

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

City Clerk  
City of Meridian  
33 E. Broadway Avenue  
Meridian, ID 83642

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## **RECYCLED WATER USER AGREEMENT**

This RECYCLED WATER USE AGREEMENT (this "Agreement") made this 12<sup>th</sup> day of July, 2022, by and among, TFC Ten Mile Mister, LLC ("User") located at 4891 N Cortona Way, Meridian ID 83646, and the and the City of Meridian, a municipal corporation organized under the laws of the state of Idaho ("City").

**WHEREAS**, municipalities that typically discharge wastewater to the lower basin of the Boise River have been required by the Idaho Department of Environmental Quality ("IDEQ") to reduce the discharge of nutrients to the lower basin of the Boise River, and as a partial response, City has identified, as one of City's environmentally-responsible Comprehensive Plan goals. the 'use of recycled water throughout City (the terms "Recycled", "Reclaimed", and "Reuse" may be used interchangeably, and all refer to the City's Class A Reclaimed Water);

**WHEREAS**, City has worked to implement this Comprehensive Plan goal by establishing a state-of-the-art wastewater treatment and water reclamation facility;

**WHEREAS**, IDEQ has issued a Municipal Wastewater Reuse Permit, identified as Municipal Wastewater Reuse Permit No. M-215-03 (the "Permit"), which allows City to use the City's recycled water and allows City to contract with other parties for the use of the City's recycled water;

**WHEREAS**, the City uses recycled water for land application option for Class A effluent at various locations as specified by allowable uses in the Permit, which will continue to conserve a significant amount of ground water and reduce City's discharge flows into surface waters;

**WHEREAS**, City has constructed and operates a delivery system capable of delivering to User recycled water meeting the quality standards set forth herein.

**NOW, THEREFORE**, for and in consideration of the recitals above which are incorporated below, the mutual covenants set forth herein, as well as in consideration of continued receipt of recycled water and in further consideration of such other values as may inure to City and User from the delivery and use of recycled water, City hereby agrees to deliver and User hereby agrees to receive recycled water on the following terms and conditions.

1. **No Charge for Recycled Water.** The cost to be paid by User for recycled water delivered by City as provided further herein shall be \$0.00 (zero dollars). Whenever recycled water is utilized by the User and then returned to the sanitary sewer (examples: toilet flushing, car wash, etc.), the User will be charged the standard City rates for sewer use for that volume of water. User acknowledges that City may, in the future, adopt a commodity rate for recycled water, which rate shall apply to User. In the event that City adopts a commodity rate for recycled water this agreement will be void.
2. **Quality Standards.** The recycled water delivered by City to User shall meet IDEQ standards set for Class A Municipal Water. User shall not be obligated to accept recycled water from City that does not meet this standard.

3. Place of Use. Recycled water delivered under this Agreement shall be used only on the Property, as described in this agreement.

4. Use. The recycled water delivered pursuant to this Agreement shall be used solely for the following purpose: landscape irrigation and use in an automated car wash. No other use of the recycled water shall be permitted.

5. Backflow Prevention. If a non-potable or potable, supplemental water source is interconnected with City's recycled water system, reduced pressure backflow prevention assemblies shall be installed, at the sole expense of the User, on both the other irrigation and potable water sources and the Class A source to prevent any cross connections between the recycled water and the supplemental water source. All backflow prevention assemblies shall be approved by City prior to installation, and tested on an annual basis. User is responsible for the maintenance and annual testing of all such backflow prevention assemblies.

6. Automated Valving-Potable Water Redundancy. At the sole expense of the User, an automated valving system will be installed that will automatically switch between reuse and potable water in the carwash facility in the event that the reuse system is unavailable at the desired pressure or offline. It is the sole responsibility of the User to maintain and repair this system. City shall use all good faith efforts to notify User within one (1) day of City's inability to deliver to User recycled water and the reason therefor.

7. Metering. User shall be required to meter the quantity of recycled water delivered to the Property for each type of use. The meter(s) shall meet standard City specifications and shall be accessible to City. The cost of the meter installation shall be the sole responsibility of the User.

8. Quantity and Schedule. The City's recycled water production is limited due to production and pumping capacities. In order to maximize the City's production ability, the Users agrees to restrict water usage to the following period(s):

Water may be used for landscape irrigation only from March 15th-October 31st each year. Currently no time of day restrictions on use apply; however, the City may implement such restrictions as may be needed to ensure capacity and pressure for all users, at any time.

Water used in the carwash facility has no date or time of day restriction. The City may implement such restrictions as may be needed to ensure capacity and pressure for all users, at any time.

