



# CITY OF SAINT PAUL AGREEMENT

**PURCHASER (Referred to as "The City")**

City of Saint Paul  
15 W Kellogg Blvd  
Room 280 City Hall Courthouse  
Saint Paul, MN 55102  
Phone: 651-266-8900

**CONTRACTOR**

Public Art Saint Paul  
351 Kellogg Blvd E

Saint Paul, MN 55101  
2900921

[pasp@publicartstpaul.org](mailto:pasp@publicartstpaul.org)

Contract No: 651

Effective Date: January 1, 2015

Expiration Date: January 1, 2016

Contract Description: PSA - PUBLIC WORKS - EVERYDAY POEMS CITY SIDEWALK

**Contacts**

Buyer Contact Information:

Kelly Moch  
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City Project Manager Contact Information:

Dan Haak  
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Contractor Project Manager Contact Information:

Marcus Young  
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[marcus.young@ci.stpaul.mn.us](mailto:marcus.young@ci.stpaul.mn.us)

**PROJECT IMPLEMENTATION AGREEMENT****RECITALS**

A. In 2005, PASP launched a City Artist-in-Residency program ("CAIR") in collaboration with the City. The City's Public Works Department ("Public Works") agreed to serve as working base for CAIR. Artist Marcus Young (the "Artist") was selected as the City Artist in Residence, with a commitment from PASP to commission a streetscapes artwork as part of his CAIR activities; and

B. the Artist proposed that the City incorporate poems into sidewalk panels as part of the City's annual Sidewalk Replacement Program ("SRP"). This project ("Project") is entitled "Everyday Poems for City Sidewalk."; and

C. The Project was launched in 2008 and the CAIR status changed from independent contractor to employee of PASP. Poems were provided through a citywide contest (the "Contest") open to City residents of all ages. A distinguished panel selected winning poems. Custom-made stamps (the "Stamps") were used to impress the poems into the wet concrete as part of the SRP; and

D. The Project was considered by the City and PASP to be so successful that it was repeated in 2009 and 2010, resulting in over 300 stampings of works by 31 poets over the period 2008-2010. The Project has been refined to address issues related to homeowner notification of poetry stampings and the stamping process and continued during the years 2011 - 2014; and

E. In 2009, the City enacted a Public Art Ordinance (the "Ordinance"), which mandates allocation of 1% of eligible capital project costs for public art. SRP is an eligible capital project under the Ordinance; and  
F. The parties now wish to set forth the conditions for the Project for the year 2015.

## TERMS OF AGREEMENT

For good, valuable, mutual and sufficient consideration, the parties hereby agree as follows:

### I. Personnel

PASP will provide the services described in this Agreement through the Artist (its employee). PASP will authorize and direct the Artist to undertake the duties and tasks specified for him in this Agreement. PASP will employ or contract with others to assist the Artist in carrying out the tasks assigned to them.

### II. Project Plan

A. The plan for the Project (the "2015 Project Plan") is set forth in the attached Exhibit A. The Project Plan will result in the stamping original poems by City residents in City sidewalks (the "Installed Poems") as part of the SRP. The CAIR has presented the Project Plan to the City and to PASP. The City and PASP have approved the 2014 Project Plan for implementation in accordance with attached Exhibit A;

B. Each party will provide the services, perform the tasks, and furnish the deliverables assigned to it and described in the 2015 Project Plan, and will use all reasonable efforts to comply with the schedule and achieve the milestones and outcomes described in the 2015 Project Plan;

C. The City hereby approves and authorizes the implementation of the Project in accordance with the 2015 Project Plan on public rights of way within the City, subject to the terms and conditions of this Agreement, and agrees to provide its support of the Project as specified in the Project Plan;

D. PASP agrees to provide its support of the Project as specified in the 2015 Project Plan, including participation of the Artist in connection with the Project.

E. It is the intent of the parties that Project Plans for 2016 ("Future Plans") will be presented in writing by the Artist to the City and to PASP on or before January 1, 2016, for discussion. Upon approval by the City, the parties intend to enter into an agreement to implement those Future Plans.

### III. Coordination and Communications

The 2015 Project Plan will be coordinated through Public Works Sidewalk Engineering. All reports and communications made by the City and PASP in relation to the Project are to be transmitted to the City and PASP through the following contract liaisons:

A. For the City of Saint Paul:

Dan Haak, Manager, Street Design and Construction Division Department of Public Works

City of Saint Paul

City Hall Annex

St. Paul, MN 55102 651-266-6084

dan.haak@ci.stpaul.mn.us

B. For Public Art Saint Paul:

Marcus Young, City Artist in Residence 351 Kellogg Boulevard East

St. Paul, MN 55101 651-290-0921

marcus.young@ci.stpaul.mn.us

### IV. Budget and Payment Schedule

A. Budget: Funds have been allocated by the Ordinance and PASP's program fund to support the Project. The Project budget for 2015 is set forth in the attached Exhibit A.

B. Payment Process and Schedule: The Project Payment Process and Schedule ("Payment Plan") is also set forth in the attached Exhibit A. Each party will provide the funding and make the payments assigned to it and described in the Payment Plan.

