

**PROFESSIONAL SERVICES AGREEMENT FOR FABRICATION AND  
INSTALLATION OF FIVE MILE CREEK PATHWAY TRAILHUB ARTWORK**

This PROFESSIONAL SERVICES AGREEMENT FOR FABRICATION AND INSTALLATION OF FIVE MILE CREEK PATHWAY TRAILHUB ARTWORK (“Agreement”) is made this \_\_\_ day of November, 2022 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Eileen Gay, an individual whose address is 2051 Canal Road, Sparks, Nevada 89434-6608 (“Artist”). (City and Artist may hereinafter be collectively referred to as “Parties.”)

**WHEREAS**, City desires that public art will be a component of the Five Mile Creek pathway, and to that end, issued a Call for Artists and Request for Qualifications (“RFQ”), attached hereto as *Exhibit A*, to commission artwork to be installed at the Five Mile Creek Pathway Trailhub;

**WHEREAS**, Artist was chosen as a finalist and pursuant to the *Professional Services Agreement for the Five Mile Creek Pathway Trailhub Public Art Project Proposal*, proposed the installation of *Water Metrics*, a concrete sculptural mosaic gateway, as generally depicted in *Exhibit B* hereto (“Artwork”);

**WHEREAS**, a Selection Panel comprised of project stakeholders representing the Meridian Parks and Recreation Department, the Meridian Parks and Recreation Commission, and the Meridian Arts Commission evaluated Artist’s and other finalists’ proposals submitted in response to the City’s Request for Proposals (“RFP”) and selected Artist’s proposal for recommended installation;

**WHEREAS**, on November 10, 2022, the Meridian Arts Commission reviewed the Selection Panel’s recommendation, and recommends to the Meridian City Council that Artist’s proposal be commissioned for full design and installation;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

**I. SCOPE OF SERVICES.**

Artist shall design and fabricate two (2) mosaic sculptures as described and depicted in *Exhibit B*, and shall install such Artwork at the Five Mile Creek Pathway Trailhub at 3430 N. Ten Mile Road, in Meridian, Idaho, in the specific location authorized by the Meridian Arts and Culture Coordinator (“Site”). Artwork design and installation shall comply in all respects with established industry and engineering standards, Idaho Standards for Public Works Construction, all established policies and ordinances of the City of Meridian, and the direction of the Meridian Arts Commission and the Arts and Culture Coordinator. Artist shall engage an independent testing agency to test and inspect construction materials and methods.

## **II. COMPENSATION.**

- A. **Total amount.** The total payment to Artist for the design, fabrication, and installation of the Artwork shall be fifty thousand dollars (\$50,000.00). This amount shall constitute full compensation for any and all design, fabrication, installation, site restoration, and other services; travel; materials; shipping; contingency; commission; artist fee; and other costs of work to be performed or furnished by Artist.
- B. **Method of payment.** Artist shall provide to City one (1) completed W-9 form, and invoices for services and/or materials provided pursuant to the payment schedule set forth herein, which City shall pay within thirty (30) days of receipt. City shall not withhold any federal or state income taxes or Social Security tax from any payment made by City to Artist under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums shall be the sole responsibility of Artist.
- C. **Payment schedule.** Artist shall be paid pursuant to the following benchmarks:
1. **City Approval of Detailed Plan:** \$5,000.00 shall be paid to Artist within thirty (30) days of the Arts and Culture Coordinator's approval of Artist's detailed plan for design, fabrication, and installation of the Artwork at the Site, and Site restoration ("Detailed Plan"). The Detailed Plan shall include:
    - a. Detailed project timeline;
    - b. Detailed site plan for the location and positioning of each installation component of the Artwork at Site;
    - c. Plan for engaging a contractor for installation of footings and foundations;
    - d. Plan for transportation of artwork to Site for installation;
    - e. Plan for any site restoration regarding landscaping and utilities, if necessary;
    - f. A plan for engaging an engineer certified in the state of Idaho to prepare stamped drawings and structural calculations; and
    - g. Plan for engaging an independent testing agency to test and inspect construction materials and methods, if necessary.
  2. **Engineering Approval:** \$10,000 shall be paid to the Artist within thirty (30) days of Artists' submission to the Arts and Culture Coordinator all of the following:
    - a. Final construction drawings and structural calculations for Artwork, prepared and stamped by an engineer certified in the state of Idaho;
    - b. Documentation of all materials purchased to date; and
    - c. Proof of application for a building permit from the City of Meridian Community Development Department/Building Division, and for any permits required by from the City of Meridian Community Development Department/Planning Division.
  3. **Fabrication of Artwork, Phase I:** \$10,000 shall be paid to the Artist within thirty (30) days of an online video conference between Artist and the Arts and Culture Coordinator, with live video, or photos taken within the previous twenty-four (24) hours, demonstrating at least fifty percent (50%) completion of fabrication of Artwork, and confirmation by the Arts and Culture Coordinator that the work meets

the standards set forth in this Agreement and Artist's representations as set forth in the proposal set forth in *Exhibit B*.

4. **Fabrication of Artwork, Phase II:** \$10,000 shall be paid to the Artist within thirty (30) days of Artists' completion of fabrication of the Artwork, as demonstrated to the Arts and Culture Coordinator and confirmation by the Arts and Culture Coordinator that the work meets the standards set forth in this Agreement and Artist's representations as set forth in the proposal set forth in *Exhibit B*.
5. **Installation of Artwork:** \$10,000.00 shall be paid to the Artist within thirty (30) days of Installation of Artwork, which shall be defined as:
  - a. Complete installation of the completed Artwork at the Site, in coordination with and as confirmed by the Arts and Culture Coordinator;
  - b. Artist's submission to the Arts and Culture Coordinator of a report from an independent testing agency approving construction materials and methods;
  - c. Final inspection and approval of the installation of Artwork at the Site by the Arts and Culture Coordinator and City Building Official; and
  - d. Full restoration of the Site, including restoration of landscaping and any aboveground or underground facilities, to pre-installation conditions.
6. **Final Completion:** \$5,000.00 shall be paid to the Artist within thirty (30) days of Final Completion, which shall be defined as:
  - a. Artist's submission to the Arts and Culture Coordinator of a recommended maintenance plan for the Artwork;
  - b. Execution of a mutually agreed-upon acceptance agreement to include Artist's indemnification of City; express waiver of Artist's right, title, or interest in the Artwork; and waivers of lien from any and all sub-contractors and major materials suppliers; which agreement shall be prepared by the City Attorney's Office and approved by Meridian City Council; and
  - c. City Council's adoption of a resolution indicating that the City accepts the delivery of the Artwork as designed, fabricated, and installed.

