



500 West Big Beaver
Troy, MI 48084
troymi.gov

CITY COUNCIL AGENDA ITEM

Date: June 27, 2022



To: Honorable Mayor and City Council Members

From: Mark F. Miller, City Manager
Robert J. Bruner, Assistant City Manager
Lori Grigg Bluhm, City Attorney
Robert C. Maleszyk, CFO
Dee Ann Irby, Controller

Subject: Legal Representation Agreement – VanOverbeke, Michaud & Timmony, P.C.

History

The City of Troy Employees Retirement System (ERS), City of Troy Retiree Health Care Plan (OPEB), and City of Troy Incentive Plan for Volunteer Firefighters (VFIP) are in the process of reviewing their ordinances and daily procedures. In doing so, it has been identified that additional legal services are necessary for drafting ordinance changes and giving legal representation at all Board meetings. The ERS Board has already approved the contract and the other two Boards will vote on this contract at their next meeting in August. The City Attorney will be kept updated of all legal items and billings.

Financial

Per the contract, each Board will be charged for services rendered and billed quarterly in arrears.

Recommendation

City Management recommends, in the best interest of the City, that the bid process be waived and City Council approve the attached contract and resolution to utilize VanOverbeke, Michaud & Timmony, P.C. as further legal assistance for the ERS, OPEB, and VFIP Boards.

**VANOVERBEKE
MICHAUD &
TIMMONY, P.C.**
ATTORNEYS AND COUNSELORS

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FIRM RESUME

I. INTRODUCTION

VanOverbeke, Michaud & Timmony, P.C. is committed to assisting our clients in fulfilling their fiduciary responsibilities by providing quality legal services and administrative support to public employee pension systems, defined contribution retirement plans, and health and welfare benefit plans.

Our focus on public employee benefits law enables us to provide comprehensive services uniquely tailored to the needs of our public sector clients. The firm is prepared to provide timely advice on legal issues in areas such as public pension, health care, disability, municipal, domestic relations, labor, tax and trust law.

Our office is well acquainted with public employee benefits plans and understands the effects of collective bargaining agreements and applicable federal and state laws on an employee benefits plan. In addition, the firm is experienced in dealing with actuaries, auditors, custodian banks, medical directors, financial consultants, and investment managers, and understands their relationships with the Retirement System and their responsibilities to the Retirement System.

As a firm specializing in public employee benefits law, we take a pro-active approach in representing our clients and are willing and able to assist you and your administrative support staff in all aspects of administration, operation, and management of your retirement plan.

II. CLIENT SERVICES

VanOverbeke, Michaud & Timmony, P.C.'s focus on public employee benefits law allows the firm to provide comprehensive legal and consulting services, including:

A. BENEFIT ADMINISTRATION - RETIREMENT

- Attendance at Board of Trustee meetings and committee meetings
- Plan design, drafting and implementation
- Rendering of legal opinions regarding benefit administration, investment compliance, and fiduciary duties
- Drafting, clarification and revision of resolutions
- Presentation of formal legal reports at meetings
- Reviewing policies, procedures and forms
- Meeting and administrative support
- Organize and conduct seminars
- Preparation and/or assistance in developing employee benefit plan handbooks
- Review service and disability retirement applications and eligibility
- Review Domestic Relations Orders, EDROs and QDROs
- Review, clarify and interpret collective bargaining agreements
- Review, draft and revise ordinances and amendments
- Review and respond to Freedom of Information Act requests
- Conduct administrative review hearings

B. INTERNAL REVENUE SERVICE COMPLIANCE

- Qualified Plan Determination Letters:
 - Defined Benefit Plans (IRC 401(a))
 - Defined Contribution Plans (IRC 401(a))
 - Hybrid Plans
 - Voluntary Employee Beneficiary Associations (IRC 501(c)(9))
- Letter Rulings:
 - IRC §414(h): Employer Pick-Up
 - Deferred Compensation Plans (IRC 457)
 - IRC §115 Governmental Trusts
- Employee Plans Compliance Resolution System
- Reporting requirements
- Qualified Plan compliance and/or amendments
- Lump sum distributions

