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CITY OF MERIDIAN  
FINDINGS OF FACT, CONCLUSIONS OF LAW,  
FINAL DECISION, AND ORDER



**Date of Order:** December 17, 2024  
**Case No.:** H-2024-0032 (Timber Creek Recycling – MDA)  
**Applicant:** Engineering Solutions, LLP  
**In the Matter of:** Request for modification of existing development agreement (H-2018-0042, Inst. #2019-053058)

Pursuant to testimony and evidence received regarding this matter at the public hearing before the Meridian City Council on August 20, 2024, September 17, 2024, November 12, 2024, and December 17, 2024, as to this matter, the City Council enters the following findings of fact, conclusions of law, final decision, and order.

**A. Findings of Fact.** The City Council finds that:

1. The facts pertaining to the property at issue, located on the northwest corner of S. Locust Grove Rd. and E. Columbia Rd. (“Property”), L&G Murgoitio, LLC’s request, and the notices and hearings are set forth in section III(A) of the December 17, 2024 staff report for Case No. H-2024-0032, which is attached hereto as **Exhibit 1** (“Staff Report”). Section III(A) of the Staff Report is incorporated in these findings of fact as though set forth fully herein.
2. The Property was initially annexed into the City of Meridian by ordinance adopted by City Council on January 26, 2016, and the initial development agreement was recorded on January 27, 2016. Currently, the Property is subject to a first modified development agreement (H-2018-0042), recorded in Ada County as instrument no. 2019-053058 (“June 11, 2019 MDA”).
3. The modifications requested by L&G Murgoitio, LLC and approved by City Council on December 17, 2024 reflect changes to the June 11, 2019 MDA proposed by L&G Murgoitio, LLC over the course of the public hearings. Modifications to the June 11, 2019 MDA that L&G Murgoitio, LLC requested at the respective hearings are attached, and may be summarized, in relevant part, as follows:
  - a. September 17, 2024 public hearing: Per the proposed modified development agreement attached hereto as **Exhibit 2**, among other modifications to the June 11, 2019 MDA, L&G Murgoitio, LLC proposed to:
    - 1) Eliminate the list of materials that Timber Creek Recycling (“TCR”) may use for the Recycling Activities, and instead agree to use only materials not prohibited by the Idaho Department of Environmental Quality (“IDEQ”) or Central District Health (“CDH”).
    - 2) Eliminate the list of allowed Recycling Activities, and instead agree to undertake only activities not prohibited by IDEQ or CDH.

# DRAFT

- 3) Remove the daily limitation on the number of trucks delivering materials to the Property.
  - 4) Add a commitment to keep the Property free of public nuisance conditions.
  - 5) Amend the deadline for TCR to cease the Recycling Activities on the Property, from June 11, 2029 (under the June 11, 2019 MDA) to five (5) years from the date of execution of the modified development agreement, with an option for L&G Murgoitio, LLC to request an extension following City Council review.
  - 6) Provide that if the Property were sold to a developer, TCR would be permitted to continue operating, at the purchasing developer's discretion.
  - 7) Toll all deadlines in the event the modified development agreement is challenged or appealed.
- b. November 12, 2024 public hearing: Per the proposed modified development agreement attached hereto as **Exhibit 3**, among other modifications to the June 11, 2019 MDA, L&G Murgoitio, LLC proposed to:
- 1) Keep the list of materials that TCR may use for the Recycling Activities, but clarify that "cheese whey WAS" is categorized as food waste, and is therefore permissible for use for Recycling Activities.
  - 2) Keep the list of allowed Recycling Activities, with no material changes to the list in the June 11, 2019 MDA.
  - 3) Keep the daily limitation on the number of trucks delivering materials to the Property, with no material changes in that regard to the June 11, 2019 MDA.
  - 4) Add a commitment to keep the Property free of public nuisance conditions.
  - 5) Amend the deadline for TCR to cease the Recycling Activities on the Property, from June 11, 2029 (under the June 11, 2019 MDA) to December 31, 2027, and require that TCR follow a transition plan with milestones for progressively lessened use of the Property for Recycling Activities over time, until the December 31, 2027 Termination Date.
  - 6) Provide a schedule of graduated administrative fines to be applied in the event of TCR's failure to comply with the transition plan.
- This version did not provide that if the Property were sold to a developer, TCR would be permitted to continue operating, at the developer's discretion; nor did this version propose to toll all deadlines in the event the modified development agreement is challenged or appealed.
- c. December 17, 2024 public hearing: Per the proposed modified development agreement attached hereto as **Exhibit 4**, among other modifications to the June 11, 2019 MDA, L&G Murgoitio, LLC proposed to:
- 1) Add, as an exhibit, a more specific list of permitted materials; and eliminate as materials permitted for use for the Recycling Activities the miscellaneous category of "other materials . . . which are of the same category as the materials identified . . . or are intended for agricultural uses."
  - 2) Keep the list of allowed Recycling Activities, with no material changes to the list in the June 11, 2019 MDA.
  - 3) Keep the daily limitation on the number of trucks delivering materials to the Property.

# DRAFT

- 4) Add a commitment to keep the Property free of public nuisance conditions.
- 5) Amend the deadline for TCR to cease the Recycling Activities on the Property, from June 11, 2029 (under the June 11, 2019 MDA) to June 30, 2027, and require that TCR follow a transition plan with milestones for progressively lessened use of the Property for Recycling Activities over time, until the June 30, 2027 Termination Date.
- 6) Commit to posting signs on the Property, facing S. Locust Grove Road, and Columbia Road, stating that the facility will close on June 30, 2027.

This version did not provide a schedule of graduated administrative fines to be applied in the event of the TCR's failure to comply with the transition plan.

4. City Council's action on L&G Murgoitio, LLC's request is subject to Idaho Code section 67-6511A, which states that a development agreement "may be modified only by the permission of the governing board after complying with the notice and hearing provisions of section 67-6509, Idaho Code."
5. City Council's action on L&G Murgoitio, LLC's request is further subject to Meridian Unified Development Code section 11-5B-3(F)(2), which reads, in relevant part: "A development agreement may be modified by the city or an affected party of the development agreement. Decision on the development agreement modification is made by the City Council in accord with this Chapter."
6. City Council's action on L&G Murgoitio, LLC's request is further subject to Table 11-5A-2 of the Meridian Unified Development Code, which provides that the Director of the Community Development Department (or staff designee) is to make a recommendation regarding the request for a development agreement modification, and City Council is to make the final decision, following a public hearing process set forth in 11-5A-6. Staff, City Council, and the Applicant did follow this process, as detailed in Table 2, section II of the Staff Report attached hereto as *Exhibit 1*, which table is incorporated as though set forth fully herein. Compliance with this process does meet the notice and hearing requirements of Idaho Code section 67-6509.
7. Testimony and evidence in opposition to the Applicant's request was received prior to and on September 17, 2024, and on November 12, 2024. (The August 20, 2024 hearing was continued due to a noticing error.) Such testimony and evidence may be summarized as follows:
  - a. September 17, 2024 public hearing: Citizens testified about their concerns regarding Timber Creek Recycling's current operations creating conditions of blowing dust, foul odors, and unsightly materials; as well as noise from the grinder, truck traffic, processing of waste-activated sludge (WAS), air pollution, and potential health impacts. Citizens testified that the City should honor the June 11, 2019 MDA's commitment that the use would cease when residential development was within 1,000 feet of the property, that the use should have been subject to a conditional use permit, and that the current and proposed ongoing use is incompatible with the residential and other uses in the area.

# DRAFT

- b. November 12, 2024 public hearing: Citizens testified about their concerns regarding accountability for compliance with the terms of the current development agreement and operating plan, compliance with the proposed transition plan, air and water pollution, processing of waste-activated sludge (WAS), truck traffic, and foul odors. A representative of the developer of a nearby subdivision requested denial of the extended operational period, or, alternatively, a requirement that the Applicant post a sign on the Property announcing when operations would cease. Citizens testified that a two-year closure deadline would be workable, and that the modified agreement should include liquidated damages.
8. Testimony and evidence in support of the Applicant's request was received on September 17, 2024, and on November 12, 2024. Such testimony and evidence may be summarized as follows:
  - a. September 17, 2024 public hearing: Citizens testified to say that the applicant's activities divert discarded materials from landfills, that they emit little dust, and that there is a need to continue the activities until another location in Nampa is operational. Citizen testimony also suggested that dust may be attributed to unrelated truck traffic or construction in the area.
  - b. November 12, 2024 public hearing: A citizen testified that he had testified against the request at the September hearing, but had changed his mind to support the request after touring the Property and learning about benefits of the Recycling Activities.
9. At the November 12, 2024 public hearing, representatives of the Central District Health Department ("CDH") testified that:
  - a. While CHD did issue warnings of operation plan violations related to odor complaints, no formal notice of violation has been issued to Timber Creek Recycling for violation of the operating plan approved by the Idaho Department of Environmental Quality.
  - b. No public health threat is associated with the recycling activities at Timber Creek.
10. Based on the testimony and evidence received, the City Council finds that it is in the best interest of the City of Meridian to amend the June 11, 2019 MDA to incorporate the modifications proposed in *Exhibit 4*, because such modifications will serve competing interests by:
  - a. Clarifying which materials may be used for the Recycling Activities;
  - b. Providing an enforcement mechanism to Meridian Police Department, Code Enforcement Division, in the event of a nuisance condition on the Property;
  - c. Providing a date certain for the cessation of Recycling Activities on the Property (June 30, 2027), which date does allow operations after the potential earliest deadline for cessation under the June 11, 2019 MDA, but also provides assurance to the community

# DRAFT

that the Recycling Activities will cease earlier than the potential latest date allowed under the June 11, 2019 MDA;

- d. By following the transition plan, facilitating the cessation of the Recycling Activities while also allowing TCR to continue providing the benefits to the community offered by the operation; and
- e. Notifying the public of the timeline for cessation of the Recycling Activities by the posting of signs on the Property.

**B. Conclusions of law.** The City Council concludes that:

1. The modification of a development agreement is governed by the Local Land Use Planning Act (“LLUPA”), codified at Chapter 65, Title 67, Idaho Code, specifically Idaho Code section 67-6511A, and City Council takes judicial notice of same.
2. Meridian Unified Development Code (“UDC”) section 11-5B-3(F)(2) governs the modification of a development agreement, and City Council takes judicial notice of same, as well as of all current zoning maps and the City of Meridian Comprehensive Plan.
3. Though City Council received conflicting testimony, City Council’s findings of fact are supported by substantial competent evidence in the record per *Price v. Payette County Board of County Commissioners*, 131 Idaho 426, 429 (1998) and *Davisco Foods International, Inc. v. Gooding County*, 141 Idaho 784, 789 (2005).
4. Pursuant to Idaho Code section 67-6503, the City of Meridian has properly exercised the powers conferred by LLUPA.

**C. Order.** Pursuant to the above findings of fact and conclusions of law, the City Council hereby grants Applicant’s request for modification of the June 11, 2019 MDA as set forth in **Exhibit 5** hereto.

**D. Final decision.** Upon approval by majority vote of the City Council, this is a final decision of the governing body of the City of Meridian.

**E. Judicial review.** Pursuant to Idaho Code section 67-6521(1)(d), if this final decision had concerned a matter enumerated in Idaho Code section 67-6521(1)(a), within twenty-eight (28) days after all remedies have been exhausted, including requesting reconsideration of this final decision as provided by Meridian City Code section 1-7-10, an affected person aggrieved by this final decision would have had the opportunity to seek judicial review of this final decision as provided by Chapter 52, Title 67, Idaho Code. This notice is provided as a courtesy; the City of Meridian does not admit by this notice that this decision is subject to judicial review under LLUPA.

In the Decision entered on November 24, 2021, in *Brown et al. v. City of Meridian* (Ada County Fourth Judicial District Case no. CV01-19-06894), District Judge Derrick J. O’Neill

# DRAFT

held that City Council’s decision to modify a development agreement is not a matter enumerated in Idaho Code section 67-6521(1)(a), and is therefore not subject to judicial review.

**F. Notice of right to regulatory takings analysis.** Pursuant to Idaho Code sections 67-6521(1)(d) and 67-8003, an owner of private property that is the subject of a final decision may submit a written request with the Meridian City Clerk for a regulatory takings analysis.

