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Via E-mail Transmission  
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Noah Browning, Senior Internal Auditor  
Kevin Madok, CPA  
Clerk of the Court and Comptroller  
500 Whitehead Street  
Key West, FL 33040

Re: Audit of Stuart Newman Association, Inc.

Dear Mr. Madok and Mr. Browning:

As you are aware, our office represents Stuart Newman, Associates, Inc. d/b/a NewmanPR (hereafter referred to as NewmanPR).

The following constitutes the written response to the draft audit report prepared by your office, the Clerk of the Court (“Clerk”), provided to NewmanPR on January 19, 2024, and dated February 5, 2024 (“Audit”). The following summarizes our positions set forth in this response<sup>1</sup>:

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<sup>1</sup> Although the Clerk provided our client and I the opportunity to respond to the current Audit, NewmanPR was not given the opportunity to respond to the October 2023 audit of the Tourist Development Council prior to the issuance of the report related to that audit, which was seemingly prematurely issued. That report made incorrect allegations directed to NewmanPR which were subsequently explained and which the Clerk acknowledges to be “reasonable” in the current report. The inclusion of those incorrect statements has already resulted in significant damage to NewmanPR.

- (1) The Audit contains false statements of fact.
- (2) The Audit expresses erroneous legal opinions regarding the requirements of the Contract which the Clerk's office is not licensed nor qualified to express.
- (3) The Audit report expresses opinions on matters which are not appropriate for an audit and/or an audit of NewmanPR.
- (4) The performance and the issuance of the audit by the Clerk's office is improper and in violation of any applicable auditing professional standards because the office lacks the required independence.

### **BACKGROUND**

NewmanPR was started by Stuart G. Newman, an honored World War II officer who steered the organization until his March 24, 2019, death. NewmanPR began its relationship with Monroe County on October 1, 1980, and it has provided indisputably immaculate service to Monroe County ("County"), helping it navigate multiple and significant crises which threatened the Keys tourism-based economy. Those crises included the Mariel Boat Lift, Hurricane Georges, Hurricane Irma, Covid 19, and the BP Oil Spill, just to name a few. In addition, the agency has either developed or helped develop award-winning proactive programs that have helped the Keys and Keys officials deal with critical issues including a pioneering hurricane visitor safety program and a public awareness initiative to ensure that visitors understand the rules during the state's lobster sport (mini-season) harvest season. Through it and its subcontractors' relationships with national and international news outlets, the Florida Keys & Key West are commonly featured in stories throughout the U.S. and the world. Not unexpectedly, the scope of services provided by NewmanPR changed with the times, adjusting to technological advances and changes including the internet, handheld computers (e.g. iPhones and other smartphones), and the explosion of social media. Succinctly stated, the platforms upon which public relations must be managed changed dramatically in the 43-year relationship between the County and NewmanPR with each new technological change placing increased demands on the public relations agency. NewmanPR successfully shepherded Monroe County through all of those changes. NewmanPR has never exceeded its allotted budget in the 43-year relationship with Monroe County. NewmanPR's staff consists of in-house full-time employees and independent contractors. Those who know or knew the principals of NewmanPR, the late Stuart Newman and Andy Newman, know them to be people of immaculate character, honest and credible. NewmanPR has never retained an attorney to assist in the negotiation or drafting of its contracts with Monroe County nor did it, prior to the allegations made by the Clerk regarding Graphics 71 in the recent "audit" of the Monroe County Tourist Development Council ("TDC") and/or Visit Florida Keys, have an attorney providing advice in connection with the use of fictitious names or other corporate related matters.

### **THE CURRENT CONTRACT**

Because the Clerk inappropriately expresses legal opinions which he is neither licensed nor qualified to do and also offers comments regarding the adequacy of the "deal" between the County

and NewmanPR, a review of the structure of the present and controlling contract between NewmanPR and the County (“Contract”) and its critical terms is necessary.

Conceptually, the Contract provides for the payment of an annual fixed fee to NewmanPR payable in twelve equal installments. The fee is for management of the County’s public relations needs. The Contract lays out certain requirements and includes a defined scope of work for which the fix fee is paid.

Noticeably, the current Contract, and any past versions thereof, *have never required* NewmanPR to exclusively dedicate itself or its employees to Monroe County. The terms of the Contract acknowledge that NewmanPR and its staff will service other clients. That being said, the scope of services defined in the Contract, as a practical matter, place demands on NewmanPR which require, when measured in hours worked, the equivalent of several full-time employees and occasionally demands an employee work full time for Monroe County. The Contract also does not require NewmanPR to track time committed to its duties or have its employees log time associated with their duties under the Contract. The best evaluation of NewmanPR is the results of its efforts, not a time slip.

In addition to the fixed fee, the Contract also provides for the payment of the additional amounts:

The Contractor shall be reimbursed at cost for all actual expenses incurred for contracted staff, media materials, postage, shipping, clipping services, special event support, research, website maintenance, promotional items, seminars or show registrations, sub-agency agreements, entertainment of media, broadcast production, other video and audio projects, travel expenses and all other all other projects or production materials that are necessary for the fulfillment of this Agreement and that have been approved in advance by the TDC Fiscal Marketing Plan or budget according to Monroe County Procurement Policies.

It is important to note that neither the above provision, nor any other provision in the Contract, places any limitations on the terms or agreements entered into with, amongst others, contracted staff, sub-agencies, and entertainment of media. This provision, which vests broad discretion in NewmanPR, is particularly important to make a mental note of because the Clerk’s Audit expresses opinions suggesting NewmanPR did not comply with the Contract, when in fact the deficiencies claimed by the Clerk were not required by the Contract.

### **UNREGISTERED BUSINESS - GRAPHICS 71**

One of the “big reveals” by the Clerk is that Graphics 71 is an “unregistered business.” The Clerk, through a series of gyrations, attempts to characterize an admittedly poor methodology for billing services performed by NewmanPR and not covered by the fixed fee portion of the Contract as

some effort to “double bill” the County and/or conceal payment<sup>2</sup> for services already included within the scope of the fixed fee.

“Graphics 71” was a name used by NewmanPR to designate and invoice photography, print production and rare video production projects (“Photography Services”) not included within the scope of services for which NewmanPR was compensated by way of the fixed fee. Graphics 71 is nothing more than a fictitious name. Originally, NewmanPR maintained a separate bank account in the name of Graphics 71 and cut checks from the NewmanPR operating account to the Graphics 71 account which would, ultimately, be disbursed to and deposited into NewmanPR’s operating account. The practice of maintaining a separate account to deposit the checks into was discontinued some nine years ago by the late Stuart Newman because of the administrative costs and burden associated with maintaining a separate account. Graphics 71 is not registered as a fictitious name in Florida, which is not uncommon.

The considerable effort the Clerk claims to have undertaken to determine that Graphics 71 was not a legal “entity” was unnecessary because the name in and of itself reveals Graphics 71 is not an entity. Under Florida law, names of legal entities (Corporations, Limited Liability Companies, Limited Liability Partnerships) are required to include designations associated with the entity type unless a fictitious name is filed. So, by way of example, the name of a corporation “must contain the word “corporation,” “company,” or “incorporated” or the abbreviation “Corp.,” or “Inc.,” or “Co.,” or the designation “Corp.,” or “Inc.,” or “Co.,” as will clearly indicate that it is a corporation instead of a natural person, partnership, or other eligible entity. *See*, Fla. Stat. § 607.0401. However, an entity can drop this designation or operate under another name or as more commonly referred to, a fictitious name. An entity operating under a fictitious name should register the fictitious name. Not infrequently, businesses are unaware of this requirement and will operate using an unregistered fictitious name. The Florida Legislature, having apparently understood that a non-compliance gives rise to nothing more than inconvenience, has enacted penalties and, perhaps more importantly, reaffirmed that operation under an unregistered fictitious name is not a basis to avoid liability under contracts. The penalty provision of the fictitious name statute provides as follows:

9) PENALTIES —

- (a) If a business fails to comply with this section, neither the business nor the person or persons engaging in the business may maintain any action, suit, or proceeding in any court of this state with respect to or on behalf of such business until this section is complied with. An action, suit, or proceeding may not be maintained in any court of this state by any successor or assignee of such business on any right, claim, or demand arising out of the

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<sup>2</sup> In furtherance of this effort, the Clerk points to a response from Andy Newman of NewmanPR wherein he states that “Graphics 71 was initiated as a separate entity within Stuart Newman Associates” suggesting this statement was made to mislead the Clerk. The statement actually reflects Andy Newman’s lack of familiarity with the concept of legal entities because, as the Clerk should well know, legal entities like corporations and limited liability companies, don’t have legal entities “within” them.

transaction of business by such business in this state until this section has been complied with.

(b) The failure of a business to comply with this section does not impair the validity of any contract, deed, mortgage, security interest, lien, or act of such business and does not prevent such business from defending any action, suit, or proceeding in any court of this state. However, a party aggrieved by a noncomplying business may be awarded reasonable attorney fees and court costs necessitated by the noncomplying business.

(c) Any person who fails to comply with this section commits a noncriminal violation as defined in s. 775.08, punishable as provided in s. 775.083.

Fla.Stat. § 865.09

The fine provided for in Fla.Stat. §775.083 is \$500.00.

An understanding of the Contract and the above reveal several undisputable facts:

- (1) The fact that Graphics 71 was not an “entity” was not a secret to anyone and did not require any special investigative or audit techniques to discover.
- (2) The Contract does not prohibit the Company from having or utilizing a fictitious name;
- (3) The punishment for the Clerk’s claimed lack of adherence to all laws and regulations is akin to a traffic ticket (e.g. a fine).

### **NO PAYMENTS MADE TO GRAPHICS 71/ IMPROPER DUPLICATE COMPENSATION**

Aware the common mistake of failing to register a fictitious name lacks a credible basis to accuse NewmanPR of wrongdoing, the Clerk attempts to associate some improper purposes to this innocent mistake by claiming NewmanPR has engaged in double billing and failed to comply with a technical provision of the Contract, to wit: that all expenses shall “have been paid for by the agency before being submitted for reimbursement”.

The claimed “double billing” was first raised in the Clerk’s October 2023 “audit” of the TDC/Visit Florida Keys (“TDC Audit”) wherein the Clerk, who is not a licensed attorney or qualified to express legal opinions, opined the Photography Services being billed under the name Graphics 71 were included within the scope of services for which NewmanPR was compensated via a fixed fee. The Clerk’s inappropriate opinion was, however, quickly revealed as incorrect by persons actually qualified and properly licensed to practice law in the State of Florida: the County Attorney’s Office. The County Attorney’s Office opined the Photography Services were not included within the scope of the services covered by the fixed fee component of the Contract.

Notwithstanding, in the current Audit, the Clerk continues his unlicensed practice of law and takes issue with the conclusions of the County Attorney’s Office (Audit, pg. 15). In doing so, he argues two ancient contracts, both of which were entered into over 30 years ago and have long since expired, somehow support his position. These two artifacts bear no relevance to the current,

negotiated in an arms-length transaction, Contract between the County and NewmanPR, which was drafted by the County Attorney's Office with review and input of the Clerk.

The Clerk decides to double down and attempts to refute the conclusion of the County Attorney in the Audit of NewmanPR. In doing so he argues that because NewmanPR justified reimbursement of a hotel room while attending Fantasy Fest in Key West as being public relations related, it was inappropriate for NewmanPR to bill for Photography Services which occurred while NewmanPR was in Key West for the event. Again, the Contract, which controls the relationship between the County and NewmanPR, demonstrates otherwise.

As revealed before, the Contract is a fixed fee plus reimbursable expenses Contract, not an hourly fee based Contract, and it effectively provides for the rendition of services on an as needed basis. It does not contemplate that NewmanPR will exclusively dedicate its business to Monroe County or prohibit NewmanPR from attending to other items while attending to public relations matters for the County, *particularly matters which are for the benefit of the County* (e.g. Photography Services). The Clerk's view, which is unsupported by the Contract, would put NewmanPR in violation of the Contract for sending emails or taking phone calls related to other clients since the Clerk seems to believe, without support, that the incursion of expenses for attending a major public relations event prohibits NewmanPR from attending to the needs of other clients or the client for which it is attending to the event. Stated another way, the Clerk argues that because NewmanPR submitted the hotel expense, NewmanPR was precluded from doing anything other than public relations work the entire time it was in Key West. This conclusion is non-sensical and flies in the face of the Contract. The Clerk seemingly believes the County's interest would have been better served if NewmanPR had increased the costs associated with covering the event by hiring a separate photography agency that would have incurred reimbursable expenses separate and apart from those of NewmanPR.

