

## SERVICES AGREEMENT

This **SERVICES AGREEMENT** is made the 27<sup>th</sup> day of **October, 2021** by the **Township of Lower Makefield**, a political subdivision of the Commonwealth of Pennsylvania, maintaining a principal place of business at 1100 Edgewood Road, Yardley, Pennsylvania (hereinafter referred to as the Township), and **David Perry** a **Artist** with a primary business address of **716 Noble Street, Norristown, PA 19401** (hereinafter referred to as "Provider").

### WITNESSETH:

**WHEREAS**, the Township owns and maintains a number of properties and facilities for use by the community;

**WHEREAS**, Provider wishes to increase its recognition among the residents of the Township and of Bucks County by providing certain Services as outlined in this Agreement, and any addendums or amendments thereto, at a Township owned property;

**WHEREAS**, the Township has agreed to permit Provider to provide certain Services as outlined in this Agreement at Township-owned property and/or facility on a periodic basis;

**WHEREAS**, Provider has agreed to provide said Services at Township-owned property and/or facility on a periodic basis;

**NOW THEREFORE**, in consideration of the mutual covenants and obligations set forth herein, the Township and Provider agree to the following terms:

1. **Services and Location(s)**. Provider agrees to provide certain Services at Township-owned Property and/or facilities. Said Services and location of service shall be set forth in an addendum to this Service Agreement.
2. **Payment**. Provider agrees to provide payment for the use of Township-owned Property or facilities. The terms of said payment shall be set forth in an addendum to this Service Agreement.
3. **Indemnification by Provider**. Except to the extent of the Township's gross negligence or willful misconduct, Provider shall indemnify and hold the Township and the Township's officers, administrators, members of its board of directors, employees, attorneys and agents (collectively, the "Township Indemnitees") harmless from and against any and all liabilities, injuries (including death), losses, damages, costs, including reasonable attorney fees, judgments, settlements, claims, actions, causes of action, penalties, awards or expenses of any nature to the extent arising out of Provider's, or its shareholders', members', partners', officers', directors', employees', personnel's, contractors', subcontractors', consultants', therapists' or agents' (collectively, the "Provider Indemnitors") performance or omission of performance pursuant hereto or in connection herewith from, including but not limited to, the following: (1) any and all labor, employment, unemployment compensation, or workers' compensation claims or

causes of action or other claim or cause of action arising from an employment, collective bargaining or contractor relationship between Provider and any of the other Provider Indemnitors or any collective bargaining unit; (2) the intentional, negligent or wrongful performance, acts or omissions of any of Provider Indemnitors in connection with any services provided pursuant to this Agreement; (3) the intentionally improper, negligent or wrongful disclosure, storage, handling (including, but not limited to, maintaining the security of) by any of Provider Indemnitors of any records or information of the Township, including but not limited to student health records, received by it under this Agreement; (4) any breach, violation, inaccuracy, or misrepresentation of or contained in any term, condition, covenant, representation, warranty or covenant of Provider contained herein or any omission of a material fact necessary to be stated herein in order to make such statement not a breach, violation, inaccurate or misrepresentation; (5) the claim of malpractice, ineffective rendering of service or other claim related to the negligent, wrongful or intentionally improper provision of services by any of Provider Indemnitors in connection with this Agreement; and (6) any claim, notice, violation, citation, breach or other failure alleging violation of any of Provider Indemnitors with respect to any federal, state or local law, regulation, ordinance, contract, or other obligation. Provider Indemnitor's duty to indemnify the Township Indemnitees shall not be limited to the available proceeds of insurance coverage.