### **III. TIME OF PERFORMANCE.**

**A. Timeline.** In addition to the benchmarks set forth in the timeline prepared by Artist as part of the Detailed Plan, the Parties shall meet the following deadlines:

1. **By 5:00 p.m., December 15, 2022:** Artist shall submit to the Arts and Culture Coordinator the Detailed Plan. The Arts and Culture Coordinator shall review, request modifications as necessary, and approve the Detailed Plan, either as submitted or as modified pursuant to mutual agreement, within fourteen (14) days of receipt thereof.
2. **By 5:00 p.m., February 17, 2023:** Artist shall submit to the Arts and Culture Coordinator the final construction drawings and structural calculations for Artwork and proof of application for any and all applicable building and planning permits. By

this date, Artist shall also coordinate with the Arts and Culture Coordinator to determine placement of the Artwork at the Site.

3. **By 5:00 p.m., April 28, 2023:** Artist shall demonstrate to the Arts and Culture Coordinator at least fifty percent (50%) completion of fabrication of the Artwork. The Arts and Culture Coordinator shall review the work, request modifications as necessary, and confirm that the work meets the standards set forth in this Agreement and with Artist's representations as set forth in the proposal set forth in *Exhibit B*, within fourteen (14) days of the online meeting with the Artist.
4. **By 5:00 p.m., June 2, 2023:** Artist shall complete fabrication of the Artwork and obtain written approval of same by the Arts and Culture Coordinator. The Arts and Culture Coordinator shall approve, or approve as modified, the Artwork within seven (7) days of Artist's notice of such completion. Prior to issuing approval, the Arts and Culture Coordinator shall determine that the Artwork is in keeping with the standards set forth in this Agreement and with Artist's representations as set forth in the proposal set forth in *Exhibit B*, with the limited exception of non-material design refinements and/or improvements.
5. **By 5:00 p.m., June 30, 2023:** Artist shall be responsible for installation of Artwork at the Site. The Arts and Culture Coordinator may extend the date of installation of Artwork for a reasonable amount of time only if such delay is due to circumstances and events beyond the control of Artist or pursuant to a written agreement by the Parties.
6. **By 11:59 p.m., August 4, 2023:** Provided that Artist has completed Final Completion, as provided herein, the Parties shall execute Final Acceptance of the Artwork.

**B. Time of the essence.** The Parties acknowledge that services provided under this Agreement shall be performed in a timely manner. The Parties acknowledge and agree that time is strictly of the essence with respect to this Agreement, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of, and a default under, this Agreement by the party so failing to perform.

**C. Inspection.** Upon the Arts and Culture Coordinator's request, the Artist shall provide the Arts and Culture Coordinator and/or City with reasonable opportunities to review the progress of the Artwork to ensure compliance with the timeline and the proposal as described and depicted in *Exhibit B* hereto or as otherwise mutually agreed by the Parties in writing. If during such inspection, or in the course of the approval processes required herein, the Arts and Culture Coordinator or City concludes that the Artwork or any portion or component thereof do not conform to the timeline or to the proposal as described and depicted in *Exhibit B* hereto or as mutually agreed by the Parties in writing, notice of the specific non-conformity and request for Artist to address the specified non-conformity shall be given to Artist in writing as soon as practicable. Artist shall have fourteen (14) days to address and correct any non-conformity. If, upon Arts and Culture Coordinator's re-inspection, the Arts and Culture Coordinator concludes that the Artwork



or the nonconforming portion or component thereof remain nonconforming, termination procedures may commence. City's failure to disapprove in writing shall constitute presumptive approval of the Artwork as inspected.

#### **IV. MAINTENANCE AND REPAIR.**

- A. **Two years following Final Acceptance.** Artist shall be fully responsible for all parts and workmanship of the Artwork for a period of two (2) years after City's Final Acceptance of the Artwork, and during such time shall replace any defective parts and/or rework any defective craftsmanship in a timely fashion at no cost to City, except that during such period Artist shall not be required to replace or repair any damage to the Artwork caused by City's employees, by vandalism, or by an act of God.
- B. **Determination of need for repair.** At all times, including in the first two years following Final Acceptance, City shall make any and all determinations regarding whether the Artwork's parts and/or craftsmanship require maintenance, restoration, or repair. Artist may be asked to provide input regarding such matters, but all decisions regarding the need for maintenance, restoration, or repair shall be made by City.
- C. **Maintenance, restoration, and repair.** City shall provide basic maintenance, restoration, and repair of the Artwork at City's cost. In the event that the Artwork is damaged or destroyed, in whole or in part, City may, at its sole election, restore the Artwork, subject to receipt of any insurance proceeds and availability of sufficient funds.

#### **V. CREATION, INTEGRITY, AND OWNERSHIP OF ARTWORK.**

- A. **Waiver and relinquishment of rights.** Between Artist's Final Completion and City's Final Acceptance, Artist shall expressly waive any and all right, title, or interest in the Artwork. Artist understands that this waiver shall include waivers of the rights of reproduction, adaptation, publication, and display, except as otherwise permitted by this Agreement. Artist agrees to relinquish any and all rights, title, and interest to the Artwork developed in connection with this Agreement, and hereby expressly waives any rights Artist has to the Artwork, including, but not limited to, the rights afforded artists under the Copyright Act of 1976 and the Visual Arts Rights Act of 1990, Title 17 U.S.C. §§ 101 *et seq.* Artist understands and agrees that the right of attribution and integrity, as specifically set forth in 17 U.S.C. § 106A, are hereby expressly waived except as otherwise provided herein. To the extent that the provisions of this Agreement differ with the Copyright Act of 1976 and Visual Arts Rights Act of 1990, the provisions of this Agreement will govern and any such differences in the rights and duties created thereunder are expressly waived.
- B. **Limited edition.** Artwork shall be one of a limited edition of one (1). Artist warrants and represents that the Artwork designed, fabricated, and installed pursuant to this Agreement has never heretofore been designed, fabricated, installed, created, published, or copied and that Artist is the sole creator and owner of all rights in the Artwork and the design thereof.

