

**ACCEPTANCE AGREEMENT FOR PUBLIC ART AT
FIVE MILE CREEK PATHWAY TRAILHUB: "WATER METRICS"**

This ACCEPTANCE AGREEMENT is made this ____ day of _____, 2023 ("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, a sole proprietor whose address is 2051 Canal Road, Sparks, Nevada ("Artist"). (City and Artist may hereinafter be collectively referred to as "Parties.")

WHEREAS, on July 5, 2023, Artist installed at Five Mile Creek Pathway Trailhub artwork entitled "Water Metrics," a concrete sculptural mosaic gateway ("Artwork");

WHEREAS, on December 6, 2022, City and Artist entered into a Professional Services Agreement for Fabrication and Installation of Five Mile Creek Pathway Artwork ("December 6, 2022 Agreement") that includes, in Section II.C.6.b, a requirement that the parties enter into a mutually agreed-upon acceptance agreement as a condition of the City's Final Acceptance of the artwork designed, created, and installed by Artist pursuant to the December 6, 2022 Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby, and in the December 6, 2022 Agreement, acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

I. INDEMNIFICATION.

Artist hereby indemnifies and saves and holds harmless City and its respective employees, elected officials, agents, guests, volunteers, and/or business invitees, from any and all liabilities, losses, claims, actions, and/or judgments for damages, expenses, and/or injury to any person or property caused or incurred by or as the result of the performance of or failure to perform any work or service under or related to the December 6, 2022 Agreement.

Artist specifically hereby indemnifies and saves and holds harmless City and its respective employees, elected officials, agents, guests, and/or business invitees, from any and all liabilities, losses, claims, actions, judgments for damages, expenses, or injury to any person or to property arising as a result of:

- A. Artist's failure, or the failure of any agent, employee, or subcontractor of Artist to exercise reasonable care, skill or diligence in the performance of any work or service under or related to the December 6, 2022 Agreement and any and all addenda thereto;
- B. Any breach of any representation, warranty or covenant made by Artist, or by any of Artist's agent(s), employee(s), or subcontractor(s);
- C. Artist's infringement of or upon any intellectual property rights, whether intentional or unintentional, known or unknown, including any copyright or patent arising out of the reproduction or use in any manner of any plans, designs, drawings, specifications, information, material, sketches, notes or documents created by Artist in the performance of any work or service under the December 6, 2022 Agreement and any and all addenda thereto; and/or

- D. The malfunction, breakage, or failure of the artwork, or any portion or component thereof, created and installed under the December 6, 2022 Agreement and any and all addenda thereto.

II. WAIVER.

Artist hereby waives and releases, on behalf of Artist, Artist's employees, agents, heirs, executors, administrators, assigns, and/or personal representatives, any and all claims and/or rights for damages Artist now has or may hereafter have against the City of Meridian and/or its employees, elected officials, agents, guests, and/or business invitees, suffered in connection with or arising out of the performance of any work or service under or related to the December 6, 2022 Agreement. Except as otherwise expressly delineated in the December 6, 2022 Agreement, Artist hereby waives any and all right, title, or interest in the Artwork and/or all items created under, assembled pursuant to, and/or otherwise related to the December 6, 2022 Agreement and any and all addenda thereto.

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