

**CITY OF PONTIAC VEBA TRUST  
BOARD OF TRUSTEES SPECIAL MEETING  
December 15, 2021**

A special meeting of the Board of Trustees was held on Wednesday, December 15, 2021 via Conference Call and in person.

**Trustees Present**

Claudia Filler, Chairperson – St. Augustine Beach, FL  
Linda D. Watson – In Person  
Darin Carrington – In Person  
Lon Britton – Sebastian, FL  
NZ Bryant – In Person  
Deirdre Waterman, Mayor - Pontiac, MI  
Walter Moore, Lantana, TX

**Others Present**

Matt Henzi, AsherKelly  
Duane Menter, BeneSys  
Violet Gjorgjevski, BeneSys  
Jennifer Crosby, BeneSys  
Samantha Kopacz, Miller Canfield  
Steve Roth, Dahab

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*Chairman Filler declared that a quorum was present and called the meeting to order at 9:01 a.m.*

**AGENDA CHANGES**

**PUBLIC COMMENT – None**

**CONSENT AGENDA**

- A. Minutes of Meeting – October 11, 2021
- B. Financial Reports
  - 1. Financial Reports – October 2021
- C. Invoices for Payment
  - a. AsherKelly Invoice – November 2021 - \$11,186.90
  - b. BeneSys Invoice – November 2021 - \$13,895.14
  - c. American Graphics – November 4, 2021 - \$237.86
  - d. American Graphics – November 9, 2021 - \$579.36

**RESOLUTION by Ms. Watson; seconded by Mr. Carrington**

Further Resolved, to approve the Consent Agenda as presented with payment being made to American Graphics. AsherKelly and BeneSys to be held until transfer of assets from GERS is received.

**RESOLUTION by Ms. Moore; seconded by Mayor Waterman**

Further Resolved, to add and approve to pay to GERS, \$45.30 for assistance in mailing Open Enrollment Packets.

**CONSULTANT REPORTS**

**A, Investment Consultant – Steve Roth, Dahab**

Mr. Roth presented to the Board a report showing the GERS Actuarial Liability, the Value to the New GERS, the value at the time of split and the amount to the VEBA post transfer excluding Opt-Out payments.

Discussion took place, they are currently 189 members who have selected the Opt-Out. The GERS

funds are scheduled to be transferred to the VEBA on January 3, 2022. The Police & Fire VEBA timing it to be determined as we are still waiting on the Merger Agreement to be approved by City Council and the Mayor to Execute. It will then be sent to the IRS for approval. There will be an audit conducted for the Police & Fire VEBA after the transfer.

**RESOLUTION by Ms. Britton; seconded by Mr. Carrington**

Further Resolved, to follow the recommendation of counsel and investment consultant to use the assets' market value as the valuation analysis at the time of asset transfer instead of using the historical cost basis.

Yea – 6 Nay - 0

**REPORTS**

**A. CHAIRPERSON**

Chairperson Filler thanked the Mayor for her service to the City of Pontiac.

**B. SECRETARY - None**

**C. TRUSTEE COMMITTEES - None**

**D. LEGAL REPORT**

**Revised Manquen Vance Contract**

Attorney Henzi addressed this matter for the Board in the Attorney Report. Since the last meeting, we revised the Contract to provide that Manquen Vance will disclose whether it received paid commissions, and the amount of any paid commission, on each invoice submitted to the VEBA. Manquen Vance agreed to this inserted term. The revised Contract was fully executed. A motion to approve the revised Contract and ratify the Chair's signature is in order.

**RESOLUTION by Mr. Moore; seconded by Mr. Britton**

Further Resolved, to ratify and approve the Revised Manquen Vance Contact.

Yea – 5 Nay - 0

**Open Enrollment**

Attorney Henzi addressed this matter for the Board in Attorney Report. Plan professionals drafted and revised enrollment kits. These were mailed to Police & Fire Retirees on November 8, 2021. This communication included FAQs about eligibility, the enrollment kit, and an invitation to four different enrollment meetings. The enrollment meetings were held in person and by Zoom on November 17 and December 1, 2021. The purpose of those meetings was to explain the levels of coverage to retirees, explain the open enrollment process to retirees, and to assist retirees with their enrollment forms.

BeneSys, legal, and the GERS Office were in consistent contact to mail the enrollment packets to general retirees. This was completed on November 12, 2021. BeneSys and legal continue to work with the bargaining parties and the GERS Office to verify eligibility of general retirees.