- C. **Ownership.** Upon City's Final Acceptance, the Artwork shall be owned by City. Following Final Acceptance, City may remove the Artwork from the Site and/or move the Artwork to another location, at City's sole election and discretion.
- D. **No copyright.** Artist shall not make any claim to the copyright of the Artwork.
- E. **Photographs of Artwork by City.** City may photographically reproduce the image of the Artwork and all preliminary studies, models and maquettes thereof, as City may desire for educational and public information purposes. Where practicable and to the extent of City's authority, Artist shall be acknowledged on each such photographic reproduction to be the creator of the original subject thereof, provided that photographic reproductions of preliminary studies, models and maquettes shall not be identified as or represented to be the finished Artwork.
- F. **Photographs of Artwork by Artist.** Artist may photographically reproduce the image of the Artwork and all preliminary studies, models and maquettes thereof, as Artist may desire for marketing, educational and public information purposes. Where practicable, Artist shall acknowledge on each such photographic reproduction the location of such Artwork, provided that reproductions of preliminary studies, models and maquettes shall not be identified as or represented to be the finished Artwork.
- G. **Models of Artwork.** City shall at no time create any model, maquette, replica, copy, or any other three-dimensional reproduction of Artwork or any component thereof for any purpose without first entering into a mutually agreed-upon written agreement with Artist governing the creation, use, and/or sale of such model, maquette, replica, copy, or reproduction. Upon Final Completion, Artist shall not create any new model, maquette, replica, copy, or any other three-dimensional reproduction of Artwork or any component thereof for any purpose without first entering into a mutually agreed-upon written agreement with City governing the creation, use, and/or sale of such model, maquette, replica, copy, or reproduction. This provision shall not prevent Artist's creation of any model or mock-up for purposes of designing and/or engineering Artwork prior to Final Completion.
- H. **Alteration of Artwork.** If any alteration occurs to the Artwork after installation, whether intentional or accidental and whether caused by City or others, upon written request of Artist, such Artwork shall no longer be represented to be the work of Artist, unless otherwise allowed by Artist in writing. Other than as specified herein, Artist specifically waives the right to claim any other remedy concerning the alteration of the Artwork as provided for under Idaho or federal law, whether by statute or otherwise.
- I. **Removal from display.** City shall have the right to remove the Artwork from Site and/or from public display. In the event that City determines that the Artwork or any component thereof shall be sold, Artist shall be provided the first right of refusal to purchase the Artwork or such component from City. Should Artist choose to purchase the Artwork pursuant to this provision, the price of the Artwork shall be the fair market value thereof. This provision shall expire upon the death of Artist and shall not be extended to Artist's estate unless City so elects.

- J. **Subcontracting or assignment of obligations.** Artist shall not subcontract or assign any of Artist's obligations under this Agreement that require or that may require Artist's artistic talent or expertise. Artist may subcontract or assign obligations that do not require Artist's artistic talent or expertise, including, but not limited to, such obligations as transport and installation of the Artwork, and other obligations as outlined in Artist's proposal as set forth in *Exhibit B*. Any and all subcontractors or assignees shall be bound by all the terms and conditions of this Agreement.

VI. **INDEMNIFICATION, WAIVER, AND INSURANCE.**

- A. **Indemnification.** Artist shall indemnify, save, and hold harmless the City and any and all of its employees, agents, volunteers, and/or elected officials from any and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Artist or Artist's servants, agents, employees, guests, and/or business invitees, occurring before City's Final Acceptance of the Artwork.
- B. **Waiver.** Artist waives any and all claims and recourse against City, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to Artist's performance of this Agreement, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of City or its officers, agents or employees.
- C. **Insurance to be obtained by Artist.** Artist shall obtain and shall maintain, at Artist's own expense, from the Effective Date of this Agreement through City's Final Acceptance of the Artwork, each and all of the following:
1. **General liability insurance.** General liability insurance with a limit of not less than one million dollars (\$1,000,000.00) per each occurrence, combined single limit bodily injury and property damage, covering the actions and omissions of Artist and her employees, agents, and/or workers in fabricating, transporting, and installing the Artwork and/or components or materials thereof, including coverage for owned, non-owned, and hired vehicles, as applicable.
  2. **Workers' compensation insurance.** Artist shall obtain and shall maintain, at Artist's own expense, from the Effective Date of this Agreement through City's Final Acceptance of the Artwork, and throughout the course of this Agreement, workers' compensation insurance, in an amount required by Idaho law, whichever is higher, to cover any and all persons employed by Artist.
  3. **Insurance of Artwork.** Upon completion of the sculptures, through City's Final Acceptance of Artwork, Artist shall procure and maintain, at Artist's own expense, in an all-risk form with limits of not less than fifty thousand (\$50,000), and any deductible not to exceed five hundred dollars (\$500) each loss, with any loss payable

to City. Artist agrees to bear all risks of loss of and/or damage to the Artwork until City's Final Acceptance of Artwork.

- D. **Proof of insurance.** Artist shall provide to City, within seven (7) days of the Effective Date of this Agreement, written proof that Artist has obtained all insurance required hereunder. If any change is made to any insurance policy or coverage required under and/or obtained pursuant to this Agreement, Artist or Artist's insurance agent shall notify City immediately.
- E. **Insurance to be obtained by Artist's subcontractors.** Artist shall require any and all subcontractors employed or utilized in the course and scope of the obligations described in this Agreement to obtain and maintain general liability insurance and workers' compensation insurance in the amounts described herein. Artist shall provide to City, within twenty-four (24) hours of hiring or engaging any subcontractor, written proof that her subcontractors have obtained all insurance required hereunder.
- F. **Insurance to be obtained by City.** City shall obtain all necessary property and commercial general liability insurance as may be required in order to protect its insurable interests for its rights and obligations described within this Agreement. Upon City's Final Acceptance of the Artwork, City shall obtain property insurance for the Artwork.
- G. **No cancellation without notice.** On all insurance policies required under this agreement, such policies shall provide that they may not be cancelled or reduced in coverage except upon thirty (30) days advance written notice to all Parties. Any cancellation of insurance without appropriate replacement in the amounts and terms set forth herein may constitute grounds for termination of the contract.