The Clerk also attempts to make an issue out of NewmanPR not having time sheets for the Photography Services or having a "market analysis" to justify the fees charged for Photography Services stating:

Put differently, NewmanPR could provide no objective justification for the rates or hours charged by Mr. Newman and could provide no evidence that NewmanPR made any effort to ensure the County was given the best pricing for the services provided.

Audit, pg. 19.

The Clerk's conclusions are not only factual misstatements, but they also overlook the fact that the Contract does not require NewmanPR to maintain any such records. Further, although the Clerk suggests the deal entered into by and between NewmanPR and the County was not favorable to the County, it fails to offer any information suggesting otherwise. In short, the Clerk makes an accusation and says it must be true if the accused can't disprove it.

The Clerk then again resorts to undermining the legal opinion of the County Attorney, stating:

[The Monroe County Attorney's] limited legal analysis focused solely on debating whether or not photography and videography service fall under the definition of being a

reimbursable expense and failed to address the more troubling issues involving Graphics 71”

He then identifies the “troubling issues” which reveal the County Attorney is incorrect:

- (1) Using a non-existent company as the conduit, NewmanPR claimed to have made payments eligible for reimbursement when, in fact, the agency made no payments and, therefore, there were no valid reimbursable expenses. NewmanPR requested reimbursement for the County for nonexistent payments made to a nonexistent company.

**Response:** the problem with this statement is there is nothing in the Contract that prohibits NewmanPR from using a fictitious name nor would the contract prohibit NewmanPR from using a wholly owned separate legal entity to provide the Photography Services. Additionally, it was common knowledge that NewmanPR billed separately for Photography Services. Furthermore, the Contract does not require a check cut for services be “cashed” by the payee before it is deemed “paid”.

- (2) Newman PR is not following Monroe County purchasing policies to ensure that the most qualified and cost-effective third-party vendor is providing services to the TDC.

**Response:** the Contract does not require NewmanPR to follow Monroe County purchasing policies when providing out of scope services or hiring third parties to provide those services.

- (3) Graphics 71 is not registered as a fictitious name for NewmanPR or registered to conduct business in the State of Florida.

**Response:** as noted above, this non-compliance is a minor, frequent oversight by small businesses and easily rectifiable. Moreover, the gravity of this non-compliance is revealed through the penalties: a small fine and a prohibition to filing lawsuits until the fictitious name is registered.

The Clerk then formulates a legal opinion regarding his findings:

“These appear potentially to be material breaches of the contract”.

There are several core problems with the Clerk’s legal opinion: (1) he is not qualified to give it; (2) the items which the Clerk complains about are not in violation of the Contract; and (3) the Clerk’s improper legal opinion is not supported by law.

First, the Contract at issue does not define the term “paid.” When language or a term used in a contract is clear and unambiguous, “the plain meaning of that language controls.” *Anthony v. Anthony*, 949 So. 2d 226, 227 (Fla. 3<sup>rd</sup> DCA 2007), citing, *Maher v. Schumacher*, 605 So.2d 481, 482 (Fla. 3d DCA 1992). The term “paid,” as customarily used in business and personal practice, particularly when “checks” are involved, does not mean the funds have cleared the bank and the payor is in possession of a cancelled check. Even the most aggressive creditors will reflect an item is “paid” when the check is received, not collected. The payor or person issuing the check will reflect an item as paid when a check has been mailed.

Additionally, to constitute a material breach, a party's nonperformance must “go to the essence of the contract, and a party's failure to perform some minor part of its contractual duty cannot be

classified as material.” *Covelli Family, L.P. v ABGS, LLC.*, 997 So.2d 749 (Fla. 4<sup>th</sup> DCA, 2008), *Beefy Trai, Inc. v. Beefy King International, Inc.*, 267 So.2d (Fla. 4<sup>th</sup> DCA 1972). Further, “trivial noncompliance and minor failings do not constitute material breaches.” *Eclectic Synergy, LLC v. Seredin*, 347 So. 3d 27, 29 (Fla. 4<sup>th</sup> DCA 2022) , citing *Burlington & Rockenbach, P.A. v. Law Offices of E. Clay Parker*, 160 So. 3d 955, 960 (Fla. 5<sup>th</sup> DCA 2015).

Even if “paid” meant the funds had to be collected before reimbursement, which it does not, ***the essence of the Contract between Monroe County and NewmanPR is the management of public relations for the Monroe County Tourist Development Council.*** Notably absent from the Clerk’s Audit is any suggestion that NewmanPR has not done a stellar job managing Monroe County’s tourism public relations. Thus, contrary to the Clerk’s ill-advised legal opinion, the alleged non-compliance, even if true, is by no means material, particularly since the ultimate result under the old methodology (deposit funds into Graphics 71 account and later remit to NewmanPR operating account) has the same final result as the current process: the funds are deposited in the operating account of NewmanPR. Further, this immaterial non-compliance could easily be corrected through re-establishment of the prior practice or the creation of a separate wholly owned legal entity (which is not prohibited by the Contract) through which Photography Services could be billed. The more viable and sensible option would be to amend the Contract to address this set of circumstances or make clear that, going forward, Photography Services will not be provided by NewmanPR, an option which NewmanPR would not take objection and at this point, would welcome.

Finally, while the appropriate analysis of the Contract bears out there was no “double billing” the idea that NewmanPR somehow concealed this billing is further buttressed by another significant fact: the critical persons involved in the management of NewmanPR and oversight of its activities throughout the years, which included the past and present marketing director and various TDC board members, were fully aware that NewmanPR charged a separate fee for Photography Services and sought reimbursement for same. In fact, questions were raised in 2010 regarding Graphics 71 and the parties concluded the practice was acceptable.

### **MISLEADING CERTIFICATIONS**

In presenting *its case*, the Clerk next claims NewmanPR provided misleading certifications to seek reimbursement. In doing so, he again ignores the Contract language and, in a most bizarre way, argues the County is improperly paying wire fees.

On page 21 of the Audit, the Clerk states:

It is the County’s standard practice to require vendors seeking reimbursement to provide proof of payment as part of the supporting documentation before payment may be made. Specifically, the County does not reimburse an expense until the vendor has provided either a copy of a cancelled check, a bank statement, credit card statement, or bank wire confirmations.



The Clerk goes on to say this “strict documentation requirement” was loosened for NewmanPR, and the agency was allowed to submit a “certification” in lieu of proof of payment<sup>3</sup>.

Audit, pg. 21.

The Clerk then claims that “we found instances where checks were not paid in full as certified and instances with the actual amount paid to a vendor were less than the amount certified as paid.”

With respect to the claim of paying an amount different than the amount “certified,” the Clerk points to a reimbursement to NewmanPR from a third-party vendor for a wire fee. The Clerk states:

While this appears to be an agreed-upon arrangement between NewmanPR and KBC [the vendor in question], it is not an agreed-upon arrangement between NewmanPR and the TDC. Banking charges of this nature are not an allowable cost reimbursed by the County. This is a cost of doing business that NewmanPR is expected to assume and not pass on to the County for reimbursement. Submitting an invoice for reimbursement with an inaccurate amount is not transparent and could be construed as an intent to mislead by NewmanPR.

Audit, pg. 25

The Clerk does not cite any basis to support these opinions ... for a simple reason ... there are none.

First, as noted multiple times in this response, the Contract gives NewmanPR wide latitude in negotiating the terms of agreements that it negotiates with third parties. Most of the arrangements NewmanPR makes with providers are not specifically approved by the County, and the Contract does not require those agreements to be approved; furthermore, there is nothing in the Contract prohibiting reimbursement for banking charges. Finally, most importantly, the County is not, as the Clerk opines, paying wire charges ... those charges are being paid by the vendor. The arrangement between NewmanPR and the vendor is nothing more than the netting of two transactions: Transaction 1: NewmanPR remitting the payment to the vendor via an expedited method which, unlike a check, has an associated charge; Transaction 2: the vendor reimburses NewmanPR for the cost NewmanPR incurred in connection with that expedited method. In no uncertain terms, the vendor is using its money to pay for the wire fee. This netting of the transactions is frequently used in business transactions. As an example, closing agents in real estate transactions will, at the request of the realtor, subtract the fee associated with paying realtors their commissions via wire from the commission amount due the agent.

The Clerk then reiterates its unsupportable opinion, which is at odds with the plain meaning of the language used in the Contract, that a check must be negotiated by the vendor and paid by NewmanPR’s bank before it is “paid” as the term is used in the Contract. In doing so, the Clerk

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<sup>3</sup> The Clerk implies this certification process was limited to NewmanPR when in fact it applied to a wide range of TDC vendors, including Tinsley Advertising, the TDC’s longtime advertising agency of record.

points to an example where the date the check was paid by NewmanPR's bank was after the date of the certification and claims that the certification is false because the instrument had not been "paid" when the certification was submitted, even though NewmanPR had cut the check and mailed it to the vendor.

