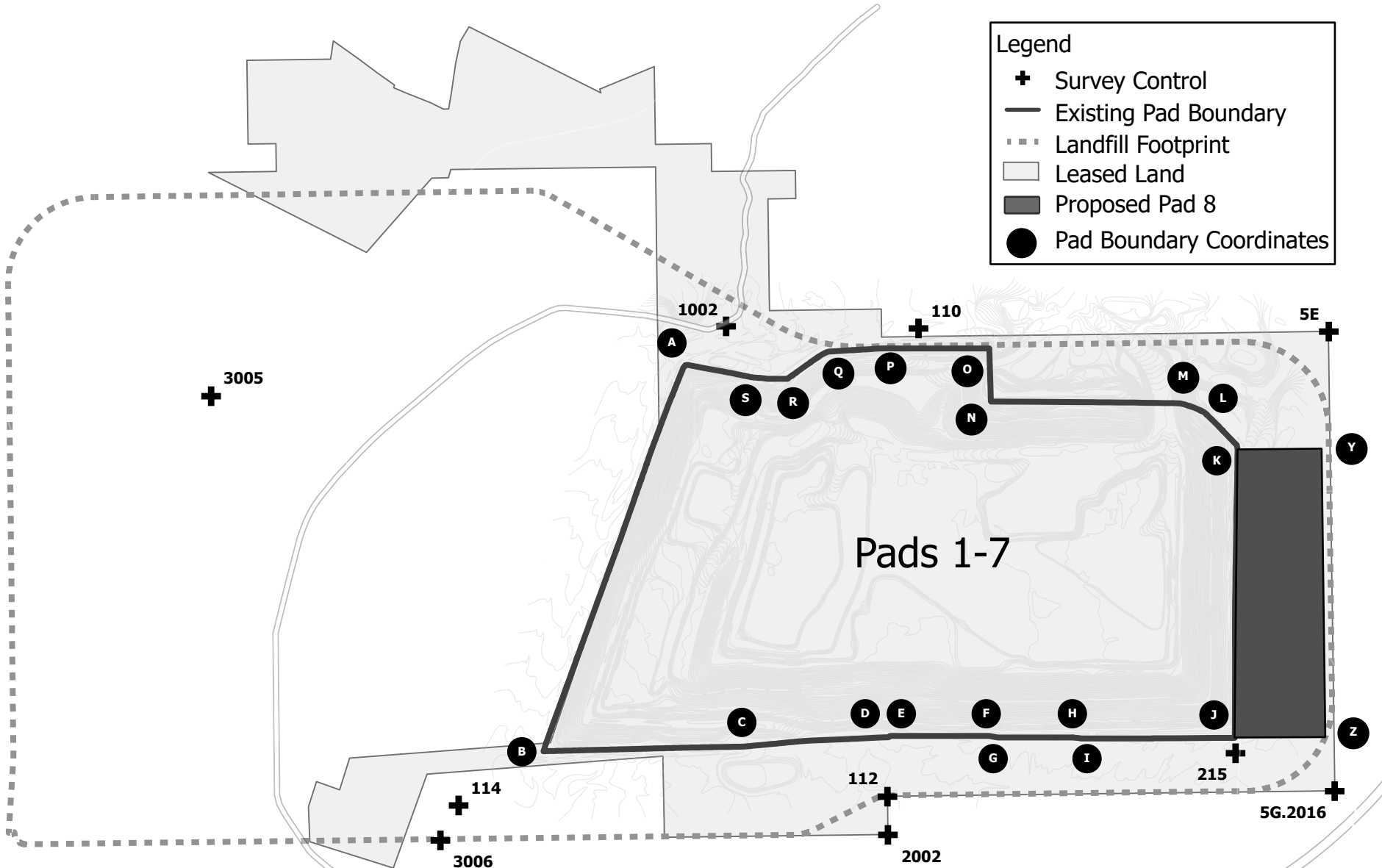
TOM HENRY

THOMAS A. HENRY, Attorney for WMMI



**Legend**

- Survey Control
- Existing Pad Boundary
- Landfill Footprint
- Leased Land
- Proposed Pad 8
- Pad Boundary Coordinates



