



Participation Agreement

THIS AGREEMENT is entered into this ___ day of _____, 20____ (the “Effective Date”) by and between the Elko Redevelopment Agency, a political subdivision of the State of Nevada organized and existing under Chapter 279 of the Nevada Revised Statutes (the “RDA”), and:

NAME OF PARTICIPANT:

PARTICIPANT’S PHYSICAL ADDRESS:

PARTICIPANT’S MAILING ADDRESS (IF DIFFERENT):

TELEPHONE NUMBER: _____

EMAIL ADDRESS: _____

(the “Participant”).

PHYSICAL ADDRESS OF PROJECT PROPERTY:

(the “Project Property”).

RECITALS

WHEREAS, the RDA, in its continuing effort to support the redevelopment of the Elko Redevelopment Area (the “Area”), has created the Storefront Improvement Program (the “Program”);



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WHEREAS, the primary objective of the Program is to encourage and support building and business owner investment in upgrading their existing building storefronts on selected properties within the Area;

WHEREAS, the Program is a process that involves a one-time reimbursement of up to 50% of approved expenses from the RDA for businesses and building owners who construct eligible improvements to the facades of their buildings, to include expenses for construction, painting and refinishing, preparation and permitting of plans, building permit fees, design work and construction drawings (the “Work”);

WHEREAS, the Program will provide reimbursement for a Participant’s investment in the Work in an amount between \$5,000.00 and \$25,000.00 per parcel (the “Grant”);

WHEREAS, the Participant must apply for and be approved in order to receive the Grant;

WHEREAS, the Participant must comply with this Agreement, to include any requirements incorporated by reference in order to be eligible for the Grant;

WHEREAS, the Project Property is located within the Area;

WHEREAS, the Participant seeks to take part in the Program pursuant to the terms and conditions of this Agreement;

NOW, THEREFORE, for and in consideration of the above recitals and the terms and conditions set forth below, the RDA and the Participant agree as follows:

I.

PROGRAM DESCRIPTION

A. The RDA shall reimburse the Participant for the cost of the Work at the rate of _____ percent (___%); *provided*, the Grant amount shall be no less than **FIVE THOUSAND DOLLARS (\$5,000.00)** per Assessor’s Parcel Number and no greater than **TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00)** per Assessor’s Parcel Number.

B. Costs which are eligible for reimbursement include all labor, material, equipment and other related items necessary for the proper performance of the Work as shown on the plans, design drawings, specifications and estimates approved by the RDA, attached at **Appendix 1** and incorporated herein; *provided*, costs paid for in cash will not be reimbursed by the RDA.



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C. In order to be eligible to participate in the Program, all requirements set forth in the **Program Guidelines**, attached hereto at **Appendix 2** and incorporated herein, must be complied with and satisfied.

D. By signing this Agreement, the Participant certifies that all requirements set forth in the **Program Guidelines** have been satisfied and will remain satisfied throughout the Term (defined below).

E. Participant acknowledges that it has obtained all certificates of insurance from its contractor(s) in compliance with the **Program Guidelines**.

F. In the event the RDA determines that the Participant has materially misrepresented any information needed to obtain approval for participation in the Program, to include the foregoing certification that the requirements set forth in the **Program Guidelines** have been satisfied, the RDA may thereupon immediately recover the entire amount of the Grant from the Participant, together with reasonable attorney fees and costs incurred in enforcing this provision.

II.

SUBMISSION AND APPROVAL

A. No Work shall be undertaken until its design has been submitted to and approved by the RDA. Following approval, the Participant shall contract for the Work within one hundred eighty (180) days from the date of approval by the RDA Grant Review Committee.

B. All Work shall be completed within nine (9) months of the date of approval by the RDA Grant Review Committee.

III.

REVIEW BY RDA

The RDA will periodically review the progress of the Work. These inspections do not replace any required permit inspections by the City of Elko or any other regulatory authority. All defective Work or Work which fails to conform to the approved plans, design drawings and specifications at **Appendix 1** shall be immediately brought into conformity by the Participant.

IV.

ACCEPTANCE BY RDA

Upon completion of the Work and upon final inspection and acceptance of the Work by the RDA, the Participant shall complete and submit to the RDA a properly executed **Reimbursement**



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Request Form (supplied by the RDA) showing all expenses incurred in performing the Work. In addition, the Participant shall submit to the RDA proof of payment of the expenditures listed on the **Reimbursement Request Form** and final lien waivers from all contractors and subcontractors.

V.

PAYMENTS BY RDA

A. The RDA shall, within forty-five (45) days of receipt of the **Reimbursement Request Form**, all proofs of payment, and all lien waivers from all contractors and subcontractors, issue a Final Payment to the Participant as reimbursement for _____ percent (___%) of the approved expenditures for performance of the Work, less any amounts previously reimbursed and subject to any limitations set forth in this Agreement.

B. In addition to the foregoing, if the total amount of the Grant is \$10,000.00 or more, upon completion of fifty percent (50%) of the Work and following receipt of a **Reimbursement Request Form** and all proofs of payment, the RDA may, in its discretion, issue a Progress Payment to the Participant as reimbursement for _____ percent (___%) of the approved expenditures for the Work performed up to that point in the Project, subject to any limitations set forth in this Agreement; *provided*, in the event Participant subsequently fails to complete the Project in accordance with this Agreement, Participant shall immediately upon demand by the RDA repay the Progress Payment to the RDA, together with interest thereon at the rate of eighteen percent (18%) per annum accruing from the date the Progress Payment was made.

VI.

