

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

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In re : Chapter 9  
CITY OF DETROIT, MICHIGAN, : Case No. 13-53846  
Debtor. : Hon. Steven W. Rhodes  
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CITY OF DETROIT, MICHIGAN, : Chapter 9  
Plaintiff, : Adversary Proceeding No. 14-04112  
vs. : Hon. Steven W. Rhodes  
DETROIT GENERAL RETIREMENT :  
SYSTEM SERVICE CORPORATION, :  
DETROIT POLICE AND FIRE :  
RETIREMENT SYSTEM SERVICE :  
CORPORATION, DETROIT :  
RETIREMENT SYSTEMS FUNDING :  
TRUST 2005, and DETROIT :  
RETIREMENT SYSTEMS FUNDING :  
TRUST 2006 :  
Defendants. :  
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**FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO CITY OF DETROIT, MICHIGAN FROM DETROIT  
RETIREMENT SYSTEMS FUNDING TRUST 2005 AND  
DETROIT RETIREMENT SYSTEMS FUNDING TRUST 2006**

Wilmington Trust, National Association (“WTNA”), successor trustee for the above-captioned defendants (a) Detroit Retirement Systems Funding Trust 2005 (the “2005 Funding Trust”) and (b) Detroit Retirement Systems Funding Trust 2006 (the “2006 Funding Trust” and, together with the 2005 Funding Trust, the “Trust Defendants”), pursuant to the Bankruptcy Court’s August 14, 2014 Case Management Order (the “CMO”), makes the following requests for production (these “Requests”) pursuant to Rule 34 of the Federal Rules of Civil Procedure (the “Rules”), made applicable to the above-captioned adversary proceeding (this “Adversary Proceeding”) by Rule 7034 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **INSTRUCTIONS**

A. Production shall be made as the records are kept in the usual course of business, or shall be organized and labeled to correspond with the categories of this request.

B. These Requests call for the production of all documents or electronically stored information in your possession, custody, or control within the meaning of Rule 34(a), made applicable in this Adversary Proceeding by Bankruptcy Rule 7034, wherever those documents may be located.

C. Unless otherwise stated, these Requests seek documents (defined below) regarding the period beginning January 1, 2003 through the present (the

“Relevant Time Period”), and responses should include all responsive materials concerning that time period.

D. If you find the meaning of any term in these Requests to be unclear, you should assume a reasonable meaning, state what the assumed meaning is, and respond to the Request on the basis of that assumed meaning.

E. If any documents responsive to these Requests are not available for production because they have been misplaced, discarded, or destroyed, identify which documents cannot be produced for these reasons, and state fully in writing the reasons that the documents are unavailable.

F. If any document responsive to these Requests cannot be produced in full, it shall be produced to the maximum extent possible and the City (defined below) shall specify in writing the reasons for its inability to produce the remainder.

G. If documents responsive to these Requests are not available to you because they are in the custody or in control of a third person, identify such documents and the third person in whose possession or control said documents are to be found.

H. Produce original documents whenever such documents are available to you.

I. Produce all documents available by virtue of being in possession of your attorneys or other agents.

J. If any documents responsive to these Requests are available but are not produced because of an objection, including an objection based on privilege, identify such documents with particularity as to date, subject matter and the nature of the objection or privilege claim.

K. In accordance with Rule 26(b)(5), made applicable in this Adversary Proceeding by Bankruptcy Rule 7026, where a claim of privilege is asserted in objecting to any Request or part thereof, and production is not provided on the basis of such assertion:

1. In asserting the privilege, the responding party shall, in the objection, identify with specificity, the nature of the privilege that is being claimed; and
2. The following information should be provided in the objection, if known or reasonably available, unless divulging such information would cause disclosure of the allegedly privileged information: (a) the type of document or communication; (b) the general subject matter of the document or communication; (c) the date of the document or communication; (d) such other information as is sufficient to identify the document or

communication, including, where appropriate, the participants in the communication and any relationship between or among the participants, and the author(s) (including the business or legal title(s) or position(s)), addressee (including the business or legal title(s) or position(s)), custodian, and any other recipient of the document, and, where not apparent, the relationship of the author, addressee, custodian, and any other recipient to each other, and (e) such other information to adequately justify the assertion of privilege.