On December 2, 2021, counsel for the City emailed Manquen Vance and legal counsel suggesting that the VEBA Trust should immediately issue correspondence to retirees stating that the February 1, 2022 benefit commencement date may be delayed due to ongoing discussions relative to transfer of the excess GERS' assets. Legal counsel sent correspondence to the City attorney indicating that such a letter would have to be authorized by the VEBA Trustees. Further, that the issue would be discussed with the Chair for placement on the December 15, 2021 Special Meeting Agenda.

On December 13, 2021, a meeting was held between representatives of GERS and its actuary and legal counsel, and the City and its legal counsel. Following the meeting, correspondence was exchanged stating that excess GERS' assets will be transferred to pay the opt-out benefits on or before December 21, 2021. Further, the remaining balance to be transferred into the VEBA remains on target.

**RESOLUTION by Mr. Moore; seconded by Mr. Britton**

Further Resolved, to authorize attorney to draft a letter to members warning of any delay in benefit commencement date. The letter will only be sent in the event a delay to the February 1, 2022 benefit commencement date is confirmed. Further, to authorize the Chair to execute the letter in the event of a confirmed delay and to have the administrator send the letter.

Yea – 7 Nay - 0

**Communication re: Rescission of Opt-Out Election**

Attorney Henzi addressed this matter for the Board in the Attorney Report. At the last meeting, the Trustees directed legal counsel to send correspondence to the bargaining parties with the recommendation that the bargaining parties permit eligible retirees to rescind a previously elected opt-out form, or to opt-out of VEBA coverage, on or before December 10, 2021. CPREA provided its approval of the recommendation. The City provided its approval to the recommendation on December 2, 2021. Legal counsel drafted a proposed communication and opt-out form to the Trustees on December 2, 2021. BeneSys distributed the communication via email to 570 retirees for whom BeneSys had email addresses on December 3, 2021. BeneSys posted it on its website on December 3, 2021. BeneSys forwarded it to the City of Pontiac, which posted the communication. BeneSys mailed the communication on December 6, 2021. The communication was inadvertently mailed to hospital retirees and potentially other noneligible retirees for the opt-out. The Chair issued a response to the GERS office regarding this error.

**RESOLUTION by Mayor Waterman; seconded by Mr. Bryant**

Further Resolved, to authorize attorney to draft a letter of apology to hospital retirees and have the Chair execute.

Yea – 6 Nay – 1, Mr. Britton.

**Proposed Amendment to Trust re: Special Meeting Notices**

Attorney Henzi addressed this matter for the Board in the Attorney Report. Michigan's Open Meetings Act requires a public body to post a special meeting notice at least 18 hours before the scheduled meeting. The VEBA Trust Agreement provides that special meetings may be called upon five days written notice to the Trustees. As we get closer to our benefit commencement date, we anticipate that there may be time sensitive issues that require approval from the Board. In an effort to allow the Board to call meetings to swiftly conduct time sensitive necessary discussions, and to be compliant with the Open Meetings Act, legal counsel prepared the attached proposed amendment to the Trust Agreement.

Amendments to the Trust Agreement require approval by CPREA and the City and a unanimous vote of the seven VEBA Trustees, concurred in by Pontiac City Council.

**RESOLUTION by Mr. Britton; seconded by Ms. Watson**

Further Resolved, to authorize the Trust amendment as proposed by attorney.

Yea – 7 Nay – 0

**Revised PF VEBA/VEBA Merger Agreement**

Attorney Henzi addressed this matter for the Board in the Attorney Report. He provided a copy of the document executed by Matt Nye and Claudia Filler. It is now anticipated that City Council will approve the Merger Agreement at its meeting on December 14, 2021. Subsequently, it will be fully executed by the City and submitted by Ms. Kopacz to the IRS. We will continue to work with Honorable Brenda Lawrence's office to assist us in our request that the IRS expedite its response to the Merger Agreement.

### **VEBA Request for Miscellaneous Determination , Form 8940**

Attorney Henzi addressed this matter for the Board in the Attorney Report. The IRS represented that the Police & Fire VEBA Trust should file a Form 8940 request for miscellaneous determination as support for its request for exemption from the requirement to file an annual Form 990. The IRS subsequently exempted the Police & Fire VEBA Trust from this annual filing requirement.

### **Transfer of Assets to VEBA Trust**

Attorney Henzi addressed this matter for the Board in the Attorney Report. Plan professionals continue to work on executing the necessary documents to open several custodial accounts in anticipation of the transfer of assets from the Police & Fire VEBA and the excess GERS assets in January 2022. A meeting is scheduled for December 14, 2021 at 1:00 p.m. between the custodian banks for the GERS and VEBA Trust along with plan professionals.

