

RESOLUTION RECORD

VILLAGE OF NEWBURGH HEIGHTS, OHIO

RESOLUTION NO. 21- 18

INTRODUCED BY: All of Council

A RESOLUTION AUTHORIZING A LETTER AGREEMENT WITH HENNES COMMUNICATIONS; AND DECLARING AN EMERGENCY

WHEREAS, Village Council wishes to authorize the Mayor to enter into a Letter Agreement with Hennes Communications for the performance of services as specified therein;

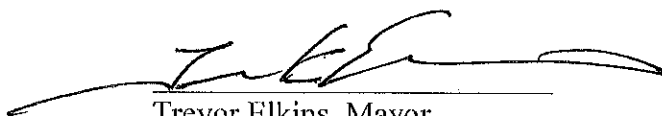
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL FOR THE VILLAGE OF NEWBURGH HEIGHTS, COUNTY OF CUYAHOGA AND STATE OF OHIO, THAT:

Section 1. Council hereby authorizes the Mayor to enter into a Letter Agreement with Hennes Communications, on the terms and at the rates set forth in Exhibit A hereto, which is incorporated herein by reference as if fully rewritten.

Section 2. That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this Council, and that all deliberations of this Council that resulted in such formal action occurred in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

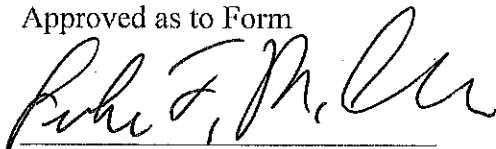
Section 3. This Resolution is hereby declared to be an emergency measure immediately necessary for the preservation of public peace, health and safety of the inhabitants of the Village of Newburgh Heights, such emergency being the need for Hennes Communications to render services as soon as possible for purposes of immediately providing accurate information relating to, and informing the general public about, the functions of the Village Building Department ; wherefore, provided it receives the affirmative vote of four (4) or more of the members elected or appointed to this Council, this Resolution shall take effect and be in force immediately upon its passage; otherwise, it shall take effect and be in force from and after the earliest time allowed by law.

PASSED: November 2, 2021



Trevor Elkins, Mayor
Village of Newburgh Heights, Ohio

Approved as to Form



Solicitor



Cathleen Nagorski, Fiscal Officer
Village of Newburgh Heights, Ohio

1ST Reading: 11/2/21
2ND Reading: 11/2/21
3RD Reading: 11/2/21



HENNES COMMUNICATIONS

CRISIS MANAGEMENT | CRISIS COMMUNICATIONS
LITIGATION COMMUNICATIONS | MEDIA TRAINING

Terminal Tower | 50 Public Square, Suite 3200 | Cleveland, Ohio 44113 | tel 216-321-7774
33 Merz Blvd. | Akron, Ohio 44333 | tel 330-310-9290
www.crisiscommunications.com

November 1, 2021

SENT VIA EMAIL

Trevor Elkins, Mayor
Village of Newburgh Heights
3801 Harvard Ave.
Newburgh Heights, Ohio 44105

Dear Mayor Elkins,

Thank you very much for contacting us to discuss certain issues facing the Village of Newburgh Heights (Newburgh) and how our communications consulting services can be of assistance. We have agreed that certain services will be provided, the scope of which shall be determined as the project develops (the "Services").

Rates & Terms

The billing rates for our senior consultants are listed below:

<i>Service</i>	<i>Hourly Rate</i>
<i>Standard communications consulting, planning, writing, etc.</i>	<i>\$400.00</i>
<i>Emergency crisis response (M-F 7:00 pm – 7:00 am)*</i>	<i>\$450.00</i>
<i>Emergency crisis response (weekends & legal holidays)*</i>	<i>\$500.00</i>
<i>Social Media monitoring & analysis</i>	<i>\$250.00</i>
NOTE: Travel time is billed at full rate *Eastern Standard Time	

Undisputed consulting fees shall be paid by Newburgh net thirty (30) days from receipt of Hennes Communications LLC's (HC) invoice for the Services. Notwithstanding the foregoing, if fees are being reimbursed by insurance coverage, then invoices will be prepared in accordance with and paid pursuant to the insurance company's requirements. The HC invoices shall describe the communications services provided and reference Newburgh. Any delinquent fees due to us shall carry interest at the rate of 10% per annum. If Newburgh disputes all or any portion of an invoice, it shall be required to pay only the amount not in dispute. Payment by Newburgh shall not result in a waiver of any of its rights hereunder.

