

**ACCEPTANCE AGREEMENT:
DISPLAY OF ARTWORK IN INITIAL POINT GALLERY, MERIDIAN CITY HALL**

This ACCEPTANCE AGREEMENT: DISPLAY OF ARTWORK IN INITIAL POINT GALLERY, MERIDIAN CITY HALL (“Agreement”) is made on the ____ day of _____, 20__ (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and Kevin Flynn and Amber Day, doing business as **Flynn Day Pottery**, an assumed business name established pursuant to the laws of the state of Idaho (“Organization”). (City and Organization may hereinafter be collectively referred to as “Parties.”)

WHEREAS, the City desires that public art will be a component of Meridian City Hall by the display of artwork in Initial Point Gallery, an art gallery on the third floor of Meridian City Hall, the address of which is 33 E. Broadway Ave., Meridian, Idaho (“Initial Point Gallery”);

WHEREAS, the Meridian Arts Commission (“Commission”) recommends to the Meridian City Council that Artist’s artwork be displayed in Initial Point Gallery;

WHEREAS, the Meridian City Council accepts such recommendation and directs the Commission to work with Artist to establish a display of Artist’s artwork in Initial Point Gallery; and

WHEREAS, the Parties acknowledge that Meridian City Hall is primarily a place of public business, that Initial Point Gallery is a public place, and that while the City seeks to encourage artistic expression and public dialogue, the City must simultaneously ensure that Meridian City Hall is a place where citizens, employees, and visitors of diverse ages and perspectives feel welcome and comfortable;

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 personally deliver artwork to Initial Point Gallery, on November 4, 2022, at such time as is specified by the Gallery Curator. Artist shall be responsible for installing such artwork on November 4, 2022, at the direction of the Gallery Curator; shall allow the display of such work in Initial Point Gallery from November 4, 2022 through December 2, 2022, in accordance with the terms of this Agreement; and shall be responsible for removal of such artwork on December 2, 2022, at such time as is specified by the Gallery Curator.

II. COMPENSATION AND SALE OF ARTWORK.

A. No compensation. Artist shall display Artist’s artwork in Initial Point Gallery at the pleasure of the Meridian City Council. City shall not provide compensation to Artist for services, work, and/or any activity undertaken pursuant to or related to this Agreement.

B. Sale of artwork. Artist may, at the direction of and in the manner established by the Gallery Curator, passively offer the artwork on display in Initial Point Gallery for sale. No price shall be displayed on or be proximate to any piece on display in Initial Point Gallery. City personnel shall not facilitate in any way the sale of Artist's work; any transaction related to the sale of artwork shall be handled solely by Artist. Artist acknowledges the Commission's request that Artist voluntarily donate to the Commission twenty percent (20%) of proceeds from any artwork sold due to its display in Initial Point Gallery. Upon the sale of a piece of artwork on display in Initial Point Gallery, Artist may remove such artwork from the Gallery, provided that Artist replaces the removed piece with another piece of artwork within twenty-four (24) hours of such removal. Artist shall coordinate the removal, replacement, and/or substitution of any and all artwork with the Gallery Curator prior to such activity.

III. TIME OF PERFORMANCE.

Artist shall provide services described in this Agreement in a timely manner, as described herein. Artist acknowledges and agrees 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 default of this Agreement.

IV. INSTALLATION.

A. Coordination with Curator. Prior to the installation, removal, replacement, and/or substitution of the display in Initial Point Gallery or any portion or component thereof, Artist shall coordinate any and all such activity with the Gallery Curator. Artist shall be responsible for contacting the Gallery Curator at least thirty (30) days prior to the date of delivery of artwork to Initial Point Gallery to confirm details regarding the installation, removal, publicity, and promotion of the exhibit. Artist's failure to affirmatively contact the Gallery Curator as required by this paragraph shall constitute a default of this Agreement.

B. Inspection of display. Prior to or after installation, the Gallery Curator and/or the City may inspect and/or review the artwork proposed by Artist for display in Initial Point Gallery to ensure compliance with all criteria set forth in the most recent Call to Artists issued for Initial Point Gallery, and the Application and Acknowledgements Form completed by Artist, as well as to ensure that such artwork may be safely and appropriately displayed in Initial Point Gallery. If the Gallery Curator or the City concludes that the display or any portion or component thereof does not meet the criteria set forth in these enumerated documents, does not reflect artwork as described to the Commission or the Gallery Curator, or cannot be safely and/or appropriately displayed in Initial Point Gallery, the Gallery Curator or the City may require the immediate removal of such artwork from Initial Point Gallery. Further, the Gallery Curator or the City may require the immediate removal of such artwork from Initial Point Gallery where such removal serves the best interest of the City.

