

## SECOND MODIFIED DEVELOPMENT AGREEMENT

- PARTIES:**
1. City of Meridian
  2. L & G Murgoitio, LLC

THIS SECOND MODIFIED DEVELOPMENT AGREEMENT (this “**Agreement**”), is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Meridian, a municipal corporation of the State of Idaho, hereafter called “**City**”, and L & G Murgoitio, LLC, an Idaho limited liability company, whose address is 6575 S. Locust Grove Road, Meridian, Idaho 83642 hereinafter called “**Owner/ Developer.**”

### 1. RECITALS:

- 1.1 WHEREAS, the Owner/Developer is the sole owner, in law and/or equity, of certain tract of land in the County of Ada, State of Idaho, described in Exhibit “A,” which is attached hereto and by this reference incorporated herein as if set forth in full, herein after referred to as the “**Property**”; and
- 1.2 WHEREAS, Timber Creek Recycling, LLC (“**Timber Creek**”) has operated, does operate, and will operate a processing facility on the Property; and
- 1.3 WHEREAS, Idaho Code § 67-6511A provides that cities may, by ordinance, require or permit as a condition of re-zoning that an owner or developer make a written commitment concerning the use or development of the subject property; and
- 1.4 WHEREAS, Idaho Code § 67-6511A and Meridian City Code §11-5A-2(E) provides that said written commitments may be modified with the permission of the governing board; and
- 1.5 WHEREAS, the City has exercised its statutory authority by the enactment of Section 11-5B-3 of the Unified Development Code (“**UDC**”), which authorizes development agreements upon the annexation and/or re-zoning of land; and
- 1.6 WHEREAS, the City and the Owner/Developer negotiated terms and conditions into that certain Development Agreement, dated January 26, 2016, recorded as Instrument No. 2016-007075, Records of Ada County, Idaho (“**Original Agreement**”); and
- 1.7 WHEREAS, the City and the Owner/Developer entered into that certain Modified Development Agreement, dated June 11, 2019, recorded as

Instrument No. 2019-053058, Records of Ada County, Idaho (“**Modified Agreement**”), to amend and replace the Original Agreement; and

- 1.8 WHEREAS, the City, Owner/Developer, and Timber Creek agree to negotiate in good faith and seek resolution to any conditions or circumstances that existed at the time this Agreement was approved and executed that are necessary for the continued and future use of the Property; and
- 1.9 WHEREAS, the City and the Owner/Developer agree to negotiate in good faith and seek resolution to any conditions or circumstances that existed at the time the Original Agreement and this Modified Agreement were approved and executed that are necessary for the continued and future use of the Property; and
- 1.10 WHEREAS, the Owner/Developer, the City, Timber Creek, and others made representations at the public hearings before the Meridian City Council, as to the current and proposed uses of the Property and how the Property may be developed, if any, at this time or in the future; and
- 1.11 WHEREAS, the Meridian City Council, on the \_\_\_\_ day of \_\_\_\_\_, 2024, approved certain Findings of Fact and Conclusions of Law and Decision and Order (“**Findings**”), which have been incorporated into this Agreement and attached as Exhibit “B” and have been accepted by Owner/Developer and Timber Creek; and
- 1.12 WHEREAS, the Findings require the Owner/Developer to enter into this Agreement as a replacement to the Modified Agreement; and
- 1.13 WHEREAS, the Owner/Developer deems it to be in its best interest to be able to enter into this Agreement and acknowledges that this Agreement was entered into voluntarily; and
- 1.14 WHEREAS, the City requires the Owner/Developer to enter into a development agreement for the purpose of ensuring that the use of the Property is in accordance with the terms and conditions of this Agreement, herein being established as a result of evidence received by the City and from affected property owners.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein, the parties agree as follows:

**2. INCORPORATION OF RECITALS:** That the above recitals are contractual and binding and are incorporated herein as if set forth in full.

**3. DEFINITIONS:** For all purposes of this Agreement the following words, terms, and phrases herein contained in this section shall be defined and interpreted as herein provided, unless the clear context of the presentation of the same requires otherwise:

- 3.1 CITY:** means and refers to the City of Meridian, a party to this Agreement, which is a municipal corporation and government subdivision of the state of Idaho, organized and existing by virtue of law of the State of Idaho, whose address is 33 East Broadway Avenue, Meridian, Idaho 83642.
- 3.2 OWNER/DEVELOPER:** means and refers to L & G Murgoitio, LLC, whose address is 6575 S. Locust Grove Road, Meridian, Idaho 83642, the party that owns the Property and shall include any subsequent owner/developer(s) of the Property.
- 3.3 SITE/PROPERTY:** means and refers to that certain parcel(s) of property located in the County of Ada, City of Meridian as described in Exhibit “A” attached hereto and by this reference incorporated herein as if set forth at length. The terms, in any form, may be used throughout this document and are meant to be interchangeable in meaning unless specifically defined.
- 3.4 DEVELOPMENT/REDEVELOPMENT:** means any construction or installation of a structure, or any change in use of an existing structure, or any subdivision of the Property, or any change in the use of the Property that creates additional or different demand and/or need for public facilities or services, except as otherwise permitted herein. Notwithstanding the foregoing, the construction of structures necessary for Timber Creek to continue its operation on the Property, now or in the future, shall not constitute development or redevelopment of the Property.

The terms, in any form, may be used throughout this document and are meant to be interchangeable in meaning unless specifically defined.

**4. USES PERMITTED BY THIS AGREEMENT:** The right to use and develop the Property shall be in accordance with the terms and conditions of this Agreement. The following uses on the Property are specifically allowed:

- 4.1** All uses allowed or will be allowed in the future under the City’s Zoning Ordinance codified in the UDC.
- 4.2** No change in the uses specified in this Agreement shall be allowed without modification of this Agreement.

