

**COST SHARING AGREEMENT FOR
VERTICAL ACCESS TOWER OPERATION AND MAINTENANCE**

**Central Station Block in Downtown Saint Paul
METRO Green Line**

THIS AGREEMENT (“Agreement”) is made and entered into by the Metropolitan Council (“Council”) and the City of Saint Paul (“City”).

Recitals

WHEREAS, the Council completed construction of its Central Corridor Light Rail Transit line as part of its METRO Green Line and has commenced METRO Green Line revenue service along the Central Corridor on June 14, 2014; and

WHEREAS, one of the METRO Green Line stations is located in downtown Saint Paul (“Central Station”) on the city block bounded by 5th Street on the north, Minnesota Street on the east, 4th Street on the south, and Cedar Street on the west (“Central Station Block”); and

WHEREAS, construction of the Central Station as originally designed did not include stair or elevator access (“Vertical Access Tower”) to the pedestrian skyway that extends over the Central Station Block, a portion of which skyway was constructed and is owned by the Council; and

WHEREAS, 2013 Minnesota Laws chapter 127, section 61 requires the Council and the City to “include construction or establishment of access to a pedestrian skyway system” at the Central Station as part of the initial METRO Green Line construction project; and

WHEREAS, connecting the Central Station Block to the downtown pedestrian skyway system benefits persons who visit Saint Paul, persons who live and work in downtown Saint Paul and transit customers who use the METRO Green Line and connecting bus service; and

WHEREAS, the Council, the City and the Housing and Redevelopment Authority of the City of Saint Paul, Minnesota (“Saint Paul HRA”) entered into a Memorandum of Understanding (“MOU”), identified as Council Agreement No. 13I018, which memorializes the City’s, the Saint Paul HRA’s and the Council’s common or shared goals and objectives for the redevelopment and future use of the Central Station Block; and

WHEREAS, one of the shared goals and objectives of the City, the Saint Paul HRA and the Council is “to find a mutually acceptable method for covering the ongoing costs of operating and maintaining the Vertical Access Tower until the Central Station Block is redeveloped, after which time the operation and maintenance costs should be borne by the owner(s) of the redevelopment”; and

WHEREAS, the City proposed and took the proposed Vertical Access Tower through initial design development but the original specifications for the Vertical Access Tower did not include a public art component; and

WHEREAS, the City, at its own expense, elected to incorporate public art into the Vertical Access Tower; and

WHEREAS, the Council secured or provided funding for the construction of the Vertical Access Tower, the cost of which was estimated to exceed \$1.94 million; and

WHEREAS, the City, the Saint Paul HRA and the Council also expressed in the MOU their intention to enter into a separate binding agreement that addresses in detail ongoing responsibilities for the operation and maintenance costs of the Vertical Access Tower until the Central Station Block is redeveloped and this Agreement will serve as that agreement; and

WHEREAS, the governing bodies of the City and the Council authorized the execution of this Agreement at their respective meetings on May 22, 2013.

NOW, THEREFORE, in reliance on the statements in the recitals and in consideration of the mutual promises and covenants contained in this Agreement, the City and the Council agree as follows:

1. **Vertical Access Tower.** The City and the Council will share the costs of operating and maintaining the Vertical Access Tower as follows:
 - (a) **Construction.** The Council provided the funding for and was responsible for constructing the Vertical Access Tower on Council-owned property on the Central Station Block. At the City's request the Council included public art through a change order to the Vertical Access Tower construction contract. For the purposes of this Agreement, the Vertical Access Tower generally is defined as: the stair and elevator tower (constructed under Metropolitan Council Contract No. 13P094) that connects 5th Street between Cedar Street and Minnesota Street in downtown Saint Paul and the Central Station to that part of the pedestrian skyway system extending over the Central Station Block.
 - (b) **Annual Operation and Maintenance Costs.** The Council is solely responsible for operating and maintaining the Vertical Access Tower and maintaining the public art. The Council and the City will share the annual operating costs of the Vertical Access Tower as provided in this paragraph, and all costs unique to the maintenance of the public art will be paid by the City as provided in Paragraph 2(b) below. The estimated annual cost of operating and maintaining the Vertical Access Tower is \$75,000. The City is responsible for one-half of the annual operation and maintenance costs of the Vertical Access Tower, subject to the following conditions: (i) the City will reimburse the Council for fifty percent (50%) of the actual annual cost of operating and maintaining the Vertical Access Tower or \$37,500, whichever amount is lesser, and (ii) the City's responsibility for its share of the annual operation and maintenance costs commences on June 15, 2014. The Council is responsible for annual operations and maintenance costs not reimbursed by the City. The City and the Council will remain responsible for their respective shares of the annual operation and maintenance costs as long as the Council is responsible for operating and maintaining the Vertical Access Tower. Typical operation and maintenance costs (both parts and labor) for a stair and elevator access tower include, but are not limited to: electricity and other utilities; general cleaning and dusting; carpet or

floor mat cleaning and replacement; replacement of broken or cracked standard glass components; repair or replacement of lighting components; repair or replacement of worn or broken doors; repair or replacement of worn or broken elevator components; repair or replacement of surveillance equipment; routine elevator maintenance and inspection; glass cleaning; garbage removal; and graffiti removal. The Council is solely responsible for the costs of operating and maintaining the Council-owned pedestrian skyway extending over the Central Station Block.