4. **Assumption of Risk.** Provider undertakes and assumes all risk of any dangerous condition, whether known or unknown, identified or not identified, on the property.
5. **No Employment Relationship.** Nothing in this Agreement shall be construed to create an employment or agency relationship, partnership or joint venture between the Township and Provider. The employees, agents or subcontractors of one party shall not be considered the employees or subcontractors of the other party. At all times the employees of Provider shall be deemed to be employees of Provider (or an Affiliate, as the case may be), and Provider (or an Affiliate, as the case may be) shall have sole and exclusive authority over all such employees and labor matters for such employees, including, without limitation, determination of wages, benefits, vacation and holiday schedules, hours of work, job assignments, and other terms and conditions of employment. Nothing herein shall be construed to create an employer-employee relationship between the Township and Provider, or any employee of Provider.
6. **Term.** The term of this Services Agreement shall be for one year from the date of execution and shall not automatically renew.
7. **Background Checks.** All instructors and other employees utilized by the Provider at Township-owned properties or facilities for the purpose of conducting a program for minors (defined as those under 18 years of age) shall be in compliance with all mandated clearances required for employees who have direct contact or routine interaction with children. Provider agrees to furnish copies of Pennsylvania Child Abuse History Clearance, Pennsylvania Criminal Background Check, and FBI Criminal Background Check for any and all staff assigned to the Township in order to provide contracted services.

8. **Insurance.** Provider shall obtain and maintain at its own expense the following types and amounts of insurance for the term of this Agreement:
  - a. **General Liability:** Provider shall obtain General Liability Insurance on an occurrence form with a five hundred thousand dollar (\$500,000.00), at minimum, combined single limit of liability per occurrence and, at minimum, a one million dollar (\$1,000,000.00) annual aggregate.

The Township of Lower Makefield shall be named as an additional insured on the General Liability insurance policy obtained by Provider. Provider shall provide the Township with a copy of insurance certificate(s) at least 10 days prior to providing Services under this Service Agreement.

9. **Successors.** This Agreement shall bind the successors of the Township and Provider in the same manner as if they were expressly named.
10. **Choice of Law.** This Services Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania.
11. **Venue.** In the event that any dispute arises out of the Agreement, the parties hereto consent and agree that venue and jurisdiction for any dispute hereunder shall be exclusively in the Court of Common Pleas for Bucks County, Pennsylvania.
12. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.
13. **Entire Agreement.** This Agreement constitutes the entire agreement between the Township and Provider with respect to the matter of indemnification. Both parties revoke all prior or contemporaneous oral or written agreements between them that are inconsistent with the terms of this Agreement. In the event of any dispute between the parties regarding the Agreement, this contract will be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against the drafter of any part of the Agreement.
14. **Alteration:** No alteration or variation of the terms of this Agreement is valid unless made in writing and signed by both parties.
15. **Binding Agreement:** This Agreement shall inure to the benefit of, and be binding upon the parties' respective successors, heirs, and assigns.
16. **Headings.** The headings in this Agreement are for convenience of reference only and shall not affect the construction hereof.

17. **Severability**. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability will not affect any other provisions of this Agreement.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused these presents to be executed and their corporate or common seals hereunto affixed the day and year first above mentioned.

LOWER MAKEFIELD TOWNSHIP

By: Elizabeth Louson

David Perry

By: David C. Perry  
Title: \_\_\_\_\_

## **ADDENDUM TO SERVICES AGREEMENT**

This **ADDENDUM** to the Services Agreement between the Township of Lower Makefield and **David Perry** is now made on the 27<sup>th</sup> day of **October, 2021** by the Township of Lower Makefield, a political subdivision of the Commonwealth of Pennsylvania, maintaining a principal place of business at 1100 Edgewood Road, Yardley, Pennsylvania (hereinafter referred to as the Township) and **David Perry** a **Artist** with a primary business address of **716 Noble Street, Norristown, PA 19401** (hereinafter referred to as "Provider").

### **BACKGROUND**

The Township and Provider entered into a "Services Agreement" (hereinafter on or about **October 27<sup>th</sup>, 2021**) for the provision of certain Services at Township owned properties.

The aforesaid Agreement stated that "Provider agrees to provide certain Services at a Township-owned property and/or facility. Said Services and location of service shall be set forth in an addendum to this Service Agreement."

