

**AGREEMENT BETWEEN THE CITY OF ANN ARBOR
AND VARNUM LLP FOR LEGAL SERVICES**

The City of Ann Arbor, a Michigan municipal corporation, having its offices at 301 E. Huron St. Ann Arbor, Michigan 48104 (“City”), and VARNUM LLP, a Michigan Limited Liability Partnership, with offices at 333 Bridge Street NW, Grand Rapids, Michigan 49504 (“Firm”), enter into this Agreement for the provision of legal services as follows:

1. Services

A. Firm previously agreed to provide initial professional legal services relative to intervention by the City in DTE Electric Company rate case Case No. U-18091 before the Michigan Public Service Commission (“MPSC”). City now wishes and Firm agrees to continue those services and provide the City with professional legal services relative to continuing matters associated with MPSC Case No. U-18091 regarding DTE’s payment amounts and obligations for the purchase of hydro power from the City, as described in Exhibit A.

B. The Firm agrees to perform diligently the Services in accordance with the conditions contained in this Agreement and the quality of Services under this Agreement shall be of the level of professional quality performed by practitioners regularly rendering this type of service. Determination of acceptable quality shall be made solely by the City Attorney, or authorized designee.

C. The Firm shall perform and carry out in a satisfactory manner the Services described in Exhibit A under the direction of the City Attorney or his designee. Work completed at the request of anyone other than the City Attorney may result in the City Attorney or his designee not authorizing payment of invoice. In the event that there is any dispute between the parties with regard to the extent and character of the Services to be performed, the interpretation of the City shall govern.

D. The Firm shall perform its services in compliance with all applicable laws, ordinances and regulations.

2. Personnel and Administration

A. The Firm warrants that all attorneys assigned to the performance of the Service are members in good standing of the State Bar of Michigan and are legal experts in the field or are working under the supervision of legal experts in the field.

B. Each employee or consultant employed by the Firm in the performance of this Agreement shall devote such time, attention, skill, knowledge and professional ability as is necessary to perform most effectively and efficiently the services in accordance with the level of professional quality performed by experts regularly performing these legal services in the State of Michigan; provided, however, it is recognized that the Firm may engage in legal service for other clients to the

extent that the rendering of such services does not conflict with the services to be performed under this Agreement.

3. In-House Assistance

It is City policy to use in-house resources to the full extent possible. The City Attorney, or authorized designee, will be available to assist with respect to matters such as document review and indexing interviews or presentations. It is expected that any attorney on City property will notify the City Attorney in advance of his/her visit.

4. Compensation of the Firm

A. The Firm shall be paid as described in Exhibit B. Payment shall be made following receipt of monthly invoices submitted by the Firm. The invoices shall include a detailed report of the Firm's activities for the month.

B. The Firm will contract with an expert witness, subject to the City's approval, to provide testimony. The Firm will forward the expert witnesses invoices to the City for approval and payment and will not include those amounts in its monthly invoices to the City.

C. The Firm will be compensated for services performed in addition to the services described in Exhibit A only when those additional services have received prior written approval of the City Attorney. The Firm is being retained because of its experience. All work will be done at the direction of the City Attorney.

D. The Firm shall keep complete records of time spent and expenditures made in performing the services so that the City may verify invoices submitted by the Firm. Such records shall be made available to the City upon request and submitted in summary form with each invoice.

5. Insurance

A. During the term of this Agreement, the Firm agrees to procure and maintain in effect a policy or policies of professional liability insurance protecting the Firm and its employees in an amount of no less than \$1,000,000.

B. During the term of this Agreement the Firm agrees to procure and maintain in effect workers' compensation insurance in the form and amount required by Michigan law.

C. Certificates showing the Firm has the required insurance shall be filed with the City before any services are performed. Certificates shall provide for not less than 30 days prior written notice to the City of cancellation, non-renewal, reduction in the amount of insurance or material change of terms of the policy to the extent possible. For workers' compensation insurance, the notice shall be ten (10) days prior with notice.

6. Indemnification

A. The Firm agrees to save harmless the City against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges and expenses (including, without limitation, reasonable fees and expenses for consultants, expert witnesses and other consultants at the prevailing market rate for such services) which may be imposed upon, incurred by or asserted against the City by reason of any of the following:

1. Any negligent or tortious act, error, or omission attributable in whole or in part to the Firm or any of its employees, consultants, or agents, during the course of providing services.
2. Any failure by the Firm or any employees to perform their obligations expressed under this Agreement.

B. The Firm agrees that it is the responsibility of the Firm and not the responsibility of the City to safeguard the property and material that are used in performing this Agreement. Further the Firm agrees to hold the City harmless for costs and expenses resulting from any loss of such property and material used pursuant to the Firm's performance under this Agreement.

C. The relationship of the Firm to the City is and shall continue to be that of an independent contractor and no relationship other than that of an independent contractor shall be implied between the parties, or either party's agent, or employee. The Firm agrees to hold the City harmless from any such claims, and any costs or expenses related thereto.