L. The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. “All” means “any and all.” “Any” means “any and all.” “Including” means “including but not limited to.” “And” and “or” encompasses both “and” and “or.” Words in the masculine, feminine, or neuter shall include each of the other genders. The terms “all” and “each” shall be construed as all and each.

M. These Requests shall be deemed to be continuing, and any additional documents relating in any way to these Requests or your original responses that are acquired subsequent to the date of responding to these Requests, up to and including the time of trial, shall be furnished to the Trust Defendants promptly after such documents are acquired as supplemental responses to these Requests.

N. Pursuant to the CMO, your responses are due within twenty (20) days.

### **DEFINITIONS**

As used in these Requests, the meanings ascribed to the following terms are to be interpreted in accordance with the below definitions.

1. All terms not otherwise defined herein shall have the meanings given to them in the *Answer with Affirmative Defenses and Counterclaims of Defendants Detroit Retirement Systems Funding Trust 2005 and Detroit Retirement Systems Funding Trust 2006 to Complaint for Declaratory and Injunctive Relief* (Adv. Pro. Doc. 10).

2. The term “Complaint” means the Complaint for Declaratory and Injunctive Relief (Adv. Pro. Doc. 1) filed in *City of Detroit v. Detroit General Retirement System Service Corporation, et al.*, Adv. Pro. No. 14-04112.

3. The terms “communication” and “communications” mean the transmittal of information by any means, whether orally or in writing.

4. “By and between” means communications that include you and another identified party or parties, and includes any communications that include any number of third parties. The fact that another individual or entity participates in or is copied on a communication does not mean that the communication is anything other than by and between you and the identified party or parties.

5. The term “City” means the City of Detroit, Michigan.

6. The term “State” means the State of Michigan.
7. “Concerning” means regarding, relating to, referring to, describing, evidencing, reflecting, embodying, or constituting.
8. The terms “document” and “documents” shall be construed in the broadest possible sense consistent with Rule 34 of the Federal Rules of Civil Procedure and Rule 7034 of the Federal Rules of Bankruptcy Procedure. The terms shall include any communications (as defined above), writings, drawings, graphs, charts, electronically stored information, photographs, photorecords, and other data compilations from which information can be obtained, and/or translated, if necessary, through detection devices into reasonably usable form. The term shall also include any removable “Post-It” notes or other attachments to any of the foregoing, as well as any file folders, folder tabs, or labels relating to such documents. A draft, annotated, or otherwise non-identical copy shall be considered a separate document.
9. The terms “person” and “persons” mean any natural person or persons, business or businesses, or legal or governmental entity, entities, association, or associations.
10. The term “personnel” means the Emergency Manager, the Office of the Emergency Manager, the City Council, and the Mayor, as well as any past or present divisions, departments, officials, trustees, agents, affiliates, employees,

attorneys, advisors, professionals, representatives, advisors, and consultants of the foregoing, and all other persons acting or purporting to act on their behalf.

11. “You” or “your” means the City and its personnel, as those terms are defined above, and shall include anyone acting on behalf of those parties, over whom the parties have control, or which is or may be subrogated to the parties’ interests, including, without limitation, any officer, agent, servant, employee, attorney, insurance company, investigator, independent adjusting company, or other person or entity.

12. The term “GRS” means the Detroit General Retirement System.

13. The term “PFRS” means the Police and Fire Retirement System.

14. The term “Retirement Systems” means the GRS and PFRS, collectively.

15. The term “GRS Service Corporation” means the Detroit General Retirement System Service Corporation, a nonprofit corporation that the City caused to be formed in or about April 2005.

16. The term “PFRS Service Corporation” means the Detroit Police and Fire Retirement System Service Corporation, a nonprofit corporation that the City caused to be formed in or about April 2005.

17. The term “Service Corporations” means the PFRS and the GRS Service Corporations, collectively.



18. The term “UAAL” means the unfunded accrued actuarial liabilities of the Retirement Systems.

19. The term “COPs” means the Certificates of Participation that were issued and sold to fund certain UAAL of the Retirement Systems. Specifically, the term “2005 COPs Transaction” refers to the COPs that were issued and sold in 2005, and the term “2006 COPs Transaction” refers to the COPs that were issued and sold in 2006. The term “COPs Transactions” refers to the 2005 COPs Transaction and the 2006 COPs Transaction, collectively.