The aforesaid Agreement also stated that "Provider agrees to provide payment for the use of Township-owned Property or facilities. The terms of said payment shall be set forth in an addendum to this Service Agreement."

### **TERMS OF ADDENDUM**

NOW, THEREFORE, intending to be legally bound hereby and in consideration of the promises and covenants set forth herein and for other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation; Integration**: This Addendum is hereby incorporated, in full, into and shall be a part of the Services Agreement in accordance with and for so long as permitted by the terms hereof. The parties hereto expressly agree that this Addendum shall expire in accordance with Paragraph 5 of the Service Agreement, at which time the terms and conditions of this Addendum shall be null and void and of no further force and effect (except as otherwise expressly provided herein). The Agreement, as amended by the Addendum, represents the entire understanding of the parties and supersedes all prior agreements, understandings, negotiations, either oral or written, between the parties hereto. The Agreement may not be amended except by writing signed by both parties.
2. **Services and Location(s)**: The Township and the Provider expressly agree that during the term of this Addendum and for so long as this Addendum is in force and effect, Paragraph 1 – Services and Location(s) of the Services Agreement shall be amended to read as follows:

- a. Provider agrees to provide certain Services at Township-owned property (named below). Services shall include **cartoon art classes** (hereinafter referred to as “Services”).
  - b. Provider shall provide the aforesaid Services at the following location(s) at dates convenient to the Township and approved by the Township’s Director of Parks and Recreation: **Monica Tierney**
  - c. The registration period for any particular class shall close five days before the start of the class.
  - d. A minimum and a maximum number of participants shall be agreed upon between the Township and Provider.
  - e. In the event the minimum number of participants has not been reached, the class shall be cancelled and the Township shall notify any registered participants and the Provider of said cancellation.
3. **Payment:** The Township and the Provider expressly agree that during the term of this Addendum and for so long as this Addendum is in force and effect, Paragraph 2 – Payment of the Services Agreement shall be amended to read as follows:

Provider agrees to provide payment for the use of Township-owned Property or facilities. Payment shall be pursuant to the terms of either of the following provisions, or both, as the parties shall agree below (and initial, accordingly, at the time of execution):

- ~~(a) **Flat Rental Fee:** Provider agrees to pay the Township the amount of \$0.00 no later than fourteen (14) days before the first day it provides Services under this Agreement. No refunds shall be issued if Provider fails to notify the Township in writing directed to its Director of Parks and Recreation of its inability to perform the aforementioned Services no later than seven (7) days prior to the agreed upon date of service.~~
- (b) **Portion of Revenue:** Provider agrees that the Township shall collect all revenue for services performed under the Services Agreement, and this Addendum thereto, for each session held. Provider shall invoice the Township no later than thirty (30) days after each class provided. Upon receipt of Provider’s invoice, the Township shall pay the Provider an amount equal to 75 percent of gross revenue received from session referenced on the respective invoice for Services performed on Township-owned Property and/or facilities. Said payment shall be made to Provider no later than sixty (60) days following the date of each respective invoice.

The Provider represents and acknowledges that it has had ample time and a full opportunity to consider whether to enter into this Addendum and have it reviewed by his counsel at its option and expense, and has carefully and completely read, fully understands, and freely and voluntarily accepts the terms of this Addendum.

This Addendum shall be binding upon the respective parties, their successors, heirs and assigns and shall be interpreted in accordance with the laws of the Commonwealth of Pennsylvania.

This Agreement may be executed via electronic signatures and in counterparts, each of which shall constitute an original, and all of which shall constitute one Agreement.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]



IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have caused these presents to be executed and their corporate or common seals hereunto affixed the day and year first above mentioned.

LOWER MAKEFIELD TOWNSHIP

By: Elizabeth Yawn

Attest: PROGRAM MANAGER

David Perry

By: David C. Perry

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

Attest: \_\_\_\_\_