



Town of Simsbury

933 HOPMEADOW STREET

P.O. BOX 495

SIMSBURY, CONNECTICUT 06070

Thomas F. Cooke - Director of Administrative Services

BOARD OF SELECTMEN MEETING AGENDA SUBMISSION FORM

1. **Title of submission:** Appointment of Retirement Plan Counsel

2. **Date of submission:** May 7, 2013

3. **Date of Board Meeting:** May 13, 2013

4. **Individual or Entity making the submission:**

Thomas F. Cooke – Director of Administrative Services

5. **Action requested of the Board of Selectmen (Acceptance of gift, creation of reserve, approval of contract, information only, etc. Be as specific as possible with respect to the desired action of the Board.):**

The Individual or Entity making the submission requests that the Board of Selectmen:

Approve the appointment of Reid and Riege, P.C. as retirement plan counsel for a term concluding in December, 2015

6. **Individual(s) responsible for submission (Please include complete contact information. The identified individual(s) should be prepared to present information to the Board of Selectmen at the Board Meeting.):**

Thomas F. Cooke – Director of Administrative Services – (860) 658-3230

7. **Summary of Submission** (Include in your summary (i) relevant dates and timelines; (ii) parties involved; (iii) a description of financial terms and conditions specifically identifying the financial exposure/commitment of the Town of Simsbury; (iv) whether or not contracts, licenses and other legal documents have been reviewed by the Town's counsel; and (v) other information that will inform the Board of Selectmen's consideration of your submission. Include any additional information in an attached memorandum.):

The Town of Simsbury issued a Request for Proposal for retirement plan counsel earlier this year. Three responses were received, and two of the respondents – including the firm that has advised the Town on pension matters for many years – were interviewed by Town Staff.

Based on the RFP responses, the interviews and subsequent reference checks, I am recommending the appointment of Reid and Riege, P.C. as counsel to the Town of Simsbury on retirement plan-related matters. The firm currently provides legal advice to a number of Connecticut municipalities. Its proposed hourly rates are discounted and significantly lower than those proposed by the incumbent firm.

With recent labor negotiations resulting in changes to the existing pension plan and introduction of a new defined contribution plan, I anticipate regular reliance on pension plan counsel as these changes are implemented. The recommended time period (until December, 2015) will provide continuity as these projects are brought to conclusion.

8. **Description of documents included with submission** (All documents must be in final form and signed by the appropriate party.):

The following documents are included with this submission and attached hereto:

RFP Response – Reid and Riege, P.C.

**REID AND RIEGE, P.C.
One Financial Plaza
Hartford, CT 06103**

**TOWN OF SIMSBURY
PROPOSAL FOR LEGAL SERVICES**

**A. DESCRIPTION OF THE BUSINESS OF THE EMPLOYEE BENEFITS
PRACTICE GROUP AT REID AND RIEGE, P.C.**

The emphasis on pensions and employee benefits at Reid and Riege, P.C. (the "Firm") was unique in the region when the Firm was founded in 1950. Pension and employee benefits law remains one of the cornerstones of the Firm's practice today. There are five attorneys and one paraprofessional in the pension and employee benefits practice group who are responsible for monitoring the legal requirements of over 150 tax-qualified retirement plans. The pension and employee benefits practice group regularly advises clients with respect to all state and federal laws pertaining to retirement plans.

The pension and employee benefits practice group is regularly involved in:

1. Designing, drafting and reviewing all types of tax-qualified retirement plans, including retirement plans sponsored by approximately ten municipalities and governmental agencies located throughout Connecticut. Many of these are complicated plans incorporating sophisticated approaches to plan design.
2. Designing, drafting and reviewing nonqualified retirement plans, including Section 457 plans sponsored by tax-exempt employers and governmental entities. The Firm has also advised several clients regarding unfunded deferred compensation plans governed by Section 409A of the Internal Revenue Code.
3. Drafting and reviewing Section 403(b) plan documents for tax-exempt employers.
4. Drafting and reviewing summary plan descriptions for all types of employee benefit plans.
5. Assisting clients in obtaining favorable IRS determination letters for qualified retirement plans, and resolving issues raised in governmental audits.
6. Making submissions to the IRS under its voluntary compliance program to correct form and operational defects in qualified plans and Section 403(b) arrangements.
7. Advising clients (by telephone, by e-mail and in person) on questions regarding the administration of employee benefit plans, including the interpretation of plan provisions regarding eligibility and the determination of benefit accruals.