- (c) ***Maintenance Contract(s).*** If the Council does not elect to maintain the Vertical Access Tower with its own Metro Transit staff, the Council may enter into one or more contracts for maintenance services. If the Council elects to use outside maintenance services, the Council will be solely responsible for procuring and managing the maintenance services contract(s) and will be solely responsible for approving invoices submitted under any maintenance services contract(s).
- (d) ***Initial and Annual Invoices and Payments.*** Within 30 days after this Agreement is fully executed, the Council will submit to the City an itemized written invoice for the City's share of the costs of operating and maintaining the Vertical Access Tower for the last six months of 2014 and calendar years 2015 and 2016. By March 1 of 2018 and March 1 of each succeeding year, the Council will submit to the City an itemized written invoice for the City's share of the annual costs of operating and maintaining the Vertical Access Tower. The annual invoices will: (i) cover operating and maintenance costs incurred during the preceding calendar year; (ii) cover costs for maintenance unique to the public art (including the cost of storing an inventory of colored glass panels) that were incurred during the preceding calendar year; and (iii) provide sufficient detail to ensure the City is invoiced only for costs directly related to the operation and maintenance of the Vertical Access Tower, costs for storing an inventory of colored glass panels and costs for maintenance that is unique to the public art, and not to any part of the Council-owned skyway system. The City will make its annual reimbursement payments to the Council within thirty (30) days after the City receives a written invoice. Invoices from the Council should be sent to:

City of Saint Paul
Attn: Real Estate Division
City Hall Annex Suite 1000
25 West Fourth Street
Saint Paul, Minnesota 55102

Annual and other reimbursement payments by the City should be sent to:

Metro Transit Engineering & Facilities
Attn: Assistant Director, Facilities Maintenance
560 Sixth Avenue North
Minneapolis, Minnesota 55411

- 2. **Public Art.** The City is responsible for the costs of design, fabrication and installation of the public art (all of which have been paid for); and maintenance costs that are unique to the public art.

- (a) **Description of Public Art.** The public art comprises: colored exterior glass panels; colored glass curtainwall on the elevator hoistway; mirrored bird images applied to certain glass panels; and artist-selected colors for the terrazzo floor. The artist-selected colors for the terrazzo floor are intended to complement the colored glass panels.
- (b) **Maintenance of Public Art.** While the Council will perform all maintenance work for the public art, the City is solely responsible for the costs of all maintenance that is unique to the public art. For the purposes of Paragraphs 2(b) and 1(d) “the cost of maintenance that is unique to the public art” means the cost of storing an inventory of colored glass panels, maintaining, repairing, replacing or protecting the public art as designed, including any additional labor or shipping costs associated with the maintenance, repair, replacement or protection of the public art, that would not have been incurred if the items were not public art components. The Council will submit to the City itemized written invoices for the Council’s actual reasonable and necessary cost of performing public art maintenance work. The City will reimburse the Council the difference between the cost of maintaining, repairing, replacing or protecting public art components and the cost of maintaining, repairing, replacing or protecting those same items if those items were not components of the public art. The maintenance costs that are unique to the public art are excluded from, and are in addition to, the Vertical Access Tower operation and maintenance costs for which the City assumes responsibility in Paragraph 1(b) of this Agreement, and will be included in the Annual Invoices and Payments described in Paragraph 1(d). The following is an illustrative example of the cost allocation described in this paragraph: If the actual cost of purchasing and installing a replacement clear glass panel is \$500 and the actual cost of purchasing and installing a replacement colored glass panel is \$600, the City’s total share of this maintenance cost is \$350: 50% of \$500 (pursuant to Paragraph 1(b)) plus 100% of the additional \$100 cost associated with the colored glass panel (pursuant to this Paragraph 2(b)).
- (c) **Public Art Component Inventory.** The Council will, at the City’s expense, maintain and store an inventory of colored glass panels so the public art can be timely maintained as designed. The inventory will include at least one glass panel of each size and color of the exterior glass panels and colored glass curtainwall. When a colored glass panel is removed from the inventory or is damaged during storage the Council will purchase and place into inventory an identical colored glass panel to replenish the stock. The City will pay all reasonable and necessary costs associated with the Council’s purchasing and placing into inventory an identical colored glass panel to replenish the stock. The Council will periodically (but not less than every two years) review with the City any contracts the Council has relating to the storage and maintenance of the colored glass panels for purposes of determining the reasonableness of such costs. The City has the option but not the obligation to physically repair or replace any damaged or destroyed mirrored bird images.
- (d) **Removal of Colored Glass Panels.** The City has the right at any time to elect to remove the colored glass panels (and mirrored bird images) in the Vertical Access Tower. If the City exercises this right, the City will, at its expense, decommission the public art and the Council will remove the colored glass panels and replace them with tempered glass panels. The City will reimburse the Council for the actual costs of (i) removing the colored glass panels and mirrored bird images; (ii) purchasing and installing tempered glass panels; and (iii) permits, LRT service disruptions and road, sidewalk and skyway

closures. Council will not be responsible for any damage to the colored glass panels or mirrored images resulting from their removal.

The City will coordinate its decommissioning work with the Council. The decommissioning, removal, and replacement costs are excluded from, and are in addition to, the Vertical Access Tower operation and maintenance costs for which the City assumes responsibility in Paragraph 1(b) of this Agreement. Upon removal of the colored glass panels, there will no longer be any costs for maintenance that is unique to the colored glass panels as described in Paragraph 2(b).