### V. Warranties.

Each party represents and warrants that:

A. it has all necessary authority to enter into this Agreement; and

B. it is not a party to any pre-existing agreement which would be the cause for any breach of this Agreement or render this Agreement impracticable for such party.

### VI. Risk of Loss, Indemnities, and Insurance

A. The risk of loss or damage to the Stamps created by the Project will be borne by the City while they are on the City's premises or under City control;

B. The risk of loss or damage to the Installed Poems will be borne by the City;

C. It is acknowledged by the City that the Installed Poems will be in the City's right-of-way and will be accessible by members of the public. The City will take responsibility for, and defend, indemnify and hold PASP (as well as its respective agents, employees and subcontractors) harmless against any and all claims and suits alleging personal injuries, or property damage arising out of accidents associated with the Project and its Installed Works. This indemnity shall not apply to the extent the claim or cause of action arises out of the negligence of PASP (or its officers, agents or employees); and

D. In order to protect itself as well as the City under the terms of this Agreement, PASP will obtain and keep in force, at its expense, during the term of this Agreement, a policy of general liability insurance as

follows:

1. Bodily injury of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate;
2. Property Damage of not less than \$1,500,000 each accident and \$2,000,000 aggregate;
3. Automobile Insurance Bodily Injury of not less than \$750,000 per person and \$1,000,000 per accident and property damage of not less than \$50,000 per accident;
4. Workers Compensation per Minnesota Statute.

The general liability coverage will contain an endorsement naming the City of Saint Paul as an Additional Insured as to acts committed by PASP, its employees or its subcontractors for which PASP and the City could be held responsible. A Certificate of Insurance evidencing compliance with this requirement will be provided to the City.

#### VII. Ownership, Trademark and Attribution

- A. The Installed Poems will belong to the City.
- B. The title of the Project, Everyday Poems for City Sidewalk, is a trademark of the Artist.
- C. All Project descriptions and public awareness materials developed and disseminated by the Parties to this Agreement shall carry the following Project attribution: "Everyday Poems for City Sidewalk is a project of City Artist in Residence Marcus Young in partnership with the City of Saint Paul Public Works Department and Public Art Saint Paul".

#### VIII. Alterations and Removal

A. Alteration, Modification or Change of Installed Works. The City agrees that it shall not intentionally alter, modify, or change the Installed Poems without obtaining the prior written approval of PASP. The City agrees to notify PASP of any proposed, necessary alterations of the Installed Poems that would affect the intended character and appearance of the Installed Poems and shall consult with the Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Installed Poems as originally installed.

B. Project Removal or Destruction. The City shall not remove or destroy the Installed Poems without the prior written notice to PASP. In the event that an Installed Poem (or the sidewalk in which is installed) creates a hazard to the public, necessitating immediate alteration or removal of an emergency nature, prior notice to PASP shall not be required, but the City shall provide PASP with notice as soon as reasonably possible after the alteration or removal.

IX. Relationship. The relationship among the parties is not that of employer- employee, but rather that between and among independent contractors. The parties are interested only in the results to be obtained and not in the manner or method of the performance of other parties to this Agreement.

#### X. Term and Termination.

A. This Agreement will have a term beginning with the Effective Date and ending on December 31, 2015, unless extended by written agreement among all parties. Provisions of this Agreement, such as those respecting indemnities, copyright, license, etc., as appropriate, will survive termination.

B. A party may earlier terminate this Agreement by written notice to the other parties if a material breach of this Agreement (other than a breach attributable in whole or in part to the notifying party) has not been cured within 30 days after the terminating party has provided the other parties with written notice detailing the substance of the breach.

#### XI. Assignment.

Any assignments of this Agreement by one party without the express written mutual consent of the other parties will be void.

#### XII. Entire Agreement.

This Agreement represents the entire agreement between the parties and the provisions of this Agreement will supersede all prior oral and written commitments, contracts and understandings with respect to the subject matter hereof. The recitals at the beginning of this Agreement are incorporated herein by reference.

#### XIII. Amendments.

This Agreement may be amended only by an instrument in writing executed by all parties hereto.

#### XIV. Governing Law.

This Agreement is acknowledged to have been made in and will be construed in accordance with the laws of the State of Minnesota. all parties acknowledge that by virtue of this Agreement, they are conducting business in such state and are subject to the jurisdiction of the courts of Minnesota. Any action to enforce the obligations created by this Agreement will be brought before a court of competent jurisdiction within the State of Minnesota, Ramsey County.

#### XV. Construction.

Should any paragraph, sentence, or any portion of a paragraph or sentence of this Addendum be judicially held to be invalid, unenforceable, or void, such holding will not have the effect of invalidating or voiding the remainder of such sentence, paragraph or the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the day and year first above written.