## VII. TERMINATION.

- A. **Termination for cause.** If City determines that Artist has failed to comply with any term or condition of this Agreement, violated any of the covenants, agreements, and/or stipulations of this Agreement, falsified any record or document required to be prepared under this Agreement, engaged in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement; or if either Party willfully or negligently defaults in, or fails to fulfill, its material obligations under this Agreement; the other Party shall have the right to terminate the Agreement by giving written notice to the defaulting party of its intent to terminate, and shall specify the grounds for termination. The defaulting party shall have thirty (30) days after receipt of such notice to cure the default. If the default is not cured within such period, this Agreement shall be terminated upon mailing of written notice of such termination by the terminating party.
  - 1. **Default by City.** In the event of termination for non-performance or default by City, City shall compensate Artist for work actually completed by Artist prior to the date of written notice of termination and any verified additional services and materials actually performed or supplied prior to the date of written notice of termination, less payments of compensation previously made, not to exceed the total amount of compensation allowed hereunder.

2. **Default by Artist.** In the event of termination for non-performance or default by Artist, except that caused by the death or incapacity of Artist, all finished and unfinished drawings, photographs, plans, timelines, and/or any and all other work products prepared and submitted or prepared for submission under this Agreement shall, at City's option, become City's property. Notwithstanding this provision, Artist shall not be relieved of any liability for damages sustained by City attributable to Artist's default or breach of this Agreement. City may reasonably withhold payments due until such time as the exact amount of damages due to City from Artist is determined. Artist shall not be relieved of liability to City for damages sustained by City by virtue of any breach or default of this Agreement by Artist. This provision shall survive the termination of this Agreement and shall not relieve Artist of liability to City for damages.

B. **Termination without cause.** City may terminate this Agreement for any reason at any time by providing fourteen (14) days' notice to Artist.

C. **Termination upon death or incapacity of Artist.** This Agreement shall automatically terminate upon the death or incapacity of Artist. In the event of termination caused by the death or incapacity of Artist, all finished and unfinished drawings, photographs, plans, timelines, and/or any and all other work products prepared and submitted or prepared for submission under this Agreement shall, at City's option, become its property, and the right to fabricate and/or complete fabrication of the Artwork shall pass to City. Notwithstanding this provision, neither Artist nor Artist's estate shall be relieved of any liability for damages sustained by City attributable to Artist's default. City may reasonably withhold payments due to Artist or to Artist's estate until such time as the exact amount of damages due to City from Artist or Artist's estate is determined. Artist shall not be relieved of liability to City for damages sustained by City by virtue of any breach or default of this Agreement by Artist. This provision shall survive the termination of this Agreement and shall not relieve Artist or Artist's estate of liability to City for damages.

D. **Non-waiver of breach.** A waiver of any breach or default of any provision of this Agreement shall not be construed as a waiver of a breach of the same or any other provision hereof.

## **VIII. GENERAL PROVISIONS.**

A. **Relationship of Parties.** It is the express intention of Parties that Artist is an independent contractor and neither Artist nor any officer, employee, subcontractor, assignee, or agent of Artist shall be deemed an employee, agent, joint venturer, or partner of City in any manner or for any purpose. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Artist and City or between Artist and any official, agent, or employee of City. Both parties acknowledge that Artist is not an employee of City. Artist shall retain the right to perform services for others during the term of this Agreement. Specifically, without limitation, Artist understands, acknowledges, and agrees:

1. Artist is free from actual and potential control by City in the provision of services under this Agreement.
  2. Artist is engaged in an independently established trade, occupation, profession, or business.
  3. Artist has the authority to hire subordinates.
  4. Artist owns and/or will provide all major items of equipment necessary to perform services under this Agreement.
- B. **Compliance with law.** Throughout the course of this Agreement, Artist shall comply with any and all applicable federal, state, and local laws.
- C. **Non-Discrimination.** Throughout the course of this Agreement, Artist shall not discriminate against any person as to race, creed, religion, sex, age, national origin, sexual orientation or any physical, mental, or sensory handicap.
- D. **Entire Agreement.** This Agreement constitutes the entire understanding between the Parties. This Agreement supersedes any and all statements, promises, or inducements made by either party, or agents of either party, whether oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by both parties hereto.
- E. **Costs and attorneys' fees.** If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.
- F. **Agreement governed by Idaho law.** The laws of the State of Idaho shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of Ada County, Idaho.
- G. **Cumulative Rights and Remedies.** All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.
- H. **Interpretation.** Words of gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and vice versa unless the context otherwise requires. The Agreement and the captions of the various sections of this Agreement are for convenience and ease of reference only, and do not define, limit, augment or describe the scope, context or intent of this Agreement or any part or parts of this Agreement.
- I. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.

- J. **Successors and Assigns.** All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of, and shall be binding upon, each party and their successors, assigns, legal representatives, heirs, executors, and administrators.
- K. **Notice.** Day-to-day communications between Artist and the Arts and Culture Coordinator may occur by telephone. Any and all notice required to be provided by either of the Parties hereto, unless otherwise stated in this Agreement, shall be in writing and shall be deemed communicated upon mailing by United States Mail or upon sending via e-mail, addressed as follows:
- |                          |                                      |
|--------------------------|--------------------------------------|
| <u>Artist:</u>           | <u>Arts and Culture Coordinator:</u> |
| Eileen Gay               | Cassandra Schiffler                  |
| 2051 Canal Road          | Parks and Recreation Department      |
| Sparks Nevada 89434-6608 | 33 E. Broadway Ave. Ste 206          |
| (775) 688-6278           | Meridian ID 83642                    |
| mosaicsbyeileen@aol.com  | (208) 489-0399                       |
|                          | cschiffler@meridiancity.org          |
- Either party may change her/its address for the purpose of this provision by giving written notice of such change in the manner herein provided.
- L. **Exhibits.** All exhibits to this Agreement are incorporated by reference and made a part of hereof as if the exhibits were set forth in their entirety herein.
- M. **City Council approval required.** The validity of this Agreement shall be expressly conditioned upon City Council action approving the Agreement. Execution of this Agreement by the persons referenced below prior to such ratification or approval shall not be construed as proof of validity in the absence of Meridian City Council approval.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the Effective Date first written above.

