

**IN THE UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

In re	)	Chapter 9
)	
CITY OF DETROIT, MICHIGAN	)	Case No. 13-53846
)	
Debtor.	)	Hon. Steven W. Rhodes

**APPELLANT’S DESIGNATION OF THE CONTENTS
OF THE RECORD AND STATEMENT OF ISSUES ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), appellants Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (together, “Syncora”) file this designation of the contents of the record and statement of issues regarding Syncora’s December 20, 2013, notice of appeal [Doc. No. 2273], filed pursuant to Bankruptcy Rule 8001 and 28 U.S.C. § 158(a), from the Order Approving the Public Lighting Authority Transaction [Doc. No. 1955], entered December 6, 2013 (the “Order”).

I. DESIGNATION OF THE CONTENTS OF THE RECORD ON APPEAL

A. Docket Entries from Case No. 13-53846

<u>Item #</u>	<u>Date</u>	<u>Docket Number</u>	<u>Document Title</u>
1	10/23/13	1341	Debtor’s Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief

<u>Item #</u>	<u>Date</u>	<u>Docket Number</u>	<u>Document Title</u>
			Note: Including all exhibits thereto
2	11/6/13	1557	Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction Note: Including all exhibits thereto
3	11/7/13	1574	Joinder of Ambac Assurance Corporation in the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction
4	11/8/13	1603	Joinder of the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to the Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction
5	11/8/13	1615	Joinder of FMS Wertmanagement AöR to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction

<u>Item #</u>	<u>Date</u>	<u>Docket Number</u>	<u>Document Title</u>
6	11/11/13	1636	Joinder of Hypothekenbank Frankfurt AG, Hypothekenbank Frankfurt International S.A., and Erste Europäische Pfandbrief-Und Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A. in the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance, Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction
7	11/11/13	1638	Motion of the Objectors for (I) Clarification Regarding the Purpose of the Hearing for Debtor's Motion for Entry of an Order Authorizing the Debtor to Enter into and Perform Under Certain Transaction Documents With the Public Lighting Authority and Granting Other Related Relief and (II) Leave to Conduct Limited Discovery Note: Including all exhibits thereto
8	11/11/13	1639	Ex Parte Motion for Shortened Notice and Expedited Hearing on the Motion of the Objectors for (I) Clarification Regarding the Purpose of the Hearing for Debtor's Motion for Entry of an Order Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents With the Public Lighting Authority and Granting Other Related Relief and (II) Leave to Conduct Limited Discovery Note: Including all exhibits thereto
9	11/12/13	1661	Order Denying Motion for Clarification and Motion to Expedite Hearing

<u>Item #</u>	<u>Date</u>	<u>Docket Number</u>	<u>Document Title</u>
10	11/30/13	1877	Transcript regarding Hearing Held 11/27/13 RE: Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief (Docket #1341)
11	12/2/13	1884	Transcript Order Form of Hearing November 27, 2013, Filed by Interested Parties Syncora Capital Assurance, Inc., Syncora Guarantee Inc.
12	12/4/13	1939	Supplement to Joinder of the Official Committee of Retirees to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction

II. DESIGNATION OF ISSUES ON APPEAL

- a) Whether the order approving the Public Lighting Authority transaction should be reversed or otherwise vacated and remanded because the bankruptcy court failed to make the findings of fact required by Federal Rule of Civil Procedure 52.
- b) Whether the bankruptcy court erred by finding that the Public Lighting Authority transaction satisfied the requirements of section 364(c) of the Bankruptcy Code.
- c) Whether the bankruptcy court erred by finding that the Public Lighting Authority transaction represented an extension of credit in “good faith” within the meaning of section 364(e) of the Bankruptcy Code.
- d) Whether the bankruptcy court erred by denying appellant’s request to conduct discovery regarding the Public Lighting Authority transaction.

Dated: January 3, 2014

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**U.S. Bankruptcy Court
Eastern District of Michigan (Detroit)
Bankruptcy Petition #: 13-53846-swr**

Date filed: 07/18/2013

Assigned to: Judge Steven W. Rhodes
Chapter 9
Voluntary
No asset

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Filing Date	#	Docket Text
10/23/2013	<u>1341</u>	Motion / <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter into and Perform under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief</i> Filed by Debtor In Possession City of Detroit, Michigan (Attachments: # <u>1</u> Summary of Attachments # <u>2</u> Exhibit 1 – Proposed Order # <u>3</u> Exhibit 2 – Form of Notice # <u>4</u> Exhibit 4 – Certificate of Service # <u>5</u> Exhibit 6.1 (CFAgreement).Part 1 # <u>6</u> Exhibit 6.1 – (CFAgreement).Part 2 # <u>7</u> Exhibit 6.1 – (CFAgreement).Part 3 # <u>8</u> Exhibit 6.1 – (CFAgreement).Part 4 # <u>9</u> Exhibit 6.2 – (OMAgreement) # <u>10</u> Exhibit 6.3 – (Trust Agreement) # <u>11</u> Exhibit 6.4 – (Emergency Manager Order)) (Heiman, David) (Entered: 10/23/2013)
11/06/2013	<u>1557</u>	Objection to (related document(s): <u>1341</u> Motion / <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter into and Perform under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief</i>) Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction Filed by Interested Parties Syncora Capital Assurance Inc., Syncora Guarantee Inc. (Attachments: # <u>1</u> Exhibit 1 – Presentation to the City of Detroit) (Bennett, Ryan) (Entered: 11/06/2013)
11/07/2013	<u>1574</u>	Response to (related document(s): <u>1341</u> Motion / <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter into and Perform under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief</i>) (<i>Joinder in the Limited Objection of Syncora Guarantee Inc. and Syncora</i>

			<i>Capital Assurance Inc. to Debtors Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction) Filed by Interested Party Ambac Assurance Corporation (Cohen, Carol) (Entered: 11/07/2013)</i>
11/08/2013		<u>1603</u>	<i>Concurrence / Joinder of the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to the Debtors Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction Filed by Creditor Michigan Council 25 Of The American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (RE: related document(s)<u>1341</u> Motion / Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter into and Perform under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief, <u>1557</u> Objection). (Levine, Sharon) (Entered: 11/08/2013)</i>
11/08/2013		<u>1615</u>	<i>Concurrence / Joinder of FMS Wertmanagement to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction Filed by Creditor FMS Wertmanagement. (Newbury, Karen) (Entered: 11/08/2013)</i>
11/11/2013		<u>1636</u>	<i>Concurrence Joinder in Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction Filed by Creditors Erste Europäische Pfandbrief- und Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A., Hypothekenbank Frankfurt AG, Hypothekenbank Frankfurt International S.A. (RE: related document(s)<u>1557</u> Objection). (Summers, Matthew) (Entered: 11/11/2013)</i>
11/11/2013		<u>1638</u>	<i>Motion Motion of the Objectors for (I) Clarification Regarding the Purpose of the Hearing for Debtor's Motion for Entry of an Order Authorizing the Debtor to Enter into and Perform Under Certain Transaction Documents with the Public Lighting Authority and Granting Other Related Relief and (II) Leave to Conduct Limited Discovery Filed by Interested Parties Syncora Capital Assurance Inc., Syncora Guarantee Inc. (Attachments: # <u>1</u> Index - Summary of Attachments # <u>2</u> Exhibit 1 - Proposed Form of Order # <u>3</u> Exhibit 2 - Notice of Motion and Opportunity to Object # <u>4</u> Exhibit 3 - None [Brief Not Required] # <u>5</u> Exhibit 4 - None [Separate Certificate of Service to be Filed] # <u>6</u> Exhibit 5 - Affidavits [Not Applicable] # <u>7</u> Exhibit 6 - Documentary Exhibits [Not Applicable]) (Hackney, Stephen) (Entered: 11/11/2013)</i>
11/11/2013		<u>1639</u>	<i>Motion to Expedite Hearing (related documents <u>1638</u> Generic Motion) Ex Parte Motion for Shortened Notice and Expedited Hearing on the Motion of the Objectors for (I) Clarification Regarding the Purpose of the Hearing for Debtor's Motion for Entry of an Order Authorizing the Debtor to Enter into and Perform Under Certain Transaction Documents with the Public Lighting Authority and Granting Other Related Relief and (II) Leave to Conduct Limited Discovery Filed by Interested Parties Syncora Capital Assurance Inc., Syncora Guarantee Inc. (Attachments: # <u>1</u> Exhibit 1 - Proposed Order) (Hackney, Stephen)</i>

			(Entered: 11/11/2013)
11/12/2013		<u>1661</u>	Order Denying Motion for Clarification and Motion to Expedite Hearing (Related Doc # <u>1638</u>). (jjm) (Entered: 11/12/2013)
11/30/2013		<u>1877</u>	Transcript regarding Hearing Held 11/27/13 RE: Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief (Docket #1341). THIS TRANSCRIPT WILL BE MADE ELECTRONICALLY AVAILABLE TO THE GENERAL PUBLIC 91 DAYS AFTER THE DATE OF FILING, TRANSCRIPT RELEASE DATE IS 03/3/2014. Until that time, the transcript may be viewed at the Clerk's Office by parties who do not receive electronic notice and participated in the proceeding. A copy of the transcript may be purchased from the official court transcriber Lois Garrett at 517.676.5092. (RE: related document(s) <u>1837</u> Transcript Request, <u>1841</u> Transcript Request, <u>1843</u> Transcript Request, <u>1848</u> Transcript Request). Redaction Request Due By 12/23/2013. Redacted Transcript Submission Due By 12/30/2013. Transcript access will be restricted through 03/3/2014. (Garrett, Lois) (Entered: 11/30/2013)
12/02/2013		<u>1884</u>	Transcript Order Form of Hearing November 27, 2013, Filed by Interested Parties Syncora Capital Assurance Inc., Syncora Guarantee Inc.. (Bennett, Ryan) (Entered: 12/02/2013)
12/04/2013		<u>1939</u>	Supplemental Objection / <i>To Joinder of The Official Committee of Retirees To The Limited Objection Of Syncora Guarantee Inc. and Syncora Capital Assurance In. To Debtor's Motion For Entry Of An Order Authorizing The Public Lighting Authority Transaction</i> Filed by Retiree Committee Official Committee of Retirees (RE: related document(s) <u>1341</u> Motion / <i>Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter into and Perform under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief, <u>1557</u> Objection, <u>1713</u> Concurrence</i>). (Montgomery, Claude) (Entered: 12/04/2013)

**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

**DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING
THE DEBTOR TO ENTER INTO AND PERFORM UNDER CERTAIN
TRANSACTION DOCUMENTS WITH THE PUBLIC LIGHTING
AUTHORITY AND (II) GRANTING OTHER RELATED RELIEF**

The City of Detroit, Michigan (the "Debtor" or the "City"), as the debtor in the above-captioned case, submits this motion (the "Motion") for entry of an order: (i) authorizing, pursuant to sections 105(a), 362, 364, 904(2) and 922 of title 11 of the United States Code (the "Bankruptcy Code"), the City to enter into and perform under (a) the Interlocal Agreement for the Construction and Financing of a Public Lighting System (the "C&F Agreement") by and between the City and the Public Lighting Authority (the "PLA"), (b) the Interlocal Agreement for the Operation, Maintenance and Management of a Public Lighting System by and between the City and the PLA (the "O&M Agreement" and, together with the C&F Agreement, the "Interlocal Agreements") and (c) the Amended and Restated Trust

Agreement (the "Trust Agreement" and, together with the Interlocal Agreements, the "PLA Transaction Documents") by and among the City, the PLA, the Michigan Finance Authority (the "MFA") and Wilmington Trust, National Association (the "Trustee"), each in substantially the form attached hereto as Exhibits 6.1, 6.2 and 6.3, respectively; (ii) authorizing and approving a financing transaction for the benefit of the Debtor and the granting of a pledge and lien in, and the irrevocable transfer of, specified revenues of the Debtor under section 364(c)(2) of the Bankruptcy Code; and (iii) granting other related relief.¹

The relief requested above is necessary for the City to facilitate the adequate financing of the PLA. The PLA is an integral component to the City's restructuring and future, as, upon consummation of the transactions contemplated under the PLA Transaction Documents (collectively, the "PLA Transaction"), the PLA will commence the improvement of the City's public lighting system and will assume operational control of the portions of the public lighting system the PLA improves. The City's public lighting system currently is in a state of disarray, and the PLA Transaction is the City's best viable option to fix its public lighting system

¹ This Motion includes certain attachments that are labeled in accordance with Rule 9014-1(b)(1) of the Local Rules of the Bankruptcy Court for the Eastern District of Michigan (the "Local Rules"). Consistent with Local Rule 9014-1(b), a copy of the proposed form of order granting this Motion is attached hereto as Exhibit 1. A summary identifying each included attachment by exhibit number is appended to this Motion.

and provide the level of lighting services that the City's residents expect. As such, the City's ability to consummate the PLA Transaction is of utmost importance.

The City respectfully requests that the Court schedule a hearing on this Motion for the omnibus hearing scheduled on November 13, 2013 at 10:00

a.m., Eastern Time. In further support of this Motion, the City further respectfully represents as follows:

General Background

1. On July 18, 2013 (the "Petition Date"), the City filed a petition for relief in this Court, thereby commencing the largest chapter 9 case in history.

2. Incorporated in 1806, Detroit is the largest city in Michigan. As of December 2012, the City had a population of less than 685,000 (down from a peak population of nearly 2 million in 1950). Over the past several decades, the City has experienced significant economic challenges that have negatively impacted employment, business conditions and quality of life.

3. As of June 30, 2013 — the end of the City's 2013 fiscal year — the City's liabilities exceeded \$18 billion (including, among other things, general obligation and special revenue bonds, unfunded actuarially accrued pension and other postemployment benefit liabilities, pension obligation certificate liabilities and related derivative liabilities). As of June 30, 2013, the City's accumulated unrestricted general fund deficit was approximately \$237 million.

4. In February 2013, a state review team determined that a local government financial emergency exists in the City. Thereafter, in March 2013, Kevyn D. Orr was appointed, and now serves as, emergency manager with respect to the City (in such capacity, the "Emergency Manager") under Public Act 436 of 2012, the Local Financial Stability and Choice Act, MCL § 141.1541, *et seq.* ("PA 436"). Under Section 18(1) of PA 436, the Emergency Manager acts exclusively on behalf of the City in this chapter 9 case. MCL § 141.1558.

The Public Lighting Authority Transaction

5. In 2012, the State legislature enacted Public Act 392 of 2012, the Municipal Lighting Authority Act, as amended, MCL § 123.1261, *et seq.* ("Act 392"). Act 392's primary purpose was to provide an equitable and reasonable method and means of financing, operating and maintaining public lighting systems for cities of a certain size, including the City. To accomplish its intended purpose, Act 392 specifically allows for the creation of separate public lighting authorities to provide the City and other cities with more favorable and efficient access to the credit markets, thus enabling such cities to obtain the financing necessary to operate and maintain effective public lighting systems.

6. In accordance with Act 392, on February 5, 2013, the City created the PLA, a separate municipal corporation, to manage and maintain the City's public lighting system. Section 21 of Act 392 provides the PLA with

authority to issue bonds (the "Act 392 Bonds") and to sell those bonds to the MFA.² The PLA will use the proceeds of the Act 392 Bonds to construct and improve the public street lighting system of the City under the C&F Agreement. The PLA also will bear responsibility for the operation and maintenance of the portion of the City's public lighting system that the PLA has constructed and improved in accordance with the terms of the O&M Agreement.

7. The City will continue levying a utility tax (the "Utility Tax") as permitted under Public Act of 1990, the Utility Users Tax Act, MCL §§ 141.1151 to 141.1177 ("Act 100"). The Utility Tax generates revenue collected by public utilities and resale customers and. Upon issuance of the Act 392 Bonds, the City will irrevocably pledge and cause the existing and future revenue generated from the Utility Tax (the "Pledged Revenues") to be directed to the Trustee under the Trust Agreement as security for, and the primary source for the repayment of, the Act 392 Bonds. Under Act 100 and Act 392, the total amount of the Pledged Revenues to which the PLA is entitled, in any calendar year, is the lesser of (i) \$12.5 million and (ii) the total revenues generated by the Utility Tax.

² The MFA intends to issue its own bonds (the "MFA Bonds") to one or more third-party lenders, including Citibank N.A., and use the proceeds of the MFA Bonds to purchase the Act 392 Bonds. The MFA Bonds will be secured by the MFA's right to payment under the Act 392 Bonds.

8. As required under Act 392, the City will enter into the Trust Agreement. Pursuant to the Trust Agreement and the irrevocable directive of the Emergency Manager, the public utilities and resale customers that collect the Utility Tax for the City will transfer the Pledged Revenues to the Trustee directly. Under Act 392 and the Trust Agreement, the Trustee will hold the Pledged Revenues in trust (the "Trust Fund"). The Trustee will use the Pledged Revenues as set forth in the Trust Agreement, including for the repayment of the Act 392 Bonds and the payment to the City of all Pledged Revenues in excess of \$12.5 million that the Trustee collects in any calendar year.

9. Under the PLA Transaction Documents and Act 392, the City has no liability for, and undertakes no full faith and credit obligation in connection with, the Act 392 Bonds or the C&F Agreement. However, as described above, under the Trust Agreement and Act 392, the City is required to direct the transfer of all of the City's right, title and interest in the Pledged Revenues to the Trustee for the payment of the Act 392 Bonds.³ It is this transaction for which the City seeks authorization under sections 105(a) and 364(c) and (e) of the Bankruptcy Code.

³ Despite this pledge of the entirety of the revenues generated by the Utility Tax, Act 392 limits the amount of the Pledged Revenues that the PLA may utilize in any calendar year to \$12.5 million, and the Trustee must disburse to the City all amounts in excess of \$12.5 million.

City Council and Emergency Loan Board Approval

10. Pursuant to Section 12(1)(r) of PA 436, the Emergency Manager may, subject to Section 19 of P.A. 436, "transfer . . . the responsibilities of the local government." Section 19(1) of PA 436 provides that an emergency manager shall, prior to transferring the responsibilities of the local government, submit his or her proposed action to the governing body of the local government for approval. Section 19(1) of PA 436 further provides the local governing body with 10 days from the date of submission to approve or disapprove the action proposed by the emergency manager.

11. If the governing body of the local government disapproves the proposed action within 10 days, Section 19(2) of PA 436 requires the governing body of the local government, within 7 days of its disapproval, to submit to the local emergency financial assistance loan board (the "Emergency Loan Board") an alternative proposal that "would yield substantially the same financial result as the action proposed by the emergency manager." The Emergency Loan Board then has 30 days to review both the alternative proposal submitted by the governing body of the local government, as well as the proposal submitted by the emergency manager and approve the proposal that "best serves the interest of the public."

12. On October 23, 2013, the Emergency Manager issued Order No. 18 (the "EM Order"), generally approving the PLA Transaction Documents

and authorizing the necessary actions contemplated thereunder. A copy of the EM Order is attached hereto as Exhibit 6.4. The EM Order serves as the submission to City Council of the Interlocal Agreements and directs City Council to either approve or disapprove the Interlocal Agreements within 10 days of such submission, based on the terms attached to the EM Order.⁴ The PLA Transaction Documents, along with the Emergency Order, were hand-delivered to City Council on October 23, 2013.

13. To the extent approved by City Council or the Emergency Loan Board, the City respectfully submits that no other or further consents are required under applicable Michigan law, and prior to closing, the Interlocal Agreements will be fully authorized in that regard.

Jurisdiction

14. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

15. By this Motion, the City respectfully requests the entry of an order (i) authorizing, pursuant to sections 105(a), 362, 364, 904(2) and 922 of the

⁴ Except for the approval contained in the EM Order, the Trust Agreement requires no further approval under PA 436 or other applicable law.

Bankruptcy Code, the City to enter into and perform under the PLA Transaction Documents;⁵ (ii) authorizing and approving a financing transaction for the benefit of the Debtor and the granting of a pledge and lien in, and the irrevocable transfer of, the Pledged Revenues under section 364(c)(2); and (iii) granting other related relief.

Basis for Relief Requested

16. The City seeks authorization to enter into and perform under the PLA Transaction Documents under sections 105(a), 362, 364, 904(2) and 922 of the Bankruptcy Code. While the City does not believe it is required to seek approval of, or authority to enter into and perform under, the PLA Transaction Documents, the initial purchasers of the MFA Bonds, which among other things are secured by the Act 392 Bonds and the Pledged Revenues, require such approval and, thus, the City elected to seek such approval solely with respect to the relief requested in this Motion.

17. The City also seeks approval of the transfer of all of its right, title and interest in the Pledged Revenues to the Trustee under the Trust Agreement in support of, as security for, and as the primary source for the repayment of, the

⁵ The City respectfully requests limited relief under sections 362 and 922 of the Bankruptcy Code, modifying the stay solely to the extent necessary to allow the parties to the PLA Transaction Documents to fully perform their obligations and exercise any rights and remedies they may have under the PLA Transaction Documents.

Act 392 Bonds under section 364(c)(2) of the Bankruptcy Code. Finally, the City seeks a determination that section 364(e) of the Bankruptcy Code applies to the transactions contemplated under the PLA Transaction Documents, including the City's pledge and grant of the lien in the Pledged Revenues.

A. The City's Entry Into the PLA Transaction Documents is Appropriate Under Sections 364(c) and 105(a) of the Bankruptcy Code

18. Section 364 of the Bankruptcy Code allows a debtor to pledge assets as security for postpetition credit obligations regardless of whether such obligations allow for recourse against a debtor.⁶ In this case, the City seeks the authority and approval of the Court to the transfer of the Pledged Revenues, and grant of a lien in any residual interest in the Pledged Revenues the City may possess, to secure the non-recourse debt of the PLA under the Act 392 Bonds. The transfer of, and the grant of a lien in any residual interest in, the Pledged Revenues is both collateral support for, and the source for the repayment of, the Act 392 Bonds – support that Act 392 creates and requires, and support that is to be implemented under the PLA Transaction Documents for the benefit of the City, its citizens and others.

⁶ A "debt" means liability on a claim, §101(12), and a "claim" includes a non-recourse claim. Cf. Johnson v. Home State Bank, 501 U.S. 78 (1991) (mortgage that survived a chapter 7 discharge of the debtor's personal liability was a "claim" subject to inclusion in approved chapter 13 reorganization plan).

19. Under sections 3.1 and 3.2 of the C&F Agreement, with the borrowings afforded by the Act 392 Bonds, the PLA has agreed to finance the cost to construct, improve, enlarge, reduce or extend the City's Public Lighting System for the benefit of the City. The City has no liability to reimburse the PLA for these costs, nor does the City pledge its full faith and credit in connection with the Act 392 Bonds. However, as means of implementing the financing necessary for the PLA to improve the public lighting system, under Act 392, section 4.2 of the C&F Agreement and the EM Order, the City must (i) direct the transfer of the Pledged Revenues to the Trust under the Trust Agreement and (ii) pledge in trust, and grant a lien in any residual interest of, the City's right, title and interest in the Pledged Revenues. This directive to transfer, pledge in trust, and grant a lien in, the Pledged Revenues allows the Pledged Revenues to secure, and serve as the primary source for the repayment of, the Act 392 Bonds.

20. Despite the City's directive to transfer all of the Pledged Revenues to the Trustee, Act 392 limits the amount of the Pledged Revenues that the PLA may utilize in any calendar year to \$12.5 million. As such, in any calendar year, the Trustee must disburse to the City all amounts of the Pledged Revenues in excess of \$12.5 million under the terms of the Trust Agreement.

21. The ability of the City to consummate the transactions contemplated under the PLA Transaction Documents (collectively, the "PLA

Transaction") is one of many essential components to the City's restructuring. In fact, it is well known that the City and its residents suffer from the City's inability to maintain the street light system. See Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code at ¶ 33 (Docket No. 11). The PLA Transaction represents the City's best (and perhaps only) opportunity to remedy this public safety concern.

22. The Court's approval of the PLA Transaction is necessary for the Debtor, the PLA, the MFA and the Trustee to consummate the PLA Transaction successfully. Obtaining the Court's approval of the PLA Transaction is necessary to allow the MFA to successfully issue and sell the MFA Bonds.

23. Specifically, it is essential for the purchasers of the MFA Bonds that the Debtor receive an order from the Court determining, upon the City's execution of the PLA Transaction Documents and except as otherwise set forth in Act 100, Act 392 and the PLA Transaction Documents (including, without limitation, that the Trustee disburse to the Debtor all Pledged Revenues in excess of \$12.5 million in any calendar year) that: (i) the Pledged Revenues will no longer constitute property of the City pursuant to the operation of Act 100 and Act 392; and (ii) the City will have no further claim to, interest in, or right to control the Pledged Revenues, to which the PLA is statutorily entitled pursuant to Act 100 and Act 392.

24. Given the importance of the PLA Transaction to the City and its residents, the Debtor respectfully submits that it is appropriate for the Court to approve the PLA Transaction under sections 105(a) and 364(c) of the Bankruptcy Code and consents to seek such approval.

B. Section 364(e) Applies to the PLA Transaction

25. Given the nature of the PLA Transaction, it is equally important that the Court expressly find that the PLA Transaction Documents are the result of good faith, arms-length negotiations among the City, the PLA, the MFA and the initial purchasers of the MFA Bonds to ensure all parties that the PLA Transaction Documents and the pledge and transfer of, and lien on, the Pledged Revenues to secure, and provide the primary source for the repayment of, the Act 392 Bonds, is in "good faith" within the meaning of section 364(e), thus allowing the purchasers of the MFA Bonds to rely upon the protections afforded under section 364(e) of the Bankruptcy Code.

26. Section 364(e) of the Bankruptcy Code states:

The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

27. As the transaction described in the PLA Transaction Documents and the City's pledge and transfer of the Pledged Revenues in support of that transaction constitutes, subject to the limitations set forth in Act 100 and Act 392, the granting of a lien on all of the City's right, title and interest in the Pledged Revenues, for the reasons set forth above, section 364(e) of the Bankruptcy Code applies to the City's pledge and transfer of the Pledged Revenues.

28. Further, the PLA Transaction Documents are the result of good faith, arms-length negotiations among the City, the PLA, the MFA and the initial purchasers of the MFA Bonds; and the MFA Bonds are payable from, and which bonds are secured by the right to payment under, payments on the Act 392 Bonds from the Pledged Revenues. Each of those entities is acting in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

29. Finally, as a practical matter, it appears that no potential purchaser of the MFA Bonds will make such purchase, and thus provide the financing necessary to consummate the lighting transaction under the PLA Transaction Documents and Act 392, in the face of an appeal, without the comfort of an order from this Court that section 364(e) applies. As such, without a specific determination that section 364(e) applies in the instant situation, the initial

purchasers of the MFA Bonds in this case, will only provide financing pursuant to a final and nonappealable order.

30. As such, the mere filing of a notice of appeal of an order approving the PLA Transaction, regardless of how potentially meritorious or baseless such appeal may be, likely will delay unnecessarily the PLA Transaction for an extended period of time. This result is precisely what section 364(e) is intended to avoid. This transaction is too important to the public safety of the residents of Detroit and the City's overall restructuring to allow such a delay.

Conclusion

31. As set forth above, the authorization sought in this Motion will provide an immense and vital benefit to the City and its residents. Further, the City's request for the relief set forth herein represents a sound exercise of the City's business judgment and is in the best interest of the City, its creditors and other parties in interest. Thus, the City respectfully submits that the granting of the Motion is appropriate under the instant circumstances.

Reservation of Rights

32. The City files this Motion without prejudice to or waiver of its rights pursuant to section 904 of the Bankruptcy Code, and nothing herein is intended to, shall constitute or shall be deemed to constitute the City's consent, pursuant to section 904 of the Bankruptcy Code, to this Court's interference with

(a) any of the political or governmental powers of the City, (b) any of the property or revenues of the City or (c) the City's use or enjoyment of any income-producing property.

Notice

33. Notice of this Motion has been given to all entities that have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (or their counsel if known) and all parties to the PLA Transaction Documents (or their counsel if known). In addition, a copy of the Motion was served on the Office of the United States Trustee. The City submits that no other or further notice need be provided.

Statement of Concurrence

34. Local Rule 9014-1(g) provides that "in a bankruptcy case unless it is unduly burdensome, the motion shall affirmatively state that concurrence of opposing counsel in the relief sought has been requested on a specified date and that the concurrence was denied." Local Rule 9014-1(g). Given the number of parties and potential parties involved in this case and the lack of known opposing parties who would be adversely impacted by the relief requested herein, it would be impracticable (and, with regard to unknown parties, impossible) for the City to affirmatively seek the concurrence of each opposing counsel interested in the relief sought herein. Accordingly, the City submits that imposing the requirements of

Local Rule 9014-1(g) in this matter would be "unduly burdensome" and requests that its requirements be waived.

No Prior Request

35. No prior request for the relief sought in this Motion has been made to this or any other Court.

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WHEREFORE, the City respectfully requests that this Court: (a) enter an order substantially in the form attached hereto as Exhibit 1 granting the relief sought herein; and (b) grant such other and further relief to the City as the Court may deem proper.

Dated: October 23, 2013

Respectfully submitted,

/s/ David G. Heiman

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Heather Lennox (OH 0059649)

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SUMMARY OF ATTACHMENTS

The following documents are attached to this Motion, labeled in accordance with Local Rule 9014-1(b).

Exhibit 1	Proposed Form of Order
Exhibit 2	Notice
Exhibit 3	None [Brief Not Required]
Exhibit 4	Certificate of Service
Exhibit 5	None [No Affidavits Filed Specific to This Motion]
Exhibit 6.1	C&F Agreement
Exhibit 6.2	O&M Agreement
Exhibit 6.3	Trust Agreement
Exhibit 6.4	Emergency Manager Order

EXHIBIT 1

(Form of Proposed Order)

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

In re:	:	Chapter 9
	:	
CITY OF DETROIT, MICHIGAN,	:	Case No. 13-53846
	:	
Debtor,	:	Hon. Steven W. Rhodes
	:	

**ORDER (I) AUTHORIZING THE DEBTOR TO
ENTER INTO AND PERFORM UNDER CERTAIN
TRANSACTION DOCUMENTS WITH THE PUBLIC LIGHTING
AUTHORITY AND (II) GRANTING OTHER RELATED RELIEF**

This matter coming before the Court on the Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief (the "Motion"); whereas, in the Motion, the Debtor specifically requested an order (the "Order"): (i) authorizing, pursuant to sections 105(a), 362, 364, 904(2) and 922 of title 11 of the United States Code (the "Bankruptcy Code"), the City of Detroit (the "Debtor") to enter into and perform under (a) the Interlocal Agreement for the Construction and Financing of a Public Lighting System by and between the Debtor and the Public Lighting Authority (the "PLA"), (b) the Interlocal Agreement for the Operation, Maintenance and Management of a Public Lighting System, by and between the Debtor and the PLA (subsections (a) and (b) collectively, the "Interlocal Agreements"), and (c) the Amended and Restated Trust

Agreement (the "Trust Agreement") by and between the Debtor, the PLA, the Michigan Finance Authority (the "MFA") and Wilmington Trust, National Association, each substantially in the form attached as Exhibits 6.1, 6.2 and 6.3 to the Motion , (the "PLA Transaction Documents"); (ii) authorizing and approving a financing transaction for the benefit of the Debtor and the granting of a pledge and lien in, and the irrevocable transfer of, specified Pledged Revenues (as defined in the Motion) of the Debtor under section 364(c)(2) of the Bankruptcy Code; and (iii) granting other related relief; the Court having reviewed the Motion and exhibits attached thereto and having held a hearing to consider the Motion; and the Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish just cause for the relief granted herein;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:

A. Jurisdiction and Venue. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. Notice. Notice of the Motion and the Hearing was sufficient and proper under the circumstances and no further notice is necessary.

C. Authorization Appropriate. The authorization sought in the Motion will benefit the Debtor and its citizens and is a sound exercise of the

Debtor's business judgment, is in the best interest of the Debtor, its creditors and other parties in interest and is based on good, sufficient and sound business purposes and justifications.

D. Bankruptcy Court Authorization. The Bankruptcy Code permits, but does not require, the Debtor to seek this Court's authorization to enter into and perform under the PLA Transaction Documents. Solely to the extent necessary to grant the relief requested in this Order, the Debtor has consented to the jurisdiction of the Court. Under the circumstances of this case, the terms and conditions of this Order are fair and reasonable and will facilitate the Debtor's improvement of its public lighting system.

E. Good Faith. The PLA Transaction Documents are the result of good faith, arms-length negotiations among the Debtor, the PLA, the MFA and the initial purchasers of the MFA bonds (the "Initial Holders") issued by the MFA pursuant to Executive Order 2010-2 and the Shared Credit Rating Act, Act 227, Public Acts of Michigan 1985, as amended MCL 141.1051 et seq (the "MFA Bonds"). The PLA's issuance of the bonds (the "Act 392 Bonds") in connection with the PLA Transaction Documents and in accordance with the Municipal Lighting Authority Act, Act No. 392, Public Acts of Michigan 2012, as amended MCL § 123.1261, et seq, ("Act 392"), the MFA's issuance of the MFA Bonds and the extension of credit and purchase of the MFA Bonds by the Initial Holders of

the MFA Bonds each represents an extension of credit in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. In addition, the grant by the Debtor of a pledge and lien in, and the Debtor's irrevocable transfer of, its right, title and interest in the utility taxes that it levies pursuant to the Utility Users Tax Act, MCL 141.1151 to 141.1177 ("Act 100") to secure, and to provide a source for the repayment of, the Act 392 Bonds in connection with the PLA Transaction Documents and in accordance with Act 392 is in "good faith" within the meaning of section 364(e) of the Bankruptcy Code. As such, the PLA, the MFA and the Initial Holders of the MFA Bonds are entitled to the protections afforded under section 364(e) of the Bankruptcy Code.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Any objections to the entry of this Order or the relief granted herein and requested in the Motion that have not been withdrawn, waived, or settled, or not otherwise resolved pursuant to the terms hereof, if any, hereby are denied and overruled on the merits with prejudice.
3. Pursuant to sections 105(a) and 364(c) of the Bankruptcy Code, the Debtor is authorized to enter into, and perform under, the PLA Transaction Documents and to otherwise satisfy the requirements of Act 100 and Act 392. The PLA Transaction Documents, substantially in the forms attached to the Motion,

will constitute valid, binding and non-avoidable obligations of the Debtor enforceable against the Debtor in accordance with the terms of this Order, the PLA Transaction Documents, Act 100 and Act 392. The Debtor is authorized to perform and fulfill its respective obligations under the PLA Transaction Documents, Act 100 and Act 392.

4. The Debtor has taken, and is authorized to continue to take, all steps required of it under Act 392 to irrevocably instruct each public utility and resale customer collecting Pledged Revenues to irrevocably transfer the Debtor's interest in the Pledged Revenues to the trustee (the "Trustee") appointed under the Trust Agreement and remit and transfer the Pledged Revenues to the Trustee for the payment of the Act 392 Bonds, so that an amount of the Pledged Revenues not to exceed \$12.5 million in any calendar year can be used only for the purposes set forth in the Trust Agreement and in accordance with Act 392. Except as set forth in Act 100, Act 392 and the PLA Transaction Documents, Pledged Revenues do not constitute property of the Debtor, and the Debtor has no right, claim or interest in or right to interfere with, control, or deal with in any manner the Pledged Revenues irrevocably transferred, or that will be transferred, to the Trustee.

5. Pursuant to section 364(c) of the Bankruptcy Code, upon execution of PLA Transaction Documents, the Pledged Revenues are, and will have been, validly pledged and irrevocably transferred to the Trustee and held in

trust for the benefit of the MFA and the Initial Holders of the MFA Bonds. As such, the provisions of section 921(e) of the Bankruptcy Code apply to the PLA Transaction Documents and to the PLA, the MFA and the holders of the MFA Bonds.