HC may incur additional expenses in execution of this agreement including, but not limited to, printing, video production, travel, meals, and overnight delivery. HC will invoice Newburgh each month for these expenses and Newburgh agrees to pay these invoices within thirty (30) days of receipt. Notwithstanding the foregoing, Newburgh shall only reimburse HC for its reasonable travel expenses and other ordinary and necessary business expenses reasonably incurred in the performance of the Services upon presentation of appropriate receipts therefor and in accordance with Newburgh's business expense policy, provided that such costs are approved in advance by Newburgh in writing. HC shall be solely responsible for all of HC's other expenses incurred in connection with the performance of the Services, including but not limited to any and all taxes which may be imposed on HC or on the relationship between HC and Newburgh with respect to this letter of agreement. Other than the fees and expenses described herein, HC shall not be entitled to any further payment or compensation from Newburgh.

Rights & Responsibilities of Each Party

HC will review each bill for accuracy before being sent to Newburgh. Newburgh agrees to review HC's bills and agrees that if it cannot approve any portion of one of HC's bills, it will contact HC to discuss the bill.

Either party may immediately terminate this letter of agreement without penalty upon written notice to the other party. In the event of such termination, HC shall be entitled to receive payment for any and all undisputed expenses, fees or other costs incurred prior to termination.

This letter of agreement will terminate immediately if performance hereunder by either party is prevented by a cause beyond that party's control, including but not limited to: acts of God, fire, flood, explosion, war, disaster or civil disorder.

HC agrees to keep confidential and not to disclose or use for its own benefit or for the benefit of any third party (except to HC personnel as may be required for the performance of services under this agreement or as may be required by law), any information, documents or materials related to Newburgh ("Proprietary Information"). The confidentiality obligations in the preceding sentence, however, shall not extend to any information, documents, or materials that (a) become publicly available without breach of this provision, (b) are received from a third party without restriction on confidentiality or disclosure, or (c) are independently developed without reference to information received hereunder from the other party who is not obligated under a confidentiality agreement or covenant. HC shall treat such Proprietary Information with the same care as HC would exercise in the handling of its own confidential or proprietary information, but in no event less than reasonable care and in no event shall such information be disclosed to any person including employees of HC, and/or contractors, unless such person or entity is bound by or specifically undertakes a like obligation of confidentiality. Upon termination or cancellation of this letter of agreement for any reason, all such Proprietary Information of Newburgh shall be destroyed or returned by HC and the limitations and undertakings specified in this paragraph shall remain in effect.

HC represents and warrants that there are no employment contracts, consulting contracts, restrictive covenants, nor any other restrictions preventing the full performance of HC's duties and provision of the Services hereunder. HC further represents that the execution, delivery, and performance of this letter of agreement will not constitute a default under or breach of any agreement or other instrument to which HC is a party or by which HC is bound, including without limitation, any confidentiality or noncompetition agreement. HC further agrees, represents, and warrants not to use Newburgh's confidential information without Newburgh's written consent.

HC further represents and warrants that it shall provide the Services to the best of its ability, in good faith, and in accordance with the highest standards in the industry.

In performing this Agreement, HC shall comply with all applicable laws, rules, and regulations. In the event of a breach of the preceding sentence, this letter of agreement shall terminate automatically without notice and any compensation due hereunder shall be forfeited.

HC shall not make any representations, warranties, guarantees, or commitments beyond those which Newburgh shall, from time to time, authorize in writing. HC shall disclose that HC is acting for Newburgh as HC only and only in connection with the provision of the Services.

Limits of This Agreement

This letter of agreement does not create an employer-employee relationship between Newburgh and HC, nor an agency, joint venture, or partnership. HC shall be an independent contractor only.