- (e) **Ownership of Public Art and Signage.** The Council has sole ownership and possession of the public art. The City's contract with the artist for the public art, as amended by a first amendment ("Artist Contract"), is hereby assigned to the Council, and the Council hereby assumes and agrees to perform all of the City's duties and obligations under the Artist Contract. A copy of the Artist Contract is attached to and made a part of this Agreement. Signage has been installed and will be maintained in the Vertical Access Tower acknowledging the title of the public art piece, the name of the public artist, copyright notice and year of completion, and the City's financial assistance for the public art. Subject to the City's rights under Paragraph 2(d), as long as the City performs its obligations under this Agreement and as long as the Council owns the Vertical Access Tower the public art shall remain in the Vertical Access Tower and be maintained and repaired by the Council. Provided, however, if in the reasonable judgment of the Council's Director of Engineering and Facilities, and after consultation with the City and the Artist, it is determined that any future alterations to the public art are needed to address any future material public safety or operational considerations, then the Council may make such alterations at its own cost. If there exists any conflicts between the provisions of this Agreement and the Artist Contract, the provisions of this Agreement shall control.

3. **Future Responsibility for Vertical Access Tower and Public Art.** The City and the Council agree that the operation and maintenance of the Vertical Access Tower and the maintenance of the public art should be the responsibility of the developer/owner who redevelops the Central Station Block and that the City's and the Council's responsibilities for operating and maintaining the Vertical Access Tower and maintaining the public art should terminate when a third party assumes responsibility for the Vertical Access Tower. The City's and the Council's respective operation and maintenance obligations under this Agreement will continue until a third party assumes responsibility for the operation and maintenance costs. The City and the Council will work cooperatively and collaboratively to transfer Vertical Access Tower and public art ownership and operation and maintenance responsibilities to the developer/owner of the Central Station Block.
4. **Transit Advertising.** Pursuant to Minnesota Statutes section 473.449, the Council reserves the right to place advertising on or in the Vertical Access Tower provided that any such advertising does not unreasonably block the view of the public art. Advertising (if any) placed on or in the Vertical Access Tower will be subject to the Council's *Policies and Standards for Advertising on Metro Transit Properties and Other Council Transit Assets* (adopted Nov. 18, 2015), as the policies and standards may be amended from time to time.

5. **Amendments.** This Agreement may be amended by mutual agreement of the City and the Council. Any amendment must be in writing and signed by the City's and the Council's authorized representatives.
6. **Notices.** Notices from the Council and Council invoices should be sent to the following person, or this person's designee:

City of Saint Paul
Attn: Real Estate Division
City Hall Annex Suite 1000
25 West Fourth Street
Saint Paul, Minnesota 55102

Notices from the City and reimbursement payments to the Council should be sent to the following person, or this person's designee:

Metro Transit Engineering & Facilities
Attn: Assistant Director, Facilities Maintenance
560 Sixth Avenue North
Minneapolis, Minnesota 55411

Or such other person or address as either party may designate in writing to the other party.

7. **Contract Managers.** The City's and the Council's contract managers are:

For the City: Real Estate Manager
 City Hall Annex, Suite 1000
 25 West Fourth Street
 Saint Paul, Minnesota 55102

For the Council: Assistant Director, Facilities Maintenance
 Metro Transit Engineering & Facilities
 560 Sixth Avenue North
 Minneapolis, Minnesota 55411

The City's and the Council's contract managers are not authorized to execute amendments to this Agreement or terminate this Agreement unless prior approval of the governing body of each party is first given.

8. **Liability.** The City and the Council are not liable for the acts or omissions of the other party and neither the City nor the Council waives any immunities or liability limitations conferred on them by any applicable state or federal law, including without limitation the immunities and liability limitations conferred on them by the Municipal Tort Claims Act, Minnesota Statutes Chapter 466. Nothing in this Agreement creates any partnership, joint venture, or agency relationship between the City and the Council.
9. **Termination.** This Agreement will terminate: (i) when ownership and the operation and maintenance responsibilities of the Vertical Access Tower and the public art have been

transferred to a third party; or (ii) when the City and the Council mutually agree in writing to terminate this Agreement.

IN WITNESS WHEREOF, the City and the Council have caused this Agreement to be executed by their authorized representatives. This Agreement is effective on the date when this Agreement has been signed by both the City's and the Council's authorized representatives.

METROPOLITAN COUNCIL

By [Signature]
Its: Regional Administrator

Date 05/02/2017

CITY OF SAINT PAUL

By Nancy P. Horner
for Its: Mayor

Date 9-13-2017

By [Signature]
Its: Director, Department of Planning and Economic Development

Date 9-8-2017

By [Signature]
Its: Director, Office of Financial Services

Date 9-13-17

Approved as to form:

[Signature]
Assistant City Attorney

ATTACHMENT

Metropolitan Council No. 171028

**COST SHARING AGREEMENT FOR
VERTICAL ACCESS TOWER OPERATION AND MAINTENANCE**

**Central Station Block in Downtown Saint Paul
METRO Green Line**

This Attachment comprises: (1) a copy of the Public Art Final Design Phase Agreement between the City of Saint Paul and JoAnn Verburg for Design of Public Artwork (May 1, 2013); and (2) a copy of the First Amendment to and Assignment and Assumption of Public Art Final Design Phase Agreement.

