

**AGREEMENT FOR THE INSTALLATION,
PURCHASE AND SALE OF ARTWORK**

This Agreement for the Installation, Purchase and Sale of Artwork (the “Agreement”) is made and entered into this _____ day of _____, 20____ (hereinafter the “Effective Date”), by and between the **CITY OF ELKO**, a municipal corporation and political subdivision of the State of Nevada (hereinafter the “CITY”), and:

Name

Address

City/State/Zip Code

Telephone number

(hereinafter the “ARTIST”), for the installation, purchase and sale of the following artwork:

more fully described at **Exhibit 1** (hereinafter the “ARTWORK”), to be located on real property owned by the CITY on the designated concrete slab between Railroad Street and Commercial Street on the east side of 6th Street Parking Corridor, shown on the map at **Exhibit 2** (hereinafter the “Site”).

RECITALS

WHEREAS, ARTIST holds the rights to install and sell the ARTWORK; and

WHEREAS, the CITY desires to purchase the ARTWORK following its installation at the Site upon the terms and conditions contained in this Agreement; and

WHEREAS, the CITY intends the ARTWORK to be a permanent installation at the Site for the benefit of the residents of the City of Elko; and

WHEREAS, pursuant to NRS 332.115, this Agreement is not adapted to award by competitive solicitation.

NOW, THEREFORE, for good and valuable consideration and based upon the

foregoing recitals, which are incorporated herein by this reference, and subject to all terms and conditions of this Agreement, the CITY agrees to purchase from the ARTIST and the ARTIST agrees to sell to the CITY the ARTWORK, as follows:

1. AUTHORITY: The ARTIST unconditionally represents, warrants and guarantees:

1.1 That the ARTIST has full rights and permission from any other person or entity which has an interest in the ARTWORK, including but not limited to any copyright and other legal rights to install and sell the ARTWORK in accordance with this Agreement; and

1.2 That the ARTIST will not utilize any protected patent, trademark or copyright relating to the ARTWORK.

2. INSTALLATION AND SALE OF ARTWORK: The ARTIST shall, at its own risk and expense, transport to and install the ARTWORK at the Site and shall abide by the following requirements:

2.1 The ARTIST shall install the ARTWORK at the Site and shall position the ARTWORK in accordance with instructions from the CITY.

2.2 Upon completion of installation, the CITY shall inspect the ARTWORK within five (5) business days. The CITY shall seasonably thereafter deliver to the ARTIST either written Notice of Acceptance or Notice of Rejection of the ARTWORK.

2.3 In the event the CITY accepts the ARTWORK following installation at the Site, title to the ARTWORK shall pass to the CITY upon delivery of Notice of Acceptance delivered to the ARTIST.

2.4 In the event the CITY rejects the ARTWORK following installation at the Site, title to the ARTWORK shall remain with the ARTIST and the CITY shall seasonably thereafter deliver a Notice of Rejection to the ARTIST; provided, the CITY may only reject the ARTWORK upon its determination that the ARTWORK is defective or fails to conform to the description set forth in this Agreement (to include **Exhibit 1**), or if the ARTIST materially breaches this Agreement for a reason other than failure to satisfactorily complete the installation of the ARTWORK on or before the Installation Deadline (which shall be deemed an automatic material breach of this Agreement).

2.5 The ARTIST or any third-person utilized by the ARTIST (such as an employee or contractor) shall install the ARTWORK in accordance with all applicable laws, regulations, ordinances, resolutions and codes, and consistent with standards of skill provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

2.6 The ARTIST shall consult with the CITY regarding all aspects of the ARTIST'S performance under this Agreement, to include the timing of the installation, and shall comply with the CITY'S instructions. The ARTIST shall ensure that the ARTWORK is safely installed in a manner compatible with the existing concrete foundation at the Site.

2.7 Should any deficiency in the installation of the ARTWORK be brought to the ARTIST'S attention by the CITY at any time, the ARTIST shall promptly rectify the deficiency at its sole expense. The foregoing requirement shall survive the Term.

2.8 The ARTIST shall coordinate and perform the installation in a manner and at a time so as not to cause conflict or interfere with any of the CITY'S operations, or its construction or maintenance activities, or any permitted special events.

2.9 Following the installation, the ARTIST shall promptly perform such clean up on the CITY'S property in and around the Site as is necessary to return the area around the installed ARTWORK to its condition on the Effective Date.

2.10 The CITY may request the ARTIST to implement reasonable measures to protect the public if concerns arise regarding the CITY'S potential liability related to the ARTWORK (such as access to the Site by children) during the Term. The CITY shall notify the ARTIST in writing should such a concern arise and the ARTIST shall perform the requested reasonable measures at its own expense, to include, without limitation, installation of temporary signage and barricades.