6. In connection therewith, the PLA, MFA and the Initial Holders of the MFA Bonds have extended credit to the Debtor and otherwise engaged in the financing transaction described herein in "good faith" within the meaning of section 364(e) of the Bankruptcy Code, and are entitled to all the rights, remedies, privileges and benefits provided for under section 364(e) of the Bankruptcy Code. If any or all of the provisions of this Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay will not affect the validity or enforceability of the Act 392 Bonds, the MFA Bonds or any trust, pledge, lien or other security interest or priority authorized or created pursuant to the PLA Transaction Documents, Act 100, Act 392 or the documents governing the issuance of the MFA Bonds (the "MFA Bond Documents").

7. To the extent applicable, the automatic stay provisions of sections 362 and 922 of the Bankruptcy Code are vacated and modified to the extent necessary to permit the PLA, the MFA or the holders of the MFA Bonds to effect the PLA Transaction Documents and comply with Act 100 and Act 392 and to enforce all of their respective rights, remedies, liens and security interests under

the PLA Transaction Documents, the MFA Bond Documents or under Act 100 or Act 392 and to exercise all rights and remedies under the PLA Transaction Documents, the MFA Bond Documents or under Act 100 or Act 392.

8. This Order and all rights and remedies of the PLA, the MFA and the holders of the MFA Bonds under this Order shall remain effective and may not be modified, impaired or discharged, notwithstanding the authority of the Emergency Manager of the Debtor to act on behalf of and bind the Debtor, the dismissal of this case, or the confirmation of, or failure to confirm, any plan of adjustment in this case.

9. No party will be required to file any claim or proof of claim in this case respecting its rights or interests in the matters approved by this Order.

10. This Order will be effective immediately upon its entry.

EXHIBIT 2

(Notice)

**UNITED STATES BANKRUPTCY COURT
Eastern District of Michigan**

In re:

CITY OF DETROIT, MICHIGAN,

Debtor.

Chapter: 9

Case No.: 13-53846

Judge: Hon. Steven W. Rhodes

Address: 2 Woodward Avenue, Suite 1126
Detroit, Michigan 48226

Last four digits of Social Security or
Employer's Tax Identification (EIN) No(s).(if any): 38-6004606

**NOTICE OF DEBTOR'S MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
DEBTOR TO ENTER INTO AND PERFORM UNDER CERTAIN TRANSACTION DOCUMENTS
WITH THE PUBLIC LIGHTING AUTHORITY AND (II) GRANTING OTHER RELATED RELIEF**

The City of Detroit, Michigan (the "City") has filed papers with the Court seeking entry of an order (i) authorizing the City to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (ii) Granting Other Related Relief.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought in the motion, or if you want the court to consider your views on the motion, **on or by November 6, 2013**, you or your attorney must:

1. File with the court a written response or an answer, explaining your position at:¹

United States Bankruptcy Court
211 W. Fort Street, Suite 2100
Detroit, Michigan 48226

If you mail your response to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above. All attorneys are required to file pleadings electronically.

¹ Any response or answer must comply with F. R. Civ. P. 8(b), (c) and (e).

You must also mail a copy to:

David G. Heiman
Heather Lennox
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114

and

Bruce Bennett
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, California 90071

2. If a response or answer is timely filed and served, the Court will schedule a hearing on the motion and you will be served with a notice of the date, time and location of the hearing. The City has requested that the Court schedule a hearing date with respect to the motion of **November 13, 2013** at 10:00 a.m., Eastern Time, or sooner, if the Court's schedule permits.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Dated: October 23, 2013

Respectfully submitted,

/s/ David G. Heiman

David G. Heiman (OH 0038271)

Heather Lennox (OH 0059649)

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ATTORNEYS FOR THE CITY

EXHIBIT 4

(Certificate of Service)

CERTIFICATE OF SERVICE

I, David G. Heiman, hereby certify that the foregoing Debtor's Motion for Entry of an Order (i) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (ii) Granting Other Related Relief was filed and served via the Court's electronic case filing and noticing system on this 23rd day of October, 2013.

/s/ David G. Heiman _____

EXHIBIT 6.1

(C&F Agreement)

INTERLOCAL AGREEMENT

BETWEEN

THE CITY OF DETROIT

AND THE

PUBLIC LIGHTING AUTHORITY

FOR THE

**CONSTRUCTION AND FINANCING
OF A
PUBLIC LIGHTING SYSTEM**

The following recitals are made regarding this interlocal agreement between the City of Detroit, a Michigan municipal corporation (the “City”), and the Public Lighting Authority, a Michigan municipal corporation (the “Authority”, together with the City, the “Parties” and each a “Party”):

WHEREAS, the City has properly incorporated the Authority pursuant to the Michigan Municipal Lighting Authority Act, 2012 PA 392, MCL 123.1261 *et seq.* (“Act 392”) for the purpose of providing an equitable and reasonable method and means of financing, operating, and maintaining a lighting system in sufficient quantities within the City; and

WHEREAS, Act 392 and the Urban Cooperation Act, 1967 PA 7, MCL 124.501 *et seq.*, each authorize interlocal public agency agreements between a city and a public lighting authority; and

WHEREAS, the governor of the state of Michigan has appointed an emergency manager (“Emergency Manager”) for the City pursuant to the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541 – 1575. (“EM Act”); and

WHEREAS, the EM Act provides that the Emergency Manager shall have broad powers in receivership to rectify the financial emergency of the applicable local government and to assure the fiscal accountability of the local government and the local government's capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare; and

WHEREAS, the City and the Authority desire to enter into this Agreement for the purposes, among other things, of defining the roles and responsibilities of each of the Parties with respect to the construction and financing of a public lighting system within the City for the benefit of residents of and visitors to the City; and

WHEREAS, the City, the Authority and Trustee have entered into the Trust Agreement whereby the Utility Taxes collected pursuant to Act 100 are deposited with the Trustee to be disbursed pursuant to the Authority’s instructions, subject to the terms and conditions of the Trust Agreement; and

WHEREAS, the City, the Authority, the Michigan Finance Authority, and the Trustee will; contemporaneously herewith, enter into the Amended and Restated Trust Agreement, which will terminate and supersede the Trust Agreement; and

WHEREAS, the Emergency Manager issued Order No. 6 and Order No. 14, affirming the creation of the Authority and the execution of the Trust Agreement; and

WHEREAS, the Emergency Manager will, contemporaneously herewith, issue Order No. [], affirming the execution of the Amended and Restated Trust Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**ARTICLE I
DEFINITIONS**

Section 1.1 Definitions. As used in this interlocal agreement:

“Act 100” means the City Utility Users Tax Act, 1990 PA 100, MCL 141.1151 to MCL 141.1177.

“Act 392” has the meaning set forth in the Recitals to this Agreement.

“Agreement” means this Interlocal Agreement for the Construction and Financing of a Public Lighting System by and between the City and the Authority.

“Amended and Restated Trust Agreement” means that certain agreement that will be entered into contemporaneously herewith by and among the City, the Authority, the Michigan Finance Authority, and the Trustee pursuant to Act 392 and Act 100.

"Ancillary Facility" shall mean “Ancillary facility” as defined in Act 392.

“Bond Indenture” means any bond or trust indenture entered into by the Authority and a bank, financial institution, or other entity pursuant to which the Authority bonds (including the Utility Bonds) as authorized by Act 392 will be issued, refunded, or reissued.

“City Council” means the legislative body of the City of Detroit, established by §4-101 of the 2011 City Charter.

“Contractors” means any third party contractors who have entered into agreements to provide services to the Authority, notwithstanding whether those agreements are directly with the Authority or as a subcontractor to a prime contractor of the Authority.

“Effective Date” means the date described in Section 7.1.

“Excess Revenue” has the meaning set forth in Section 3.2.

“Financing Costs” means the costs, including, without limitation, principal, interest, accreted value, if any, premium, if any, the costs of replenishing reserves, if any, and costs of issuance, payable in respect of any Utility Bonds issued by the Authority or any Ancillary Facility entered into by the Authority pursuant to Act 392 and Act 100, which Financing Costs are subject to the first sentence of Section 5.2 hereof.

“Improvements” or “Work”, means all of the work, investments, and activities made or conducted, in whole or in part, on the construction, improvement, enlargement, reduction or extension of the System as contemplated by this Agreement or Act 392 and undertaken in compliance with the Lighting Plan approved by the City Council pursuant to Act 392, as amended.

“Initial Work” means the implementation of the Lighting Plan in the pilot projects the Authority will complete by December 31, 2013, which are further described on Exhibit 2, attached hereto and made a part hereof.

“Lighting Plan” means the plan required under MCL §123.1277.

“MFA” means the Michigan Finance Authority created by Executive Reorganization Order No. 2010-2.

“Revenue Bonds” means the bonds authorized pursuant to Act 392 and this Agreement and not secured by the Utility Taxes.

“System” means all of the luminaires, lamps, photocells, brackets, conductors, lights, poles and foundations, ballasts, circuits, transformers, conduits, underground equipment that are not part of the distribution system, and other equipment and appurtenances, including any easements or other interests in real property, commencing at the point of connection to the electric distribution system and continuing to the luminaire, necessary for the operation of the street lights within the City. For the avoidance of doubt, the System includes any Improvements to it. This definition specifically excludes the Mistersky Power Plant, any distribution assets of the City or DTE Energy, and any transmission assets of the City or DTE Energy, including any and all wires, distribution poles, transmission poles, substations, and transformers used for the distribution or transmission of electricity.

“Trust Agreement” means that certain Trust Agreement, as amended, entered into between the Authority, the City, and the Trustee, executed and effective as of August 1, 2013, which will terminate upon the execution of, and be superseded by, the Amended and Restated Trust Agreement.

“Trustee” means Wilmington Trust, N.A., as trustee pursuant to the Trust Agreement and the Amended and Restated Trust Agreement.

“Utility Bondholder” means any holder of a Utility Bond.

“Utility Bonds” means any bonds issued by the Authority pursuant to Act 392, Act 100 and the Amended and Restated Trust Agreement and secured by a pledge of Utility Taxes.

“Utility Revenues” means the revenues collected pursuant to Act 100, the Amended and Restated Trust Agreement and the Bond Indenture in the annual amount up to Twelve Million, Five Hundred Thousand Dollars and zero/100 (\$12,500,000.00).

“Utility Taxes” means the taxes authorized to be levied by the City of Detroit pursuant to Act 100.

Section 1.2 Captions and Headings. The captions, headings, and titles in this Agreement are intended as a convenience and not intended to have any substantive meaning or be interpreted as part of this Agreement.

Section 1.3 Plural Terms. A term or phrase in this Agreement importing the singular number only may extend to and embrace the plural number and every term or phrase importing the plural number may be applied and limited to the singular number.

**ARTICLE II
ASSURANCES**

Section 2.1 Assurances by the City. The City hereby makes the following assurances, representations, and warranties:

- (a) That the Utility Taxes, authorized to be collected pursuant to Act 100, have been properly levied by the City in full compliance with the requirements of Act 100.
- (b) Except as contemplated herein, that all necessary permissions, approvals, reviews, or any other forms of acquiescence necessary to authorize the City to enter into this Agreement have been obtained and conducted.
- (c) To the extent permitted by law and any agreement to which the City is a party, the City shall use commercially reasonable efforts to provide all information within its control requested by the Authority to the Authority necessary to effectuate the purposes of this Agreement, including taking actions and providing certifications to effectuate the issuance of debt by the Authority as further described in Section 5.6 of this Agreement.

Section 2.2 Assurances by the Authority. The Authority hereby makes the following assurances, representations, and warranties:

- (a) That the organizational structure necessary to implement the Lighting Plan is established.
- (b) That all funds shall be expended and accounted for according to generally accepted accounting standards for governmental entities.
- (c) That the construction, improvements, enlargements, reductions or extensions of the System shall be completed within reasonable conformance to the Lighting Plan, accommodating any unforeseen conditions according to the objectives of the Lighting Plan.
- (d) That the Authority shall take reasonable actions to reduce and limit the costs associated with this Agreement, including future System operating costs.

- (e) The Authority shall use reasonable efforts, subject to the availability of funding and operational considerations, to ensure that the Pilot Work is substantially completed by December 31, 2013 and that the Lighting Plan in effect as of the date hereof or as properly amended, is completed in substantial conformity therewith as prescribed by statute.
- (f) To the extent permitted by law and any agreement to which the Authority is a party, the Authority shall use commercially reasonable efforts to provide all information within its control requested by the City to the City necessary to effectuate the purposes of this Agreement.

**ARTICLE III
CONSTRUCTION OF THE PUBLIC LIGHTING SYSTEM**

Section 3.1 The System. The Authority shall undertake the Work pursuant to the terms of this Agreement and the Lighting Plan. The Authority shall coordinate and receive input from the City, the Emergency Manager and third parties with an interest in the retail distribution and transmission systems within the city to ensure technological compatibility between the portion of the System being upgraded and the distribution and transmission systems necessary to provide electricity to such upgraded portions of the System. The Authority will conduct a field survey and research of the existing System to determine the actual condition of the System and to identify the components that need repair, improvement, enlargement, reduction, or extension. The results of this survey and research will be integrated into the Lighting Plan. All work will be kept within allowable limits of funding. Acceptance of the project shall be based upon the work being completed within reasonably close conformance to the plans and specifications. For any contract with a value that equals or exceeds \$100,000, other than contracts for services that are exempt from a competitive requirement under Michigan law, the Authority shall award such contracts pursuant to a competitive process. For purposes of determining such \$100,000 threshold, the value of any contracts entered into during any twelve month period that relate generally to the same subject matter shall be aggregated for determining if such contracts exceed the \$100,000 threshold and are thus subject to award pursuant to a competitive process.

Section 3.2 Costs and Financing. The costs of construction of the Improvements shall be paid for with the Utility Bonds. The City does not pledge its full faith and credit to any Utility Bonds authorized under this Agreement. The Parties agree that the Authority may finance the Initial Work with Utility Revenues it receives pursuant to the Trust Agreement, prior to the issuance of Utility Bonds. In the event the Authority (i) does not issue Utility Bonds or (ii) issues Utility Bonds and the Utility Revenues are in excess of the amounts required to pay Financing Costs ("Excess Revenue"), the Parties agree the Authority may expend such Excess Revenue on any of the Improvements to the System contemplated by Act 392 or for any other lawful purpose under Act 392 consistent with the Lighting Plan.

Section 3.3 Third-Party Attachments, Fixtures, and Other Property. The Authority shall conduct its activities under this Article in a manner so as not to impair any leases or other contractual rights of third parties to attach any fixtures or other property to System assets.

The Authority shall relocate any third party fixtures or other property to the extent required by, and subject to the terms of, the applicable agreement with the third party. The Authority shall be entitled to all access and relocation rights of the City under such agreements, including reimbursement for fixture relocation costs. Notwithstanding the foregoing, in connection with the Work, the Authority, at its expense, shall relocate all fixtures or other property of the City attached to or on System assets to improved System assets in a manner that is reasonably acceptable to the City. To the extent permitted by law, and subject to Section 11.11, the Authority agrees to defend, indemnify and hold the City harmless, from and against any and all losses, damages, claims, suits, proceedings, liabilities, and out-of-pocket costs and expenses (including settlement costs, interest, penalties, reasonable attorneys' fees and any reasonable legal or other expenses for investigation or defense of any actions or threatened actions) that are actually sustained or incurred by the City and that arise out of any actions or omissions taken by the Authority pursuant to this Section 3.3

Section 3.4 Operation of Lighting System. Nothing in this Agreement is intended to convey any operational duties or responsibilities from the City to the Authority. The Parties acknowledge and agree that the Authority has no obligation to pay any costs of operating or maintaining the System or any portion thereof. The City shall remain responsible for the operation, maintenance, and upkeep of the entire System, and for all costs associated therewith, including those portions of the System that are constructed, improved, enlarged, reduced or extended pursuant to this Agreement. The City shall also be responsible for providing, or contracting for the provision of, and paying the costs for, the quantity and quality of electricity necessary for the proper operation of the System. Notwithstanding the foregoing, the Parties may contemporaneously herewith or subsequently agree to transfer certain operational responsibilities to the Authority by the execution of a separate operations and maintenance agreement; provided however, that to the extent the Parties so contract, to the extent that the Authority undertakes any operational, maintenance or management obligations, the Authority and the City must identify a source of revenues for such undertakings other than the Utility Revenues needed to pay Financing Costs, which requirement may be satisfied by the City's payment from such other revenue source in advance.

Section 3.5 Public Property and Ownership. All property of the Authority is public property devoted to an essential public and governmental purpose. All income of the Authority is for a public and governmental purpose. Nothing in this Agreement shall be construed as transferring the ownership of any lighting system assets owned by the City to the Authority.

ARTICLE IV FINANCE

Section 4.1 Ratification of Direction of Funds. The City hereby ratifies the direction established under that certain Trust Agreement to each public utility and resale customer that collects or receives revenues pursuant to Act 100 to remit payment of all such revenues to the Trustee. For the avoidance of doubt, the Parties agree that regardless of the stated effective date of the Trust Agreement that the Trust Agreement was fully executed and effective on August 1, 2013, shortly after the Emergency Manager issued Order No. 14 authorizing the Trust Agreement.

Section 4.2 Pledge of Utility Taxes. The City hereby pledges the Utility Taxes to the Utility Bonds, provided that funds from the Utility Taxes transferred to the City Disbursement Fund pursuant to the Trust Agreement or the Amended and Restated Trust Agreement shall be free and clear of all liens as more particularly described in the Amended and Restated Trust Agreement.

Section 4.3 No Exemptions. The City shall not permit or authorize any exemption not authorized and in effect on the date of issuance of the first series of Utility Bonds to the tax assessed under Act 100 for any end user required to pay such assessment under Act 100.

Section 4.4 Disbursement and Expenditure of Funds. Revenues from Utility Taxes shall be applied by the Trustee pursuant to the Trust Agreement or the Amended and Restated Trust Agreement, as applicable. The Authority may expend the Excess Revenue on any of the Improvements to the System contemplated by Act 392 or for any other lawful purpose under Act 392 consistent with the Lighting Plan.

Section 4.5 Orderly Collection of Utility Taxes. The City shall take all steps reasonably necessary to ensure the orderly collection of Utility Taxes so that they are deposited pursuant to the Trust Agreement or the Amended and Restated Trust Agreement, as applicable.

Section 4.6 Tax Covenant. The Authority may temporarily invest any bond proceeds or other funds held by it as permitted by law, and investment income shall accrue to and follow the fund producing such income. Neither the Authority nor the City shall invest, reinvest, or accumulate any moneys deemed to be proceeds of the bonds pursuant to applicable federal law and regulations, in such a manner as to cause the bonds to be “arbitrage bonds” within the meaning of said law and regulations, nor shall either take or fail to take any actions which would cause the interest on the bonds to be included in gross income for federal income taxation purposes. The City agrees that, to the extent Utility Bonds are issued on a “tax-exempt” basis, it will use reasonable efforts to cooperate with the Authority to maintain that status, including but not limited to, executing a non-arbitrage and tax compliance certificate(s) and any other documents determined necessary or advisable to the Authority’s counsel.

Section 4.7 Authority Revenue. For the avoidance of doubt, and notwithstanding anything to the contrary set forth in this Agreement, regardless of the pledge by the City of the Utility Taxes pursuant to Section 4.2, the amount payable to the Authority for repayment of the Utility Bonds in any one year shall be limited to the Utility Revenues for that year.

**ARTICLE V
BONDS, DEBTS, AND SECURITIES**

Section 5.1 Issuance of Bonds, Debts, or Other Securities. Subject to the requirements of Act 392, the Amended and Restated Trust Agreement, any Bond Indenture, and this Agreement, the Authority is authorized to issue or refund bonds, debts, securities, and other forms of indebtedness, or may otherwise enter into other agreements obligating itself to repayment of debt.

Section 5.2 Limitation on Bond Issuance. The Authority shall not issue, or cause to be issued Utility Bonds: (i) in an amount that shall require payments from the Utility Revenues of the Financing Costs in excess of Twelve Million, Five Hundred Thousand Dollars, and Zero Cents (\$12,500,000.00) in any single year; or (ii) in an aggregate principal amount that exceeds five percent (5%) of the total state equalized valuation of the property assessed in the City. This limitation on the issuance of Utility Bonds in no way limits the ability of the Authority to finance the costs of operating, maintaining, or managing the System by issuing Revenue Bonds to the extent that the City and the Authority have entered into such a contract for such purpose in accordance with Section 3.4.

Section 5.3 Nonimpairment of Bondholder Security. The City shall not take any action that may impair the security of bondholders in repayment of the Utility Bonds, any Ancillary Facilities or other debt obligations authorized hereunder. Such impairment includes, but is not limited to, a reduction of the tax authorized and in effect on the date of issuance of the first series of Utility Bonds pursuant to Act 100, or a reduction in category of taxpayers required to pay the Utility Taxes. Nothing in this section shall be construed as a limitation on the City's power to increase the tax authorized under Act 100 or to broaden the category of taxpayers required to pay the Utility Taxes.

Section 5.4 Revised Municipal Finance Act. This Agreement, and any bonds, debts, or other securities issued under or pursuant to this Agreement, are not subject to the Revised Municipal Finance Act, 2001 PA 34, MCL 141.2401 to 141.2821.

Section 5.5 Revenue Bond Act. This Agreement, and any bonds, debts, or other securities issued under or pursuant to this Agreement, are not, subject to the Revenue Bond Act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

Section 5.6 Enforceability Opinions/Certificates. The City agrees that in connection with the issuance of any Utility Bonds by the Authority it will cause its corporation counsel or outside counsel to deliver an enforceability opinion as to this Agreement and the Amended and Restated Trust Agreement. The City also agrees to deliver customary forms of certificates as to the due authorization, execution and enforceability of this Agreement and the Amended and Restated Trust Agreement and other certificates as are necessary or advisable in connection with the issuance of any Utility Bonds.

**ARTICLE VI
DATA SHARING, ACCESS, COOPERATION, PERMITS, AND SYSTEM
PROTECTION**

Section 6.1 Data and Information. To the extent permitted by law and any agreements to which the City is a party, the City shall provide the Authority full access to all data and information in its possession or control, which is reasonably accessible, including all data and information contained in the documents commonly known as the "series streetlight maps," necessary to provide the Work. To the extent permitted by law and any agreements to which the Authority is a party, the Authority shall provide the City full access to all data in the Authority's possession or control, which is reasonably accessible, reasonably related to the System. The

Authority shall provide notice to the City of recent Improvements made and shall, on a continuing basis, provide notice to the City on future Improvements.

Section 6.2 Access to Assets. The City shall provide the Authority or any of its Contractors full access to all facilities, assets, easements, appurtenances, and related rights and property, owned, operated, or maintained by the City necessary to design, establish, construct, operate, and maintain the System on behalf of the City. The Authority shall permit the City full access to all facilities, assets, easements or appurtenances owned, operated, or maintained by the Authority related to the System, if any, and shall not impair access to any public rights of way.

Section 6.3 Cooperation. The Parties hereby agree to use commercially reasonable efforts to cooperate with each other to the fullest extent possible to effectuate the purposes of this Agreement.

Section 6.4 Permits. The City shall process and issue any permit(s) required under the City Charter, the City Code of Ordinances, or any other local regulatory requirements to the Authority, its employees, agents, or Contractors within fifteen (15) business days of receiving a request for such permit(s) provided that such request includes the detail and documentation otherwise required to issue such permit; *provided, however*, that if there are any permit(s) required to conduct any work specified herein that are not within the direct control of the City, the City shall use commercially reasonable efforts to ensure that such permits are issued within a commercially reasonable timeframe. The City shall not charge a fee to the Authority for any permits, approvals, reviews, or other actions required by the City.

Section 6.5 System Damage. The Authority shall not be responsible for any damage to the System, or any component thereof, resulting from the criminal, intentional, or negligent acts of any third parties. In the event any portion of the System or Improvements are damaged by the negligent acts of a third party and the City refuses or is unable to seek recovery of funds for such damage, the Authority may, but is not required, to seek such recovery in the City's name.

ARTICLE VII EFFECTIVE DATE, TERM, and EXPIRATION

Section 7.1 Effective Date. This Agreement shall become effective on the date that each of the following events have occurred: (i) the approval and execution by the City; (ii) the approval of the Agreement pursuant to the procedures set forth in the EM Act; (iii) the approval by resolution of the Authority; (iv) the execution by the Executive Director of the Authority; (v) approval and execution of the Amended and Restated Trust Agreement and the Bond Indenture; and (vi) the City has caused a notice to be sent to each public utility and resale customer that collects or receives revenues pursuant to Act 100.

Section 7.2 Term and Expiration. This Agreement shall commence on the Effective Date and shall expire upon final payment of all financial obligations of the Authority under Act 392 or this Agreement.

**ARTICLE VIII
BOOKS, RECORDS, AND FINANCES**

Section 8.1 Financial Statements and Reports by City. The City shall prepare, or cause to be prepared, at its own expense, audited financial statements of the City, which shall include the Utility Revenues and the other revenues collected pursuant to Act 100 each fiscal year and provide such statements to the Authority, the Trustee, the Emergency Manager and any other parties reasonably necessary to ensure compliance with the disclosure requirements of all relevant state and federal laws, including, but not limited to the Securities and Exchange Act, Pub.L. 73-291, 48 Stat. 881, 15 U.S.C. §78a *et seq.*

Section 8.2 Books and Records. The Authority shall provide for a system of accounts for the Authority to conform to a uniform system required by law and for the auditing of the accounts of the Authority. The Authority shall obtain an annual audit of the Authority's books and records by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by sections 6 to 13 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also shall be in accordance with generally accepted auditing standards for public bodies and shall satisfy any applicable federal regulations relating to federal grant compliance audit requirements. The audit shall be provided to the City within thirty (30) days of acceptance by the Board of Directors of the Authority but in no event more than one hundred and twenty (120) days following the end of the Authority's fiscal year. The City may examine the books and records of the Authority related to the Authority's finances, the System or the Work, and make copies and extracts therefrom at its own expense, all during regular business hours as may be reasonably requested and reasonably agreed to by the Authority in advance.

**ARTICLE IX
INDEMNIFICATION, LIABILITY, DAMAGES, AND INSURANCE**

Section 9.1 Indemnification. To the extent permitted by law and subject to Section 11.11, each Party shall indemnify and hold harmless the other Party and the other Party's employees, agents, directors and officers against all liability arising out of, or resulting from any third party claim, suit, action or proceeding arising out of or resulting from (i) the failure of a Party or any of its agents, employees or contractors, to comply with the terms of this Agreement or any applicable law; or (ii) any injury, loss, claim or damages arising from the actions or omissions of a Party or an agent, employee, director, officer or contractor of the Party.

Section 9.2 Limitation of Liability; No Special Damages. Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement. Nothing in this Agreement shall be construed as a waiver of governmental immunity, where applicable, or as a limitation on any rights of Utility Bondholders under applicable law.

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Section 9.3 Notice of Claims. If either Party becomes aware of any injury, damages, claim, demand, action, legal proceeding, or other loss that may involve the other Party, whether directly or indirectly, it shall inform the other Party in writing within fifteen (15) business days of receiving knowledge of the injury, damages, claim, demand, action, legal proceeding, or other loss. Such notice(s) shall be provided in accordance with Section 12.7 of this Agreement.

Section 9.4 Insurance. At all times during the term of this Agreement, each Party shall procure and maintain, at its sole cost and expense, the following types and amounts of insurance coverage issued by an insurance company reasonably acceptable to the other Party, unless otherwise agreed to by the Parties in writing:

- (a) Commercial General Liability, covering bodily and personal injury, property damage, and contractual liability insuring the activities of the Party under this Agreement, in a minimum amount of One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000) in the annual aggregate, adding the other Party as an additional insured with respect to this Agreement.
- (b) Commercial Automobile Liability with limits of One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000) in the annual aggregate, adding the other Party as an additional insured with respect to this Agreement.
- (c) Worker's compensation insurance in amounts required in accordance with applicable laws.
- (d) Errors and Omissions/Professional Liability with limits no less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the annual aggregate.

The insurance required of the City by this Agreement in the amounts, with the coverage and other features herein required, may be supplied by a fully funded self-insurance program of the City or a self-insurance pool in which the City is a participant; provided that such self-insurance program or pool will provide the full coverage required herein.

ARTICLE X DISPUTES

Section 10.1 Informal Dispute Resolution. The Authority and the City will attempt to settle any dispute through informal good faith negotiations. The dispute will be escalated to appropriate senior level management of the Parties, if necessary. Except as otherwise set forth herein, if such managers are unable to resolve the dispute within fifteen (15) business days of referral (or any other mutually agreed upon timeframe), the Parties will seek resolution of such disputes pursuant to Section 10.2.

Section 10.2 Jurisdiction and Venue. Except as otherwise set forth herein, in the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved any the Parties pursuant to Section 10.1, shall be submitted to the courts of the State of Michigan.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1 Amendment. This Agreement can be modified or amended only by written agreement executed and approved by both Parties in the same manner as required for the initial effectiveness of the Agreement, as applicable.

Section 11.2 Heirs, Successors, and Assigns. All provisions of this Agreement are and will be binding on the heirs, executors, administrators, personal representatives, successors and assigns of the Authority and the City.

Section 11.3 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 11.4 Governing Law. The internal laws of the State of Michigan will control in the construction and enforcement of this Agreement.

Section 11.5 Third Party Beneficiary Rights. The Parties expressly acknowledge that the Utility Bondholders (and the Trustee on behalf of such Bondholders) are direct, intended third party beneficiaries of Article IV and Article V of this Agreement and of all other provisions of this Agreement relating to the Utility Taxes and Utility Revenues and as such, are entitled, but not obligated to enforce this Agreement and shall be afforded all remedies available hereunder or otherwise afforded by law against the Parties hereto.

Section 11.6 Entire Agreement. This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them in any related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

Section 11.7 Notices. Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party by first class mail. All such written notices shall be addressed to each other Party's signatory to this Agreement. All correspondence shall be considered delivered to a Party as of the date that the notice is deposited with sufficient postage with the United State Postal Service. A notice of termination shall be sent via certified mail to the address included with each Party's signature to this Agreement. Notices shall be mailed to the following addresses:

If to the Authority: Public Lighting Authority
65 Cadillac Square, Ste. 2900
Detroit, MI 48226

If to City: City of Detroit
Office of the Mayor
2 Woodward Avenue, 11th Floor
Detroit, MI 48226

With a copy to: City of Detroit
Office of the Emergency Manager
Coleman A. Young Municipal Center
2 Woodward Ave.
11th Floor
Detroit, MI 48226
Attn: Sonya Mays

Section 11.8 Force Majeure. Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of the claiming Party or its suppliers, that prevent the claiming Party from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

Section 11.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 11.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto. No Party to this Agreement may assign its rights under this Agreement to any other person without obtaining the written permission of the other Parties in advance, provided that the Authority's right to terminate this Agreement may be collaterally assigned by the Authority.

Section 11.11. Limited Obligation. Notwithstanding anything herein to the contrary, all of the Authority's obligations under this Agreement, other than the obligations which are payable out of proceeds of the insurance required to be maintained by the Authority pursuant to this Agreement, to the extent such obligations are payable out of those insurance proceeds, shall be limited obligations, payable from and expressly limited to those funds provided to the Authority in accordance with the Trust Agreement or the Amended and Restated Trust Agreement or any Bond Indenture, and not payable from any portion of the Utility Revenues needed to pay Financing Costs.

Section 11.12 Emergency Manager Approval. If the City is under the management of an Emergency Manager pursuant to the EM Act, at the time of a decision for which the approval of

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the City, the City Council or the Mayor is required, then the approval of the Emergency Manager is hereby substituted in place of the approval of the City, the City Council or the Mayor, as applicable..

[SIGNATURE PAGE FOLLOWS]

This Agreement is executed by the Parties on the dates indicated below.

CITY OF DETROIT

Dated: _____

By: _____

KEVYN D. ORR

Its: Emergency Manager

PUBLIC LIGHTING AUTHORITY

Dated: _____

By: _____

ODIS JONES

Its: Executive Director

Exhibit 1
Lighting Plan



PUBLIC LIGHTING AUTHORITY

LIGHTING PLAN

Office Location: 65 Cadillac Square, Suite 2900
Detroit, MI 48226

Project Location: City of Detroit

Executive Director: Odis Jones

Revision: 10

Date Issued 9-9-2013

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 5. Appendix E – Detroit Zip Code Map

 6. Appendix F – Project Schedule

 7. Appendix G – Cash Flow/Budget

A. Project Information

1. Project Background

The Public Lighting Authority (“PLA”) was authorized by the Michigan Legislature in 2012 pursuant to a three-bill package that included: (1) the Michigan Municipal Lighting Authority Act, 2012 PA 392, MCL 123.1261 – MCL 123.1295 (“Act 392”), which authorized the creation of lighting authorities and granted the statutory authority for their operations; (2) an amendment to the City Utility Users’ Tax Act, 1990 PA 100 as amended, MCL 141.1151 – MCL 141.1177 (“Act 100”), which required a city that creates a lighting authority to direct Twelve Million, Five Hundred Thousand Dollars (\$12,500,000) to the authority from the revenues authorized under Act 100; and (3) an amendment to the City Income Tax Act, 1964 PA 284 as amended, MCL 141.501 – MCL 141.787, which authorized a city that creates a lighting authority to continue to assess an increased income tax rate in order to hold harmless the public safety departments from the mandatory diversion of revenues under Act 100.

The City Council and Mayor of the City of Detroit (“City”) properly incorporated and perfected the formation of the PLA as required under Act 392, with an effective formation date of April 5, 2013. The approved Articles of Incorporation (“Articles”) commit the City to the annual payment of \$12.5 million to the Authority. (See Appendix A, Articles of Incorporation, Art. XIII, Sec. 1). The PLA and the City have executed a Trust Agreement with Wilmington Trust, N.A. as Trustee, wherein the City has irrevocably directed all of the Utility Users’ Tax Revenue to the Trustee to be disbursed pursuant to the Trust terms. (See Appendix B, Trust Agreement). The disbursement terms provide that the revenues will be directed as follows: of the first \$12.5 million, first to any holders of bonds or debt of the PLA and second to the PLA, if any is left; and third, to City for all of the revenues exceeding \$12.5 million.

Consistent with Act 392 and the Articles, the PLA is overseen by an independent, five-member board. The PLA board includes former State Rep. Maureen Stapleton, who serves as chair, Michael Einheuser, John L. Davis, Marvin Beatty and Cedric Dargin. As stated under Act 392, the purpose of the PLA is to provide an equitable and reasonable method and means of financing, operating, and maintaining a lighting system to supply lighting in sufficient quantities to the City of Detroit. The PLA anticipates making a multi-year, large scale, city-wide investment in the public lighting infrastructure including poles, ballasts, circuits, transformers, and distribution connections. The PLA anticipates funding the improvements through: (i) a bridge loan in the amount of \$60 million; and (ii) the subsequent sale of approximately \$153 million in bonds. The financing will be paid back with the mandatory payment of \$12.5 million per year as required under Act 100.

The PLA staff will consist of an Executive Director and support staff. DTE Energy has been selected as the owner’s representative. In addition, the PLA has or will procure the services of

legal, accounting, engineering, public relations, construction, and maintenance through contracting. Gregory Terrell & Company will provide financial accounting, the Allen Law Group, P.C. will provide legal service and Berg Muirhead and Associates will provide public relations.

2. Facility Background

The Detroit street light system is in need of repair and improvement. Detroit's street light system of 88,000 lights is in disrepair, with approximately 55,000 lights being fed by DTE Electric and the remaining 33,000 being fed by Public Lighting Department (PLD). Although it is estimated that half of the lights in the system are not working, the status of the street light system is unknown and will require a survey of each light. Most of the underground fed lighting circuits within Detroit are made up of series circuits consisting of multi-generation light fixtures.

3. Scope and Schedule

The implementation of the lighting plan is being segregated into a short-term and long-term plan. Two pilot areas have been chosen for the short-term plan implementation, the outcomes of which will inform the long-term process. (See Appendices C and D for maps of the selected areas). Both the short and long-term plans will be implemented in several segments, specifically consisting of survey, design and construction work. All contracts will be awarded pursuant to a competitive bid process. The short-term plan implementation will commence in 2013 with completion projected in 1st quarter 2014. The field survey will include collecting status information on each pole and recording in a geographical mapping system. The owner's engineer will provide engineering, material specifications and work packages for construction. A specific improvement will be converting "series" circuits to "multiple" circuits. The overhead and underground construction contractors will perform all field installations and provide field records. Quality and safety audits will be performed throughout the project. Each area has approximately 2,500 lights, for a total of approximately 5,000 street lights.