### **Executed Investment Policy Statement**

Attorney Henzi addressed this matter for the Board in the Attorney Report. Dahab prepared a draft Investment Policy Statement. The document was reviewed and revised by legal and Dahab. The final version was approved at this Board's November 18, 2021 meeting. An executed copy was provided for the Board review.

### **Discussions on VEBA Eligibility**

Attorney Henzi addressed this matter for the Board in the Attorney Report. Legal sent correspondence to the bargaining parties about their position on a frequently asked question:

- I have a minor child born after December 22, 2011, is this child eligible for coverage under the VEBA?

CPREA's position is that such a minor child would be eligible for benefits. We are waiting for the City to communicate its position.

Legal counsel also sent correspondence to counsel for the bargaining parties about another frequently asked question. There are a number of general retirees but are not age 60. Legal counsel asked whether the bargaining parties agreed to permit these individuals to opt-out now rather than forcing them to wait until they reach age 60. The bargaining parties are discussing this matter but have not reached a resolution.

Another issue for this Board to consider involves a group of 7 Police & Fire members. Most, if not all, retired prior to 1996, or are the surviving spouse of a member who retired before 1996. For decades, police and fire personnel were required to opt-out of Social Security, presumably as a cost saving measure for the City. As a result, employment as a police officer or a firefighter would not enable such an individual to earn the requisite credit (40 quarters) to become eligible for Medicare. By way of further illustration, the same credit, termed as "quarters" are necessary to qualify for Social Security Disability benefits. It was only discovered during the open enrollment process that these individuals do not qualify for Medicare. If they were to enroll, they would have to pay substantial penalties for enrolling after their 65th birthday. A good explanation of the process by Manquen Vance is attached. These individuals have been on a pre-Medicare Plan for decades. Prior to 2011, the City paid for these individuals to be on the pre-Medicare Plan because they did not qualify for Medicare.

Thus, the question is whether these individuals should be continued on the VEBA's pre-Medicare Plan or be forced to enroll in Medicare and incur penalties. Further, if penalties are incurred, who is responsible to pay the penalties? Manquen Vance has done a cost calculation and concluded that it would be more economical for the VEBA to enroll these individuals into the Medicare Advantage Plan and pay the Part A and B penalties than it would be to pay the cost of a pre-Medicare premium for these individuals.

Thus, due to the time sensitive nature of open enrollment, this Board should at least consider a short term process for these individuals. For example, the Board could pay the Medicare costs from February through July (the next Medicare enrollment), or for a 12 month period before making a long term decision on how to treat these individuals. These individuals will argue that the penalty should be subsidized by the VEBA because it would amount to the restoration of what benefit they had prior to the 2011 elimination of retiree health care by the City's Emergency Manager.

Legal counsel and BeneSys have started the process to identify whether there are any Police & Fire VEBA members (retired after 1996) who did not earn the requisite Medicare eligibility credits. Legal and BeneSys will report back to this Board the results of their investigation.

**RESOLUTION by Ms. Watson; seconded by Mr. Bryant**

Further Resolved, to authorize Legal Counsel and BeneSys to inform the seven members ineligible for Medicare to obtain Medicare Part A and Part B or remain on their current coverage.

Yea – 7 Nay - 0

**Revised Timeline for Merger and Transition Issues**

Attorney Henzi addressed this matter for the Board in the Attorney Report. The timeline was revised to indicate a benefit commencement date of February 1, 2022. Timeline dates relative to open enrollment and commencement of benefits have been revised upon recommendations by Manquen Vance.

**Denial Correspondence regarding Member's Request for Cash Equivalent of Insurance Benefits**

Attorney Henzi addressed this matter for the Board in the Attorney Report. This individual is eligible for the VEBA membership. The individual sent correspondence indicating that the individual did not want to enroll in the VEBA. Further, the individual did not want to opt-out in exchange for \$20,000. Instead, the individual asked to be paid a monthly cash equivalent of the cost of the individual's health insurance premium. Legal counsel sent a letter denying the request on the basis that this is not permissible under the Settlement Agreement or Trust Agreement.

**RESOLUTION by Mayor Waterman; seconded by Mr. Bryant**

Further Resolved, to affirm legal letter to deny member's appeal requesting the cash equivalent of insurance benefits.