- 4.3 Any existing and future written agreements for the collection, disposal, processing or maintaining of solid waste in pursuance of an agreement with the City's solid waste franchisee may remain until such time that the Property is developed in the future.
- 4.4 Any currently allowed use in Ada County regarding the raising or maintaining of livestock shall remain on the Property until such time that the Property is developed in the future. The Property maintains a livestock business and operation. All existing uses and operation on the Property relating to the livestock business and operation at the time of annexation may remain until the Property is developed in the future.
- 4.5 The Property will have an exemption to Meridian City Code 6-3-10, Firearms; Dischargeable Instruments, until such time that the Property is developed in the future.
- 4.6 Any use constituting an "agricultural operation", as defined in Idaho Code § 22-4502 until such time the Property is developed in the future.
- 4.7 Currently stored or maintained on the Property: farm equipment, vehicles (registered and unregistered), and excess organic and/or inorganic material necessary for the agricultural operation of the Property. Such items may include but not be limited to weed spray, gasoline, diesel, wood, compost, fertilizers and the like in quantities not usually found in urban residential properties. Such storage may remain in the current condition at the time of the adoption of this Agreement until such time that the Property develops in the future.
- 4.8 Allow Timber Creek Recycling, LLC ("**Timber Creek**") to operate on the portion of the Property ("**Recycling Property**") outlined on the site plan ("**Site Plan**") attached hereto as Exhibit "C" and incorporated herein, as Timber Creek is currently operating or may operate in the future, whether under the name of Timber Creek Recycling or another name or entity, subject to the provisions of Section 5 and Section 6 of this Agreement.

**5. OPERATION OF TIMBER CREEK RECYCLING.** As set forth in Section 4.8 of this Agreement, but as limited by Section 6.14 of this Agreement, Timber Creek is specifically permitted to continue operations on the Recycling Property. The following outlines the primary activities, but not all activities, related to Timber Creek's operation or proposed operation on the Recycling Property:

**5.1 Delivery of Recycled Materials.** Timber Creek receives the materials identified in Exhibit "F", attached hereto and incorporated herein (collectively "**Recycling Materials**") at the Recycling Property for Recycling Activities (defined below). Timber Creek

shall not accept any other materials or products at the Recycling Property for Recycling Activities.

**5.2 Recycling Activities.** Timber Creek is entitled to accept, process, utilize and sell the Recycling Materials on the Recycling Property (“**Recycling Activities**”). For purposes of clarity, but not limitation, the following are examples of the Recycling Activities which are permitted on the Recycling Property:

**5.2.1 Grinding.** The Recycling Materials may be ground and transported from the Recycling Property for animal bedding, soil amendment, other agricultural uses or otherwise, and may be sold on the Recycling Property or to third parties. In the grinding process, Timber Creek may use loaders and excavators and other necessary equipment to perform such grinding.

**5.2.2 Screening.** The Recycling Materials, before and after processing, may be screened. Screening of any Recycling Materials may include the use of conveyors, trommels, hopper boxes, air systems, loaders and other equipment necessary to screen the Recycling Materials.

**5.2.3 Feed.** The Recycling Materials may be processed and transported from the Recycling Property for feed for livestock or other agricultural uses, and may be sold on the Recycling Property or to third parties.

**5.2.4 Composting.** The Recycling Materials may be composted on the Recycling Property and transported from the Recycling Property for soil amendment, agricultural uses or otherwise, and may be sold on the Recycling Property or to third parties. Compost piles shall be maintained in a manner that does not cause or create a nuisance condition including, but not limited to, odor, other nuisance and/or other conditions relative to insects or disease that affect neighboring properties, cause harmful vapors or constitute a risk to the environment or public health and safety as set forth in Meridian City Code 4-1-10. In addition to the remedies available through the enforcement of this Agreement, the City may seek enforcement through abatement by civil action or code enforcement.

**5.2.5 Storing of Recycling Materials.** The Recycling Materials, both before and after processing, shall be stored on the Recycling Property and after processing may be used on the balance of the Property.

**5.2.6 Miscellaneous Recycling Activities.** Timber Creek may engage in any of the following as part of the Recycling Activities: loading and unloading of trucks; use of watering trucks on the Recycling Property and as part of the Recycling Activities; use of loaders, graders, tractors (with implements), forklifts, and other heavy equipment, preparation and maintenance of the Recycling Property for the Recycling Activities; erection and use of a weather station; modification of the Recycling Property for the Recycling Activities, including

leaching ponds and berms; use of air compressors, generators, tarps for covering of Recycling Materials, and bagging systems.

**5.2.7 Other Activities.** Timber Creek may engage in other activities relating to the operation of Timber Creek and utilize any or all of the Recycling Materials as deemed appropriate by Timber Creek, provided, however, that any such use shall be in accordance with applicable laws and regulations governing such activities.

**5.3 Related Activities.** In addition to the Recycling Activities, Timber Creek may engage in uses on the Recycling Property that are related to, support, or are in furtherance of the Recycling Activities (“**Related Activities**”). For purposes of clarity, but not limitation, the following are examples of the Related Activities:

**5.3.1 Truck Parking.** Timber Creek may park trucks used for delivery, removal and/or processing of Recycling Materials on the Recycling Property.

**5.3.2 Equipment.** Timber Creek may place, operate, maintain, repair, relocate and remove any equipment, fixtures and personal property onto and from the Recycling Property in order to engage in the Recycling Activities.

**5.3.3 Marketing and Sale of Processed Recycling Materials.** Timber Creek may market and sale processed Recycling Materials. Processed Recycling Materials include, but are not limited to, mulch, compost, bark, playground chips, sand, stone, etc.