The long term plan, scheduled from 1st quarter 2014 through 4th quarter 2016, would consist of progressive geographic implementation using Detroit zip codes, as shown on Appendix E, as improvement project areas. (See also Appendix F for the long term schedule of project areas). New project areas will begin approximately every other month and take approximately nine months to complete. The final number of street lights will be approximately 46,000. After the two pilot areas, contiguous areas will be addressed including those defined as high priority areas by the City of Detroit. To inform the public of changes and facilitate outage reporting, public notice will be made by way of door hangers and public meetings.

The project design criteria are as follows:

- a) Lighting will remain essentially the same in densely populated areas and thoroughfares

- b) All intersections will have lighting
- c) Streets blocks greater than 600 feet long will have a street light in the middle of the block
- d) All new lamp heads should be one cost effective style
- e) All new light arms should be 6 foot in length, centering new lamp head illumination in the street
- f) Standardize on two sizes of lights for majority of fixtures (150Watt (W) High Pressure Sodium (HPS) & 250W HPS)
- g) Overhead feeds will be standard where allowable
- h) Existing lights that do not fit in the above criteria, such as alley lights, will be removed as part of the improvement model
- i) All applicable codes and regulations will be followed

4. Operation & Maintenance

The PLA has drafted a proposed operations & maintenance agreement (“O&M Agreement”) with the City of Detroit. Please note that negotiations on the O&M Agreement have not commenced, therefore the information contained in this section should be considered prospective and subject to modification.

Financially, the O&M Agreement will cover two separate costs associated with operating the street light system: the cost of energy to actually light the lights, and the cost of on-going operations and maintenance of the system. The O&M Agreement contemplates the annual establishment of rates to be charged to the City for the services provided.

With respect to the purchase of energy, the O&M Agreement provides two options: one is for the City to purchase electricity directly from a third-party power provider at regulated rates, and the second is for the PLA to purchase power and pass through that purchase to the City at cost. Under either option, DTE Energy will supply the energy under the Michigan Public Service Commission-approved DTE Energy Municipal Street Lighting Rate E.1 – Option III tariff.

With respect to the ongoing operations and maintenance, it is contemplated that the PLA will enter into an agreement with DTE Energy for the duration of the project wherein DTE Energy will operate and maintain the System on a per unit cost basis. Maintenance will include replacement material and equipment as may be necessary to ensure that the refurbished street light system is fully operational with an anticipated 30 year expected useful life. This includes both preventative and reactive maintenance services. The maintenance program will also include outage notification methods with repair time requirements. Upon completion of the project, the PLA will competitively bid this service.

The estimated annual costs for these operations and maintenance services, including PLA administrative costs, is \$11M to \$12M based on the criteria contained in Section A.3. The

source of the City funds for the payment of rates has not been identified yet, but it should be anticipated that the source will be the City of Detroit General Fund.

B. Project Funding

The total estimated project cost for capital improvements is \$153 million, excluding the operations and maintenance and PLA administrative costs. This is the anticipated total investment to be repaid through the Utility Users Tax of \$12.5 million per year for an expected 30 years. (See Appendix G for the cash flow projections for the project by quarter). As stated, street light energy, operation and maintenance are not included in the project costs and will likely be supported by the City of Detroit General Fund.

A strict change control process will be deployed throughout the project.

C. Appendices

- a) Appendix A – PLA Articles of Incorporation
- b) Appendix B - Trust Agreement
- c) Appendix C – West PLA Pilot Area
- d) Appendix D – East PLA Pilot Area
- e) Appendix E – City of Detroit by Zip Code
- f) Appendix F – Schedule Summary
- g) Appendix G – Cash Flow/Budget

APPENDIX A

**ARTICLES OF INCORPORATION
OF THE
PUBLIC LIGHTING AUTHORITY**

These Articles of Incorporation are executed and adopted by the City Council of the City of Detroit for the purpose of establishing a Public Lighting Authority pursuant to Act 392 of the Public Acts of Michigan of 2012.

**Article I
Name**

The name of the corporation and Authority is the Public Lighting Authority (the "Authority").

**Article II
Definitions**

As used in these Articles of Incorporation, the following words have the following meanings:

Section 1. The "*Act*" means Act 392 of the Public Acts of Michigan of 2012, and such amendments as may be hereinafter adopted.

Section 2. "*Authority*" means the Public Lighting Authority incorporated under these Articles of Incorporation pursuant to the Act.

Section 3. "*Best Value*" means a contract and procurement process to be followed by an authority that encourages and considers bids from locally headquartered companies and that considers use of the local workforce.

Section 4. "*Board*" or "*Authority Board*" means the Board of Directors of the Authority.

Section 5. "*Bonds*" mean bonds and notes issued by the Authority and includes any Ancillary Facility (as defined in Act) or other financing instruments entered into by the Authority if the facilities are permitted by the contract entered into between the City and the Authority.

Section 6. "*City*" means the City of Detroit, located in Wayne County, Michigan.

Section 7. "*City Council*" means the City Council of the City of Detroit.

Section 8. "*Lighting System*" or "*System*" means plants, works, instrumentalities, and properties used or useful in connection with providing lighting and necessary resources and appurtenances for the System.

Section 9. "*Mayor*" means the Mayor of the City of Detroit.

Section 10. "*Utility Users Tax*" means the tax levied by the City authorized by Utility Users Tax Act.

Section 11. “*Utility Users Tax Act*” means the City Utility Users Tax Act, Act 100 of the Public Acts of Michigan of 1990, as last amended by Act 393 of the Public Acts of Michigan of 2012.

Article III
Purpose and Intent

Section 1. It is the intent of these Articles of Incorporation to provide an equitable and reasonable method and means of financing, operating, and maintaining a Lighting System to supply lighting in sufficient quantities to the City.

Section 2. The City, by majority vote of its City Council, hereby incorporates the Authority comprising the territory within its respective limits for acquiring, constructing, consolidating, purchasing, operating, or maintaining a municipally owned Lighting System. The Authority is a public municipal corporation with the rights, powers, and duties as provided by the Act.

Section 3. The powers of the Authority shall be carried out in a manner authorized by the Act.

Section 4. Nothing in the Act or these Articles of Incorporation shall be construed as transferring the ownership of any Lighting System assets to the Authority unless the transfer is specified in these Articles of Incorporation and the transfer is ratified in accordance with all applicable laws.

Section 5. A transfer of ownership or operational control of a Lighting System to the Authority shall not be considered a sale, lease, or disposal of any kind of an asset by the City under any state or local law.

Article IV
Franchises

Section 1. Nothing in these Articles of Incorporation shall be considered to alter the laws and regulations regarding utility franchises unless explicitly stated. The creation of the Authority shall not be considered to create a new franchise as long as the Authority only provides service within the City and any area that the City may be serving or permitted to serve under law on the effective date of the Act.

Article V
Powers, Duties and Limitations

Section 1. The Authority is a public municipal corporation. The Authority is a public body corporate with the power to sue and be sued in any court of this state. The Authority possesses all the powers necessary to carry out the purposes of its incorporation. The enumeration of any

powers in the Act or in these Articles of Incorporation shall not be construed as a limitation on the Authority's general powers.

Section 2. The Authority may do any of the following:

- a. Adopt bylaws for the regulation of the Authority's affairs and the conducting of its business.
- b. Adopt an official seal and alter the seal at its pleasure.
- c. Maintain an office at a place or places within the City as it may designate.
- d. Sue and be sued in its own name, plead and be impleaded.
- e. Determine the location of any project constructed by it under the Act and determine, in its discretion and without reference to any other provisions of the Act or any other law, the design, standards, and the materials of construction, and construct, maintain, repair, and operate the project.
- f. Issue Bonds of the Authority for any of its corporate purposes under those means as provided by the Act.
- g. Adopt and promulgate rules and regulations for the use of any project operated or constructed by it under the provisions of the Act.
- h. Acquire, hold, lease and dispose of real and personal property in the exercise of its powers and the performance of its duties under the Act.
- i. Engage engineering, legal, and other professional services as considered necessary to effectuate the purposes of the Authority.
- j. Enter into contracts for any purpose necessary or incidental to its purposes under the act, including, but not limited to, contracts with the City necessary for financing the Lighting System.
- m. The Authority shall possess all powers necessary to carry out the purpose of its incorporation, including any powers authorized by the Act or the incidental power necessary thereto.

Section 3. The Authority shall maintain its books and records and its funds on an enterprise fund basis. The Authority shall not pay any net proceeds or profits to the City, but may pay the City for services provided.

Section 4. Following the appointment of the Authority Board, the Board shall implement a Best Value supply chain and procurement practice and shall annually report thereon to the City Council.

Article VI
Authority Board

Section 1. The Authority shall be directed and governed by a Board of Directors consisting of 5 members appointed as provided by the Act.

Section 2. The Board shall consist of members with the qualifications as required by the Act. Such Board members shall be appointed and serve terms of service as provided by the Act.

Section 3. Each Board member shall make such certifications as required by the Act. A person shall not begin service as a Board member until he or she completes and files the certification with the Michigan Attorney General as required under this Article.

Section 4. If the required certification is not filed by a Board member as required by the Act as described in a report of the Michigan Attorney General, the term of office for that Board member who fails to make the required certification as required by the Act shall automatically terminate as required by the Act.

Article VII
Authority Organization

Section 1. Within 30 days following the appointment of the last Board member to the Board, the Board shall hold its first meeting.

Section 2. At its first meeting, the Board shall select a chairperson, treasurer, and any other officers as the Board considers necessary. The Board shall require the treasurer to post a suitable bond of not less than \$100,000.00 issued by a responsible bonding entity, with the cost of the premium of the bond paid for by the Authority.

Section 3. The Board shall select, employ, and fix the compensation for employees of the Board and contract for those engineering, legal, and other professional services that the Board considers necessary to effectuate the purposes of the Authority.

Section 4. A majority of the members of the Board constitute a quorum for the purpose of conducting business and exercising powers of the Authority. Official action may be taken by the Authority upon the vote of a majority of the Board members present.

Section 5. The Board shall adopt rules and bylaws governing its procedures and the holding of meetings. The Board shall designate an office or location within the City as its principal place of business.

Section 6. The business of the Board shall be conducted at a public meeting of the Board held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of the meeting shall be given in the manner required by the

Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275. After organization, the Board shall adopt a schedule of regular meetings and adopt a regular meeting date, place, and time.

Section 7. The Board shall keep a written or printed record of each meeting, which record and any other document or record prepared, owned, used, in the possession of, or retained by the Authority in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, 1976 PA 442, MCL 15.231 to 15.246.

Section 8. The Board shall provide for a system of accounts for the Authority to conform to a uniform system required by law and for the auditing of the accounts of the Authority. The Board shall obtain an annual audit of the Authority by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by Sections 6 to 13 of the Uniform Budgeting and Accounting Act, 1968 PA 2, MCL 141.426 to 141.433. The audit also shall be in accordance with generally accepted government auditing standards and shall satisfy federal regulations relating to federal grant compliance audit requirements.

Section 9. The Board shall provide a monthly progress report to the Mayor and the City Council and shall make that monthly progress report available on the Authority's internet website.

Section 10. The Board shall provide an annual progress report to the chairpersons of the Michigan Senate and House Government Operations Committees and shall make that annual progress report available on the Authority's internet website. The annual progress report shall detail the Authority's operating revenues, expenditures, vendor contracts, and all major decisions on lighting within the City, including all rulings concerning the future locations of streetlights within the City.

Article VIII **Lighting System Planning**

Section 1. On or before March 15 after the creation of the Authority, and on or before March 15 of every second year after the creation of the Authority, the Board shall prepare and submit to the City Council a plan for the next 3 succeeding fiscal years. The plan shall contain all of the following:

- a. The number and placement of streetlights in the City.
- b. A budget that includes, but is not limited to, the following:
 - i. Anticipated expenses of administration, operation, and maintenance of the Authority and the Lighting System.
 - ii. Any reserve to be established for the administration, operation, and maintenance of the Authority and the Lighting System.

- iii. A statement showing the amounts necessary to retire all principal and interest on any Bonds of the Authority maturing during the applicable fiscal years.
 - iv. A plan to implement Best Value practices.
 - v. Any other item specified in these Articles of Incorporation.
- c. The budget prepared by the Authority shall provide that any money derived from the collection of rates and charges shall be applied and used by the Authority in the following manner and in the following priority:
- i. To provide for the payment during each fiscal year of all current expenses of administration, operation, and maintenance as may be necessary to preserve the Lighting System in good repair and working order, including payments required under Bonds incurred in accordance with the authorization contained in the Act.
 - ii. In the discretion of the Board, there may be set aside during each fiscal year money to provide a reserve fund for replacements or major repairs and improvements not anticipated or considered to be a part of current expenses of administration, operation, or maintenance of the Lighting System.

Section 2. The City Council may vote to accept or reject the plan as provided by the Act. The City Council does not have the power to amend the plan in any respect. Unless the City Council votes to reject the plan within 45 days of its submittal, the plan is considered approved.

Section 3. If the City Council rejects the plan as provided in Section 2, the Authority shall revise the plan and shall submit the revised plan to the City Council within 30 days of the vote that rejected the plan as provided by the Act.

Section 4. The City Council may vote to accept or reject the revised plan within 30 days of its submittal as provided by the Act. Unless the City Council votes to reject the revised plan, the revised plan is considered approved as provided by the Act.

Section 5. If the City Council votes to reject the revised plan, the City Council must contemporaneously adopt, by a vote of at least 2/3 of the members of the City Council elected and serving, a resolution that includes a list of items that, if altered, would result in a vote to adopt the plan as provided by the Act. Failure to adopt a resolution in compliance with this Section is considered acceptance of the revised plan by the City Council as provided by the Act.

Section 6. If the City Council votes to reject the revised plan and submits the required resolution as provided in Section 5, the Authority shall prepare a final proposed plan not more than 20 days following the vote to reject the revised plan. The final proposed plan shall be sent to the Mayor, and the Mayor shall make the final proposed plan available on the City's internet website as soon as is practicable. The final proposed plan shall also be made available at a public hearing to be held not more than 10 days after the final proposed plan is complete. Public

comment shall be taken at the public hearing concerning the final proposed plan. On or after the tenth day after the public hearing, the Authority shall vote on the final proposed plan.

Section 7. Except as otherwise provided in this Section, if 2/3 of the Board members of the Authority vote to adopt the final proposed plan, it is adopted. If the final proposed plan incorporates a majority of the items identified in the appropriate resolution or resolutions adopted by the City Council, then the final proposed plan is adopted if approved by a majority vote of the Board of Directors of the Authority.

Section 8. If a plan is not adopted on or before July 1 of the year in which a plan is required to be prepared under Section 1, then the adopted plan shall be the final proposed plan, except that all changes identified in the resolution of the City Council submitted under Section 5 are considered amendments to the final proposed plan so that the plan as adopted contains all changes listed in the resolution from the City Council.

Section 9. A plan adopted by the Board may be amended by a vote of 4 of the 5 members on the Board as provide by the Act.

Article IX **Fiscal Year**

Section 1. Unless the Board, by resolution, establishes a different fiscal year, the fiscal year of the Authority shall commence on July 1 of each year and end on the following June 30.

Article X **Employment Relations**

Section 1. The City has the responsibility, authority, and right to manage and direct on behalf of the public the services performed or exercised as provided in these Articles of Incorporation to the extent the Articles of Incorporation are consistent with, and not otherwise limited by, the Act.

Section 2. The contents or language of these Articles of Incorporation shall be a permissive subject of collective bargaining between the City and a bargaining representative of its employees. If the City and a bargaining representative of its employees engage in collective bargaining before these Articles of Incorporation are approved and the City and that bargaining representative reach an agreement on issues that would obligate an entity that will function as an employer in the Authority, these Articles of Incorporation shall include those obligations.

Section 3. Nothing in these Articles of Incorporation creates an employment relationship between the existing employees of the City and the Authority.

Section 4. The Authority shall be effective through these Articles of Incorporation at least 180 days before the actual transfer of any City personnel and equipment. Before the Authority's

effective date, the City shall affirm in writing to the Authority those City employees, if any, who will be transferred to the Authority.

Section 5. If any City employees who are to be transferred to the Authority are represented by a labor organization, those employees are subject to their previous terms and conditions of employment until those terms and conditions of employment are modified in accordance with 1947 PA 336, MCL 423.201 to 423.217, or for 6 months after the transfer to the Authority, whichever is earlier. Negotiations on a collective bargaining agreement with the Authority shall begin no later than 180 days before the date that such represented City employees, if any, transfer to the Authority.

Section 6. Subject to Section 7, a representative of the City employees or group of employees who previously represented or was entitled to represent the City employees or group of employees under 1947 PA 336, MCL 423.201 to 423.217, shall continue to represent the City employees or group of employees if those employees or group of employees are transferred to the Authority.

Section 7. This Section does not limit the rights of City employees, under applicable law, to assert that a bargaining representative protected by Section 6 is no longer their representative. The employees of the Authority are eligible as of the day the Authority becomes effective through these Articles of Incorporation to choose their representative under 1947 PA 336, MCL 423.201 to 423.217. This Section does not extend the time limits as provided in Section 4.

Section 8. If multiple labor organizations assert the right to represent all or part of the Authority's workforce or where a substantial portion of the transferred employees were not previously represented, in the absence of a voluntary mutual agreement, at the request of any party or on the initiative of the Michigan employment relations commission, the Michigan employment relations commission shall conduct a representation election.

Section 9. In the absence of a voluntary mutual agreement, the Authority's workforce shall be merged by using a single seniority list in accordance with the Act. Disputes concerning the single seniority list or its use shall be heard in the manner provided for by the Act.

Section 10. Nothing in this Section requires the City or the Authority to assume a collective bargaining agreement between another local government and its employees.

Section 11. An employee who left the employ of the City to enter the military service of the United States shall have the same employment rights as to the City or the Authority as he or she would have had under 1951 PA 263, MCL 35.351 to 35.356.

Article XI
Authority Borrowing and Bonds

Section 1. For the purpose of constructing, acquiring, improving, enlarging, or extending a Lighting System, including the payment of engineering, legal, and financing expenses, and after the establishment of the initial service rates and the execution of contracts for the provision of construction services, purchase of power, and other related activities within the corporate limits of the Authority, the Authority may borrow money and issue Bonds and Notes for the purposes provided by the Act subject to limitations provided by the Act. The Authority may also enter into Ancillary Facilities and Contracts, including trust indentures and contracts with the City, relating to such Bonds and Notes as provided by the Act.

Article XII **Public Purpose**

Section 1. The property of the Authority is public property devoted to an essential public and governmental purpose. Income of the Authority is for a public and governmental purpose.

Section 2. Except as otherwise provided in this Section or by law, the property of the Authority and its income, activities, and operations are exempt from all taxes and special assessments of this state or a political Subsection of this state. Property of the Authority and its income, activities, and operations that are leased to private persons are not exempt from any tax or special assessment of this state or a political subdivision of this state. Property of the Authority is exempt from any ad valorem property taxes levied under the General Property Tax Act, 1893 PA 206, MCL 211.1 to 211.155, or other law of this state authorizing the taxation of real or personal property. The Authority is an entity of government for purposes of Section 4a(1)(a) of the General Sales Tax Act, 1933 PA 167, MCL 205.54a, and Section 4(1)(h) of the Use Tax Act, 1937 PA 94, MCL 205.94.

Article XIII **Implementation**

Section 1. As provided in the Utility Users Tax Act, upon the formation of the Authority, notwithstanding any ordinance of the City to the contrary, the City shall pay \$12,500,000.00 annually to the Authority from the proceeds of the Utility Users Tax. If the Authority issues Bonds pursuant to a contract with the City and pledges revenues from Utility Users Tax, those revenues shall be deposited and used as provided Utility Users Tax Act. After a contract is entered into with the City relating to Bonds pursuant to the Utility Users Act, the trustee, after setting aside funds as required by the trust indenture, shall pay to the Authority \$12,500,000.00, less the amount set aside. The trust indenture shall provide that the remaining revenues be returned to the City. Nothing in these Articles of Incorporation shall obligate the City to remit to the Authority more than is collected from taxes levied under the Utility Users Tax Act.

Section 2. As provided by the Utility Users Tax Act, notwithstanding any ordinance of the City, if the City enters into a contract with the Authority, all of the following shall apply:

(a) The City shall send notice to each public utility and resale customer (each as defined in the Utility Users Tax Act) to remit taxes collected under the Utility Users Tax Act to a trustee until notified by that trustee to return the funds to the City.

(b) After receiving a notice described in subdivision (a), each public utility and resale customer so notified shall remit taxes as directed by the notice to the trustee until notified by the trustee to remit taxes to the City.

(c) The trustee shall notify each public utility and resale customer to remit taxes collected under the Utility Users Tax Act to the City within 45 days of the retirement of debt service on the Bonds issued by the Authority.

Section 3. Notwithstanding any ordinance of City, any utility, resale customer, other entity, or person that collects a tax or any money represented to be a tax authorized under the Utility Users Tax Act holds the amount so collected in trust for the benefit of the City, or for Bondholders secured by a pledge with the Authority.

Article XIV **Best Value Objectives**

Section 1. The Board shall provide for a contract and procurement process to be followed by the Authority that encourages and considers bids from locally headquartered companies and that considers use of the local workforce.

Article XV **Miscellaneous**

Section 1. The Authority may acquire property for a Lighting System by purchase, construction, lease, gift, or devise, either within or outside the City. The Authority may hold, manage, control, sell, exchange, or lease the property, except that if the property at issue was purchased, constructed, gifted, devised, leased, or otherwise came into the Authority's ownership or control from the City, the Authority may not sell, exchange, or otherwise dispose of the property unless the other party to the transaction is the City so that the property will return to the ownership of the City.

Section 2. The City Council may advance or loan to the Authority any money required for administrative expenses or for the purpose of obtaining maps, plans, designs, specifications, and cost estimates of a proposed Lighting System. An advance or loan may be included as a part of any Bond issue by the Authority under the Act and repaid to the City upon the sale of the Bonds.

Section 3. The powers granted under the Act and these Articles of Incorporation are in addition to those granted by any charter or statute.

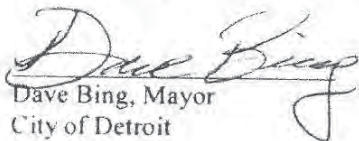
Section 4. The Act and these Articles of Incorporation shall be liberally construed in the interest of the public health, safety, and welfare of the persons and property within the City.

Section 5. These Articles of Incorporation may be amended by a majority vote of the City Council in the same manner that these Articles of Incorporation were adopted; provided, however, that no such amendment shall impair any obligation related to Bonds.

Section 6. One printed copy of these Articles of Incorporation certified as a true copy by the person or persons designated by the certification, with the date and place of the publication, shall be filed with the Michigan Secretary of State and the Wayne County Clerk. The Authority shall become effective upon the filing with the Secretary of State and the County Clerk. The City Clerk shall publish these Articles of Incorporation in a newspaper that is used for publication of other legal notices of the City.

Section 7. The validity of the Authority is conclusively presumed unless questioned in an original action filed in the Michigan Court of Appeals within 60 days after the creation of the Authority.

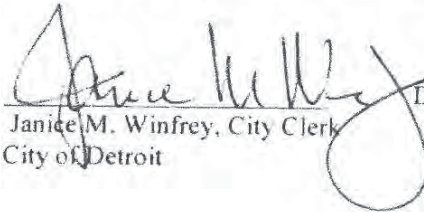
The foregoing Articles of Incorporation were adopted by the City Council of the City of Detroit, Wayne County, Michigan, at a meeting held on the 6th day of February, 2013.


Dave Bing, Mayor
City of Detroit

Dated: 3/24/13

CERTIFICATION


Janice M. Winfrey, City Clerk of the City of Detroit, certifies that the foregoing document is a true copy of the Articles of Incorporation adopted by the City Council of the City of Detroit at a meeting held on the 5th day of ~~February~~ 2013, which Articles of Incorporation were duly published as required by law on the 1st day of March 2013, in Detroit Legal News.

 Dated: 3/22/13 (Seal)
Janice M. Winfrey, City Clerk
City of Detroit

Filed with the Michigan Secretary of State on: _____

Acknowledged by: _____ (Seal)
Title: _____

Filed with the Wayne County Clerk on: 29th March 2013

Acknowledged by  (Seal)
Title: Department Administrator

20.766.298 3 088888-03795



STATE OF MICHIGAN
RUTH JOHNSON, SECRETARY OF STATE
DEPARTMENT OF STATE
LANSING

April 23, 2013

City of Detroit
Adam Hollier
Coleman A. Young Municipal Center
2 Woodward Ave., Ste. 1126
Detroit, MI 48226

RE: Detroit Public Lighting Authority

Dear Mr. Hollier:

This will acknowledge receipt of a copy of the Articles of Incorporation for the Detroit Public Lighting Authority, under the provisions of Act 392, Public Acts of 2012, filed on April 5, 2013, with the Secretary of State, Office of the Great Seal.

Sincerely,

Office of the Great Seal
1-888-767-6424

OFFICE OF THE GREAT SEAL
RICHARD H. AUSTIN BUILDING • 1ST FLOOR • 430 W. ALLEGAN • LANSING, MICHIGAN 48918
1-888-SOS-MICH (1-888-767-6424)
www.Michigan.gov/sos

APPENDIX B

TRUST AGREEMENT

THIS TRUST AGREEMENT (this "*Agreement*") is made and entered into as of July 31, 2013, by and among: the Public Lighting Authority, a Michigan municipal corporation ("*Authority*"); the City of Detroit, a Michigan municipal corporation ("*City*"); and Wilmington Trust, National Association, a national banking association lawfully authorized to conduct business in the State of Michigan ("*Trustee*"). Collectively, the signatories are referred to as the Parties, and individually, as a Party. Capitalized terms used in this Agreement and not otherwise defined shall have the meanings given to them in their respective contexts under the laws of the state of Michigan or under such other authority as otherwise indicated herein.

RECITALS

WHEREAS, the Michigan Municipal Lighting Authority Act, 2012 PA 392, MCL §§123.1261 *et seq.* ("*Act 392*"), authorizes municipalities to create public lighting authorities for the purposes of providing an equitable and reasonable method and means of financing, operating, and maintaining a lighting system in sufficient quantities within a city; and

WHEREAS, City has passed a resolution and approved the Articles of Incorporation forming the Public Lighting Authority of the City of Detroit (the Authority), pursuant to which Authority shall construct, improve, enlarge, reduce or extend City's street lighting system; and

WHEREAS, the Emergency Manager of the City, appointed under the local financial stability and choice act, 2012 PA 436, MCL §§141. *et seq.*, has entered Order No. 6 approving the Initial Funding Agreement for the Public Lighting Authority (the "*Order No. 6*") and Order No. 14 approving the Trust Agreement by and among the City of Detroit, the Public Lighting Authority, and the Trustee (the "*Order No. 14*" together with Order No. 6, the "*Orders*"); and

WHEREAS, the Emergency Manager desires to direct all public utilities and resale customers that collect utility users tax revenues pursuant to the City Utility Users Tax Act, 1990 PA 100, MCL 141.1151 to MCL 141.1171 ("*Act 100*"), to remit such revenues ("*Utility Revenues*") directly to a trustee to be used by Authority or for the benefit of bondholders of any bonds issued by Authority; and

WHEREAS, the Authority and the City seek to create a trust to receive Utility Revenues and disburse such funds hereinafter held in trust pursuant to the Orders, Act 100 and Act 392.

NOW, THEREFORE, in consideration of the respective covenants, agreements and representations and warranties set forth herein, the Parties to this Agreement, intending to be legally bound, agree as follows:

I. Establishment of Trust and Trust Fund.

(a) Establishment of Trust and Deposit of Trust Fund. The City and the Authority hereby direct the Trustee to establish a trust account designated and maintained by the Trustee for the deposit of all Utility Revenues collected and so designated under this Agreement by the Authority (the "*Trust Fund*"). Pursuant to Act 392, Act 100, and direction of the Emergency Manager, all public utilities and resale customers that collect Utility Revenues are required to

deliver all such Utility Revenues to Trustee for deposit in the Trust Fund by the Trustee, not more frequently than monthly. All such deposits of Utility Revenues shall become part of the Trust Fund. The direction of funds by the Emergency Manager is irrevocable during the term of this Agreement. The Trust Fund shall be held and disbursed pursuant to this Agreement or a successor trust agreement as contemplated under Sections 6(i), 7, or 8 of this Agreement. Exhibit C contains delivery instructions to the Trustee.

(b) Appointment of Trustee. Authority and City hereby appoint and designate Trustee as trustee to receive, hold, invest and disburse the Trust Fund in accordance with the terms of this Agreement. Trustee hereby agrees to act as trustee and to hold, safeguard and disburse funds from the Trust Fund pursuant to the terms and conditions of this Agreement. The Trustee shall invest and reinvest funds held in the Trust Fund as directed in writing by an authorized agent of both the City and the Authority. Such funds will be held uninvested by the Trustee until such joint written direction is received. The Trustee shall be entitled to rely on the investment directions of the Authority as to the suitability and legality of such investment. The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Agreement. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including investment maintenance fees. The Trustee shall not be responsible for providing broker confirmations.

(c) Trust Fund. No Party shall permit or cause to be created against the Trust Fund any lien, attachment, trustee process or any other judicial process of any creditor. Trustee shall hold and safeguard the Trust Fund, at the cost and expense of the City and Authority, until it is released pursuant to Section 2 of this Agreement. Notwithstanding the foregoing, if the Trust Fund shall be attached, garnished, or levied upon pursuant to judicial process of competent jurisdiction, or the delivery of funds held in the Trust Fund shall be stayed or enjoined by any court order of competent jurisdiction, or any court order shall be made or entered into affecting the Trust Fund, or any part thereof, Trustee is hereby expressly authorized to obey and comply with such judicial process or court order, and shall provide Authority and City as much advance written notice as is reasonably practicable thereof. In the event Trustee obeys or complies with any judicial process or court order, it shall not be liable to any Party, public utilities, resale customers or to any other person, firm or corporation by reason of such compliance, notwithstanding the subsequent reversal, modification, annulment, or setting aside of such court order.

(d) Trustee shall furnish Authority and City with a monthly written accounting of the complete account activity of, and transactions executed with respect to, the Trust Fund, within fifteen (15) days after the end of such month.

2. Administration and Disbursements of Trust Fund. The available funds in the Trust Fund shall be disbursed by Trustee beginning August 17, 2013, on the 17th of each month thereafter, or the next Business Day (defined herein as any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state of Michigan), if the 17th is not a business day, as follows:

a. For disbursements made from July 1, 2013 through December 31, 2013:

- i. The first One Million, Seven Hundred and Eighty-Three Thousand, Three Hundred and Thirty-Three Dollars and Zero/100 (\$1,783,333.00) in each month, as follows:

1. First, to the parties and in the amount directed by the Authority to satisfy any obligations under any bonded indebtedness of Authority, including the following costs: principal and interest on the bonds, including any payments due under an ancillary credit facility entered into by Authority; the administrative costs associated with the bonds; and any other bonds issued by the Authority that may be secured by the Utility Revenues;

The Authority shall notify the Trustee by the 12th of each month of any bonded indebtedness secured by the Trust Fund by the filing of a certificate with the Trustee detailing all obligations of the Authority and the name, address and wire information of each person to which payment should be made. Trustee is entitled to rely on such certificate. If the Trustee has not received such a certificate from the Authority by 5 pm (eastern) on such date, it can assume the Authority has no such bonded obligations and may make disbursements to the Authority pursuant to Section 2.a.i.2. below.

2. Second, any amount remaining to the Authority, to be used as directed by an authorized officer of the Authority in compliance with Act 392 and this Agreement. The Trustee has no responsibility for determining such compliance with Act 329 or this Agreement.

- ii. Any monthly amounts that exceed the amounts in Section 2.a.i., to City.

- b. For disbursements made from January 1, 2014 through the termination of this Agreement, on the 17th of each month, or the next Business Day if the 17th is not a Business Day:

- i. The first One Million, Forty-One Thousand, Six Hundred and Sixty-Six Dollars and Zero/100 (\$1,041,666.00) in each month, as follows,

1. First, to the parties and in the amount directed by the Authority to satisfy any obligations under any bonded indebtedness of Authority, including the following costs: principal and interest on the bonds, including any payments due under an ancillary credit facility entered into by Authority; the administrative costs associated with the bonds; and any other bonds issued by the Authority that may be secured by the Utility Revenues.

The Authority shall notify the Trustee by the 12th of each month of any bonded indebtedness secured by the Trust Fund by the filing of a certificate with the Trustee detailing all obligations of the Authority and the name, address and wire information of each person to which payment should be made. Trustee is entitled to rely on such certificate. If the Trustee has not received such a certificate from the Authority by 5pm (eastern) on such date, it can assume the Authority has no such bonded obligations and may make disbursements to the Authority pursuant to Section 2.b.i.2. below.

2. Second, any amount remaining to the Authority, to be used as directed by an authorized officer of the Authority in compliance with Act 392 and this Agreement. The Trustee has no responsibility for determining such compliance with Act 329 or this Agreement.

c. Any monthly amounts that exceed the amounts in Section 2.b.i., to City.

The Trust Fund shall be disbursed pursuant to this Section 2 on no less than a monthly basis, or as otherwise directed under a successor trust agreement.

3. Covenant of Trustee. Trustee hereby agrees and covenants with the Parties hereto that it will perform all of its obligations under this Agreement and will not deliver custody or possession of any of the Trust Fund to anyone except pursuant to the express terms of this Agreement.

4. Fees and Expenses of Trustee. The Authority shall pay to the Trustee from time to time such compensation as shall be agreed upon in writing between the Authority and the Trustee for its acceptance of this Agreement and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Authority shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the compensation for its services, including extraordinary time and services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee's agents and legal counsel. The Authority agrees that it shall pay all such fees owed the Trustee within 30 days of receipt of an invoice.

5. Limitation of Trustee's Liability. The responsibilities of the Trustee are administrative in nature and are strictly limited to those specifically set forth herein. No implied duties, covenants or obligations shall be read into this Agreement against the Trustees including, without limitation, the obligation to make any discretionary decisions. No fiduciary relationship exists between or among the Trustee, the City or the Authority. Trustee undertakes to perform such duties as are specifically set forth in this Agreement only and shall have no liabilities or obligations with respect to the Trust Fund or its administration of this Agreement except for Trustee's negligence or willful misconduct. Trustee shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein or in any notices given to it in accordance with the notice provisions of this Agreement. Trustee shall incur no liability with respect to any action taken by it or for any

inaction on its part in reliance upon any notice, direction, instruction, consent, statement or other document believed by it in good faith to be genuine and duly authorized, nor for any other action or inaction except for its own negligence or willful misconduct. Trustee may consult legal counsel selected by it in the event of any dispute or question of the construction of this Agreement or seek the assistance of a court of competent jurisdiction, and shall incur no liability and shall be fully protected in acting in accordance with the opinion or advice of such counsel or the direction of such court. The Trustee shall not be liable for any error of judgment made in good faith by a responsible partner, director, officer, affiliate, employee, employer, professional, agent or representative of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts. In no event shall Trustee be liable for incidental, indirect, special, punitive or consequential damages. The Trustee shall have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees, and shall not be responsible for the misconduct or negligence of such agents, attorneys, custodians and nominees appointed by it with due care. None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers vested in it by this Agreement, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The permissive rights of the Trustee to do things enumerated in this Agreement shall not be construed as duties. The Trustee shall not be accountable for the use or application of any money paid over by the Trustee in accordance with the provisions of this Agreement. The Trustee shall have no duty to collect any Utility Revenues which are required to be deposited with it hereunder.

The Authority shall defend, at its cost and expense, any claim (by whomever asserted) against the Trustee arising out of or in connection with the acceptance, administration, exercise or performance of its duties under this Agreement. The Authority shall satisfy any liability, judgment and cost, of or relating to such claim, except to the extent that a court of competent jurisdiction has determined that such claim, liability or expense is attributable to the Trustee's negligence or willful misconduct. The Trustee may have separate legal counsel and the Authority shall pay the reasonable fees and expenses of such separate legal counsel.