Newburgh acknowledges that during the course of its engagement of HC, it will be exposed to proprietary methods, processes and pre-existing works of HC (the "HC-IP"). Newburgh agrees that all HC-IP, as well as all new custom work product created by HC or created under the direction of HC in connection with the Services shall be the sole intellectual property of HC. Newburgh further agrees that copyrights, trademarks, trade secrets, additional intellectual property rights, and other proprietary interests related to such new custom work product shall be retained to HC, but Newburgh shall have an exclusive, perpetual, worldwide license to use such copyrighted work product.

HC shall not be responsible for the publication of any non-confidential facts or content received by HC from Newburgh for use by HC in any communications work (including, without limitation, any social media transmissions), including any content later alleged to be false, defamatory, misleading, or an infringement upon the intellectual property rights of any third party. Newburgh, and not HC, shall be solely liable for, and indemnifies and holds harmless HC for, any damages that may result from facts or content that Newburgh provides, or which it approves before the facts or content are disseminated by HC, including any damages resulting from patent, copyright, or trademark infringement, allegations of false claims, or allegations of defamation, libel or slander.

Neither party shall have the authority to act for or bind the other in any way, to execute agreements on behalf of the other, or to represent that either party is in any way responsible for the acts or omissions of the other. Nothing contained in this letter of agreement shall constitute HC as the agent or representative of Newburgh, except as expressly provided hereunder.

Newburgh agrees that neither it nor any of its assignees or successors shall (a) seek a jury trial in any lawsuit, proceeding, counterclaim or any other action based upon or arising out of or in connection with the engagement of HC by Newburgh or any services rendered pursuant to such engagement or (b) seek to consolidate any such action with any other action in which a jury trial cannot be or has not been waived. The provisions of this paragraph have been fully discussed and shall be subject to no exceptions.

Neither party may alter its obligations under this letter of agreement without the written authorization of the other, nor may HC assign this agreement without the prior written consent of Newburgh, and any such purported assignment shall be void. The exception shall be the hourly fees quoted on page one of this document, which can be changed in writing by HC, with advance notice prior to actual work performed.

The validity, construction, and interpretation of this letter of agreement shall be solely and exclusively governed by and construed in accordance with the laws of the State of Ohio, Cuyahoga County excluding any otherwise applicable rules of conflict of laws. The federal and state courts in the state of Ohio shall have sole and exclusive jurisdiction over the parties and subject matter of this letter of agreement. For implementation of this letter of agreement and all its consequences, each party waives such of its rights and privileges under any other law or legal system, such as the law of the place of performance, as is necessary to give effect to the terms and conditions hereof.

This document is a complete and exclusive statement of the terms of this letter of agreement and shall be modified only through written amendments to this letter of agreement signed by both parties.

If any part of this letter of agreement becomes to any extent invalid or unenforceable, the remainder of the agreement shall not be affected and will be valid and enforced to the fullest extent permitted by law.

Newburgh acknowledges and agrees that public relations and/or crisis management efforts take time before results can be seen. Newburgh also acknowledges that editorial coverage is out of the control of HC and that even if desired stories and articles are published or broadcast, the final editorial content cannot be dictated or controlled by it. Additionally, Newburgh acknowledges and agrees that HC makes no guarantees regarding editorial coverage or public/media relations results.

As part of this contract, Newburgh acknowledges that HC may publicize our agreement to work with you by including Village of Newburgh Heights in our public client roster. **Please note that our client roster does not contain any details on the nature of work provided.**

To execute this agreement, please sign below and return it to us via email or fax at 216-916-4405. We will then send you a signed hard copy via U.S. Mail.

Thank you for your interest in Hennes Communications LLC. While it is impossible for us to predict or guarantee results, we assure you that we will pursue your matter in a diligent and expeditious manner and do our very best on your behalf. We thank you for your confidence in us, and we look forward to working with you.

Sincerely,



Thomas Fladung, Managing Partner
Hennes Communications LLC

Agreed to and Accepted by:

Village of Newburgh Heights

By: _____ Its: _____ Date: _____
Signature Title

Printed Name