**5.4 Retail Sales.** Within the area on the Site Plan marked “Retail Sale” (“**Retail Area**”), Timber Creek may sell processed Recycling Materials to the public. Timber Creek shall take reasonable steps to keep the public purchasing Recycling Materials from the portion of the Recycling Property where active Recycling Activities occur. Retail sales in the Retail Area are restricted as follows:

**5.4.1 Hours of Operation.** The Retail Area will not be open to the public for the purchase of Recycling Materials outside of the following hours:

- (a) April – October:
  - a. Monday – Saturday: 8:00 a.m. to 6:00 p.m.
  - b. Sundays: Closed
- (b) November – March:
  - a. Monday – Saturday: 9:00 a.m. to 4:00 p.m.
  - b. Sundays: Closed

**5.4.2 Vehicle Limitation.** The following vehicles will be prohibited from accessing the Retail Property for the purchase of processed Recycling Materials:

- (a) Commercial vehicles, as defined in Idaho Code §49-123(d).
- (b) Vehicles with more than two (2) axels; provided, however, that a trailer pulled by a two (2) axel vehicle does not count towards the axel count.

**5.4.3 Limitation on Sales.** Timber Creek may only sell the following in the Retail Area: a) processed Recycling Materials; b) landscaping materials, including but not limited to, mulch, compost, bark, playground chips, and other products typically sold at a nursery, excepting trees and shrubs; and c) products and materials to permit Timber Creek to provide engineered soil to customers, including but not limited to gypsum, sulfur and nitrogen.

**5.5 Recycling Activities Structures.** Timber Creek may construct, relocate or install the following: a) a scale house with approximate dimensions of forty five feet by fifteen feet (45'x15'); b) a restroom with approximate dimensions of twenty feet by eight feet (20'x8') with a septic system until sewer is available at the Recycling Property at which time the restroom will connect to the sewer line; c) a storage shed with approximate dimension of forty feet by eight feet (40'x8'); and d) a barbwire fence on the south east corner of the Property to connect the existing fencing. The construction, relocation or installation of the above identified structures shall not constitute "development" as defined in Section 3.4.

**6. CONDITIONS AND LIMITATIONS TO OPERATION OF TIMBER CREEK RECYCLING.** To mitigate or ameliorate any adverse effects from Timber Creek's operation on the Property, Timber Creek shall comply with the following conditions on its operation:

**6.1 Extent of Operations on Property.** Timber Creek's Recycling Activities shall be limited to the Recycling Property; provided, however, that Timber Creek may use processed Recycling Materials on the balance of the Property.

**6.2 Compliance.** Timber Creek shall comply with all federal, state and local entities with jurisdiction, including, but not limited to the Idaho Department of Environmental Quality ("IDEQ"), the Central District Health Department ("CDHD"), Department of Agriculture, U.S. Environmental Protection Agency, U.S. Department of Agriculture, the Ada County Air Quality Board, and the Idaho Department of Water Resources. The City may consider a conviction or final order by one of these named agencies of violations of their regulations to be a cause for a violation of this Agreement. Timber Creek shall take any action to:

6.2.1 Comply with conditions imposed on it by any and all of aforementioned entities with jurisdiction relating to the Recycling Materials or the Recycling Activities;

6.2.2 Comply with the rules and regulations relating to the Recycling Materials or the Recycling Activities which may be adopted, revised or re-interpreted by any and all of aforementioned entities with jurisdiction; and

6.2.3 Cure or correct deficiencies or issues identified by any and all of aforementioned entities with jurisdiction.

**6.3 Composting.** Composting on the Recycling Property shall be conducted in accordance with applicable law, rules and regulations. Timber Creek has obtained the necessary approvals to operate a Tier 2 composting facility and is currently operating a Tier 2 composting facility on the Recycling Property. In the event of any change in Timber Creek’s approvals for the Tier 2 composting operation on the Recycling Property, Timber Creek shall provide notice of such changes to the City. In connection with operating a Tier 2 facility on the Recycling Property, Timber Creek shall:

**6.3.1 Odor Management.** Continue to operate under the odor management plan which has been approved by IDEQ. In the event of a change to the odor management plan, Timber Creek will provide a copy of the revised odor management plan approved by IDEQ to the City.

**6.3.2 Compliance with IDEQ and Central District Health.** Comply with all requirements of IDEQ and CDHD as part of the Tier 2 approval process. Timber Creek shall cooperate with IDEQ and CDHD and permit monitoring of the composting operation and to resolve any compliance issues.

**6.4 Noise Mitigation.** Timber Creek shall do or adopt the following to mitigate the noise generated from Timber Creek’s Recycling Activities:

**6.4.1 Mufflers.** Timber Creek will maintain a Harco 2286RSL 10 SI SO SP HARCO MFG, or a muffler of equivalent quality and characteristics, on the horizontal grinder and a muffler of similar quality and characteristics on the tub grinder.

**6.4.2 Landscaping.** Timber Creek will maintain the trees and other landscaping features on the Recycling Property, which were installed in accordance with MCC 11-3H-4D, to mitigate the sound generated on the Recycling Property by the Recycling Activities.

**6.5 Hours of Operation.** Recycling Activities on the Property will be limited to the following:

6.5.1 Monday – Friday: 7:00 a.m. to 6:00 p.m.

6.5.2 Saturday: 8:00 a.m. to 6:00 p.m.



**6.6 Visual Impact.** To minimize any visual impact caused by the Recycling Materials or the Recycling Activities, Timber Creek will keep the height of piles of Recycling Materials at the greater of: (a) twenty-five (25) feet, and (b) the height permitted by the Meridian Fire Department under applicable code, regulations and rules.

**6.7 Dust Abatement.**

**6.7.1 Water Tank.** Maintain a 4,000 gallon water tank on the Property to hold water for dust abatement purposes on the Recycling Property.

**6.7.2 Sprinklers.** Maintain a sprinkler system on roads and other parts of the Recycling Property as deemed reasonably necessary by Timber Creek to minimize dust caused by Recycling Activities.

**6.7.3 Water Trucks.** Maintain water truck, tender or buffalo or other similar equipment for dust abatement. Said equipment will be utilized to apply water to unpaved portions of the Recycling Property or the Recycling Materials to minimize dust caused by the Recycling Activities.

**6.7.4 Spray Hoses.** Spray hoses will be used as part of the Recycling Activities to reduce dust caused by the Recycling Activities.