**IT IS SO ORDERED** by the City Council of the City of Meridian, Idaho, on this 17th day of December, 2024.

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Robert E. Simison  
Mayor

Attest:

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Chris Johnson  
City Clerk

# Exhibit 1

## COMMUNITY DEVELOPMENT DEPARTMENT REPORT



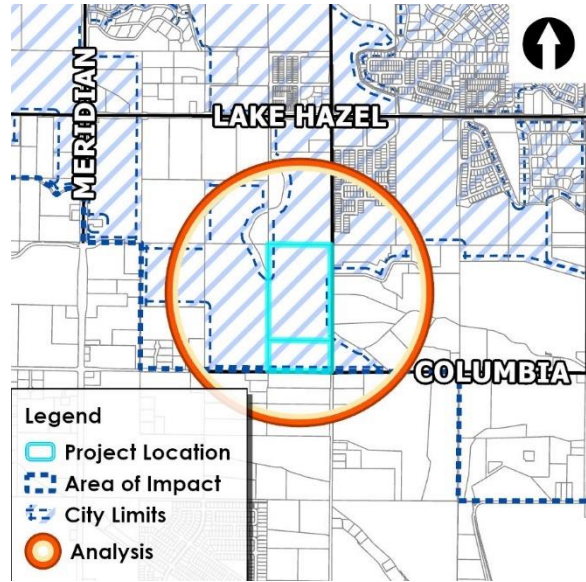
HEARING DATE: December 17, 2024  
*Continued from: August 20 and September 17 and November 12, 2024*

TO: Mayor & City Council  
FROM: Sonya Allen, Associate Planner  
208-884-5533  
sallen@meridiancity.org

APPLICANT: Engineering Solutions, LLP

SUBJECT: [H-2024-0032](#)  
Timber Creek Recycling – MDA

LOCATION: Northwest corner of S. Locust Grove Rd. and E. Columbia Rd., in the SE 1/4 of Section 6, T.2N., R.1E.



### I. PROJECT OVERVIEW

#### A. Summary

Modification to the existing development agreement (H-2018-0042, Inst. #2019-053058) to further clarify the current and future permitted uses and timelines, create guidelines to allow for efficient and continued use of the property, and ensure the operation is meeting all State and Federal guidelines.

#### B. Issues/Waivers

None

#### C. Recommendation

Staff: Staff recommends denial of all proposed changes to the DA that expand, extend and/or intensify the existing approved use and approval of other changes as noted in Section III below.

#### D. Decision

To be determined

### II. COMMUNITY METRICS

**Table 1: Land Use**

Description	Details
Existing Land Use(s)	Recycling & composting of materials
Proposed Land Use(s)	No changes proposed
Existing Zoning	R-4 (medium low-density residential)
Future Land Use Designation	LDR (Low-density Residential)

**Table 2: Process Facts**

Description	Details
Preapplication Meeting date	5/14/2024
Neighborhood Meeting	4/30/2024
Site posting date	8/7/2024 and 9/4/2024

### III. STAFF ANALYSIS

Comprehensive Plan and Unified Development Code (UDC)

#### A. History

This property was annexed with an R-4 zoning district in 2016 as part of the larger South Meridian annexation, which incorporated a total of 1,322-acres of land in south Meridian. A Development Agreement (DA) was recorded for this property as a provision of annexation (Murgoitio LLC – Inst. #[2016-007075](#)). The agreement allowed any currently allowed use in the County pertaining to raising and maintaining livestock; discharge of firearms; currently stored or maintained farm equipment, vehicles, materials necessary for the agricultural operation of the property, etc. to remain on the property; and continued operation of Timber Creek Recycling on the property as an interim use, until such time as the property is developed in the future. The agreement outlined the primary activities of the recycling business, including the type and amounts of materials delivered to the site daily from the Ada County Landfill and miscellaneous contractors (i.e. wood, grass, leaves, sheetrock and other materials); and the recycling activities that were approved to operate on the site. It also included details on the termination of recycling operations on the site.

A modification to the DA was approved by City Council in 2019 [L & G Murgoitio, LLC ([H-2018-0042](#)) – MDA Inst. #[2019-053058](#)], which replaced the original DA. The amendment added a commercial composting component and retail sales to the existing recycling operations on the site and included a concept plan depicting the layout of the site and location of specified operations. Materials proposed for composting consist of food and garden waste and demolition debris; additional activities and equipment associated with the use were included in the agreement. The amendment also removed the daily limit for deliveries to the site of certain types of materials resulting in unlimited deliveries. Hours of operation for the composting program were also included.

On April 16, 2019, a Petition for Judicial Review of the City Council’s decision was filed by several neighbors near the property. The parties litigated the matter for 2.5 years, and on November 24, 2021, the District Court entered a judgment upholding the City Council’s Findings of Fact and Conclusions of Law.

Many letters of testimony on the previous application were received by the City from nearby residents for and against the proposed business expansion and DA amendment. A general summary of the testimony includes the following concerns/ comments pertaining to the proposed use: (*see the [public record](#) for more detailed information*)

- 1) Increase in truck traffic entering/exiting the property and impact on adjacent roads and traffic (suggestion to limit truck traffic to non-commuting hours to reduce traffic conflicts of trucks using two lanes to turn at the Columbia/Locust Grove intersection);
- 2) Increase in dust generated from the existing and proposed use and mitigation thereof;
- 3) Increased noise generated from heavy equipment, grinders and trucks and impact on residential neighbors;
- 3) Size and height of recycling materials piles and potential fire hazard of compost piles;
- 4) Unpleasant odors generated from decomposition of materials (food and waste) to be recycled and pests (i.e. rodents, birds, skunks, flies, bees, mosquitos, etc.) - suggestion to require regular inspections to ensure best practices for recycling/composting are being practiced to reduce issues;



- 5) Unsightly landscape of the site (i.e. trash, stock piles of materials to be recycled, etc.);
- 6) Limitation of business hours that the recycling operation is open to the public and that recycling activities occur to reduce impacts of light pollution and noise on neighbors;
- 7) Require fencing around the perimeter of the site to prevent future conflicts between the business and area residents;
- 8) Reduced residential property values and a less desirable location with the proposed use;
- 9) Concern pertaining to water quality (potential for toxins leaching into the water) and water table; increased risk of contamination of surface and groundwater (leachate) from the facility which borders an irrigation canal;
- 10) Negative impact on quality of life for adjacent residents (excess dust, noise, odor, appearance of site);
- 11) Support of proposed recycling operation which will reduce trash in landfills and is good for the community and environment;
- 12) Success of composting program in the City of Boise and benefit for residents;
- 13) Emission of bioaerosols (airborne particles that contain live organisms or were released from living organisms, may contain bacteria, fungi, viruses, microbial toxins, pollen, plant fibers, etc.) from composting activities which may pose a hazard to susceptible members of the public;
- 14) Need for improvements to infrastructure to support homes that are currently under development in the area and increased traffic from large commercial trucks from the proposed use;
- 15) Industrial/commercial use does not belong in residential area that is continuing to grow with families;
- 16) High winds in this area blowing trash onto adjacent properties;
- 17) Potential for insects drawn to the proposed use to carry disease to residents, pets and livestock on neighboring properties; and,
- 18) Potential contamination of soil.

**Table 3: Project Overview**

Description	Details
History	H-2015-0019 South Meridian (Murgoitio LLC – Inst. # <a href="#">2016-007075</a> ); H-2018-0042 (L & G Murgoitio, LLC – MDA Inst. # <a href="#">2019-053058</a> )
Acreage	80.52-acres

**B. General Overview**

The Applicant requests a modification to the existing development agreement (H-2018-0042, Inst. #[2019-053058](#)) to further clarify the current and future permitted uses and timelines, create guidelines to allow for efficient and continued use of the property, and ensure the operation is meeting all State and Federal guidelines. This modification, if approved, will replace the previous DA in its entirety and removes the parcel (i.e. Parcel 2) from the agreement located on Lake Hazel Rd. where some business operations were occurring as that property has since redeveloped. The existing site plan, included in Section VI.B below is proposed to be replaced with the updated site plan in Section VI.C.

**C. Staff’s Analysis**

The Applicant has submitted a full version of the [proposed amended DA](#) in strike-out/underline format showing the existing text and proposed changes to the agreement, which is included in the public record and also linked in Section VI.D below. An updated version was submitted after the last Council meeting based on the proposed new Phased Transition Plan for Council’s consideration (see link in Section VI.D.

Another updated version was submitted after the Council hearing on November 12<sup>th</sup> as directed by City Council. The Applicant's [narrative](#) describing a summary of the proposed changes is also included in the public record.

The main changes proposed to the agreement are as follows: *(Staff's analysis of the proposed change is included in italics below each item)*

- The list of materials received on the site for recycling, which are currently specified, are proposed to be removed to allow “any” materials, provided they’re not prohibited by the Idaho Department of Environmental Quality (IDEQ) and Central District Health (CDH) (i.e. #5.1); a provision has been added that clarifies recycled materials do *not* include biosolids as defined by IDEQ (i.e. #5.1).

*Staff is in favor of clarifying that biosolids are not an allowed recyclable material on the site. Of particular concern is the processing of a product called Waste Activated Sludge (WAS), which is sludge produced from a non-municipal wastewater treatment or disposal facility. According to IDEQ, Timber Creek Recycling is currently processing WAS at this property. Assuming this is processed into a soil amendment for agricultural use, this is allowed under the current development agreement. However, it is unclear whether this is allowed under the currently approved IDEQ/CDH operating plan.*

*Staff is not in favor of removing the specific materials that are allowed due to possible negative impacts from new materials on adjacent residential neighbors, which could result in issues that aren't able to be addressed by Code Enforcement. Listing specific materials provides clear direction on what materials are and are not allowed to be recycled on the site – the Applicant has rescinded their request for removal of specific materials from the DA and included an updated list of materials in Exhibit F of the proposed amended DA, which includes new materials in addition to those previously included. ~~If City Council does approve this modification proposed by the applicant, staff would strongly advise City Council to require that the current operating plan, and any future operating plan, be appended to the modified agreement, and incorporated by reference.~~*

- Clarification that recycling and associated activities will not include any materials or activities that are prohibited by IDEQ or CDH and removal of the description of each activity (i.e. #5.1).  
*Staff is in favor of clarifying that recycling and associated activities won't include any materials or activities that aren't allowed by IDEQ or CDH. However, Staff is not in favor of removing the descriptions of each activity as the descriptions provide clear direction on what activities are allowed to occur on the site. An amended DA was submitted since the last hearing on November 12<sup>th</sup> that retains the description of each recycling activity (i.e. #5.2).*
- Addition of a stand-alone nuisance provision in section 6.9.5, by which the parties agree that the City may enforce the City nuisance code on this property.  
*Staff is in favor of the addition of this provision.*
- The existing agreement specifies the operation of Timber Creek Recycling on the portion of the site depicted on the site plan as “Recycling Property” is allowed to be conducted on the property for a maximum period of 10 years from the date City Council approved the signed DA, which was on 6/11/2019. The use would terminate on 6/11/2029 unless Timber Creek submits a request for Council to review the recycling activities (no later than one (1) year prior to the expiration date) and determine whether to permit the recycling activities to continue (i.e. #4.8).

The Applicant proposes to remove the maximum operating period of the recycling activities on the site and includes a 5-year maximum timeline on composting activities with an option for an extension (i.e. #6.14.1). The Applicant states the change is necessary to meet the requirements of IDEQ, providing a hard deadline. Since the last hearing on Sept. 17<sup>th</sup>, the Applicant met with the neighbors and based on testimony presented at the public hearing and feedback from neighbors, a Phased Transition Plan was submitted for the next three (3) years for all operations to be

completed by December 2027, included in Section VI.F of this report and in the proposed amended DA as Exhibit E. The Plan focuses on the following issues: odor, dust, volume and accountability and proposes a timeline for addressing these issues. **After the hearing on Nov. 12<sup>th</sup>, the Applicant submitted an updated transition plan as directed by Council with a six (6) month shorter termination date of June 30, 2027, at which point all recycling activities on the property shall cease. A 3<sup>rd</sup> amendment to the Plan was submitted that's included in Section VI.F; changes are included in a red box.**

*Staff is not in favor of the proposed change to remove the maximum time period of 10 years for recycling activities or the new proposed 5-year timeline for composting activities. Staff recommends the existing timelines remain for the overall use and that the composting use is included in the provision.*

- Inclusion of a statement requiring compliance with all federal, state and local entities with jurisdiction, including, but not limited to IDEQ, CHD, 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 (#6.2). The City may consider a finding by one of these named agencies of violations of their regulations to be a cause for a violation of this Agreement. If a violation is found, actions to be taken by Timber Creek are included.