20. The term “Service Payments” means the periodic payments that the City obligated itself to make to the Service Corporations pursuant to certain service contracts that were part of the COPs Transactions.

21. The term “Trust Defendants” has the meaning ascribed in the introduction to these Requests.

22. The term “WTNA” has the meaning ascribed in the introduction to these Requests.

23. The term “HRCA” refers to the Michigan Home Rule Cities Act, Mich. Comp. Laws §§ 117.1-117.38.

## **REQUESTS**

1. Any and all documents concerning the COPs Transactions.

2. Any and all documents concerning the UAAL of the Retirement Systems during the Relevant Time Period.

3. Any and all documents concerning the City's efforts to fund the UAAL of the Retirement Systems prior to the 2005 COPs Transaction.

4. Any and all documents concerning the City's calculation of its "net indebtedness" pursuant to HRCA § 117.4a during the Relevant Time Period.

5. Any and all documents identifying or concerning the City's debt for purposes of determining the City's "net indebtedness" pursuant to HRCA § 117.4a during the Relevant Time Period.

6. Any and all documents concerning the decision not to include the outstanding Service Payments in the Legal Debt Margin schedule of the City's Comprehensive Annual Financial Reports during the Relevant Time Period.

7. Any and all documents concerning the City's consideration, review, and analysis of alternative means or proposals for funding the UAAL during the Relevant Time Period.

8. Any and all documents concerning the decision to pursue the COPs Transactions as opposed to alternative plans or proposals.

9. Any and all documents concerning the amount of proceeds that could have been raised through the COPs Transactions without insurance.

10. Any and all documents sufficient to show the current status and location of the proceeds of the COPs Transactions.

11. Any and all documents concerning the possibility of filing for bankruptcy at any time prior to the 2005 COPs Transaction.

12. Any and all documents concerning the plan to raise funds through the issuance of the COPs.

13. Any and all documents concerning transactions the City identified as similar or analogous to the COPs Transactions pursued by other states or municipalities.

14. Any and all documents sufficient to show any calculations of any savings – financial or otherwise – the City expected to derive from the COPs Transactions.

15. Any and all documents concerning the structure of the COPs Transactions.

16. Any and all documents concerning the formation of the Service Corporations.

17. Any and all documents concerning the process for approval of the 2005 COPs Transaction.

18. Any and all documents concerning the process for approval of the 2006 COPs Transaction.

19. Any and all documents concerning the drafting or revision process for the transactional documents for the 2005 COPs Transaction, including any discussion of the meaning or interpretation of one or more provisions of the Offering Circular, the Underwriting Agreement, the Service Contracts, the Contract Administration Agreement, the Trust Agreement, the Funding Ordinances, and any legal opinions requested or delivered for the closing of the 2005 COPs Transaction.

20. Any and all documents concerning the drafting or revision process for the transactional documents for the 2006 COPs Transaction, including any discussion of the meaning or interpretation of one or more provisions of the Offering Circular, the Underwriting Agreement, the Service Contracts, the Contract Administration Agreement, the Trust Agreement, the Funding Ordinances, and any legal opinions requested or delivered for the closing of the 2006 COPs Transaction.

21. Any and all documents concerning the issuance of the 2005 COPs.

22. Any and all documents concerning the issuance of the 2006 COPs.

23. Any and all documents concerning the decision to make interest-only payments for the 2006 COPs Transaction.

24. Any and all documents concerning the decision not to include the 2005 COPs as indebtedness in Appendix B of the Offering Circular for the 2006 COPs Transaction.

25. Any and all documents concerning the use of the proceeds from the 2005 COPs Transaction.

26. Any and all documents concerning the use of the proceeds from the 2006 COPs Transaction.

27. Any and all documents concerning the Service Payments made by the City.

28. Any and all documents concerning the City's termination of the Service Payments.

29. Any and all documents concerning the City's decision to terminate the Service Payments.

30. Any and all documents concerning the City's use of funds budgeted or earmarked for the Service Payments.

31. Any and all documents regarding the amount the City presently owes pursuant to each COPs Transaction.

32. Any and all documents concerning the financial impact on the City of the COPs Transactions.

33. Any and all documents concerning the alleged relationship between the Service Payments and the City's petition for Chapter 9 bankruptcy.

34. Any and all documents concerning the possible effect of the COPs Transactions on the City's financial stability.

35. Any and all documents concerning the allegations regarding Sean Werdlow in the Complaint at paragraph 24.

36. Any and all documents concerning the allegations regarding Kwame Kilpatrick in the City's *Motion to Dismiss in Part the Trust Defendants' Counterclaims* (Adv. Pro. Doc. 23) at 21, and the relationship between those allegations and the COPs Transactions.

37. Any and all communications or documents reflecting communications concerning the COPs Transaction, including any and all documents provided to or received from, by and between you and any State personnel.

38. Any and all communications or documents reflecting communications concerning the City's pension funding obligations, including any and all documents provided to or received from, by and between you and any State personnel.

39. Any and all communications or documents reflecting communications concerning the COPs Transactions, including any and all documents provided to or received from, by and between you and any County of Wayne personnel.

40. Any and all communications or documents reflecting communications concerning the City's pension funding obligations, including any and all documents provided to or received from, by and between you and any County of Wayne personnel.

41. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and the Trust Defendants.

42. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and WTNA.

43. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and U.S. Bank, National Association.

44. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and Financial Guaranty Insurance Company.

45. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and XL Capital Assurance, Inc.

46. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and Syncora.

47. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and prospective or actual purchasers of the COPs.

48. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and the holders, at any time, of COPs.

49. Any and all communications or documents reflecting communications concerning the COPs Transactions by and between you and the Service Corporations, or their representatives (including any attorneys), agents, or board members.

50. Any and all communications or documents reflecting communications concerning the Adversary Proceeding by and between you and the Service Corporations, or their representatives (including any attorneys), agents, or board members.

51. Any and all documents concerning services provided by the Service Corporation.

52. Any and all documents concerning actions undertaken by the Service Corporations.

53. Any and all documents concerning any other services performed by the Service Corporations.



54. Any and all documents concerning the Service Corporations with respect to interest rate swap transactions.

55. Any and all documents concerning the Service Corporations with respect to the termination issues in 2009.

56. Any and all documents concerning the Service Corporations with respect to the 2013 forbearance agreement among the City, the Service Corporations, and the swap counter-parties.

57. Any and all documents concerning the Service Corporations with respect to the City's efforts to settle with the swap counter-parties in connection with the Bankruptcy Proceeding.

58. Any and all documents concerning the City's liability for or enforceability of the COPs Transactions.

59. Any and all documents concerning the City's allegations that the Service Corporations do not provide services.

60. Any and all documents concerning any litigation between the City and either Retirement System.

61. Any and all documents reviewed in responding to the Trust Defendants' First Set of Interrogatories.

62. Any and all documents concerning the decision to file the Complaint.

63. Any and all communications or documents reflecting communications concerning the decision and justification for filing the Complaint.

64. Any and all documents you intend to rely on in support of any of the allegations in the Complaint.

65. Any and all documents you intend to rely on in defending against any of the allegations in the Trust Defendants' counterclaims and Financial Guaranty Insurance Company's counterclaims.

66. Any and all documents identified in the City's Initial Disclosures in this Adversary Proceeding.

67. Any and all documents that you gathered or collected from the Service Corporations as disclosed in the Service Corporations' Initial Disclosures in this Adversary Proceeding.

*[Signature Page Immediately Follows]*

September 26, 2014

DRINKER BIDDLE & REATH LLP

/s/ Heath D. Rosenblat

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**CERTIFICATE OF SERVICE**

I, Heath D. Rosenblat, hereby certify that on this day I caused a true and correct copy of the foregoing *First Requests For Production Of Documents To City Of Detroit, Michigan From Detroit Retirement Systems Funding Trust 2005 And Detroit Retirement Systems Funding Trust 2006* to be electronically filed, and to be thereby served upon the following:

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Dated: September 26, 2014

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