**6.7.5 Wood Flour.** Timber Creek Recycling will not accept or process wood flour as part of the Recycling Activities.

**6.7.6 Dustless Material.** Resurface the entrance to the Recycling Property and Retail Area with a dustless material, including those materials set forth in Meridian City Code 11-3C-5B-1.

**6.8 Traffic for Recycling Materials.** Traffic to the Recycling Property is regulated as follows:

**6.8.1 Recycling Activities.** All traffic to permit Timber Creek to perform the Recycling Activities, including but not limited to, traffic for delivery of Recycling Materials, any safety programs, fire prevention, odor management, and composting, grinding and screening operations is expressly permitted, except as limited by this Section 6.8, and shall not constitute a nuisance.

**6.8.2 Compliance with Ada County Highway District.** All traffic to the Recycling Property shall comply with Ada County Highway District rules and regulations.

**6.8.3 Truck Limitation.** No more than fifty-six (56) Truckloads of Recycling Materials will be delivered to the Recycling Property per day. For purposes of this Agreement, “**Truckload**” shall mean any truck or vehicle carrying ten (10) or more cubic yards

of Recycling Materials to the Recycling Property for Recycling Activities. For purposes of clarification, the following do not qualify as a Truckloads:

- (a) Vehicular traffic associated with the agricultural use of the Property such as delivery of feed, livestock, equipment and fertilizer or the removal of crops, livestock, equipment, feed, waste or fertilizer;
- (b) Vehicles to and from the Retail Area;
- (c) Vehicular traffic to and from the Property not carrying Recycling Materials; and
- (d) Vehicular traffic from the Property delivering Recycling Materials for agricultural uses.

**6.9 Agency Requirements/Recommendations.** Timber Creek shall comply with the following requirements and recommendations from the following agencies:

**6.9.1 Fire.**

- (a) **Emergency Plan.** Timber Creek with comply with the emergency plan previously delivered to the Meridian Fire Code Official. Timber Creek shall provide the City with an updated or revised emergency plan and comply with the updated ore revised emergency plan.
- (b) **Process Hazard Analysis.** Timber Creek shall prepare a process hazard analysis which satisfies the requirements of the International Fire Code, Section 5001.3.3.11-17 (2015) and deliver to the Meridian Fire Code Official, if required by the Meridian Fire Code Official.

**6.9.2 Irrigation.** Obtain approval from the applicable irrigation district for any use of or encroachment on the easement(s) surrounding the canals bordering the Recycling Property. If any such approval is required, Timber Creek shall provide evidence of said approval to the City.

**6.9.3 Land Development Services.** As long as Timber Creek is engaged in Recycling Activities, the Recycling Property shall be open to inspection for compliance with this Agreement by the Land Development Services, upon advance notice.

**6.9.4 Complaints.** Timber Creek will set up a telephone line, email account, or other means of communication for neighbors to be able to submit comments and complaints to Timber Creek relating to the Recycling Activities.

**6.9.5 Nuisance.** Timber Creek shall not keep the Recycling Property and all associated grounds in a manner that constitutes a public nuisance, as defined in Meridian City Code (MCC) 4-2-1. Procedures and penalties for general nuisances are listed in MCC 4-2-4. In addition to the remedies available through the enforcement of this Agreement, the City may seek enforcement through abatement by civil action or code enforcement.

**6.10 Leaching Ponds.** The leaching pond(s), if applicable and any other open water pond(s) for run off or drainage on the Recycling Property shall be treated and maintained such that it does not become a mosquito breeding ground as set forth in UDC 11-3G-3B.8.

**6.11 Mechanical Equipment.** All mechanical equipment (excluding all private or commercial vehicles) and power-driven processing equipment on the Recycling Property shall be operated at least 300 feet from abutting residential districts. All shipping and delivery areas, storage and other outdoor activity on Recycling Property shall be located at least 300 feet from abutting residential districts within the City of Meridian.

**6.12 Burning.** Burning or incinerating to dispose of solid waste or recyclable materials is prohibited on the Property.

**6.13 Site Plan.** Attached hereto as Exhibit “C” is a site plan which: a) defines the Property; b) defines the Recycling Property; c) defines the portion of the Property intended to be used for agricultural purposes or non-Recycling Activities; and d) identifies the current location of the equipment to be used for the Recycling Activities. Subject to the limitations in Section 6.11, Timber Creek may change the location of the equipment to be used for the Recycling Activities so long as the equipment is operated within the Recycling Property. The Recycling Property shall not exceed the identified thirty-six (36) acres in total.

#### **6.14 Termination of Recycling Activities.**

**6.14.1 Complete Termination.** On or before June 30, 2027 (“Termination Date”), Timber Creek shall: (a) cease all Recycling Activities on the Recycling Property; (b) have removed all Recycling Materials from the Recycling Property; (c) have removed all improvements constructed pursuant to Section 5.5 of this Agreement from the Recycling Property; and (d) have removed all equipment, fixtures, and personal property used primarily for the Recycling Activities from the Recycling Property.

**6.14.2 Use of Property after July 1, 2027.** As of July 1, 2027 the Property may only be used for the uses allowed under Section 4.1, Section 4.6, Section 4.7, and Section 6.14.4 of this Agreement.

**6.14.3 Transition Plan.** Prior to the Termination Date, Timber Creek shall cease accepting certain Recycling Materials, and shall accept reducing quantities of other Recycling Materials, as set forth in the Transition Plan attached hereto as Exhibit “E.” Timber Creek shall also comply with other tasks and the timelines set forth in the Transition Plan.

**6.14.4 Parking of Trucks.** Notwithstanding the foregoing, following the Termination Date Timber Creek may park commercial equipment on the Property, provided that: (a) the number and size of trucks does not exceed the limits set forth in Section 6.8.3; the commercial equipment is not operated on the Property (excepting the necessary actions to park and remove the commercial equipment).