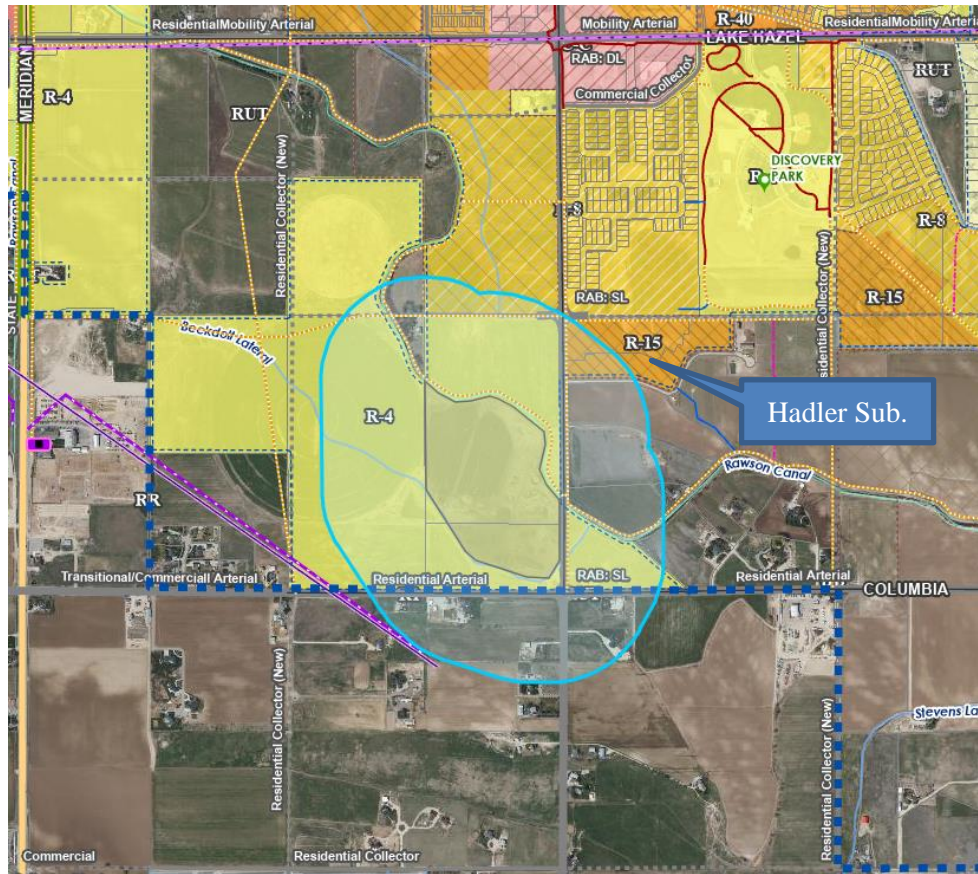
*Staff is in support of this change.*

- Removal of the truck limitation requirement (i.e. 56 truckloads per day). The Applicant states the change is due to the difficulty in keeping track of the number of vehicles and the burden it's placed on operation of the facility (i.e. #6.6.3).

*Staff is not in support of removing the truck limitation as it could result in a much greater number of deliveries to the site, which could negatively impact traffic and neighbors in the area and leave Code Enforcement with no way to address issues if they arise. Since the last hearing on Nov. 12<sup>th</sup>, the Applicant submitted an amended DA that retains the truck limitation requirement.*

- Removal of the requirement for operations to cease on the site within 30 days of the City granting a Certificate of Occupancy to any new residential or commercial development within 1,000 feet of the recycling property (i.e. #6.8.2).

*Staff is not in favor of removing this requirement as the use will likely negatively impact future residents in this area as existing residents have complained about the negative impacts they've experienced from the facility. Land has been annexed into the City within 550-feet of the facility for the development of Hadler Subdivision northeast of the site; a final plat has been approved within 675-feet of the facility – the first Certificate of Occupancy will likely be issued within the next year, which will require recycling operations to cease on the site. In lieu of removing this requirement, a transition plan was submitted, included in Section VI.F below.*



- An updated site plan is included in Section VI.C below; the existing site plan is included for reference in Section VI.B.  
*Staff is amenable to replacing the existing site plan with the updated site plan as it appears to be generally the same. The applicant has withdrawn the request to update the site plan.*
- Removal of Parcel 2 from the boundary of the property subject to the amended DA due to that property being redeveloped into residential lots; see legal description and exhibit map included below in Section VI.E for property subject to the amended DA.  
*Staff is in favor of updating the area subject to the amended DA.*
- Inclusion of two (2) new sections: 9.3 Failure to Comply with Transition Plan and 9.5 Remedies against Timber Creek. These sections detail remedies the City will have if Timber Creek fails to comply with the obligations or deadlines set forth in the Transition Plan, which include monetary penalties to the City in the event Timber Creek is in default of the Transition Plan following notice and opportunity to cure.  
*Staff does not object to the addition of these provisions. These sections were removed in the amended version of the DA at the request of the City Attorney.*

**In summary, Staff recommends denial of all changes to the DA that expand, extend and/or intensify the existing approved use.**

To date, ~~three~~ (3) many letters of public testimony against expansion and extension of the existing use have been received (see [public record](#) for more information).

#### IV. AGENCY COMMENTS

Agency comments may be accessed in the [project file](#), included in the public record.

#### V. ACTION

##### A. Staff:

Staff recommends denial of all proposed changes to the DA that expand, extend and/or intensify the existing approved use and approval of other changes as noted in Section III above.

##### A. City Council:

The Meridian City Council heard these items on August 20<sup>th</sup>, September 17<sup>th</sup> and November 12<sup>th</sup>. At the hearing on November 12<sup>th</sup>, Council voted to approve the proposed MDA application.

##### 1. Summary of the City Council public hearing:

- a. In favor: Caleb Lakey, Applicant's Representative; Mike Murgoitio, Applicant; Becky McKay, Engineering Solutions (Applicant's Representative)
- b. In opposition: Quinn Black; Joann Tima; Clancy O'Hara; Lou Murgoitio; Ken McAfee; Brenda Blitman; Troy Allen; Anna Canning, Centurion Engineers (on behalf of neighboring property owner); Tony Mayer; Marla Fund; Gena Russell; Todd Edgar; Ken Jantz; Billie Jean Black; Jim Cox; and Debbie Allen.
- c. Commenting: Lori Badigian & Michael Reno, Central District Health Dept.; Lacy Iooi; Joanne Tima, Jonathan Fewkes, Brenda Blitman, Elizabeth Koeckeritz on behalf of Black Rock Homes; Justin Cranney
- d. Written testimony: Many letters have been submitted (see public record)
- e. Staff presenting application: Sonya Allen
- f. Other Staff commenting on application: Lacy Ooi, Code Enforcement

##### 2. Key issue(s) of public testimony:

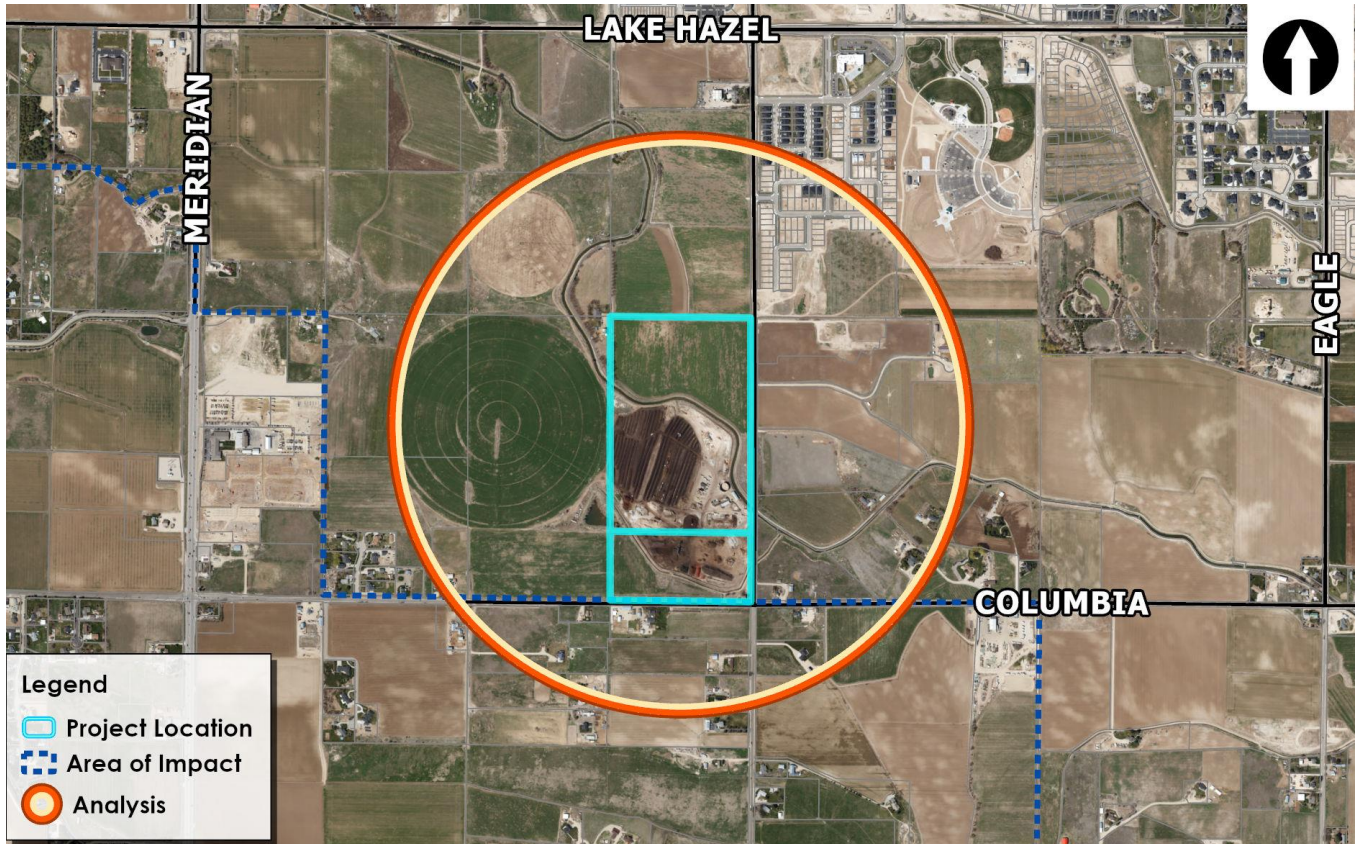
- a. Negative air quality from grinding of concrete and odor generated from use;
- b. Health concerns due to silica dust in the air generated from the site;
- c. Water and air quality concerns for children and residents in the area;
- d. In support of the recycling services provided by this business and reduction of waste in the landfill;
- e. Odors from the facility smell like human waste and rotting flesh and fine white dust (concrete, rocks?) generated from the facility – would like to see the uses associated with these issues cease. The use doesn't belong in residential neighborhood. Lack of fairness involved – other industrial users have to have approval to operate and be in an industrial area;
- f. The use doesn't comply with the UDC – purpose statement of the district, non-conforming use, not requiring a CUP for the use, etc. Code violations on the site, including the use being a public nuisance.
- g. Concern due to cancer causing toxins in the air; request for a narrower timeline to off-load to other site in Nampa;
- h. Request for concrete and rock crushing and sludge be immediately removed.
- i. No public opportunity to comment on the use originally; use should have gone through a conditional use permit; limited accountability of the user; against extension of use;
- j. Frustration that none of the agencies seem to be able to make a decision on whether or not the Applicant is operating in violation of the DA and/or applicable regulations.
- k. Update from Central District Health on notice of violations on the site.
- l. Update from City code enforcement on process for handling complaints and concern pertaining to the proposed 30 day notice to vacate.
- m. Request for a shorter operating time than 3 years.

##### 3. Key issue(s) of discussion by City Council:

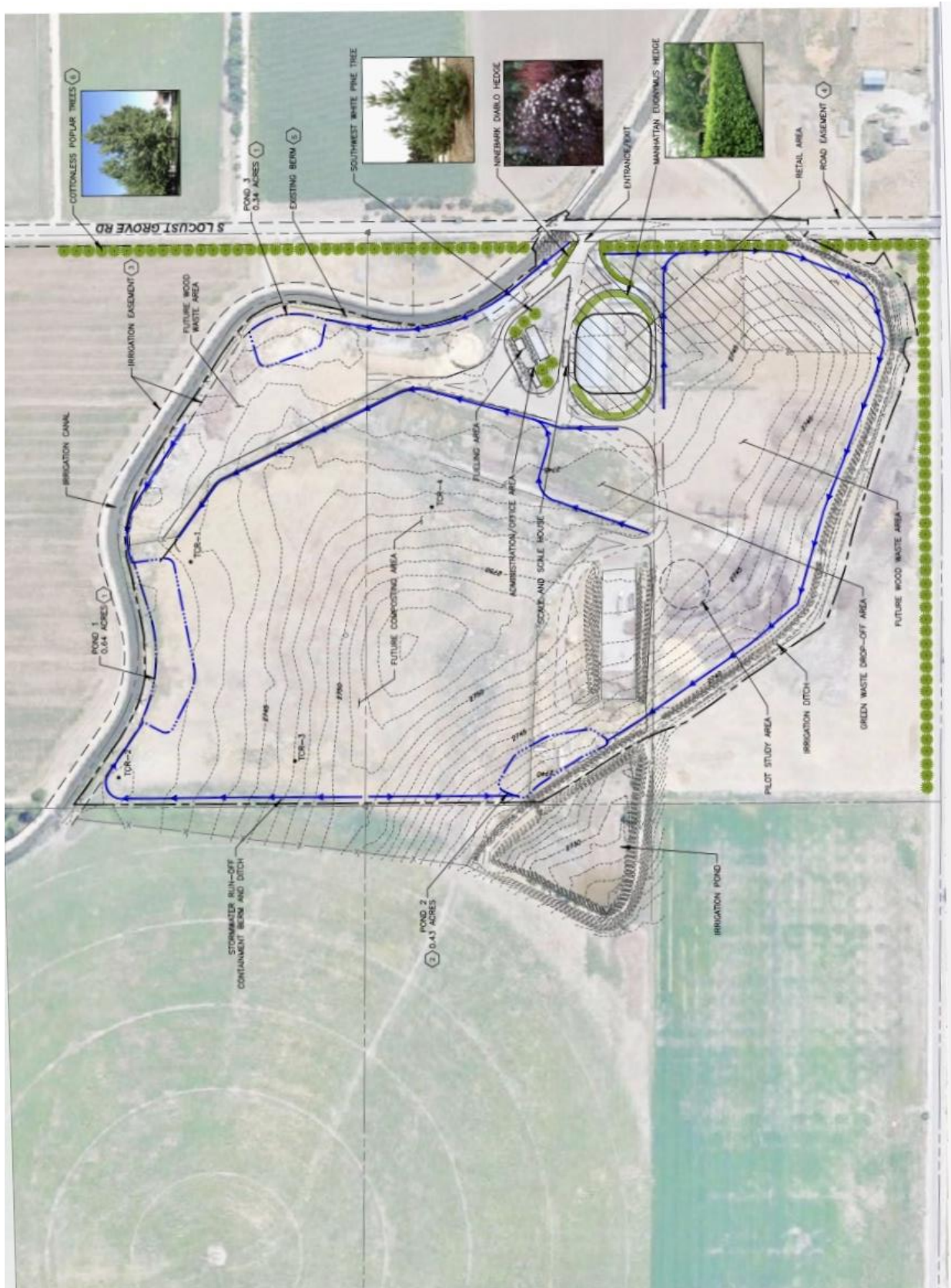
- a. Work with Staff and the Legal Dept. to work on a plan that would fully decommission the site within two (2) years.
  - b. Cease all operations on the site by April 1, 2027.
  - c. Continue this application until April 1<sup>st</sup> and keep public hearing open – is there any additional info or timeline that we’re seeking from the Applicant to give greater clarification.
  - d. The Applicant’s proposal to shut down all operations by June 30, 2027.
  - e. Continue to December 17<sup>th</sup> in order for the Applicant to come back with a revised DA with a six month shorter timeline, revise the Phased Transition Plan accordingly to cease all operations by June 30, 2027. Draft Findings for approval would also be prepared for review by Council. The Applicant should include a list of all materials to be accepted for recycling. The Applicant should include signage on the property for when operations on the site will cease.
4. City Council change(s) to Staff recommendation:
- a. None