Yea – 7 Nay - 0

**Denial Correspondence to Individual Who Retired in 2013**

Attorney Henzi addressed this matter for the Board in the Attorney Report. An individual with over 28 years' service credit, and who retired in 2013, made several inquiries with BeneSys for eligibility in the VEBA. Legal counsel sent the attached letter denying the individual's eligibility on the basis that the individual was not retired or otherwise eligible for retiree health care as of December 22, 2011. The letter set forth the appeal rights for this denial. Legal counsel has asked BeneSys to use this as the form denial letter for similar situations.

**RESOLUTION by Mr. Bryant; seconded by Mr. Britton**

Further Resolved, to deny member's appeal to enroll in benefits despite retiring after December 22, 2011.

Yea – 7 Nay - 0

**Draft Correspondence to Individual Laid off in 2012**

Attorney Henzi addressed this matter for the Board in the Attorney Report. An individual with over 10 years' service credit who was laid off effective January 31, 2012 and who was classified as a secretary pursuant to the Teamsters CBA, approached legal counsel at the December 1, 2021 enrollment meeting about eligibility. Legal counsel investigated the individual's eligibility. The individual was permitted to retire early by City Council resolution in 2017. The individual was neither retired nor deferred vested as of December 22, 2011. The attached letter setting forth a denial has not been sent pending confirmation of her email address and/or residence address.

**RESOLUTION by Mr. Bryant; seconded by Mr. Britton**

Further Resolved, to deny member's appeal based on his neither retiring nor deferring prior to December 22, 2011.

Yea – 7 Nay - 0

**RFP for Actuarial Services**

Attorney Henzi addressed this matter for the Board in the Attorney Report. As authorized at the last meeting, legal counsel prepared the attached RFP for Actuarial Services. It was posted on the MAPERS website. We also emailed it to the seven actuarial services firms who are MAPERS' members: Foster & Foster; CBIZ; Cavanaugh Macdonald Consulting; Lauterbach & Amen, LLP; Gabriel, Roeder, Smith & Company; Milliman; and Nyhart. Responses to the RFP are due on or before January 7, 2022. To date, two of the firms have contacted legal counsel with questions regarding the scope of the RFP. The RFP requests an electronic and paper copies. Legal counsel will provide copies to the Trustees in whatever form they prefer.

**Legislative Update**

**House Bill 5427**

Attorney Henzi addressed this matter for the Board in the Attorney Report. This Bill, which was only recently introduced, appears to serve as a replacement to HB 4934. HB 5427 would allow for retirement boards to meet remotely, for any reason. It was referred out of Committee without amendment. It underwent a second reading on November 11, 2021. Upon the third reading, a vote will be called in the House. We continue to monitor this Bill daily. Interestingly, the attached Legislative Fiscal Analysis concluded that HB 5427 could result in cost savings for local units of government to the extent that convening meetings of public bodies responsible for maintaining a retirement system remotely would not be required to reimburse members for necessary travel expenses if the members are eligible for travel reimbursements.

**House Bill 5467**

Attorney Henzi addressed this matter for the Board in the Attorney Report. This recently introduced Bill would amend the Open Meetings Act to allow members of public boards to attend remotely and participate in meetings, but not to deliberate or vote during the meeting. The Bill was referred to Committee on October 21, 2021.

**Senate Bill 705**

Attorney Henzi addressed this matter for the Board in the Attorney Report. This recently introduced Bill would amend the Open Meetings Act to temporarily extend the sickness option available for public board

members allowing them to attend remotely, through March 31, 2022. The Bill was referred to Committee on October 26, 2021.

**Investment Contracts for Transfer of Assets**

Attorney Henzi addressed this matter for the Board in the Attorney Report. In preparation for the transfer of excess GERS’ assets, legal has negotiated Investment Management Agreements between the VEBA and the Investment Manager. Specifically, contracts are ready for execution between the VEBA and these Investment Managers: Attucks, Northern Trust, Xponance, Kennedy Capital, Invesco, Victory Capital, Robinson Capital, Sawgrass and First Eagle. Legal counsel recommends that the Board adopt these Agreements and authorize the Chair to sign them. In short, these contracts are necessary to establish the contractual relationship between the VEBA and the Investment Manager at the time of, and following, the transfer of Assets into the VEBA. Legal counsel is still working to negotiate and complete for execution Investment Management Agreements with the balance of the Investment Managers, including: Loomis Sayles, WCM, Wellington, and Principal.

**RESOLUTION by Mr. Moore; seconded by Mr. Britton**

Further Resolved, to execute documents and allow Darin Carrington or Duane Menter to sign these contracts. .