C. INVESTMENT COMPLIANCE/COORDINATION

- Investment objectives, policies and guidelines
- Investment management agreements
- Investment consultant agreements
- Investment compliance with state and federal laws and regulations
- Requests for Proposals

D. SECURITIES CLASS ACTION LITIGATION

- Securities Litigation Policy and Procedure implementation
- Portfolio review and monitoring
- Litigation counsel due diligence
- Litigation oversight and steering
- Development of corporate governance initiatives

E. CIVIL LITIGATION

- Complex civil litigation in federal and state trial courts
- Multi-plaintiff and multi-defendant commercial litigation
- Employment and labor litigation
- Civil appeals in state, federal, and administrative forums
- Alternative Dispute Resolution, including arbitration and mediation
- Federal bankruptcy litigation on behalf of creditors (retirement systems)

F. REAL ESTATE TRANSACTIONS

- Loans
- Equities: partnerships, acquisitions, dispositions
- Commercial loans and investments
- Real estate modifications, workouts, and foreclosures

G. RETIREE HEALTH CARE ADMINISTRATION

- Plan design, drafting and implementation
- Administrative policy and procedure development
- P.A. 149 Accounts, IRC§ 401(h) Accounts, VEBAs, IRC §115 Trusts, Rabbi Trusts
- IRC §420 Transfers

III. THE ROLE OF LEGAL COUNSEL

VanOverbeke, Michaud & Timmony, P.C.'s primary role as legal counsel is to assist our clients in fulfilling their fiduciary responsibilities and to provide quality legal services which are solely in the interest of the plan and trust. Our duty is to inform our clients of their legal options in accordance with plan provisions, applicable collective bargaining agreements, state laws and federal laws, including applicable tax laws and regulations. Accordingly, we provide our clients with independent and objective advice with a unique perspective specific to public plan clients.

This office actively promotes education of plan trustees and staff. Representatives from this office are frequent speakers at conferences, at both the state and national level, and have authored numerous articles on various benefit issues. We encourage trustees to obtain the knowledge necessary to fulfill their fiduciary duties and we welcome any opportunity to conduct trustee training seminars addressing any issue of plan administration, operation, or management.

With our focus on, and promotion of, public sector plans, we actively participate in state and national public pension forums and have taken a prominent role in the development and amendment of legislation affecting public employee benefit plans. Given our focus on public plans, we are in the best position to offer comprehensive and objective advice to our clients.

We find that this approach is the best means of assessing the needs of our clients and allows this office to provide timely and comprehensive answers to issues that come before public plan trustees and administrators.

IV. FIRM BACKGROUND

VanOverbeke, Michaud & Timmony, P.C. represents over seventy public employee retirement systems, health care plans and employee benefit plans as general counsel (See, Attachment A). The firm is also general counsel to the Michigan Association of Public Employee Retirement Systems (MAPERS). Additionally, this firm represents numerous public employee retirement systems and health care plans on an as-needed, special counsel, or of-counsel basis (See, Attachment B). Our office has assisted many municipalities throughout Michigan to establish and/or administer health care plans as well.

Our attorneys are active members of such organizations as the Michigan Association of Public Employee Retirement Systems, the National Conference on Public Employee Retirement Systems, International Foundation of Employee Benefit Plans, the National Association of Public Pension Attorneys, National Association of Government Defined Contribution Administrators as well as various bar associations.

In addition, this office subscribes to various legal subscription services and publications to expand our knowledge base. All attorneys attend national, state, and local conferences and seminars to supplement continuing education initiatives.

V. FEES

VanOverbeke, Michaud & Timmony, P.C.'s fees charged would be billed at \$190.00 per hour for non-litigation legal services (fees adjusted July 1 of each year based upon Consumer Price Index - but not to exceed 3%). Reimbursable expenses incurred by the firm and charged to the client include only direct out-of-pocket expenses (i.e., court filing fees, court reporter fees, courier fees, etc.). Typically, this office does not request reimbursement for routine telephone, facsimile, mileage, postage, copying, secretarial or word processing work or other miscellaneous minimal costs. Statements for services rendered are submitted on a calendar quarter basis.

