

**BEACHWOOD CITY COUNCIL**  
**LEGAL AND PERSONNEL COMMITTEE MEETING AGENDA**  
**MONDAY, OCTOBER 3, 2022, 5:30 PM**  
*at* **BEACHWOOD CITY HALL, COUNCIL CHAMBERS**  
25325 Fairmount Boulevard, Beachwood, Ohio 44122

Eric Synenberg  
Alec Isaacson  
Barbara Bellin Janovitz  
June E. Taylor

Agenda Items

1. Mayor's Report
2. Discussion regarding Professional Services Contracts - George Smerigan, Tactical Planning and Bruce Hennes, Hennes Communications
3. Any other matters coming before the Legal and Personnel Committee

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# CITY OF BEACHWOOD

## INTER-OFFICE MEMORANDUM

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**TO:** Eric Synenberg, Council Vice President &  
Legal and Personnel Committee Chair  
Alec Isaacson, Council President

**FROM:** Tina Turick, City Administrator 

**DATE:** September 29, 2022

**SUBJECT:** **Committee Meeting – Professional Services Contracts**

In preparation for the Council Committee meeting set for Monday evening, Mayor Berns asked me to provide the following documents for your review and information:

1. Proposal from George Smerigan for Professional Planning Services – 3-year contract
2. Letter of Engagement from Hennes Communications

Mr. Smerigan will be present should Council have any specific questions regarding his proposal for professional planning services.

The City of Beachwood has maintained a relationship with Hennes Communications for many years. Mayor Berns will, again, create a purchase order under his spending authority giving us the continued ability to consult with this successful and experienced firm staffed exclusively with senior-level consultants.

Enc.

**Cc:** Mayor Justin Berns  
Members of City Council  
Larry Heiser, Finance Director  
Stewart Hastings, Law Director  
Whitney Crook, Clerk of Council  
George Smerigan, City Planner



# HENNES COMMUNICATIONS

CRISIS MANAGEMENT | CRISIS COMMUNICATIONS  
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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](http://www.crisiscommunications.com)

August 24, 2022

SENT VIA EMAIL

Mayor Justin Berns  
City of Beachwood  
25325 Fairmount Blvd.  
Beachwood, OH 44122

Dear Mayor Berns,

Thank you very much for contacting us to discuss certain issues facing the City of Beachwood (Beachwood) 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. We agree that these services shall not exceed \$25,000.

<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 &amp; legal holidays)*</i>	<i>\$500.00</i>
<i>Social Media monitoring &amp; analysis</i>	<i>\$250.00</i>
<b>NOTE: Travel time is billed at full rate    *Eastern Standard Time</b>	

Undisputed consulting fees shall be paid by Beachwood 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 Beachwood. Any delinquent fees due to us shall carry interest at the rate of 10% per annum. If Beachwood disputes all or any portion of an invoice, it shall be required to pay only the amount not in dispute. Payment by Beachwood 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 Beachwood each month for these expenses and Beachwood agrees to pay these invoices within thirty (30) days of receipt. Notwithstanding the foregoing, Beachwood 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 Beachwood's

business expense policy, provided that such costs are approved in advance by Beachwood 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 Beachwood 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 Beachwood.

### **Rights & Responsibilities of Each Party**

HC will review each bill for accuracy before being sent to Beachwood. Beachwood 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 Beachwood ("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 Beachwood 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 Beachwood's confidential information without Beachwood'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 Beachwood shall, from time to time, authorize in writing. HC shall disclose that HC is acting for Beachwood 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 Beachwood and HC, nor an agency, joint venture, or partnership. HC shall be an independent contractor only.

Beachwood 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"). Beachwood 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. Beachwood 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 Beachwood 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 Beachwood 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. Beachwood, 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 Beachwood 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 Beachwood, except as expressly provided hereunder.

Except with respect to gross negligence or willful misconduct, both parties agree to hold harmless, indemnify, and defend its managers, members, employees and agents against any and all liabilities, losses, claims, costs and expenses relating to this engagement. In no event shall HC be liable to Beachwood for any indirect, special, consequential or incidental damages. The parties' relationship shall be governed exclusively by Ohio law, with venue for any disputes being only in the Cuyahoga County, Ohio, Court of Common Pleas, or federal court in the Northern District of Ohio, with all parties irrevocably submitting to those courts' jurisdiction.

Beachwood 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 Beachwood 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 Beachwood, 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.

Beachwood acknowledges and agrees that public relations efforts take time before results can be seen. Beachwood 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, Beachwood acknowledges and agrees that HC makes no guarantees regarding editorial coverage or public/media relations results.

