

**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 _____, 2020 (“Effective Date”), by and between the City of Meridian, a municipal corporation organized under the laws of the State of Idaho (“City”), and the Idaho Commission on the Arts (“ICA”), an agency of the State of Idaho. (City and ICA may hereinafter be collectively referred to as “Parties.”)

WHEREAS, the City desires that public art will be a component of Meridian City Hall and to that end, the Meridian Arts Commission has invited ICA to display 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 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.

ICA shall designate an employee to serve in the role of Organizer for purposes of this Agreement. Organizer shall deliver artwork to Initial Point Gallery, on December 3, 2021, at such time as is specified by the Gallery Curator. Organizer shall be responsible for installing such artwork on December 3, 2021 at the direction of the Gallery Curator for display of such artwork in Initial Point Gallery from December 3, 2021 through February 3, 2022, in accordance with the terms of this Agreement; and shall be responsible for removal of such artwork on February 4, 2022, at such time as is specified by the Gallery Curator. ICA acknowledges and agrees that time is strictly of the essence with respect to this Agreement, and that Organizer’s failure to timely perform any of the obligations hereunder shall constitute a default of this Agreement.

II. 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, Organizer shall coordinate any and all such activity with the Gallery Curator. Organizer 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. Organizer’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 ICA for display in Initial Point Gallery to ensure compliance with all criteria set forth in the most recent Call to Organizations issued for Initial Point Gallery, 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.

III. DISPLAY.

A. Original artwork. Organizer warrants that any and all artwork provided by Organizer for display in Initial Point Gallery shall be, and is, original work conceived and created by artists selected by ICA, as certified by such artists.

B. Photographs of artwork. City may photograph the artwork displayed in Initial Point Gallery, as City may desire for the limited and non-commercial purposes of promotion and public information.

C. Use of ICA's name. ICA hereby conveys to City permission to use ICA's name and/or logo for purposes of promotion, and public information, without violation of ICA's rights of privacy or any other rights ICA may possess under this Agreement.

D. Use of City's name. City hereby conveys to ICA permission to use City's name for purposes of promotion and public information, provided that neither Organizer nor its agents or invitees shall use City's logo for any purpose without the express, written permission of the City Mayor's Chief of Staff.

E. Removal of artwork by City. City shall have the right to remove 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 Organizer in the manner set forth herein. While it is intended that the artwork provided by ICA 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.

F. Removal of artwork by ICA. Organizer 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.

IV. INDEMNIFICATION, WAIVER, AND INSURANCE.

A. Apportionment of Liability. City and ICA shall be responsible only for the acts, omissions or negligence of such agency's own employees. The term "employee" is defined for the purposes of this section as set forth in Idaho Code Section 6-902. Nothing in this Agreement shall extend the tort responsibility or liability of either City or ICA beyond that required by the Idaho Tort

Claims Act, Idaho Code section 6-901 *et seq.*. Each party shall be responsible for damage to property of the other party caused by its employees in the performance of the Agreement to the extent funds are legally available therefore.

B. Waiver. Organizer and ICA shall, and hereby do, 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 Organizer's or ICA'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 is ICA'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 ICA or its agents or invitees in the furtherance of the respective rights or obligations described herein. Insurance of the artwork; of the ICA's or its agents' or invitees' persons, property, or interests; and/or of the ICA's or its invitees, employees, or agents shall be the sole responsibility of ICA or of such respective parties. ICA or its agents or invitees shall obtain all necessary insurance as may be required in order to protect those parties' insurable interests for their 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. ICA 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, except as provided for in Section IV(A) above.

V. TERMINATION.

A. Termination for cause. If City determines that Organizer, ICA, or any of their agents or invitees have failed to comply with or are 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 Organizer.