VI. EXHIBITS

A. Aerial Photo

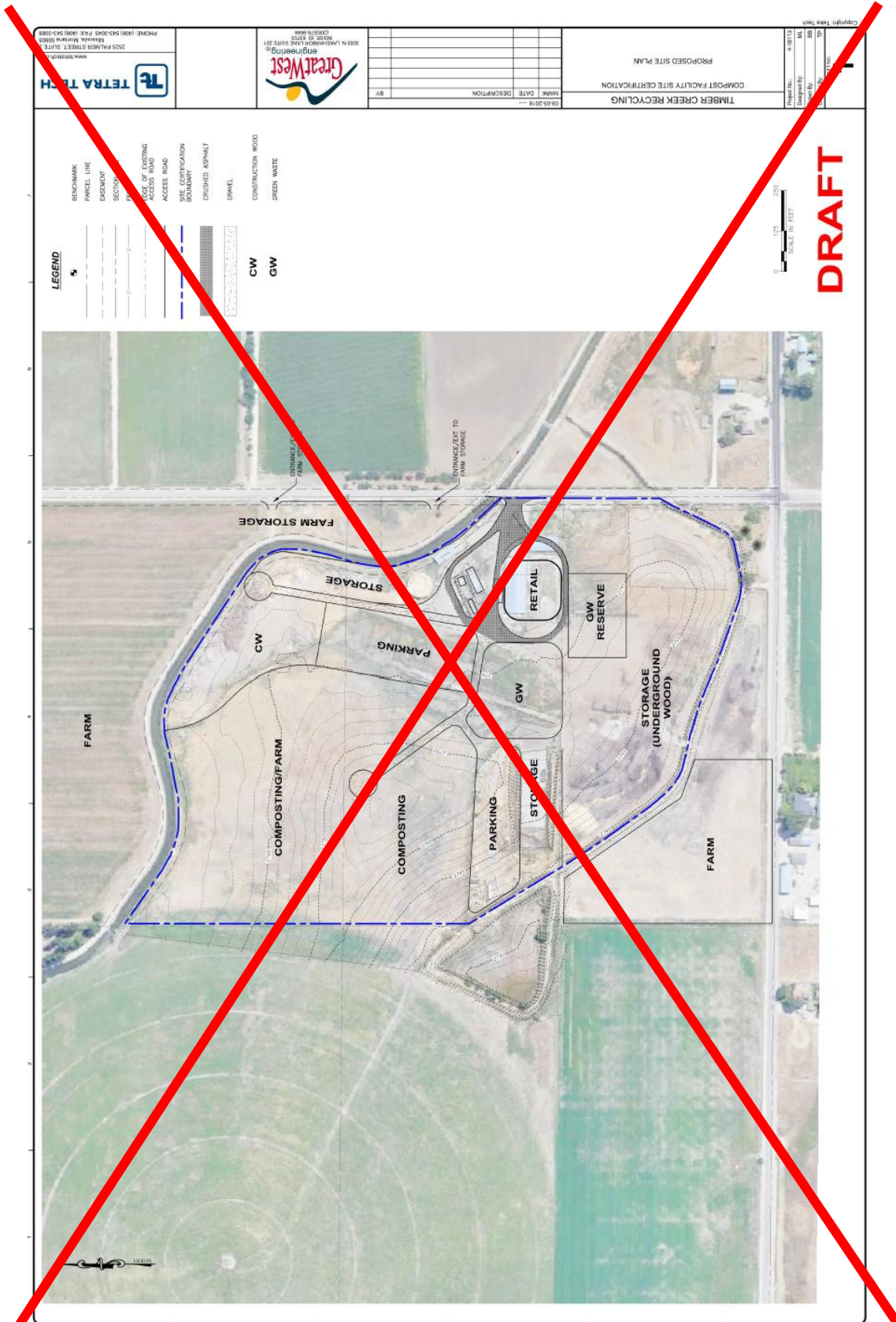


**B. Existing Site Plan (No changes are proposed)**





**C. Proposed Site Plan – Withdrawn**



#### **D. Proposed Amended Development Agreement**

Copy the following links for these documents, contained in the project file, into a separate browser:

Links:

*Redline version of proposed DA:*

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=377748&dbid=0&repo=MeridianCity>

*Clean version of proposed DA:*

<https://weblink.meridiancity.org/WebLink/DocView.aspx?id=377747&dbid=0&repo=MeridianCity>

## E. Legal Description of Property Subject to the Amended Development Agreement

### EXHIBIT A

#### ANNEXATION DESCRIPTION FOR THE CITY OF MERIDIAN, IDAHO

##### 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.

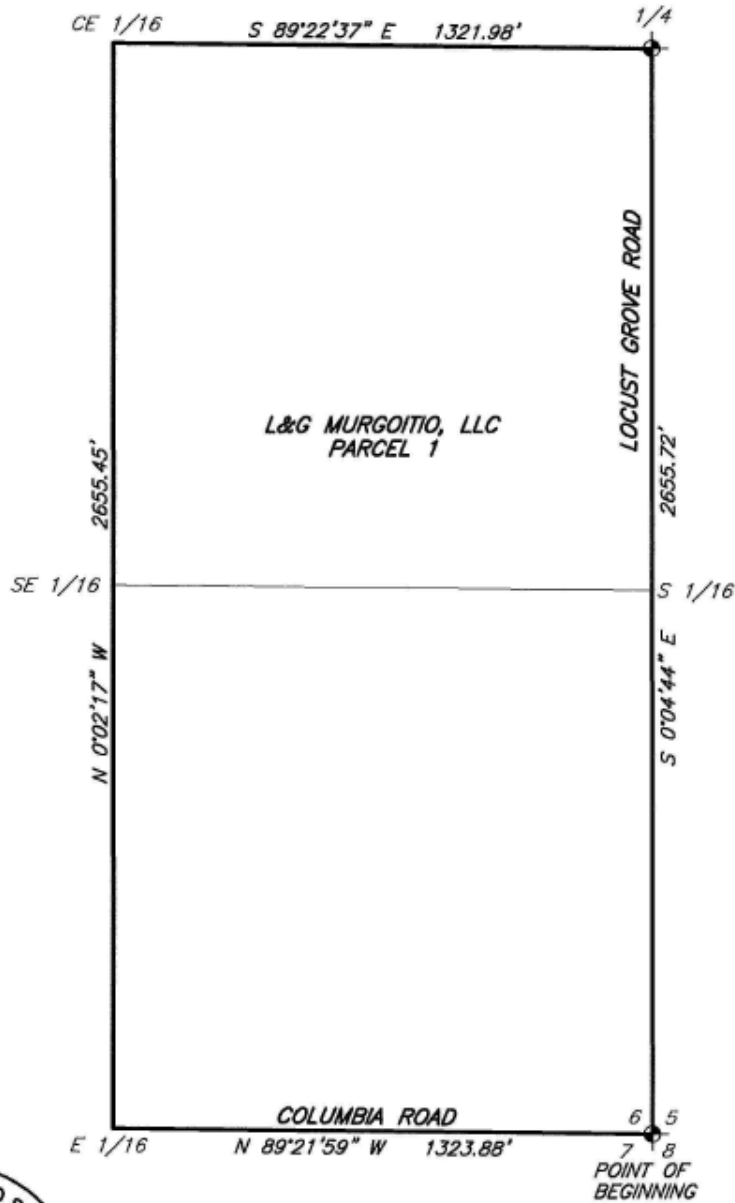
This parcel contains 80.64 acres.


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 A**  
**SKETCH TO ACCOMPANY ANNEXATION DESCRIPTION FOR THE**  
**CITY OF MERIDIAN LOCATED IN THE E 1/2 OF THE SE 1/4**  
**OF SECTION 6, TOWNSHIP 2 NORTH, RANGE 1 EAST,**  
**BOISE MERIDIAN, ADA COUNTY, IDAHO**




**CIVIL SURVEY CONSULTANTS, INC.**  
 2893 SOUTH MERIDIAN ROAD  
 MERIDIAN, IDAHO 83642  
 (208)888-4312

F. Phased Transition Plan – REVISED

Revisions shown in red box

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


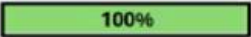
7695 S. Locust Grove Rd



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>	<p>Q1 Q2 Q3 <b>Q4</b></p>	
	<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>	<p>Q1 Q2 Q3 <b>Q4</b></p>	
	<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>	<p>Q1 Q2 Q3 <b>Q4</b></p>	
	<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>	<p>Q1 Q2 Q3 <b>Q4</b></p>	

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 an odor control measure, so long as testing was successful (Q2)</li> </ul>		
	<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>		
	<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>		
	<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>		

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 2

### 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 \_\_\_\_\_, ~~2019~~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

SECOND MODIFIED DEVELOPMENT AGREEMENT –  
L & G Murgoitio, LLC – \_\_\_\_\_

~~H 2018-0042~~– Page 1

55663.0002.17148968.1

55663.0027.17148968.3

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

- 1.8 ~~1.7~~ WHEREAS, the City, Owner/Developer and Timber Creek (as defined below) have negotiated terms and conditions into this Agreement to clarify the uses permitted on the Property under the ~~Original~~ Modified Agreement, and to allow for the continued use of the Property and the permitted future uses of the Property; and
- 1.9 ~~1.8~~ WHEREAS, the City ~~and the~~ Owner/Developer, and Timber Creek agree to negotiate in good faith and seek resolution to any conditions or circumstances that existed at the time ~~the Original~~ this Agreement ~~and this Modified Agreement were~~ was approved and executed that are necessary for the continued and future use of the Property; and
- 1.10 ~~1.9~~ 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 ~~1.10~~ WHEREAS, the Meridian City Council, on the \_\_\_\_ day of \_\_\_\_\_, ~~2019~~ 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 ~~1.11~~ WHEREAS, the Findings require the Owner/Developer to enter into this Agreement as a replacement to the ~~Original Development dated January 26, 2016, recorded as Instrument No. 2016-007075, Records of Ada County, Idaho~~ Modified Agreement; and
- 1.13 ~~1.12~~ 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 ~~1.13~~ 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:

SECOND MODIFIED DEVELOPMENT AGREEMENT –  
L & G Murgoitio, LLC – \_\_\_\_\_

~~H 2018-0042~~– Page 2

55663.0002.17148968.1

55663.0027.17148968.3

**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 Operate Timber Creek Recycling (“Timber Creek”) on the portion of the Property (“Recycling Property”) outlined on the site plan (“Site Plan”) attached hereto as Exhibit “C” and incorporated herein, ~~as is currently conducted or may be conducted in the future,~~ whether under the name of Timber Creek Recycling or another name or entity,

~~for a maximum period of ten (10) years from the date the City Council approves the signed Agreement. Upon the expiration of the ten (10) year period, all Recycling Activities (as defined below in Section 5.2) shall cease; provided, however, that Timber Creek may submit an application to the City Council to review the Recycling Activities and determine whether to permit Timber Creek to continue the Recycling Activities. Timber Creek~~

**Commented [JC1]:** This language was moved to Section 6.14

~~shall submit the request for review no later than one (1) year prior to the expiration of the ten (10) year period. Upon review, the City Council may, at the City Council's sole discretion: a) elect to grant or refuse to grant additional time to Timber Creek to conduct the Recycling Activities on the Recycling Property past the initial ten (10) year period; and b) should additional time be granted, require more or different conditions on the Recycling Activities. If the City Council does not elect to grant Timber Creek additional time to conduct Recycling Activities on the Recycling Property beyond the initial ten (10) year time period then, at the City Council's direction and by the date determined by the City Council, the Recycling Activities shall cease and all materials, equipment, structures, site modifications, etc. associated with the Recycling Activity shall be removed and the Recycling Property reclaimed to its former agricultural use/condition. In the event the City Council grants Timber Creek additional time to conduct the Recycling Activities after the initial ten (10) year period, then the City Council may review the Recycling Activities upon the expiration of the additional time in accordance with the foregoing procedures, conditions and timelines.~~

~~5. Operation of Timber Creek Recycling~~ 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, 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 or may receive ~~the following~~ any materials (collectively "**Recycled Materials**") which Timber Creek currently uses, or may in the future use, for Recycling Activities (defined below): provided, however, that Recycling Materials will not include any materials prohibited by the Idaho Department of Environmental Quality ("IDEQ") and the Central District Health ("CDH"), nor will Recycled Materials include biosolids, as this term is defined by IDEQ.

**5.2 Recycling Activities.**

~~5.1.1 Wood.~~ Wood is and will be delivered to the Recycling Property from the Ada County Landfill, Republic Services and other sources.

~~5.1.2 Grass.~~ Grass clippings are and will be delivered to the Recycling Property from Republic Services and other sources.

~~5.1.3 Leaves.~~ Leaves are and will be delivered to the Recycling Property from the Ada County Landfill and other sources.

~~5.1.4 Sheetrock.~~ Sheetrock and/or gypsum is and will be delivered to the Recycling Property from Republic Services and other sources.

~~5.1.5 Food Waste.~~ Food waste will be delivered to the Recycling Property from Republic Services and other sources.

~~5.1.6 Garden Waste.~~ Garden waste will be delivered to the Recycling Property from Republic Services and other sources.

~~5.1.7 Other Materials.~~ Timber Creek is allowed to accept other materials to recycle which are of the same category as the materials identified in Sections 5.1.1 through 5.1.6 or are intended for agricultural uses.

5.2.1 Recycling Activities. Timber Creek is entitled to accept, process, utilize and sell the Recycled Materials on the Recycling Property (“**Recycling Activities**”). ~~For purposes of clarity, but not limitation, the following are examples of the :~~ provided, however, that the Recycling Activities will not include any activity that is prohibited by IDEQ or CDH on the Recycling Property. Examples of Recycling Activities which are permitted on the Recycling Property: include, but are not limited to, grinding, screening, composting, and storing of Recycled Materials (both before and after Recycling Activities) and the processing, transporting and selling of Recycling Materials for feed for livestock or other agricultural purposes.

~~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.~~

5.2.2 Storing of Recycling Materials. The Recycled Materials, ~~both before and after processing,~~ shall be stored on the Recycling Property ~~and after before~~ processing. After processing the Recycled Materials may be stored or used on the balance of the Property. ~~The facility and all associated grounds shall be maintained in an orderly manner to keep them from becoming 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.~~

Commented [JC2]: Moved to the new Section 6.9.5

5.2.3 Miscellaneous Recycling Activities. ~~Engage~~ 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), ~~fork lifts~~ 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.

5.2.4 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 Recycled 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.

~~**Compliance. 5.3.3** Compliance with all federal, state and local entities with jurisdiction, including, but not limited to Department of Environmental Quality, Department of Agriculture,~~

Commented [JC3]: Moved to the new Section 6.2

~~Central District Health Department, 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 finding 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:~~

- ~~(a) Comply with conditions imposed on it by any and all of aforementioned entities with jurisdiction relating to the Recycling Materials or the Recycling Activities;~~
- ~~(b) 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~~
- ~~(c) Cure or correct deficiencies or issues identified by any and all of aforementioned entities with jurisdiction.~~

**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~~  
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 IDEQ, CHD, 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 finding 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. ~~Prior to composting in quantities which would require approval as Timber Creek has obtained the necessary approvals to operate a Tier 2 composting facility, Timber Creek shall satisfy all requirements imposed on Tier 2 composting facilities by the Idaho Department of Environmental Quality (“DEQ”). Timber Creek shall provide proof of satisfaction of DEQ’s requirements to the City prior to composting as and is currently operating a Tier 2 composting facility. In connection with the Tier 2 designation process and 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 as a Tier 2 facility on the Recycling Property,~~ Timber Creek shall:

**Commented [JC4]:** The revisions to the new Sections 6.3-6.6, Section 6.9 and Section 6.13 have been revised to reflect the completion of the requirements set forth in the corresponding Sections in the Modified Development Agreement.

**6.3.1 Odor Management.** ~~Adopt an Continue to operating under the odor management plan as part of the Tier 2 approval process that satisfies DEQ. Upon being designated as a Tier 2 composting facility 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 ~~DEQ~~ IDEQ to the City.

**6.3.2 Compliance with ~~DEQ~~ IDEQ and Central District Health.** Comply with all requirements of ~~DEQ and the Central District Health Department (“CDHD”) IDEQ and CDH~~ as part of the Tier 2 approval process. ~~Following approval as a Tier 2 facility, Timber Creek shall cooperate with DEQ-IDEQ and CDHD-CDH 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 ~~acquire and install 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. ~~Timber Creek shall provide notice to the City upon the installation of the mufflers.~~

**6.4.2 Landscaping.** Timber Creek ~~will install maintain the~~ trees and other landscaping features on the Recycling Property ~~in a manner as prescribed in, which were installed in accordance with MCC 11-3H-4D, as is depicted on the Site Plan,~~ to mitigate the sound generated on the Recycling Property by the Recycling Activities. ~~Said landscaping shall be installed prior to commencement of Tier 2 composting provided that the pilot programs for obtaining Tier 2 designation, as required by DEQ, may occur prior to the installation of the landscaping or berms as shown on the site plan. Timber Creek shall provide notice to the City when the landscaping set forth in this Modified Agreement has been installed.~~

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

**6.5.1** ~~(a)~~ Monday – Friday: 7:00 a.m. to 6:00 p.m.

**6.5.2** ~~(b)~~ 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: **6.4.1 Landscaping.** Timber Creek will comply with the requirements of Section 6.3.2;~~

~~**6.4.2 Height of Recycling Materials.** 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 ~~6.5.6~~ 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 ~~6.6~~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.

~~**6.6.3 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 ~~shall prepare and deliver an~~ comply with the emergency plan previously delivered to the Meridian Fire Code Official. ~~Timber Creek shall notify the City upon approval of the 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~~ maintain 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.

~~**6.8 Termination of Recycling Activities.** The Recycling Activities on the Recycling Property will cease, unless permitted in the UDC, upon the earliest of the following to occur:~~

**Commented [JC5]:** Moved to the new Section 6.15.

~~**6.8.1 Conveyance to Third Party.** Upon the conveyance of the Recycling Property to a third party; provided, however, that the conveyance of the Recycling Property: 1) via intestacy or other estate planning devise or instrument; 2) to an immediate family member of any member of the Owner/Developer or Timber Creek; or 3) to an affiliated entity, will not trigger the elimination of the Recycling Activities. For purposes of this Section 4.8.3, an “affiliated entity” is an entity: (a) which is a successor to Owner/Developer or Timber Creek by either merger or consolidation or pursuant to sale of all or substantially all of Owner/Developer or Timber Creek’s assets or membership interests, or (b) an entity controlled by, or under common control with, or controlling Owner/Developer; or~~

~~**6.8.2 Development of Adjacent Property.** Within thirty (30) days of written notice that the City has granted a Certificate of Occupancy to any new residential or commercial development within 1000 feet of the Recycling Property, as approximately depicted on the attached Exhibit “C”, being delivered to Timber Creek. For purposes of this Section 6.8.2, a “new residential or commercial development” shall mean real property which has:~~

- ~~(a) — Been annexed into the City;~~
- ~~(b) — Zoned either with a commercial designation or a residential designation of R-4 or denser;~~
- ~~(c) — Has been subdivided in accordance with Meridian City Code, excepting however any real property subdivided by a short plat under Meridian City Code 11-6B-6; and~~
- ~~(d) — Receives water and sewer services from the City.~~

~~In no event will the issuance of a Certificate of Occupancy for any structure existing as of the date of this Agreement, as may be expanded, modified or altered, or for any new accessory building, within 1000 feet of the processing area on the Recycling Property trigger Timber Creek's obligation to cease operations under this Section 6.8.2.~~

~~**6.9 Tolling of Deadlines.** In the event the approval of this Agreement is challenged, contested or appealed, in any manner, the deadlines imposed on Timber Creek under this Section 6 shall be tolled until all challenges, contents and appeals have been completely and finally resolved.~~

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 ~~operations,~~ power-driven processing equipment ~~and operations~~ on the Recycling Property shall be ~~located~~ 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.** ~~Timber Creek shall provide a detailed site plan, as an Attached hereto as Exhibit "C" of this Agreement, to the City 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 ~~general-current~~ location of the equipment to be used for the Recycling Activities. 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 Composting. All composting on the Recycling Property will cease upon the earlier of the following to occur:

6.14.1 Five (5) years from the date the City Council approves the signed Agreement. Upon the expiration of the five (5) year period, all composting on the Recycling Property shall cease; provided, however, that Timber Creek may submit an application to the City Council to review the composting and determine whether to permit Timber Creek to continue composting on the Recycling Property. Timber Creek shall submit the request for review no later than one (1) year prior to the expiration of the five (5) year period. Upon review, the City Council may, at the City Council's sole discretion: a) elect to grant or refuse to grant additional time to Timber Creek to conduct composting on the Recycling Property past the initial five (5) year period; and b) should additional time be granted, require more or different conditions on the composting. If the City Council does not elect to grant Timber Creek additional time to conduct composting on the Recycling Property beyond the initial five (5) year time period then, the composting will cease upon the expiration of the five (5) year period. In the event the City Council grants Timber Creek additional time to conduct the Recycling Activities after the initial five (5) year period, then the City Council may review the composting upon the expiration of the additional time in accordance with the foregoing procedures, conditions, and timelines.

6.14.2 Upon the termination of all Recycling Activities on the Recycling Property, as required by Section 6.15.

**6.15** **Termination of Recycling Activities.** The Recycling Activities on the Recycling Property will cease, unless permitted in the UDC, upon the conveyance of the Recycling Property to a third party. Notwithstanding the foregoing, the following types of conveyances will not trigger the cessation of Recycling Activities on the Recycling Property: 1) any conveyance via intestacy or other estate planning devise or instrument; 2) to an immediate family member of any member of the Owner/Developer or Timber Creek; or 3) to an Affiliated Entity. For purposes of this Section 6.15, an "Affiliated Entity" is an entity: (a) which is a successor to Owner/Developer or Timber Creek by either merger or consolidation or pursuant to sale of all or substantially all of Owner/Developer or Timber Creek's assets or membership interests, or (b) an entity controlled by, or under common control with, or controlling Owner/Developer; or controlling Owner/Developer or Timber Creek. Additionally, if the Recycling Property is conveyed to a developer who plans on developing the Recycling Property, Timber Creek may continue to engage in the Recycling Activities for as long as the developer allows Timber Creek to perform the Recycling Activities on the Recycling Property.

**6.16** **Tolling of Deadlines.** In the event the approval of this Agreement is challenged, contested, or appealed, in any manner, the deadlines imposed on Timber Creek under this Section 6 shall be tolled until all challenges, contents and appeals have been completely and finally resolved.

## **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. The sole

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. 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. Upon the execution of this Agreement, the Original Agreement and Modified Agreement are terminated and of no further force or effect.

**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. **EFFECTIVE DATE OF AGREEMENT:** This Agreement shall be effective on the date the Meridian City Council approved this ~~Modified-Development~~ Agreement and [is](#) executed by the Mayor and City Clerk.

[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 ~~Tammy De Weerd~~ Robert Simison

ATTEST:

\_\_\_\_\_  
~~C. Jay Coles~~ Chris Johnson, City Clerk

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of ~~May~~ August, 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 ~~Tammy De Weerd and C. Jay Coles~~ Robert Simison and Christ 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**

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



# Exhibit 3

## 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 \_\_\_\_\_, ~~2019~~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, Owner/Developer and Timber Creek (as defined below) have negotiated terms and conditions into this Agreement to clarify the~~

~~uses permitted under the Original Agreement, to allow for the continued use of the Property and the permitted future uses of the Property; 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 ~~1.8~~ 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 ~~1.9~~ 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 ~~1.10~~ WHEREAS, the Meridian City Council, on the \_\_\_\_ day of \_\_\_\_\_, ~~2019~~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 ~~1.11~~ WHEREAS, the Findings require the Owner/Developer to enter into this Agreement as a replacement to the ~~Original Development dated January 26, 2016, recorded as Instrument No. 2016-007075, Records of Ada County, Idaho~~Modified Agreement; and

1.13 ~~1.12~~ 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 ~~1.13~~ 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 ~~Operate~~ 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 ~~conducted~~ operating or may ~~be conducted~~ operate in the future, whether under the name of Timber Creek



~~Recycling or another name or entity, for a maximum period of ten (10) years from the date the City Council approves the signed Agreement. Upon the expiration of the ten (10) year period, all Recycling Activities (as defined below in Section 5.2) shall cease; provided, however, that Timber Creek may submit an application to the City Council to review the Recycling Activities and determine whether to permit Timber Creek to continue the Recycling Activities. Timber Creek shall submit the request for review no later than one (1) year prior to the expiration of the ten (10) year period. Upon review, the City Council may, at the City Council's sole discretion: a) elect to grant or refuse to grant additional time to Timber Creek to conduct the Recycling Activities on the Recycling Property past the initial ten (10) year period; and b) should additional time be granted, require more or different conditions on the Recycling Activities. If the City Council does not elect to grant Timber Creek additional time to conduct Recycling Activities on the Recycling Property beyond the initial ten (10) year time period then, at the City Council's direction and by the date determined by the City Council, the Recycling Activities shall cease and all materials, equipment, structures, site modifications, etc. associated with the Recycling Activity shall be removed and the Recycling Property reclaimed to its former agricultural use/condition. In the event the City Council grants Timber Creek additional time to conduct the Recycling Activities after the initial ten (10) year period, then the City Council may review the Recycling Activities upon the expiration of the additional time in accordance with the foregoing procedures, conditions and timelines. subject to the provisions of Section 5 and Section 6 of this Agreement.~~

~~5. — Operation of Timber Creek Recycling~~ **OPERATION OF TIMBER CREEK RECYCLING.** As set forth in Section 4.8 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 or may receive the following materials (collectively "**Recycled Materials**") for Recycling Activities (defined below):

**5.1.1 Wood.** Wood is and will be delivered to the Recycling Property from the Ada County Landfill, Republic Services and other sources.

**5.1.2 Grass.** Grass clippings are and will be delivered to the Recycling Property from Republic Services and other sources.

**5.1.3 Leaves.** Leaves are and will be delivered to the Recycling Property from the Ada County Landfill and other sources.

**5.1.4 Sheetrock.** Sheetrock and/or gypsum is and will be delivered to the Recycling Property from Republic Services and other sources.

**5.1.5 Food Waste.** Food waste- including Cheese Whey WAS. will be delivered to the Recycling Property from Republic Services and other sources.

**5.1.6 Garden Waste.** Garden waste will be delivered to the Recycling Property from Republic Services and other sources.

**5.1.7 Other Materials.** Timber Creek is allowed to accept other materials to recycle which are of the same category as the materials identified in Sections 5.1.1 through 5.1.6 or are intended for agricultural uses.

**5.2 Recycling Activities.** Timber Creek is entitled to accept, process, utilize and sell the Recycled 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 Recycled 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. ~~The facility and all associated grounds shall be maintained in an orderly manner to keep them from becoming 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.~~

**Commented [JC1]:** Moved to Section 6.9.5.

~~5.2.6 Miscellaneous.~~ Engage 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), ~~fork lifts~~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 Recycled 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.

Commented [JC2]: Moved to Section 6.2.

~~**Compliance 5.3.3**— Compliance with all federal, state and local entities with jurisdiction, including, but not limited to Department of Environmental Quality, Department of Agriculture, Central District Health Department, 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 finding 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:~~

- ~~(a) Comply with conditions imposed on it by any and all of aforementioned entities with jurisdiction relating to the Recycling Materials or the Recycling Activities;~~
- ~~(b) 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~~
- ~~(c) Cure or correct deficiencies or issues identified by any and all of aforementioned entities with jurisdiction.~~

**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~~ **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. ~~Prior to composting in quantities which would require approval as~~ Timber Creek has obtained the necessary approvals to operate a Tier 2 composting facility, ~~Timber Creek shall satisfy all requirements imposed on Tier 2 composting facilities by the Idaho Department of Environmental Quality (“DEQ”). Timber Creek shall provide proof of satisfaction of DEQ’s requirements to the City prior to composting as~~ and is currently operating a Tier 2 composting facility. ~~In connection with the Tier 2 designation process and~~ 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 as a Tier 2 facility on the Recycling Property, Timber Creek shall:

**Commented [JC3]:** The revisions to the new Sections 6.3-6.6, Section 6.9, and Section 6.13 are to reflect the completion of the requirements set forth in the corresponding Sections in the Modified Development Agreement.

**6.3.1 Odor Management.** ~~Adopt an~~ Continue to operate under the odor management plan ~~as part of the Tier 2 approval process that satisfies DEQ. Upon being designated as a Tier 2 composting facility~~ 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 ~~DEQ~~ IDEQ to the City.

**6.3.2 Compliance with ~~DEQ~~ IDEQ and Central District Health.** Comply with all requirements of ~~DEQ and the Central District Health Department (“IDEQ and CDHD”)~~ as part of the Tier 2 approval process. ~~Following approval as a Tier 2 facility,~~ Timber Creek shall cooperate with ~~DEQ~~ 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 ~~acquire and install~~ 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. ~~Timber Creek shall provide notice to the City upon the installation of the mufflers.~~

**6.4.2 Landscaping.** Timber Creek ~~will install~~ maintain the trees and other landscaping features on the Recycling Property ~~in a manner as prescribed in , which were installed in accordance with~~ MCC 11-3H-4D, ~~as is depicted on the Site Plan~~, to mitigate the sound generated on the Recycling Property by the Recycling Activities. ~~Said landscaping shall be installed prior to commencement of Tier 2 composting provided that the pilot programs for obtaining Tier 2 designation, as required by DEQ, may occur prior to the installation of the landscaping or berms as shown on the site plan. Timber Creek shall provide notice to the City when the landscaping set forth in this Modified Agreement has been installed.~~

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

**6.5.1** ~~(a)~~ Monday – Friday: 7:00 a.m. to 6:00 p.m.

**6.5.2** ~~(b)~~ 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:~~ **6.4.1 Landscaping.** ~~Timber Creek will comply with the requirements of Section 6.3.2;~~

~~6.4.2 Height of Recycling Materials.~~ 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 ~~6.5.6~~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 ~~6.6~~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 ~~shall prepare and deliver an~~ with comply with the emergency plan previously delivered to the Meridian Fire Code Official. Timber Creek shall ~~notify the City upon approval of the~~ 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.

~~**6.8 Termination of Recycling Activities.** The Recycling Activities on the Recycling Property will cease, unless permitted in the UDC, upon the earliest of the following to occur:~~

Commented [JC4]: Moved to Section 6.14.

~~**6.8.1 Conveyance to Third Party.** Upon the conveyance of the Recycling Property to a third party; provided, however, that the conveyance of the Recycling Property: 1) via intestacy or other estate planning devise or instrument; 2) to an immediate family member of any member of the Owner/Developer or Timber Creek; or 3) to an affiliated entity, will not trigger the elimination of the Recycling Activities. For purposes of this Section 4.8.3, an “affiliated entity” is an entity: (a) which is a successor to Owner/Developer or Timber Creek by either merger or consolidation or pursuant to sale of all or substantially all of Owner/Developer or Timber Creek’s assets or membership interests, or (b) an entity controlled by, or under common control with, or controlling Owner/Developer; or~~

~~**6.8.2 Development of Adjacent Property.** Within thirty (30) days of written notice that the City has granted a Certificate of Occupancy to any new residential or commercial development within 1000 feet of the Recycling Property, as approximately depicted~~

~~on the attached Exhibit “C”, being delivered to Timber Creek. For purposes of this Section 6.8.2, a “new residential or commercial development” shall mean real property which has:~~

- ~~(a) — Been annexed into the City;~~
- ~~(b) — Zoned either with a commercial designation or a residential designation of R-4 or denser;~~
- ~~(c) — Has been subdivided in accordance with Meridian City Code, excepting however any real property subdivided by a short plat under Meridian City Code 11-6B-6; and~~
- ~~(d) — Receives water and sewer services from the City.~~

~~In no event will the issuance of a Certificate of Occupancy for any structure existing as of the date of this Agreement, as may be expanded, modified or altered, or for any new accessory building, within 1000 feet of the processing area on the Recycling Property trigger Timber Creek’s obligation to cease operations under this Section 6.8.2.~~

~~**6.9 — Tolling of Deadlines.** In the event the approval of this Agreement is challenged, contested or appealed, in any manner, the deadlines imposed on Timber Creek under this Section 6 shall be tolled until all challenges, contents and appeals have been completely and finally resolved.~~

**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 ~~operations,~~ power-driven processing equipment ~~and operations~~ on the Recycling Property shall be ~~located~~ 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.** ~~Timber Creek shall provide a detailed site plan, as an Attached hereto as Exhibit “C” of this Agreement, to the City 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 ~~general-current~~ location of the equipment to be used for the Recycling Activities. 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.** All Recycling Activities on the Recycling Property will cease on or before December 31, 2027 (“Termination Date”).

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

**6.14.3 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).

**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~~ Except for a default provided in Section 9.3, 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 Failure to Comply with Transition Plan.** In the event that Timber Creek fails to comply with the obligations or deadlines set forth in the Transition Plan, the City may deliver a notice of default to Timber Creek and Timber Creek will have fifteen (15) days from receipt of the notice to become compliant with the Transition Plan. If Timber Creek fails to become compliant within said fifteen (15) days, the City will have the remedies set forth in Section 9.5 against Timber Creek, in addition to the remedies set forth in Section 9.4.1.

**9.4 Remedies.**

**9.4.1 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. ~~The sole~~ 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.

**9.4.2 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.

**9.5 Remedies against Timber Creek.** In the event that Timber Creek is in default of the Transition Plan, pursuant to Section 9.3, Timber Creek shall pay the following amounts to the City (each a "Penalty"):

**9.5.1 First Default.** For Timber Creek's first default under Section 9.3, the Penalty is \$10,000.00

**9.5.2 Second Default.** For Timber Creek's second default under Section 9.3, the Penalty is \$15,000.00.

**9.5.3 Third Default.** For Timber Creek's third default under Section 9.3, the Penalty is \$20,000.00.

**9.5.4 All Additional Defaults.** For each default beyond Timber Creek's third default under Section 9.3, the Penalty is \$30,000.00.

For purposes of the foregoing, a default of Section 9.3 which is of a continuing nature will only incur a single Penalty, but a similar and separate default of Section 9.3 (for example defaulting under a different deadline in the Transition Plan) will be considered a new default and incur a new Penalty. Nothing in this paragraph will limit any other remedies that City may have under this Agreement.

**9.6 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.

**9.7 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 [SECOND MODIFIED DEVELOPMENT AGREEMENT – L & G Murgoitio, LLC – ~~H-2018-0042-H-~~2024-5533](#) - Page 19

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.

[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 ~~Tammy De Weerd~~ Robert Simison

ATTEST:

\_\_\_\_\_  
~~C. Jay Coles~~ Chris Johnson, City Clerk

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of ~~October~~ November, 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 ~~Tammy De Weerd and C. Jay Coles~~ Robert 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**

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





EXHIBIT "D"  
UTILITY EXTENSION

[TO BE INSERTED]

EXHIBIT "E"  
TRANSITION PLAN

[TO BE INSERTED]

# Exhibit 4

## 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 \_\_\_\_\_, ~~2019~~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, Owner/Developer and Timber Creek (as defined below) have negotiated terms and conditions into this Agreement to clarify the~~

~~uses permitted under the Original Agreement, to allow for the continued use of the Property and the permitted future uses of the Property; 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 ~~1.8~~ 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 ~~1.9~~ 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 ~~1.10~~ WHEREAS, the Meridian City Council, on the \_\_\_\_ day of \_\_\_\_\_, ~~2019~~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 ~~1.11~~ WHEREAS, the Findings require the Owner/Developer to enter into this Agreement as a replacement to the ~~Original Development dated January 26, 2016, recorded as Instrument No. 2016-007075, Records of Ada County, Idaho~~Modified Agreement; and

1.13 ~~1.12~~ 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 ~~1.13~~ 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 ~~Operate~~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 ~~conducted~~operating or may ~~be conducted~~operate in the future, whether under the name of Timber Creek

~~Recycling or another name or entity, for a maximum period of ten (10) years from the date the City Council approves the signed Agreement. Upon the expiration of the ten (10) year period, all Recycling Activities (as defined below in Section 5.2) shall cease; provided, however, that Timber Creek may submit an application to the City Council to review the Recycling Activities and determine whether to permit Timber Creek to continue the Recycling Activities. Timber Creek shall submit the request for review no later than one (1) year prior to the expiration of the ten (10) year period. Upon review, the City Council may, at the City Council's sole discretion: a) elect to grant or refuse to grant additional time to Timber Creek to conduct the Recycling Activities on the Recycling Property past the initial ten (10) year period; and b) should additional time be granted, require more or different conditions on the Recycling Activities. If the City Council does not elect to grant Timber Creek additional time to conduct Recycling Activities on the Recycling Property beyond the initial ten (10) year time period then, at the City Council's direction and by the date determined by the City Council, the Recycling Activities shall cease and all materials, equipment, structures, site modifications, etc. associated with the Recycling Activity shall be removed and the Recycling Property reclaimed to its former agricultural use/condition. In the event the City Council grants Timber Creek additional time to conduct the Recycling Activities after the initial ten (10) year period, then the City Council may review the Recycling Activities upon the expiration of the additional time in accordance with the foregoing procedures, conditions and timelines. subject to the provisions of Section 5 and Section 6 of this Agreement.~~

~~5. — Operation of Timber Creek Recycling~~ **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 ~~or may receive~~ the ~~following~~ materials identified in Exhibit "F", attached hereto and incorporated herein (collectively "~~Recycled~~ **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.