**ARTIST:**

  
Eileen Gay

**CITY OF MERIDIAN:**

BY: \_\_\_\_\_  
Robert E. Simison, Mayor

Attest: \_\_\_\_\_  
Chris Johnson, City Clerk



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**Call for Artists - RFQ + RFP**  
**Five Mile Creek Pathway Trailhub Public Art Project**

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**TOTAL PROJECT BUDGET:**

Up to \$50,000 has been approved for the Five Mile Creek Pathway Trailhub public art project.

**REQUEST FOR QUALIFICATION APPLICATION DEADLINE:**

June 3, 2022

**CONTACT:**

Questions, via e-mail:

Cassandra Schiffler, Arts and Culture Coordinator  
[mac@meridiancity.org](mailto:mac@meridiancity.org)

Mail or deliver applications to: Meridian Arts Commission

Attn: Cassandra Schiffler, Arts and Culture Coordinator  
33 E. Broadway Avenue  
Meridian, Idaho 83462

**PROJECT DESCRIPTION:**

The Meridian Arts Commission (MAC) and Meridian Parks and Recreation request artists or artist teams to submit qualifications for the design, fabrication, and installation of a public artwork at the Five Mile Creek Pathway Trailhub at 3430 N. Ten Mile Road. Up to four qualified finalists will be selected to develop and submit public art proposals and will receive \$1,000 for their initial design proposals. The artist or artist team with the final selected proposal will be awarded a contract (or contracts) of up to \$50,000. The artist or artist team will be responsible for artist fees, insurance, engineering, fabrication, and installation, and any site preparation and restoration, permitting, travel, meeting with City of Meridian staff as necessary, contingencies, and all related incidental expenses.

Possibilities for Public Art include, but are not limited to: Free standing sculpture, kinetic sculpture, functional or interactive artwork, archway, or other visual artwork that is highly visible to facility users, passersby, and motorists on the busy Ten Mile Road.



**ELIGIBILITY:**

Artists who are 18 years or older are eligible to respond. This project is open to applicants regardless of race, gender, gender identity, sexual orientation, religion, nationality, or disability. Teams of artists, designers, and/or engineers are welcome to apply. Treasure Valley and Northwest area artists are encouraged to apply. Incomplete, ineligible, or late submissions will be deemed ineligible and will not be considered.

**ANTICIPATED PROJECT SCHEDULE:\***

<b>April 25, 2022</b>	Call to Artists (RFQ/RFP) issued
<b>June 3, 2022 5:00 p.m.</b>	Application Deadline for RFQ
<b>June 10, 2022</b>	Selection Panel evaluates RFQ responses, selects finalists
<b>Late June, 2022</b>	Finalists notified, invited to respond to RFP
<b>July 2022</b>	Optional Pre-proposal onsite meeting, not mandatory
<b>July 2022</b>	Due date for W-9 and finalists’ signed agreements with City to develop finalists’ project proposals
<b>September 30, 5:00 p.m.</b>	Deadline for submission of finalists’ project proposals
<b>October 2022</b>	Selection Panel, artist presentations, preliminary evaluations, and recommendations
<b>November 2022</b>	Selection Panel final evaluations, recommendations on proposals
<b>December 2022</b>	Meridian Arts Commission and City Council approvals
<b>December 2022</b>	Artists notified of decision
<b>January 20 2023</b>	Due Date for selected artist’s signed agreement with City
<b>January 2023 – June 2023</b>	Fabrication
<b>June 2023</b>	Installation

\*Schedule and timeline are subject to change.

**PROJECT LOCATION:**

The Five Mile Creek Pathway Trailhub is new trailhead facility located at 3430 N. Ten Mile Road (north of Ustick Rd, across from the City wastewater treatment plant). The recently completed Trailhub will serve as the first ever gateway to the Five Mile Pathway, one of the City’s priority pedestrian routes. The 1.5-acre park/trailhead facility offers vehicle parking, drinking water, seating and gathering space, and both traditional and low-water landscaping. A public restroom and site furnishings, including bike parking and repair facilities, will be added in spring 2022. Possibilities for art placement include the plaza/gathering space between the columnar basalt benches, and in or around the planter area(s) north of the parking lot entry. The attached site plan illustrates possible locations and dimensions. Alternate siting may be proposed as long as the art is located within the Trailhub boundary, is highly visible, and remains clear of existing irrigation easements (noted on the site plan).

The Five Mile Pathway is Meridian’s longest multi-use bike and pedestrian route, with almost 5 miles of connected pathway. The pathway provides connection, recreation, and transportation for the City. Citizens walk, bike, run, and exercise on the path. For the most part, the pathway runs near the Five Mile Creek.

Prior to the 1890s, Five Mile Creek was one of three waterways that fed into the Boise River from the south. As settlers moved in and built irrigation canals to support farms and communities, the Creek could no longer handle the increased surface water, and was engineered to function as a drain for the local irrigation district. Five Mile Creek currently returns water to the Boise River and serves as habitat to birds (including ducks, redwing blackbirds, and others) and the occasional

small mammal (muskrats, for instance). Near the Trailhub is Reta Huskey Park, a City park in a suburban neighborhood.

### **DESIRED OUTCOMES**

The public art project should create and/or enhance the overall Five Mile Creek Pathway Trailhub identity. The objective of the project is to create a theming element, or elements, that give the Trailhub a true identity and sense of place and address the characteristics of the site as a Trailhub and gateway to the Five Mile Pathway, running along Five Mile Creek. The desired public artwork should function as a visible and memorable landmark for the site.

Key themes and visual elements for the artwork may include, but are not limited to:

- Waterway or creek imagery, especially historic, functional, and recreational uses
- Bike parts or trailhub parts such as cogs, wheels, or cycles
- Pedestrian movement themes that evoke momentum, motivation, and activation
- Gateway themes: passages, starting points, jumping-off place, beginnings, origins
- Other ideas relating to the history and context described in this RFP

Artists are encouraged to submit functional or interactive pieces. Artists are encouraged to submit works that are highly visible to users, passersby, and motorists on the busy Ten Mile Road.

The artwork must be safe appropriate for the project site, and its design, regardless of material or medium. The artwork must conform to all applicable City ordinances and policies, including building and sign codes.

