

## STACIA GOODMAN MOSAICS, LLC: Commissioned Art Agreement

This Commissioned Art Agreement (Agreement) is made and entered into on \_\_\_\_\_, 2021, by and between the "Client" – City of La Crosse, Wisconsin, a municipal corporation located at 400 La Crosse St., La Crosse, WI 54601,  
– and Stacia Goodman Mosaics, LLC ("Artist"), a Minnesota Limited Liability Company with its principal place of business at 2724 Chowen Ave. S., Minneapolis, MN 55416. Client and Artist are collectively referred to as "the parties."

**services.** Client is commissioning Artist to design and fabricate a custom piece of art (artwork) described in the attached Terms of Service document, which is attached to and made a part of this Agreement.

**process.** The Terms of Service document describes the project-specific details and the process of creating the artwork, from conceptualizing through its final installation.

**fees.** The fee for the artwork is set forth in the Terms of Service.

**payment schedule.** The payment schedule for the artwork is set forth in the Terms of Service.

**cancellation.** If Client cancels this Agreement after it has been signed, Client agrees to pay Artist all expenses and travel costs incurred, and all professional time up until the moment of cancellation. Artist may stop work upon cancellation and retains ownership of the artwork in its then present condition.

**ownership of artwork and design.** After final payment, Client will own the artwork for the purposes set forth in the Terms of Service. Within three months of installation, Client will install a nameplate approved by Artist that identifies Stacia Goodman Mosaics as the Artist.

Artist retains all rights to copyright and design of the artwork. This includes Artist using images of the artwork for display, publication, advertising, merchandise and other purposes at Artist's sole discretion. Artist may print copies and make videos of the artwork and post these images and videos to social media and other media sites, including but not limited to, Instagram, Facebook, Twitter and Pinterest.

**ownership of nonselected designs.** Artist owns all designs of the artwork, including the design for the artwork that is delivered to Client, and any and all nonselected designs, including all versions of nonselected designs.

**negotiating usage fees.** If Client wishes to own any rights to the design of the artwork or images of the artwork for fund-raising or saleable items, Client can discuss possible usage fees with Artist. Client has the right to use the artwork in promotional or publicity photos in both electronic and hard copy formats.

**prohibited uses of the artwork.** Except as otherwise provided in this Agreement, the following uses of the artwork by Client are EXPRESSLY PROHIBITED in order to maintain the integrity and quality of Artist's reputation and work:

- (1) Submitting the artwork to any magazine, blog or other third party without Artist's prior written consent and without ensuring Artist's name ("Stacia Goodman Mosaics") is published with the image.
- (2) Making substantial alterations to the artwork in any way.
- (3) Producing derivative works of the artwork.
- (4) Using the design in or for any other part of the Client's building.
- (5) Duplicating or printing images of the artwork for fundraising or saleable items.

(6) Any use deemed unreasonable or defamatory, at the sole discretion of Artist.

**deadline extensions.** The Terms of Service require certain feedback, approvals and actions by Client. In order to maintain Artist's schedule for completing the artwork, Client agrees to provide responses to Artist in the timeframe requested by Artist. If Client does not respond within the requested timeframe, Client agrees that Artist may alter Artist's schedule for completion.

**variation in design.** The artwork is hand-made, and Artist uses various suppliers of tile, glass and interesting objects. Colors, shapes and dimensions can vary somewhat from what Artist initially shows Client. There will inevitably be variations between the final approved concept and the final artwork. Client agrees to not reject the artwork or demand any reimbursement unless the variation is substantial in Artist's reasonable discretion.

**guarantee.** The artwork (materials, labor and installation mechanism) is guaranteed against faulty craftsmanship for one year from the date of installation. Artist will make repairs relating to faulty craftsmanship during this period, free of charge.

This guarantee is limited to faulty craftsmanship – it does not cover damages from other causes such as Client's negligence, negligence of others, vandalism, acts of nature, or normal wear of the mosaic products used.

After one year from Art installation and for non-covered damages, Artist will repair the artwork at her current hourly rate (\$50/hr.), plus the cost of materials and travel, per her availability.

**maintenance/cleaning.** Artwork should not be cleaned by aggressive scrubbing (human or mechanical), nor any cleaning agent. Artwork should only be polished, as needed, using a slightly dampened (with plain, clean water) lint-free cloth and gentle touch. It is normal for grout to slightly flake after installation. Vacuum or sweep the area below and around the artwork as needed. Do not vacuum the artwork.

**assumption of risk and indemnity.** Except as otherwise provided in this Agreement, Client assumes all liability and risk of loss in association with the artwork after Artist installation, including but not limited to the following actions: insuring the artwork, maintaining the artwork, displaying warnings that Client believes are appropriate on and around the artwork, and taking measures that Client believes are appropriate with respect to people touching or climbing on the artwork. Except as otherwise provided in this Agreement, Client expressly agrees to indemnify Artist from any claims and lawsuits by third parties relating in any way to the artwork after Artist has delivered or installed the artwork.