~~**5.1.1 Wood.** Wood is and will be delivered to the Recycling Property from the Ada County Landfill, Republic Services and other sources.~~

~~5.1.2 Grass. Grass clippings are and will be delivered to the Recycling Property from Republic Services and other sources.~~

~~5.1.3 Leaves. Leaves are and will be delivered to the Recycling Property from the Ada County Landfill and other sources.~~

~~5.1.4 Sheetrock. Sheetrock and/or gypsum is and will be delivered to the Recycling Property from Republic Services and other sources.~~

~~5.1.5 Food Waste. Food waste will be delivered to the Recycling Property from Republic Services and other sources.~~

~~5.1.6 Garden Waste. Garden waste will be delivered to the Recycling Property from Republic Services and other sources.~~

~~5.1.7 Other Materials. Timber Creek is allowed to accept other materials to recycle which are of the same category as the materials identified in Sections 5.1.1 through 5.1.6 or are intended for agricultural uses.~~

**5.2 Recycling Activities.** Timber Creek is entitled to accept, process, utilize and sell the ~~Recycled~~ 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 ~~Reecyled~~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. ~~The facility and all associated grounds shall be maintained in an orderly manner to keep them from becoming 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.~~

~~5.2.6 Miscellaneous.~~ Engage 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), ~~fork lifts~~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 ~~Reecyled~~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.

~~**Compliance. 5.3.3**—Compliance with all federal, state and local entities with jurisdiction, including, but not limited to Department of Environmental Quality, Department of Agriculture, Central District Health Department, 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 finding 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:~~

- ~~(a) —Comply with conditions imposed on it by any and all of aforementioned entities with jurisdiction relating to the Recycling Materials or the Recycling Activities;~~
- ~~(b) —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~~
- ~~(c) —Cure or correct deficiencies or issues identified by any and all of aforementioned entities with jurisdiction.~~

**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~~  
6.1.1 **Recycling** 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. ~~Prior to composting in quantities which would require approval as~~ Timber Creek has obtained the necessary approvals to operate a Tier 2 composting facility, ~~Timber Creek shall satisfy all requirements imposed on Tier 2 composting facilities by the Idaho Department of Environmental Quality (“DEQ”). Timber Creek shall provide proof of satisfaction of DEQ’s requirements to the City prior to composting as~~ and is currently operating a Tier 2 composting facility. ~~In connection with the Tier 2 designation process and~~ 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 ~~as~~ a Tier 2 facility on the Recycling Property, Timber Creek shall:

**6.3.1 Odor Management.** ~~Adopt an~~ Continue to operate under the odor management plan ~~as part of the Tier 2 approval process that satisfies DEQ. Upon being designated as a Tier 2 composting facility~~ 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 ~~DEQ~~ IDEQ to the City.

**6.3.2 Compliance with ~~DEQ~~ IDEQ and Central District Health.** Comply with all requirements of ~~DEQ and the Central District Health Department (“IDEQ and CDHD”)~~ as part of the Tier 2 approval process. Following approval as a Tier 2 facility, Timber Creek shall cooperate with ~~DEQ~~ 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 ~~acquire and install~~ 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. ~~Timber Creek shall provide notice to the City upon the installation of the mufflers.~~

**6.4.2 Landscaping.** Timber Creek will ~~install~~ maintain the trees and other landscaping features on the Recycling Property ~~in a manner as prescribed in,~~ which were installed in accordance with MCC 11-3H-4D, ~~as is depicted on the Site Plan,~~ to mitigate the sound generated on the Recycling Property by the Recycling Activities. ~~Said landscaping shall be~~

~~installed prior to commencement of Tier 2 composting provided that the pilot programs for obtaining Tier 2 designation, as required by DEQ, may occur prior to the installation of the landscaping or berms as shown on the site plan. Timber Creek shall provide notice to the City when the landscaping set forth in this Modified Agreement has been installed.~~

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

**6.5.1** ~~(a)~~ Monday – Friday: 7:00 a.m. to 6:00 p.m.

**6.5.2** ~~(b)~~ 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 :

~~**6.4.1 Landscaping.** Timber Creek will comply with the requirements of Section 6.3.2;~~

~~**6.4.2 Height of Recycling Materials.** 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 ~~6.5.6~~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 ~~6.6~~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 ~~shall prepare and deliver an~~ with comply with the emergency plan previously delivered to the Meridian Fire Code Official. Timber Creek shall ~~notify the City upon approval of the~~ 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.

~~**6.8 Termination of Reeyeling Activities.** The Reeyeling Activities on the Recycling Property will cease, unless permitted in the UDC, upon the earliest of the following to occur:~~

~~**6.8.1 Conveyance to Third Party.** Upon the conveyance of the Recycling Property to a third party; provided, however, that the conveyance of the Recycling Property: 1) via intestacy or other estate planning devise or instrument; 2) to an immediate family member of any member of the Owner/Developer or Timber Creek; or 3) to an affiliated entity, will not trigger the elimination of the Recycling Activities. For purposes of this Section 4.8.3, an “affiliated entity” is an entity: (a) which is a successor to Owner/Developer or Timber Creek by either merger or consolidation or pursuant to sale of all or substantially all of Owner/Developer or Timber Creek’s assets or membership interests, or (b) an entity controlled by, or under common control with, or controlling Owner/Developer; or~~

~~**6.8.2 Development of Adjacent Property.** Within thirty (30) days of written notice that the City has granted a Certificate of Occupancy to any new residential or commercial development within 1000 feet of the Recycling Property, as approximately depicted on the attached Exhibit “C”, being delivered to Timber Creek. For purposes of this Section 6.8.2, a “new residential or commercial development” shall mean real property which has:~~

- ~~(a) Been annexed into the City;~~

~~(b) — Zoned either with a commercial designation or a residential designation of R-4 or denser;~~

~~(c) — Has been subdivided in accordance with Meridian City Code, excepting however any real property subdivided by a short plat under Meridian City Code 11-6B-6; and~~

~~(d) — Receives water and sewer services from the City.~~

~~In no event will the issuance of a Certificate of Occupancy for any structure existing as of the date of this Agreement, as may be expanded, modified or altered, or for any new accessory building, within 1000 feet of the processing area on the Recycling Property trigger Timber Creek's obligation to cease operations under this Section 6.8.2.~~

~~**6.9** — **Tolling of Deadlines.** In the event the approval of this Agreement is challenged, contested or appealed, in any manner, the deadlines imposed on Timber Creek under this Section 6 shall be tolled until all challenges, contents and appeals have been completely and finally resolved.~~

**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 ~~operations,~~ power-driven processing equipment ~~and operations~~ on the Recycling Property shall be ~~located~~ 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.** ~~Timber Creek shall provide a detailed site plan, as an~~ Attached hereto as Exhibit "C" ~~of this Agreement, to the City 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 ~~general~~ 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. ~~The sole~~ 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 ~~Tammy De Weerd~~ Robert E. Simison

ATTEST:

\_\_\_\_\_  
~~C. Jay Coles~~ Chris Johnson, City Clerk

STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this \_\_\_\_ day of ~~October~~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 ~~Tammy De Weerd and C. Jay Coles~~**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



**L & G MURGOITIO, LLC – PARCEL 2**

A parcel located in the NE ¼ of Section 5, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap monument marking the northwesterly corner of said NE ¼, from which a 5/8 inch diameter iron pin marking the southwesterly corner of said NE ¼ bears S 0°01'18" W a distance of 2674.72 feet;

Thence S 0°01'19" W along the westerly boundary of said NE ¼ a distance of 1854.47 feet to a 5/8 inch diameter iron pin;

Thence leaving said westerly boundary S 78°30'02" E a distance of 191.66 feet to a 5/8 inch diameter iron pin;

Thence N 43°00'20" E a distance of 108.41 feet to a 5/8 inch diameter iron pin;

Thence N 68°36'37" E a distance of 694.84 feet to a 5/8 inch diameter iron pin;

Thence S 46°02'31" E a distance of 379.56 feet to a 5/8 inch diameter iron pin;

Thence S 64°59'20" E a distance of 64.46 feet to a 5/8 inch diameter iron pin;

Thence N 0°22'35" W a distance of 32.24 feet to a point on the centerline of the Farr Lateral;

Thence along said centerline the following described courses:

Thence N 49°59'59" W a distance of 27.38 feet to a point;

Thence N 22°30'26" W a distance of 1518.71 feet to a point;

Thence N 25°12'16" W a distance of 135.17 feet to a point;

Thence a distance of 153.61 feet along the arc of a 200.00 foot radius curve left, said curve having a central angle of 44°00'19" and a long chord bearing N 47°12'25" W a distance of 149.86 feet to a point;

Thence leaving said centerline N 0°00'01" E a distance of 104.32 feet to a 5/8 inch diameter iron pin on the northerly boundary of said NW ¼;

Thence N 89°56'47" W along said northerly boundary a distance of 287.51 feet to the POINT OF BEGINNING.

This parcel contains 32.22 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 C SITE PLAN



EXHIBIT "D"  
UTILITY EXTENSION

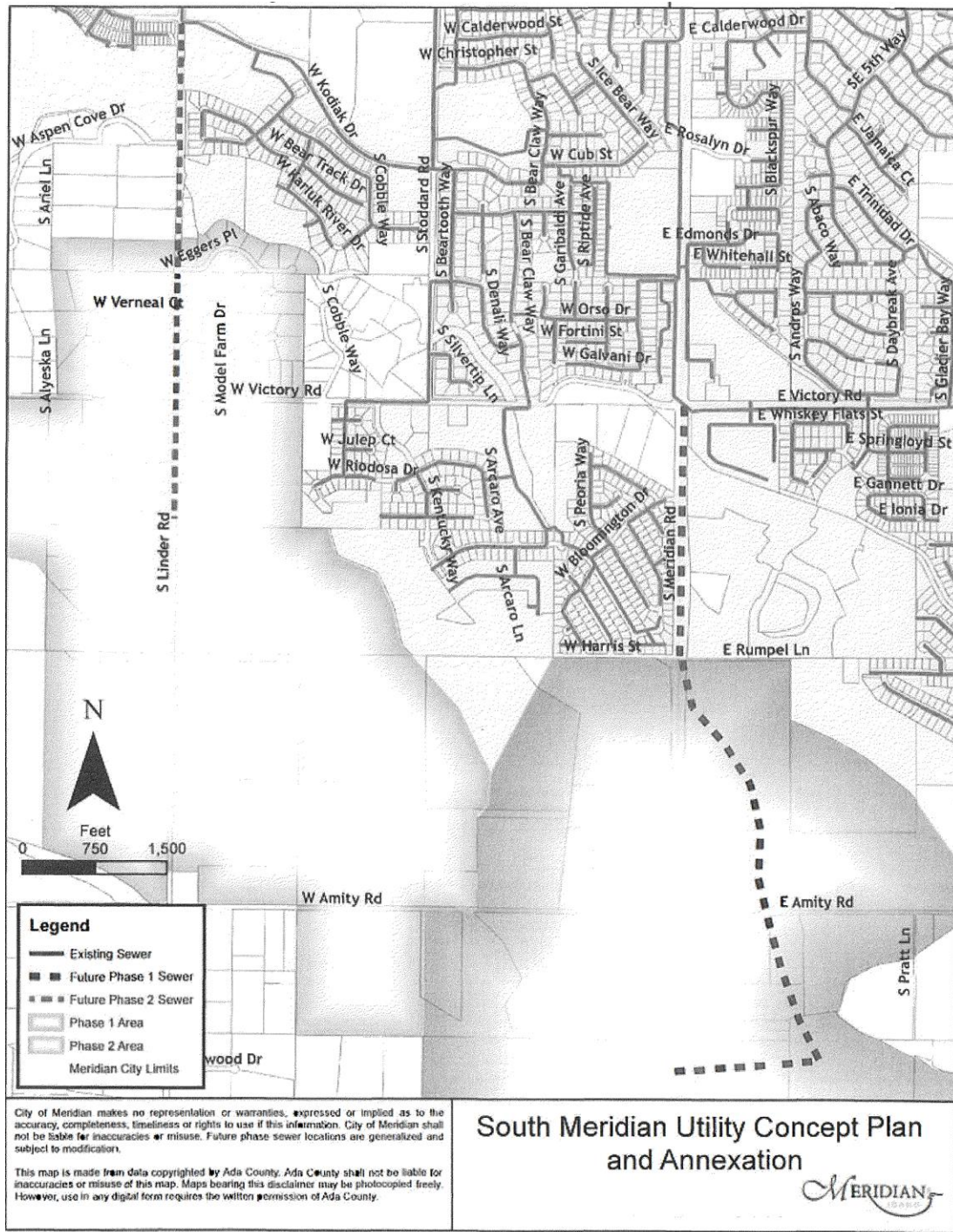


EXHIBIT “E”  
TRANSITION PLAN

# Timber Creek Recycling

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



Date: December 3, 2024



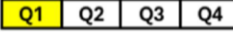



## Phased Transition Plan for the Meridian Compost Site


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	
	Q1	Q2	Q3	Q4			
	<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>		
	<p><b>Dust</b></p> <ul style="list-style-type: none"> <li>○ <b>Final crushing of</b> Concrete/Asphalt/Tile/Porcelain/Brick at the Meridian Site (Q1)</li> <li>○ Continue regular dust control measures (i.e., water truck)</li> </ul>		
<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>			
<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>			