VI. CONCLUSION

On behalf of this office, we would like to thank you for the opportunity to submit this information for your consideration. This firm welcomes the opportunity to work with the Board and will provide any additional material the Board requests. Please do not hesitate to contact this office should you have any questions regarding the enclosed materials.

LEGAL REPRESENTATION AGREEMENT

THIS AGREEMENT is entered and made effective as of the _____ day of _____, 2022 between the City of Troy Retirement Systems (collectively "Client") and VanOverbeke, Michaud & Timmony, P.C. ("Attorney").

Article I

Commencement and Scope of Representation

Section 1.1. Commencement of Representation. Attorney will commence representation of Client as of the effective date first indicated above.

Section 1.2. Client's Goal. Client has retained Attorney to represent the legal and fiduciary interests of the Client in its management and administration of the retirement plans.

Section 1.3. Services To Be Performed by Attorney. Attorney agrees to assist the Client and its Trustee(s) in fulfilling its fiduciary responsibilities to members, retirees and beneficiaries by providing legal services and administrative support to Client.

Attorney will not perform any legal services other than those already agreed to by Client without first obtaining Client's authorization. Client acknowledges that Attorney has made no promises about the outcome of Attorney's legal representation of Client.

Section 1.4. Client's Duties. Client agrees to pay Attorney the fees and expenses specified in Article II. Client also agrees to fully cooperate with Attorney and provide information that will help Attorney achieve Client's goal.

Section 1.5. Keeping Client Informed About Developments. Attorney agrees to promptly notify Client of all significant developments affecting the scope of Attorney's representation of Client and to consult with Client about those developments. Attorney agrees to keep Client informed about the status of the matter of representation and courses of action being taken or recommended by Attorney. Attorney agrees to provide Client at Client's request with copies of all written materials pertaining to Client's matter of representation.

Section 1.6. Ownership of Attorney's Work Product. Attorney's work product prepared in the course of its representation of Client will be owned by Client and will be made available to Client upon written request. Attorney shall maintain ownership of any proprietary drafts and/or personal notes prepared by Attorney and not previously shared with Client.

Article II

Fees and Expenses

Section 2.1. Legal Fee. Client agrees to pay Attorney a fee as follows:

\$190.00 per hour for non-litigation legal services. Effective July 1, 2022, and as of July 1 of each year thereafter, this rate will increase based on the Consumer Price Index for all Urban Consumers (“CPI-U”) established for the prior year, but not to exceed 3% in any given year.

Section 2.2. Expenses. Client agrees to reimburse Attorney for direct out-of-pocket expenses incurred while performing legal services for Client (e.g., court reporters, filing fees, overnight courier, etc.). Client will not be responsible for reimbursement of routine telephone, postage, copying or other miscellaneous minimal costs.

Section 2.3. Payment of Fees and Expenses. Fees and expenses will be billed quarterly, in arrears. Payment is due upon receipt of invoice.

Article III

Conflict of Interest

Section 3.1. Attorney agrees to not represent anyone with interests that directly conflict with Client’s without prior written approval of Client.

Article IV

Termination of Representation

Section 4.1. Termination by Client. Client may terminate Attorney’s representation at any time for any reason, but agrees to pay fees earned and expenses incurred by Attorney prior to date of written notice of termination.

Section 4.2. Termination by Attorney. Attorney may stop representing Client if Client fails to fulfill this Agreement or if permitted or required by the Rules of Professional Responsibility or Michigan Court Rules. Attorney must provide Client 60 days’ written notice of intention to withdraw from representing Client. Client agrees to pay Attorney for all fees earned and expenses incurred prior to the date of withdrawal.

Article V

Acknowledgments

Section 5.1. Attorney agrees to conform to all applicable Federal, State and Local laws.

Section 5.2. Attorney states that it has no conflicting financial or professional interest and is qualified to perform the service.

Article VI

Modification of Agreement

This Agreement is the entire agreement between Attorney and Client regarding Attorney's legal representation of Client. The terms of this Agreement may only be modified in writing signed by both Client and Attorney.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

CLIENT:

ATTORNEY:

By: _____



By: _____

Thomas C. Michaud

Its: _____

Its: Partner

ATTACHMENT A
**PUBLIC EMPLOYEE RETIREMENT SYSTEMS AND HEALTH CARE
PLANS TO WHICH VANOVERBEKE, MICHAUD & TIMMONY, P.C.
HAS BEEN APPOINTED GENERAL COUNSEL**

1. *City of Allen Park Employees Retirement System*
2. *City of Allen Park Retiree Health Care Trust*
3. *City of Ann Arbor Employees Retirement System*
4. *City of Ann Arbor Retiree Health Care Plan (VEBA)*
5. *City of Auburn Hills Employees Retirement System*
6. *City of Auburn Hills Retiree Health Care Trust*
7. *City of Bay City Police and Fire Retirement System*
8. *City of Centerline Police and Fire Pension System*
9. *Clinton Township Fire and Police Pension System*
10. *City of Dearborn Heights Police and Fire Retirement System*
11. *City of Dearborn Heights Police and Fire Retiree Health Care Trust*
12. *City of Dearborn Heights General Employees Retirement System*
13. *City of Dearborn Heights General Retiree Health Care Trust*
14. *City of Detroit General Retiree Health Care Trust (VEBA)*
15. *City of Detroit Police and Fire Retiree Health Care Trust (VEBA)*
16. *The General Retirement System of the City of Detroit*
17. *City of Farmington Hills Employees' Retirement System*
18. *City of Farmington Hills Retiree Health Benefits Plan*
19. *City of Farmington Hills Defined Contribution Plans*
20. *City of Ferndale Employees Retirement System*
21. *City of Ferndale Police and Fire Retirement System*
22. *Flint Township Firemen's Retirement System*
23. *Genesee County Employees Retirement System*
24. *Genesee County Retiree Health Care Plan*
25. *Gogebic County Employees Retirement System*
26. *City of Grand Rapids General Employee Retirement System*
27. *City of Grand Rapids Police and Fire Retirement System*
28. *City of Grosse Pointe Farms General Employees Retirement System*

ATTACHMENT A
(continued)

29. *City of Grosse Pointe Farms Public Safety Retirement System*
30. *Harrison Township Employees Retirement System*
31. *Harrison Township Fire Retirement System*
32. *Jackson County Employees' Retirement System*
33. *Kent District Library Employees Retirement System*
34. *City of Lansing Employees' Retirement System*
35. *City of Lansing Police and Fire Retirement System*
36. *City of Lincoln Park Police and Fire Retirement System*
37. *City of Livonia Employees' Retirement System*
38. *City of Livonia Defined Contribution Plan*
39. *City of Livonia Retiree Health Care Plan*
40. *Macomb County Employees' Retirement System*
41. *Macomb County Intermediate Retirees Medical Benefits Trust*
42. *Macomb County Retiree Health Care Fund*
43. *Macomb County Defined Contribution Plans*
44. *Macomb Township Fire Retirement System*
45. *City of Melvindale Fire and Police Retirement System I*
46. *Monroe County Employees Retirement System*
47. *Monroe County Library Retiree Health Care Plan*
48. *Oakland County Employees' Retirement System*
49. *Oakland County VEBA*
50. *Redford Township Police and Fire Retirement System*
51. *City of Roseville Employees Retirement System*
52. *City of Roseville Police & Fire Retirement System*
53. *City of Royal Oak Retirement System*
54. *City of Royal Oak Retiree Health Care Trust*
55. *Sault Ste. Marie Police and Fire Retirement System*
56. *City of Southfield Fire and Police Retirement System*
57. *City of Southfield Employee Retirement System*