Again, the Contract does not define "paid," and in ordinary and customary usage of the term, "paid" does not mean when the payor is in possession of a cancelled check. NewmanPR wrote a check to the third-party vendor the same day that it submitted its "certification" and thus, paid the item for which reimbursement was sought. Overstepping his bounds once again, the Clerk opines there has been a breach of Contract.

### **INVOICING BEFORE SERVICES RENDERED**

Continuing its assault on the character of NewmanPR, the Clerk points out that NewmanPR submits its invoices for payment, including invoices for work performed by stringers before the services are fully performed. NewmanPR does not dispute this has been a practice for some time, but makes the following points:

- (1) The practice resulted from the Clerk's failure to comply with the provisions of the Contract that require prompt payment as required by Local Government Prompt Payment Act which is incorporated into the Contract.
- (2) Even with the early submission of the invoices, the Clerk routinely fails to pay in accordance with the Contract and Local Government Prompt Payment Act.
- (3) Notwithstanding its early submittals, NewmanPR nor any stringer has ever been paid prior to the satisfactory completion of the required services, and the Clerk does not offer any information suggesting that has actually occurred.
- (4) There is nothing to remotely suggest that NewmanPR has become complacent in connection with the management of its stringers. To the contrary, as noted in the Clerk's Audit, NewmanPR has two weekly zoom meetings with its stringers, as well as frequent individual meetings between staff, to obtain status reports and monitor their activities.
- (5) When the Clerk's finance office instructed NewmanPR to move its monthly billings to the end of the month, NewmanPR complied.

### **NO DOCUMENTATION TO SUBSTANTIATE PERFORMANCE**

In the next salvo, the Clerk opines there is insufficient documentation substantiating performance by stringers and/or Newman PR. As part of its "analysis", the Clerk points to the sub-contract agreements with the stringers that require them to provide "monthly reports" of their activities. The Clerk claims that even though NewmanPR has two weekly update meetings with the stringers via Zoom, the failure to provide a written monthly report (even though the sub-contracts don't require the monthly report to be in writing) is in violation of the sub-contract and/or there is an overall lack of "documentation" supporting performance. The Clerk also claims NewmanPR's assertion, through its attorney, that the Contract does not require NewmanPR to maintain time sheets or job cards related to services performed for the County is inaccurate arguing the Contract

requires NewmanPR to maintain books and records in accordance with “generally accepted accounting principles” and “standard expectation[s]” of the Clerk requires as such.

Generally Accepted Accounting Principles (“GAAP”) do not require NewmanPR to maintain any job cards or timecards in connection with performance under the Contract, which is precisely why the Clerk failed to cite any pronouncement of the Financial Accounting Standards Board, the promulgator of GAAP, to support its *argument*. In addition, the Contract, not the Clerk’s expectations, determine the responsibilities and duties of the parties. The Clerk apparently failed to ensure his expectations were codified in the Contract when he participated in its crafting and now seemingly tries to land blame for his failures on NewmanPR.

In short, the Clerk’s conclusions regarding a lack of documentation are nothing more than his personal opinions; opinions which are not proper for an audit and which, like all of his assertions, reflect his core complaint is with the terms of the Contract with NewmanPR, a contract in which he had a hand in molding.

As a final comment on the Clerk’s claim of lack of documentation to substantiate performance under the Contract, NewmanPR provides monthly reports of its activities to the TDC Board and TDC’s District Advisory Committees. These reports are in addition to the numerous oral and video presentations made by NewmanPR at TDC board meetings throughout the year. These reports and presentations set forth detailed information reflecting the agency’s activities and substantiate, far better than any timecard, performance of the Contract.

### **QUESTIONABLE COSTS AND DOCUMENTATION**

In its final salvo, the Clerk draws into question documentation and costs submitted in support of requests for reimbursement. Without doubt, the submissions in question could have been better documented, and, for this reason, the Clerk flagged them for non-payment. A more detailed explanation of the matter involving the Key West accommodation is attached as Exhibit “A”.

With respect to the issue of the \$20.08 receipt for a gratuity raised in the audit, which was also incorrectly presented in the TDC Audit due to its seemingly premature release, that issue was explained, and the Clerk acknowledges “this explanation appears reasonable” but now states the payment of the gratuity is not reimbursable. The Clerk also points to: (1) costs incurred by a sub-contractor attending a conference, claiming “Florida statutes clearly prohibits payment of a per diem if the cost of meals is covered by the registration fee”<sup>4</sup>; (2) payment of expenses for attending the Key West Business Guild meetings; and (3) costs paid in connection with the filming of a TV show, all of which the Clerk claims were improper requests for reimbursement and/or are not payable to NewmanPR under the Contract.

The Clerk’s analysis is flawed yet again. The contracts or agreements which NewmanPR enters into with other providers are between NewmanPR and those providers. The County is not a party to these agreements, the Contract does not require the County to approve the specific contracts, and the statutory limitations concerning per diems do not apply to these agreements. Per the Contract with the County, ***NewmanPR both controls and is liable for these agreements, not the***

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<sup>4</sup> Without citing any statute.

**County.** NewmanPR effectively bankrolls these efforts with the expectation it will be reimbursed by the County.

Thus, if, in the judgment of NewmanPR, reimbursement of an item is appropriate to maintain a relationship with a media personality or other provider, it is within the discretion of NewmanPR to do so even if the initial agreement did not provide as such. Stated another way, NewmanPR is authorized to modify its original agreements, in writing, orally or through its conduct (e.g. payment) to include an item that may not have initially been part of the agreement, and it is entitled to reimbursement for such items per the Contract.

### **LACK OF PROCUREMENT POLICY**

The Clerk incorrectly claims “[a]s indicated in their contract with Monroe County, NewmanPR is expected to procure these contracts consistent with Monroe County’s Purchasing Policy.” The Clerk does not identify where this *expectation* originates, and the Clerk’s statement is again at direct odds with the Contract. The Contract contains only two references to Monroe County’s Procurement Policies and neither reference requires NewmanPR to follow such policies when hiring or negotiating claims with other providers pursuant to the provisions of Part 3.B. of the Contract.

### **LACK OF TDC MANAGEMENT OVERSIGHT**

The presence of these statements is inappropriate in an audit of NewmanPR and are not properly the subject of an audit.

### **THE IMPROPRIETY OF THE OPINIONS EXPRESSED BY THE CLERK**

The Clerk claims to be issuing an internal audit report which audited the “records, assets, and activities relating to the scope of services detailed in the Contract”. Stated another way, the Clerk claims to be performing a compliance audit. A compliance audit is an audit *or testing* to determine compliance with applicable requirements, or in this case, the Contract. Before an auditor expresses an opinion on a matter, the auditor must satisfy certain universally recognized and critical professional standards which provide, amongst other things:

- (1) The auditor must be independent;
- (2) The auditor has the appropriate competence and capabilities to perform the audit.

Professional guidance for auditors reveals that independence consists of two elements:

- a. Independence of mind is the state of mind that permits a member to perform an attest service without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity and exercise objectivity and professional skepticism.
- b. Independence in appearance is the avoidance of circumstances that would cause a reasonable and informed third party who has knowledge of all relevant information, *including the safeguards applied, to reasonably conclude that the integrity, objectivity, or professional skepticism of a firm or member of the attest engagement team is compromised.*

The Clerk's Audit Report reveals the Clerk lacks both independence of mind and independence in appearance.

Throughout the report, the Clerk ascribes sinister motivations to innocuous sets of circumstances; thereby revealing his report is biased against NewmanPR. For example, the Clerk claims that offsetting the cost of a wire fee from the payment due to the vendor, at the request of the vendor, is improper. The Clerk also accuses NewmanPR of improperly seeking reimbursement of costs when the Contract clearly provides for the reimbursement of such costs and grants NewmanPR the authority to do so.

Additionally, when reading the Clerk's report, it becomes evident the Clerk's conclusions and comments are not the result of testing or analytics, they are the result of an aggressive bias against the TDC and NewmanPR. This bias is painfully evident from the Clerk's "recommendations," which have nothing to do with the putative compliance audit of NewmanPR. These recommendations include termination of the Contract, modification of the competitive solicitation process, and elimination of Visit Florida Keys.