**6.14.5 Signage.** On or before July 1, 2025, Timber Creek shall post a sign on the Recycling Property in a location adjacent to South Locust Grove Road and a second sign on the Recycling Property in a location adjacent to Columbia Road, both of which will state the following: “THIS FACILITY WILL CLOSE ON JUNE 30, 2027.” The sign will comply with the size requirements set forth in Meridian City Code 11-5A-6(D)(2)(b)(1), and the letters will be no less than six inches in height.

## **7. CONDITIONS GOVERNING DEVELOPMENT OF THE PROPERTY:**

**7.1** Owner/Developer shall develop the Property in accordance with the following special conditions:

7.1.1 Except as otherwise provided in this Agreement, future development of the Property shall comply with the ordinances in the Meridian City Code in effect at the time of development.

7.1.2 Except as otherwise provided in this Agreement, future development of the Property shall comply with all bulk, use, and development standards of the R-4 zoning district listed in UDC 11-2A-5, unless rezoned by City in accordance with the UDC following application by the Owner/Developer or future developer, and then in accordance with the new zoning designation.

7.1.3 Any property or easements reasonably needed by the City to provide any sewer or water infrastructure in furtherance of this Agreement shall be provided by the Owner/Developer at no cost to the City.

7.1.4 Any future development of the Property which will require an amendment to this Agreement to approve any proposed development plan may be sought by the Owner/Developer. The first such request for an amendment shall be at no cost to the Owner/Developer or future developer.

## **8. COMMITMENTS AND CONDITIONS BY THE CITY OF MERIDIAN:**

**8.1** The City intends to extend the sewer and water infrastructure (“**Utility Extension**”) which will benefit the Property, the City, and other adjacent and adjoining properties. The City will endeavor to design the Utility Extension in a manner consistent with the City’s Sewer Master Plan

(including the assumptions and tolerances included in the Sewer Master Plan) in existence at the time the City designs the Utility Extension. In furtherance of this objective, the Utility Extension will include, but is not limited to, the extension of:

- (a) Water Mains; and
- (b) Sewer Mains; and
- (c) Trunk Lines.

A complete description of the Utility Extension is set forth in Exhibit "D", incorporated by reference to this Agreement.

**8.2** The City shall be expending funds to plan, design, and construct the Utility Extension described in 8.1 over the course of time. The City anticipates completion of the initial phase of the Utility Extension in or about Meridian Road/State Highway 69 within approximately two (2) years from the date of the publication of the annexation ordinance for the Property and the completion of the Utility Extension in or about Linder Road and Victory Road in approximately four (4) years from the date of the publication of the annexation ordinance for the Property. The above described timelines for completion of the Utility Extension are subject to the following conditions:

- (a) Acts of God; or
- (b) Denial of the Application by the City or any other governmental agency with authority to approve or deny the Application or Utility Extension; or
- (c) Any legal challenge to the annexation of the Property that causes the delay of the annexation approval; or
- (d) The inability of the City to acquire all the needed target properties necessary to allow for the necessary expenditure of the Utility Extension; or
- (e) Economic limitations, as prescribed by law; or
- (f) Permitting limitations or denials; or
- (g) The inability to acquire the necessary easements for the Utility Extension; or

- (h) Geology and/or geography of the area; or
- (i) Weather conditions that may cause delay; or
- (j) Unavailability or delay of materials for the Utility Extension; or
- (k) Review or delay by other agencies needed for approvals of the Application or Utility Extension; or
- (l) Labor disputes, strikes, work stoppages; or
- (m) Limitations by other governmental, semi-governmental, or private industry restrictions unanticipated at the time of execution of this Agreement; or
- (n) Any and all contingencies, whether anticipated or not, that are beyond the control of the City.

**8.3** In the event the City reasonably determines that it cannot complete the Utility Extension within the timeframes set forth above in Section 8.2 due to the occurrence of any of the conditions set forth in Sections 8.2(a) to 8.2(n), the Owner/Developer or the City may terminate this Agreement upon compliance with the requirements of the UDC.

## **9. DEFAULT/CONSENT TO DE-ANNEXATION AND REVERSAL OF ZONING DESIGNATION:**

**9.1 Acts of Default.** In the event either party fails to faithfully comply with all of the terms and conditions included in this Agreement, this Agreement may be terminated by the Owner/Developer or the City upon compliance with the requirements of this Agreement and in a manner prescribed by law or ordinance.

**9.2 Notice and Cure Period.** In the event of any alleged default or failure to perform any obligation under this Agreement, the non-defaulting party shall give the alleged defaulting party written notice thereof. The party given notice of failure shall have a period of thirty (30) days after such notice is given within which to cure such default, which period shall be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within thirty (30) days after such notice is given and thereafter prosecuted with due diligence.

**9.3 Remedies.**

**9.3.1 Remedies Against the Owner/Developer.** In the event of default by Owner/Developer that is not cured after notice as described in Section 9.2, Owner/Developer shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property and upon the City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511. Owner/Developer reserves all rights to contest whether a default has occurred. This Agreement shall be enforceable in the Fourth Judicial District Court in Ada County by the City. This remedy for enforcement of this Agreement may be sought by an appropriate action at law or in equity to secure the specific performance of the covenants, agreements, conditions, and obligations contained within this Agreement or to de-annex the Property.

**9.3.2 Remedy against the City .** In the event of default by the City that is not cured after notice as described in Section 9.2, the City shall be deemed to have consented to modification of this Agreement and de-annexation and reversal of the zoning designations described herein, solely against the offending portion of Property and upon City's compliance with all applicable laws, ordinances and rules, including any applicable provisions of Idaho Code §§ 67-6509 and 67-6511. The City reserves all rights to contest whether a default has occurred.

**9.4 Delay.** In the event the performance of any covenant to be performed hereunder by either the Owner/Developer or the City is delayed for causes that are beyond the reasonable control of the party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

**9.5 Waiver.** A waiver by a party of any default of any one or more of the covenants or conditions hereof shall apply solely to the default and defaults waived and shall neither bar any other rights or remedies nor apply to any subsequent default of any such or other covenants and conditions.