V. DISPLAY.

- A. Original artwork.** Artist warrants that any and all artwork provided by Artist for display in Initial Point Gallery shall be, and is, original work conceived and created by Artist.
- B. Photographs of artwork.** City may photograph the artwork displayed in Initial Point Gallery, as City may desire for purposes of advertising, marketing, and public information. Where practicable and to the extent of City's authority, Artist shall be acknowledged on each such photograph to be the creator of the original subject thereof, provided that photographic reproductions of artwork shall not be identified as or represented to be the finished artwork.
- C. Use of Artist's name.** Artist hereby conveys to City permission to use Artist's name for purposes of advertising, marketing, and public information, without violation of Artist's rights of privacy or any other rights Artist may possess under this Agreement, provided that City shall not use Artist's logo, if any, for any purpose without the express, written permission of Artist.
- D. Use of City's name.** City hereby conveys to Artist permission to use City's name for purposes of advertising, marketing, and public information, without violation of City's rights of privacy or any other rights City may possess under this Agreement, provided that Artist shall not use City's logo for any purpose without the express, written permission of the Mayor's Chief of Staff.
- E. Removal of artwork by City.** City shall have the right to remove Artist's artwork from public display at any time and for any reason. Such removal may be temporary or permanent in nature. Where such artwork is or is intended to be removed from public display for longer than forty-eight (48) hours, City shall notify Artist in the manner set forth herein. While it is intended that Artist's artwork will be displayed in Initial Point Gallery for the period set forth herein, this period may be shortened by City for any reason, without notice to the Artist.
- F. Removal of artwork by Artist.** Artist shall coordinate with the Gallery Curator the removal, replacement, and/or substitution of any and all artwork prior to such activity, whether such activity is necessary due to the sale of a piece or for any other reason.
- G. Simultaneous display.** City may elect to display the work of more than one Artist or Organization in Initial Point Gallery at any time, at the City's sole discretion. The manner and arrangement of the display(s) in Initial Point Gallery shall be determined by the Gallery Curator.

VI. INDEMNIFICATION, WAIVER, AND INSURANCE.

- A. Indemnification.** Artist shall, and hereby does, 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 invitees.

- B. Waiver.** Artist shall, and hereby does, waive 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 the tortious conduct of City or its officers, agents or employees.
- C. Insurance Artist's responsibility.** City shall not provide insurance to cover loss, theft, or damage of artwork displayed in Initial Point Gallery or to cover any activity undertaken by Artist in the furtherance of Artists' rights or obligations described herein. Insurance of the artwork; of the Artist's person, property, or interests; and/or of the Artist's employees or agents shall be the sole responsibility of Artist. Artist shall obtain all necessary insurance as may be required in order to protect Artist's insurable interests for its rights and obligations described within this Agreement, including, but not limited to, liability insurance, automobile insurance, worker's compensation insurance, and/or insurance of the artwork to be displayed in Initial Point Gallery. Artist shall bear any and all risks of, and actual, loss of, theft of, and/or damage to the artwork prepared for, transported to, transported from, installed or hung in, and/or displayed in Initial Point Gallery.

VII. TERMINATION.

- A. Termination for cause.** If City determines that Artist has failed to comply with or is in default of 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 providing written notice to the defaulting party of its intent to terminate, and shall specify the grounds for termination. The defaulting party shall have two (2) calendar days, not including Sundays or federal holidays, after the other party mails such notice to cure the default. If the default is not cured within such period, this Agreement shall be terminated immediately upon mailing of written notice of termination.
- B. Termination without cause.** City may immediately terminate this Agreement for any reason at any time without prior notice to Artist.
- C. Termination upon death or incapacity of Artist.** This Agreement shall automatically terminate upon the death or incapacity of Artist.
- D. Non-waiver.** 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 party and not an employee, agent, joint venturer, or partner of City. 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.
- 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.** In fulfilling or exercising any right or obligation under 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 disability.
- 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, and 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. 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.
- F. 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.
- G. 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.
- H. Successors and assigns.** 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. 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.

- I. Notice.** Any and all notice required to be provided by the Parties hereto, unless otherwise stated in this Agreement, shall be in writing and shall be deemed communicated upon mailing by United States Mail, addressed, if to the Artist, to the address written below, and if to the City, to: 33 E. Broadway Avenue, Meridian, Idaho, 83642. Either party may change its respective mailing address by giving written notice of such change in the manner herein provided.
- J. 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 written above.

ORGANIZATION:
Flynn Day Pottery



Kevin Flynn, Owner

Address: 506 S. Haeding St.

Boise, ID. 83705

Phone: (208) 859-6207

E-mail: KEVINFLYNN17@Q.COM

CITY OF MERIDIAN:

BY: _____
Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk