

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

	:	x
In re	:	
	:	Chapter 9
	:	
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor.	:	Hon. Steven W. Rhodes
	:	
	:	
	:	x
CITY OF DETROIT, MICHIGAN,	:	Chapter 9
	:	
Plaintiff,	:	Adversary No. 1404112
	:	
vs.	:	Hon. Steven W. Rhodes
	:	
DETROIT GENERAL RETIREMENT SYSTEM SERVICE CORPORATION, <i>et al.</i>	:	
	:	
Defendants.	:	
	:	x

**DEFENDANTS DETROIT GENERAL RETIREMENT
SYSTEM SERVICE CORPORATION AND DETROIT
POLICE AND FIRE RETIREMENT SYSTEM SERVICE
CORPORATION'S AMENDED ANSWER
AND AFFIRMATIVE AND OTHER DEFENSES**

Defendants, Detroit General Retirement System Service Corporation
("Retirement Service Corporation") and Detroit Police And Fire Retirement
System Service Corporation ("Police and Fire Service Corporation")

(hereinafter together "Defendants" or "Service Corporations"), with the Plaintiff, City of Detroit, Michigan's (the "City") consent, provide the following Amended Answer and Affirmative and Other Defenses to the City's Complaint for Declaratory and Injunctive Relief (Docket No. 1) ("Complaint").

PARTIES

1. The Service Corporations admit that the City is a Michigan municipal corporation, located in Wayne County. The remaining allegations of Paragraph 1 state conclusions of law to which no response is required. Should a response be required, however, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, deny the allegations.

2. Defendants admit only that Retirement Service Corporation is a non-profit Michigan corporation created by the City in April 2005. As to the remaining allegations of Paragraph 2, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, deny the allegations.

3. Defendants admit only that Police and Fire Service Corporation is a non-profit Michigan corporation created by the City in April 2005. As to the remaining allegations of Paragraph 3, the Service Corporations lack

knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, deny the allegations.

4. The Service Corporations admit that the 2005 Funding Trust is a trust created and existing under Michigan law, and that it issued and sold Certificates of Participation (“COPS”) in 2005 (the “2005 COPS Transaction”). The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 4 and, therefore, deny those allegations.

5. The Service Corporations admit that the 2006 Funding Trust is a trust created and existing under Michigan law, and that it issued and sold COPS in 2006 (the “2006 COPS Transaction”). The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 5 and, therefore, deny those allegations.

VENUE AND JURISDICTION

6. The Service Corporations deny that this is a core proceeding pursuant to 28 USC § 157(b)(2). The remaining allegations of Paragraph 6 state conclusions of law to which no response is required. Should a response be required, however, the Service Corporations lack knowledge or

information sufficient to form a belief as to the truth of the allegation and, therefore, deny the allegations.

BACKGROUND

7. The Service Corporations admit the first three sentences of Paragraph 7. The remaining allegations of Paragraph 7 state a conclusion of law to which no response is required. Should a response be required, however, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, deny the allegations.

8. The Service Corporations admit that, as of 2005, the Retirement Systems had certain unfunded accrued actuarial liabilities (“UAAL”); however the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 and, therefore, deny the allegations.

9. The first two sentences of Paragraph 9 state conclusions of law to which no response is required. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations in the third sentence of of Paragraph 9 and, therefore, deny the allegations. The Service Corporations admit that Exhibit A to the Complaint is a copy of

an Offering Circular for \$1,440,000,000 Taxable Certificates of Participation Series 2005 (the "2005 Offering Circular").

10. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 10 and, therefore, deny the allegations.

Structure of the COPs

11. The Service Corporations admit, with respect to clauses (a), (b), and (c) of the second sentence of Paragraph 11, that the Service Corporations were formed, that the two trusts (i.e., the 2005 Funding Trust and the 2006 Funding Trust) were established, and that the proceeds of the 2005 COPs Transaction were paid to the Retirement Systems, as part of a funding mechanism for the City to meet its obligation to fund certain UAAL of the Retirement Systems. The Service Corporations further admit that Exhibit A to the Complaint is an authentic copy of the 2005 Offering Circular, which is a transactional document that speaks for itself and that two series of COPs were sold to investors in 2005 in conjunction with this funding mechanism, and two series of COPs were sold to investors in 2006. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 11 and, therefore, deny the allegations.

Service Corporations

12. The Service Corporations admit that in April 2005 the City incorporated two non-profit corporations – Detroit General Retirement System Service Corporation and Detroit Police and Fire Retirement System Service Corporation. The Service Corporations also admit that Exhibit B to the Complaint is an authentic copy of the City of Detroit Ordinance, the interpretation of which is a conclusion of law to which no response is required. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12 and, therefore, deny the allegations.

13. The Service Corporations admit that the board of each Service Corporation was to consist of five *ex officio* directors, all of whom were to be members of the City government –the City’s Finance Director, Budget Director, and Corporation Counsel, plus two members of the City Council. The Service Corporations further admit that Exhibit B to the Complaint is a copy of a City of Detroit Ordinance that is referenced in Paragraph 13, the interpretation of which is a conclusion of law to which no response is required. Should a response be required, however, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, deny the allegations. The Service Corporations

admit only that Exhibit C to the Complaint is a copy of the GRS Service Contract 2005 between the Detroit General Retirement System Service Corporation and the City of Detroit, dated May 25, 2005 (the "GRS Service Contract 2005"). For the remaining allegations in Paragraph 13, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegation and, therefore, deny the allegations.

14. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14 and, therefore, deny the allegations.

The Service Contracts

15. The Service Corporations admit that Exhibit C to the Complaint is a copy of a May 25, 2005 "Service Contract" between the City and the Service Corporations. The Service Contract is a document that speaks for itself. The Service Corporations also admit that Exhibit D is a copy of a 2005 Trust Agreement which states that the Service Corporations irrevocably transferred their entire right to receive the City Payments. The Service Corporations further admit that the sole ongoing function of the Service Corporations disappeared almost as soon as they were created. The Service Corporations lack knowledge or information sufficient to form a

belief as to the truth of the remaining allegations of Paragraph 15 and, therefore, deny the allegations.

16. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 and, therefore, deny the allegations.

17. The first, second and fourth sentences of Paragraph 17 state conclusions of law to which no response is required. To the extent the first, second, and/or fourth sentences of Paragraph 17 allege facts to which a response is deemed required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 17 and, therefore, deny the allegations.

Funding Trusts

18. The Service Corporations admit that Exhibit C to the Complaint is a copy of the GRS Service Contract 2005, which is a transactional document that speaks for itself. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 18 and, therefore, deny the allegations.

19. The Service Corporations admit that Exhibit D to the Complaint is a copy of a 2005 Trust Agreement, which is a transactional document that speaks for itself. The Service Corporations also admit that U.S. Bank National Association was engaged on or about June 2, 2005 as the Contract Administrator, and that Exhibits E and F to the Complaint are copies of, respectively, the Contract Administration Agreement 2005 and the Contract Administration Agreement 2006, which are transaction documents that speak for themselves. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 19 and, therefore, deny the allegations.

20. The Service Corporations admit the first and second sentence of Paragraph 20. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and, therefore, deny the allegations.

Issuance of the COPs

21. The Service Corporations admit the first two sentences of Paragraph 21. The Service Corporations further state that the COPs transactional documents speak for themselves and lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 21 and, therefore, deny the allegations.

22. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 22 and, therefore, deny the allegations.

23. The Service Corporations admit the allegations contained in the second and third sentences of Paragraph 23. The Service Corporations further admit that Exhibit C is a copy of a GRS Service Contract 2005. The Service Corporations further admit that the payments were not made to the Service Corporations to compensate the Service Corporations for any ongoing services. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 23 and, therefore, deny the allegations.

24. The Service Corporations admit that the 2005 Trust Agreement has Sean K. Werdlow's name as executioner on behalf of both Service Corporations. The Service Corporations also admit that Mr. Werdlow was, at that time, the Finance Director of the City. The Service Corporations further admit that Mr. Werdlow is no longer employed with the City. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 24 and, therefore, deny the remaining allegations.

25. The Service Corporations admit that Exhibit G is a copy of an article that was published in the December 29, 2005 issue of the Bond Buyer, titled *Detroit Uses COPs to Shift Pension Burden and Set a Few Records*. The article speaks for itself and, therefore, no answer is required. Should an answer be required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations related to the article, as well as to the remaining allegations of Paragraph 25 and, therefore, deny the allegations.

2006 COPs Transaction

26. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 26 and, therefore, deny the allegations.

27. The Service Corporations admit that Exhibits H and Exhibits I to the Complaint are copies of, respectively, a GRS Service Contract 2006, dated June 7, 2006 and Trust Agreement, dated June 12, 2006. Both documents are transactional documents which speak for themselves. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 27 and, therefore, deny the remaining allegations.

28. The Service Corporations admit that the City entered into Service Contracts with the Service Corporations and that the Service Corporations irrevocably transferred all their rights to receive payments from the City to the 2006 Funding Trust. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 28 and, therefore, deny the allegations.

29. The Service Corporations admit that Exhibit J to the Complaint is a copy of an Offering Circular for \$948,540,000 Taxable Certificates of Participation Series 2006 which is a transactional document that speaks for itself. The remainder of the Paragraph 29 states conclusions of law to which no response is required. To the extent the remainder of Paragraph 29 alleges facts to which a response is required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 29 and, therefore, deny the allegations.

Effect Of The COPs Transaction Upon The city Of Detroit

30. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 30 and, therefore, deny the allegations.

31. The Service Corporation admit that the City benefited from the sale of COPs. The Service Corporations further state that the service

contracts are transactional documents that speak for themselves. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31 and, therefore, deny the allegations.

32. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 32 and, therefore, deny the allegations.

Detroit's Bankruptcy

33. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 and, therefore, deny the allegations.

34. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 and, therefore, deny the allegations.

35. The Service Corporations admit that the City filed a petition for bankruptcy under Chapter 9 on or about July 18, 2013 and that the City has suspended payment on the COPs. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 and, therefore, deny the allegations.

COUNT I – DECLARATORY JUDGMENT

36. In response to Paragraph 36, the Service Corporations incorporate by reference the responses to Paragraphs 1 through 35 as if set forth herein.

37. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37 and, therefore, deny the allegations.

38. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 and, therefore, deny the allegations.

39. The second sentence of Paragraph 39 states conclusions of law to which no response is required. To the extent the second sentence alleges facts to which a response is deemed required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 39 and, therefore, deny the allegations. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 39 and, therefore, deny the allegations

40. Paragraph 40 states conclusions of law to which no response is required. To the extent Paragraph 40 alleges facts to which a response is

deemed required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 and, therefore, deny the allegations.

41. Paragraph 41 states conclusions of law to which no response is required. To the extent Paragraph 41 alleges facts to which a response is deemed required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 41 and, therefore, deny the allegations.

42. Paragraph 42 states conclusions of law to which no response is required. To the extent Paragraph 42 alleges facts to which a response is deemed required, the Service Corporations deny the allegations of Paragraph 42 for the reason that they are untrue.

43. The Service Corporations admit that the City seeks a declaratory judgment. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 43 and, therefore, deny the allegations.

COUNT II – DECLARATORY JUDGMENT

44. In response to Paragraph 44, the Service Corporations incorporate by reference the responses to Paragraphs 1 through 43 as if set forth herein.

45. The Service Corporations admit the allegations of Paragraph 45.

46. The Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46 and, therefore, deny the allegations.

47. The Service Corporations admit that counsel for the Trustee and the Contract Administrator have entered their appearance in the Chapter 9 proceeding. The Service Corporations further admit that Exhibit F is a Contract Administration Agreement 2005, which is a transactional document that speaks for itself. The remainder of Paragraph 47 states conclusions of law to which no response is required. To the extent a response is deemed to be required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 47 and, therefore, deny the remaining allegations.

48. The Service Corporations deny that an actual case or controversy exists between it and the City. The remaining allegations state conclusions of law to which no response is required. To the extent the remaining allegations state facts to which a response is deemed required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the allegations and, therefore, deny the allegations.

49. The Service Corporations admit that the City seeks certain declaratory relief. The remaining allegations state conclusions of law to which no response is required. To the extent the remaining allegations state facts to which a response is deemed required, the Service Corporations lack knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 49 and, therefore, deny the allegations.

COUNT II – INJUNCTIVE RELIEF

50. In response to Paragraph 50, the Service Corporations incorporate by reference the responses to Paragraphs 1 through 49 as if set forth herein.

51. The Service Corporations admit that the City seeks certain injunctive relief.

PRAYER FOR RELIEF

The Service Corporations deny that the Plaintiff, the City of Detroit is entitled to any of the relief requested in Paragraphs A – B of Plaintiff's Prayer for Relief.

AFFIRMATIVE DEFENSES

Without assuming any burden of proof or production to which they are not otherwise subject under the law, the Service Corporation Defendants assert the following affirmative defenses:

First Affirmative Defense

Plaintiff's claims are barred as the action is not a core proceeding pursuant to 28 USC § 157(b)(2) and this Court lacks jurisdiction.

Second Affirmative Defense

Plaintiff's claims are barred, in whole or in part, as it has failed to state an actual case or controversy against the Service Corporations.

RESERVATION OF RIGHTS

Defendant Service Corporations reserve the right to further amend this Answer and to add, supplement or modify the above stated Affirmative Defenses based on legal theories that come to light through further clarification of the Complaint, through discovery, or through further legal analysis of the City's Complaint.

WHEREFORE, Defendant Service Corporations request that this Court dismiss Plaintiff's Complaint with prejudice and award Defendants expenses and attorney fees in having to defend this lawsuit.

Dated: August 25, 2014

Respectfully submitted,

BUTZEL LONG,
a professional corporation

By: /s/ Cynthia J. Haffey

Cynthia J. Haffey (P57352)
150 W. Jefferson Ave., Ste. 100
Detroit, Michigan 48226
Telephone: (313) 983-7434
haffey@butzel.com

*Attorneys for Defendants Detroit
General Retirement System Service
Corporation and Detroit Police and
Fire Retirement System Service
Corporation*

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2014, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all parties registered to receive notice in this adversary proceeding.

/s/ Cynthia J. Haffey
Cynthia J. Haffey (P57352)
150 West Jefferson, Suite 100
Detroit, MI 48226
(313) 225-7000
haffey@butzel.com

*Attorneys for Defendants Detroit
General Retirement System Service
Corporation and Detroit Police and
Fire Retirement System Service
Corporation*