The Clerk's lack of independence, both in fact and appearance, is further put on full display by his response to the legal opinion of the County Attorney. Instead of accepting the opinion of the person qualified to opine on the legal obligations required by the Contract, the Clerk advocates for rejecting the County Attorney's position.

The Clerk's bias and inappropriate response to the County Attorney's opinion also runs afoul of applicable professional standards promulgated by the American Institute of Certified Public Accountants. Those standards reveal the Clerk should not be interpreting the Contract because he is not competent to do so. Instead, he should retain the services of a specialist to assist him in this regard.


### **CONCLUSION**

Although the Clerk cloaks his report as an internal audit, it is anything but. In substance, the Clerk's report is a manifesto revealing the Clerk's disdain for the Contract with NewmanPR and the overall operation of the Monroe County Tourist Development Council/Visit Florida Keys. The Clerk's opinions about the quality of the "deal" that was negotiated between Monroe County and NewmanPR, a deal in which the Clerk was involved, is not the proper subject of an audit.

NewmanPR has been a faithful servant to Monroe County for over 43 years. The growth in the Florida Keys tourism-based economy during its 43-plus-year relationship with Monroe County and the tax revenue derived therefrom "substantiate" the performance of NewmanPR, the TDC and its other agencies of record. The catalysts for the Clerk's disdain for NewmanPR appears to be the provision of Photography Services by the agency. In this regard, NewmanPR would gladly work with the County to clarify its future role in connection with these services or eliminate the performance of those services by NewmanPR.

Sincerely,

HERSHOFF, LUPINO & YAGEL, LLP

A handwritten signature in blue ink, appearing to read "Russell A. Yagel". The signature is fluid and cursive, with a long, sweeping tail.

By: \_\_\_\_\_

RUSSELL A. YAGEL

RAY/tld

## Exhibit "A"

On September 11, 2023, NewmanPR's media relations manager finalized details for a two-night stay on behalf of an editor with "The Knot," a premiere weddings' market magazine, as well as a two-night stay for the media manager. The dates of stay were to be September 28 through 30, 2023, and were part of a larger media visit beginning September 26, 2023. One room, provided to the editor, was complimentary for both nights and the property, The Grand Maloney in Key West, offered a discounted rate for the second room used by the media manager to accompany the editor around Key West. The total charged September 11, the day the reservations was made, was \$669.72.

Despite the request for the rooms to be placed under the names of those traveling, both reservations were made under the name Adriana Sol, the property's public relations representative.

Ahead of the dates of stay, the NewmanPR media manager contacted the property's call center to have names updated but they were not able to do so.

Upon departing the property, the media manger received a folio for the stay that included an additional cleaning fee and taxes bringing the total bill to \$774. As there was no option to provide additional payment and the bill contained a zero balance, the manager assumed that the additional amount would be billed to the card on file.

It is worth mentioning that the hotel property does not have a front desk or staff available on-site, so an in-person conversation or formal checkout procedure is not available. All communications, check-in and check-out actions are done remotely via text and email.

Upon submitting the initial travel voucher, the media manager mistakenly sent in the folio still containing the name of the public relations representative who made the initial reservation. Once NewmanPR's invoice to TDC was returned by the finance office, the media manger was able to address the issue with a representative at the corporate level who provided an updated folio with her correct name. This folio still contained the amount of \$774 and still had the confirmation number that was provided.

In late November, when proof of payment was requested, the media manager was advised that a charge for the remaining balance of the hotel could not be found on the corporate card. Since the media manager does not have access to the monthly credit card statements, the manager did not know that the cleaning fee, plus tax, had been waived.

In early December, the media manager was able to get in contact with a representative at corporate level who informed that cleaning fees should not have been charged to the folio even though they were on the folio provided at check-out. On December 6, 2023, an updated folio was provided for the correct amount of \$669.72.

However, for reasons unknown, this version of the folio contained a different room category and confirmation number. The media manager did not realize this when sending the folio through for processing so an explanation was not obtained.

To be clear, neither the media manager, nor anyone at NewmanPR altered any of the backup materials provided throughout the process.

While we understand that the above caused much confusion for everyone, including the finance office, we appreciate that the scrutiny of the finance office resulted in the correct amount being billed.

Even if that hadn't happened, we would have likely eventually discovered that the cleaning fees were not charged and a credit would have been issued.