PUBLIC ART FINAL DESIGN PHASE AGREEMENT

02-

**Between the City of Saint Paul and JoAnn Verburg
for Design of Public Artwork**

THIS AGREEMENT, made and entered into this 1st day of May, 2013, by and between the **City of Saint Paul**, Minnesota, a municipal corporation under the laws of the State of Minnesota, hereinafter referred to as "CITY," and **JoAnn Verburg** (referred to in this Agreement as "ARTIST;"), whose permanent address is **901 South 2nd Street, No. 303, Minneapolis, MN 55415**, phone # is **651-398-4455**, email address is **verbsite@aol.com** and Social Security Number is on record.

WHEREAS, funds have been allocated or otherwise made available by the CITY for public art design under PART III – ADMINISTRATIVE CODE, Title 1 – General Provisions, Chapter 12. – Public Art hereinafter referred to as "Public Artwork," for the **Central Station Vertical Connection building** ("Project"); and

WHEREAS, the Project will be constructed and owned by the Metropolitan Council, a public corporation and political subdivision of the State of Minnesota (the "Council"); and

WHEREAS, the Project has been fully designed, and bid out to a general contractor by the Council, without a public art component; and

WHEREAS, the Council is prepared to allow the City to install the Public Artwork into the Project, subject to Council approval on final design, and with the understanding that all additional costs associated with the installation and maintenance of the Public Artwork will be paid for by the CITY; and

WHEREAS, the CITY would like for the Project to have a public art component; and

WHEREAS, the ARTIST has completed a Preliminary Design Concept for the Public Artwork under Contract #02-16385-C, and the Preliminary Design Concept was acceptable to the City; and

WHEREAS, the Preliminary Design Concept involved colored exterior glass panels, colored glass curtainwall on the elevator hoistway, mirrored bird images applied to certain glass panels, and colors chosen for the terrazzo floor which complement the colored glass panels, all architectural elements that would be installed under the general contractor's construction contract with the Council; and

WHEREAS, the CITY wants to proceed with the final design ("Final Design") of Public Artwork for the **Central Station Vertical Connection building** to determine: a) how much the Public Artwork will cost as a change order to the general contractor's construction contract; b) how the Public Artwork will integrate into the building and/or site improvements with regard to structural support, electrical connections and general design; and c) whether, based on this information, to proceed with installation of the Public Artwork; and

WHEREAS, the budget for the Final Design Phase is **\$21,000**, and these funds shall cover all expenses incurred by the ARTIST for the Final Design Phase, including but not limited to fees; materials; applicable State and/or city sales taxes; labor of the ARTIST and the ARTIST's assistants and technical sub-consultants including conservators; studio and operating costs applicable to this Project; insurance; travel costs for the ARTIST to visit and research the site and participate in meetings and public presentations; the presentation of the design proposal to the CITY; and all materials necessary for the Project's lead designer to prepare a biddable change order for the Project's general contractor; and

WHEREAS, the ARTIST has indicated a desire to design for the CITY an original Public Artwork in a timely and professional manner; and

WHEREAS, the ARTIST acknowledges that the CITY has indicated that there are likely to be budgetary limitations on what the CITY will be willing to spend on incorporating the Public Artwork into the Project through the change-order process, but at the time of execution of this contract the CITY has not yet indicated the magnitude of those budget limitations; and

WHEREAS, the CITY will provide information on the aforementioned budget limitations to the ARTIST as soon they can be determined; and

WHEREAS, the ARTIST will be as flexible as is reasonably possible in designing the Final Design for the Public Artwork in a way that fits within the budget limitations; and

WHEREAS, all parties wish the integrity and clarity of the ARTIST's ideas and statements in the Public Artwork to be maintained to the greatest extent possible.

NOW THEREFORE, the CITY and ARTIST, in consideration of the mutual terms and conditions, promises, covenants, and payments hereinafter set forth, agree as follows:

SECTION 1: Scope of Services.

It is the intent of the parties that the CITY and the ARTIST shall establish a cooperative consultation throughout the duration of this Agreement. Therefore, the ARTIST is requested to meet and communicate with representatives of the CITY including committees or groups convened by the CITY, and also with the Project Manager, Martin Schieckel, and Theresa Olsen of TKDA Architects, Project Architect, during Final Design Phase of the Public Artwork. Upon completion of Final Design Phase and acceptance of the concepts expressed in the Final Design

Phase deliverables, the process may proceed to the production of change order documents and the actual implementation of the proposed Public Artwork.

The specific tasks, deliverables, timelines, etc. that make up the design services are as follows:

Deliverables. The Final Design Phase proposal shall include the following deliverables:

- [X] Location of Public Artwork(s) as shown on scaled annotated plans, or site plans, with potential relationships and connections to other sites.
- [X] Scaled or dimensioned drawings showing color, or documentation as required to present a meaningful representation of the proposed Public Artwork, and materials samples and specifications as necessary.
- [X] Complete Public Artwork Statement describing design intention; relationship to project goals and criteria; and description of Public Artwork materials, dimensions, and finish.
- [X] Outline of proposed installation, and the ongoing operations and maintenance that will be required including cost estimate.
- [X] Recommendations regarding site preparation, including but not limited to appropriate lighting, electrical and mechanical systems connections, and the structural support necessary for the Public Artwork.
- [X] Images and materials specifications that will allow Project Architect to prepare change order documents suitable for bidding and installation by the Council's contractor.

SECTION 2: Time for Completion.

The Final Design Phase deliverables shall be submitted to the CITY by **August 1, 2013.**

All work shall be completed by **August 1, 2013.**

In the event that there are delays caused by actions of the CITY, or which may be reasonably requested by the ARTIST which can change the completion date, the ARTIST shall request an extension of time for completion of the project. The Project Manager will review the request and with approval of the department head may grant to the ARTIST such extensions of contract time as may be reasonable.