The Trustee shall notify the Authority promptly of any claim against for which it may seek defense. Failure by the Trustee to so notify the Authority shall not relieve the Authority from its obligations hereunder. The Trustee shall cooperate in the defense. The forgoing shall survive the termination of this Agreement pursuant to Section 6 hereof.

The Trustee agrees to accept and act upon written instructions or directions pursuant to this Agreement sent by unsecured e-mail (in .pdf file format), facsimile transmission or other similar unsecured electronic methods, provided, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the Authority or the City, respectively, or in the name of the Authority or the City, respectively, by an authorized representative of the Authority or City, respectively, and the Authority or the City, respectively shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Authority or City, respectively, elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be

deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority and City agree: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Authority or the City; and (iii) that the security procedures (if any) to be followed in connection with their transmission of instructions provide to them a commercially reasonable degree of protection in light of their particular needs and circumstances.

6. Termination. This Agreement will automatically terminate upon the earlier of the following: (i) the execution of a trust agreement between Authority, City, the Michigan Finance Authority, and a trustee in connection with the issuance of bonds by Authority as authorized under Act 392 with a notice of such execution delivered to the Trustee; or (ii) receipt by the Trustee and the City of a notice delivered by the Authority of the final receipt of Utility Revenues under Section 1.a. and the final disbursement of the Trust Fund pursuant to Section 2 of this Agreement. Following such termination, this Agreement shall be of no further force or effect, and no further fees or expenses shall be invoiced by Trustee pursuant hereto except for unbilled fees or expenses incurred by Trustee prior to such time.

7. Successor Trustee.

(a) In the event Trustee becomes unavailable or unwilling to continue as trustee under this Agreement, Trustee may resign and be discharged from its duties and obligations hereunder by giving its written resignation to the Parties to this Agreement. In addition, Trustee may be removed at any time, with or without cause, upon 30 days' prior written notice delivered to Trustee and executed by both Authority and City. Such resignation or removal shall take effect not less than thirty (30) days after notice is given to all Parties hereto. In such event, Authority may appoint, with the consent of City, which consent shall not be unreasonably withheld, a successor trustee, which shall be a commercial bank, trust company or other financial institution qualified to act as a trustee under Michigan law. If Authority fails to appoint a successor trustee within fifteen (15) days after receiving Trustee's written resignation, Trustee shall have the right to apply to a court of competent jurisdiction for the appointment of a successor trustee. The successor trustee shall execute and deliver to Trustee an instrument accepting such appointment, and the successor trustee shall, without further acts, be vested with all the estates, property rights, powers and duties of the predecessor Trustee as if originally named as Trustee herein. Trustee shall act in accordance with written instructions from Authority and City as to the transfer of the Trust Fund to a successor trustee.

(b) Any corporation, association or other entity into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or otherwise transfer all or substantially all of its corporate trust assets and businesses or any corporation, association or other entity resulting from any such conversion, sale, merger consolidation or other transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder, as applicable, vested with all other matters as was its predecessor, without the execution or filing of any

instrument or any further act on the part of the Parties hereto, notwithstanding anything herein to the contrary.

8. Miscellaneous.

(a) Amendment; Waiver. Any agreement on the part of a Party to any extension or waiver of any provision hereof shall be valid only if set forth in an instrument in writing signed on behalf of such Party with a copy sent to the other Parties. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty shall not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act shall not constitute a waiver of the performance of any other act or an identical act required to be performed at a later time. This Agreement may not be amended, modified or supplemented except by written agreement of all of the Parties.

(b) Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other address or person as a Party may designate by notice to the other Parties):

If to Authority:

Public Lighting Authority
65 Cadillac Square
Suite 2900
Detroit, MI 48226

with a mandatory copy to (which copy shall not constitute notice):

The Allen Law Group, P.C.
2500 Fisher Building
3011 West Grand Boulevard
Detroit, MI 48202

If to City:

City of Detroit
Office of the Mayor
Coleman A. Young Municipal Center
2 Woodward Ave.
11th Floor
Detroit, MI 48226

with a mandatory copy to (which copy shall not constitute notice):

City of Detroit
Office of the Emergency Manager

Coleman A. Young Municipal Center
2 Woodward Ave.
11th Floor
Detroit, MI 48226

with a mandatory copy to (which copy shall not constitute notice):

City of Detroit
Corporation Counsel
660 Woodward Ave, Ste 1650
Detroit, MI 48226

If to Trustee:

Wilmington Trust, N.A.
Corporate Trust Services
25 South Charles Street, 11th Floor
Baltimore, MD 21201

with a mandatory copy to (which copy shall not constitute notice):

Drinker Biddle & Reath
Kristin Going
1500 K. St., N.W., Suite 1100
Washington, DC 20005

(c) Interpretation. Unless the context otherwise requires, references in this Agreement to Sections and Exhibits refer to the Sections and Exhibits to this Agreement. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to dollar amounts contained in this Agreement shall mean United States dollars. References in this Agreement to any gender include references to all genders, and references to the singular include references to the plural and vice versa. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement.

(d) Entire Agreement. This Agreement and the other agreements referred to herein constitute the entire agreement of the Parties to this Agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof.

(e) Parties in Interest. Except as expressly provided herein, none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the Parties hereto and their respective successors and assigns (if any).

(f) Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(g) Governing Law; Jurisdiction and Venue.

- (i) This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Michigan (without giving effect to principles of conflicts of laws).
- (ii) Each Party to this Agreement:
 - (1) irrevocably submits to the exclusive jurisdiction of the Circuit Court for the County of Wayne in the State of Michigan and any state appellate court therefrom within the State of Michigan for the purpose of any legal proceeding directly or indirectly based upon, relating to arising out of this Agreement or any transaction contemplated hereby or the negotiation, execution or performance hereof or thereof and irrevocably agrees that all claims in respect of such action or proceeding shall be brought in, and may be heard and determined, exclusively in such state or federal courts;
 - (2) irrevocably consents to the service of the summons and complaint and any other process in any other action or proceeding relating to the transactions contemplated by this Agreement, on behalf of itself or its property, by personal delivery of copies of such process to such Party at the addresses set forth in Section 8(b), provided that nothing in this Section 8(g) shall affect the right of any Party to serve legal process in any other manner permitted by law;
 - (3) acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such Party hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury in any legal proceeding directly or indirectly based upon, relating to or arising out of this Agreement or any transaction contemplated hereby or the negotiation, execution or performance hereof or thereof;
 - (4) certifies and acknowledges that (a) no representative, agent or attorney of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of any legal proceeding, seek to enforce the foregoing waiver in Section 8(g)(3), (b) each Party understands and has considered the implication of such waiver, (c) each Party makes such waiver voluntarily, and (d) each Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 8(g).

(h) Rules of Construction. The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

(i) Assignment and Successors. No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties, except with respect to the Trustee as set otherwise forth under Section 7(b) of this Agreement. This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties.

(j) Further Assurances. Each Party hereto shall execute and cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

(k) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or PDF transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or PDF shall be deemed to be their original signatures for all purposes.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have duly caused this Agreement to be executed as of the day and year first above written.

PUBLIC LIGHTING AUTHORITY


By: Odis Jones
Its: Executive Director

Date: 7/31/13

Witness for Public Lighting Authority:



CITY OF DETROIT

By: Kevyn D. Orr
Its: Emergency Manager

Date: _____

Witness for City:

Wilmington Trust, N.A., AS TRUSTEE

By:
Its:

Date: _____

Witness for Trustee:

IN WITNESS WHEREOF, the Parties have duly caused this Agreement to be executed as of the day and year first above written.

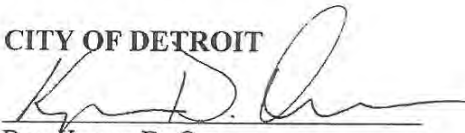
PUBLIC LIGHTING AUTHORITY

By: Odis Jones
Its: Executive Director

Date: _____

Witness for Public Lighting Authority:

CITY OF DETROIT



By: Kevyn D. Orr
Its: Emergency Manager

Date: August 1, 2013

Witness for City:

Wilmington Trust, N.A., AS TRUSTEE

By:
Its:

Date: _____

Witness for Trustee:

IN WITNESS WHEREOF, the Parties have duly caused this Agreement to be executed as of the day and year first above written.

PUBLIC LIGHTING AUTHORITY

By: Odis Jones
Its: Executive Director

Date: _____

Witness for Public Lighting Authority:

CITY OF DETROIT

By: Kevyn D. Orr
Its: Emergency Manager

Date: _____

Witness for City:

Wilmington Trust, N.A., AS TRUSTEE



By: JAY SMITH
Its: Vice President

Date: 7-31-13

Witness for Trustee:



Public Lighting Authority Trust

Exhibit A Fee Schedule

Administration Fee \$2,500.00 per annum, payable at closing

- Assumes proceeds are placed in Wilmington Trust's non-collateralized escrow depository account.
- Assumes one account.

The fees as quoted and the acceptance of our duties as Escrow Agent are subject to the satisfactory review and acceptance of all related financing documents by the Escrow Agent, our counsel and the New Business Acceptance Committee. In the event the escrow changes prior to or after closing, Wilmington Bank reserves the right to review and renegotiate the fees accordingly.

Public Lighting Authority Trust

**Exhibit B
Certificate as to Authorized Signatures**

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Public Lighting Authority and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Escrow Agreement to which this Exhibit B is attached, on behalf of the Public Lighting Authority.

Name / Title / Phone Number

Specimen Signature

ODIS JONES

Name



Signature

EXECUTIVE DIRECTOR

Title

(313) 324-8290

Phone Number

Name

Signature

Title

Phone Number

Name

Signature

Title

Phone Number

Public Lighting Authority Trust

Exhibit C Payment Instructions

By Wire:

Bank: M & T Bank
ABA: 022000046
Account: Corporate Trust Clearing
Account No.: 3088001950200
ffc Public Lighting Authority Trust
Attn: Jay Smith

By Check:

Payable to: Wilmington Trust, National Association

Mailed to:

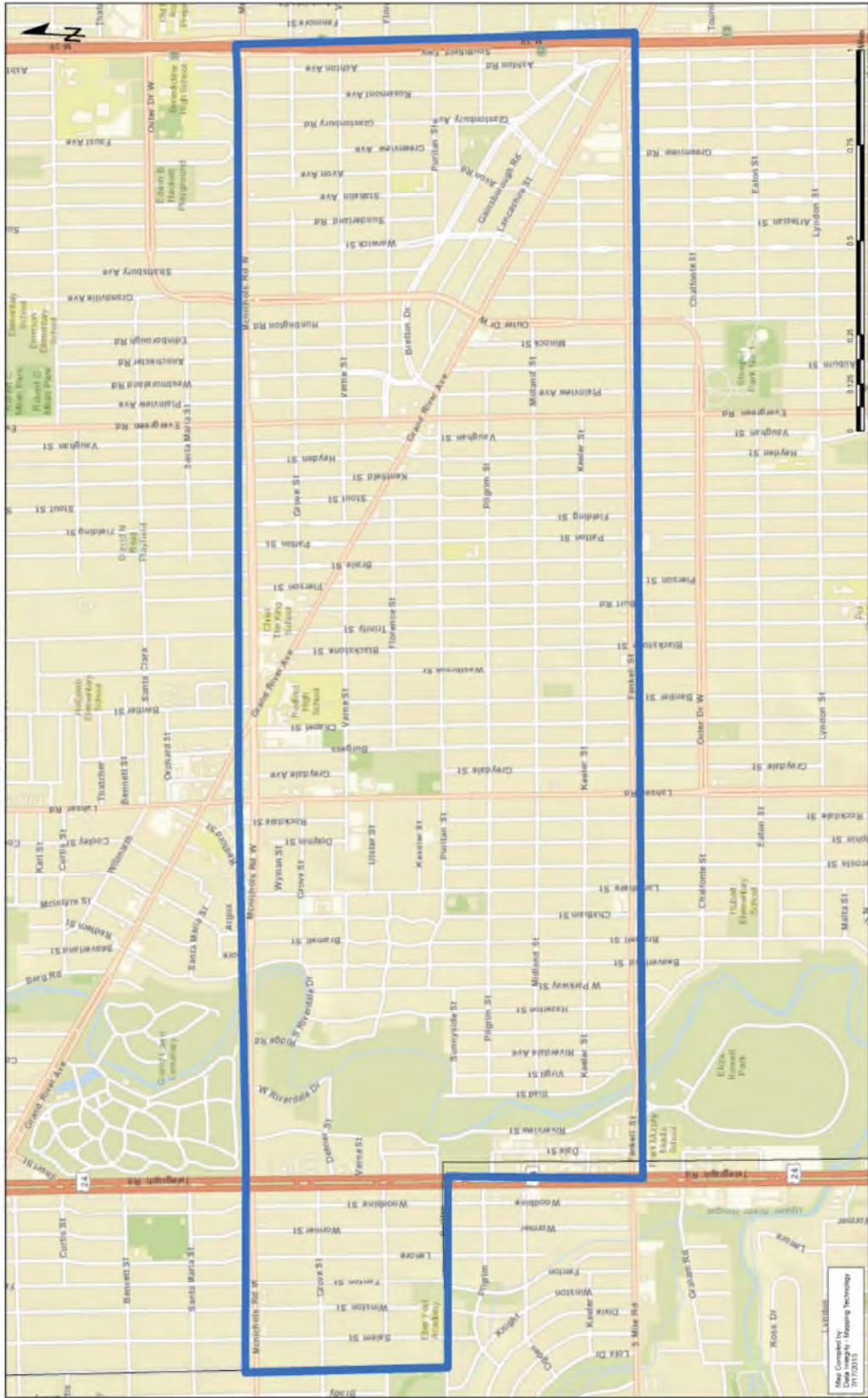
Wilmington Trust, National Association
Global Capital Markets
25 S. Charles Street, 11th Floor
Baltimore, MD 21201
Attn: Jay Smith

CHI-1898778v2

Appendix C

Appendix C

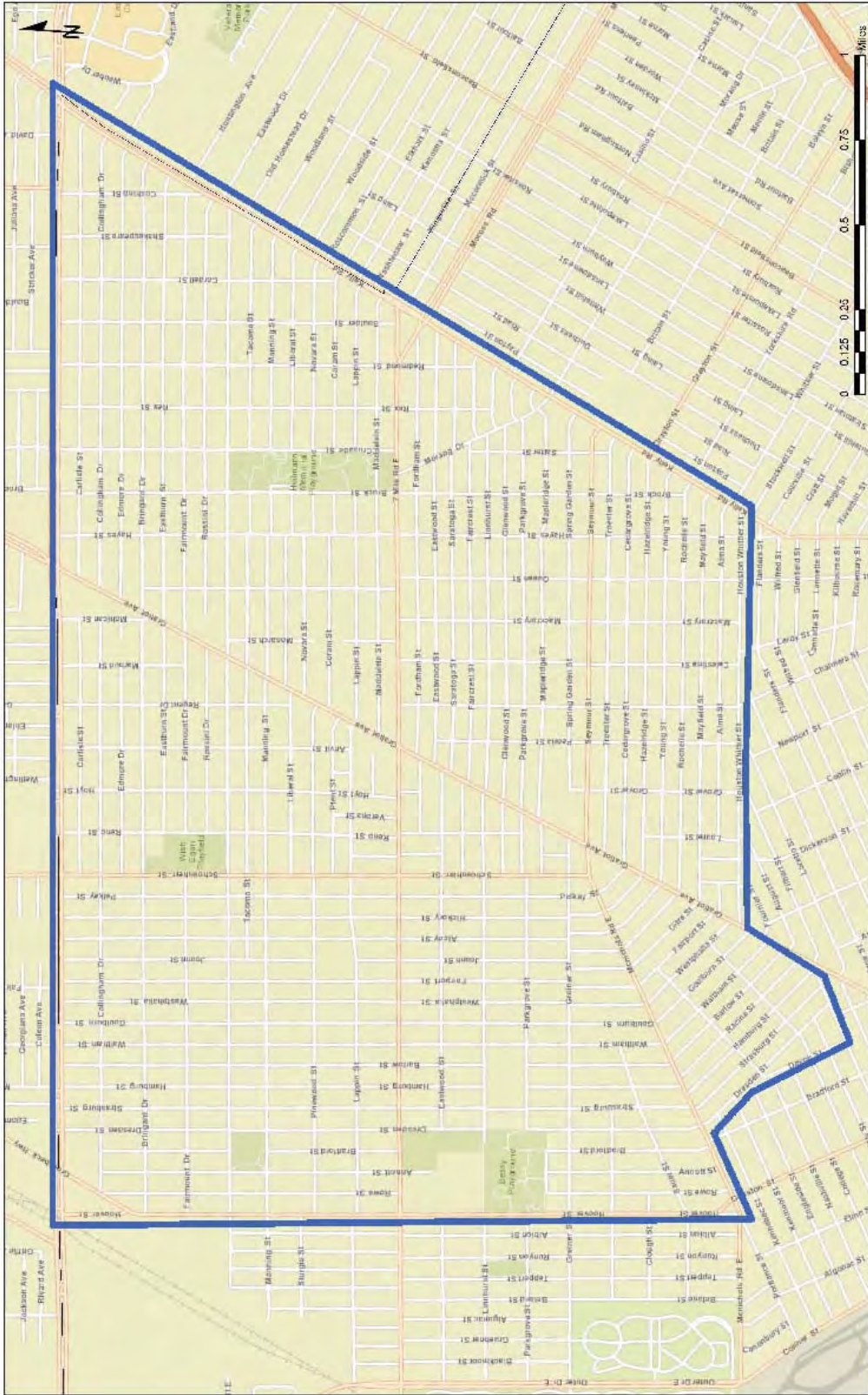
West PLA Pilot Area



Appendix D

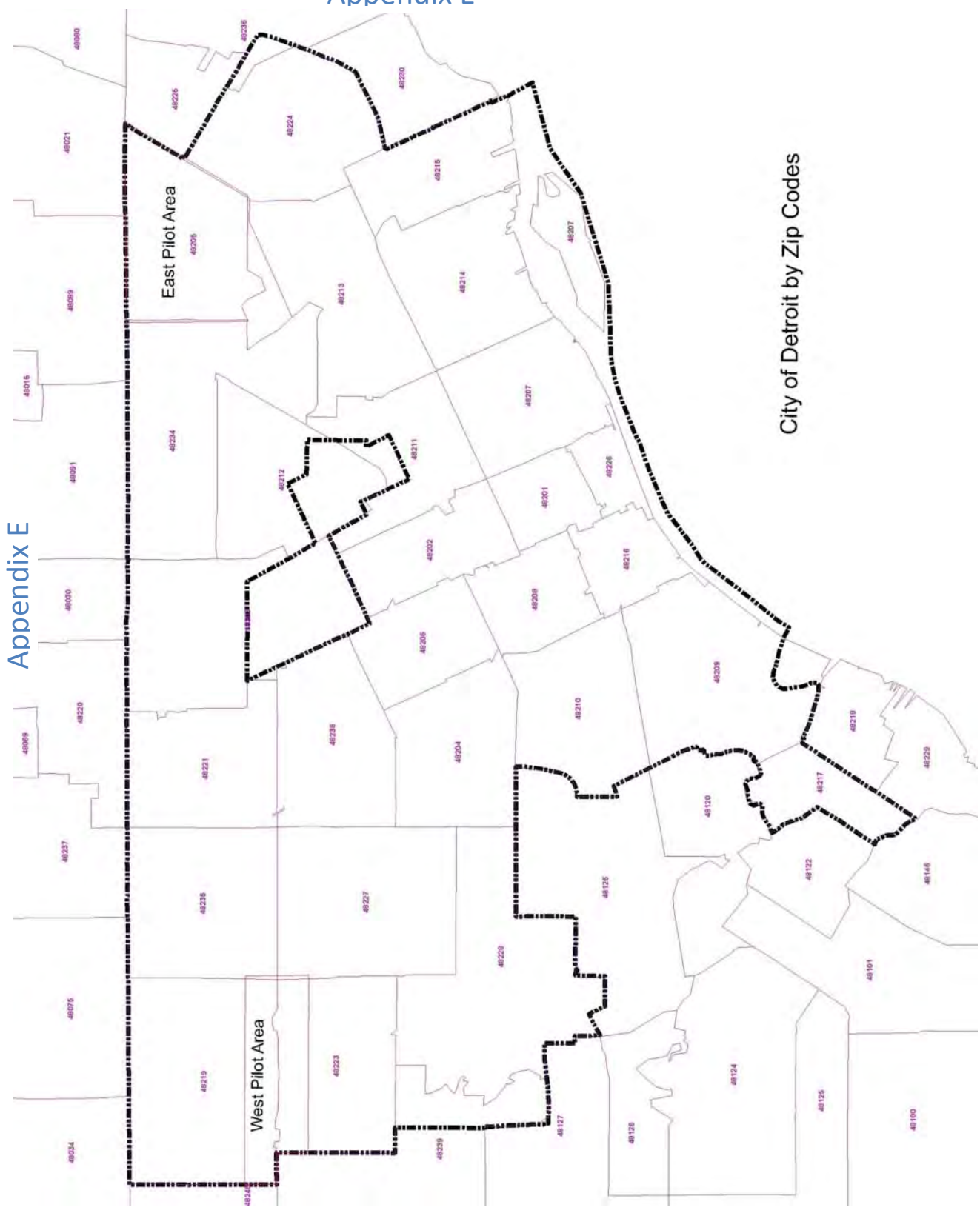
Appendix D

East PLA Pilot Area



Appendix E

Appendix E



Public Lighting Authority
Short Term and Long Term Summary Schedule



	2013	2014	2015	2016
	1Q	2Q	3Q	4Q
Survey and Map Short Term Plan				
Design/Eng Short Term Plan				
Construction Short Term Plan				
Survey and Map Long Term Plan				
Design/Eng Long Term Plan				
Construction Long Term Plan				
	Zip 48219 # Lights 2250 Zip 48223 # Lights 1520 Zip 48235 # Lights 2285 Zip 48221 # Lights 2014 Zip 48208 # Lights 1413 Zip 48224 # Lights 1632 Zip 48213 # Lights 2251 Zip 48227 # Lights 2314 Zip 48238 # Lights 1803 Zip 48204 # Lights 2130 Zip 48206 # Lights 1098 Zip 48202 # Lights 1849 Zip 48208 # Lights 1151 Zip 48201 # Lights 1689 Zip 48234 # Lights 1920 Zip 48212 # Lights 1100 Zip 48205 # Lights 1929 Zip 48228 # Lights 1885 Zip 48209 # Lights 1675 Zip 48210 # Lights 1668 Zip 48217 # Lights 623 Zip 48216 # Lights 922 Zip 48226 # Lights 1878 Zip 48211 # Lights 1143 Zip 48207 # Lights 2445 Zip 48214 # Lights 1360 Zip 48215 # Lights 911 Zip 48226 # Lights 135 Zip 48229 # Lights 286			
Number of Lights Reconstructed:	3000	14038	14253	13989
Number of Capital Dollars Spent:	\$10,600,941	\$49,603,569	\$50,365,070	\$49,430,420

APPENDIX G

**Public Lighting Authority of Detroit
Budget**

	30-Jun-14	30-Jun-15	30-Jun-16	30-Jun-17	30-Jun-18	30-Jun-19	30-Jun-20	30-Jun-21	30-Jun-22	30-Jun-23
Revenue Sources										
Utility User Tax	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000	\$ 12,500,000
City of Detroit Admin Fees	\$ 329,348	\$ 658,696	\$ 1,317,392	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000
Bridge Loan Proceeds	\$ 60,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Bond Proceeds (Net of D.S. Reserve Fund)	\$ 135,904,992	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Revenue	\$ 208,334,340	\$ 13,158,696	\$ 13,817,392	\$ 14,015,000	\$ 14,015,000	\$ 14,015,000	\$ 14,015,000	\$ 14,015,000	\$ 14,015,000	\$ 14,015,000
Administrative Budget										
Salaries & Benefits	\$ 534,114	\$ 566,160	\$ 594,468	\$ 610,000	\$ 620,000	\$ 620,000	\$ 620,000	\$ 620,000	\$ 620,000	\$ 620,000
Insurance	\$ 78,500	\$ 83,316	\$ 87,482	\$ 89,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000	\$ 90,000
Auto Expenses	\$ 15,600	\$ 16,092	\$ 16,414	\$ 16,500	\$ 17,000	\$ 17,000	\$ 17,000	\$ 17,000	\$ 17,000	\$ 17,000
Professional Fees	\$ 626,100	\$ 429,346	\$ 419,843	\$ 327,385	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000
Occupancy	\$ 58,093	\$ 51,677	\$ 45,976	\$ 48,275	\$ 50,000	\$ 55,000	\$ 60,000	\$ 65,000	\$ 70,000	\$ 75,000
Office	\$ 152,000	\$ 161,120	\$ 165,000	\$ 170,000	\$ 175,000	\$ 180,000	\$ 185,000	\$ 190,000	\$ 195,000	\$ 200,000
Conferences & Meetings	\$ 25,000	\$ 26,500	\$ 27,825	\$ 28,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000	\$ 30,000
Others	\$ 315,000	\$ 333,900	\$ 350,595	\$ 280,000	\$ 283,000	\$ 273,000	\$ 263,000	\$ 253,000	\$ 243,000	\$ 233,000
Total Operating Budget	\$ 1,804,506	\$ 1,668,052	\$ 1,707,603	\$ 1,569,159	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000	\$ 1,515,000
Capital Project Expenditures										
DTE - Project Management	\$ 1,200,000	\$ 1,200,000	\$ 900,000	\$ 300,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Surveys	\$ 1,950,000	\$ 2,200,000	\$ 94,731	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Engineering & Design	\$ 3,876,555	\$ 6,307,326	\$ 3,153,663	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Over Head Removal	\$ 3,230,485	\$ 4,826,266	\$ 4,826,266	\$ 2,413,133	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Under Ground Removal	\$ 727,993	\$ 1,087,604	\$ 1,087,604	\$ 543,802	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Over Head Installation	\$ 4,221,358	\$ 7,316,305	\$ 7,316,305	\$ 3,658,153	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Under Ground Installation	\$ 18,228,858	\$ 26,780,858	\$ 28,019,278	\$ 17,497,608	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Communications	\$ 26,400	\$ 5,400	\$ 4,050	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Capital Projects	\$ 33,461,648	\$ 49,723,759	\$ 45,401,897	\$ 24,412,696	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Debt Service Expenditures										
Principal payment - Bridge Loan	\$ 60,000,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Principal payment - Bond	\$ -	\$ -	\$ 1,525,000	\$ 1,595,000	\$ 1,675,000	\$ 1,760,000	\$ 1,855,000	\$ 1,950,000	\$ 2,060,000	\$ 2,185,000
Interest Expenses - bond	\$ -	\$ 5,990,788	\$ 10,973,113	\$ 10,902,613	\$ 10,820,863	\$ 10,734,988	\$ 10,644,613	\$ 10,549,488	\$ 10,438,938	\$ 10,311,588
Interest Expenses - Bridge Loan	\$ 1,350,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Issuance Expenses - Bond	\$ 2,233,275	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Issuance Expenses - Bridge Loan	\$ 660,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Trustee Fees	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000
Total Debt Service	\$ 64,246,275	\$ 5,993,788	\$ 12,501,113	\$ 12,500,613	\$ 12,498,863	\$ 12,497,988	\$ 12,502,613	\$ 12,502,488	\$ 12,501,938	\$ 12,499,588
Total	\$ 99,512,429	\$ 57,385,599	\$ 59,610,612	\$ 38,482,468	\$ 14,013,863	\$ 14,012,988	\$ 14,017,613	\$ 14,017,488	\$ 14,016,938	\$ 14,014,588
Change	\$ 108,821,910	\$ (44,226,903)	\$ (45,793,220)	\$ (24,467,468)	\$ 1,137	\$ 2,012	\$ (2,613)	\$ (2,488)	\$ (1,938)	\$ 412
Beginning Fund Balance	\$ 6,117,415	\$ 114,939,325	\$ 70,712,422	\$ 24,919,202	\$ 451,733	\$ 452,870	\$ 454,882	\$ 452,269	\$ 449,781	\$ 447,843
Ending Fund Balance	\$ 114,939,325	\$ 70,712,422	\$ 24,919,202	\$ 451,733	\$ 452,870	\$ 454,882	\$ 452,269	\$ 449,781	\$ 447,843	\$ 448,255

Assumptions:

Revenue:

- Utility User Tax:** This is the revenue from City's utility tax that will be used to repay the bond.
- City of Detroit Admin Fees:** City has agreed to pay 15% of the electricity operating cost as an admin fee. PLA estimated the number of lights available during the pilot program are 10,000 and 20,000 for the first two years
- Bridge Loan Proceeds:** PLA will initially borrow \$60 million to start the project. The loan will be paid as soon as the \$149 Million bond is issued. The loan will have interest rate equal to 1 month LIBOR index plus 16% margin. (estimated 3%)
- Bond Proceeds:** This assumption is based on PLA will sell \$149 million in bonds by June 15, 2014. This will be repaid through Utility user tax of \$12.5M per year for 30 years. The bond is a 30 year bond issue and carries an interest rate ranging from 4 to 8 percent. The bond analysis was prepared by Robert W. Baird & Co.
Note: City will be paying all operating and electricity cost

Administrative Budget

- Salaries & Benefits:** These expenditures are based on the number of employees that PLA will utilize.
- Insurance:** Consist of Officers and Directors, Liability and umbrella insurance.
- Auto Expenses:** Consist of the employee parking and auto allowance
- Professional Fees:** Consist of accounting, auditing, legal and public relation professionals
- Occupancy:** Consist of rent and repairs & maintenance of the PLA office
- Office:** Consist of office expenses
- Conferences & Meetings:** Board and staff meeting.
- Others:** All other unexpected expenses

Capital Project Expenditures:

Estimated total cost of the project will be \$153 Million

Debt Service Expenditures:

Bridge loan in the amount of \$60 million which will paid within a year with an estimated interest of \$1.35M.
Bond will be issued 1st quarter of fiscal year 2015. The first principal payment is scheduled on July 2016 and the first interest payment is January 2016.
Estimated trustee and others fees of \$3,000 per annum.

PUBLIC LIGHTING AUTHORITY OF DETROIT
BALANCE SHEET
JULY 31, 2013

ASSETS

Cash	\$ 1,029,411
Employee Advances	20,000
Total Assets	<u>\$ 1,049,411</u>

LIABILITIES & FUND BALANCE

LIABILITIES	
Accounts Payable	\$ 29,091
Other Payables	-
Total Liabilities	<u>\$ 29,091</u>
FUND BALANCE	
Non-spendable	\$ -
Unassigned	1,020,320
Total Fund Balance	<u>\$ 1,020,320</u>
Total Liabilities & Fund Balance	<u>\$ 1,049,411</u>

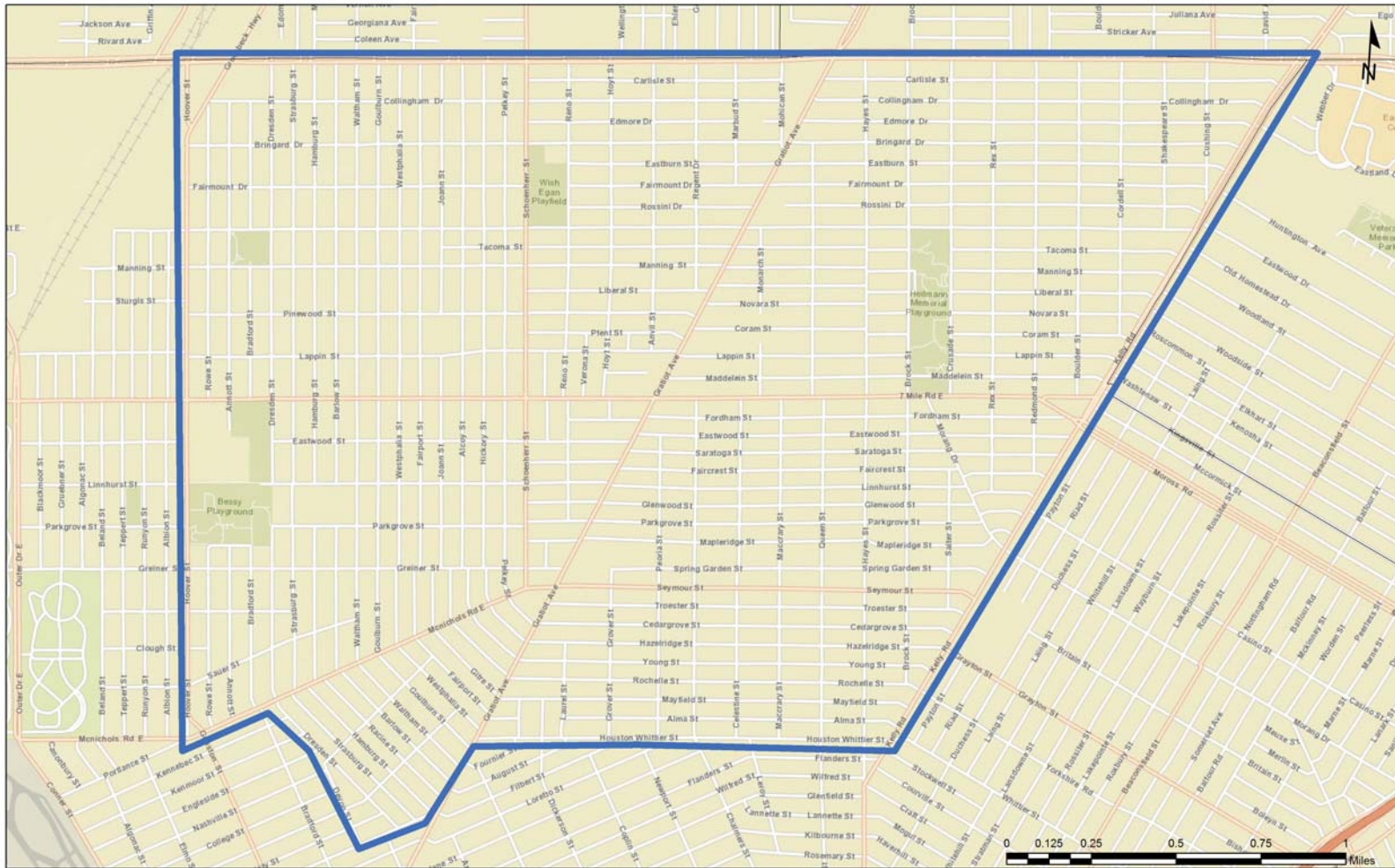
PUBLIC LIGHTING AUTHORITY OF DETROIT
STATEMENT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCE
FOR THE ONE MONTH ENDED JULY 31, 2013

	<u>CURRENT</u>	<u>YEAR-TO-DATE</u>
REVENUE:		
Utility User Tax Revenue	\$ -	\$ 1,200,000
	<hr/>	<hr/>
Total Revenue	\$ -	\$ 1,200,000
EXPENDITURES:		
Salaries & Wages	\$ 4,360	\$ 4,360
Fringe Benefits	338	338
Auto Expenses	518	518
Bank Charges	75	110
Occupancy	150	150
Office Expenses	608	608
Legal Fees	28,377	101,444
Public Relation Services	7,600	56,350
Secretarial Services	1,038	1,770
Trustee Fees	2,500	2,500
Relocation Expenses	-	10,000
Telephone & Internet	1,532	1,532
	<hr/>	<hr/>
Total Expenditures	\$ 47,097	\$ 179,680
Change in Fund Balance	\$ (47,097)	\$ 1,020,320
Beginning Fund Balance	1,067,417	-
	<hr/>	<hr/>
Ending Fund Balance	\$ 1,020,320	\$ 1,020,320

Exhibit 2

Pilot Area Maps

East PLA Pilot Area



West PLA Pilot Area

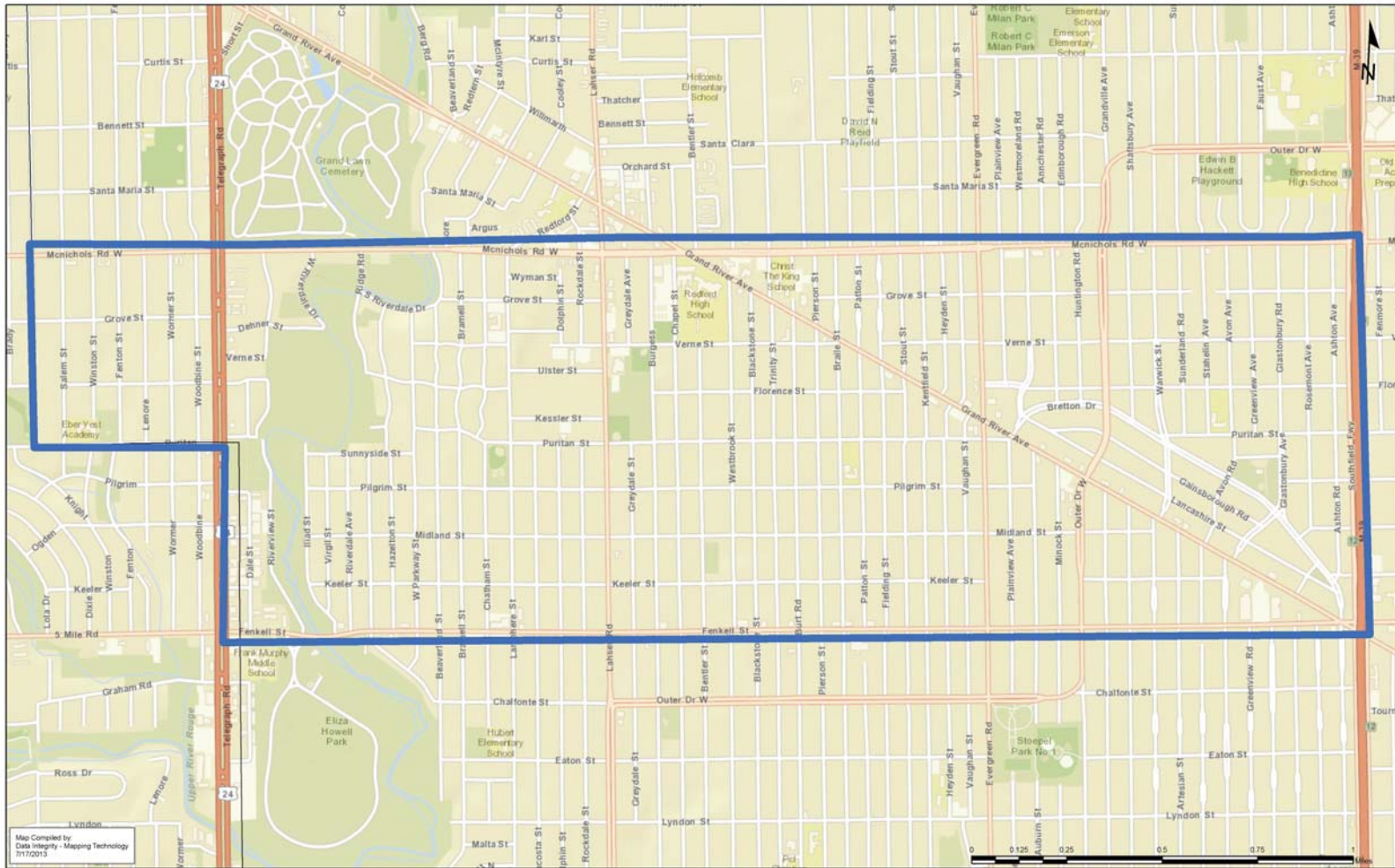


EXHIBIT 6.2

(O&M Agreement)

INTERLOCAL AGREEMENT

BETWEEN

THE CITY OF DETROIT

AND THE

PUBLIC LIGHTING AUTHORITY

FOR THE

**OPERATION, MAINTENANCE AND MANAGEMENT
OF A
PUBLIC LIGHTING SYSTEM**

The following recitals are made regarding this interlocal agreement between City of Detroit, a Michigan municipal corporation (the “City”), and the Public Lighting Authority, a Michigan municipal corporation (the “Authority”, together with the City, the “Parties” and each a “Party”):

WHEREAS, the City has properly incorporated the Authority pursuant to the Michigan Municipal Lighting Authority Act, 2012 PA 392, MCL 123.1261 *et seq.* (“Act 392”) for the purpose of providing an equitable and reasonable method and means of financing, operating, and maintaining a lighting system in sufficient quantities within the City; and

WHEREAS, Act 392 and the Urban Cooperation Act, 1967 PA 7, MCL 124.501 *et seq.*, each authorize interlocal public agency agreements between a city and a public lighting authority; and

WHEREAS, the City and the Authority have previously entered into an agreement for the financing and construction of a Public Lighting System (as amended, the “Construction and Financing Interlocal Agreement”);

WHEREAS, the City and the Authority desire to enter into an agreement for the purposes of defining the roles and responsibilities of each of the Parties with respect to the operation, maintenance and management of the System within the City for the benefit of residents of and visitors to the City; and

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1 Definitions. As used in this interlocal agreement:

“Act 392” has the meaning set forth in the Recitals to this Agreement.