D. The Firm shall not hold the City liable for any personal injury incurred by its employee(s), agents or consultants while providing services under this Agreement and the Firm agrees to hold the City harmless from any such claims.

7. Nondiscrimination

The Firm agrees to comply with the nondiscrimination provisions of Section 209 of the Elliot-Larsen Civil Rights Act (MCL 37.2209) The Firm further agrees to comply with the nondiscrimination provisions of Chapter 112 of the Ann Arbor City Code and to assure that applicants are employed and that employees are treated during employment in a manner which provides equal employment opportunity.

8. Living Wage

If the Firm is a "covered employer" as defined in Chapter 23 of the Ann Arbor City Code, the Firm agrees to comply with the living wage provisions of Chapter 23 of the Ann Arbor City Code. In the event that the Firm becomes a "covered employer," the Firm agrees to pay those employees providing services to the City under this Agreement a "living wage," as defined in Section 1:815 of the Ann Arbor City Code; to post a notice approved by the City of the applicability of Chapter 23 in every location in which regular or contract employees providing services under this agreement are

working; to maintain records of compliance; if requested by the City, to provide documentation to verify compliance; to take no action that would reduce the compensation, wages, fringe benefits, or leave available to any employee or person contracted for employment and providing services under this Agreement in order to pay the living wage required by Section 1:1815; and otherwise to comply with the requirements of Chapter 23.

9. Termination of Agreement

A. The City has the right to terminate the services at any time, with liability to pay fees and expenses incurred to the date the Firm receives notice of termination. The Firm has the right to terminate services at any time, subject to its ethical obligations under the Michigan Rules of Professional Conduct, and shall be paid for services and expenses rendered to the date of the Firm's resignation. The City or Firm shall provide notice of such termination by first-class mail to the other party at the address stated herein.

B. This Agreement may be terminated by either party in the case of a breach of this Agreement by the other party, if the breaching party has not corrected the breach within 15 days after notice of termination is provided to it by first class mail at the address stated herein.

10. Obligations of the City

A. The City agrees to give the Firm access to City records as required to perform the necessary services under this Agreement.

B. The City shall notify the Firm of any defects in the services of which the City Attorney has actual notice.

C. The City shall pay the Fees and Costs described in Exhibit B.

D. The City warrants that this Agreement has been duly executed by its authorized representative, and in accordance with the City Charter and Code.

11. Assignment

This Agreement may not be assigned or subcontracted by the Firm, in whole or in part, without the written consent of the City Attorney. If the Firm subcontracts or assigns any portion of the services, the Firm shall require the subcontractor or assignee to enter into a subcontract or other agreement which incorporates all the same terms as this Agreement.

12. Conflict of Interest

A. Firm covenants that the Firm presently has no interest and shall not during the pendency of the services, assume a representation nor acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of the services under this Agreement

except as identified in Exhibit A. The Firm further covenants during the pendency of the services, no person having any such interest or conflicting representation shall be employed by the Firm.

B. The Firm further covenants that no officer or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the Agreement has any personal or financial interest, direct or indirect, in this Agreement or in the proceeds thereof.

13. Confidentiality

A. The services to be performed by Firm shall be at the direction of City Attorney, or authorized designee, and the Firm shall report to the City Attorney, or authorized designee, regarding the services performed.

B. In order that the Firm may effectively fulfill its obligations to the City under this Agreement, it may be necessary or desirable for the City to disclose confidential and proprietary information pertaining to the City's past, present, and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Firm and all Firm employees shall regard all information gained from the City during the term of this Agreement or provided by the City Attorney or City prior to agreement, and as a result of the services to be performed hereunder as information which is proprietary to the City and not to be disclosed to any organization or individual without the prior written consent of the City, or as required by law. If the Firm receives a subpoena or other legal process seeking disclosure for the Firm of information gained from the City during the term of this Agreement and as a result of the services, the Firm shall immediately notify the City of same, and the City, at its sole expense, shall undertake such opposition to the legal process as the City shall deem appropriate, or in the alternative, the City shall provide the Firm with its written approval to disclose the information sought by the process.

C. The Firm shall take appropriate action to insure that all employees comply with this policy of nondisclosure.

D. The Firm also shall take appropriate action to ensure that all employees protect from improper disclosure all information obtained or produced, all communications made or received, and all work under this Agreement which are covered by the attorney-client privilege or attorney work product doctrine.

E. The Firm shall retain its files relative to the services for a reasonable period of time after completion of the services, and shall then have the right to destroy its files.

14. Amendments

A. The City may consider it in its best interests to change, modify, or extend a term or condition of this Agreement or the City may request the Firm to perform additional services. Any such change, extension or modification, which is mutually agreed upon by the City and the Firm, shall be incorporated by written amendments to this Agreement. Such amendments shall not

invalidate this Agreement nor relieve or release the Firm or the City from any of their obligations under this Agreement.