Yea – 6 Nay - 0

**TRUSTEE COMMENTS - None**

**PUBLIC COMMENTS - None**

**UNFINISHED BUSINESS**

**A. Open Enrollment Process & Meetings**

Discussion took place regarding the success of the Open Enrollment Meetings BeneSys gave an update regarding the processing of enrollment documents, determining eligibility and communication with members.

**NEW BUSINESS**

**A. Delta Dental Enrollment Period**

An update was given from Delta Dental informing the Board that members may enroll in Dental Benefits at any time, it does not have to be during the Open Enrollment Period.

**B. Member Letter and Denial Response**

This matter was discussed under the Legal Report.

**C. P&F Members Not Qualified for Medicare**

This matter was discussed under the Legal Report.

**D. Cost of Purchasing Medicare**

This matter was discussed during the Legal Report.

#### **E. Age Eligibility for Deferred**

This matter was discussed, and it was stated that deferred GERS members become eligible for benefits upon turning age 60. Deferred P&F members become eligible upon turning age 50.

#### **F. Excerpted Rules & Regulations for Appeals**

A copy of the excerpted Rules & Regulations for Appeals was provided for the Boards and BeneSys knowledge. Ms. Crosby will develop an Appeal Form for the Board's approval.

#### **G. Stadium Retirees**

Deborah Munson from the GERS Office emailed Ms. Crosby an updated census stating that the previous census had excluded stadium retirees. Ms. Crosby either emailed or mailed these members Open Enrollment Packets and BeneSys will allow these members until December 15, 2021 to turn in their Enrollment Forms due to the late notification to the members.

#### **H. Plan for Census Verification**

Mr. Carrington had provided a plan to verify the census information provided to BeneSys at the request of Mayor Waterman on December 3, 2021 via email. This matter was discussed in detail.

#### **RESOLUTION by Mayor Waterman; seconded by Mr. Moore**

Further Resolved, to engage an auditor to audit the eligible members lists from this enrollment.

Yea – 7 Nay – 0

#### **I. Option to Rescind Opt-Out Election**

Final communication regarding the letter mailed to members on December 3, 2021 allowing them the opportunity to rescind their previous Opt-Out or choose to Opt-Out by December 10, 2021 was provided.

#### **J. Hospital Retirees Issue**

Email communication from Deborah Munson informing the Board that the Rescind Opt-Out letter was mailed to hospital retirees was provided for the Board. Discussion took place regarding the matter.

#### **K. Early Out Eligibility**

Email communication from Chairperson Filler regarding the Early Out members needing to be age 60 before they are eligible for Benefits was shared with the Board. Discussion took place regarding this matter.

#### **L. Resigned Members Eligibility**

Ms. Crosby shared email communication regarding a member who did not retire from the VEBA, her paperwork showed that she resigned. Confirmation was given by the Board that this member is not eligible for VEBA benefits.

**M. Spouse after Retirement Date Eligibility**

Ms. Crosby and Chairperson Filler had shared communication via email regarding if a Spouse who married a member after the members retirement or deferred date would be eligible for VEBA benefits. A discussion took place regarding this matter. The Board felt that the concern should lie with those married or having children after December 22, 2011. Mr. Henzi will reach out to the Bargaining Parties for clarification.

**RESOLUTION by Mr. Moore; seconded by Mr. Britton**

Further Resolved, to send a letter to members who were married or had children born after December 22, 2011, instructing them to not cancel their current coverage pending a final decision on eligibility.

Yea – 7 Nay – 0

**N. Surviving Beneficiary Non-Spouse**

Correspondence from Deborah Munson regarding the eligibility of a son who was a pension beneficiary of a deceased member inquiring if he would be eligible for VEBA benefits was provided. Discussion took place regarding this matter, and it was determined that only Surviving Spouses were eligible for VEBA benefits.

**O. MAPERS Plan Application**

Ms. Crosby provided a MAPERS Plan Application to the Board for review. Discussion took place regarding the matter.

**RESOLUTION by Mr. Moore; seconded by Mr. Britton**

Further Resolved, to have Ms. Crosby complete the application and submit payment for the Board to enroll as members of MAPERS as a means of educational opportunity.

Yea – 7 Nay - 0

**CORRESPONDENCE - None**

**NEXT MEETING DATE:** January 13, 2022 at 9:00 a.m.

**ADJOURNMENT**

**RESOLUTION by Mr. Moore; seconded Mr. Britton**

Further Resolved, that the meeting be adjourned at 12:35 p.m.

I certify that the foregoing are the true minutes of the City of Pontiac VEBA Trust on December 15, 2021.

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*As recorded by BeneSys*