**10. INSPECTION:** Following the development of the Property, Owner/Developer shall, immediately upon completion of any portion or the entirety of said development of the Property, as required by City ordinance or policy, notify the City Engineer and request the City Engineer's inspections and written approval of such completed improvements or portion thereof in accordance with the terms and conditions of this Agreement and all other ordinances of the City that apply to said Property.

**11. REQUIREMENT FOR RECORDATION:** City shall record, at its cost and expense, either a memorandum of this Agreement or this Agreement, including all of the Exhibits, and submit proof of such recording to Owner/Developer, prior to the third reading of the ordinance annexing and re-zoning the Property. If for any reason after such recordation, the City Council fails to adopt the ordinance in connection with the annexation and zoning of the Property contemplated hereby, the City shall execute and record an appropriate instrument of release of this Agreement, at its cost and expense.

**12. SURETY OF PERFORMANCE:** Following the development of the Property, the City may require surety bonds, irrevocable letters of credit, cash deposits, certified check, or negotiable bonds, as allowed under Meridian City Code §11-5-C, to insure the installation of future improvements, which the Owner/Developer agrees to provide, if required by the City.

**13. CERTIFICATE OF OCCUPANCY:** Following the development of the Property, no Certificates of Occupancy shall be issued in any phase in which the improvements have not been installed, completed, and accepted by the City.

**14. ABIDE BY ALL CITY ORDINANCES:** That Owner/Developer agrees to abide by all ordinances of the City, except as otherwise provided in this Agreement, and the Property shall be subject to de-annexation if the Owner/Developer shall not meet the conditions contained in the Findings, this Agreement, and the ordinances of the City.

**15. NOTICES:** Any notice desired by the parties and/or required by this Agreement shall be deemed delivered if and when personally delivered or three (3) days after deposit in the United States Mail, registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

CITY: City Clerk  
City of Meridian  
33 E. Broadway Ave.  
Meridian, Idaho 83642

with copy to: City Attorney  
City of Meridian  
33 E. Broadway Avenue  
Meridian, ID 83642

OWNER/DEVELOPER: L & G Murgoitio, LLC  
6575 S. Locust Grove Road  
Meridian, Idaho 83642

**15.1** A party shall have the right to change its address by delivering to the other party a written notification thereof in accordance with the requirements of this section.



**16. ATTORNEY FEES:** Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

**17. 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 other party so failing to perform.

**18. BINDING UPON SUCCESSORS:** This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including City's corporate authorities and their successors in office. This Agreement shall be binding on the Owner/Developer, each subsequent owner and any 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. City agrees, upon written request of Owner/Developer, to execute appropriate and recordable evidence of termination of this Agreement if City, in its sole and reasonable discretion, has determined that Owner/Developer has fully performed its obligations under this Agreement.

**19. INVALID PROVISION:** If any provision of this Agreement is held not valid by a court of competent jurisdiction, such provision shall be deemed to be excised from this Agreement and the invalidity thereof shall not affect any of the other provisions contained herein.

**20. DUTY TO ACT REASONABLY:** Unless otherwise expressly provided, each party shall act reasonably in giving any consent, approval, or taking any other action under this Agreement.

**21. FINAL AGREEMENT:** This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owner/Developer 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 Owner/Developer and City, other than as are stated herein. This Agreement amends and replaces the Original Agreement and the Modified Agreement. 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 and pursuant, with respect to City, to a duly adopted ordinance or resolution of City.

**21.1** No condition governing the uses and/or conditions governing re-zoning of the subject Property herein provided for can be modified or amended without the approval of the

City Council after the City has conducted public hearing(s) in accordance with the notice provisions provided for a zoning designation and/or amendment in force at the time of the proposed amendment.

**22. THIRD-PARTY BENEFICIARIES.** Except for Timber Creek, this Agreement is not intended to create, nor shall it in any way be interpreted or construed to create any third-party beneficiary rights in any person or entity not a party hereto.

**23. EFFECTIVE DATE OF AGREEMENT:** This Agreement shall be effective on the date the Meridian City Council approved this Modified Development Agreement and executed by the Mayor and City Clerk.

**24. INCORPORATION OF EXHIBITS.** All exhibits attached hereto are incorporated herein.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have herein executed this Agreement and made it effective as hereinabove provided.

**OWNER/DEVELOPER:**

L & G Murgoitio, LLC

Date: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF MERIDIAN:**

Date: \_\_\_\_\_

By: \_\_\_\_\_

Mayor Robert E. Simison

ATTEST:

\_\_\_\_\_  
Chris Johnson, City Clerk

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of December, 2024, before me a Notary Public in and for said State, personally appeared \_\_\_\_\_, known or identified to me to be the manager or a member of **L & G Murgoitio, LLC**, or the person who executed the instrument on behalf of said limited liability company and acknowledged to me that such limited liability company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of \_\_\_\_\_, 2024, before me, a Notary Public, personally appeared **Robert E. Simison** and **Chris Johnson**, known or identified to me to be the Mayor and Clerk, respectively, of City of Meridian who executed the instrument or the person that executed the instrument on behalf of said City, and acknowledged to me that such City executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

\_\_\_\_\_  
Notary Public for Idaho  
Residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTY**

**L & G MURGOITIO, LLC - PARCEL NO. 1**

A parcel located in the E ½ of the SE ¼ of Section 6, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at an aluminum cap monument marking the southeasterly corner of said SE ¼ of the SE ¼, from which an aluminum cap monument marking the northeasterly corner of the SE ¼ of said Section 6 bears N 0°04'44" W a distance of 2655.72 feet;

Thence N 89°21'59" W along the southerly boundary of said E ½ of the SE ¼ a distance of 1323.88 feet to the southwesterly corner of said E ½ of the SE ¼;

Thence N 0°02'17" W along the westerly boundary of said E ½ of the SE ¼ a distance of 2655.45 feet to the northwesterly corner of said E ½ of the SE ¼;

Thence S 89°22'37" E a distance of 1321.98 feet to an aluminum cap monument marking the northeasterly corner of said E ½ of the SE ¼;

Thence S 0°04'44" E along the easterly boundary of said E ½ of the SE ¼ a distance of 2655.72 feet to the POINT OF BEGINNING.