ATTACHMENT A
(continued)

58. *City of Southfield Retiree Health Care Plan and Trust*
59. *City of Southfield Defined Contribution Plans*
60. *City of Southgate Police and Fire Retirement System*
61. *St. Clair County Employees Retirement System*
62. *City of St. Clair Shores General Employees Retirement System*
63. *City of St. Clair Shores Police and Fire Retirement System*
64. *City of Sterling Heights General Employees Retirement System*
65. *City of Sterling Heights Police and Fire Retirement System*
66. *City of Taylor General Employees' Retirement System*
67. *City of Taylor Police and Fire Retirement System*
68. *City of Trenton Fire and Police Pension System*
69. *City of Utica Police and Fire Employees Retirement System*
70. *City of Warren Employees Retirement System*
71. *City of Warren Police and Fire Retirement System*
72. *City of Warren Police and Fire Retiree Health Care Plan*
73. *Washtenaw County Employees Retirement System*
74. *Waterford Township Police and Fire Retirement System*
75. *Wayne County Employees' Retirement System*
76. *West Bloomfield Township Employees Retirement System*
77. *West Bloomfield Township Retiree Health Care Plan*
78. *City of Westland Police and Fire Retirement System*
79. *City of Ypsilanti Police and Fire Retirement System*
80. *Ypsilanti Township Police and Firefighter's Retirement System*

ATTACHMENT B
PLANS TO WHICH VANOVERBEKE, MICHAUD & TIMMONY, P.C.
PROVIDES/HAS PROVIDED SERVICES AS SPECIAL COUNSEL

1. *City of Albion Police and Fire Retirement System*
2. *City of Alpena Retiree Health Care Plan*
3. *City of Battle Creek Police and Fire Retirement System*
4. *Berrien County Employees Retirement System*
5. *City of Dearborn Employees' Retirement System*
6. *City of Dearborn Police and Fire Retirement System*
7. *City of Dearborn Police and Fire Revised Retirement System*
8. *City of Detroit Employees Benefit Plan*
9. *The Police and Fire Retirement System of the City of Detroit*
10. *City of Eastpointe Employees Retirement System*
11. *City of Escanaba Public Safety Retirement System*
12. *City of Farmington Retiree Health Care Plan*
13. *City of Gibraltar Police and Fire Retirement System*
14. *Gogebic County Community Mental Health Authority*
15. *Gogebic County Road Commission*
16. *City of Grand Blanc Employees Retirement System*
17. *City of Grosse Pointe Employees Retirement System*
18. *Highland Township Post-Employment Medical Reimbursement Plan*
19. *City of Iron Mountain Police and Fire Retirement System*
20. *City of Ishpeming Policemen and Firemen Retirement System*
21. *City of Jackson Employees Retirement System*
22. *City of Jackson Police and Fire Retirement System*
23. *City of Joplin, MO Police and Fire Retirement System*
23. *City of Madison Heights Retiree Health Care Plan*
24. *City of Marquette Fire and Police Retirement System*
25. *Michigan State Police Department Retirement System*
26. *State of Michigan Legislative Retirement System*
27. *City of Midland Policemen and Firemen Retirement System*
28. *City of Negaunee Act 345 Police Retirement System*
29. *Niles Township Police and Fire Retirement System*
30. *Oakland County Community Mental Health*
31. *Oakland County Road Commission Retirement System*
32. *Oakland County Road Commission Retiree Health Care Plan*
33. *Ontonagon County Road Commission*
34. *City of Riverview Employees Retirement System*
35. *City of Rochester Hills Employees Retirement System*
36. *City of Saginaw Police and Fire Retirement System*
37. *Shiawassee County Community Mental Health*
38. *City of Southgate Municipal Employees' Retirement System*
39. *St. Clair County Community Mental Health*
40. *Sumpter Township Retirement System*
41. *Traverse City Policemen and Firemen Retirement System*
42. *City of Woodhaven General Employees Retirement System*
43. *City of Woodhaven Retiree Health Care Trust*