C. 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.

VI. GENERAL PROVISIONS.

- A. Compliance with law.** Throughout the course of this Agreement, Organizer, ICA, and ICA's invitees and agents shall comply with any and all applicable federal, state, and local laws.
- B. Non-discrimination.** In fulfilling or exercising any right or obligation under this Agreement, Organizer, ICA, and their agents and invitees shall not discriminate against any person as to race, creed, religion, sex, age, national origin, or any physical, mental, or sensory disability.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. Successors and assigns.** ICA shall not subcontract or assign any of ICA's obligations under this Agreement that require or that may require their artistic talent or expertise. ICA may subcontract or assign obligations that do not require 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.
- H. 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 as follows:

Idaho Commission on the Arts:
Executive Director
PO Box 83720
Boise ID 83720-0008


City:
Initial Point Gallery Curator
33 E. Broadway Avenue
Meridian ID 83642

Either party may change its respective mailing address by giving written notice of such change in the manner herein provided.

- I. Warranty of authority.** ICA expressly warrants that, to the extent set forth herein, Organizer is duly authorized to act as the representative and agent of ICA.
- J. No personal liability.** City specifically understands and agrees that in no event shall any official, officer, employee or agent of the State be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Agreement, express or implied.
- K. Individual artists' agreement to terms and conditions.** Prior to display of artwork in Initial Point Gallery, ICA shall require from each artist whose work is displayed an Artist Agreement, attached hereto as Exhibit A and incorporated herein by this reference, informing each artist of the applicable provisions of sections III and IV of this Agreement, as well as each artist's acknowledgment of specific terms and conditions, as required by the City.
- L. 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:
Idaho Commission on the Arts**



Michael Faison
Executive Director

CITY OF MERIDIAN:

BY: _____
Robert E. Simison, Mayor

Attest: _____
Chris Johnson, City Clerk

EXHIBIT A: ARTIST AGREEMENT

I. This Artist Agreement (“Agreement”) is between Idaho Commission on the Arts (“ICA”) and the undersigned artist (“Artist”), wherein Artist agrees to the following terms and conditions prior to Artist’s chosen artwork being displayed at the Initial Point Gallery, located in the City of Meridian (City), from December 3, 2021 through February 3, 2022.

II. Artist represents and warrants to ICA that the artwork chosen to be displayed in Initial Point Gallery is freely, solely and fully owned by Artist, and is original work conceived and created by Artist. Artist further represents and warrants that such ownership includes all rights to its use, display, copyright, trademark, or otherwise, and that Artist’s chosen artwork does not infringe on the rights of any third party.

III. Artist acknowledges that City is an intended third-party beneficiary. Artist acknowledges and agrees that City may photograph the artwork displayed in Initial Point Gallery for the limited and non-commercial purposes of promotion and public information. Artist acknowledges and agrees that City has the right to remove artwork from public display at any time and for any reason to the extent permitted by law; such removal may be temporary or permanent in nature. Artist acknowledges that ICA does not take part in, and is in no way responsible for, any actions taken by City as it relates to subsection C below. Artist further acknowledges the following terms and conditions, as required by the City of Meridian:

- a. The City of Meridian will not assume liability for or provide insurance to cover any loss, theft, or damage of the artwork.
- b. Artist bears all risks, some of which are unknown, and releases and indemnifies the City from all related claims for damages caused by or arising out of Artist’s display of the chosen artwork at Initial Point Gallery and Artist’s representations set forth herein.
- c. Meridian City Hall is primarily a place of public business and Initial Point Gallery is a public place. The City seeks to encourage artistic expression and public dialogue, but must also ensure that City Hall is a place where citizens, employees, and visitors of diverse ages and perspectives feel welcome and comfortable. To this end, artwork will be displayed which: is appropriate in subject and content for a functioning government workplace, is consistent with City policy and community values, contributes to the aesthetic and cultural atmosphere of Meridian City Hall, and is not disruptive or likely to offend the general public, in City’s sole discretion.

The above terms and conditions are authorized by:

Artist’s Printed Name

Artist’s Signature

Name of Artist’s Chosen Piece

Date