B. No amendment to this Agreement shall be effective and binding upon the parties unless it expressly makes reference to this Agreement, is in writing, is signed by duly authorized representatives of both parties and is executed in accordance with the City's Charter and Code.

C. The parties acknowledge that the amount payable for the services under this Agreement is an estimate which may be increased or decreased by the parties pursuant to this Article.

15. Notices

All notices and communications under this Agreement shall be given in writing, signed by the Firm, mailed by first-class mail and addressed as follows:

If to the Firm:

Varnum LLP
333 Bridge Street NW
Grand Rapids, Michigan 49504

Attn: Tim Lundgren
Partner

If to the City:

City Attorney's Office
City of Ann Arbor
301 E. Huron St.
P.O. Box 8647
Ann Arbor, MI 48107-8647

Attn: Stephen K. Postema
City Attorney

16. General Provisions

A. No failure by a party to insist upon the strict performance of any term of this Agreement or to exercise any right, term or remedy consequent upon a breach thereof shall constitute a waiver of any breach of this Agreement. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach.

B. If any provision of this Agreement or its application to any person or circumstances shall be judicially determined to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

C. This instrument, including Exhibits A and, B attached hereto and made a part hereof, contains the entire agreement between the parties and all prior negotiations and agreements are merged herein. Neither party has made any representation except those expressly set forth herein, and no rights or remedies are or shall be acquired by either party by implication unless expressly set forth herein.

D. Unless the context otherwise expressly requires, the words “herein,” “hereof” and “hereunder,” and other words of similar import, refer to this Agreement as a whole and not to any particular article, section or other subdivision.

E. The headings of the articles in this Agreement are for convenience only and shall not be used to construe or interpret the scope or intent of this Agreement or in any way affect the same.

F. The rights and remedies set forth herein are not exclusive and are in addition to any of the rights or remedies provided by law or equity. This Agreement, and all actions arising hereunder, shall be governed by the laws of the State of Michigan. The Firm submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. The Firm agrees that service of process at the address and in the manner specified in this Agreement will be sufficient to put the Firm on notice. The Firm also agrees that no action will be commenced against the City because of any matter arising of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be had in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

G. It is understood that during the term of this Agreement the City may contract with other firms providing the same or similar service, provided, however, that the Firm’s obligations to the City contained in this Agreement will not be affected in any manner.

H. The Firm covenants that it is not and will not become in arrears to the City upon any obligations to the City, including real property, personal property, and income taxes.

I. As used herein, the singular shall include the plural; the plural shall include the singular.

J. Press releases or interviews with the press in connection with the Firm’s representation of the City must be authorized by the City Attorney in writing prior to any action on the Firm’s part. The Firm shall not use the name “City of Ann Arbor” or any of its departments in connection with publicity releases, articles, advertising or listings without prior written consent of the City Attorney. The City may be listed as a client with prior approval of the City Attorney.

K. For purposes of the hold harmless provisions contained herein, the term “City” shall be deemed to include the City of Ann Arbor and all other associated, affiliated or subsidiary entities, now existing or hereafter created and their agents and employees.

Dated: December ___, 2016

Signatures on following page.

VARNUM LLP, a Michigan Limited Liability Partnership

By _____
Tim Lundgren
Partner

CITY OF ANN ARBOR, a Michigan municipal corporation

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

Approved as to substance:

Howard S. Lazarus, City Administrator

Approved as to form and content:

Stephen K. Postema, City Attorney

EXHIBIT A

Scope of Services

General

The Firm will provide legal services relative to matters associated with the DTE Electric Company hearing, Case No. U-18091, before the Michigan Public Service Commission regarding hydro rates.

Conflicts in Representation

The Firm will advise the City when the Firm has been retained to handle a matter in which its representation is adverse to the City. The City will consent to the Firm's representation of other clients in matters that are adverse to the City unless, as the result of the Firm's representation of the City, the Firm has obtained sensitive, proprietary or otherwise confidential information of a non-public nature that, if known to the Firm's other proposed client, could be used in any such other matter by the other client to the material disadvantage of the City. Each matter will be reviewed on a case-by-case basis.

EXHIBIT B

Schedule of Fees and Costs

General

The Firm shall be paid for those services performed pursuant to this Agreement, as amended, inclusive of all reimbursable expenses, in accordance with the terms and conditions herein and with Exhibit A in particular. The total amount for the Services shall not exceed \$43,000.00.

The Firm will contract with Peter Richardson to serve as expert witness on behalf of the City, for an amount not to exceed \$5,000.00. The City will pay Peter Richardson upon receipt of his invoices from the Firm.

Fee Schedule

Hourly rate for attorneys based on average hourly rate	\$350.00 per hour
Hourly rate for Peter Richardson	\$250.00

Reimbursable Expenses

Normal and customary expenses necessary to perform the services are included in the not to exceed fee amounts.