2.11 Upon delivery of written Notice of Acceptance from the CITY to the ARTIST confirming satisfactory installation of the ARTWORK and compliance with this Agreement, title to the ARTWORK shall pass to the CITY and the ARTIST shall have no further rights in or to the ARTWORK.

3. TERM AND INSTALLATION DEADLINE:

3.1 The Term of this Agreement shall commence on the Effective Date and terminate upon delivery the CITY'S Notice of Acceptance or Notice of Rejection to the ARTIST.

3.2 The ARTIST shall complete the installation of the ARTWORK at the Site on or before _____, unless extended by mutual agreement of the parties (the "Installation Deadline").

4. ARTIST'S OBLIGATIONS: The ARTIST shall be responsible, at its sole expense, for the installation of the ARTWORK in accordance with the following requirements:

4.1 The ARTIST must deliver the ARTWORK to the Site and install the ARTWORK prior to the Installation Deadline in coordination with CITY personnel.

4.2 The ARTIST must provide all hardware, tools and equipment required for the installation, such as bolts, brackets, hammer drills and cleaning brushes.

4.3 The ARTWORK must be structurally sound and safe for the general public, including children.

4.4 The ARTWORK must be extremely durable in outdoor conditions.

4.5 The ARTIST hereby warrants the ARTWORK for a period of one (1) year after installation against any and all defects in structural integrity and any other defect which reasonably may affect public safety and the aesthetics of the ARTWORK. The ARTIST shall, within five (5) business days after delivery of written notice from the CITY during the 1-year warranty period, promptly repair at ARTIST'S sole expense and through the use of ARTIST'S own resources any such defects.

5. DISCLAIMERS AND REMOVAL OF LIENS:

5.1 The CITY shall not be responsible for installing the ARTWORK.

5.2 The ARTIST shall not seek to hold the CITY responsible, in any manner, for claims made by third-parties, including but not limited to claims for personal injury or property damage in connection with the ARTWORK (to include claims arising out of the ARTIST'S installation of the ARTWORK) for claims arising from events occurring during the Term.

5.3 The ARTIST shall immediately remove any liens placed upon the ARTWORK or, to the extent arising from ARTIST'S performance, acts or omissions under this Agreement, the Site. In the event the ARTIST fails to immediately remove a lien placed upon the ARTWORK or the Site, the CITY may cause the lien to be removed by payment to the party claiming the lien or as otherwise allowed by law, and the ARTIST shall immediately reimburse the CITY for any amounts incurred in removing the lien or any legal action relating thereto, to include attorney fees and costs.

6. CITY'S OBLIGATIONS: The CITY agrees to perform the following duties:

6.1 The CITY shall provide reasonable access to the Site and other CITY property to enable the ARTIST to perform its obligations under this Agreement.

6.2 In exchange for the satisfactory performance of the ARTIST'S obligations under this Agreement, the CITY will pay the ARTIST as follows:

6.3.1 \$_____ (which amount represents one-half (1/2) of the Artist Honorarium) to be paid within fourteen (14) days of the Effective Date.

6.3.2 \$ _____, together with any remaining balance of the Artist Honorarium, to be paid within fourteen (14) days after delivery of the CITY'S Notice of Acceptance to the ARTIST.

6.3 The Artist Honorarium shall be calculated as the sum of ARTIST'S documented costs associated with materials and labor needed to create the ARTWORK, together with the cost of transportation, insurance, travel, installation, and other expenses required for the installation of the ARTWORK at the Site. The Artist Honorarium shall be paid in two installments as set forth in Subsections 6.3.1 and 6.3.2, above; provided, in the event the ARTWORK is not satisfactorily installed at the Site on or before the Installation Deadline, the ARTIST shall be automatically deemed to be in material breach of this Agreement, shall not be entitled to the Artist Honorarium or any portion thereof, and shall promptly reimburse the CITY for any portion of the Artist Honorarium previously paid. It is the intent of the parties that this Agreement shall automatically terminate based on the ARTIST'S material breach without delivery of a Notice of Rejection if the ARTIST fails to satisfactorily install the ARTWORK at the Site on or before the Installation Deadline.

6.4 Upon delivery of a Notice of Rejection to the ARTIST, the CITY shall be released from all further payment obligations to the ARTIST and the ARTIST shall retain all amounts previously paid as liquidated damages to compensate the ARTIST for its losses, such losses being difficult to quantify or prove. The foregoing liquidated damages shall be accepted by ARTIST as reasonable compensation in full satisfaction of any claims against the CITY arising under this Agreement.