FAILURE TO COMPLETE WORK

If the Participant (including Participant's contractor(s) and/or subcontractor(s)) fails to complete the Work in accordance with this Agreement, to include the approved plans, design drawings and specifications at **Appendix 1**, then upon written notice from the RDA to the Participant in the manner provided herein, this Agreement shall terminate and the financial obligation on the part of the RDA shall also terminate without any retroactive obligation on the part of the RDA to reimburse the Participant for any Work performed or money or labor expended. Any breach of this Agreement by the Participant shall automatically and immediately disqualify the Participant from any Grant funds, to include Grant funds for Work already performed or funds already expended.

VII.

MAINTENANCE OF WORK, REMEDIES FOR BREACH

Upon completion of the Work pursuant to this Agreement and for the duration of the Term

(defined below), the Participant and any subsequent transferee of the Project Property, such as a purchaser, shall properly maintain the completed Work in finished form and without change or alteration. The foregoing maintenance obligations shall include all such obligations set forth in the **Program Guidelines**. For the duration of the Term, the Participant and any subsequent transferee of the Project Property shall not enter into any contract for or take any other steps to alter, change or remove any or all of the completed Work, nor shall the Participant or any subsequent transferee undertake any other changes, by contract or otherwise, to the improvements made in performing the Work, unless the proposed changes are first reviewed and approved by the RDA. In the event the Participant or any subsequent transferee breaches this Article VII (Maintenance of Work), the RDA may thereupon recover the entire amount of the Grant from the Participant and/or the subsequent transferee of the Project Property, together with reasonable attorney fees and costs incurred in enforcing this provision.

VIII.

RESTRICTIVE COVENANT AND SUCCESSORS

The Participant shall, at the request of the RDA, record a restrictive covenant for the purpose of preserving the completed Work throughout the Term (defined below). The Participant shall inform any subsequent purchaser of Project Property of this Agreement and the obligations herein contained. The Participant (or any subsequent transferee) shall include in any conveyance of the Project Property during the Term language incorporating by reference the obligations of this Agreement and specifically reciting the text of Article VII (Maintenance of the Work) and making these obligations binding upon any transferee.

IX.

TERM

This Agreement shall commence on the Effective Date and shall terminate three (3) years thereafter; the period of time during which this Agreement remains in effect is referred to herein as the “Term.”

X.

HOLD HARMLESS AND INDEMNIFICATION

The Participant shall indemnify the RDA and shall release, hold and save the RDA harmless from and against all liabilities, debts, claims, actions, causes of action, losses, damages and attorney’s fees now existing or that may hereafter arise or result from performance of the Work. Without limitation, as used in this Article X, the term “the RDA” shall include all officials, officers, employees, directors, employees, agents and representatives of the Elko Redevelopment Agency.



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XI.

OTHER WORK

Nothing herein is intended to limit, restrict or prohibit the Participant from undertaking any other work in or about the Project Property which is unrelated to the Work.

XII.

GENERAL PROVISIONS

A. AMENDMENT.

No modification, amendment, addition to, or termination of this Agreement nor waiver of any of its provisions shall be valid or enforceable unless in writing and signed by all the parties.

B. ASSIGNMENT; BINDING EFFECT.

This Agreement shall be binding on the parties' successors and assigns.

C. NOTICES.

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing and if personally delivered or sent by registered or certified mail to:

If to the RDA:

**Elko Redevelopment Agency
c/o Elko City Planner
1751 College Avenue
Elko, Nevada 89815**

If to the Participant:

Name of Participant: _____

Name of Contract (if different): _____

Title of Contact: _____

Mailing Address: _____

City/State/Zip Code: _____



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or such other address as shall be specified in writing by either the RDA or the Participant.

D. GOVERNING LAW AND VENUE.

This Agreement shall be governed, construed and enforced according to the laws of the State of Nevada. Any action to enforce this Agreement or regarding any benefits or conditions of this Agreement shall be filed in the Fourth Judicial District Court in and for the County of Elko, State of Nevada, which court shall have jurisdiction and venue over said action.

E. ATTORNEY FEES AND COSTS.

In the event of any litigation concerning this Agreement between the parties, the prevailing party shall be entitled to recover all of its court costs and reasonable attorney's fees from the other party.

F. SEVERABILITY.

In the event any term or provision of this Agreement is held to be invalid or unenforceable in any respect by a court of competent jurisdiction, then all other terms and provisions of this Agreement shall remain in full force and effect and shall not in any way be affected or impaired thereby.

G. CAPTIONS.

The captions appearing at the commencement of the articles and sections and herein are not substantive but are descriptive only and for convenience in reference to this Agreement and in no way whatsoever define, limit or describe the scope or intent of this Agreement or other otherwise affect the same.

H. NO INTEREST IN PROJECT PROPERTY.

Nothing in this Agreement shall be construed to transfer any interest in the Project Property to the RDA.

I. ENTIRE AGREEMENT.

This Agreement (including any appendices hereto and any documents incorporated by reference) contains the entire agreement between the RDA and the Participant with respect to the subject matter hereof, and all representations, provisions and covenants between the parties, whether verbal or written, are merged herein.



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J. TIME OF THE ESSENCE.

Time is of the essence in this Agreement and of each covenant and agreement that is to be performed at a particular time or within a particular period of time. However, if the final date of any period which is set forth in this Agreement falls on a Saturday, Sunday or legal holiday under the Laws of the United States or the State of Nevada, then the time of such period shall be extended to the next date which is not a Saturday, Sunday or legal holiday.

L. CONFLICTING TERMS.

In the event of a conflict between this Agreement and any document incorporated herein by reference, to include the appendices hereto, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement:

ELKO REDEVELOPMENT AGENCY:

By: _____
Signature

Print Name

PARTICIPANT:

By: _____
Signature

Print Name