8. Reviewing domestic relations orders to determine if they constitute qualified domestic relations orders.
9. Preparing plan amendments reflecting changes in plan design, as well as changes required by law.
10. Providing general newsletters and updates to our clients highlighting important developments in the law and regulations governing retirement plans.

B. SUMMARY OF QUALIFICATIONS

1. Identification of lead counsel and personnel

John V. Galiette will be the stockholder of the Firm responsible for providing services to the Town of Simsbury in connection with its retirement plans.

John V. Galiette is a stockholder in the Firm's pension and employee benefits practice group. John was born in Waterbury, Connecticut and graduated from Holy Cross High School in 1972. He received his B.A. in Engineering and Applied Physics from Harvard University *magna cum laude* in 1976, and he received his J.D. *magna cum laude* from Boston College Law School in 1979. Immediately upon graduating, John joined the Waterbury law firm of Gager, Henry & Narkis, becoming a partner in 1987. He worked there until 1997, when he joined the Firm. John resides in Watertown, Connecticut.

It is anticipated that Mr. Galiette will perform most of the services relating to the Town of Simsbury's retirement plans. However, should the need arise, he will be able to call upon the assistance of the practice group's other members. Their experience is described below:

a. John J. Jacobson is a stockholder and the head of the Firm's pension and employee benefits practice group. John is a graduate of Bowdoin College and Georgetown University. He joined the Firm in 1976, and has worked exclusively in the area of tax qualified retirement plans and other employee benefits matters. Prior to joining the firm, John spent one year in pension benefits work at the Office of Employee Benefits Security, U.S. Department of Labor in Washington, D.C. John resides in West Hartford, Connecticut.

b. Ronald J. Koniuta is a stockholder in the pension and employee benefits practice group. Ron graduated from the University of Connecticut in 1979 and from the Western New England College School of Law in 1994.

c. Erek M. Sharp is a stockholder in the Firm's pension and employee benefits practice group. Erek graduated from the University of Maine in 1995, where he received his B.A. with distinction, and the University of Maine School of Law in 1998.

d. Devin M. Karas is an associate in the pension and employee benefits practice group. Devin graduated from the University of Michigan in 2003 and from Michigan State University College of Law in 2007.

e. Mary F. Gonzalez is a paralegal in the pension and employee benefits practice group. Mary has over 35 years of experience in pensions and employee benefits matters.

2. Other comparable clients

The firm's employee benefits clients range from sole proprietorships, to small and medium sized companies, to large employers. Clients include professional corporations, service organizations and manufacturers, as well as governmental entities and nonprofit organizations. Governmental entities for which we provide employee benefits legal services include The Metropolitan District, City of Bridgeport Fire Commission, Town of Brookfield, Town of Monroe, New Haven Board of Education, Town of New Canaan, Town of Trumbull, Town of West Hartford, and Town of Wilton.

During the past twelve months, the services that the pension and employee benefits practice group has provided to our employee benefits clients have included the preparation of amended and restated plan documents to reflect changes in the law and regulations, the preparation of required good faith interim amendments and amendments relating to changes in plan design, the submission of qualified plans to the IRS for the issuance of favorable determination letters, the submission of requests to the IRS for relief concerning form and operational defects under the IRS's voluntary compliance program, the preparation of summary plan descriptions, the review of domestic relations orders, and the provision of advice regarding the interpretation of plan provisions and legal requirements and plan funding issues.

3. General description of the Firm

As noted above, the Firm is a medium-sized law firm that was founded in 1950 and that currently has approximately 50 attorneys. Our main office is located at One Financial Plaza, Hartford, Connecticut 06103-3185 (860) 278-1150. In addition to employee benefits, other practice groups in the firm include the commercial banking and finance group, the corporate and securities group, the environmental and land use group, the estate planning and settlement group, the fiduciary services group, the health care group, the insolvency, financial restructure and loan work-out group, the litigation group, the nonprofit organization group, the Taft-Hartley plan group, and the tax group. For more information concerning the firm, please refer to our website at www.rrlawpc.com.

C. FEE SCHEDULE

Historically, our firm has represented our clients on an hourly rate basis. These rates are adjusted in February of each year. We normally bill and are paid monthly, based on fully itemized statements.

If the Firm is selected as counsel for the Town of Simsbury, we will provide a discount from our regular hourly rates of 10%. In addition, we will use the talents of a lower billing rate lawyer or paraprofessional whenever that will achieve the proper legal result at a lower cost to the client. We will not charge for the time involved in traveling to and from meetings.