“Agreement” means this Interlocal Agreement for the Operation, Maintenance and Management of a Public Lighting System by and between the City and the Authority.

“Approving Entities” shall have the meaning set forth in Section 4.3.

“Certificate of Completion” means a certification in substantially the form attached hereto as Exhibit A, issued by the Authority that all construction, improvement, enlargement, reduction or extension of a geographically-specified portion of the System has been completed pursuant to the Construction and Financing Interlocal Agreement and the Lighting Plan.

“City Council” means the legislative body of the City of Detroit, established by §4-101 of the 2011 City Charter.

“Construction and Financing Interlocal Agreement” has the meaning set forth in the Recitals to this Agreement.

“CPI” means the Consumer Price Index for All Urban Consumers, Detroit-Ann Arbor-Flint, all items, (1982-84=100), published by the Bureau of Labor Statistics of the United States Department of Labor.

“Effective Date” has the meaning set forth in Section 7.1.

“EM Act” means the Local Financial Stability and Choice Act, 2012 PA 436, MCL 141.1541 – 1575

“Emergency Manager” means the emergency manager appointed by the Governor of Michigan pursuant to the EM Act.

“Extraordinary Maintenance” means any non-routine maintenance of any System component(s), requiring replacement or repair of any System component(s) prior to the natural expiration of its expected useful life due solely to the criminal acts of third parties regardless of whether such acts are actually prosecuted or the offenders identified or arrested.

“Financing Costs” shall have the meaning given to such term in the Construction and Financing Interlocal Agreement.

“Improvements” means all of the work, investments, and activities made or conducted, in whole or in part, on the construction, improvement, enlargement, reduction or extension of the System as contemplated by the Construction and Financing Interlocal Agreement or Act 392.

“Industry Practices” means the practices, methods, techniques, standards and acts employed in the public lighting industry for the operation and maintenance of a public lighting system similarly sized to the System.

“Lighting Plan” means the plan required under MCL §123.1277.

“Managed System Area” shall mean that geographic portion of the System that has been constructed, improved, enlarged, reduced, or extended pursuant to the Lighting Plan, and the responsibility to manage, operate, and maintain such upgraded area has been assumed by Authority pursuant to Section 3.2.

“Mayor” means the executive of the City of Detroit, established by §5-101 of the 2011 City Charter.

“Overhead-Fed Streetlight” means any streetlight in the Managed System Area, which receives electricity directly from wires that travel above ground.

“Quarterly Statement” has the meaning set forth in Section 4.2.

“Services” shall mean all actions necessary to operate, maintain, and manage the Managed System Area required under this Agreement.

“Streetlight” means any Overhead-Fed Streetlight or Underground-Fed Streetlight.

“System” means all of the luminaires, lamps, photocells, brackets, conductors, lights, poles and foundations, ballasts, circuits, transformers, conduits, underground equipment that are not part of the distribution system, and other equipment and appurtenances, including any easements or other interests in real property, commencing at the point of connection to the electric distribution system and continuing to the luminaire, necessary for the operation of the street lights within the City. This definition specifically excludes the Mistersky Power Plant, any distribution assets of the City or DTE Energy, and any transmission assets of the City or DTE Energy, including any and all wires, distribution poles, transmission poles, substations, and transformers used for the distribution or transmission of electricity.

“Underground-Fed Streetlight” means any streetlight in the Managed System Area, which receives electricity directly from wires that travel below ground.

“Utility Revenues” shall have the meaning given to such term in the Construction and Financing Interlocal Agreement.

Section 1.2 Captions and Headings. The captions, headings, and titles in this Agreement are intended as a convenience and not intended to have any substantive meaning or be interpreted as part of this Agreement.

Section 1.3 Plural Terms. A term or phrase in this Agreement importing the singular number only may extend to and embrace the plural number and every term or phrase importing the plural number may be applied and limited to the singular number.

ARTICLE II ASSURANCES

Section 2.1 Assurances by the City. The City hereby makes the following assurances, representations, and warranties:

- (a) Except as contemplated herein, that all necessary permissions, approvals, reviews, or any other forms of acquiescence have been obtained and conducted authorizing the City to enter into this Agreement.
- (b) To the extent permitted by law and any agreement to which the City is a party, the City shall use commercially reasonable efforts to provide all information within its control requested by the Authority to the Authority necessary to effectuate the purposes of this Agreement.

Section 2.2 Assurances by the Authority. The Authority hereby makes the following assurances, representations, and warranties:

- (a) All funds paid by the City to the Authority pursuant to this Agreement shall be expended and accounted for according to accounting standards for governmental entities.
- (b) The Authority shall take reasonable actions to minimize the costs associated with this Agreement, including future System operating costs, while providing the levels of operation and maintenance set forth herein.
- (c) The Authority shall perform, or cause to be performed, all Services required under this Agreement with the typical level of skill as is customary in the public lighting industry.
- (d) To the extent permitted by law and any agreement to which the Authority is a party, the Authority shall use commercially reasonable efforts to provide all information within its control requested by the City to the City necessary to effectuate the purposes of this Agreement.

**ARTICLE III
OPERATION, MAINTENANCE, AND MANAGEMENT OF A PUBLIC LIGHTING
SYSTEM**

Section 3.1 Operation and Management. Subject to the terms of Section 5.2 and the availability of funding from the City, the Authority shall commence and perform the Services for the Managed System Areas in accordance with Section 3.2. The City shall purchase all electricity necessary to power the System from a third-party power provider. The Authority is not obligated to provide or otherwise arrange for the purchase of electricity on the City's behalf under this Agreement.

Section 3.2 Certificate of Completion. The commencement of the Services by the Authority of the Managed System Area shall be effectuated by the delivery of a Certificate of Completion to the City. The Authority shall deliver such Certificate of Completion within thirty (30) calendar days of acceptance of the work in such area as required by the Lighting Plan and in conformity with the Construction and Financing Interlocal Agreement. The City shall be responsible for all activities required for the proper operation, maintenance, and management of the portion of the System that are not included in any Managed System Area. The Authority's responsibility to provide the Services is only applicable to the Managed System Area. Upon the delivery of a Certificate of Completion, the obligation to operate and maintain any real property, facilities, equipment, or other personal property held and used by the City necessary for the Services in the Managed System Area, including, but not limited to, any part of the System, shall be automatically assumed by the Authority without the requirement of further action by the

Parties. At the request of the City, the Authority shall execute documents that are reasonably necessary to evidence such assumption.

Section 3.3 Service Requirements. The Authority shall ensure that the luminaires, lamps, photocells and lights in the Managed System Area are in operation and emitting light from daily dusk, defined as the half-hour after sunset, to dawn, defined as the half-hour before sunrise, in accordance with the service levels set forth in Section 3.7.

Section 3.4 Outage Reporting System. The Authority shall establish a telephonic and internet reporting system, such that individuals may report outages of any System components in a Managed Service Area to the Authority, and the Authority shall use commercially reasonable efforts to ensure that the individuals that live or work in the geographic area of the Managed Service Area are aware of such reporting system.

Section 3.5 Maintenance.

3.5.1 Routine Maintenance. The Authority shall conduct routine maintenance on an on-going basis according to Industry Practices to ensure that, at a minimum, the System provides the service levels described in Section 3.7. The Authority shall plan and budget for equipment replacement and upgrades based on the expected useful life of System equipment and components based on manufacturer recommendations.

3.5.2 Extraordinary Maintenance. Subject to the payment of funds under this Agreement in sufficient amounts, the Authority shall perform Extraordinary Maintenance as necessary to ensure that, at a minimum, the System provides the service levels described in Section 3.7. The Authority shall make such personnel and equipment available as necessary to respond to and remediate any damage to or failure of the System or any individual System component on an as-needed basis. In the event any portion or individual components of the System are damaged due to the criminal, intentional, or negligent acts of a third party, Authority may, but is not required to, seek such recovery in its own name from such responsible parties.

3.5.3. Maintenance Resulting from Vegetation. In the event that any System asset in the Managed System Area becomes non-functional due to the City's failure to maintain the vegetation on City property, the Authority shall remain obligated to make the repairs it is required to make under this Agreement, provided that the City shall reimburse the Authority for the costs directly related to such maintenance, including the costs of any necessary vegetation maintenance in connection therewith, which payment shall be in addition to the fees and costs set forth in Article IV, upon the City's receipt of invoices therefor and commercially reasonable documentation showing the required maintenance was due to the City's failure to maintain such vegetation.

Section 3.6 Delegation of Responsibilities. Subject to the written consent of the City, which shall not be unreasonably withheld, the Authority can delegate any or all of its responsibilities under this Agreement to a third party contractor. The City shall have fifteen (15) business days from the date of submission of a notice of intent to delegate responsibility under

this Section 3.6 to consent or not to consent to such delegation. If the City does not act within fifteen (15) business days, the City shall be deemed to have consented to such delegation.

Section 3.7 Service Levels. The Authority shall repair any damaged individual System assets, or components thereof, that have been reported as non-functioning within the standard timeframe for such repair, which standard timeframe shall be the standard of DTE Energy for the southeastern Michigan region but in no event more than seven (7) days, of receiving such report of non-functionality, provided that if such damage cannot be reasonably repaired within such timeframe, then the Authority shall commence such repair within such timeframe and diligently prosecute such repairs until completion.

Section 3.8 Asset Management. The Authority shall operate and maintain the assets of the Managed System Area according to Industry Practices. Inspections and testing of the System components shall occur no less than once every six years. Structural inspections and risk assessments will be conducted on a rotating basis of distinct geographical portions of the System every three years. The Authority shall maintain an asset management database that includes, at minimum, the following information: the location and installation dates of all poles and components; the results of any inspections, testing, and risk assessments of the System components; the expected useful life of each of the components of an individual pole; the projected inspection and testing date of each component; the type and technical detail of each component; and an incident record of each occurrence that requires Extraordinary Maintenance, the type and costs of repairs performed, and any third parties that may be liable.

**ARTICLE IV
BUDGETS AND FINANCING**

Section 4.1 Operation and Management Fees and Costs. The City shall pay the Authority the following amounts for the Services, provided that in no event, shall the City be obligated to pay more in any given year than \$8,024,000 (the “Annual Cap Amount”), excluding any payments for Extraordinary Maintenance:

- (a) Operations and Maintenance Costs: \$9.62 per month per Overhead-Fed Streetlight, and \$17.66 per month per Underground-Fed Streetlight.
- (b) Extraordinary Maintenance Costs: The actual costs of any Extraordinary Maintenance performed during the second previous quarterly period, such that the City will pay the Extraordinary Maintenance costs performed for the period of January through March of any year on the Quarterly Statement for the July through September quarter of that year.
- (c) Administrative Costs: One Hundred and Twenty-Six Thousand and Two-Hundred and Fifty Dollars (\$126,250) per month for the operation of the Authority.

The amounts to be paid under this Section 4.1 shall increase annually by the lesser of (i) three percent (3%) or (ii) the percentage increase in the CPI over the prior year.

Section 4.2 Calculation of Quarterly Costs. No later than thirty (30) days prior to the first date of each fiscal quarter (defined as January 1, April 1, July 1 and October 1 of each

calendar year), the Authority shall submit a statement to the City estimating the costs to be paid by the City for such fiscal quarter pursuant to Section 5.1 (the “Quarterly Statement”). The Quarterly Statement shall include detail of the fees for such fiscal quarter, including the number and type of Streetlights expected to be serviced, broken out by each of the cost categories in substantially the form provided in Exhibit B.

Section 4.3 Adjustments to Quarterly Statements. To the extent the Authority deems it necessary to adjust any of the Quarterly Statements to address a change in circumstances outside the Authority’s reasonable control, it shall submit such revisions to the City Council and the Mayor or their respective lawful designees (the “Approving Entities”) for their approval, which approval shall not be withheld, except in the reasonable discretion of the Approving Entities. The Approving Entities shall have fifteen (15) business days from the date of submission of the revisions under this Section to approve or disapprove the revision. If either of the Approving Entities does not to disapprove the revision within fifteen (15) days, the revision shall be deemed approved.

Section 4.4 Limited Obligations. Nothing in this Agreement, including but not limited to this Article IV, shall require the Authority to pay the costs associated with the performance of any Services or other obligations under this Agreement from Utility Revenues.

**ARTICLE V
PAYMENT**

Section 5.1 Payments.

Section 5.1.1 Budgeted Payments. At the beginning of each fiscal quarter (which shall be January 1st, April 1st, July 1st, October 1st of each calendar year), the City shall pay the Authority the amount for such quarter set forth in the Quarterly Statement provided pursuant to Article IV, such that the City shall pay on January 1, 2014 the budgeted amount for January, February and March 2014. The City shall pay such payments by check, payable to the Public Lighting Authority, which must be received by the Authority by the fifth (5th) business day following the beginning of the fiscal quarter. Any payment not received by the fifth (5th) day following the beginning of a fiscal quarter shall be subject to a ten percent (10%) late payment penalty.

Section 5.1.2 Quarterly Reconciliation. Within ten (10) days after the end of each fiscal quarter (which shall be March 31st, June 30th, September 30th and December 31st of each calendar year), except for the fiscal quarter coinciding with the Authority’s fiscal year-end, and within thirty (30) days after the Authority’s fiscal year-end, the Authority shall provide to the City a detailed reconciliation of the actual out-of-pocket costs and expenses incurred by the Authority in the performance of the Services for such fiscal quarter based on the actual number of Streetlights serviced. If the reconciliation discloses an overpayment by the City for the previous fiscal quarter, the Authority shall credit the difference to the City against the next amounts that may become due under this Agreement. If the reconciliation shows an underpayment by the City for the previous fiscal quarter, the City shall remit the difference to the Authority within fifteen (15) business days of such reconciliation pursuant to the procedures set forth in Section 5.1.1; provided, however, that, in no event, shall the City be obligated to pay

more in any given year than \$8,024,000, excluding any payments for Extraordinary Maintenance. In no event shall the Authority perform any Services under this Agreement once the cumulative costs for a given year submitted by the Authority in the Quarterly Statements for such one year period equal the Annual Cap Amount unless the City has agreed in writing to pay the Authority for such costs above the Annual Cap Amount pursuant to the payment procedure set forth in this Agreement or the Authority has otherwise identified and earmarked available sources of revenue to pay for those Services in excess of the Annual Cap Amount. In the event that the City determines that it, in good faith, believes that the reconciliation does not fully and accurately set out the actual out-of-pocket expenses of the Authority that the City is responsible to reimburse pursuant to this Agreement, it shall provide notice to the Authority within fifteen (15) business days of receipt of the reconciliation, and such dispute will be reconciled pursuant to the procedures set forth in Article X. If the City provides notice of such dispute, the City shall remain obligated to pay any undisputed amounts required pursuant to this Section 5.1.3, and the City shall deposit the maximum disputed amount in escrow pending resolution of the dispute.

Section 5.2 No Service Without Payment. In the event that the City does not make a payment pursuant to Section 5.1 or otherwise due hereunder, the Authority shall not perform the Services until such time as the City has made such payment; provided, however, (i) if there is a good-faith dispute about the amount owed pursuant to the reconciliation procedure set forth in Section 5.1.2, then the City’s delivery of the contested amount to escrow rather than the Authority pursuant to the terms herein shall not permit the Authority to cease performing the Services until such time as the dispute is resolved and (ii) the Authority may perform Services following a nonpayment by the City but only if it has identified and earmarked available sources of revenue other than the Utility Revenues. In the event the City makes any payments less than the amounts included in the Quarterly Statement, as may be revised pursuant to this Agreement, the Authority is authorized to apply any payments to and continue that portion of the Services it deems to be the highest priority and is excused from providing any other Services.

Section 5.3 Other Revenues. The Authority shall not be entitled to any revenues arising from pole attachment fees, lease payments, or other payments for the use or right to attach property to any System assets.

**ARTICLE VI
DATA SHARING, ACCESS, COOPERATION, AND SYSTEM DAMAGE**

Section 6.1 Data and Information. To the extent permitted by law and any agreements to which the City is a party, the City shall provide the Authority full access to all data and information in its possession or control, which is reasonably accessible, including all data and information contained in the documents commonly known as the “series streetlight maps,” necessary to provide the Services. To the extent permitted by law and any agreements to which the Authority is a party, the Authority shall provide the City full access to all data in the Authority’s possession or control, which is reasonably accessible, reasonably related to the System.

Section 6.2 Access to Assets. The City hereby grants the Authority a license to access all facilities, assets, easements or appurtenances owned, operated, or maintained by the City’s

Public Lighting Department or any other City department necessary to provide the Services. The Authority may only use such license for the performance of its obligations pursuant to this Agreement and all activities reasonably related thereto. In using such license, the Authority shall not interfere with the City and its representatives, contractors or employees in the performance of their duties. The Authority shall permit the City full access to all facilities, assets, easements or appurtenances owned, operated, or maintained by the Authority related to the System, if any, and shall not impair access to any public rights of way.

Section 6.3 Cooperation. The Parties hereby agree to cooperate with each other to the fullest extent possible to effectuate the purposes of this Agreement.

Section 6.4 Permits. The City shall process and issue any permit(s) required under City Charter, City Code of Ordinances, or any other local regulatory requirements to the Authority, its employees, agents, or contractors within fifteen (15) business days of receiving a request for such permit(s) provided that such request includes the detail and documentation otherwise required to issue such permit; *provided, however*, that if there are any permit(s) required to conduct any work specified herein that are not within the direct control of the City, the City shall use commercially reasonable efforts to ensure that such permits are issued within a commercially reasonable timeframe. The City shall not charge a fee to the Authority for any permits, approvals, reviews, or other actions required by the City, but in the event that the City does charge a fee to the Authority, such fees can be included as a cost to be reimbursed by the City pursuant to this Agreement.

Section 6.5 System Damage. The Authority shall not be responsible for any damage to the System, or any component thereof, resulting from the criminal, intentional, or negligent acts of any third parties, except for its maintenance obligations set forth herein that are fully compensated pursuant to this Agreement. In the event any portion of the System or Improvements are damaged by the negligent acts of a third party and the City refuses or is unable to seek recovery of funds for such damage, the Authority may, but is not required, to seek such recovery in the City's name.

Section 6.6 System Status Meetings. The Parties shall meet monthly to review data and information relevant to the entire System. Such meetings shall include a review of system outages, Extraordinary Maintenance issues and updates, any outstanding financial issues, and any other issues relevant to this Agreement.

ARTICLE VII EFFECTIVE DATE, TERM, DEFAULT, TERMINATION

Section 7.1 Effective Date. This Agreement shall become effective on the later date that each of the following events have occurred: (i) the approval and execution by the City; (ii) the approval of the Agreement pursuant to the procedures set forth in the EM Act; (iii) the approval of the Agreement by resolution of the Authority; and (iv) the execution by the Executive Director of the Authority (the "Effective Date").

Section 7.2 Term. This Agreement shall commence on the Effective Date and shall continue for a period of three years. This Agreement shall automatically renew for additional three-year terms unless the non-renewing Party provides notice to the other Party of its intent not to renew no later than one year prior to the expiration date of a term. The non-renewal of the Agreement shall be approved by the same process as is required to terminate the Agreement under Section 7.5.

Section 7.3 Default.

Section 7.3.1 City Default. The City shall be in default of this Agreement if the City does not make the payments required hereunder, whether in whole or in part, including any late payment penalty authorized under Section 5.1.1, within ten (10) days after the due date set forth in Section 5.1; provided, however, that the City shall not be in default hereunder if the City is in good faith contesting the amount of such payment pursuant to Section 5.1.2.

Section 7.3.2 Authority Default. Subject to Section 5.2, the Authority shall be in default of this Agreement if the Authority fails to perform any of its obligations hereunder after the Authority has received thirty (30) days' notice of such default, provided that if such failure cannot be remedied within such thirty (30) day period, the Authority shall not be in default if it commences to remedy the default and diligently pursues the remedy to its completion.

Section 7.4 Remedies upon Default.

Section 7.4.1 Remedies for City Default. Upon the occurrence of a default by the City under Section 7.3.1, the Authority shall first satisfy itself from funds paid in advance to the Authority pursuant to Section 5.1. In the event such amounts are not sufficient to cover all payments then due to the Authority, this Agreement shall immediately terminate upon notice from the Authority, provided that if such default is cured by the City at any time during the thirty (30) consecutive days immediately following termination of this Agreement, such termination shall be deemed void and of no further force or effect, provided that the Authority shall have no obligations hereunder, financial or otherwise, during such period when the City's default remains uncured or during the 10 day grace period set forth in Section 7.3.1

Section 7.4.2 Remedies for Authority Default. Upon default by the Authority under this Article VII, the City may, at its sole option, (i) perform such obligation of the Authority without further notice, and the Authority shall reimburse the City for all costs incurred by the City in such performance, but in no event shall the Authority be required to reimburse the City any amount in excess of the amounts paid to the Authority in advance pursuant to section 5.1.1; or (ii) terminate this Agreement by providing thirty (30) days' written notice to the Authority of the City's intent to terminate, which notice shall describe in detail the Authority's default; provided that, if the default is cured by the Authority at any time during the thirty (30) day notice period, the notice shall be deemed void and of no further force or effect.

Section 7.5 Termination for Convenience. Either Party may terminate this Agreement, for any reason or no reason, with one year advance notice that is approved by a two-

thirds vote of the governing body of the Party. If the terminating Party is the City, then the approval of the Mayor is required in addition to the vote of the City Council.

**ARTICLE VIII
BOOKS, RECORDS, AND FINANCES**

Section 8.1 Books and Records. The Authority shall provide for a system of accounts for the Authority to conform to a uniform system required by law and for the auditing of the accounts of the Authority. The Authority shall obtain an annual audit of the Authority's books and records by an independent certified public accountant and report on the audit and auditing procedures in the manner provided by sections 6 to 13 of the uniform budgeting and accounting act, 1968 PA 2, MCL 141.426 to 141.433. The audit also shall be in accordance with generally accepted government auditing standards and shall satisfy federal regulations relating to federal grant compliance audit requirements. The audit shall be provided to the City within thirty (30) days of acceptance by the Board of Directors of the Authority but in no event more than one hundred and twenty (120) days following the end of the Authority's fiscal year. The City may examine the books and records of the Authority related to the Authority's finances or the System and make copies and extracts therefrom at its own expense, all during regular business hours as may be reasonably requested and reasonably agreed to by the Authority in advance.

Section 8.2 Enterprise Fund. The Authority shall maintain its books and records and its funds on an enterprise fund basis. The Authority shall not pay any net proceeds or profits to its local government, other than for services received by the Authority.

**ARTICLE IX
INDEMNIFICATION, LIABILITY, DAMAGES, NOTICE, AND INSURANCE**

Section 9.1 Indemnification. To the extent permitted by law and subject to Section 4.4, each Party shall indemnify and hold harmless the other Party and the other Party's employees, agents, directors and officers against all liability arising out of, or resulting from any third party claim, suit, action or proceeding arising out of or resulting from (i) the failure of a Party or any of its agents, employees or contractors, to comply with the terms of this Agreement or any applicable law; or (ii) any injury, loss, claim or damages arising from the actions or omissions of a Party or an agent, employee, director, officer or contractor of the Party.

Section 9.2 Limitation of Liability; No Special Damages. Notwithstanding any other provision of this Agreement, neither Party shall be liable to the other for any damages for loss of profits, loss of revenues, loss of goodwill, loss of anticipated savings, loss of data or cost of purchasing replacement services, or any indirect, incidental, special, consequential, exemplary or punitive damages arising out of the performance or failure to perform under this Agreement. Nothing in this Agreement shall be construed as a waiver of governmental immunity, where applicable.

Section 9.3 Notice of Claims. If either Party becomes aware of any injury, damages, claim, demand, action, legal proceeding, or other loss that may involve the other Party, whether

directly or indirectly, it shall inform the other Party in writing within fifteen (15) business days of receiving knowledge of the injury, damages, claim, demand, action, legal proceeding, or other loss.

Section 9.4 Insurance. At all times during the term of this Agreement, each Party shall procure and maintain, at its sole cost and expense, the following types and amounts of insurance coverage issued by an insurance company reasonably acceptable to the other Party, unless otherwise agreed to by the Parties in writing:

- (a) Commercial general liability, covering bodily and personal injury, property damage, and contractual liability insuring the activities of the Party under this Agreement, in a minimum amount of One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000) in the annual aggregate, adding the other Party as an additional insured with respect to this Agreement.
- (b) Commercial automobile liability with limits of One Million Dollars (\$1,000,000) per claim and Five Million Dollars (\$5,000,000) in the annual aggregate, adding the other Party as an additional insured with respect to this Agreement.
- (c) Worker's compensation insurance in amounts required in accordance with applicable laws.
- (d) Errors and Omissions/Professional Liability with limits no less than One Million Dollars (\$1,000,000) per claim and Three Million Dollars (\$3,000,000) in the annual aggregate.

The insurance required of the City by this Agreement in the amounts, with the coverage and other features herein required, may be supplied by a fully funded self-insurance program of the City or a self-insurance pool in which the City is a participant; provided that such self-insurance program or pool will provide the full coverage required herein.

**ARTICLE X
DISPUTES**

Section 10.1 Informal Dispute Resolution. The Authority and the City will attempt to settle any dispute through informal good faith negotiations. The dispute will be escalated to appropriate senior level management of the Parties, if necessary. Except as otherwise set forth herein, if such managers are unable to resolve the dispute within fifteen (15) business days of referral (or any other mutually agreed upon timeframe), the Parties will seek resolution of such disputes pursuant to Section 10.2.

Section 10.2 Jurisdiction and Venue. Except as otherwise set forth herein, in the event of any disputes between the Parties over the meaning, interpretation, or implementation of the terms, covenants, or conditions of this Agreement, the matter under dispute, unless resolved any the Parties pursuant to Section 10.1, shall be submitted to the courts of the State of Michigan.

**ARTICLE XI
MISCELLANEOUS**

Section 11.1 Amendment. This Agreement can be modified or amended only by written agreement executed and approved by both Parties in the same manner as required for the initial effectiveness of the Agreement, as applicable.

Section 11.2 Heirs, Successors, and Assigns. All provisions of this Agreement are and will be binding on the heirs, executors, administrators, personal representatives, successors and assigns of the Authority and the City.

Section 11.3 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 11.4 Governing Law. The internal laws of the State of Michigan will control in the construction and enforcement of this Agreement.

Section 11.5 Intentionally Omitted.

Section 11.6 Entire Agreement. This Agreement sets forth the entire agreement between the Parties and supersedes any and all prior agreements or understandings between them related to the subject matter of this Agreement. It is further understood and agreed that the terms and conditions of this Agreement are contractual and are not a mere recital and that there are no other agreements, understandings, contracts, or representations between the Parties in any way related to the subject matter of this Agreement, except as expressly stated in this Agreement.

Section 11.7 Notices. Any and all correspondence or notices required, permitted, or provided for under this Agreement to be delivered to any Party shall be sent to that Party by first class mail. All such written notices shall be addressed to each other Party's signatory to this Agreement. All correspondence shall be considered delivered to a Party as of the date that the notice is deposited with sufficient postage with the United State Postal Service. A notice of termination shall be sent via certified mail to the address included with each Party's signature to this Agreement. Notices shall be mailed to the following addresses:

If to the Authority: Public Lighting Authority
65 Cadillac Square, Ste. 2900
Detroit, MI 48226

If to City: City of Detroit
Office of the Mayor
2 Woodward Avenue, 11th Floor
Detroit, MI 48226

With a copy to: City of Detroit
Office of the Emergency Manager
Coleman A. Young Municipal Center
2 Woodward Ave.
11th Floor
Detroit, MI 48226
Attn: Sonya Mays

Section 11.8 Force Majeure. Any delay or failure in the performance by either Party hereunder shall be excused if and to the extent caused by the occurrence of a Force Majeure. For purposes of this Agreement, Force Majeure shall mean a cause or event that is not reasonably foreseeable or otherwise caused by or under the control of the Party claiming Force Majeure, including acts of God, fires, floods, explosions, riots, wars, hurricane, sabotage terrorism, vandalism, accident, restraint of government, governmental acts, injunctions, labor strikes, other than those of the claiming Party or its suppliers, that prevent the claiming Party from furnishing the materials or equipment, and other like events that are beyond the reasonable anticipation and control of the Party affected thereby, despite such Party's reasonable efforts to prevent, avoid, delay, or mitigate the effect of such acts, events or occurrences, and which events or the effects thereof are not attributable to a Party's failure to perform its obligations under this Agreement.

Section 11.9 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

Section 11.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto. No Party to this Agreement may assign its rights under this Agreement to any other person, without obtaining the written permission of the other Parties in advance.

Section 11.11 Emergency Manager Approval. If the City is under the management of an Emergency Manager pursuant to the EM Act, at the time of a decision for which the approval of the City, the City Council or the Mayor is required, then the approval of the Emergency Manager is hereby substituted in place of the approval of the City, the City Council or the Mayor, as applicable.

Section 11.12 No Third Party Beneficiaries. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the Parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of this Agreement it being the intention of the Parties that this Agreement and the transactions contemplated hereby shall be for the sole and exclusive benefit of such Parties or such successors and permitted assigns.

[SIGNATURE PAGE FOLLOWS]

This Agreement is executed by the Parties on the dates indicated below.

CITY OF DETROIT

Dated: _____

By: _____

KEVYN D. ORR

Its: Emergency Manager

PUBLIC LIGHTING AUTHORITY

Dated: _____

By: _____

ODIS JONES

Its: Executive Director

EXHIBIT A

Form Certificate of Completion

Please see attached.

**PUBLIC LIGHTING AUTHORITY
CERTIFICATE OF COMPLETION**

In compliance with the Lighting Plan of the Public Lighting Authority of Detroit (“PLA”), the Improvements to the System have been completed for the following geographic area and shall now become a Managed System Area of the PLA:

Zip Code	
Date of Acceptance	
Number of Street Lights	
Northern Boundary	
Southern Boundary	
Western Boundary	
Eastern Boundary	

In addition to the Street Lights located within the Managed System Area, the following operation, maintenance, and management of the following property, facilities, or other System assets, including any easements or rights-of-way, shall also be assumed by the PLA:

Type of Asset	
General Location	

Type of Asset	
General Location	

Type of Asset	
General Location	

Type of Asset	
General Location	

A Map of the Managed System Area is attached to this Certificate of Completion as Exhibit A.

Submitted and certified by:

Signature

Date

Name

Title

The contents of this document may be amended from time to time by written mutual consent of the Parties.