7. PHOTOGRAPHIC DEPICTIONS: The ARTIST represents that it has all rights needed to grant, and hereby does grant to the CITY, a license to reproduce and distribute photographic or other depictions of the ARTWORK during the Term, during which time the City may utilize any photographic or other depictions of the ARTWORK in any manner it sees fit.

8. TERMINATION AND REMOVAL:

8.1 This Agreement shall terminate upon delivery of the CITY'S Notice of Acceptance or Notice of Rejection to the ARTIST, subject to any obligations that survive the Term.

8.2 In the event the CITY delivers a Notice of Rejection to the ARTIST, the ARTIST shall within thirty (30) days thereafter remove the ARTWORK from the Site at its own expense. The foregoing requirement shall survive the Term.

8.3 The parties may terminate this Agreement by mutual written consent, subject to approval by Elko City Council.

8.4 If the ARTIST is required to remove the ARTWORK following a Notice

of Rejection, the ARTIST shall leave the display foundation and the CITY'S property clean and in as good condition as on the Effective Date, reasonable wear and tear excepted.

8.5 This Agreement shall terminate automatically if the ARTWORK is not installed by the Installation Deadline and the CITY shall thereafter be released from all further obligations to the ARTIST arising under this Agreement.

9. INSURANCE AND RISK OF LOSS:

9.1 During the Term, the ARTIST shall maintain its own insurance policy protecting the ARTWORK naming the CITY as an additional insured. The CITY will not provide insurance coverage or indemnity for any risk pertaining to the ARTWORK during the Term. Any person responsible for the installation (and, in the event of a Notice of Rejection, removal) of the ARTWORK shall comply with the CITY'S standard insurance requirements as determined by the Elko City Manager. If the ARTIST cannot reasonably provide insurance that satisfies these requirements, the ARTIST shall submit to the CITY documentation of any relevant insurance coverage the ARTIST can provide and the CITY will determine, in its sole discretion, whether the coverage is acceptable. In the event the ARTIST is unable to obtain insurance coverage that is acceptable to the CITY, this Agreement may be immediately terminated by the CITY, the ARTIST shall refund to CITY any amount that has been paid to the ARTIST at the time of termination, and the CITY shall have no further obligations hereunder.

9.2 The ARTIST shall be responsible for any damages caused to the ARTWORK during the Term by exposure to the elements, vandalism or any other impacts of being exhibited outdoors in public.

9.3 The ARTIST assumes all risk of loss due to fire or other casualty during the Term.

9.4 The ARTIST is responsible for any damage to CITY property caused by ARTIST'S performance under this Agreement.

10. INDEMNIFICATION:

10.1 Neither the CITY nor its officers or employees shall be responsible or liable for any debt, action, obligation, negligence or liability committed or incurred under this Agreement by the ARTIST. The ARTIST agrees to indemnify, defend, release and hold harmless the CITY, its officers and employees, and each of them, from and against any and all claims, liabilities, and damages of any kind, including reasonable attorney fees, expert fees and litigation costs arising from or relating to any personal injury, death or property damage incurred in the performance of this Agreement or caused in whole or part by ARTIST or any of its officers, employees, agents, contractors or subcontractors; provided, the foregoing does not apply to liability or damages arising from the sole negligence or willful misconduct of the CITY, its officers, agents, or employees. The CITY may, in its sole discretion and at its sole expense,

participate in the defense of any claim against the CITY or its officers or employees. This Section does not waive, and the CITY intends to assert all common law and statutory defenses and immunities available to it or its officers or employees, including those set forth in NRS Chapter 41.

10.2 The ARTIST agrees to release, indemnify and hold harmless the CITY and its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance of this Agreement that infringe upon any patent, trademark or copyright that is protected by law.

10.3 If any claim asserting liability occurs in connection with the ARTIST'S performance under this Agreement or in relation to the ARTWORK, the ARTIST shall immediately notify the Elko City Manager by electronic mail, followed by hard copies of all claims information and documentation within ten (10) calendar days of notice of the occurrence or claim.

11. COMPLIANCE WITH LAW:

11.1 The ARTIST shall comply with all applicable federal, state and local laws, ordinances, executive orders and regulations, including but not limited to those prohibiting discrimination, to include Executive Order 14173, entitled "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." In the event any performance due under this Agreement is subject to Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. ("Title VI"), the ARTIST agrees, if requested, to furnish the CITY with a copy of its Title VI policy. The ARTIST agrees that it will not discriminate against any employee or applicant for employment for work under this Agreement on the basis of race, color, religion, gender, age, national origin, creed, marital status or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration or implementation of this Agreement.