**CONTRACT LINES**

| <b>Item</b>                     | <b>Item Description</b> | <b>Unit of Measure</b> | <b>Base Cost</b> |
|---------------------------------|-------------------------|------------------------|------------------|
| EVERDAY POEMS FOR CITY SIDEWALK | SEE EXHIBIT A - SOW     | 8P                     | 10,000.00000     |

**EXHIBIT A**  
**PROJECT PLAN**  
**FOR EVERYDAY POEMS FOR CITY SIDEWALK**

- **General Project Description**

The Project will permanently install original works of poetry (each a “**Poem**”) to beautify and enhance sidewalks throughout City neighborhoods, using a concrete stamping processes approved by Public Works. Each will be type-set into a **Stamp** that will be used to create a permanent impression of the associated Poem in the concrete of a sidewalk scheduled by the City to be part of the annual SRP.

For 2015, Poems will be used from the existing Project collection, created through the annual contests held 2008-2013.

The City and PASP will promote awareness of the Project and its community building and artistic goals.

- **Public Awareness Plan**

The City and PASP will collaborate to develop a public awareness plan (the “**Public Awareness Plan**”) , which is not limited to, but must consider the following elements:

- Proper property owner notification of the installation of Poems in public sidewalks, per City requirements;
- A dedicated web site that will be linked to the City’s and to PASP’s web sites; and
- Press releases and media interviews.

- **Project Activities**

- *Site Guidelines.* The Artist will provide to the City and PASP guidelines for selection of sidewalk sites where the Poems will be installed. The guidelines will conform to the City’s public right-of-way requirements. Once approved by the City and PASP, the resulting guidelines (the “**Site Guidelines**”) will be used by the Artist and the Project installers to make decisions regarding sites for installation of the Poems.
- *Graphic Design.* The Artist and PASP staff will design layout of the Poems for the Stamps.
- *Materials and Installation*
  - The Artist shall work with Public Works to define and coordinate a process and schedule for implementation of the Project.
  - The Artist, or his representative, will be present at the Sites during the concrete pouring and Poems stamping process, to provide the City and its SRP contractor with installation advice as needed to ensure conformity with the approved Project plan.

- *Maintenance.* It is understood that the Installed Poems will require no extraordinary maintenance beyond what is standard for the City's sidewalks.
- *Public Awareness.* The Artist will work with the City and PASP to develop the Public Awareness Plan in accordance with Section II and carry out those tasks assigned to the Artist in that plan.
- **The City's Obligations**
  - *Right of Way Considerations.* To assist in his development of the Project, the City will provide information to the Artist regarding public right of way requirements for installation implementation of the Project and will confirm that the Artist's Site Guidelines conform to those requirements.
  - *B. Materials and Installation.* Public Works will be responsible for materials, labor and equipment to implement the Project. Materials include concrete or other sidewalk paving material and Stamps to impress the Poems into City sidewalks. Labor includes delivery of the materials to the Sites and work to prepare the Sites, pour the concrete, impress the Poems, and repair the landscape immediately adjacent to the Sites.
  - *Vehicle.* The City shall provide use of a Public Works vehicle as needed.
  - *Maintenance.* The City will be responsible for care and maintenance of Project as part of standard City process for sidewalk maintenance.
    - *Public Awareness.* The City shall work with the Artist and PASP to develop a public awareness plan for the Project.
    - *Approvals and Permissions*
      - The City will promptly review the Artist's Site Guidelines ;
      - The City herein grants its permission for the Artist or his representatives to be present at the Sites as needed during the course of impressing the Poems into City sidewalks.
- **PASP's Obligations**
  - *Project Sites.* PASP will review and approve the Artist's Site Guidelines in a timely manner and shall not unreasonably withhold its approval.
  - *Selection of Poems.* PASP will support the process of selecting the Poems described in the Agreement.
  - *Public Awareness.* PASP will work with the City to develop a public awareness program for the Project D. *Payments.* PASP will make payments to the Artist and to the City in a timely manner, as called for in the Budget and Payment Schedule below.
- **Schedule**

It is the intention of all parties to this Agreement that the Project will be implemented as part of the City's on-going sidewalk improvement process between March and December of each year. The Artist and the City will provide the information and services required to implement the Project to meet that intended schedule.
- **2015 Payment Plan**

- City Payments

- City shall pay its SRP Contractor as part of that Contractor's agreement with the City for SRP services.

City shall reimburse PASP for its Project expenses. All other costs incurred by the City in relation to Project planning, implementation, maintenance, evaluation and Public Awareness are to be borne by the City.

The Public Art Budget for Sidewalk Replacement in 2015 is \$10,000, based upon the Public Art Ordinance 1% for Art allocation.

- PASP Payments

- Per the Project Budget above, PASP shall pay its employees and contractors for their Project services and related expenses.
- PASP shall submit to Public Works an invoice for its Project expenses at the completion of the SRP no later than November 30, 2015. The City shall reimburse PASP for its Project expenses.

City of Saint Paul  
15 W Kellogg Blvd  
Saint Paul, MN 55102

Public Art Saint Paul  
351 Kellogg Blvd E

Saint Paul, MN 55101  
651^2900921

City:  
This Agreement has been duly executed by the  
City of Saint Paul via electronic approval

Contractor:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date