EXHIBIT B
Public Lighting Authority
Operations and Maintenance
Quarterly Statement

Table 1: Summary of Estimated Costs For This Quarter	
Cost Category	Total
Operations and Maintenance Costs (See Table 2)	\$[]
Extraordinary Maintenance Costs (See Table 3)	\$[]
Administrative Costs (See Table 4)	\$[]
Estimated Quarterly Total Costs	\$[]

Table 2: Estimated Operations and Maintenance Costs			
Period	Estimated Number of Streetlights	Per Streetlight Cost	Total
Month 1			
<i>Overhead-Fed Streetlight</i>	[]	\$[]	\$[]
<i>Underground-Fed Streetlight</i>	[]	\$[]	\$[]
<i>Overhead-Fed Streetlight (LED)</i>	[]	\$[]	\$[]
<i>Underground-Fed Streetlight (LED)</i>	[]	\$[]	\$[]
Month 2			
<i>Overhead-Fed Streetlight</i>	[]	\$[]	\$[]
<i>Underground-Fed Streetlight</i>	[]	\$[]	\$[]
<i>Overhead-Fed Streetlight (LED)</i>	[]	\$[]	\$[]
<i>Underground-Fed Streetlight (LED)</i>	[]	\$[]	\$[]
Month 3			
<i>Overhead-Fed Streetlight</i>	[]	\$[]	\$[]
<i>Underground-Fed Streetlight</i>	[]	\$[]	\$[]
<i>Overhead-Fed Streetlight (LED)</i>	[]	\$[]	\$[]
<i>Underground-Fed Streetlight (LED)</i>	[]	\$[]	\$[]
Operations and Maintenance Costs – Quarterly Subtotal			\$[]

Table 3: Estimated Extraordinary Maintenance Costs			
Period	Estimated Number of Streetlights	Per Streetlight Cost (as determined in Table 3a)	Total
Month 1	[]	\$[]	\$[]
Month 2	[]	\$[]	\$[]
Month 3	[]	\$[]	\$[]
Extraordinary Maintenance Costs – Quarterly Subtotal			\$[]

Table 3a: Prior Six Month Extraordinary Maintenance Per Streetlight Costs			
Period	Total Actual Cost of Extraordinary Maintenance	Actual Number of Streetlights Serviced	Per Streetlight Total
Prior Month 1	[]	[]	\$[]
Prior Month 2	[]	[]	\$[]
Prior Month 3	[]	[]	\$[]
Prior Month 4	[]	[]	\$[]
Prior Month 5	[]	[]	\$[]
Prior Month 6	[]	[]	\$[]
Prior Six-Month Average Extraordinary Maintenance Costs (Sum of prior six months divided by six)			\$[]

Table 4: Administrative Costs	
Period	Total
Month 1	\$[]
Month 2	\$[]
Month 3	\$[]
Administrative Costs – Quarterly Subtotal	
	\$[]

EXHIBIT 6.3

(Trust Agreement)

AMENDED AND RESTATED TRUST AGREEMENT

THIS AMENDED AND RESTATED TRUST AGREEMENT is made and entered into as of _____, 2013, by and among: the Public Lighting Authority, a Michigan municipal corporation ("*Authority*"); the City of Detroit, a Michigan municipal corporation ("*City*"); the Michigan Finance Authority (the "*MFA*") and Wilmington Trust, National Association, a national banking association lawfully authorized to conduct business in the State of Michigan ("*Trustee*"). Collectively, the signatories are referred to as the Parties, and individually, as a Party. Capitalized terms used in this Amended and Restated Trust Agreement and not otherwise defined shall have the meanings given to them in their respective contexts under the laws of the State of Michigan (the "*State*") or under such other authority as otherwise indicated herein.

RECITALS

WHEREAS, the Michigan Municipal Lighting Authority Act, 2012 PA 392, MCL §§123.1261 *et seq.* ("*Act 392*"), authorizes municipalities to create public lighting authorities for the purposes of providing an equitable and reasonable method and means of financing, operating, and maintaining a municipally owned lighting system to supply lighting in sufficient quantities to a city; and

WHEREAS, the City has duly incorporated the Authority pursuant to Act 392 for the purpose of constructing, improving, enlarging, reducing, extending, financing, operating or maintaining the City's street lighting system (the "*System*"); and

WHEREAS, the Emergency Manager of the City (the "*Emergency Manager*"), appointed under the Local Financial Stability and Choice Act, 2012 PA 436, MCL §§141.1541 *et seq.*, has entered Order No. 6 approving the initial funding for the Public Lighting Authority ("*Order No. 6*"); and

WHEREAS, the Authority and the City have entered into an Interlocal Agreement for the Construction and Financing of a Public Lighting System, pursuant to Act 392 (the "*Contract*"); and

WHEREAS, the Authority is authorized to issue bonds of the Authority, pursuant to appropriate action of its Board of Directors (the "*Authority Board*"), and to enter into Ancillary Facility, also as referred to herein "Ancillary Facilities" (as defined in Act 392) with respect to the bonds, to provide the funds therefor, payable from proceeds described in the resolution authorizing the bonds, which proceeds may include revenues pledged directly to support the bonds of the Authority pursuant to the Contract, specifically, the revenues to be received by the City pursuant to the City Utility Users Tax Act, 1990 PA 100, MCL §§141.1151 *et seq.* ("*Act 100*"), to finance certain improvements to the System, together with all related appurtenances and attachments (the "*Improvements*"); and

WHEREAS, on _____, 2013, the Authority Board adopted a resolution (the "*Bond Resolution*") authorizing the issuance of bonds in the principal amount of not to

exceed \$ _____ (the “*Authority Bonds*”), authorizing the Authority to enter into an Ancillary Facility (as defined in Act 392) with respect to the Authority Bonds (together with the Authority Bonds, the “*Bonds*”), to pay the costs of the Improvements, authorizing certain officers to negotiate the terms and enter into agreements as may be necessary to accomplish the sale and delivery of the Bonds, and to take such other actions and make such other determinations as may be necessary or desirable to accomplish the sale and delivery of the Bonds; and

WHEREAS, before the pledge of revenues for payment of the Bonds and the Contract become effective, the Authority shall, among other things, enter into an agreement with the City, the MFA and the Trustee to provide for the collection of utility tax revenues pursuant to Act 100 (the “*Utility Revenues*”), and to direct payment of those Utility Revenues to the Trustee to be held in trust for the benefit of bondholders of the Bonds and any additional bonds, Ancillary Facilities or obligations issued by the Authority (the “*Additional Obligations*”, together with the Bonds, the “*Obligations*”, and each singularly, an “*Obligation*”), or to be used by the Authority for lawful purposes of the Authority, provided that not more than \$12,500,000 of the Utility Revenues may be used to satisfy the Obligations or to further other lawful purposes under Act 392 as directed by the Authority; and

WHEREAS, the Emergency Manager has directed all public utilities and resale customers that collect Utility Revenues pursuant to Act 100 (the “*Customers*”) to remit such revenues directly to the Trustee for deposit in the Trust Fund; and

WHEREAS, the Authority, the City and the Trustee have previously entered into a Trust Agreement, effective as of August 1, 2013 (the “*Trust Agreement*”), and approved by Order No. 14 of the Emergency Manager (“*Order No. 14*”, and together with Order No. 6, the “*Orders*”), providing for the creation of a trust to receive and disburse Utility Revenues pursuant to the Orders, Act 100 and Act 392; and

WHEREAS the Authority, the City and the Trustee desire to amend and restate the Trust Agreement (as amended and restated herein, this “*Agreement*”), and to add the MFA as a Party; and

WHEREAS, the Emergency Manager has issued Order No. __, approving the execution of this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE RESPECTIVE COVENANTS, AGREEMENTS AND REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, THE PARTIES TO THIS AGREEMENT, INTENDING TO BE LEGALLY BOUND, AGREE AS FOLLOWS:

ARTICLE I

ESTABLISHMENT OF FUNDS AND ACCOUNTS

Section 101. Establishment of Trust Fund and Appointment of Trustee. The City and the Authority hereby direct the Trustee to establish a trust account designated and

maintained by the Trustee for the deposit of all Utility Revenues collected and so designated under this Agreement by the Authority (the "*Trust Fund*"). Pursuant to Act 392, Act 100, and the Orders of the Emergency Manager on behalf of the City, the Customers are directed to deliver all such Utility Revenues to the Trustee for deposit in the Trust Fund held by the Trustee, not more frequently than monthly. All such deposits of Utility Revenues shall become part of the Trust Fund. The direction of funds by the Emergency Manager on behalf of the City as described in this Section 101 is irrevocable for so long as any Obligations are Outstanding pursuant to their terms. The Trust Fund shall be held and disbursed pursuant to this Agreement or a successor trust agreement as contemplated under Section 303 of this Agreement. Exhibit D attached hereto and made a part hereof contains delivery instructions to the Trustee.

The City and the Authority hereby appoint the Trustee as depository and trustee for the Trust Fund pursuant to the terms of this Agreement. Trustee hereby agrees to act as trustee and to receive, hold, invest and disburse funds from the Trust Fund pursuant to the terms and conditions of this Agreement. The Trustee shall deposit Utility Revenues in the Trust Fund and allocate and set aside Utility Revenues into the Debt Retirement Escrow Fund in accordance with Section 103 and in the amounts as required for disbursements under Section 105 herein below.

Section 102. Establishment of Funds and Accounts Within Trust Fund. (a) The City and the Authority hereby establish and create within the Trust Fund the following special, separate and segregated accounts which shall be held by the Trustee:

- A. Debt Retirement Escrow Fund.
- B. PLA Fund.
- C. City Disbursement Fund.

The Executive Director of the Authority is hereby authorized to direct the Trustee to establish such accounts, subaccounts or funds within the Debt Retirement Escrow Fund as shall be required for each series of Obligations, if any, to accommodate the requirements of such Obligations to the extent permitted by Act 100, Act 392 and other applicable law.

(b) The Utility Revenues held by the Trustee shall be subject to a lien in favor of the holders of Outstanding Obligations, provided that the Authority and the City have an interest in the Utility Revenues, but only to the extent of the transfers made pursuant to Section 105(b)(ii) and Sections 105(a)(ii) and 105(b)(iii) respectively, and once the Utility Revenues have been disbursed from the Trust Fund, they shall be disbursed free and clear of all liens. The lien in this Section 102(b) is paramount and superior to all other liens and interests of any kind, including any interest of the Authority or the City, and shall be for the sole purpose of ensuring payment of the principal, interest and related administrative and issuance costs of the Obligations. The lien is created and perfected without delivery, recording or notice.

(c) Notwithstanding the provision in Section 102(b) hereinabove, no Party shall permit or cause to be created against the Trust Fund any lien, attachment, trustee process or any other judicial process of any creditor. Trustee shall hold and safeguard the Trust Fund, at the cost and expense of the Authority and the City, until no Obligations remain Outstanding and the Trust Fund is released pursuant to Section 105(d) of this Agreement. Notwithstanding the

foregoing, if the Trust Fund shall be attached, garnished or levied upon pursuant to judicial process, or the delivery of the funds held in the Trust Fund shall be stayed or enjoined by any court order, or any court order shall be made or entered into affecting the Trust Fund, or any part thereof, the Trustee is hereby expressly authorized to obey and comply with such judicial process, stay, injunction or court order, and shall provide the Authority and the City as much advance written notice as is reasonably practicable thereof. In the event the Trustee obeys or complies with any judicial process or court order, it shall not be liable to any Party or Customer, or to any other person, firm (public or private) or corporation (public or private) by reason of such compliance, notwithstanding the subsequent reversal, modification, annulment or setting aside of such judicial process, stay, injunction or court order.

Section 103. Debt Retirement Escrow Fund. A fund within the Trust Fund to be designated the Debt Retirement Escrow Fund (the “*Debt Retirement Escrow Fund*”) shall be established and created under this Trust Agreement for the purpose of disbursing Utility Revenues pledged to payment of the Bonds to the party designated in an agreement (the “*Bond Trust Indenture*”) among the Authority, the purchaser or purchasers of such Bonds and Wilmington Trust National Association, as trustee appointed by the Authority to act as trustee, transfer agent and paying agent for the Bonds (the “*Bond Trustee*”), and to any party designated in an agreement (each, a “*Trust Indenture*”) among the Authority, the purchaser or purchasers of any Additional Obligations and a trustee appointed by the Authority to act as transfer agent and paying agent for such Additional Obligations, for the purpose of paying debt service on Bonds and Additional Obligations issued by the Authority, including any related reserve requirements as provided in the Bond Trust Indenture or another Indenture (“*Reserve Requirements*”), and any administrative and issuance costs associated with the Bonds or Additional Obligations.

Section 104. PLA Fund; City Disbursement Fund. (a) A PLA Fund (the “*PLA Fund*”) is hereby created within the Trust Fund, as provided in Section 105 herein below. Moneys in the PLA Fund shall be used by the Authority for any purpose permitted by Act 392, provided that no Utility Revenues shall be deposited to the PLA Fund so long as the Bonds are Outstanding and no Additional Obligations have been issued.

(b) The Executive Director of the Authority is authorized and directed to expend money from the PLA Fund for costs permitted by Act 392.

(c) In the event that the Authority has no remaining expenses or use for moneys as permitted by Act 392, any balance in the PLA Fund shall be (i) transferred to the Debt Retirement Escrow Fund for disbursement to the Bond Trustee in accordance with Section 103 hereof, or (ii) if no Obligations remain Outstanding, upon agreement by the Parties (other than the Trustee), transferred to a general City Disbursement Fund (the “*City Disbursement Fund*”), which the Trustee is hereby directed to create within the Trust Fund. The Trustee is hereby authorized to disburse moneys from the City Disbursement Fund to the City for deposit to the General Fund of the City in the City’s account specified on Exhibit E attached hereto, free and clear of all liens as provided in Sections 105(a)(ii), 105(b)(iii) and 105(d).

Section 105. Disbursements from the Trust Fund. The available funds in the Trust Fund shall be disbursed by the Trustee on the 1st day of each month, or the next Business Day (defined herein as any day other than a Saturday, a Sunday, a day on which banking institutions

in the city in which the designated corporate trust office of the Trustee is located are closed, or a day on which the New York Stock Exchange is closed), if the 1st day is not a Business Day, as follows:

(a) For disbursements made beginning the 1st day of the month, or the next Business Day if the 1st day is not a Business Day, immediately following the date of this Agreement through December 31, 2013:

(i) Each month, from the available funds in the Trust Fund, the lesser of (i) the available funds in the Trust Fund and (ii) \$1,783,333, shall be transferred to the Debt Retirement Escrow Fund and following such transfer, on the same day of such month, such amount shall be remitted directly to the Bond Trustee for the purpose of paying any principal of and interest on the Obligations, including any Reserve Requirements, any administrative and issuance costs associated with the Obligations and to be further disbursed as provided in the relevant Bond Indenture.

(ii) Any amounts remaining in the Trust Fund after making the disbursement as provided in Section 105(a)(i) shall be transferred to the City Disbursement Fund. The Trustee is hereby authorized to disburse moneys from the City Disbursement Fund to the City for deposit to the General Fund of the City free and clear of all liens.

(b) For disbursements made from January 1, 2014 until no Obligations are Outstanding, on the 1st day of each month, or the next Business Day, if the 1st day is not a Business Day, as follows:

(i) Each month, from the available funds in the Trust Fund, the lesser of (i) the available funds in the Trust Fund and (ii) \$1,041,666 (for a maximum annual aggregate amount of not to exceed \$12,500,000 per calendar year), shall be transferred to the Debt Retirement Escrow Fund and following such transfer, on the same day of such month, such amount shall be remitted directly to the Bond Trustee or an Additional Obligation Trustee for the purpose of paying any principal of and interest on the Bonds and any Additional Obligations, including any Reserve Requirements, any issuance costs associated with Additional Obligations and to be further disbursed as provided in the relevant Bond Indenture.

(ii) After making the disbursements in Section 105(b)(i) above, from the remaining available funds in the Debt Retirement Escrow Fund, in an amount which including the amount of the deposit made pursuant to Section 105(b)(i) above does not exceed \$1,041,666 per month (and not to exceed an annual aggregate amount of \$12,500,000 per calendar year, which, for the avoidance of doubt, shall be inclusive of the amount of the deposit made pursuant to Section 105(b)(i) above) shall be deposited to the PLA Fund.

(iii) Any amounts remaining in the Trust Fund after making the deposits as provided in Sections 105(b)(i) and 105(b)(ii) shall be transferred to the City Disbursement Fund. The Trustee is hereby authorized to disburse moneys from the City Disbursement Fund to the City for deposit to the General Fund of the City free and clear of all liens.

(c) The Trustee shall furnish the Authority and the City with a monthly written accounting of the complete account activity of, and transactions executed with respect to, the Trust Fund, within fifteen (15) days after the end of such month.

(d) Within 45 days of the retirement of all Outstanding Obligations issued by the Authority, the Trustee shall use best efforts to notify each Customer (identified with contact information provided by the City or Authority) to remit Utility Revenues collected under Act 100 to the City, and if the Trustee receives any funds following the retirement of all Outstanding Obligations issued by the Authority, the Trustee shall transmit such funds directly to the City. Thereupon the Trust Fund shall be released.

Section 106. Additional Obligations. The Trustee, Authority and the MFA may enter into Supplements to this Trust Agreement (each, a “*Supplement*”) without the consent of the City of the limited purpose of providing for the issuance of Additional Obligations to be secured by this Trust Agreement pursuant to this Section 106.

The issuance and delivery of Additional Obligations secured shall be conditioned upon the following:

(a) A certificate of the Executive Director or other authorized officer of the Authority, as provided in Exhibit B (the “*Authorized Officer*”) certifying that the maximum aggregate principal and interest due and payable in any one calendar year on all Obligations that are Outstanding shall not exceed \$12,500,000 and that all the conditions precedent to the issuance and delivery of Additional Obligations have been met.

(b) A Supplement executed by the Trustee, the Authority and the MFA.

(c) Delivery to the Trustee, the MFA, the City and the Authority of an opinion of counsel to the Authority that the Supplement has been duly authorized and is legal, binding, valid and enforceable in accordance with its terms.

For purposes of this Agreement “*Outstanding*” means, in the case of any Obligations, all such Obligations secured by the Trust Agreement which have been issued except any such portion thereof canceled after purchase or surrendered for cancellation or because of payment at or redemption prior to maturity, any such Obligations in lieu of which other Obligations have been duly incurred and any such Obligations which are no longer deemed Outstanding under their respective terms and with respect to which the Authority is no longer liable under the terms of such Obligations.

Section 107. Utility Tax Revenue Information.

(a) *Delivery of Information.* The City shall direct all Customers to send to the Trustee the information to be submitted in connection with the Utility Revenues, including, but not limited to, the utility users tax form (the “*Utility Tax Revenue Information*”) to the Trustee in connection with the Customers’ delivery of the Utility Revenues. Upon receipt of such Utility Tax Revenue Information, the Trustee shall deliver to the individuals specified on Exhibit F an electronic copy in PDF form of such Utility Tax Revenue Information. The Trustee will use commercially reasonable efforts to deliver such Utility Tax Revenue Information within one (1) business day of its receipt, but in no event no later than three (3) business days after receipt. The

City may alter or amend the information on Exhibit F by delivery of written notice to the Trustee and the Authority.

(b) *Records.* The Trustee shall keep the original Utility Tax Revenue Information with its records for the Trust Fund, provided that the Trustee shall, upon request of the City and Authority, send such original Utility Tax Revenue Information to the address set forth below within ten (10) business days of receipt of the request:

City of Detroit Finance Department
Income Tax Division
Coleman A. Young Municipal Center
2 Woodward Avenue, Suite 1220
Detroit, MI 48226
ATTN: Utility Users Tax

(c) *Trustee's Role.* The Trustee's duties with respect to the Utility Tax Revenue Information is limited to the duties expressly set forth herein, and, for the avoidance of doubt, all Parties hereby agree and acknowledge that the Trustee has no oversight duties as to correctness or completeness of any Utility Tax Revenue Information and the Trustee's receipt of the Utility Tax Revenue Information shall not constitute constructive notice of any information contained therein.

ARTICLE II

INVESTMENT OF FUNDS

Section 201. Investment of Funds. All moneys held by the Trustee pursuant to this Agreement shall be invested by the Trustee in accordance with written instruction from an Authorized Officer of the Authority, which instruction shall be in accordance with the laws of the State. Such moneys will be held uninvested by the Trustee unless and until such joint written instruction is received. The Trustee shall be entitled to rely on said investment instruction as to the suitability and legality of such investments. The Trustee shall not be liable for losses on investments made in compliance with the provisions of this Agreement or such investment instructions. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including investment maintenance fees. The Trustee shall not be responsible for providing broker confirmations or investment advice.

Section 202. Eligibility of Financial Institutions. Except as provided in Section 1(5) of the Investment of Surplus Funds of Political Subdivisions Act, 1943 PA 20, MCL §§ 129.91, *et seq.*, the Authority and City shall not instruct the Trustee to deposit or invest the funds in a financial institution that is not eligible to be a depository of funds belonging to the State under a law or rule of the State or the United States. For purposes of this Section 202, "financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office located in the State under the laws of the State or the United States.

ARTICLE III

THE TRUSTEE

Section 301. Powers and Duties of Trustee.

(a) The Trustee hereby agrees and covenants with the Parties hereto that it will perform all of its obligations under this Agreement and will not deliver custody or possession of any of the Trust Fund to anyone except pursuant to the express terms of this Agreement.

(b) The responsibilities of the Trustee are administrative in nature and are strictly limited to those specifically set forth herein. No implied duties, covenants or obligations shall be read into this Agreement against the Trustee including, without limitation, the obligation to make any discretionary decisions. No fiduciary relationship exists between or among the Trustee or the City. The Trustee undertakes to perform such duties as are specifically set forth in this Agreement only and shall have no liabilities or obligations with respect to the Trust Fund or its administration of this Agreement except for the Trustee's negligence or willful misconduct. The Trustee shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein or in any notices given to it in accordance with the notice provisions of this Agreement. The Trustee shall incur no liability with respect to any action taken by it or for any inaction on its part in reliance upon any notice, direction, instruction, consent, statement or other document believed by it in good faith to be genuine and duly authorized, nor for any other action or inaction except for its own negligence or willful misconduct. The Trustee may consult legal counsel selected by it in the event of any dispute or question of the construction of this Agreement or seek the assistance of a court of competent jurisdiction, and shall incur no liability and shall be fully protected in acting in accordance with the opinion or advice of such counsel or the direction of such court. The Trustee shall not be liable for any error of judgment made in good faith by a responsible partner, director, officer, affiliate, employee, employer, professional, agent or representative of the Trustee unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts. In no event shall the Trustee be liable for incidental, indirect, special, punitive or consequential damages. The Trustee shall have the right to perform any of its duties hereunder through agents, attorneys, custodians or nominees, and shall not be responsible for the misconduct or negligence of such agents, attorneys, custodians and nominees appointed by it with due care. None of the provisions contained in this Agreement shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers vested in it by this Agreement, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. The permissive rights of the Trustee to do things enumerated in this Agreement shall not be construed as duties. The Trustee shall not be accountable for the use or application of any money paid over by the Trustee in accordance with the provisions of this Agreement. The

Trustee shall have no duty to collect any Utility Revenues which are required to be deposited with it hereunder.

(c) The Authority shall defend, at its cost and expense, but only from funds other than Utility Revenues, any claim (by whomever asserted) against the Trustee arising out of or in connection with the acceptance, administration, exercise or performance of its duties under this Agreement. The Authority shall satisfy any liability, judgment and cost, of or relating to such claim, except to the extent that a court of competent jurisdiction has determined that such claim, liability or expense is attributable to the Trustee's negligence or willful misconduct. The Trustee may have separate legal counsel and the Authority shall pay the reasonable fees and expenses of such separate legal counsel.

The Trustee shall notify the Authority promptly of any claim against for which it may seek defense. Failure by the Trustee to so notify the Authority shall not relieve the Authority from its obligations hereunder. The Trustee shall cooperate in the defense. The forgoing shall survive the termination of this Agreement pursuant to Section 402 hereof.

(d) The Trustee agrees to accept and act upon written instructions or directions pursuant to this Agreement sent by unsecured e-mail (in pdf file format), facsimile transmission or other similar unsecured electronic methods, provided, however, that the instructions or directions shall be signed by a person as may be designated and authorized to sign for the Authority or the City, respectively, or in the name of the Authority or the City, respectively, by an authorized representative of the Authority or City, respectively, and the Authority or the City, respectively shall provide to the Trustee an incumbency certificate listing such designated persons, which incumbency certificate shall be amended whenever a person is to be added or deleted from the listing. If the Authority or City, respectively, elects to give the Trustee e-mail or facsimile instructions (or instructions by a similar electronic method) and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. The Authority and City agree: (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Trustee and that there may be more secure methods of transmitting instructions than the method(s) selected by the Authority or the City; and (iii) that the security procedures (if any) to be followed in connection with their transmission of instructions provide to them a commercially reasonable degree of protection in light of their particular needs and circumstances.

Section 302. Fees and Expenses of the Trustee. The Authority shall pay to the Trustee from time to time such compensation as shall be agreed upon in writing between the Authority and the Trustee for its acceptance of this Agreement and services hereunder. The Trustee's compensation shall not be limited by any law on compensation of a trustee of an express trust. The Authority shall reimburse the Trustee promptly upon request for all reasonable disbursements, advances and expenses incurred or made by it in addition to the

compensation for its services, including extraordinary time and services. Such expenses shall include the reasonable compensation, disbursements and expenses of the Trustee’s agents and legal counsel. The Authority agrees that it shall pay all such fees owed the Trustee within 30 days of receipt of an invoice.

Section 303. Successor Trustee.

(a) In the event the Trustee becomes unavailable or unwilling to continue as Trustee under this Agreement, the Trustee may resign and be discharged from its duties and obligations hereunder by giving its written resignation to the Parties to this Agreement. In addition, the Trustee may be removed at any time, with or without cause, upon 30 days prior written notice delivered to the Trustee and the Bond Trustee (and any trustee for any Additional Obligations) and executed by each of the Parties. Such resignation or removal shall not take effect until the successor has been appointed and has accepted its appointment. In such event, the Authority may appoint, with the consent of the City and the MFA which consent shall not be unreasonably withheld, a successor trustee, which shall be a commercial bank, trust company or other financial institution qualified to act as a trustee under Michigan law. If the Authority fails to appoint a successor trustee within fifteen (15) days after receiving the Trustee’s written resignation, the Trustee shall have the right to apply to a court of competent jurisdiction for the appointment of a successor trustee. The successor trustee shall execute and delivery to the Trustee an instrument accepting such appointment, and the successor trustee shall, without further acts, be vested with all the estates, property rights, powers and duties of the predecessor Trustee as if originally named as Trustee herein. The Trustee shall act in accordance with written instructions from the Authority, the City and the MFA as to the transfer of the Trust Fund to a successor trustee.

(b) Any corporation, association or other entity into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or otherwise transfer all or substantially all of its corporate trust assets and businesses or any corporation, association or other entity resulting from any such conversion, sale, merger, consolidation or other transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder, as applicable, vested with all other matters as was its predecessor, without the execution or filing of any instrument or any further act on the part of the Parties hereto, notwithstanding anything herein to the contrary.

ARTICLE IV

REMEDIES

Section 401. Events of Default.

Each of the following events is hereby declared an “event of default”:

(a) failure of the any of the Parties to apply the Utility Revenues as required hereby;
or

(b) any judgment, writ or warrant of attachment or of any similar process shall be entered or filed against the Utility Revenues and remains unvacated, unpaid, unbonded, unstayed or uncontested in good faith for a period of 60 days.

Upon the occurrence and during the continuance of an event of default described in this Section 401 and known to a responsible officer of the Trustee who is responsible for the administration of this Agreement, the Trustee shall give written notice to the City, the Authority and the MFA and the Bond Trustee.

Section 402. Remedies; Rights of Obligation Holders.

Upon the occurrence of any event of default, the Trustee may, but is not required to, pursue any available remedy including a suit, action or proceeding at law or in equity to enforce the payment of the principal of, premium, if any, and interest on the Outstanding Obligations hereunder and any other sums due hereunder and may collect such sums in the manner provided by law out of the Utility Revenues, subject to the provisions of applicable State and federal law.

No remedy by the terms of this Agreement conferred upon or reserved to the Trustee (or to the beneficiary or holder of any Outstanding Obligations) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the holders of Outstanding Obligations hereunder now or hereafter existing at law or in equity or by statute.

No delay or omission to exercise any right or power accruing upon any default or event of default shall impair any such right or power or shall be construed to be a waiver of any such default or event of default, or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

No waiver of any default or event of default hereunder, whether by the Trustee or by the holders of Outstanding Obligations, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereon.

Section 403. Direction of Proceedings by Holders.

The Bond Trustee or the holders of a majority in aggregate principal amount of the Outstanding Obligations which have become due and payable in accordance with their terms and have not been paid in full in the case of remedies exercised to enforce such payment, or the Bond Trustee or the holders of not less than a majority in aggregate principal amount of the Outstanding Obligations in the case of any other remedy, shall have the right, subject to the Trustee's right to be indemnified to its satisfaction, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Agreement.

The foregoing notwithstanding, the Bond Trustee or the holders of not less than a majority in aggregate principal amount of the Outstanding Obligations which are entitled to the exclusive benefit of certain security in addition to that intended to secure all or other Outstanding Obligations shall have the right, subject to the Trustee's right to be indemnified to its

satisfaction, at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Agreement and any supplemental agreement, if any, pursuant to which such Outstanding Obligations were issued or so secured or any separate security document in order to realize on such security; provided, however, that such direction shall not be otherwise than in accordance with the provisions of law and of this Agreement and that the Trustee shall have the right to decline to comply with any such request if the Trustee shall be advised by counsel (who may be its own counsel) that the action so directed may not lawfully be taken.

Section 404. Application of Moneys.

All moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the fees of, expenses, liabilities and advances incurred or made by the Trustee, be applied as follows:

First: after payment as provided above in this Section, to the payment to the persons entitled thereto of all installments of interest then due on the Outstanding Obligations, in the order of the maturity of the installments of such interest, and, if the amount available shall not be sufficient to pay in full any particular installment, then to the payment ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or privilege; and

Second: to the payment to the persons entitled thereto of the unpaid principal and premium, if any, on the Outstanding Obligations which shall have become due (other than Outstanding Obligations called for redemption or payment for payment of which moneys are held pursuant to the provisions of this Agreement), in the order of the scheduled dates of their payment, and, if the amount available shall not be sufficient to pay in full the Outstanding Obligations due on any particular date, then to the payment ratably, according to the amount of principal and premium due on such date, to the persons entitled thereto without any discrimination or privilege; and

Third: to the payment to the persons entitled thereto of all unpaid principal and interest on Outstanding Obligations, payment of which was extended by such persons as described in Section 401 hereof.

Whenever moneys are to be applied by the Trustee pursuant to the provisions of this Section 404, such moneys shall be applied by it at such times, and from time to time, as the Trustee shall determine in its sole discretion, having due regard for the amount of such moneys available for application and the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall apply such moneys, it shall fix the date (which shall be an interest payment date unless it shall deem another date more suitable) upon which such application is to be made and upon such date interest on the amounts of principal to be paid on such date shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date, and shall not be required to make payment to the holder of any unpaid Outstanding Obligations until

such Outstanding Obligations shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Outstanding Obligations and interest thereon have been paid under the provisions of this Section 404 and all expenses and charges of the Master Trustee have been paid, any balance remaining shall be paid as provided above.

Notwithstanding any of the provisions in this Article above, the Trustee shall only apply moneys held by it that have been deposited in the Debt Retirement Escrow Fund or the PLA Fund pursuant to Section 105 hereof and in no event shall the amount applied pursuant to this Section 404 exceed \$12,500,000 per calendar year. If any Ancillary Facility is entered into pursuant to a supplemental indenture, the Trustee shall apply moneys to such Ancillary Facility as provided in such supplemental indenture and in accordance with this Section, provided that any such supplemental indenture shall state whether the related Ancillary Facility will be treated as interest or principal for purposes of the application of moneys pursuant to this Section 404.

Section 405. Remedies Vested in Trustee.

All rights of action including the right to file proof of claims under this Agreement or under any of the Outstanding Obligations may be enforced by the Trustee without the possession of any of the Outstanding Obligations or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Outstanding Obligations, and any recovery of judgment shall be for the equal benefit of the holders of the Outstanding Obligations.

Section 406. Rights and Remedies of Obligation Holders.

No holder of Outstanding Obligations shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of this Agreement or for the execution of any trust hereof or for the appointment of a receiver or any other remedy hereunder, unless a default shall have become an event of default and (a) the holders of 25% or more in aggregate principal amount (i) of the Outstanding Obligations which have become due and payable in accordance with their terms and have not been paid in full in the case of powers exercised to enforce such payment or (ii) the Obligations then Outstanding in the case of any other exercise of power, and unless the Trustee shall thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding in its own name; and such notification, request and offer of indemnity are hereby declared in every case at the option of the Trustee to be conditions precedent to the execution of the powers and trusts of this Agreement and to any action or cause of action for the enforcement of this Agreement, or for the appointment of a receiver or for any other remedy hereunder; it being understood and intended that no one or more holders of the Outstanding Obligations shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Agreement by its, his or their action or to enforce any right hereunder except in the manner herein provided, and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal benefit of the holders of all Outstanding Obligations. Nothing in this Agreement contained shall, however, affect or impair the right of any holder to enforce the payment of the principal of, premium, if

any, and interest on any Outstanding Obligations at and after the maturity thereof, or the obligation of the Authority to pay the principal, premium, if any, and interest on each of the Outstanding Obligations issued hereunder to the respective holders thereof at the time and place, from the source and in the manner in said Outstanding Obligations expressed.

Section 407. Termination of Proceedings.

In case the Trustee shall have proceeded to enforce any right under this Agreement by the appointment of a receiver, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Trustee shall, subject to any determination in such proceeding, be restored to their former positions and rights hereunder with respect to the Utility Revenues pledged and assigned hereunder, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 408. Trustee or Bondholders Deemed to be Related Obligation Holders.

For the purposes of this Agreement, any trustee appointed pursuant to the Bond Trust Indenture or a Trust Indenture shall be deemed the holder of the Obligation or Obligations pledged to secure the related MFA bonds for which the trustee is acting pursuant to the related Trust Indenture, unless said trustee elects to the contrary or contrary provision is made in the related Trust Indenture, in which event the related Trust Indenture shall provide that the holders of the Obligation or Obligations pledged to secure the MFA Bonds shall be deemed the holders of the Obligation or Obligations to the extent of the principal amount of the Obligation or Obligations to which the MFA Bonds secured by such Obligation or Obligations relate.

ARTICLE V

MISCELLANEOUS

Section 501. Notices. All notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid) to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other addresses or person as a Party may designate by written notice to the other Parties):

If to the Authority:

Public Lighting Authority
Executive Director
65 Cadillac Square, Suite 2900
Detroit, MI 48226

with a mandatory copy to (which copy shall not constitute notice):

The Allen Law Group, P.C.
2500 Fisher Building
3011 West Grand Boulevard
Detroit, MI 48202

If to the City:

City of Detroit
Office of the Mayor
Coleman A. Young Municipal Center
2 Woodward Avenue, 11th Floor
Detroit, MI 48226

with a mandatory copy to (which copy shall not constitute notice), while applicable:

City of Detroit
Office of the Emergency Manager
Coleman A. Young Municipal Center
2 Woodward Avenue, 11th Floor
Detroit, MI 48226

If to the MFA:

Michigan Finance Authority
Department of Treasury
Austin Building, 1st Floor
430 West Allegan Street
Lansing, MI 48922

If to the Trustee:

Wilmington Trust, National Association
Corporate Trust Services
25 South Charles Street, 11th Floor
Baltimore, MD 21201

with a mandatory copy to (which copy shall not constitute notice):

Drinker Biddle & Reath
Kristin Going
1500 K. St., N.W., Suite 1100
Washington, DC 20005

Section 502. Termination. This Agreement will terminate 30 days following the date on which no Obligations are Outstanding. Following such termination, this Agreement shall be of no further force or effect, and no further fees or expenses shall be invoiced by the Trustee pursuant hereto except for unbilled fees or expenses incurred by the Trustee prior to such time.

Section 503. Interpretation. Unless the context otherwise requires, references in this Agreement to Sections and Exhibits refer to the Sections and Exhibits to this Agreement. The words "include," "includes" and "including" when used herein shall be deemed in each case to be followed by the words "without limitation." The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All references to dollar amounts contained in this Agreement shall mean United States dollars. References in this Agreement to any gender include references to all genders, and references to the singular include references to the plural and vice versa. Unless the context otherwise requires, the words "hereof," "hereby" and "herein" and words of similar meaning when used in this Agreement refer to this Agreement in its entirety and not to any particular Article, Section or provision of this Agreement.