As part of this contract, Beachwood acknowledges that HC may publicize our agreement to work with you by including City of Beachwood 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 fax it back to us 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,



Bruce Hennes, CEO  
Hennes Communications LLC

Agreed to and Accepted by:

City of Beachwood

By: \_\_\_\_\_ Its: \_\_\_\_\_ Date: \_\_\_\_\_  
Signature Title

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

## Tina Turick

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**From:** George Smerigan <geosmerigan@gmail.com>  
**Sent:** Wednesday, September 7, 2022 10:40 AM  
**To:** Tina Turick  
**Subject:** Contract Proposal  
**Attachments:** Tactical Planning LLC 2023 Contract Propposal.doc

\*\*\*City of Beachwood Notice \*\*\* This e-mail is from an external source. Think before you click links or open attachments.

Tina,

Attached is my proposed contract for 2023, which reflects the modification in compensation that we discussed. Please note that the scope of services has remained the same.

George

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George Smerigan  
Tactical Planning, LLC  
PH: 440-725-1886  
Email: [geosmerigan@gmail.com](mailto:geosmerigan@gmail.com)



**CONTRACT WITH TACTICAL PLANNING, LLC. TO PROVIDE PROFESSIONAL PLANNING SERVICES FOR THE CITY OF BEACHWOOD IN 2023**

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This Contract is entered into by and between GEORGE SMERIGAN, of the firm TACTICAL PLANNING, LLC., whose address is P.O. Box 3163, Cuyahoga Falls, Ohio 44223, ("Planner" or "Contractor") and the CITY OF BEACHWOOD, OHIO 25325 Fairmount Boulevard, Beachwood, Ohio 44122 ("City");

WITNESSETH, that in consideration of the Contractor being selected by City Council as the City's Professional Planning Consultant to render various services for the City for **three (3) years (2023, 2024 and 2025)** and for the money considerations provided herein, the parties covenant and agree as follows:

**A. Scope of Services**

As a Professional Planner and Consultant for the City during **2023, 2024 and 2025**, Contractor shall provide the following services ("Services"):

- 1) Attend regular and special meetings of the City's Planning and Zoning Commission;
- 2) Provide plan reviews and staff reports on Planning and Zoning Commission agenda items;
- 3) Attend regular and special meetings of the City's Architectural Review Board;
- 4) Attend such meetings of Council and/or Council Committees as are requested by the Mayor;
- 5) Attend internal meetings to review and discuss pending items; and
- 6) Meet with applicants, developers, builders, design professionals, residents, and business owners as necessary to review and discuss development projects, zoning issues, and related matters.

It is further understood that Services will also include any other related routine services, but not additional, special, or extraordinary services such as special projects, special requests, litigation services, and drafting of major ordinances or plan updates ("Additional Services"). The Contractor may be assigned such additional planning work by the Mayor, Council, or the Planning & Zoning Commission. The Contractor shall not begin any such work until it has submitted a letter to the Mayor, with a copy to the Chairman of any legislative body assigning such work, clearly defining the scope of the planning work accepted by the Contractor that will be the subject of later billing, and a purchase order is issued by the City for such work. It is intended that the fees for such additional services will be billed separately as Additional Services as provided herein.

**B. Compensation**

- 1) For services described in Section A hereof during calendar year **2023, 2024 and 2025**, the City shall compensate the Consultant based upon a lump sum retainer fee on an annualized basis of Thirty-Six Thousand Dollars (\$36,000.00) per year. Payments shall be made monthly in the amount of Three Thousand Dollars (\$3,000.00) at the beginning of each month.

- 2) Payments for Additional Services as defined in Section A shall be provided on an hourly rate basis at the rate of One Hundred Twenty Dollars (\$120.00) per hour and/or at the City's option upon a negotiated and mutually agreeable fixed fee amount.
- 3) Any reimbursable expenses incurred shall be in addition to regular compensation. Reimbursable expenses shall not be accrued without prior written authorization by the City and shall be paid monthly based upon reasonable documentation.
- 4) There shall be no charge for out-of-town travel expenses unless such travel is approved by the Mayor in advance. The Contractor shall, on a monthly basis, provide the Mayor and Finance Director with a written accounting of all time spent by any representative of the Contractor. Such accounting shall include an itemization of time spent on City matters, a description of the work performed, and an identification of the person performing the work.

### **C. City Responsibilities**

The City shall provide the Consultant, at no cost, suitable work space for office hours and meetings while at City Hall.

### **D. General Provisions**

1) The Contractor shall accept no other work within the City from private employers. The Contractor shall avoid all conflicts of interest.

2) All original plans, drawings, specifications, surveys, reports and other miscellaneous drawings shall be delivered to the City immediately upon completion.

3) This Contract shall effective for the period of January 1, 2023 through December 31, 2025, unless canceled in accordance with Section D (6).

4) The City reserves the right to audit all books, time records, invoices, and other documents of the Contractor that relate to any invoices billed to the City of Beachwood, for a period of two (2) years after any such invoice is submitted. The Contractor shall maintain adequate documentation for at least two (2) years to enable the City to conduct such audit.

5) The Contractor is an independent contractor who shall provide all equipment materials and labor necessary to perform the work. The Contractor shall be responsible for arranging for workers' compensation coverage for its employees, and shall deliver to the City a copy of a certificate showing compliance with such laws. The Contractor further agrees to file an income tax return with R.I.T.A. in accordance with municipal tax law.

6) The City shall be entitled to cancel this Contract upon giving five (5) days written notice to the Contractor for failure of the Contractor to comply with any of the provisions of this contract or to furnish satisfactory work in connection with the required services. **Either party may terminate this agreement, for any reason, upon thirty (30) days written notice to the other party.** The Contractor will perform all work in accordance with all Federal, State and local laws and regulations governing such services, including but not limited to equal employment opportunity laws and prevailing wage rates, where applicable. Contractor shall certify compliance with all applicable laws.

7) Contractor shall provide the work without any sub-contractors, and shall provide proper supervision and supervisory personnel in connection with all of the work.

8) The Contractor shall furnish the City with evidence of (a) general liability insurance and (b) errors and omissions or professional liability insurance from a company licensed by the State of Ohio, both of which shall be in the amount of Two Hundred Fifty Thousand (\$250,000.00) for any accidental occurrence or error or omission arising out of any act or omission by the Contractor which causes bodily harm, property damage, or any other damages, and shall cause the City to be named as an additional insured on the general liability policies. The Contractor agrees to fully defend, indemnify and hold the City harmless from any and all claims, demands or causes of action for personal injury, property damage or otherwise arising from the work and services provided, and whether involving employee claims or third-party claims.

9) Findings for Recovery Certification: Ohio law prohibits any state agency or political subdivision from awarding a contract, in excess of twenty-five thousand dollars (\$25,000.00), for goods, services, or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. Contractor certifies that an unresolved finding for recovery has not been issued against Contractor and attached is a completed Findings For Recovery Certification.

10) This Contract shall be deemed made and entered into in the State of Ohio and shall be governed by and construed in accordance with the laws of Ohio and the laws of the United States in that order. Any controversy or claim, whether based upon Contract, statute, tort, fraud, misrepresentation or other legal theory, related directly or indirectly to this Contract, whether between the parties, or of either of the parties' employees, agents or affiliated businesses, will be resolved in the appropriate court in Cuyahoga County, Ohio.

11) Contractor acknowledges that no modifications can be made to this Contract without prior written consent and prior approval by the City.

12) Contractor agrees and acknowledges that records created by, received by, or maintained by Contractor during the term of this Agreement and in the performance of the required services may be a public record and agrees to maintain such records in a manner that is consistent with the City's public records policy and records retention policy. All responses to public records requests shall be processed by the City's Law Department.

13) This Contract represents the entire agreement between the parties, will be governed by the laws of the State of Ohio, and shall be binding upon both parties. This Contract cannot be assigned by the Contractor without the prior written permission of the City.

14) It shall be the responsibility of the Contractor to obtain a copy of the purchase order issued by the City for the approved amount of the Services or Additional Services being performed. Furthermore, it shall be the responsibility of the Contractor to track remaining funds available and not to invoice the City for any amounts not approved by the terms of the issued purchase order and the terms of this Contract. Any alteration to this Agreement shall conform to BCO 121.09(a). Invoices that exceed the approved amount of an issued purchase order or the terms of this Agreement will not be paid by the City.

15) This Contract may be executed by electronic mail, facsimile or in counterparts, each of which shall be deemed an original and all of which shall be deemed to be one and the same instrument.

IN WITNESS WHEREOF, the parties have set their hand to this Contract on the dates next to their respective signatures.

TACTICAL PLANNING, LLC.  
GEORGE SMERIGAN

CITY OF BEACHWOOD

By: \_\_\_\_\_  
George Smerigan, Managing Member

By: \_\_\_\_\_  
Justin Berns, Mayor

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

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

Approved as to Form:

\_\_\_\_\_  
Stewart Hastings, Law Director

**FINDINGS FOR RECOVERY CERTIFICATION**

I am aware that Ohio law, under certain circumstances, prohibits a political subdivision from awarding a contract for goods, services or construction to any person against whom a finding of recovery has been issued by the Auditor of State, if that finding is unresolved. I hereby certify that an unresolved finding for recovery has not been issued against Tactical Planning, LLC.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
TITLE

\_\_\_\_\_  
DATE