### **APPLICATION INSTRUCTIONS:**

- 1. Application for Request for Qualifications (RFQ).** To be considered for this project, eligible artists or artist teams must submit the following materials, and materials must be received by the Arts and Culture Coordinator via email at [mac@meridiancity.org](mailto:mac@meridiancity.org) as a single merged PDF file, or mailed, or delivered to 33 E. Broadway Avenue, Meridian, Idaho 83462 by **5:00 p.m. on June 3, 2022 at 5:00pm:**
  - a. One- to two-page letter of interest including: current contact information, reasons for interest in creating artwork for the Five Mile Creek Pathway Trailhub, and a summary of the artist's or team's experience with similar projects;
  - b. List of 3 references with contact information;
  - c. Biography or resume highlighting past experience, no more than two pages in length;
  - d. Up to 10 digital images (high resolution, no larger than 1 MB each), representative of the artist's past projects and artwork. If submitted by mail or delivered, artworks should be saved on CD or thumb drive. If submitted via email, artworks should be formatted to fill a full page of the single merged PDF; and
  - e. Image list including titles, dimensions, media, dates, and budgets of past projects and artwork.
- 2. Application for Request for Proposals (RFP) (open to selected finalists only).** The selected finalists will be invited to prepare proposals in response to this RFP. A stipend of \$1,000 for preparation of the proposal will be available to each finalist upon execution of a written agreement with the City and submission of a completed W-9 form. To respond to the RFP, finalists must submit all of the following materials to MAC by 5:00 p.m. on September 30, 2022:

- a. One- to two-page narrative describing the artwork and how it meets the project’s desired outcomes;
- b. Budget with line items for things such as: artist fees, materials, insurance, engineering, fabrication, installation, any site preparation and restoration, permitting, travel, contingencies, and all related incidental expenses;
- c. Any drawings, mock-ups, or photographs of the proposed conceptual designs;
- d. Details of materials to be used, dimensions, anticipated maintenance, and any other significant information; and
- e. three-dimensional maquette in a suitable for selection panel viewing.

Materials submitted will not be returned; do NOT submit original artwork. The City of Meridian is a public agency; any information submitted is subject to release to the public as required by Idaho Public Records Law. Submitted materials must be physically received by the Arts and Culture Coordinator, at the address above, by 5:00 p.m., on specified deadlines. Responses that are postmarked or en route, but not received, by specified deadlines will be considered late and will not be considered. Artists will receive all notifications by letter sent via email.

**SELECTION PANEL:** The selection panel may include project stakeholders representing the Meridian Parks and Recreation Department, the Meridian Arts Commission, Meridian City Elected Officials and staff, the neighboring residential and business communities, as well as arts professionals.

**SELECTION PROCESS:**

**RFQ Finalists selected.** In June 2022, the Selection Panel will convene and evaluate all responses to the RFQ. Following evaluation, the Selection Panel may select up to four finalists, or may re-open the RFQ. Selection criteria will include:

- a. Adherence to the RFQ (10 points)
- b. Artistic quality, craftsmanship, and level of professionalism of artwork represented in images (30 points)
- c. Appropriateness of experience/expertise with similar public art project sites (30 points)
- d. Professionalism and artistic experience represented in resume or bio (30 points)

**If selected as one of the finalists, the artist or team will be asked to submit a proposal.**

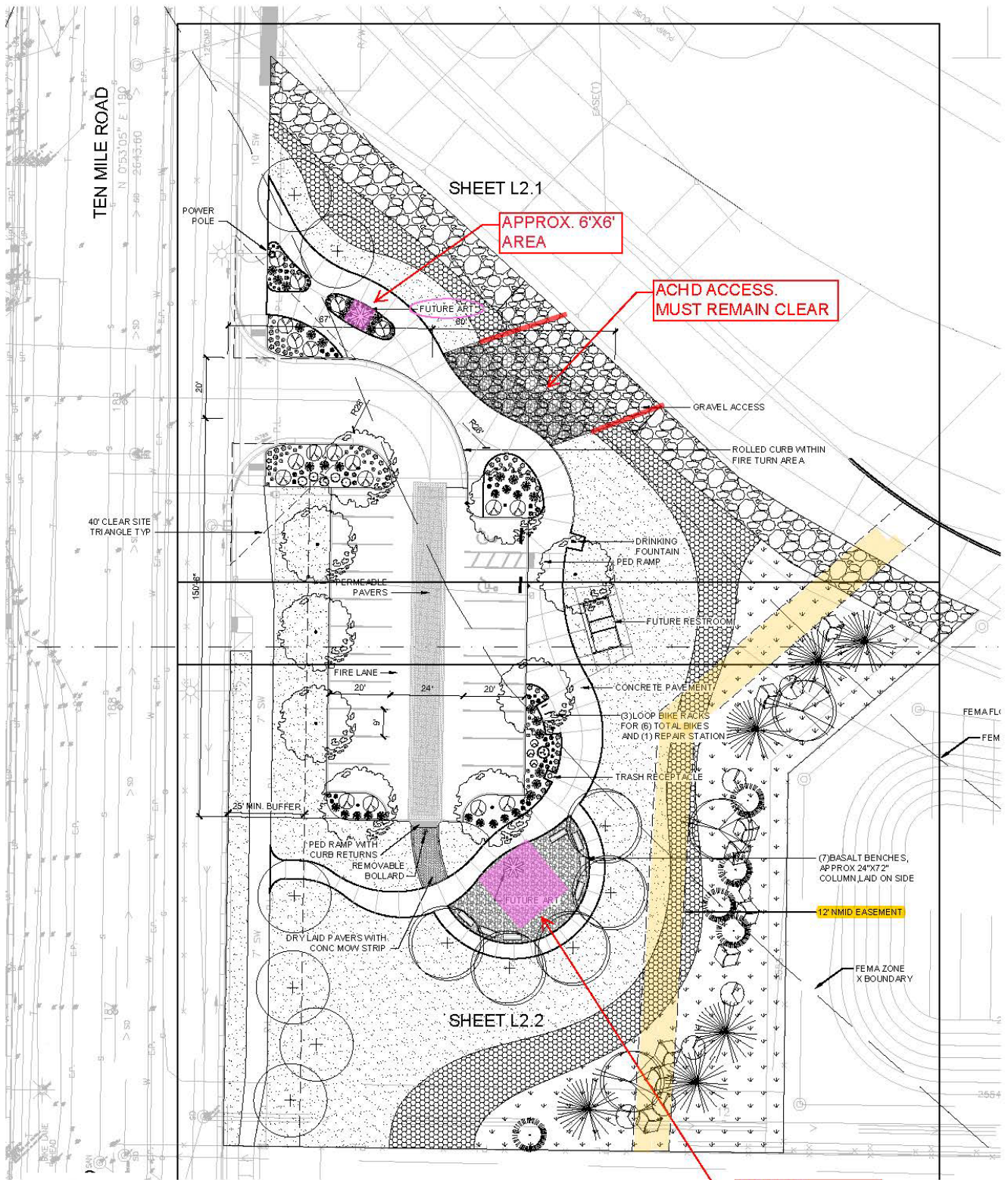
**Preliminary evaluation of proposals.** In October 2022, the Selection Panel will convene to conduct a preliminary evaluation of the finalists’ proposals to the RFP. Finalists will present their proposals to the panel. Following this evaluation, the Selection Panel will make recommendations to select or improve projects, make recommendations for alterations to projects for final evaluation, or may recommend that the RFQ or RFP be reopened. Preliminary evaluation criteria will include:

- f. Adherence to the RFP (5 points)
- g. Professionalism of work proposed (10 points)
- h. Timeline and cost (10 points)
- i. Appropriateness and safety of proposed artwork for project site (5 points)
- j. Artwork’s ability to address the context of its site location and placement (20 points)
- k. Artwork’s ability to address the context of the Five Mile Creek, Five Mile Pathway, and/or the Trailhub (20 points)
- l. Artwork’s level of visibility and positive memorable impact (10 points)

- m. Consistency with Meridian’s history, character, community values, City policies, and Meridian’s vision of being the West’s premier community in which to live, work and raise a family (10 points)
- n. Presentations (10 points)

**Final evaluation of proposals; artist or artist team selected.** In November 2022, the Selection Panel will convene to make its final evaluation of all responses to the RFP. Following evaluation, the Selection Panel may recommend selection of one proposal, or that the RFQ or RFP be reopened. Evaluation criteria will include the criteria set forth above. The Selection Panel will forward its recommendation to MAC for consideration on December 8, 2022. MAC may accept or modify such recommendation and forward its recommendation to Meridian City Council. Meridian City Council will consider such recommendation in making the final decision.

**Selected proposal installed.** Following selection, the selected Artist will fabricate and install the artwork, in accordance with a written agreement with the City, and with the project’s final budget and timeline. A budgeted amount of \$50,000 is currently available for the selected artist’s commission, which amount includes the cost of artist fees, insurance, engineering, fabrication, and installation, any site preparation and restoration, permitting, travel, meeting with City of Meridian staff as necessary, contingencies, and all related incidental expenses.



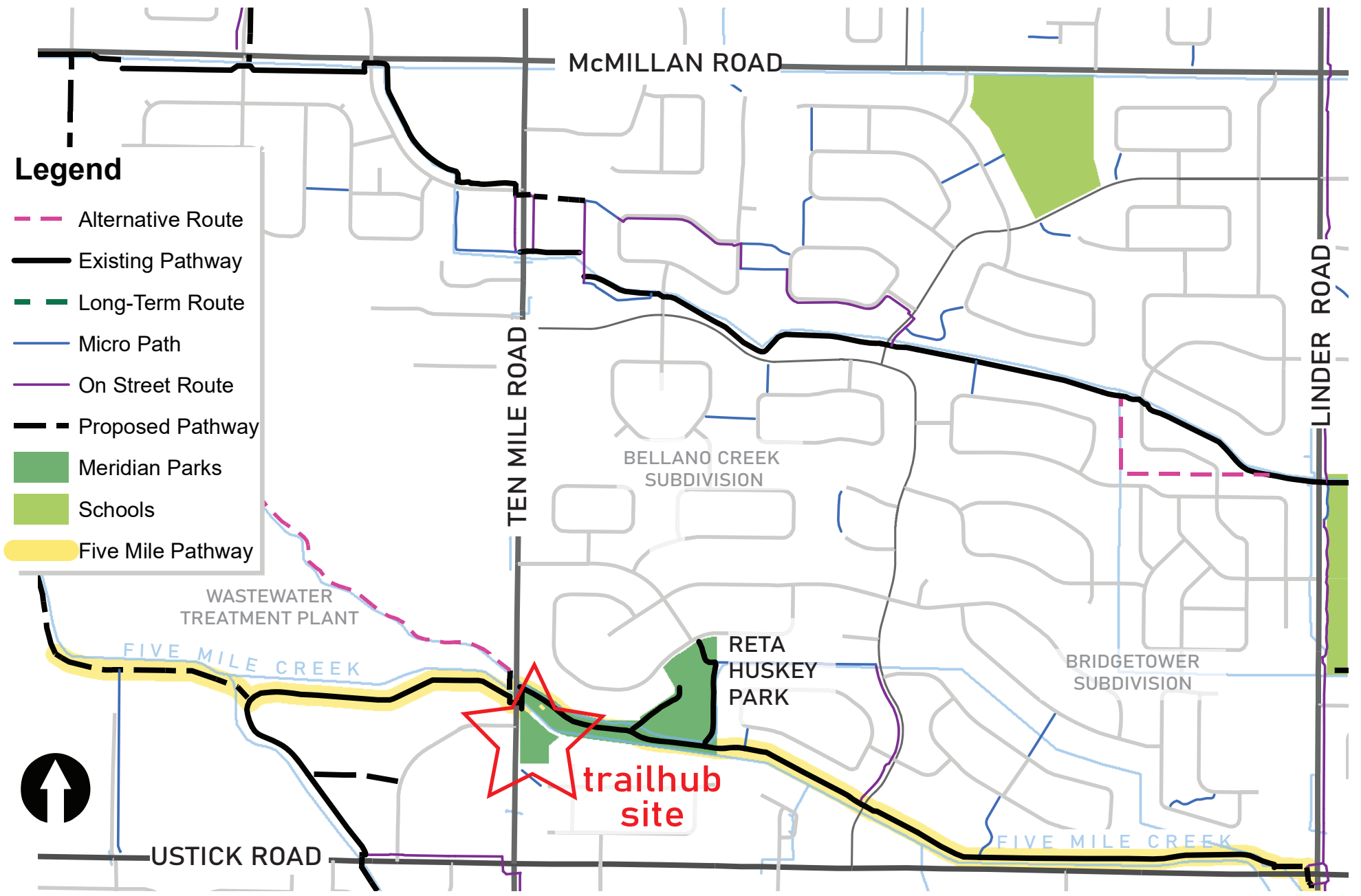
## FIVE MILE CREEK TRAILHUB AT TEN MILE ROAD