In the event of a shortage of recycled water available, priority in delivery shall be given to City owned sites. The period of use can change upon seven (7) days' notice from the City. The City reserves the right to additionally restrict use quantities.

9. Compliance with Regulations. User agrees to comply, at User's sole cost and expense, with all state, federal and local laws, regulations and standards, as now exist, or are later lawfully enacted, relating to the use of recycled water after City's delivery of recycled water to the Property. City agrees to comply, at its sole cost and expense, with all state, federal and local laws, regulations and standards, as now exist, or are later lawfully enacted, relating to the recycled water system and the treatment, delivery and use of recycled water prior to City's delivery of recycled water to the Property. Such laws, regulations, and standards may include, but are not limited to: requirements and restrictions governing use of the recycled water, limits on recycled water contact with employees, guests, members of the public and adjoining properties, control of access to the recycled water, the recycled water system, and the area of recycled water storage and use, and warning signs on the delivery system and the area of use. The User agrees to follow all policies, procedures, and specifications outlined in the most current version of the Reclaimed Water User Manual provided to the user. The User will ensure no runoff or ponding resulting from use of recycled water on their site. The User

agrees to provide the Reclaimed Water User's Manual to any person working on or around the reclaimed system. The User will install and maintain all reclaimed infrastructure beyond the point of delivery according to guidelines established in the Permit, including: All exposed and above ground piping, risers, fittings, pumps, and valves shall be purple in color (Pantone 512, 522 or other approved equivalent); all piping shall be purple in color (Pantone 512, 522 or other approved equivalent) and identified using an accepted means of labeling. User shall install signs on the Property in connection with use of the recycled water. Warning signs and labels shall read, in both English and Spanish, "Caution: Recycled Water – Do Not Drink; Agua Reclamada-No Beber" or equivalent. Example signage is included in **Exhibit C**.

10. Commencement of Service. User agrees to give City fifteen (15) days' notice prior to the first time service is initiated under this Agreement.

11. Term. The term of this Agreement shall be coterminous with the term of the Permit and any renewal or replacement thereof, unless earlier terminated by either Party.

12. Resale of Recycled Water. Users shall not resell recycled water delivered by City under this Agreement.

13. Approval. The parties hereto acknowledge that, under existing and proposed regulations, this Agreement has been generally approved as to form by DEQ. The parties hereby agree to modify this Agreement in writing to the extent that such amendment is reasonably necessary in order to comply with DEQ requirements or regulations promulgated by DEQ.

14. Inspection. Users acknowledge and agree that in order to verify compliance with this Agreement or with applicable laws and regulations, City, State, or other agencies with appropriate jurisdiction may inspect the recycled water system at the Property, with notice, at a reasonable time annually, or without notice in emergency situations or where necessary to ensure compliance.

15. Approvals and Notifications. Users specifically acknowledge that it has the responsibility to inform, notify, and/or request inspection and approvals from various agencies, including the City's Building Department, for certain activities relating to the construction, maintenance, and operation of the recycled water system on the Property, including, but not limited to: materials; construction; facility testing; violations; and emergency situations.

16. Termination; cure. Users may terminate this Agreement at any time for no cause with ten (10) days written notice to City. Notwithstanding the foregoing, the parties further agree that if City or User believe that grounds for termination occur as a result of a default, the defaulting party shall have thirty (30) days after mailing of notice of such default to correct the same prior to the non-defaulting party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period, if the defaulting party shall commence to cure the same within such thirty (30) day period and thereafter shall continue efforts to cure with diligence and continuity, then the time within which such may be cured shall be extended for such period as may be necessary to complete the cure with diligence and continuity. If the defaulting party fails to cure or make efforts to cure the default as set forth herein, this Agreement may be terminated by either party upon sixty (60) days' written notice. Grounds for termination shall include:

- a. Either party's failure to comply with any provision of the Manual;
- b. Either party's default or violation of any provision of this Agreement;
- c. Either party's failure to comply with the Permit;
- d. The purpose(s) for the use of recycled water, as described in this Agreement, no longer exist; or
- e. Changes in DEQ permitting or other regulatory requirements make continued operation of City's recycled water system a nonviable option.

17. Reclaimed Water Users' Manual. Where there is a conflict between this Agreement and the Manual, the provisions of the Manual shall apply. The User is responsible for awareness of, and compliance with, all requirements of the Manual and all IDEQ regulations.

18. Mutual Cooperation. City and User shall mutually cooperate and expeditiously perform all acts necessary or appropriate to discharge all obligations contained in or contemplated by this Agreement, and with respect to any other matters that may arise in connection with the Property and/or the recycled water and recycled water system not reasonably foreseeable by User or City as of the date of this Agreement.