This parcel contains 80.64 acres.

NOTE: This description was prepared using record information including Record of Surveys, subdivision plats and deeds acquired from the Ada County Recorder's office. No field survey has been performed.

Prepared by: Glenn K. Bennett, PLS  
Civil Survey Consultants, Incorporated  
October 13, 2015

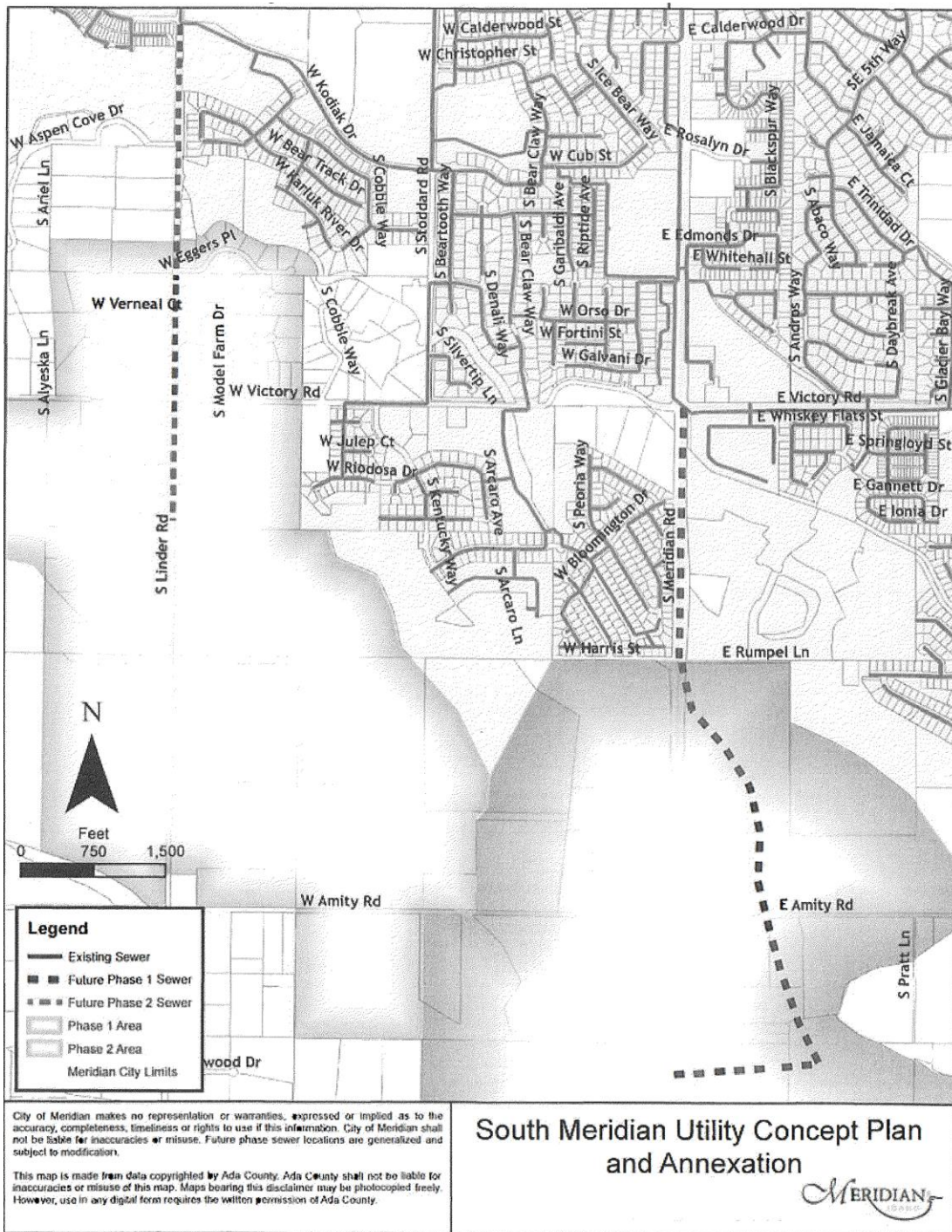


**EXHIBIT B**  
**COPY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DECISION AND**  
**ORDER**

[TO BE INSERTED]



## EXHIBIT "D" UTILITY EXTENSION





**EXHIBIT “E”  
TRANSITION PLAN**

# **Timber Creek Recycling**

*“Engineering waste to its highest and best use”*


Date: December 3, 2024


## **Phased Transition Plan for the Meridian Compost Site**



7695 S. Locust Grove Rd



Meridian, ID 83642



Phase	Focus	2024 Timing	% of total Cheese WAS diverted								
<p><b>#1</b></p> <p>(Complete by December 2024)</p> 	<p><b>Odor</b></p> <ul style="list-style-type: none"> <li>○ <b>Stop regularly</b> receiving Cheese WAS on weekends at the Meridian site</li> <li>○ <b>Conduct</b> experiments of Calcium Hydroxide, “lime” (Ca(OH)<sub>2</sub>), addition to Cheese WAS at Meridian site.</li> <li>○ <b>Coordinate</b> with Sorrento Lactalis on procurement of equipment for addition of “lime” to Cheese WAS at Sorrento plant</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4	<table border="1"> <tr> <td>25%</td> <td></td> <td></td> <td></td> </tr> </table>	25%			
	Q1	Q2	Q3	Q4							
	25%										
<p><b>Dust</b></p> <ul style="list-style-type: none"> <li>○ <b>Effective November 1<sup>st</sup></b>, no more Concrete/Asphalt/Tile/Porcelain/ Brick accepted at the Meridian site</li> <li>○ Continue regular dust control measures (i.e. water truck)</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4						
Q1	Q2	Q3	Q4								
<p><b>Volume</b></p> <ul style="list-style-type: none"> <li>○ <b>At least 25%</b> of the inbound Cheese WAS diverted from the Meridian site</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4						
Q1	Q2	Q3	Q4								
	<p><b>Accountability</b></p> <ul style="list-style-type: none"> <li>○ Present final <b>Transition Plan</b> to Meridian City Council</li> <li>○ <b>Begin</b> drafting a Tier II Composting Facility “closure plan” for DEQ and CDH approval</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4					
Q1	Q2	Q3	Q4								