Section 504. Entire Agreement. This Agreement and the other agreements referred to herein constitute the entire agreement of the Parties to this Agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the Parties with respect to the subject matter hereof.

Section 505. Parties in Interest. Except as expressly provided herein, none of the provisions of this Agreement is intended to provide any rights or remedies to any Person other than the Parties hereto and their respective successors and assigns (if any), the Bond Trustee, the purchasers of Obligations and of the MFA Bonds and the trustee for any Additional Obligations.

Section 506. Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

Section 507. Governing Law; Jurisdiction and Venue.

(a) This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of Michigan (without giving effect to principles of conflicts of laws).

(b) Each Party to this Agreement (other than the MFA):

(i) irrevocably submits to the exclusive jurisdiction of the Circuit Court for the County of Wayne in the State of Michigan and any state appellate court therefrom within the State of Michigan for the purpose of any legal proceeding directly or indirectly based upon, relating to arising out of this Agreement or any transaction contemplated hereby or the negotiation, execution or performance hereof or thereof and irrevocably agrees that all claims in respect of such action or proceeding shall be brought in, and may be heard and determined, exclusively in such state or federal courts;

(ii) irrevocably consents to the service of the summons and complaint and any other process in any other action or proceeding relating to the transactions contemplated by this Agreement, on behalf of itself or its property, by personal delivery of copies of such process to such Party at the addresses set forth in Section

501, provided that nothing in this Section 507 shall affect the right of any Party to serve legal process in any other manner permitted by law;

(iii) acknowledges and agrees that any controversy which may arise under this Agreement is likely to involve complicated and difficult issues, and therefore each such Party hereby irrevocably and unconditionally waives any right such Party may have to a trial by jury in any legal proceeding directly or indirectly based upon, relating to or arising out of this Agreement or any transaction contemplated hereby or the negotiation, execution or performance hereof or thereof; and

(iv) certifies and acknowledges that (A) no representative, agent or attorney of any other Party has represented, expressly or otherwise, that such other Party would not, in the event of any legal proceeding, seek to enforce the foregoing waiver in Section 507(b)(iii); (B) each Party understands and has considered the implication of such waiver; (C) each Party makes such waiver voluntarily and (D) each Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 507.

Section 508. Rules of Construction. The Parties hereto agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the party drafting such agreement or document.

Section 509. Assignment and Successors. No Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Parties, except with respect to a successor trustee as set forth under Section 303(b) of this Agreement. This Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties, including the holders of the Obligations.

Section 510. Further Assurances. Each Party hereto shall execute and cause to be delivered to each other Party hereto such instruments and other documents, and shall take such other actions, as such other Party may reasonably request for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.

Section 511. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or pdf transmission shall constitute effective execution and delivery of this Agreement as to the parties hereto and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties hereto transmitted by facsimile or pdf shall be deemed to be their original signatures for all purposes.

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed as of the date first written above.

PUBLIC LIGHTING AUTHORITY

By _____

Its: Executive Director

Witness for the Public Lighting Authority

CITY OF DETROIT

By _____

Its: Emergency Manager

Witness for the City of Detroit

MICHIGAN FINANCE AUTHORITY

By _____

Its: _____

Witness for the Michigan Finance Authority

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE

By _____

Its: _____

Witness for Wilmington Trust, NATIONAL ASSOCIATION

Public Lighting Authority Trust

Exhibit B

Certificate as to Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the Public Lighting Authority and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Trust Agreement to which this Exhibit B is attached, on behalf of the Public Lighting Authority.

Name/Title/Phone Number

Specimen Signature

Name

Signature

Title

Phone Number

Name

Signature

Title

Phone Number

Name

Signature

Title

Phone Number

Name

Signature

Title

Phone Number

Public Lighting Authority Trust

Exhibit C

Certificate as to City's Authorized Signatures

The specimen signatures shown below are the specimen signatures of the individuals who have been designated as authorized representatives of the City and are authorized to initiate and approve transactions of all types for the escrow account or accounts established under the Amended and Restated Trust Agreement to which this Exhibit C is attached, on behalf of the City.

Name/Title/Phone Number

Specimen Signature

Name

Signature

Title

Phone Number

Name

Signature

Title

Phone Number

Name

Signature

Title

Phone Number

Name

Signature

Title

Phone Number

Exhibit D

Payment Instructions

By Wire:

Bank: M & T Bank
ABA: 022000046
Account: Corporate Trust Clearing
Account No.: 3088001950200
ffc Public Lighting Trust
Attn: Jay Smith

By Check:

Payable to: Wilmington Trust, National Association

Mailed to:

Wilmington Trust, National Association
Global Capital Markets
25 S. Charles Street, 11th Floor
Baltimore, MD 21201
Attn: Jay Smith

Public Lighting Authority Trust

Exhibit E

City Account Information

City Account Information

Bank: Comerica Bank
ABA: 072000096
Account: City of Detroit Utilities
Account No. 1850-706191

Public Lighting Authority Trust

Exhibit F

City Recipients

Tanya Stoudemire – tanya@detroitmi.gov

Karen King – kingk@itax.ci.detroit.mi.us

Kimberly Dancy-Walker – kimdan@detroitmi.gov

Shyam Karwande – shyamk@itax.ci.detroit.mi.us

21522619.11\060531-00072
21,522,619.11\060531-00072
21,522,619.12\060531-00072
21,522,619.12\060531-00072
21522619.12\060531-00072

EXHIBIT 6.4

(Emergency Manager Order)



**EMERGENCY MANAGER
CITY OF DETROIT**

ORDER No. 18

**APPROVAL OF CERTAIN AGREEMENTS RELATED TO THE PUBLIC
LIGHTING AUTHORITY**

BY THE AUTHORITY VESTED IN THE EMERGENCY MANAGER
FOR THE CITY OF DETROIT
PURSUANT TO MICHIGAN'S PUBLIC ACT 436 OF 2012,
KEVYN D. ORR, THE EMERGENCY MANAGER,
ISSUES THE FOLLOWING ORDER:

Whereas, on March 28, 2013, Michigan Public Act 436 of 2012 ("PA 436") became effective and Kevyn D. Orr became the Emergency Manager ("EM") for the City of Detroit (the "City") with all the powers and duties provided under PA 436; and

Pursuant to section 9(2) of PA 436, the EM "shall act for and in the place and stead of" the Detroit Mayor and City Council; and

Section 9(2) of PA 436 also grants the EM "broad powers in receivership to rectify the financial emergency and to assure the fiscal accountability of the [City] and the [City's] capacity to provide or cause to be provided necessary governmental services essential to the public health, safety, and welfare;" and

Further, section 9(2) of PA 436 prohibits, during the pendency of receivership, the Detroit Mayor and City Council from exercising "any powers of those offices except as may be specifically authorized in writing by the [EM] or as otherwise provided by [PA 436] and are subject to any conditions required by the [EM]; and

Pursuant to section 10(1) of PA 436, the EM may “issue to the appropriate local elected and appointed officials and employees, agents, and contractors of the local government the orders the emergency manager considers necessary to accomplish the purposes of [PA 436], including but not limited to, orders for the timely and satisfactory implementation of a financial and operating plan” or “to take actions, or refrain from taking actions, to enable the orderly accomplishment of the financial and operating plan”; and

Pursuant to section 12(1)(b) of PA 436, the EM is empowered, “notwithstanding any charter provision to the contrary,” to “[a]mend, revise, approve, or disapprove the budget of the local government, and limit the total amount appropriated or expended;” and

Pursuant to section 12(1)(c) of PA 436, the EM is empowered, “notwithstanding any charter provision to the contrary,” to “[r]eceive and disburse on behalf of the local government all federal, state, and local funds earmarked for the local government. These funds may include, but are not limited to, funds for specific programs and the retirement of debt;” and

Section 12(1)(g) of PA 436 authorizes the EM, “notwithstanding any charter provision to the contrary” to “[m]ake, approve, or disapprove any appropriation, contract, expenditure, or loan...;” and

Section 12(1)(r) of PA 436 authorizes the EM to “[subject to Section 19 of PA 436], if provided in the financial and operating plan, or otherwise with the prior written approval of the governor or his or her designee, sell, lease, convey, assign or otherwise use or transfer the assets, liabilities, functions or responsibilities of the local government” (a “Proposed Transaction”), “provided the use or transfer of assets, liabilities, functions, or responsibilities for this purpose does not endanger the health, safety, or welfare of residents of the local government or unconstitutionally impair a bond, note, security, or uncontested legal obligation of the local government.”

Pursuant to section 12(1)(y), the EM is empowered, “notwithstanding any charter provision to the contrary,” to “[e]nter into agreements with other local governments, public bodies, or entities for the provision of services, the joint exercise of powers, or the transfer of functions and responsibilities;” and

Pursuant to section 19(1) of PA 436, the EM, before executing the Proposed Transaction, “shall submit the [Proposed Transaction] to the governing body of the local government [which] shall have 10 days from the date of submission to approve or disapprove the [Proposed Transaction]. If the governing body of the local government does not act within 10 days, the [Proposed Transaction] is considered approved by the governing body of the local government and the emergency manager may then execute the [Proposed Transaction];” and

Pursuant to Section 19(2) of PA 436, “[i]f the governing body of the local government disapproves a [Proposed Transaction] within 10 days, the governing body of the local government shall, within 7 days of its disapproval of the [Proposed Transaction], submit to the local emergency financial assistance loan board an alternative proposal that would yield substantially the same financial result as the [Proposed Transaction]. The local emergency financial assistance loan board shall have 30 days to review both the alternative proposal submitted by the governing body of the local government and the [Proposed Transaction] and to approve either the alternative proposal submitted by the governing body of the local government or the [Proposed Transaction]. The local emergency financial assistance loan board shall approve the proposal that best serves the interest of the public in that local government;” and

The Public Lighting Authority (the "PLA"), created pursuant to the Michigan Municipal Lighting Authority Act, 2012 PA 392, MCL §§ 123.1261 *et seq.* ("Act 392"), is responsible for constructing, improving, enlarging, reducing or extending the City's street light system and providing an equitable and reasonable method and means of financing, operating and maintaining a lighting system in sufficient quantities within the City; and

The EM issued Order No. 6, the "Approval of Initial Public Funding Agreement for the Public Lighting Authority," on May 2, 2013 and Order No. 14, the "Approval of Trust Agreement Between and Among the City of Detroit, the Public Lighting Authority and the Trustee"; and

Pursuant to the City Utility Users Tax Act, 1990 PA 100, MCL 141.1151 *et seq.* ("Act 100"), the City has levied a utility users tax to be collected by public utilities and resale customers (the "Utility Taxes"); and

The PLA is in the process of issuing bonds, pursuant to Act 392, that will be secured by the revenues that the PLA will receive from the Utility Taxes.

Pursuant to Act 100 and Act 392, PLA is authorized to receive in each calendar year the "Utility Revenues", defined as the lesser of (i) \$12,500,000 and (ii) the revenues received from the Utility Taxes in any given year; and

The EM, acting on behalf of the City, has the power under Section 25 of Act 392 to pledge the revenues received from the Utility Taxes in connection with bonds issued by the PLA; and

In connection with those bonds and pursuant to Act 392, the City and the PLA will enter into an Interlocal Agreement for the Construction and Financing of a Public Lighting System (the "C&F Interlocal Agreement"), in substantially the form attached hereto as Exhibit 1.

Pursuant to the C&F Interlocal Agreement, the PLA has agreed to construct and improve the public street lighting system of the City pursuant to the lighting plan created by the PLA, and the City has agreed to pledge all revenues received from the Utility Taxes to the bonds to be issued by the PLA to finance such construction and improvement, provided, however, the PLA shall only be entitled to the Utility Revenues; and

Contemporaneous with the C&F Interlocal Agreement, the City and the PLA will enter into an Interlocal Agreement for the Operation, Maintenance and Management of a Public Lighting System (the "O&M Interlocal Agreement"), in substantially the form attached hereto as Exhibit 2.

Pursuant to the O&M Interlocal Agreement, the PLA will cause the street public lighting system constructed and improved pursuant to the C&F Agreement to be operated and maintained and which will relieve the City of the obligation to so maintain the system and the City shall pay the PLA a fee therefor; and

In order to fulfill the requirements of Act 392, the EM, on behalf of the City, the PLA, the Michigan Finance Authority and a Trustee will enter into a Amended and Restated Trust Agreement for the establishment of a trust and trust fund (the "Trust Agreement"), in substantially the form attached hereto as Exhibit 3, whereby all revenues received from the Utility Taxes shall be deposited, which Trust Agreement shall amend and restate the Trust Agreement by and among the City, the PLA and the Trustee, approved pursuant to EM Order No. 14; and

The Utility Revenues will be used by the PLA as permitted by Act 392, the C&F Interlocal Agreement and the Trust Agreement; and


Consistent with the EM's May 12, 2013, Financial and Operating Plan the EM believes that the C&F Interlocal Agreement, the O&M Interlocal Agreement and the Trust Agreement (collectively, the "Agreements") will allow the PLA to provide necessary governmental services essential to the public health, safety, and welfare. The PLA will be able to use the Utility Revenues to, among other things, secure any debt obligations (bonds) of the PLA to reconfigure the City's streetlight footprint to provide reliable public lighting service and safety to the City's citizens in a timely manner.

It is hereby ordered that:

1. The Agreements are hereby approved in all respects. In furtherance of the City's obligations under the C&F Interlocal Agreement, the City hereby pledges the revenues received from the Utility Taxes to secure the bonds of the PLA issued pursuant to such agreement, but it is hereby reiterated that, in accordance with Act 392 and Act 100, the PLA shall only be entitled to the Utility Revenues from the revenues received from the Utility Taxes. The full faith and credit of the City is not pledged to the obligations of the City under the C&F Interlocal Agreement.
2. The EM hereby directs all public utilities and resale customers that collect Utility Taxes within the geographic City limits to remit all revenues received from the Utility Taxes to the Trustee to be deposited into the trust fund established by the Trust Agreement.
3. The revenues received from the Utility Taxes shall be disbursed in accordance with the Trust Agreement.
4. The PLA is hereby directed to serve a copy of this Order on all public utilities and resale customers that collect Utility Taxes within the geographic City limits as directed by the EM or his designee in writing.
5. Pursuant to section 19 of PA 436, the C&F Interlocal Agreement is hereby submitted to the City Council, and City Council is hereby instructed to review the C&F Interlocal Agreement and to either approve or disapprove the C&F Interlocal Agreement within 10 days from the date hereof.
6. Pursuant to section 19 of PA 436, the O&M Interlocal Agreement is hereby submitted to the City Council, and City Council is hereby instructed to review the O&M Interlocal Agreement and to either approve or disapprove the O&M Interlocal Agreement within 10 days from the date hereof.
7. Nothing in this Order shall be interpreted as contrary to Federal law.
8. If any component of this Order is declared illegal, unenforceable or ineffective by a court of competent jurisdiction, such component shall be deemed severable so that all other components contained in this Order shall remain valid and effective.
9. This Order is effective immediately upon the date of execution below.

10. The EM may modify, amend, rescind, replace, supplement or otherwise revise this Order at any time; provided, however, that the direction set forth in paragraph 2 hereof shall be irrevocable until all debt obligation secured by Utility Taxes shall have been paid in full.
11. This Order shall be distributed to the Mayor, City Council members and all department heads.

Dated: October ^{23rd}, 2013

By: 
Keyvn D. Orr
Emergency Manager
City of Detroit

cc: State of Michigan Department of Treasury
Mayor David Bing
Members of Detroit City Council
Chief Financial Officer of the City of Detroit
Public Lighting Authority
Michigan Finance Authority

Exhibit 1

C&F Interlocal Agreement

Please see attached.

Exhibit 2

O&M Interlocal Agreement

Please see attached.

Exhibit 3

Trust Agreement

Please see attached.

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

In re)
) Chapter 9
)
CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
)
Debtor.) Hon. Steven W. Rhodes
)
) **Re: Docket No. 1341**

**LIMITED OBJECTION OF SYNCORA GUARANTEE INC.
AND SYNCORA CAPITAL ASSURANCE INC. TO DEBTOR’S
MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE
PUBLIC LIGHTING AUTHORITY TRANSACTION**

Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (collectively, “Syncora”) file this limited objection to *Debtor’s Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief* [Docket No. 1341] (the “Motion”). In support of this limited objection, Syncora respectfully states as follows:

Preliminary Statement

1. Well before the City¹ filed its bankruptcy petition, it embraced the idea that Chapter 9, first and foremost, is a public revitalization process — not a process to allow the City to provide *essential services* while *minimizing creditor*

¹ Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

loss, as legislative history and case law dictate.² Indeed, in Jones Day’s very first pitch to the City to become its legal counsel, it explained how it intended to transform the Chapter 9 *debt adjustment process*³ into a public revitalization process that is subsidized by cuts to creditor recoveries:

- “[A]ny [C]hapter 9 process should pursue as many revitalization initiatives as possible.”⁴
- “[A]s the City gains access to new revenues, it must develop an approach that preserves those revenues for reinvestment in the City and not just to pay off preexisting debts.”⁵
- The City should “defend against approaches that focus on expense reduction and monetizing assets to pay creditors.”⁶

² See H.R. Rep. No. 95-595, at 263 (1977) (“[T]he primary purpose of Chapter 9 is to allow the municipal unit to continue operating while it adjusts or refinances creditor claims with minimum (and in many cases, no) loss to its creditors.”); H.R. Rep. No. 94-686, at 524 (1975) (same); *Fano v. Newport Heights Irrigation Dist.*, 114 F.2d 563, 564–66 (9th Cir. 1940) (holding that a Chapter 9 debtor’s “top-heavy and extravagant” infrastructure spending “of at least twice the sheer necessity of the situation” to be subsidized by cuts to creditor recoveries rendered plan of adjustment non-confirmable because “it would be highly unjust to allocate their cost to the bondholders” and such plan treatment was neither fair and equitable nor in the best interest of creditors).

³ See *In re Addison Cmty. Hosp. Auth.*, 175 B.R. 646, 648–51 (Bankr. E.D. Mich. 1994) (describing Chapter 9 as a “debt adjustment process” that allows “municipalities to continue in existence” pursuant to a confirmable plan of adjustment that is “fair, equitable, and feasible, and does not discriminate unfairly in favor of any creditor or class of creditors”).

⁴ Presentation to the City of Detroit, 57 (Jan. 29, 2013), attached hereto as Exhibit 1.

⁵ *Id.* at 54.

⁶ *Id.* at 27.

- The Chapter 9 process should be used “to address as many additional items as possible, not just the core debt readjustment issues in a Plan of Adjustment.”⁷

The City’s philosophical approach to this case conflicts with the way Congress intended Chapter 9 to operate and with the standards set forth therein — *e.g.*, a plan of adjustment must be in the “best interests of creditors,” “fair and equitable,” and submitted in good faith. While there is no question that the City of Detroit faces many challenges, the means by which these challenges are addressed must be integrated into the overall purpose of Chapter 9, which focuses on fairly adjusting the debts of the City’s creditors.

2. Since that initial presentation, the City and its advisors have continued to focus on politically popular public revitalization projects, while at the same time marginalizing the City’s many creditors. In its Creditors Proposal, for example, the City put forward a plan where it would spend \$1.25 billion on public improvement projects such as a roof replacement for the Manoogian Mansion, an unspecified airport expansion, and approximately \$300 million of unspecified “Additional Operating Expenses.”⁸ Similarly, in its DIP financing proposal, the

⁷ *Id.* at 58.

⁸ *Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan’s Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 11] Ex. A (the “Creditors Proposal”), at 127–28.

City contemplates spending reportedly \$120 million “to fund expenditures that are designed to contribute to the improvement of the quality of life in the City.”⁹

3. Meanwhile, the City previously announced that it proposes to pay certain unsecured creditors only approximately 16.8 cents on the dollar on account of their claims despite the size of the City’s asset base and potential mutually beneficial and creative opportunities to enhance creditor recoveries.¹⁰ These cuts to creditor recoveries are projected to fund approximately \$650 million of the City’s public improvements spending in what literally amounts, at best, to a zero-sum proposition.¹¹

⁹ *Motion of the Debtor for a Final Order Pursuant to 11 U.S.C. §§ 105, 362, 364(c)(1), 364(c)(2), 364(e), 364(f), 503, 507(a)(2), 904, 921, and 922 (I) Approving Post-Petition Financing, (II) Granting Liens and Providing Superpriority Claim Status and (III) Modifying Automatic Stay* [Docket No. 1520] ¶ 47; *City of Detroit Receives Commitment for up to \$350 Million of Post-Petition Financing*, PRNEWswire, Oct. 11, 2013 available at <http://www.prnewswire.com/news-releases/city-of-detroit-receives-commitment-for-up-to-350-million-of-post-petition-financing-227423391.html> (estimating approximately \$120 million for quality of life expenditures as of Oct. 11, 2013). The City’s DIP financing proposal is connected with its *Motion of Debtor for Entry of an Order (I) Authorizing the Assumption of That Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(A) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant Rule 9019, and (III) Granting Related Relief* [Docket No. 17] (the “Forbearance Motion”), wherein the City seeks to pay one group of creditors — the swap counterparties — ahead of and before all others.

¹⁰ Creditors Proposal, *supra* note 8, at 23–29, 107.

¹¹ Hr’g Tr. 137:6–14, Oct. 24, 2013; *see also id.* at 132:21–24 (Charles Moore confirming that “with respect to the [June 14] proposal . . . an important

4. And yet, despite the obvious plan implications of these proposals, the City has consistently failed to provide its creditors — as well as the City Council — with the information necessary to properly evaluate the merits of its proposals. For example, the City refused to provide parties in interest with all necessary and requested documentation in connection with the DIP financing proposal and the Forbearance Motion.¹²

5. The Motion is yet another example of the City’s approach to its Chapter 9 case. Though the City’s desire to remedy the problems with its street lights is understandable, the process surrounding, and substance of, the Motion suffers from a number of fundamental flaws that have similarly plagued many of the City’s other proposals.

component of it is reinvestment in the infrastructure and operations of the City of Detroit.”).

¹² See, e.g., *Motion of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. for Authority to Issue Document and Deposition Subpoenas to the Debtor, the Emergency Manager, and Certain of the Debtor’s Advisors Pursuant to Federal Rule of Bankruptcy Procedure 2004* [Docket No. 1342] ¶ 9 (requesting DIP term sheets and commitment letter that the City refuses to provide); *Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Motion of Debtor for Entry of an Order (I) Authorizing the Assumption of That Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(A) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant Rule 9019, and (III) Granting Related Relief* [Docket No. 366] ¶ 1 (detailing the City’s secretive negotiations in connection with the Forbearance Motion).

6. *First*, the Motion lacks the detail necessary to evaluate the merits of the proposed transaction. Among other things, the Motion fails to address why, as the City contends, the PLA Transaction is “the best (and perhaps only) opportunity.”¹³ It further fails to describe what that opportunity really is — the lighting plan seems to exist in a vacuum divorced from the City’s needs and any anticipated economic benefit. And it does not answer why, of all things the City can do to protect its citizens and generate revenues, jobs, and investment, upgrading the City’s *entire* lighting infrastructure makes sense for the City at this time.

7. *Second*, the detail that the City *has* provided indicates that the transaction may be economically unsound. For example, though the City points out that only \$12.5 million of the Pledged Revenues will fund the Act 392 Bond payments, it fails to explain why it is necessary to pledge *all* of the utility tax revenues in the first instance, which currently stand at approximately \$40 million a year.¹⁴ Additionally, as set forth in the exhibits attached to the Motion (but not referenced in the Motion itself), the City will also obligate itself generally to fund

¹³ Motion ¶ 22.

¹⁴ Creditors Proposal, *supra* note 8, at 3.

approximately \$11 to \$12 million of operating and maintenance costs under the PLA Transaction.¹⁵

8. *Third*, the Motion is yet another attempt by the City to push through a public reinvestment initiative that would be more appropriately addressed at the plan of adjustment stage — and only then after creditors have been given the opportunity to evaluate and shape the proposal or propose other approaches. Though all parties prefer to see this case move quickly, speed should not come at the expense of due process. Yet, by operating outside the plan of adjustment framework, the City is attempting to avoid many of the procedural and substantive plan confirmation requirements that are designed to protect creditors from precisely this type of transaction — which then requires creditors to respond to protect their rights. If the City would instead negotiate with its creditors towards a holistic solution (*i.e.*, a mutually-agreeable plan of adjustment) — as opposed to these contested piecemeal proposals that lack the requisite detail this case would proceed more quickly and on a more consensual basis.

9. For these reasons, Syncora submits the instant Limited Objection.

¹⁵ See Motion Ex. 1 to Ex. 6.1 (the “PLA Lighting Plan”), at A.4.

Limited Objection

A. Relevant Details Surrounding the PLA Transaction.

10. The City created the PLA as a separate municipal corporation to manage and maintain the City’s public lighting system.¹⁶ The PLA “is responsible for constructing, improving, enlarging, reducing or extending the City’s street light system.”¹⁷

11. In connection with the Motion, the City seeks an order under section 364(c)(2) of the Bankruptcy Code (a) authorizing the City to enter into and perform under the PLA Transaction Documents, and (b) authorizing and approving the PLA financing transaction and the granting of a pledge and lien in, and the irrevocable transfer of, the Pledged Revenues.

12. To secure the financing for the PLA Transaction, the City has agreed to “irrevocably pledge and cause the existing and future revenue generated from the Utility Tax . . . as security for, and the primary source for the repayment of, the Act 392 Bonds.”¹⁸ The amount of Pledged Revenues to which the PLA is entitled is the lesser of (a) \$12.5 million, and (b) the total revenues generated by the Utility

¹⁶ Motion ¶ 6.

¹⁷ Motion Ex. 6.4, at 3.

¹⁸ Motion ¶ 7.

Tax.¹⁹ The City notes, however, that certain key transactional documents the City asks this Court to approve are “prospective and subject to modification.”²⁰ As its justification for this transaction, the City contends that the public lighting initiatives the Act 392 Bonds finance and the Pledged Revenues secure will allow the PLA to “construct, improve, enlarge, reduce or extend the City’s Public Lighting System for the benefit of the City.”²¹ According to the City, the “PLA Transaction represents the City’s best (*and perhaps only*) opportunity to remedy this public safety concern.”²²

13. To support these claims, the Motion provides some high-level details surrounding the transaction. However, it makes no attempt to quantify or analyze how the PLA Transaction will benefit the City and its stakeholders. Nor does it contain any evidence that the City considered any alternative financing structures.²³

¹⁹ *Id.*

²⁰ *E.g.*, PLA Lighting Plan, *supra* note 15, at A.4 (“Please note that negotiations on the O&M have not commenced, therefore the information contained in this section should be considered prospective and subject to modification.”).

²¹ Motion ¶ 19.

²² Motion ¶ 22 (emphasis added).

²³ It is also puzzling why the City did not wait for the City Council to analyze the terms of this proposal — or, for that matter, submit an alternative proposal (as they are entitled under PA 436) — before submitting the Motion. Though the City Council’s powers have been dramatically circumscribed by PA 436, it

B. The City’s Motion Suffers from a Number of Fundamental Flaws.

14. The City must demonstrate that the proposed financing is “necessary to preserve the assets of the estate” and that the terms of the transaction are “fair, reasonable, and adequate.”²⁴ Courts consider the following factors, among others, to determine whether the terms of a postpetition financing transaction under section 364 of the Bankruptcy Code are appropriate: (a) whether the proposed transaction is an exercise of the debtor’s reasonable business judgment; (b) whether alternative financing is available on any other basis; (c) whether the proposed transaction is in the best interests of both the estate and its creditors; (d) whether any better offers, bids, or timely proposals are before the court; (e) whether the transaction is necessary, essential, and appropriate to preserve estate assets and for the continued operation of a debtor’s business; (f) whether the terms of the proposed financing are fair, reasonable, and adequate given the

retains the key right and obligation to evaluate dispositions of City Assets. Moreover, the City Council will be a critical part of any plan of adjustment. Giving the City Council the full statutory time to consider the proposal would seem to accord with at least minimal standards of comity.

²⁴ *In re Crouse Grp., Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (noting that debtor must also establish that it was unable to obtain alternative financing).

circumstances; and (g) whether the proposed transaction was negotiated in good faith and at arm's length (collectively, the "Farmland Factors").²⁵

15. As discussed below, the City cannot satisfy the Farmland Factors. First, the Motion fails to provide sufficient information to analyze the merits of the PLA Transaction. Second, the little information the City has provided demonstrates that the economics behind PLA Transaction may not be in the best interests of the City or its stakeholders. Third, the City is yet again asking this Court to approve a transaction that should be addressed within the procedural framework of a plan of adjustment.

1. The City Has Failed to Provide Adequate Information to Evaluate the Proposed Transaction.

16. Syncora favors the City of Detroit having adequate lighting to protect citizens (including considering reasonable prospective population growth) and to support other initiatives for the City's and its stakeholders' recovery. But Syncora does not support any proposal — like the one at issue in the Motion — that lacks all of the information necessary to evaluate that proposal.

²⁵ *In re Farmland Industries, Inc.*, 294 B.R. 855, 879–80 (Bankr. W.D. Mo. 2003); *Bland v. Farmworker Creditors*, 308 B.R. 109, 113–14 (S.D. Ga. 2003) (applying Farmland Factors).

17. Here, the City has failed to provide many of the important details surrounding the PLA Transaction. Among other omissions, the City has not provided the following information:

- What, if any, process it conducted (*e.g.*, competitive bidding for the bonds);
- Whether alternative financing structures were considered;²⁶
- Any objective measure of the costs and benefits associated with the relief sought;
- The identity of the engineers and/or other professionals consulting on the lighting systems project and their related analyses;
- Why the PLA Transaction is “the best (*and perhaps only*) opportunity” to address public lighting issues;
- The ultimate scope of the lighting systems upgrade over the life of the project (*e.g.*, short-term and long-term objectives); and
- How this financing transaction is necessary, essential, or appropriate to preserve the City’s assets for its continued operation.²⁷

²⁶ See 11 U.S.C. § 364(c) (“If the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or incurring of debt”); *Crouse Grp.*, 71 B.R. at 549 (same).

²⁷ See, *e.g.*, H.R. Rep. 94-686, at 546–47 (1975) (“[B]y facilitating borrowing to meet current expenses, the court was actually preserving former secured creditors’ collateral by preserving the business as a going entity. Thus, there was no actual or effective taking of property prohibited by the Fifth Amendment in giving new security that would prime the former liens of secured creditors. In the municipal context, this reasoning is similarly applicable. While the ‘business’ of government will continue whether it is insolvent or not, without cash to continue to provide *essential government services*, the only asset available for the creditors, the municipality’s tax base,

18. While it may be true that certain improvements are necessary to the City's infrastructure, this is first and foremost a Chapter 9 debt adjustment process that requires the disclosure of certain information. Notwithstanding that requirement, the City has not demonstrated that these reinvestment initiatives are necessary or how they map on to a plan of adjustment that benefits all of the City's stakeholders. Nor, for that matter, has the City detailed the process behind the PLA Transaction.

19. Without this information, it is impossible to assess the merits of the Motion and determine whether the PLA Transaction was presented in good faith, is in the best interest of creditors, or is fair and equitable.²⁸ Put simply, it is not enough to say, without any supporting evidence, that the "PLA transaction represents the City's best (and perhaps only) opportunity to remedy this public safety concern." The City's financial commitment to this project is at least \$23.5 million per year for approximately 30 years, or approximately \$705 million in

may be seriously eroded by flight of the city's businesses and residents.") (emphasis added); *see also In re Barbara K. Enterprises, Inc.*, 2008 WL 2439649, at *8 (Bankr. S.D.N.Y. June 16, 2008) ("A debtor may not obtain approval for extending secured credit unless it first establishes that it is otherwise unable to reasonably obtain unsecured credit, **and the credit is necessary for continued operation.**") (emphasis added).

²⁸ See the Farmland Factors; *see also* 11 U.S.C. §§ 901(a), 943(b)(1), 943(b)(7), 1129(b)(2), 1129(a)(3) (analogous Chapter 9 plan confirmation requirements).

total.²⁹ Of this \$705 million, approximately \$192 million, or 27%, will be used simply to finance the transaction (based on the City's own estimates).³⁰ This projected \$192 million financing cost is yet another material fact that is not disclosed by the City in the Motion. For a transaction of this type and size, much more than the City's bare-bones disclosure is required.

20. In addition, the timing of this transaction is suspect given that (a) the Act 392 Bonds are not projected to be issued until June 2014,³¹ (b) the City previously anticipated spending a total of approximately \$1.7 million on public lighting capital improvements in the Creditors Proposal,³² and (c) the City Council had not yet had the opportunity to review and act on the PLA Transaction at the time the City filed the Motion.

2. The Economic Terms that the City Has Revealed Indicate that the PLA Transaction May Not Be in the Best Interests of the City and its Stakeholders.

21. While the City has failed to provide a full view of the economic burden that this transaction will place on the City, what little detail it has disclosed is troubling — both from the perspective of the City's taxpayers and its creditors.

²⁹ See PLA Lighting Plan, *supra* note 15, at A.4, B (estimating \$12.5 million pledged to repay bonds and \$11-12 million in operating and maintenance costs).

³⁰ See *id.* App. G.

³¹ *Id.*

³² Creditors Proposal, *supra* note 8, at 127.

22. To begin, the PLA Transaction will actually cost the City more than the Motion reveals. For example, hidden amidst the details of the exhibits attached to the Motion is the fact that the City has committed to fund the operation and maintenance of the PLA-managed lighting system.³³ Though the City states that it assumes no liability for the Act 392 Bonds or C&F Agreement,³⁴ the estimated \$11–\$12 million in annual operational and maintenance expenses the City will pay out of its general fund almost doubles the \$12.5 million per year price tag attached to the face of the Motion.³⁵ Furthermore, of the approximately \$150 million in projected bond proceeds, approximately \$60 million will be used immediately to pay off the PLA’s “bridge loan,” which is yet another undisclosed financing device buried in the PLA’s plan and budget that receives no mention in the Motion.³⁶ As discussed above, of the City’s total \$705 million financial commitment,

³³ See PLA Lighting Plan, *supra* note 15, at A.4 (“The estimated annual costs for these operation and maintenance services, including PLA administrative costs, is \$11M to \$12M based on the criteria contained in Section A.3. The source of the City funds for the payment of rates has not been identified yet, but it should be anticipated that the source will be the City of Detroit General Fund.”).

³⁴ Motion ¶ 9.

³⁵ See PLA Lighting Plan, *supra* note 15, at A.4; *see also* Motion Ex. 6.2, at 4.1 (stating that the annual cap for operations and maintenance will be \$8.024 million, plus “Extraordinary Maintenance” payments). A comparison of current costs to these estimates is impossible because the City has not disclosed the current operating and maintenance costs associated with its lighting infrastructure.

³⁶ See PLA Lighting Plan, *supra* note 15, at A.1; *id.* App. G.

approximately \$192 million, or 27%, will be used simply to finance the transaction.³⁷ Finally, the City is quick to point out that only \$12.5 million of the Pledged Revenues will fund the Act 392 Bond payments, but it fails to explain why it is pledging \$40 million of utility tax revenues when only \$12.5 million is necessary for the transaction.³⁸

23. The PLA Transaction is just as unfavorable to the City's creditors. As part of the transaction, the City anticipates "making a multi-year, large scale, city-wide investment in the public lighting infrastructure."³⁹ To do so, the City seeks to lock-up the Pledge Revenues for 30 years.⁴⁰ All told, the City's financial commitment to this project is at least \$23.5 million per year for approximately 30 years, or approximately \$705 million in total. Notably though, the Pledged Revenues are City resources that could be used to fund recoveries to creditors that invested their time and resources in the City's operations and pensions for decades — creditors that are now being asked to accept 16.8 cents on the dollar.⁴¹

³⁷ See PLA Lighting Plan, *supra* note 15, App. G.

³⁸ *E.g.*, Motion ¶ 17; Creditors Proposal, *supra* note 8, at 3.