**intellectual property indemnification.** Artist shall, at the Artist's expense, defend, indemnify and hold harmless Client against any and all losses arising out of or in connection with any claim that Client's use or possession of the artwork infringes or misappropriates the patent, copyright, trade secret or other intellectual property right of any third party. In no event shall Artist enter into any settlement without Client's prior written consent.

**limitation of liability.** *ABSENT THEIR WILLFUL OR INTENTIONAL MISCONDUCT, ARTIST, ITS OWNERS, EMPLOYEES, CONTRACTORS, ASSISTANTS, INTERNS AND VOLUNTEERS (ARTIST PARTIES) ARE NOT RESPONSIBLE TO CLIENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RESULTING FROM THIS AGREEMENT AND THE ARTWORK, EVEN IF ARTIST PARTIES HAVE BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. IN ALL CIRCUMSTANCES, THE MAXIMUM LIABILITY OF ARTIST PARTIES COLLECTIVELY TO CLIENT FOR DAMAGES FROM ANY AND ALL CAUSES, AND CLIENT'S MAXIMUM REMEDY AGAINST ARTIST PARTIES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR*

OTHERWISE, SHALL BE LIMITED TO THE DOLLAR AMOUNT THAT IS EQUAL TO THE AMOUNT PAID UNDER THIS AGREEMENT. ANY CLAIM AGAINST ARTIST PARTIES MUST BE MADE WITHIN ONE YEAR OF THE ACTIONS GIVING RISE TO THE CLAIM.

Nothing in this Agreement is intended or shall be construed to be a waiver or estoppel of the City of La Crosse or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80 or other applicable law. To the extent that indemnification is available and enforceable, the City or its insurer shall not be liable in indemnity, contribution or otherwise for an amount greater than the limits of liability of municipal claims established by applicable Wisconsin or federal law. The Indemnifying Party's obligations under this Agreement are further conditioned upon the following: (i) the Indemnified Party shall promptly notify the Indemnifying Party in writing of any such claims, demands, liabilities, damages, costs and expenses within five days of discovery; (ii) the Indemnifying Party shall have sole and full control of, and the Indemnified Party shall reasonably cooperate in all respects, in the defense of the claims, demands, liabilities, damages, costs and expenses and all related settlement negotiations even though the Indemnified Party may reasonably participate in such defense, at its sole expense; and (iii) the Indemnified Party shall not make any admission or disclosure or otherwise take any action prejudicial to the Indemnifying Party except as required by law. The parties represent that, as of the effective date of the Agreement, neither party has any notice or knowledge of any claims, demands, causes of action, losses, liability, damages, costs and fees asserted or threatened by any third party with respect to the matters contemplated in this Agreement.

**governing law, mediation and venue.** This Agreement shall be governed by and interpreted under the laws of the State of Wisconsin. If any dispute, controversy or claim arises between the parties with respect to this Agreement or any future amendment to this Agreement, the parties will submit the matter for mediation in Wisconsin before a mutually agreed upon Mediator, unless either party seeks injunctive relief, which they may pursue without mediation. If the parties cannot agree on a Mediator, the matter will be heard by a Mediator appointed through an agreed upon mediation firm. If mediation does not result in agreement, the parties agree to courts in La Crosse County, Wisconsin, as the venue for any litigation regarding this Agreement, including the rights and obligations of any party to this Agreement.

**severability.** If any provision of this Agreement shall be declared invalid or unenforceable, then that provision shall be modified to one that is valid and enforceable, and most closely carries out the intent of the initial provision, and all remaining provisions shall continue in full force and effect.

**notices.** All notices required or permitted under this Agreement will be in writing and delivered by courier or overnight delivery service, or by certified mail, and in each instance will be deemed given upon delivery. All notices will be sent to the addresses set forth on the first page of this Agreement or to such other address as may be specified by either party to the other in writing.

**waiver.** The waiver of any breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of the same or other provisions hereof. The failure of either party at any time to enforce performance by the other party of any provision of this Agreement shall in no way affect such party's rights thereafter to enforce the same.

**survival.** All terms of this Agreement that expressly extend or by their nature should extend beyond termination or expiration of this Agreement, shall survive and continue in full force and effect after any termination or expiration of this Agreement.

**counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Signatures delivered by facsimile or electronic image scan shall be deemed to be original signatures for all purposes.

**modifications.** This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each party.

**entire agreement.** This Agreement constitutes the complete and exclusive understanding and agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings and agreements, whether written or oral, with respect to the subject matter hereof.

**Artist, Stacia Goodman Mosaics, LLC**


**Client: City of La Crosse**

Name: Stacia Goodman

Name: \_\_\_\_\_

Title: Owner/operator

Title: \_\_\_\_\_

Signature: 

Signature: \_\_\_\_\_

Date: June 10, 2021

Date: \_\_\_\_\_

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