Phase	Focus	2025 Timing	% of total Cheese WAS diverted							
<p><b>#2</b></p> <p>(Complete by December 2025)</p> 	<p><b>Odor</b></p> <ul style="list-style-type: none"> <li>○ <b>Pilot, full scale</b> addition of “lime” to inbound Cheese WAS at the Sorrento Cheese Plant (Q1)</li> <li>○ <b>Incorporate</b> treated Cheese WAS into compost process at Meridian Site and monitor for effectiveness (Q1)</li> <li>○ Ongoing coordination with Sorrento Lactalis for addition of “lime”</li> <li>○ <b>Fully implement</b> “lime” addition to Cheese WAS as a odor control measure, so long as testing was successful (Q2)</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4				
Q1	Q2	Q3	Q4							
	<p><b>Dust</b></p> <ul style="list-style-type: none"> <li>○ <b>Final crushing</b> of Concrete/Asphalt/Tile/Porcelain/Brick at the Meridian Site (Q1)</li> <li>○ Continue regular dust control measures (i.e., water truck)</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4				
Q1	Q2	Q3	Q4							
	<p><b>Volume</b></p> <ul style="list-style-type: none"> <li>○ <b>Complete</b> engineering for additional ASP pad (1 of 2) at the Nampa site (Q2)</li> <li>○ <b>Additional ASP pad</b> (1 of 2) under construction at the Nampa site (Q3)</li> <li>○ <b>Additional 25%</b> of inbound Cheese WAS diverted from the Meridian site (Q4)</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4	<table border="1"> <tr> <td>50%</td> <td></td> <td></td> </tr> </table>	50%		
Q1	Q2	Q3	Q4							
50%										
	<p><b>Accountability</b></p> <ul style="list-style-type: none"> <li>○ <b>Quarterly</b> inspections with Meridian City Code Enforcement</li> <li>○ Closure signage <b>posted</b> (Q2)</li> <li>○ <b>Complete</b> a draft closure plan in coordination with CDH and DEQ</li> </ul>	<table border="1"> <tr> <td>Q1</td> <td>Q2</td> <td>Q3</td> <td>Q4</td> </tr> </table>	Q1	Q2	Q3	Q4				
Q1	Q2	Q3	Q4							

Phase	Focus	2026 Timing	% of total Cheese WAS diverted
<b>#3</b>  (Complete by December 2026)  	<b>Odor</b> <ul style="list-style-type: none"> <li>Ongoing monitoring of Cheese WAS odor control measures</li> </ul>	Q1 Q2 Q3 Q4	
	<b>Dust</b> <ul style="list-style-type: none"> <li>Continue regular dust control measures (i.e., water truck)</li> </ul>	Q1 Q2 Q3 Q4	
	<b>Volume</b> <ul style="list-style-type: none"> <li>Complete engineering for additional ASP pad (2 of 2) (Q2)</li> <li>Additional ASP pad (2 of 2) under construction at the Nampa site (Q3)</li> <li>100% of the Cheese WAS diverted from the Meridian site (Q4)</li> </ul>	Q1 Q2 Q3 Q4	
	<b>Accountability</b> <ul style="list-style-type: none"> <li>Quarterly inspections with Meridian City Code Enforcement</li> <li>Finalize Tier II Composting Facility Closure Plan with IDEQ and CDH (Q4)</li> </ul>	Q1 Q2 Q3 Q4	

Phase	Focus	2027 Timing	% of total Cheese WAS diverted
<b>#4</b>  (Complete by 30 June 2027)  	<b>Odor</b> <ul style="list-style-type: none"> <li>No cheese WAS received at the Meridian site</li> </ul>	Q1 Q2	
	<b>Dust</b> <ul style="list-style-type: none"> <li>Continue regular dust control measures (i.e., water truck)</li> </ul>	Q1 Q2	
	<b>Volume</b> <ul style="list-style-type: none"> <li>Sale or transfer of remaining inventory</li> <li>Movement of compost/recycling materials and infrastructure off of the Meridian site</li> </ul>	Q1 Q2	
	<b>Accountability</b> <ul style="list-style-type: none"> <li>Quarterly inspection with Meridian City Code Enforcement (Q1)</li> <li>Final site walk through with Meridian Code Enforcement (Q2)</li> <li>Final Tier II site close out with CDH and DEQ (Q2)</li> </ul>	Q1 Q2	

**EXHIBIT F**  
**LIST OF RECYCLING MATERIALS**

- Grass
- Leaves
- Tree waste (limbs, branches, etc.)
- Stumps
- Wood chips
- Saw dust
- Wood mulch
- Christmas trees
- Pine needles/cones
- Mixed food waste, mainly bulk produce, some kitchen scraps (e.g., egg shells, fruits and vegetables, seeds and cores, tea bags and coffee filters (no meat))
- Pumpkins
- Corn Cobs
- Bean mill organic waste
- Cheese Whey WAS from Sorrento Cheese Plant
- Garden/landscape waste (other natural materials typically derived from general landscape like bushes and plants)
- Dirt
- Sod
- Sheetrock
- Clean construction wood (plywood, dimensional lumber, etc.)
- Manure (chicken, llama, horse, cow)

- Compost and compost screenings
- Dairy compost
- Mushroom compost
- Potato cake
- Straw
- Hay
- Agricultural rejects (e.g. onions, potatoes, silage beets, corn, peppers, peas, beans, mint, etc.)
- Compostable plates, cups & utensils, paper
- Paper leaf bags and small quantities of compostable paper and cardboard.