11.2 The ARTIST shall comply with Title I and Title II of the Americans with Disabilities Act, as amended, regarding nondiscrimination on the basis of disability in employment and in state and local government services in the course of providing any services funded in whole or in part by the CITY.

12. INDEPENDENT CONTRACTOR: The parties agree that the ARTIST is an independent contractor, that neither the ARTIST nor any of its agents or employees is a CITY employee, and that there shall be no:

12.1 Withholding of income taxes by the CITY;

12.2 Industrial insurance provided by the CITY;

12.3 Participation in group insurance plans which may be available to employees of the CITY;

12.4 Participation or contributions by either the ARTIST or the CITY to any public employee's retirement system for the ARTIST or any of its officers, employees, or agents;

12.5 Accumulation of vacation leave or sick leave; or

12.6 Unemployment compensation coverage provided by the CITY if the requirements of NRS 612.085 for independent contractors are met.

13. ASSIGNMENT: This Agreement shall not be assigned, delegated, transferred, or otherwise encumbered under any circumstances by either party without the prior written consent of the other party.

14. ALL PRIOR AGREEMENTS SUPERSEDED: This document is the entire agreement between the parties with respect to the subject matter hereof and incorporates and includes all prior negotiations, correspondence, conversations and agreements. There are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this Agreement. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements not contained herein, whether oral or written.

15. MODIFICATIONS: No modification, amendment or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed by the parties hereto.

16. TIME: The parties recognize that time is of the essence in the performance of the provisions of this Agreement.

17. WAIVER: Waiver of a breach of any provision of this Agreement shall not be deemed a waiver of any other or subsequent breach and shall not be constructed to be a modification of the terms of the Agreement.

18. PREVAILING PARTY: Should either party be required to enforce or interpret the terms and conditions of this Agreement through legal process, the prevailing party shall be entitled to an award of reasonable attorney fees and costs.

19. INTERPRETATION: Each party to this Agreement has had an opportunity to review the Agreement and to consult with its respective legal counsel regarding the meaning of the Agreement. Accordingly, this Agreement shall not be construed in favor of or against any party solely by reason of one party having drafted all or any part of this Agreement.

20. GOVERNING LAW AND VENUE: This Agreement shall be governed by the laws of the State of Nevada. Any litigation between the parties concerning or arising out of this Agreement shall be filed and maintained in a court of competent jurisdiction located in Elko

County, Nevada.

21. NOTICES: All notices and other communications required or permitted under this Agreement shall be in writing and may be delivered by hand, email with verification of receipt, or by United States mail, UPS or FedEx, with postage prepaid and return receipt requested or with delivery tracking, addressed to the respective parties as follows:

CITY:

Elko CITY Manager
1751 College Avenue
Elko, Nevada 89801
Email: _____

ARTIST:

A copy of any notice of a legal nature, including but not limited to any claims against the CITY or its officers, or employees, shall be served upon the CITY in a manner specified above.

Any party may designate a different address for notice by giving notice of such change in accordance with this Section. Notice shall be deemed delivered on the date of personal delivery by hand; on the date delivery is refused, if applicable; on the date of emailing if receipt is verified; or on the date of mailing if by United States mail, UPS or FedEx, with postage prepaid and return receipt requested or with delivery tracking.

22. COUNTERPARTS: This Agreement may be executed in counterparts, all of which together shall constitute one instrument.

23. SIGNATURES: A facsimile, electronic or PDF signature to this Agreement shall have the same force and effect as an original.

24. THIRD PARTIES: This Agreement shall not be construed so as to confer any right or benefit on any person or entity not a party hereto; accordingly, there are no third-party beneficiaries to this Agreement, intended or otherwise.

25. DEFAULT AND REMEDIES: Except as otherwise provided herein, if either party materially defaults under this Agreement and fails to cure the material default upon thirty

(30) days' written notice from the non-defaulting party, then the non-defaulting party may within fourteen (14) days thereafter terminate this Agreement and, within the time allowed by law and equity, may pursue all rights and remedies, to include an action for specific performance if appropriate. The preceding sentence does not modify any other termination provisions contained in this Agreement. Notwithstanding any other provision herein contained, in addition to any other remedies available to the CITY, in the event of a material breach of this Agreement by the ARTIST, to include failure to install the ARTWORK on or before the Installation Deadline, the ARTIST shall immediately refund to the CITY all amounts paid to the ARTIST pursuant to this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto on the Effective Date.

CITY OF ELKO, NEVADA

ARTIST:

By: _____
REECE KEENER, MAYOR

By: _____

Title: _____

ATTEST:

ANNETTE ROBINSON CITY CLERK