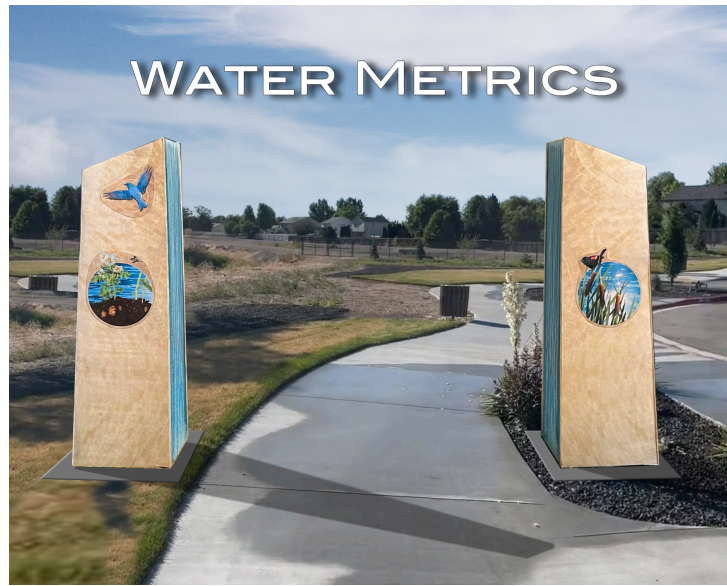
0' 20'

**NOTE:** This plan illustrates possible Art locations, with approximate spatial dimensions. Alternate siting may be proposed as long as the art is located within the Trailhub boundary and meets other RFQ requirements for sculptural pieces or functional art.





CONTEXT MAP Ten Mile Trailhub at Five Mile Creek



A gateway into a space or pathway suggests a feeling of arrival. Not only is the place entered being presented to a visitor, but whatever is framing the entry itself is usually of interest to the curious.

“Water Metrics” offers a feeling of entry in sculptural form and mosaic imagery, representing Meridian canals and water scenes.

I’m excited about the idea of creating a concrete sculptural mosaic gateway for this trailhub. Each of the two halves of the gateway will be approximately 8’ tall and 2’ deep making for an approachable, human scale and a feeling of entry. Mosaic on the forms will feature an homage to the local canal system showing glass mosaic waterfalls guided by canal-like walls over two sides. Also featured are circular icons with cattails, flowering potato plants, and local birds – including the Idaho state bird, the Mountain Blue Bird.

My vision is that ‘Water Metrics’ will feel like they’ve always been there, at the trailhead. The materials for the art - steel, concrete, high fire glazed tile and glass, are strong and freeze-thaw resistant making the artwork low maintenance gateway of the trailhub for many years to come.

Water Metrics’ surfaces feature mosaic art created in rich, long lasting colors using porcelain and glass. Hidden surprises such as embedded word stones and bits of color are often a part of my mosaics offering a sense of discovery for those who are drawn to take a closer look.

Bolted to slabs that rise above the surrounding finish grade, the placement enables visitors a good height for viewing and acts as a protective barrier from maintenance work done around the bases. The two pieces can act as an attract to invite visitors into the park for a closer look and as wayfinding devices to meet up with friends and family before enjoying the trail.

**Materials:** The armature for my sculptural mosaic forms is created using expanded polystyrene (EPS) material. The steel infrastructure inside the sculptures will include necessary pick points and attachments, per engineered specs, for installation.

The sculptural form is then wrapped in fiberglass mesh and coated with an acrylic cement material called Genesis DM made by Drivit. This application will be done in 2-3 successive coats to achieve a strong outer skin over the armature, the perfect substrate for my mosaic installation.

Once the outer shell has cured, I use latex modified thin-set mortar to adhere the mosaic to the forms. My mosaic materials will consist of high fire glazed porcelain tile and glass tesserae rated to weather freeze / thaw conditions which means that my mosaic installations will hold up and retain their rich color for years to come. I use a urethane grout to finish the mosaics.

Many successful examples of my work using this technique are included in my portfolio for your viewing. All of the materials used in this type of construction have held up extremely well. Some of my installations have been successfully in place for more than 15 years. Technical data sheets on materials are available upon request.

**Detailed Budget:**

**WaterMetrics**

2 Water Gateways and Falls

Item	Budget
Artist's Fee	4,500.00
Site visit	500.00
Engineering	2,000.00
Forms,steel	9,200.00
Materials/Supplies	4,700.00
Fabrication	18,000.00
Load, transport, crane	2,100.00
Sitework (footings, install)	7,000.00
Contingency	2,000.00
<b>Total Expenses</b>	<b>Budget</b>
	50,000.00

**Site work / installation:** For site preparation and the final installation I will work with a local contractor and am open to recommendations for in-kind donations, or direct help from the City of Meridian on the installation of “Water Metrics”.

**Schedule for project:** My fabrication schedule aims to have fabrication and installation completed by June 2023 as requested. If there are delays brought about by supply chain or other issues, I will work with the City of Meridian to assure the best schedule possible for all parties.

This time estimate is also subject to the City of Meridian’s timely issuance of documents, payments, and approvals as needed at various stages of the project. Fabrication time starts at full execution of a contract by all required parties, artist’s receipt of Notice to Proceed, and receipt of first payment by the artist.

**Maintenance plan and recommendations:** General maintenance is a wipe down of the surfaces with a mild soap and water to brighten and refresh the color. Hand wash the surfaces only. PRESSURE WASHING OR OTHER MECHANICAL WASHING IS NOT RECOMMENDED.



# EILEEN GAY

Mosaic Artist – Sculptor

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