Pads 1-7

Sources:  
 LACSD, F:\SURVEY\MRL\REPORTS\LACSD WMMI SITE CONTROL 221018 FINAL.pdf  
 LACSD, Base Survey File, Western\_Mesquite\_Mines\_Inc\_Leased\_Land.shp  
 WMMI, Base Survey File, Rec'd 8/15/22, Original 1983 Surface.dgn  
 WMMI, Base Survey File, Rec'd 8/15/22, 20220331 LeachPad\_Surface\_Unclipped.dgn  
 LACSD, F:\SURVEY\MRL\DGN\DXF\Footprint.dgn  
 Map Referenced to WMMI & LACSD Volume Payment Agreement

**LOS ANGELES COUNTY SANITATION DISTRICTS**  
**MESQUITE REGIONAL LANDFILL**

Western Mesquite Mines, Inc  
 Existing Leach Pads

California State Plane Zone 6  
 NAD 83 2011, NAVD 88

500 0 500 1,000 1,500 2,000  
 US Feet

Exhibit 1

# LOS ANGELES COUNTY SANITATION DISTRICTS

**Project:** MESQUITE REGIONAL LANDFILL

**Description:** WMMI / LACSD Site Control

**File Name:** F:\SURVEY\MRL\REPORTS\LACSD WMMI SITE CONTROL 221018.pdf

**Report Created:** Tuesday, October 18, 2022

**Horizontal Datum:** NAD83(2011) / State Plane Coordinates Zone 6

**Vertical Datum:** NGS - NAVD88 height

M = Monument AT = Aerial Target  
BLM = Bureau of Land Management

**Note:** All units in this report are in US Survey Feet unless specified otherwise.

Pad Boundary Coordinate Elevations Are Based off of The Original 1983 Surface Design File.

## SURVEY REPORT

Point	Northing	Easting	Elevation	Description
5E	1962441.292	6954826.501	742.154	M-BLM
5G.2016	1957013.704	6954895.861	681.160	M-BLM
101	1957796.466	6946018.964	726.483	AT-WMMI
104	1958391.234	6952995.126	918.108	AT-WMMI
105	1961423.326	6952976.692	910.682	AT-WMMI
106	1958786.216	6948533.698	1026.541	AT-WMMI
110	1962478.555	6949981.488	708.193	AT-WMMI
112	1956948.485	6949614.855	647.291	AT-EXISTING
114	1956844.450	6944551.120	605.890	AT-EXISTING
215	1957461.124	6953725.638	676.732	AT-EXISTING
1002	1962503.197	6947709.832	686.936	AT-LACSD SET #4 REBAR
2002	1956497.027	6949620.620	642.902	M-BLM
3005	1961678.250	6941628.442	631.083	M-BLM
3006	1956431.821	6944336.153	598.861	M-BLM
A	1962045.275	6947226.156	677.860	PAD ANGLE POINT
B	1957485.365	6945553.331	610.018	PAD ANGLE POINT
C	1957540.125	6947921.687	637.170	PAD ANGLE POINT
D	1957650.270	6949623.171	650.000	PAD ANGLE POINT
E	1957666.845	6949647.352	650.000	PAD ANGLE POINT
F	1957666.663	6950807.761	662.000	PAD ANGLE POINT
G	1957646.625	6950918.870	662.000	PAD ANGLE POINT
H	1957648.648	6951794.205	666.000	PAD ANGLE POINT
I	1957363.900	6951901.237	666.850	PAD ANGLE POINT
J	1957643.713	6953714.238	674.330	PAD ANGLE POINT
K	1961051.849	6953747.303	715.020	PAD ANGLE POINT
L	1961491.172	6953352.093	715.610	PAD ANGLE POINT
M	1961596.505	6953039.328	716.000	PAD ANGLE POINT
N	1961615.937	6950835.050	700.180	PAD ANGLE POINT
O	1962242.632	6950814.964	704.740	PAD ANGLE POINT
P	1962245.333	6949632.828	702.590	PAD ANGLE POINT
Q	1962204.325	6948918.073	694.360	PAD ANGLE POINT
R	1961883.228	6948435.364	686.000	PAD ANGLE POINT
S	1961901.937	6948011.166	682.360	PAD ANGLE POINT
Y	1961056.423	6954744.190	722.000	PROPOSED PAD ANGLE POINT
Z	1957650.353	6954787.718	684.600	PROPOSED PAD ANGLE POINT