Phase	Focus	2026 Timing	% of total Cheese WAS diverted
<p><b>#3</b></p> <p>(Complete by December 2026)</p> 	<p><b>Odor</b></p> <ul style="list-style-type: none"> <li>Ongoing monitoring of Cheese WAS odor control measures</li> </ul>	<p>Q1 Q2 Q3 Q4</p>	<p>100%</p>
	<p><b>Dust</b></p> <ul style="list-style-type: none"> <li>Continue regular dust control measures (i.e., water truck)</li> </ul>	<p>Q1 Q2 Q3 Q4</p>	
	<p><b>Volume</b></p> <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>	<p>Q1 Q2 Q3 Q4</p>	
	<p><b>Accountability</b></p> <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>	<p>Q1 Q2 Q3 Q4</p>	

Phase	Focus	2027 Timing	% of total Cheese WAS diverted
<p><b>#4</b></p> <p>(Complete by 30 June 2027)</p> 	<p><b>Odor</b></p> <ul style="list-style-type: none"> <li>○ <b>No cheese WAS</b> received at the Meridian site</li> </ul>	<p>Q1   Q2</p>	<p>100%</p>
	<p><b>Dust</b></p> <ul style="list-style-type: none"> <li>○ <b>Continue</b> regular dust control measures (i.e., water truck)</li> </ul>	<p>Q1   Q2</p>	
	<p><b>Volume</b></p> <ul style="list-style-type: none"> <li>○ <b>Sale or transfer</b> of remaining inventory</li> <li>○ Movement of compost/recycling materials and infrastructure off of the Meridian site</li> </ul>	<p>Q1   Q2</p>	
	<p><b>Accountability</b></p> <ul style="list-style-type: none"> <li>○ <b>Quarterly</b> inspection with Meridian City Code Enforcement (Q1)</li> <li>○ <b>Final</b> site walk through with Meridian Code Enforcement (Q2)</li> <li>○ <b>Final</b> Tier II site close out with CDH and DEQ (Q2)</li> </ul>	<p>Q1   Q2</p>	



**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.](#)

# Exhibit 5

## 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



**L & G MURGOITIO, LLC – PARCEL 2**

A parcel located in the NE ¼ of Section 5, Township 2 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a brass cap monument marking the northwesterly corner of said NE ¼, from which a 5/8 inch diameter iron pin marking the southwesterly corner of said NE ¼ bears S 0°01'18" W a distance of 2674.72 feet;

Thence S 0°01'19" W along the westerly boundary of said NE ¼ a distance of 1854.47 feet to a 5/8 inch diameter iron pin;

Thence leaving said westerly boundary S 78°30'02" E a distance of 191.66 feet to a 5/8 inch diameter iron pin;

Thence N 43°00'20" E a distance of 108.41 feet to a 5/8 inch diameter iron pin;

Thence N 68°36'37" E a distance of 694.84 feet to a 5/8 inch diameter iron pin;

Thence S 46°02'31" E a distance of 379.56 feet to a 5/8 inch diameter iron pin;

Thence S 64°59'20" E a distance of 64.46 feet to a 5/8 inch diameter iron pin;

Thence N 0°22'35" W a distance of 32.24 feet to a point on the centerline of the Farr Lateral;

Thence along said centerline the following described courses:

Thence N 49°59'59" W a distance of 27.38 feet to a point;

Thence N 22°30'26" W a distance of 1518.71 feet to a point;

Thence N 25°12'16" W a distance of 135.17 feet to a point;

Thence a distance of 153.61 feet along the arc of a 200.00 foot radius curve left, said curve having a central angle of 44°00'19" and a long chord bearing N 47°12'25" W a distance of 149.86 feet to a point;



Thence leaving said centerline N 0°00'01" E a distance of 104.32 feet to a 5/8 inch diameter iron pin on the northerly boundary of said NW ¼;

Thence N 89°56'47" W along said northerly boundary a distance of 287.51 feet to the POINT OF BEGINNING.

This parcel contains 32.22 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.

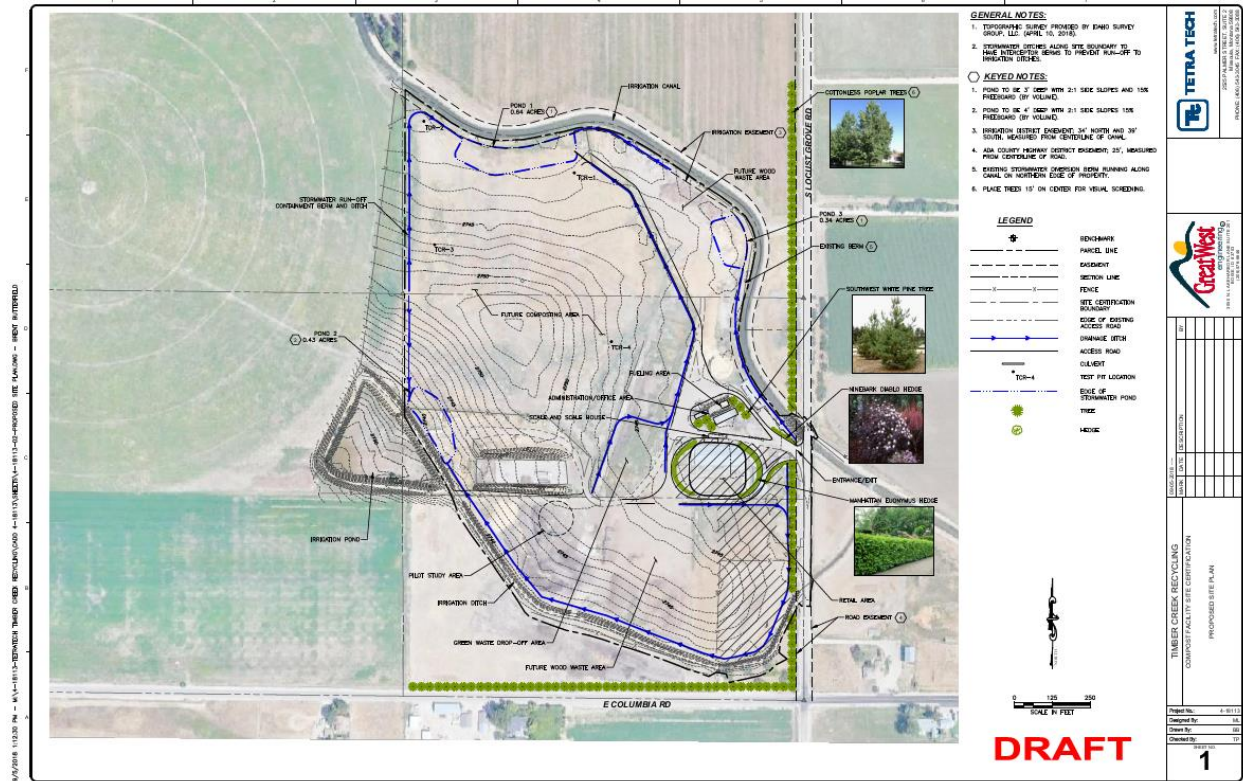
Prepared by: Glenn K. Bennett, PLS  
Civil Survey Consultants, Incorporated  
October 13, 2015



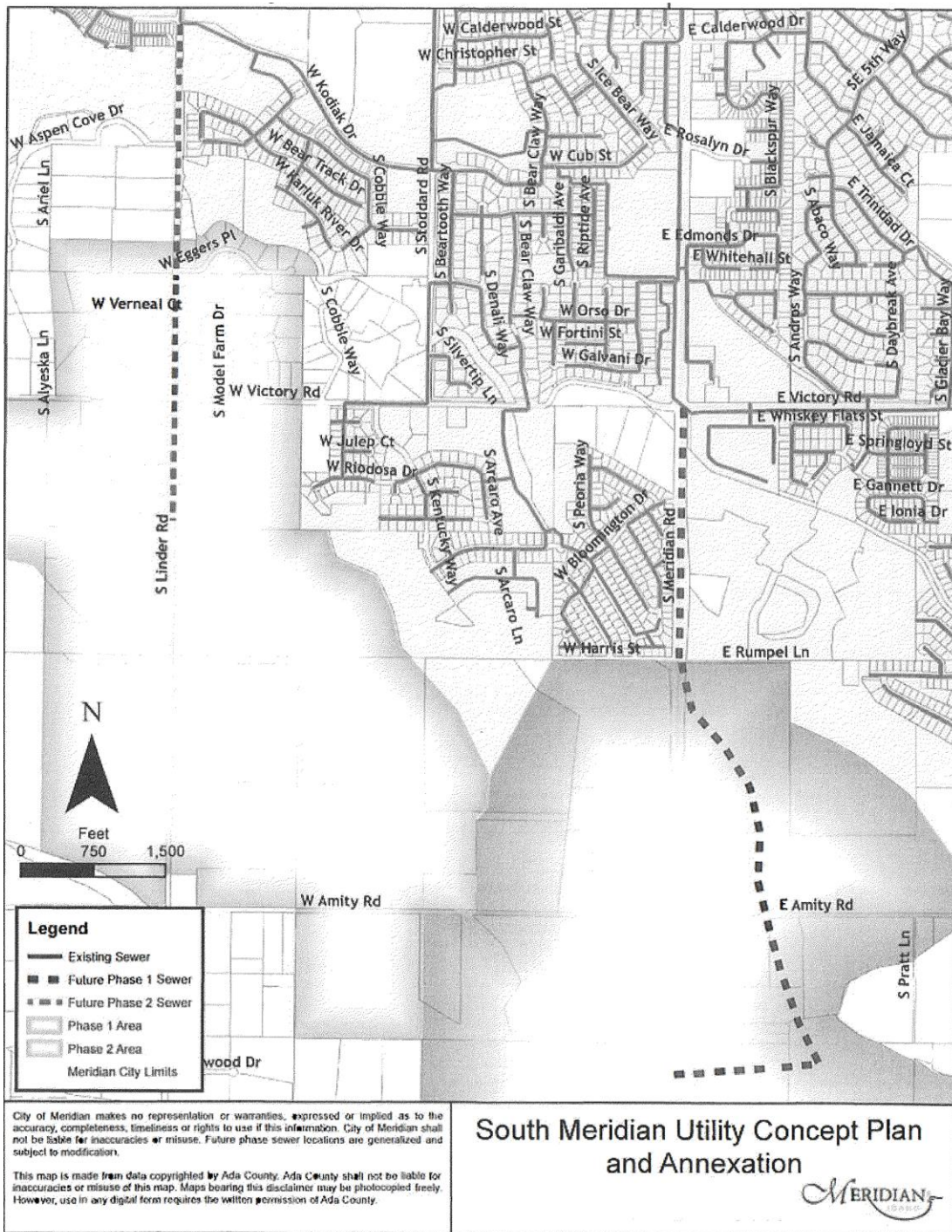
**EXHIBIT B**  
**COPY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND DECISION AND**  
**ORDER**

[TO BE INSERTED]

# EXHIBIT C SITE PLAN



## 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>	<p>Q1 Q2 Q3 Q4</p>	
	<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>	<p>Q1 Q2 Q3 Q4</p>	
	<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>	<p>Q1 Q2 Q3 Q4</p>	
	<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>	<p>Q1 Q2 Q3 Q4</p>	

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>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q2</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q3</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q4</div> </div>	<div style="border: 1px solid black; background-color: #90EE90; padding: 5px; width: fit-content; margin: 0 auto;">100%</div>
	<b>Dust</b> <ul style="list-style-type: none"> <li>Continue regular dust control measures (i.e., water truck)</li> </ul>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q2</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q3</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q4</div> </div>	
	<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>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q2</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q3</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q4</div> </div>	
	<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>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q2</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q3</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q4</div> </div>	

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>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: #cccccc; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: #cccccc; padding: 2px;">Q2</div> </div>	<div style="border: 1px solid black; background-color: #90EE90; padding: 5px; width: fit-content; margin: 0 auto;">100%</div>
	<b>Dust</b> <ul style="list-style-type: none"> <li>Continue regular dust control measures (i.e., water truck)</li> </ul>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q2</div> </div>	
	<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>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q2</div> </div>	
	<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>	<div style="display: flex; gap: 5px;"> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q1</div> <div style="border: 1px solid black; background-color: yellow; padding: 2px;">Q2</div> </div>	



**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.