19. Miscellaneous.

(a) Notices. Any notice required to be given hereunder shall be in writing and shall be deemed effectively given: (1) upon personal delivery to the party to be notified; (2) when sent by confirmed electronic mail (*i.e.*, e-mail); or (c) upon deposit in the U.S. mail. All communications shall be to the respective parties to this Agreement at the following addresses:

City:  
PW Director  
3401 N Ten Mile Rd, Meridian ID 83646  
E-mail: lmcvey@meridiacity.org

User:  
Mister Car wash  
Jeremey Falcon  
520-444-8191  
e-mail: jfalcon@mistercarwash.com

(b) Time is of the Essence. The parties hereto acknowledge and agree that time is strictly of the essence with respect to each and every term, condition and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the party so failing to perform.

(c) Final Agreement. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between User and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between User and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns.

(d) Binding upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

(e) Invalid Provisions. If any provision of this Agreement is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.

- (f) **Compatibility.** This Agreement is intended to be supplemental to all other local, City, State and Federal Code requirements, rules and regulations, and is established to assure compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Agreement conflicts with any provision of the Meridian City Code, other than a future duly adopted Amendment to Meridian City Code in connection with a commodity rate for recycled water, this Agreement shall prevail to the extent permitted by law.
- (g) **Relationship of the Parties.** It is hereby specifically understood and acknowledged that development of the Property is a private project and that neither City nor User will be deemed to be the agent of the other for any purpose whatsoever.
- (h) **Excusable Non-Performance.** In the event of an Act of God, natural catastrophe, war, civil insurrection, accidents, acts of governmental or judicial bodies other than City, or any unexpected occurrences beyond the control of either party which shall materially interfere with the ability of City to deliver recycled water to User, or the ability of User to accept, transmit or distribute recycled water, the failure of either party to perform its obligation under this Agreement shall be excused so long as the condition interfering with performance continues. The maintenance and operation of City's sewer system and of the Meridian Wastewater Treatment Plant shall be solely within the discretion of City; and in the event City discontinues the treatment plant operation and the treatment plant is not replaced by another plant, all obligations of either party to perform shall cease without prejudice to any claimed or asserted rights of either party existing prior to the execution of this Agreement.
- (i) **Attorneys' Fees.** Should any litigation be commenced between the parties hereto concerning this Agreement, court costs and reasonable attorneys' fees shall be determined and awarded by a Court of competent jurisdiction as allowed by law. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.
- (j) **Remedies Cumulative.** All remedies herein are cumulative and, to the extent not wholly inconsistent with each other, may be enforced simultaneously or separately, at the sole discretion of City and/or User.
- (k) **Governing Law.** This Agreement shall be governed by the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the 4th Judicial District of the State of Idaho, Ada County, or in the United States District Court for the District of Idaho.
- (l) **Waiver.** Waiver by City or User of any breach of any term, covenant or condition shall not be deemed to be a waiver of that term, covenant or condition on any subsequent breach of such term, covenant or condition or any other term, covenant or condition. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or User unless the waiver is in writing by City or User.
- (m) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



**Schedule of Exhibits:**

**Exhibit A Legal Description of the Property**

**Exhibit B Site Plan Depicting Point of Delivery of Recycled Water**

**Exhibit C Recycled Water Signage Text Example and Location**

# EXHIBIT A

## Legal Description of the Property

### User Parcel:

**Parcel:** R9010680081

**Year:** 2021

**Parcel Status:** Active in 2021

**Primary Owner:**

NWDC TEN MILE LLC

**Zone Code:** C-G

**Total Acres:** 1.322

**Tax Code Area:** 03

**Instrument Number:**

2020150605

**Assessor ID:**

PAR #0081 OF LOTS 10-11 BLK 12

VERONA SUB NO 04 AMD

PARCEL E ROS 12081

#0090-S #0100-S



# **EXHIBIT B**

Site Plan Depicting Point of Delivery of Recycled Water

# EXHIBIT C

Recycled Water signage is required to be installed on all logical points of entry (sidewalk entrances) around facilities and property where reclaimed water is used.

Signage will be required at entry points to the car wash facility to inform patrons, employees, and contractors that reclaimed water is used inside the facility.

The example signage below can be utilized in its entirety as is or modified as long as it contains the required information as stated in this agreement. If the User decides to modify this signage, it is recommended that they submit the design to the City to ensure the design is compliant with the requirements of this agreement prior to installation.