The CITY may require the ARTIST to make such revisions to the Final Design Phase proposal as are necessary for the Public Artwork to comply with applicable statutes, ordinances, or regulations of any governmental regulatory agency having jurisdiction over the Project. The CITY may also request revisions for other practical (non-aesthetic) reasons.

SECTION 3: Title and Copyright.

The ARTIST expressly reserves every right available to the ARTIST in common law or under the Federal Copyright Act and the Visual Artists Rights Act of 1990 (VARA) except ownership and possession and any such rights as those limited by this Agreement. All right, title and interest

in all copyrightable material which the ARTIST shall conceive or originate, either individually or jointly with others, and which arises out of the performance of this Agreement during the Design Phase, will be the property of the ARTIST, and by this Agreement assigned to the ARTIST, along with ownership of any copyrights and copyrightable materials. Upon completion and installation of the Public Artwork, ownership and possession rights of the Public Artwork shall transfer to and vest in the Council.

SECTION 4: Final Design Phase Approval

The CITY shall have final approval of the Final Design Phase proposal. Other named parties upon delegation by the CITY, shall have the right to review and comment on the Final Design Phase proposal. Prior to the completion of Final Design Phase, the ARTIST agrees not to release, transmit, or otherwise disseminate any information associated with or generated as a result of the work performed under this Agreement without prior knowledge and written consent of the CITY.

SECTION 5: Billings and Payment.

That for ARTIST'S faithful performance of this Agreement, the CITY hereby agrees to compensate ARTIST in the amount of \$21,000. Payment of \$19,500 shall be made to ARTIST within 30 days after her delivery of the six "Deliverables" specified in Section 1 above and of an invoice for same; the balance of \$1,500 shall be paid to ARTIST upon installation of the Public Artwork, and ARTIST furnishing the Documents and Records specified in Sections 7 and 8 below and of an invoice for same.

The specified amount shall fully compensate ARTIST for all work and associated costs. The Owner will honor no claim for services and/or costs submitted by the ARTIST not specifically authorized in this Agreement. Total reimbursement for the project shall not exceed \$21,000.

ARTIST shall submit an itemized invoice. Upon receipt of the invoice and verification of the charges by the Project Manager, the CITY shall make payment to ARTIST within thirty (30) days.

SECTION 6: Termination of Design Phase Agreement.

In the event the ARTIST fails to comply with any terms or conditions of the Agreement or to provide in any manner the work or services as agreed to herein, the CITY reserves the right to withhold any payment until the CITY is satisfied that corrective action has been taken or completed. This option is in addition to and not in lieu of the CITY'S right to termination as provided in the sections of this Agreement.

If the Final Design Phase proposal is accepted by CITY, the proposal may be incorporated into a change order for possible incorporation into the construction of the Project. If the Final Design Phase proposal is not accepted by the CITY, at the CITY's sole discretion, the ARTIST may be given one of the following options: A) to present a second proposal, or B) to disengage from the project.

If the ARTIST is given the choice of option A (to present a second proposal), and if the second proposal is accepted, the proposal may be incorporated into a change order for possible incorporation into the construction of the Project. If the Final Design Phase proposal is not accepted at the second presentation, then the ARTIST's involvement with the project will be terminated, and the ARTIST'S fee will be paid in the amount of \$19,500 as full and final compensation for the Final Design Phase. If the ARTIST or the CITY chooses option B (to disengage from the project), then the ARTIST's fee will be paid as full and final reimbursement for the Final Design Phase, and this Agreement shall be terminated with no further payments to ARTIST.

Should the ARTIST's participation be concluded under either option A or B, the ARTIST shall retain all rights to the Final Design proposal produced by the ARTIST. It is specifically understood that the ARTIST retains all intellectual property rights, defined to mean copyright, and all rights under the Visual Artist Rights Act of 1990. In the event the CITY elects not to proceed with installation of the Public Artwork, the CITY does not have the right to take the Final Design Phase proposal to a third party for further design development. If the CITY proceeds with the installation of the Public Artwork, then the Council shall acquire all ownership rights to the Public Artwork defined to mean physical possession and all property rights except intellectual property.

SECTION 7: Public Notice.

Upon request by the CITY, the ARTIST agrees to design, fabricate, install and pay for a notice which is satisfactory to the CITY and which includes the title of the Public Artwork, identification of the ARTIST, copyright notice and year of completion as well as notice of the CITY's ownership of the Public Artwork. The public notice shall be installed by the ARTIST prior to the completion of the Project. Subject to Council approval, the CITY agrees to the public display of this notice on or near the Public Artwork.

SECTION 8: Documentations and Records.

Upon installation of the Public Artwork the ARTIST shall furnish the CITY with: a) complete documentation of the Public Artwork including a written technical description to enable an inspection and the preparation of an initial Condition Report by the City; b) a detailed operations and maintenance plan including cost estimate addressing the ongoing care for the Public Artwork, and c) ten to twenty slides or digital images of the Public Artwork during production, and after installation, for archival records.

SECTION 9: Waiver And Termination Of Rights.

The ARTIST agrees to notify the OWNER of any changes in the ARTIST's email address within ninety (90) days of that change. Failure to do so shall be deemed a waiver of those ARTIST's rights expressed in Section 11. The ARTIST agrees that upon the ARTIST's death, all of the Artist's rights expressed in Section 11 shall terminate.

SECTION 10: Owner's Authorized Agent/Project Management.