The 2013 hourly rates for attorneys and paraprofessionals in the pension and employee benefits practice group, as adjusted for the 10% discount, are set forth below:

| | <u>Discounted 2013 Rates</u> |
|-------------------|------------------------------|
| John V. Galiette | \$396.00 |
| John J. Jacobson | \$472.50 |
| Ronald J. Koniuta | \$283.50 |
| Devin M. Karas | \$207.00 |
| Mary F. Gonzalez | \$252.00 |

Our fees for the preparation of an individually-designed, tax-qualified Section 401(a) defined contribution plan, along with the submission of the plan to the IRS, generally do not exceed \$10,000. There is also an IRS filing fee of \$2,000. Of course, our actual fees may be higher or lower, depending on the issues that arise and the amount of consultation required.

D. GENERAL COMMENTS RELATING TO THE TOWN OF SIMSBURY REQUEST FOR PROPOSAL

With respect to the request for proposal of the Town of Simsbury and the Town of Simsbury Board of Education, we have the following comments:

1. Defined contribution plan

We would recommend that the Town adopt a single tax-qualified Section 401(a) plan as its new defined contribution plan. The plan could contain multiple benefit structures for the different bargaining units.

Only employers who are exempt from tax under Section 501(c)(3) of the Internal Revenue Code and public schools can adopt a Section 403(b) plan. Non-public school governmental employees cannot participate in a Section 403(b) plan. *See* Regulation Section 1.403(b)-2(b)(8),(20). Therefore, if the Town of Simsbury Board of Education adopted a Section 403(b) plan for its employees, the employees of the Town of Simsbury could not participate in that plan.

In addition, the total contributions to a governmental Section 457(b) plan (including both employee pre-tax contributions and employer contributions) cannot exceed \$17,500 per calendar year (as adjusted for cost of living increases), with certain catch-up contributions permitted for employees who have reached age 50 or are near retirement age. *See* Section 457(b)(2),(3) and Section 414(v) of the Internal Revenue Code. Contributions to multiple Section 457(b) plans are aggregated for this purpose. *See* Regulation Section 1.457-5(a). Therefore, employees would not be able to make the full amount of pre-tax contributions permitted under the existing Section 457(b) plan if employer contributions were also made to that plan or another Section 457(b) plan.

Any employer can establish a tax-qualified Section 401(a) plan. In addition, the contribution limits under a Section 401(a) plan would not be aggregated with the contribution limits under the existing Section 457(b) plan.

2. Defined benefit plans

It had been the longstanding practice of the IRS not to question the tax qualified status of governmental retirement plans. As a result, many governmental employers have not requested determination letters from the IRS regarding the form of their plan provisions. However, in recent discussions, representatives of the IRS have stated that they now anticipate changing their prior practice and will begin to conduct audits of governmental plans. As a result, the IRS is recommending that a governmental employer submit its qualified retirement plan to the IRS for the issuance of a determination letter regarding the qualification of the plan. The IRS has indicated that, if a determination letter is not obtained, the IRS may question the adequacy of plan provisions in connection with an audit and, thus, be in a position to impose penalties pursuant to the audit.

The IRS made available two methods for submitting determination letter requests relating to a qualified governmental plan:

- a. Under the "regular" determination letter procedure, the plan could have been submitted to the IRS during its regular remedial amendment period cycle that ended on January 31, 2011. Since that date has now passed, the use of the "regular" determination letter procedure is no longer available.
- b. Under the Voluntary Compliance Program ("VCP") procedure, an employer can voluntarily notify the IRS of any form or operational defects in the governmental plan, propose a method for fully correcting those defects, and pay a stipulated compliance fee. If the IRS accepts the proposed correction method, it will enter into a compliance agreement in which it will affirm the qualified status of the governmental plan. The compliance fee under VCP depends on the number of participants in the plan, and is substantially lower than the penalties that would be imposed if the IRS discovered the plan defects on audit.

If a governmental plan has not been amended to reflect all of the qualification requirements, the form defects in the plan can be corrected by using VCP. Under VCP, the plan would have to be amended and restated to incorporate all of the current laws and regulations that apply to governmental plans, and the amended and restated plan document would have to be submitted to the IRS under the VCP procedure, along with the appropriate compliance fee. If the form defects are not corrected and the IRS were to audit the plan, the IRS could attempt to disqualify the plan. If the plan were disqualified, the value of each participant's accrued benefit under the plan would become immediately taxable to the participant, and the trust for the plan would have to pay federal income taxes on its realized gains and losses.

It would be advisable for the Town of Simsbury to review its defined benefit pension plans to determine if they have been properly amended, and to consider submitting the plans to the IRS for the issuance of a determination letter.