



A COMMUNITY ART PROJECT



## AGREEMENT FOR THE DESIGN, COMMISSION, AND IMPLEMENTATION OF THE RIDE THE WAVE BOAT SCULPTURE PROJECT

This Agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between \_\_\_\_\_ (Buyer), \_\_\_\_\_ (Artist), and the SPEDA Community Foundation, as the benefiting organization of proceeds of the Ride the Wave Boat Sculpture Project and as a representative of the Ride the Wave Committee.

### RECITALS

- A Buyer intends to purchase a Ride the Wave Boat Sculpture (“Art Boat”) through the SPEDA Community Foundation as a promotion of public art and fundraiser for the Somerset Veterans Memorial Park.
- B Buyer has selected Artist to complete the purchased Art Boat following the guidelines set forth in the Ride the Wave Call for Art.
- C Now, therefore, Buyer and Artist agree as follows:

### SECTION 1. Incorporation of Recitals.

- 1.1 The above recitals are expressly incorporated and made a part of this Agreement as though fully set forth herein.

### SECTION 2. Creation of the Art Boat.

- 1.2 Artist has conveyed to Buyer, a design for the Art Boat (the “Art Boat Design”) for the Ride the Wave Boat Sculpture Project.

2.2 Buyer and Artist have submitted the Art Boat Design to the Ride the Wave Committee per the Call for Art guidelines and said design has been approved. The Buyer will pick up the Art Boat at 817 West Columbia Street, Somerset, KY, on a designated date, and will transport to the Artist to implement the Art Boat Design under the terms of this Agreement.

- a The finished product (Art Boat) must conform to the approved Art Boat Design. Buyer and/or the Ride the Wave Committee reserve the right to disqualify finished products that are inconsistent with the approved Art Boat Design or, when in the sole discretion of the Ride the Wave Committee, it determines the work is inconsistent with its goals for the Ride the Wave Boat Sculpture Project. Designs that are inconsistent with the purpose of the event include, but are not limited to: designs containing indecent, political, religious and commercial messages, logos and icons. All Art Boat Designs must be approved by the Ride the Wave Committee for compliance with the aforementioned criteria. The boat must be painted or embellished in conformity with the approved design using the materials guidelines given to Buyer and Artist at the time of their expression of interest/purchase. If the boat deviates in the judgment of the Ride the Wave Committee from the approved Art Boat Design, Ride the Wave Committee reserves the right not to display the boat.

The Artist warrants, represents and covenants that:

- a The Art Boat is a unique and original product of the Artist's creative efforts.
- b The Art Boat is unique and an edition of one.
- c The Art Boat is free and clear of any and all lien claims.

- d The Artist has not employed or retained any company or person other than an established art agent of the Artist to solicit or secure this Agreement.
  - e Artist further acknowledges, understands, and agrees that the Artist is not an employee of Buyer with it further being expressly understood that the Artist is retained as an independent contractor of Buyer at an honorarium agreed to by both parties, and it is specifically agreed that the Artist has no right or authority to assume or create any legal obligation on behalf of Buyer.
- 4 The Buyer will deliver the completed Art Boat on Saturday, April 29, 2025 (the "Delivery Date") to a location to be determined and communicated by the Ride the Wave Committee in downtown Somerset in preparation for its display and unveiling at Somerset's Foodstock Festival.
  - 5 The Artist is responsible for all loss or damage to the Art Boat until the Ride the Wave Committee accepts delivery.
  - 6 The Artist, at Buyer's discretion, must correct any defects or non-compliant labor and materials associated with the Art Boat for a period of six months after date of final payment to the SPEDA Community Foundation. Artist is not responsible for the cost of repairing defects to the Art Boat caused by others. Artist agrees to touch up the Art Boat prior to unveiling at Buyer and Artist discretion.
  - 7 The Artist must defend, indemnify, keep and hold harmless, Buyer and its agents, officials and employees against all suits, claims, damages, losses and expenses, including attorneys' fees, caused by, growing out of, or incidental to, the performance of this Agreement by the Artist or subcontractors of the Artist, if any, to the full extent allowed by law and not beyond any extent which would render these provisions void or unenforceable.