The CITY's authorized agent for the purpose of administration of this Agreement is the CITY's Department Director who shall have final authority for acceptance of the ARTIST's services and the Public Artwork, and if such services and Public Artwork are accepted as satisfactory, shall so certify within fourteen working days on each invoice submitted pursuant to Section 5 of this Agreement. Acceptance shall not be withheld unreasonably.

The CITY has designated Martin Schieckel as the Project Manager for this Agreement, and the individual to whom all communications pertaining to the Agreement shall be addressed. The Project Manager shall have the authority to transmit instructions and receive information, and in consultation with and approval by the CITY's Department Director shall authorize amendments or changes to the Agreement and interpret and define the CITY's policies and decisions pertinent to the work covered by this Agreement.

SECTION 11: Amendment or Changes to Agreement.

CITY or ARTIST may request changes that would increase, decrease, or otherwise modify the Scope of Services. Such changes and method of compensation must be authorized in writing in advance by the City.

Any alterations, amendments, deletions or waivers of the provisions of this Agreement shall be valid only when reduced to writing and duly signed by the parties.

Modifications or additional schedules shall not be construed to adversely affect vested rights or causes of action which have accrued prior to the effective date of such amendment, modification, or supplement. The term "this Agreement" as used herein shall be deemed to include any future amendments, modifications, and additional schedules made in accordance herewith.

SECTION 12: Artist as Independent Contractor.

The ARTIST agrees to perform all Public Artwork under this Agreement as an independent contractor and not as an agent or employee of the CITY. Any and all employees of the ARTIST engaged in the performance of any Public Artwork or services required by the ARTIST under this Agreement are employees of the ARTIST only. No statement contained in this Agreement shall be construed so as to find ARTIST an employee of the CITY or Council, and ARTIST shall be entitled to none of the rights, privileges, or benefits of CITY or Council employees. The ARTIST shall furnish all supervision, labor, supplies, materials, insurance, and other incidentals needed to complete this Agreement.

SECTION 13: Subcontracting/Assignment of Public Artwork.

The Public Artwork and services required of the ARTIST under this Agreement are personal and shall not be assigned, sublet, or transferred without prior written consent of the CITY.

SECTION 14: Indemnity, Liability and Insurance.

The ARTIST agrees to indemnify and save and hold the CITY, its officers, its agents and employees harmless and protect and defend the CITY from any and all claims or causes of action brought for or on account of any claimed or alleged injuries or damages received by any person or property, including the CITY, arising from the performance of this Agreement by the ARTIST or ARTIST's agents or employees.

The ARTIST is furthermore advised of the following special precautions:

Damage to CITY Property: The ARTIST must take all reasonable precautions to protect CITY property from damage. In addition to any other available remedies, the CITY may deduct from its payments to the ARTIST the amount necessary to repair any damage.

ARTIST shall be required to carry insurance of the kind and in the amounts shown below for the duration of this Agreement. Insurance certificates should state that the Metropolitan Council and the City of Saint Paul, and their officials, employees, agents and representatives are named as Additional Insureds.

1. Public Liability Insurance

- a) Bodily Injury \$ 1,000,000 each occurrence
 \$ 2,000,000 aggregate
- b) Property Damage \$ 1,500,000 each accident
 \$ 2,000,000 aggregate
- c) Policy must include an "all services, products, or completed operations" endorsement.

2. Workers Compensation and Employer's Liability

- a) Worker's Compensation per Minnesota Statute
- b) Employer's Liability shall have minimum limits of \$500,000 per accident; \$500,000 per employee; \$500,000 per disease policy limit.
- c) Contractors (Providers) with 10 or fewer employees who do not have Worker's Compensation coverage are required to provide the CITY with a letter verifying their number of employees.

3. General Insurance Requirements

- a) The policy is to be written on an occurrence basis or as acceptable to the CITY. Certificate of insurance must indicate if the policy is issued on a claims-made or occurrence basis. All certificates of insurance shall provide that the CITY's Division of Contract and Analysis Services be given written notice of cancellation, non-renewal or any material changes in the policy in accordance with the terms of the policy, including, but not limited to, coverage amounts.

Agent must state on the certificate if policy includes errors and omissions coverage.

- b) The ARTIST shall not commence work until a Certificate of Insurance covering all of the insurance required for this Project is approved and the project manager has issued a notice to proceed. Insurance must remain in place for the duration of the original contract and any extensions periods.
- c) The CITY reserves the right to review ARTIST's insurance policies at any time, to verify that CITY requirements have been met.
- d) Satisfaction of policy and endorsement requirements for General Liability and Auto Insurance, of "each occurrence" and "aggregate" limits, can be met with an umbrella or excess policy with the same minimum monetary limits written on an occurrence basis, providing it is written by the same insurance carrier.

SECTION 15: Equal Opportunity Employment.

EQUAL OPPORTUNITY EMPLOYMENT: The ARTIST will not discriminate against any employee or applicant for employment for work under this Agreement because of race, creed, religion, color, sex, sexual or affectional orientation, national origin, ancestry, familial status, age, disability, marital status, or status with regard to public assistance and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to the same. The ARTIST agrees to be bound by and comply with the requirements of Section 183.04 of the Saint Paul Legislative Code and the Rules Governing Affirmative Requirements in Employment adopted by the Saint Paul Human Rights Commission.

This provision shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising, layoff or termination; rates of pay or their forms of compensation; and, selection for training, including apprenticeship.

SECTION 16: Business Records and Data Practices.

The ARTIST agrees to maintain all business records in such a manner as will readily conform to the terms of this Agreement and to make such records available at its office at all reasonable times during the Agreement period and for six (6) years from the date of the final payment under the contract for inspection or audit by the CITY, the State Auditor, or other duly authorized representative.

ARTIST agrees to abide strictly by Chapter 13, Minnesota Government Data Practice Act, and in particular Minn. Stat. § 13.05, subd. 6 and 11; and 13.37, subd. 1(b) and Minn. Stat. §§ 138.17 and 15.17. All of the data created, collected, received, stored, used, maintained, or disseminated by the ARTIST is subject to the requirements of the Minnesota Government Data Practices Act and the ARTIST must comply with these requirements as if it were a governmental entity. The remedies in Section 13.08 apply to the ARTIST. If any provision in this Agreement is in conflict with the Minnesota Government Data Practices Act or other Minnesota state laws, state law shall control.

SECTION 17: Compliance with Applicable Law.

ARTIST agrees to comply with all federal, state, and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the ARTIST's performance of the provisions of this Agreement.

SECTION 18: Conflict of Interest.

The ARTIST will not contract for or accept employment for the performance of any work or services with any individual, business, corporation, or governmental unit that would create a conflict of interest in the performance of the obligations pursuant to this Agreement with the CITY.

The ARTIST's acceptance of this Agreement indicates compliance with Chapter 24.03 of the Saint Paul Administrative Code: "Except as permitted by law, no CITY official or employee shall be a party to or have a direct financial interest in any sale, lease, or contract with the CITY."

The ARTIST agrees that should any conflict or potential conflict of interest becomes known, ARTIST will advise the Project Manager of the situation so that a determination can be made about ARTIST's ability to continue performing services under the Agreement.

SECTION 19: Warranties.

The ARTIST warrants that the Public Artwork is the original product of the ARTIST's own creative efforts and does not infringe on any copyright. The ARTIST also warrants that the Public Artwork is unique and that the Public Artwork, or a duplicate thereof, has not been accepted for sale elsewhere, unless, as stipulated to the CITY as one of a limited edition of Public Artworks. The ARTIST expressly warrants that no pre-existing Agreements with an ARTIST's agent shall be the cause for any breaches of this Agreement or render this Agreement impracticable by the ARTIST.

The ARTIST additionally represents and warrants that: a) the Public Artwork as designed is appropriate to its location; and b) reasonable maintenance of the Public Artwork shall not require procedures in excess of those described in the statement of maintenance requirements submitted by the ARTIST.

SECTION 20: Default by ARTIST: Remedy Of CITY.

In the event ARTIST fails or neglects to comply with any term or condition of this Agreement or to provide the services as stated herein, CITY shall have the right, after five days written notice and failure to cure by ARTIST, to cease payment hereunder and pursue a cause of action for damages. This remedy shall be in addition to any other remedies, including termination, available to the CITY in law or equity. The CITY shall be entitled to recover reasonable attorney's fees and costs of collection associated with enforcing its rights hereunder.

SECTION 21: Default by CITY: Limited Remedy by ARTIST.

In the event CITY fails or neglects to comply with any term or condition of this Agreement including but not limited to a violation of Federal Copyright Act or the Visual Artists Right Act of 1990 (VARA), , ARTIST shall have the limited right and remedy, after five days written notice to CITY and failure to cure by CITY, to: 1) terminate this Agreement; and/or 2) to bring an action for specific performance and/or action to recover any payments for services due under this Agreement. The ARTIST shall have no right to any consequential or other damages of any kind or any other remedy.

SECTION 22: Right to Exhibit.

The CITY reserves the right to request temporary possession of any drawings, models, photographic negatives, digital files, displays, and similar materials produced during the Design Phase.

SECTION 23: Dispute Resolution.

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation related to this Agreement shall be venued in the District Court of the County of Ramsey, Second Judicial District, State of Minnesota. The ARTIST shall complete the Public Artwork during any proceedings unless otherwise agreed by the ARTIST and the CITY in writing.

Mediation. All claims, disputes or other matters in question between the parties to this Agreement arising out of or relating to this Agreement or breach thereof, shall be referred to non-binding mediation before, and as a condition precedent to, the initiation of any legal action hereof, provided for herein. Each party agrees to participate in up to four hours of mediation. The mediator shall be selected by the parties, or if the parties are unable to agree on a mediator then any party can request the administrator of the Ramsey County District Court Civil ADR Program and/or similar person, to select a person from its list of qualified neutrals. The mediation shall be attended by employees or agents of each party having authority to settle the dispute. All expenses related to the mediation shall be borne by each party, including without limitation, the costs of any experts or legal counsel. All applicable statutes of limitations and all defense based on the passage of time are tolled while the mediation procedures are pending, and for a period of 30 days thereafter.

SECTION 24: Notices.

Except as otherwise stated in this Agreement, any notice or demand to be given under this Agreement shall be delivered in person or deposited in United States Certified Mail, Return Receipt Requested. Any notices or other communications shall be addressed as follows:

To CITY:

Martin Schieckel

To ARTIST:

JoAnn Verburg

Planning & Economic Development
25 West 4th Street; Suite 1300
St. Paul, MN 55102
Martin.schieckel@ci.stpaul.mn.us

901 South 2nd Street; No. 303
Minneapolis, MN 55415
651-398-4455
verbsite@aol.com

SECTION 25: Waiver.