- 8 The Artist, recognizing that "TIME IS OF THE ESSENCE," must perform under this Agreement in such a manner and with sufficient equipment and forces to complete the Art Boat with the approved Art Boat Design and deliver it by a time to be determined by the Ride the Wave Committee on the Delivery Date in good repair.
- 9 The Artist acknowledges Buyer's ownership of the Art Boat and Art Boat Design, and that they are deemed commissioned works and that Buyer will be the sole owner of all rights, copyrights, and goodwill included in such works and in all logos or marketing materials associated thereunder, and agrees to do nothing inconsistent with such ownership. Buyer and the SPEDA Community Foundation will have the sole rights to all photographs that may be utilized in advertising, catalogues, brochures, programs, and media publicity and for other commercial and non-commercial purposes; and to utilize such approved photographs in Buyer's catalogues, books, and other similar publications. Artist further agrees to assign to Buyer and to cooperate with Buyer in the pursuit of any legal action in association with any such works and agrees to cooperate in such action.
- 10 Buyer or its representatives and the Ride the Wave Committee have the right to make reasonable inspection and review of the Art Boat and the progress of the Art Boat upon request. The Artist must cooperate and make the Art Boat available for viewing to Buyer/Ride the Wave Committee when such request is received.
- 11 Buyer and Artist agree they will not advertise, promote or display the Art Boat Design or sculpture progress physically or digitally before it is unveiled on Saturday, April 29, 2025.

**SECTION 3. Compensation.**

- 1 Upon timely completion of the Art Boat and certification by Buyer and the Ride the Wave Committee that the work conforms to specifications and to the approved Art Boat Design, Buyer will pay the Artist at their discretion at a fee previously agreed upon by the two parties.

- 2 Artist acknowledges that the compensation in Section 3.1 above is the total compensation and that any other revenue, fees, or remuneration, of any kind from sale, copies, or reproduction of the design will belong solely to the Buyer.

**SECTION 4. Termination.**

- 1 Buyer may terminate this Agreement:
  - a Upon ten (10) days' written notice to the Artist if the termination is without fault on the Artist's part. In this case the Artist will be entitled to a payment and settlement based upon the work completed under the Agreement prior to the termination of the Agreement.
  - b If the Artist fails, refuses or is unable to execute the Art Boat for any reason with such diligence to allow timely completion in accordance with this Agreement, Buyer will give the Artist written notice of its intention to terminate and the reason therefore. Unless satisfactory arrangements to Buyer are made within ten (10) business days, Buyer may terminate the Agreement without any damages or compensation to Artist. In addition, within ten (10) days of termination of this Agreement, the Artist must return the Art Boat to Buyer.

**SECTION 5. General Conditions.**

- 1 This Agreement constitutes the entire agreement between the parties, and no warranties, inducements, considerations, promises, or other references will be implied or impressed upon this Agreement that are not expressly addressed herein.
- 2 This Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

- 3 No changes, amendments, modifications, cancellation, or discharge of this Agreement, or any part hereof, will be valid unless in writing and signed by the parties hereto, or their respective successors and assigns.
- 4 The parties agree nothing herein contained is intended or should be construed in any way as creating or establishing the relationship of partners or joint venturers between Buyer and the Artist, or as constituting the Artist's agents, representatives or employees of Buyer for any purpose or in any manner whatsoever.
- 5 The Artist will not assign, transfer, pledge, surrender, or otherwise encumber or dispose of this Agreement or any rights and privileges created hereby, or any interest in any portion of the same, without the prior written consent of Buyer. Buyer reserves the right to assign all or any part of its interests hereunder.
- 6 All of the terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees and assigns, if any.
- 7 No member of the governing body of Buyer and no other officer, employee or agent of Buyer who exercises any decision-making authority with regard to this Agreement, may have any personal financial interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States, or the Kentucky General Assembly and no Alderman will be admitted to share any part of the Agreement or to any financial benefit to arise herefrom.
- 8 No member of the governing body, official or employee of Buyer will be personally liable to the Artist or any successor in interest in the event of any default or breach by Buyer, or for any amount which may become due to the Artist or any successor in interest to the Artist, or on any obligation hereunder.
- 9 This Agreement will be governed in accordance with the laws of the Commonwealth of Kentucky.

10 If any provision of this Agreement is held or deemed to be or in fact is invalid, illegal, inoperative or unenforceable on its face or as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances will not render the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances. The invalidity of any one or more phrases, sentences, clauses or sections contained in this Agreement will not affect the remaining portions of this Agreement or any part thereof.

Any and all notices given or required under this Agreement must be in writing and may be delivered in person, or by email, or by placing in the United States mail, first class, certified and return receipt requested, with postage prepaid and addressed:

If to SPEDA Community Fdn.:      SPEDA Community Foundation  
306 E Mt Vernon St Suite 316  
Somerset, Kentucky 42501  
Attn: Chris Girdler, President & CEO  
Email: [chris@speda.org](mailto:chris@speda.org)

If to the Artist: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to the Buyer: \_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
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\_\_\_\_\_  
Email: \_\_\_\_\_

Notices delivered by mail or email will be deemed effective two (2) days after mailing. Notices personally delivered will be deemed effective upon receipt.



IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the date first written above.

“Artist”

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

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

“Buyer”

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

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_

SPEDA COMMUNITY FOUNDATION  
("SPEDA Community Foundation")

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

WITNESS: \_\_\_\_\_

DATE: \_\_\_\_\_