Any failure of a party to assert any right under this Agreement shall not constitute a waiver or a termination of that right, this Agreement, or any of this Agreement's provisions.

SECTION 26: Survival of Obligation.

A. The respective obligations of the CITY and ARTIST under these terms and conditions, which by their nature would continue beyond the termination, cancellation, or expiration hereof, shall survive termination, cancellation or expiration hereof.

B. If a court or governmental agency with proper jurisdiction determines that this Agreement, or a provision herein is unlawful, this Agreement or that provision, shall terminate. If a provision is so terminated but the parties legally, commercially, and practicably can continue this Agreement without the terminated provision the remainder of this Agreement shall continue in effect.

SECTION 27: Force Majeure.

Neither the CITY nor the ARTIST shall be held responsible for performance if its performance is prevented by acts or events beyond the party's reasonable control including, but not limited to: severe weather and storms, earthquake or other natural occurrences, strikes and other labor unrest, power failures electrical power surges or current fluctuations, nuclear or other civil military emergencies, or acts of legislative, judicial, executive, or administrative authorities.

SECTION 28: Entire Agreement.

It is understood and agreed that this entire Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matters herein.

IN WITNESS WHEREOF, the parties hereto are authorized signatories and have executed this Agreement, the day and year first above written.

For the CITY:

For the ARTIST: (If corporation,
two officers must execute)

Approved as to form:

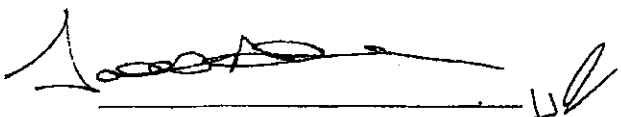

Assistant City Attorney

By: JoAnn Verberg^u

By: 


Social Security or MN Tax ID

Executed:


Director, Office of Financial Services


Department Director - PED

Funding: DIRECTOR OF PUBLIC WORKS

Activity #

C10-2S270

*** NOTICE TO ARTISTS:** You are required by Minnesota law to provide your social security number or Minnesota Tax Identification numbers if you do business with the CITY. This information may be used in the enforcement of federal and state laws. Supplying these numbers could result in action to require you to file state tax returns and pay delinquent state tax liabilities. This Agreement will not be approved unless these numbers are provided. These numbers will be available to federal and state tax authorities and city personnel involved in the payment of city obligations.

Originals to (1) ARTIST and (2-3) CITY.

Prepared by: CAS/ ___/___-20__

Req. #: _____

**FIRST AMENDMENT
TO
and
ASSIGNMENT AND ASSUMPTION OF
PUBLIC ART FINAL DESIGN PHASE AGREEMENT**

THIS FIRST AMENDMENT ("First Amendment") is made and entered into this ____ day of 29 March, 2014, by and among the City of Saint Paul, Minnesota, a municipal corporation ("City"), JoAnn Verburg ("Artist") and the Metropolitan Council ("Council").

RECITALS:

A. City and Artist executed a Public Art Final Design Phase Agreement dated May 1, 2013 ("Agreement") in connection with the Central Station Vertical Connection Building ("Project").

B. Artist has completed the Public Artwork under the Agreement and has been compensated for such Public Artwork.

C. City and Artist desire to amend the Agreement with respect to certain rights of the Artist as set forth in this First Amendment.

D. City desires to assign the Agreement to the Council and the Council desires to assume and perform all of the City's duties and obligations under the Agreement.

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual covenants and promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as follows:

1. Section 3 of the Agreement is deleted and amended to read as follows:

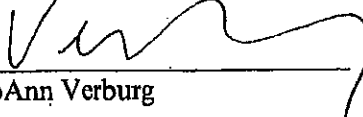
The ARTIST expressly reserves those rights under the Federal Copyright Act and the Visual Artists Rights Act of 1990 described as follows: a) the right to claim authorship of the Public Artwork; b) the right to prevent use of one's name on the Public Artwork that has been substantially distorted or modified; c) the right to create derivative works of the original Public Artwork; and d) upon decommissioning and removal of the Public Artwork from the Vertical Access Tower, the ARTIST has the first right to receive ownership and possession of the Public Artwork. The ARTIST disclaims any other statutory or common law rights to the Public Artwork.

The parties acknowledge that because the Public Artwork has been installed, the ownership and possession rights of the Public Artwork have transferred to and is now vested in the Council, which rights include but are not limited to the following: a) the right to a non-exclusive perpetual and royalty free license to have the Public Artwork in the Vertical Access Tower; b) the right to make photographs and prints of the Public Artwork ~~for nonecommercial purposes~~; c) the right in consultation with the City and ARTIST to make future alterations to the Public Artwork to address any future material public safety or operational considerations; and d) the right to transfer the Vertical Access Tower and its rights, duties and obligations under the Agreement to a successor owner of the Vertical Access Tower with or without the Public Artwork .

2. The City hereby assigns all right, title and interest of its interest in the Agreement to the Council and the Council hereby accepts, assumes and agrees to perform all of the City's duties and obligations under the Agreement. The ARTIST hereby releases the City from all liabilities and obligations under the Agreement.
3. All other terms and conditions of the Agreement remain the same and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the date first above written.

ARTIST:


JoAnn Verburg

CITY:

CITY OF SAINT PAUL, MINNESOTA

By: _____
Its: PED Director

Approved as to form:

Assistant City Attorney

By: _____
Its: Director, Office of Financial Services

COUNCIL:

METROPOLITAN COUNCIL

By: _____
Its: Regional Administrator