³⁹ PLA Lighting Plan, *supra* note 15, at A.1.

⁴⁰ *Id.* at B.

⁴¹ See *In re FCX, Inc.*, 54 B.R. 833, 838 (Bankr. E.D.N.C. 1985) (“[T]he court should not ignore the basic injustice of an agreement in which the debtor, acting out of desperation, has compromised the rights of unsecured creditors.”).

3. The Motion Should be Presented as Part of a Plan of Adjustment.

24. In connection with the PLA Transaction, the City is attempting to restrict a revenue stream for 30 years in a way that diminishes creditor recoveries. Given the impact of this transaction, the City should have included it as part of its plan of adjustment.⁴² To the contrary, the City has instead decided to hurriedly present this transaction to the City Council and ultimately the Court.

25. Ignoring for the moment that the City cannot meet the requirements for approval of the Motion, the City's tactics here signal an awareness that it cannot meet the procedural and substantive plan confirmation requirements designed to protect creditors from precisely this kind of amorphous transaction.⁴³

26. For instance, to protect those entitled to vote on a plan of adjustment, a Chapter 9 debtor must provide "adequate information" in respect of the transactions contemplated thereunder, which means:

⁴² See *In re Braniff Airways, Inc.*, 700 F.2d 935, 940 (5th Cir. 1983) (transactions that dictate the terms of any future plan of restructuring, or alter creditors' rights without otherwise requiring the satisfaction of the disclosure and confirmation standards of the Bankruptcy Code are *sub rosa* plans); see also *In re Swallen's, Inc.*, 269 B.R. 634, 638 (B.A.P. 6th Cir. 2001) ("[A] bankruptcy court cannot issue orders that bypass the requirements of Chapter 11, such as disclosure statements, voting, and a confirmed plan, and proceed to a direct reorganization on the terms the court thinks best, no matter how expedient that might be.")

⁴³ See, e.g., *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992) ("The bankruptcy court cannot, under the guise of section 364, approve financing arrangements that amount to a plan of reorganization but evade confirmation requirements.").

[I]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor's books and records ... that would enable [] a hypothetical investor of the relevant class to make an informed judgment about the plan.⁴⁴

Here, at a minimum, and as set forth above, the City should be required to provide detailed financial information, a description of its process, and its underlying assumptions in respect of the PLA Transaction.

27. Moreover, sections 943(b)(7) and 1129(a)(3) of the Bankruptcy Code require that a plan of adjustment be in the best interests of creditors and proposed in good faith, respectively. And section 1129(b)(1) of the Bankruptcy Code provides that a plan of adjustment may be confirmed even if a class of claims rejects the plan so long as “the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.” The application of “fair and equitable” in Chapter 9, for instance, requires that “the amount proposed to be paid under the plan was

⁴⁴ 11 U.S.C. § 1125(a)(1); *In re Malek*, 35 B.R. 443 (Bankr. E.D. Mich. 1983) (finding debtor did not disclose adequate information where debtor did not include, *inter alia*, certain financial information, how a plan was to be executed, and a projection and underlying assumptions related to its operations); *see also In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994) (“This disclosure requirement does not attach only to the preparation of disclosure statements. ‘Full and fair’ disclosure is required during the *entire* reorganization process; it begins ‘on day one, with the filing of the Chapter 11 petition.’”) (citations omitted).

all that the creditors could reasonably expect under the circumstances.”⁴⁵ Collier has taken the position that a plan of adjustment is not fair and equitable or in the best interests of creditors if it invests heavily in facility improvements to the detriment of creditors:

[A Chapter 9] plan that makes little or no effort to repay creditors over a reasonable period of time may not be in the best interest of creditors. ***For example, a debtor that had invested heavily in improvements in its facilities at a time when it was unable to pay the claims of its bondholders cannot rely on its cash-poor position resulting from the investment as a reason why it should pay less to bondholders, because the bondholders should not be required in effect to subsidize the improvements.*** Such a plan is not fair and equitable and is not in the best interest of creditors.⁴⁶

In order to determine whether a proposed treatment of creditors is fair:

[T]he court must have before it data which will permit a reasonable, and hence an informed, estimate of the probable future revenues available for the satisfaction of creditors. And where, as here, different classes of creditors assert prior claims to different sources of revenue, there must be a determination of the extent to which each class is entitled to share in a particular source, and of the fairness of the allotment to each class in the light of the probable revenues to be anticipated from each source. To support such determinations, there must be findings, in such detail and exactness as the nature of the case

⁴⁵ *Lorber v. Vista Irrigation Dist.*, 127 F.2d 628, 639 (9th Cir. 1942) (citing *West Coast Life Insurance Co. v. Merced Irrigation District*, 114 F.2d 654, 678 (9th Cir. 1940); see also 6 Collier on Bankruptcy ¶ 943.03[1][f][i][B] (16th ed. 2013) (noting that the “fair and equitable rule has additional content in chapter 9 cases” while quoting the “reasonable expectations” standard set forth in *Lorber*).

⁴⁶ 6 Collier on Bankruptcy ¶ 943.03 (citing *Fano v. Newport Heights Irrigation Dist.*, 114 F.2d 563 (9th Cir. 1940)).

permits, of subsidiary facts on which the ultimate conclusion of fairness can rationally be predicated.⁴⁷

Proposals like the City’s financing of the PLA Transaction are precisely what the fair and equitable and best interests tests are designed to address, and the City should not be able to short-circuit the confirmation process — including the detailed findings that must accompany the Court’s ultimate fairness determination — with the Motion.

28. Similarly, in the context of section 364(e), where a debtor fails to provide sufficient information to support a finding of good faith, the court should not rubber-stamp the debtor’s request for a finding under that section.⁴⁸ Rather, where, as here, the City has not provided the necessary information to make such a finding, a section 364(e) good faith finding is not appropriate.

29. Finally, it also makes more sense, from a practical perspective, to address the issues in the Motion as part of the confirmation process given that there are many outstanding that may impact the PLA Transaction but have not yet been

⁴⁷ *Kelley v. Everglades Drainage Dist.*, 319 U.S. 415, 420 (1943).

⁴⁸ *E.g.*, *In re White Crane Trading Co., Inc.*, 170 B.R. 694, 705 (Bankr. E.D. Cal. 1994) (“Parties similarly lack good faith when they fail to reveal material facts.”); *cf. In re Buerge*, 479 B.R. 101, 107 (Bankr. D. Kan. 2012) (“The court cannot infer good faith from an evidentiary record silent on the question because such an inference would invert the burden of proof onto the objecting party.”) *motion for relief from judgment denied*, 11-20325, 2013 WL 934836 (Bankr. D. Kan. Mar. 7, 2013).

addressed. For example, many of the City's pleadings have noted just how large the City of Detroit is and the difficulties that the City has experienced in providing municipal services over such a large area.⁴⁹ The City has also described the large number of property foreclosures that it has experienced and questioned what it will do with all of this land.⁵⁰ Presumably, the City will address issues relating to its infrastructure (*i.e.*, the land) as part of its proposed plan of adjustment. These issues, however, will likely impact the lighting issues that the City is seeking to address through the Motion. Syncora submits that the City would be better-served by addressing all of these issues at the same time as opposed to the piece-meal approach that the City is currently employing.

Conclusion

30. For the foregoing reasons, Syncora respectfully requests that the Court deny the Motion.

[Remainder of page intentionally left blank.]

⁴⁹ See, e.g., *Declaration of Kevyn D. Orr in Support of City of Detroit, Michigan's Statement of Qualifications Pursuant to Section 109(c) of the Bankruptcy Code* [Docket No. 11] ¶ 31 (discussing the City's 139-square mile footprint and challenges related to providing municipal services).

⁵⁰ See, e.g., *id.* ¶¶ 34–35 (discussing the City's large number of foreclosures); Creditors Proposal, *supra* note 8, at 16–17 (same).

Dated: November 6, 2013

/s/ Ryan Blaine Bennett

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*Attorneys for Syncora Guarantee Inc. and
Syncora Capital Assurance Inc.*

Exhibit 1

Presentation to the City of Detroit



One Firm WorldwideSM



Presentation to The City of Detroit

Detroit, Michigan

January 29, 2013

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PART I – INTRODUCTION

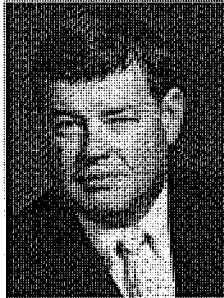
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2



The Jones Day Team



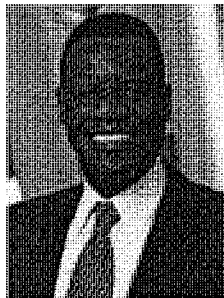
Stephen Brogan



Corinne Ball



Heather Lennox



Kevyn Orr



Bruce Bennett



Aaron Agenbroad

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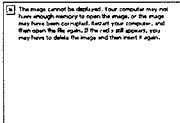


[Speaker Notes For Slide: 3]

The Jones Day Team:

Stephan Brogan
Corinne Ball
Heather Lennox
Kevyn Orr
Bruce Bennett
Aaron Agenbroad

[Brogan voiceover: Although I will not be heavily involved in the representation, I wanted to (i) provide my personal statement of Jones Day's commitment to this project and (ii) highlight the qualities of the team members that will manage this project on a day-to-day basis.]



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Jones Day's Qualifications and Commitment

- **Midwestern Roots – Continuing Presence and Practice**
- **Substantial Ties to Michigan and the 6th Circuit**
- **Belief in the Importance of a Strong Detroit**
- **Unsurpassed Expertise Where Detroit Needs It**
- **Historical Focus on Teamwork and Collaboration**
- **Know and Work Well With City's Other Advisors**
- **Firm-Wide Commitment to Detroit**

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[Speaker Notes For Slide: 5]

Jones Day's Commitment to the Detroit Project

Jones Day's roots are in the Midwest and a large part of our practice is centered there.

Many of Jones Day's clients are based in Detroit and in Michigan.

(Over 100 Michigan-based clients in the past 2 years.)

Long-standing representation of GM.

Special benefits counsel to, and good contacts with, Blue Cross of Michigan.

25 lawyers were 6th Circuit Clerks.

27 lawyers were clerks in federal courts in the 6th Circuit (Ohio, Michigan, Tennessee, Kentucky).

28 lawyers were US Supreme Court Clerks.

116 lawyers have one or more degrees from Michigan institutions (including 98 lawyers with 111 degrees from the University of Michigan alone).

We believe that a strong Detroit is vital to the state, the region and the country.

Jones Day has unsurpassed expertise and capabilities in the areas of greatest importance to Detroit and would be honored to be called upon to help.

Jones Day has a longstanding reputation for teamwork and collaboration, both within our own organization and when working with clients, related parties and other professional firms.

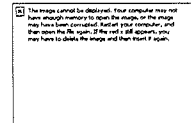
This strength will be particularly important in this matter.

We know and can work well with the other advisors retained by the City and it will be critical that everyone pulls together in the same direction.

When a client engages Jones Day, it engages the entire firm, and this would be regarded as an engagement of utmost importance for the firm as a whole.

We are committed to providing whatever resources are needed to advance Detroit's restructuring goals.

The City will have the support of each and every part of the Firm.



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PART II – GENERAL OBSERVATIONS

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7



[Speaker Notes For Slide: 7]

Jones Day's Priority for Today's Meeting

It is much more important that we discuss issues the City, the State and the FAB want to discuss rather than issues that we have identified.

We are prepared to walk through the presentation and invite dialog along the way, but are also prepared to put our presentation to one side and cover topics that interest you and address your questions and concerns.

We have studied Detroit's situation extensively and we have some preliminary views on a path forward.

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Detroit's Substantial Progress

- Improved Cash Flows
- Significant Headcount Reduction
- Implementation of CETs
- Planning to Address Pension/OPEB
- Payroll Systems Outsourcing
- Public Lighting Authority
- Regional Transportation Authority
- Initiatives to Drive Revenue/Reduce Expenditures

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9



[Speaker Notes For Slide: 9]

The City, working with the FAB and the State, already has made substantial progress in addressing its financial challenges.

Improved Cash Flows (Expected improvement of ~\$62MM in FY 2013)

Significant Headcount Reduction (from ~12K in Nov. 2011 to ~10K in Nov. 2012)

Implementation of CETs (Despite delays, large majority of CETs are in place)

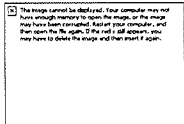
Planning to Address Pension/OPEB (e.g., recently closed the Police & Fire Retirement System to new employees, retention of Milliman to assist in revamping benefits for retirees and active employees)

Payroll Systems Outsourced

Public Lighting (Public Lighting Authority established; rate increases)

Regional Transportation Authority (authority established; new funding committed)

Initiatives to Drive Revenue or Reduce Expenditures (Belle Isle lease to the state, funding support for new arena and commercial development via Detroit Downtown Development Authority, grant and loan support for Detroit's Eastern Market through the Community Revitalization Program)



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Formidable Challenges Remain

- Substantial Debt (Bonds, POCs, Swaps)
- Pension/OPEB Liabilities
- Labor Issues (Costs, Work Rules)
- Detroiters' Quality of Life/Redevelopment of the City
- Development of Multi-Year Budget
- Reversing Economic Trends
- Encouraging New Investment in Detroit
- Political Obstacles to Reform
- EPA/Clean Water Act Case
- High Unemployment and Crime Rates

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[Speaker Notes For Slide: 11]

Notwithstanding the foregoing, many challenges remain.

Debt and related obligations (e.g., swaps)

Pensions and other retiree benefits (OPEB).

Labor costs, work rules and related issues.

Implementation of strategies to improve Detroiters' quality of life and redevelop the City.

Development of multi-year budget upon which restructuring can be based.

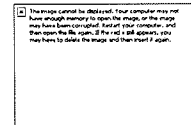
Identification of further options for saving/raising funds and stabilizing revenues (reversing trends) and encouraging new investment in Detroit.

Political obstacles to reform.

EPA and Clean Water Case before Judge Cox.

High unemployment.

High crime rate.



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Out of Court Solutions Are Preferred

- **Benefits of Well Planned Out-Of-Court Restructuring**
 - **Less Disruptive**
 - **Less Publicity**
 - **Less Expensive**
 - **Less Reputational Damage**
 - **Less Political Impact**

- **Consensus or Near Consensus Necessary for a Successful Out-of-Court Restructuring**
 - *Extremely Difficult to Achieve in Practice*

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[Speaker Notes For Slide: 13]

A well planned and carefully implemented effort to resolve Detroit's difficulties out of court is vitally important for several reasons:

An out-of-court solution is preferable for a number of reasons.

Less disruptive.

Less publicity during process.

Less expensive.

Less damage to City reputation.

Less political impact.

An out of court solution requires consensus or near consensus of affected constituencies.

This is extremely hard to achieve in practice.

Note: Could mention the possibility of a moratorium on payments being negotiated in support of an out of court solution.

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Impact of Possible Emergency Manager Appointment

- **Expansive Power**
 - **Power of City Government**
 - **Ability to Reject, Modify or Terminate CBAs**
 - **Ability to Commence Chapter 9 Filing Quickly, if Warranted**
 - ***Can Create Negotiating Leverage (Negotiating with the Backdrop of Bankruptcy)***
- **Hot-Button Political Issue**
- **Relationship With Elected Officials Must Be Established**
- **Possible Legal Challenges (Delay and Risk)**

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[Speaker Notes For Slide: 15]

Appointment of an Emergency Manager may offer the City greater powers to address some issues.

The appointment of an Emergency Manager could impact the City's restructuring efforts in a number of ways:

Expansive powers over all aspects of City government could be used to promote and expedite restructuring (e.g., budget; procurement; contracts; labor negotiations; ability to adopt ordinances related to financial condition).

Could streamline certain political/bureaucratic/legal requirements to restructuring activities.

Ability to reject, modify or terminate CBAs under certain circumstances.

Ability to commence chapter 9 filing quickly under PA 72 and PA 436 (assuming State approval).

Emergency manager powers can create negotiating leverage (negotiating in the backdrop of bankruptcy).

Hot-button political issue.

Potentially unpopular option with certain segments of the public, unions, other stakeholders.

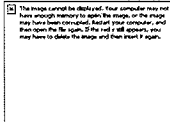
The Emergency Manager's relationship with elected officials would have to be developed.

Ultimately, the Emergency Manager could be used as political cover for difficult restructuring decisions.

Appointment of an Emergency Manager could result in legal challenges (e.g., federal & state constitutional challenges)

Could delay progress until resolved

Could lead to challenges of the legality and enforceability of any actions taken by the Emergency Manager.



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Out-of-Court Plan Should Contemplate the Possibility of Chapter 9

- **Simplify and Shorten Any Chapter 9 Case, if Out-of-Court Effort Fails**
 - **Out-of-Court Agreements Can Be Used in Chapter 9**
- **Creates Leverage in Creditor Negotiations**
 - **Negotiating in the Shadow of Chapter 9**
 - **Motivate Municipal Bond Market Participants**
- **Bolster Eligibility for – and Success in – Chapter 9 By Establishing Good-Faith Record of Seeking Creditor Consensus**

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[Speaker Notes For Slide: 17]

Any restructuring plan should be designed so that it could be implemented in a chapter 9 case, if necessary.

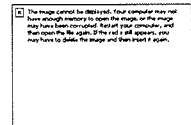
Even if an out-of-court plan cannot be implemented, agreements that are reached can form the basis for a chapter 9 plan of adjustment, thus simplifying and shortening any chapter 9 case.

Creditors understand that a troubled municipality has greater leverage in a chapter 9 case. Accordingly, developing an out-of-court restructuring plan that can later be implemented in chapter 9 if necessary can create leverage in favor of a negotiated deal.

This is particularly the case if an Emergency Manager is appointed because the threat of a chapter 9 filing – including a potential moratorium on payments – will be more tangible, and possibly more imminent.

The combination of an Emergency Manager and a proposal that could be implemented in chapter 9 could be the most effective way to motivate investors in the municipal bond market.

A good-faith effort to pursue an out of court restructuring plan will establish a clear record of seeking creditor consensus before seeking chapter 9 relief. This will deflect any eligibility complaints based on alleged failure to negotiate or bad faith.



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If Chapter 9 Needed, Planning Is Key

- Any Bankruptcy Filing Should Be Accompanied By:
 - Fully Developed Plan of Adjustment / Detailed Term Sheet
 - OR-
 - Clearly Articulated, Reasonable Restructuring Plan, Already Shared with Creditors

This approach will help demonstrate that Chapter 9 was commenced to facilitate realistic solutions to problems. Chapter 9 is not an additional symptom of those problems.

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**JONES
DAY**

[Speaker Notes For Slide: 19]

If a chapter 9 case becomes necessary, the commencement of a bankruptcy should be accompanied by either:

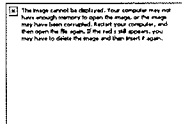
(1) A fully developed Plan of Adjustment or detailed term sheet for a Plan of Adjustment

– or –

(2) A clearly articulated, reasonable plan for resolving the City's financial difficulties – previously discussed with key constituencies – that can quickly be incorporated into a Plan of Adjustment.

~~~

This approach is intended to allow the City to describe a chapter 9 case as facilitating realistic solutions for the City's problems and not as an additional symptom or symbol of the intractability of those problems.



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# PART III – INITIAL PLANNING CONSIDERATIONS

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# Establish Long-Term Goals and Promote Inclusiveness

- Reach Consensus of City Team on Long-Term Goals and Steps to Achieve Them
- Then, Include All Constituents in Planning and Negotiations
  - Obtain – and Seriously Consider – Input From All Sources
  - Defuse Political Opposition Through Listening and Documentation
  - Establish Sub-Teams for Key Issues
  - Coordinated "Hub-and-Spoke" Approach: Sub-Teams Report to Central Hub
  - Establish a Strong Record of Inclusiveness and Consideration of All Options
- *The City (both the Office of the Mayor and City Council), the State and the FAB should strive to coordinate their efforts in all respects. Any differences and tensions among these groups can and will be exploited by adversaries.*

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[Speaker Notes For Slide: 22]

### Set Long-Term Goals and Build a Strategy of Inclusiveness

A key to a comprehensive restructuring plan will be to reach consensus at the City (in consultation with its advisors, the FAB and the State) on the restructuring steps needed to achieve a durable long-term solution to the City's issues.

Thereafter, as many constituents as possible should be included in planning and negotiations.

Input should be obtained from all sources, documented and treated seriously, even if proposals appear unrealistic. Good listening skills are helpful. This can help defuse political opposition.

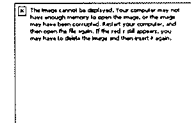
Sub-teams can be established by the City and its advisors to address particular issues (labor, pension/benefits, asset sales, redevelopment, capital markets, etc.).

Individual groups can report regularly to central core team of key officials and advisors (i.e., the Hub).

Jones Day often uses this Hub-and spokes approach to manage a complex restructuring efficiently and in a coordinated manner.

Establish a strong record (i.e., for future litigation) of (i) inclusiveness with respect to all constituencies and (ii) consideration of all options and proposals received.

The City (both the Office of the Mayor and City Council), the State and the FAB should strive to coordinate their efforts in all respects. Any differences and tensions among these groups can and will be exploited by adversaries.



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# Multi-Year Budget: Set Spending Priorities Within Realistic Revenue Projections

- **Basis for Any Restructuring Agreements**
  - **Build on Budget Work to Date**
  - **Identify All Revenue Sources (Including Future Sources)**
  - **Strive for Conservative/Achievable Revenue Estimates**
  - **Incorporate Cost Savings from Outsourcing and Other Initiatives**
- *The Budget should include funds needed to assure the proper functioning of the City and appropriate investments to revitalize the City over the long term.*

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[Speaker Notes For Slide: 24]

Set spending priorities within realistic revenue projections.

A multi-year budget that includes revenue and expense projections will be the basis for determining amounts available for distribution to creditors – critical to any restructuring agreements in or out of court.

Jones Day understands that substantial work has been done in this area, and that this is a major challenge.

The City must create credibility in the face of an unsettled revenue picture.

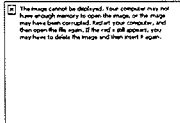
All revenue sources should be identified, including future sources (such as monetizing assets or reallocation of state/county revenue).

At the same time, the City should strive for realistic (conservative) revenue projections to assist in planning and build credibility.

Cost savings through additional outsourcing and other initiatives should be incorporated where reasonable (e.g., exploration of regionally-based options/alternatives).

This Budget should include funds needed to assure the proper functioning of the City and appropriate investments to revitalize the City over the long term.

Projected revenues should be targeted to reinvestment where possible, with a mechanism to cover shortfalls as necessary (e.g., business, state or federal partnerships).



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# Prepare to Defend the Budget

- **Defend Spending at Levels Needed to Assure Long-Term Viability**
  - **Focus on "Who Does Detroit Serve?"**
  - **Establish Case for Reinvestment**
  - **Defend Against Calls for Expense Reduction and Monetizing Assets to Pay Creditors**
- **Characterize Detroiters as "Customers "**
  - **Must Treat Citizens with Respect**
  - **Attractiveness of City to Residents and Businesses is Key**
- **Restructuring is About Revitalization, Not Just Creditor Recoveries**

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[Speaker Notes For Slide: 26]

Prepare to Defend the Budget.

The Budget will have to be defended against creditor criticism that it provides for excessive expenditures in light of the city's financial circumstances. We are prepared to build this case and address any concerns, including Constitutional or other legal challenges.

Although there is not much law in this area, Jones Day believes that the City can defend a decision to spend revenues at a level necessary to assure that the City functions properly and can attract residents and businesses.

Focus on "Who does Detroit serve?"

The citizens of Michigan benefit from a revitalized Detroit serving as an engine/economic driver for the state economy.

Need to establish a credible case that stability and restoration are key elements of reinvestment in Detroit.

At the same time, need to defend against approaches that focus on expense reduction and monetizing assets to pay creditors.

This will require daily coordinated effort of the City and its advisors, in further collaboration with the State.

We learned this lesson from Orange County – daily collection of information, discussion of core group, documentation of actions taken or considered and communication are key.

City should characterize its residents as "customers," a class of constituents that ordinarily is accorded significant benefits in business reorganizations.

Creditors may attempt to characterize residents as the "owners" or "voters" who should make sacrifices to facilitate payment of creditor claims.

The changes in the population of the City indicates that citizens can "vote with their feet" by leaving. A viable restructuring for a strong and vibrant Detroit must treat its citizens with respect, just as a successful business in the private sector treats its customers.

But also must focus on "absentee" customers to obtain City services without contributing sufficiently to the City.



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# Explore All Avenues to Pay Creditors

- Creditors (and any Bankruptcy Court) Expect Reasonable Efforts to Minimize Shortfalls to Creditors
  
- Must Explore Long List of Options for Saving or Raising Money
  - Raising Taxes and Fees
  - Non-Core Asset Sales
  - Reducing Expenses
  - Borrowing Options
  - Pay-Per-Use Taxation
  - Regional Solutions
  
- Any Savings Must Be Consistent with the City's Revitalization Plans

*A record should be established that all avenues have been explored to minimize the concessions sought from stakeholders, to bolster the notion of shared sacrifice and to support the City's case for debt reduction if a Chapter 9 ultimately is commenced.*

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[Speaker Notes For Slide: 28]

Creditors – and ultimately the Bankruptcy Court if a chapter 9 case is filed – will expect that the City exert reasonable efforts to reduce or eliminate any shortfall in amounts available to pay creditors.

Must find the right way to fix the deterioration in the City's balance sheet, including the rate and maturity of debt.

Recent events have driven to too much short term debt (for a municipality).

Must be able to assure both municipal debtholders and legacy creditors that this is not just a process of imposing more undesirable terms.

In practice, the City will be required to develop long lists of options for saving or raising money, evaluate the practicality of each of the options identified and pursue promising approaches.

In past cases, creditors have suggested:

Raising taxes and fees.

Selling assets creditors deemed to be excess or not required.

Reducing expenses.

Borrowing against revenue streams generated by municipal assets.

Borrow surplus amounts in funds administered by the municipality

Revenue enhancement alternatives should be explored, encouraged and defended, even in a chapter 9 setting. For example:

Pay-Per-Use Taxation. Consider implement pay-per-use taxation model as (1) impetus for voluntary compliance with "Core Detroit" infrastructure and service rationalization initiatives and/or (2) means to capture revenue from surrounding suburban communities that have historically expanded as Detroit's city center shrunk.

Regional cooperation/solutions also should be explored.

Any savings ultimately must be consistent with the plans to revitalize Detroit.

A record should be established that all avenues have been explored to minimize the concessions sought from stakeholders, to bolster the notion of shared sacrifice and to support the City's case for debt reduction if a chapter 9 ultimately is commenced.

Even in chapter 9, all pre-bankruptcy efforts should be highlighted to demonstrate the City's good faith efforts to resolve issues.

This also will help drive a model of equitable shared sacrifice of all stakeholders.

Given initiatives underway relating to labor and benefits, it appears that the municipal bondholders, swap participants and monoline insurers likely will be the last contributor and must understand the entire picture of sacrifices obtained over time.

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# Exploring Creditor Recoveries: Challenges and Lessons Learned

- Raising Taxes: Difficult and Possibly Counterproductive
  - Tax Relief May Be Needed to Promote Investment
- Asset Sales Pose Challenges to Generating Substantial Revenue
  - Sales of Assets to Pay Creditors May Not Promote Revitalization
- Reducing Expenditures Should Not Undermine Restructuring Goals
- Borrowing May Be Limited by Legal Restrictions

*Notwithstanding any challenges, the City will have to demonstrate to interested parties that all of these alternatives, and perhaps others, have been fully and fairly evaluated.*

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[Speaker Notes For Slide: 30]

In Jones Day's experience:

Raising additional taxes, particularly given the economic hardship in Detroit, may be difficult (if not impossible) and may be counterproductive. In fact, an evaluation of means to increase private investment dollars in Detroit suggest the need for tax relief and incentives.

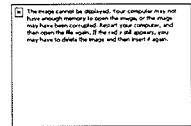
Efforts by municipalities to sell or monetize asset often pose challenges to generating material value. Disputes over the use of proceeds can undermine the benefits of an asset sale, while eroding the municipality's asset base. Notwithstanding the foregoing, there are exceptions and unique and creative structures for asset monetization can and should be explored. Working with the State to maximize asset revenues and cut costs could be a viable alternative to asset sales. Regional initiatives also could be explored (joint redevelopment, sharing of services, joint purchasing arrangements).  
Note: Asset monetization outside of bankruptcy may implicate eligibility requirement that City be insolvent (e.g., measured by short-term cash).

Troubled municipalities have reduced expenditures repeatedly even before financial difficulties become acute. That is true in Detroit, but additional reductions should be evaluated where feasible without undermining the City's restructuring goals. Given the recent sacrifices already imposed on employees and legacy creditors, the City should focus prompt attention on municipal debtholders and investors who have in some cases improved their positions.

Borrowing surplus amounts in funds administered by the municipality is complicated by State and/or Federal restrictions encumbering such funds.

Using proceeds of borrowings against revenue streams to pay City obligations is also affected by laws restricting use of the underlying assets and revenue streams.

Notwithstanding any challenges, the City will have to demonstrate to interested parties that all of these alternatives, and perhaps others, have been fully and fairly evaluated.



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[Speaker Notes For Slide: 32]

### Allocation of Sacrifice Among Competing Creditor Groups

In general, under United States bankruptcy law, including chapter 9 of the Bankruptcy Code, amounts available for distribution to creditors must be allocated in an equitable manner. "Equitable" generally means equally unless there are meaningful distinctions among the rights of competing creditors.

Recent chapter 9 cases and out of court negotiations involving troubled municipalities have involved significant disputes about whether or not workforce related claims (including claims for pension and other retiree benefits) should have some form of priority over claims for borrowed money and other commercial claims.

Pension and employee benefit commitments often are included in executory contracts. This reality may also permit some kinds of distinctive treatment from other creditor claims. In that regard, cuts in employee benefits and wages should be reasonably calibrated so that Detroit civil service compensation is market appropriate: cuts should not be so severe that the City cannot attract and retain qualified civil servants.

While legacy creditors are already being asked to make sacrifices, and have done so over the past number of months, municipal debt investors have been improving their positions. Municipal bondholders, swap participants and monoline insurers must be asked to make sacrifices compared to legacy creditors over an extended look back period. Equality of sacrifice cannot fairly be measured at a single point in time.

Tensions between statutes that protect the rights of municipal employees and the ability of municipal debtors to impair collective bargaining agreements have led to differing outcomes in bankruptcy court.

Outside of bankruptcy, Michigan employees enjoy certain constitutional protections for benefits (primarily accrued pension benefits). These protections have analogues in Michigan statutes and Detroit regulations, separate and apart from protections that may be included in CBAs, but are nevertheless considered "contractual" promises. Section 365 of the Bankruptcy Code – which is applicable to Chapter 9 proceedings – would provide Detroit with the ability to evaluate all of its "executory contracts" (including CBAs). Moreover, certain stringent restrictions on the rejection of CBAs otherwise applicable in bankruptcy do not apply in chapter 9.

Sections 903 and 904 of the Bankruptcy Code protect the power of a State to control municipalities and prohibit bankruptcy courts from interfering with the governmental power of the debtor. These provisions can be read to limit the ability of bankruptcy courts to disregard state law within chapter 9.

Thus, bankruptcy courts presiding over chapter 9 proceedings have reached differing conclusions with respect to the extent to which state laws protecting employees impact a debtor's ability to address CBA or other contractual benefits issues.

» For example, in Orange County, certain county employee coalitions successfully prevented the debtor from modifying CBAs in a manner inconsistent with California law in connection with certain seniority rights.

» On the other hand, in Vallejo, the bankruptcy court held that the filing of a Chapter 9 petition effectively foreclosed the application of state law in the CBA context. The Stockton court generally seconded Vallejo's approach regarding the primacy of federal law in chapter 9 in upholding the debtor's ability to reduce contractual OPEB benefits.

It is unclear whether bankruptcy courts within the Sixth Circuit – perhaps the most pro-union Circuit in the nation – would adopt the Orange County or the Vallejo/Stockton approach to incorporation of state law into chapter 9 proceedings.

The City also could look to expand sacrifices regionally, particularly in connection with shared services and shared benefits. Pursuing regional sacrifice may generate untested legal issues.

The City will have to develop a proposal for dealing effectively with the issues of equitable sacrifice.

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# PART IV – COMPONENTS AND CONSIDERATIONS FOR RESTRUCTURING PLAN

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# Key Plan Components

- **Pensions and Benefits**
- **Labor**
- **Municipal Debt**
- **Funds for Reinvestment**



# Contrasting Approaches in Recent Chapter 9 Cases

- **Stockton, California**
  - Continued Pension Contributions to CalPERS as Protected by State Law
  - Ceased Retiree Health Plan Premiums
  - Proposed Impairment of Certain Bond Debt, Pensions Unimpaired
  - Restructuring Opposed by Municipal Bondholders
- **San Bernardino, California**
  - Ceased Pension Contributions to CalPERS, Seeking Impairment
  - Restructuring Opposed by CalPERS and Labor, and Supported by Municipal Bondholders
- **Central Falls, Rhode Island**
  - New State Law Created Lien in Favor of Municipal Debt Service Payments
  - Bondholders Paid 100%; Pensions/Benefits Sharply Cut
  - Policy to Favor Investors and Protect Credit Ratings

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[Speaker Notes For Slide: 36]

#### Pensions and Benefits in pending California cases

The City of Stockton (population 300,000) and the City of San Bernardino (population 215,000) filed chapter 9 cases within a month of each other in mid-2012.

Like many California municipalities, both cities have very large liabilities in respect of unfunded pension and employee benefit obligations. However, each has taken a different course of action with respect to those liabilities.

Upon filing for bankruptcy, San Bernardino ceased contributions to the California Public Employee Retirement System (CalPERS) for amounts due in respect of unfunded pension obligations (both pre- and post-bankruptcy filing), and indicated that it intends to impair the claims of CalPERS like any other unsecured claim in the bankruptcy case.

Stockton, on the other hand, has continued making contributions to CalPERS and vowed to leave all CalPERS claims (the largest claims in the case) unimpaired under any plan of adjustment.

Stockton – supported by CalPERS – asserts that its obligations to CalPERS are mandated by state law and cannot be impaired in a chapter 9 case due to the limitations of sections 903 and 904 of the Bankruptcy Code.

Interestingly, Stockton has ceased paying retiree health care premiums related to promised health care benefits. Upon motion by the retirees to seek to force the city to resume such payments, the bankruptcy court issued a lengthy and important opinion touching on many questions of state sovereignty and supremacy of bankruptcy law, ultimately holding that section 904 of the Bankruptcy Code prohibited the court from granting the requested injunction against the city. In re City of Stockton, 478 B.R. 8 (Bankr. E.D. Cal. 2012). The effect of the court's opinion was to leave the retirees without a remedy, except for negotiating their treatment under the chapter 9 plan of adjustment.

The Stockton and San Bernardino cases are proceeding along parallel but opposite tracks.

In San Bernardino, due to the city's cessation of contributions to CalPERS, both CalPERS and labor groups have objected to the city's chapter 9 petition and argued, among other things, that the city will be incapable of confirming a plan of adjustment that impairs the CalPERS claims. Bondholders and bond insurers have responded in support of the city and in opposition to the CalPERS and labor objections.

In Stockton, due to the city's statement that it will not seek to impair CalPERS (and instead will seek only to impair bondholders and other unsecured creditors), it is the bondholders and bond insurers who have objected to the city's chapter 9 petition, arguing among other things that the city will be unable to confirm a chapter 9 plan of adjustment that does not impair the CalPERS claim. CalPERS has responded in support of the city and in opposition to the bondholders and bond insurers.

The cases likely will produce one or more decisions that touch upon the role and efficacy of state pension and labor law in a chapter 9 case and, when appeals ensue, ultimately may produce circuit-level authority regarding whether or not federal bankruptcy law governs in this context.

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In Rhode Island, a municipality effectively accorded priority to borrowed money creditors.

Central Falls, Rhode Island filed for chapter 9 protection in August 2011, suffering from structural budget deficits and burdensome/unpayable pension and retiree benefit obligations.

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[Speaker Notes For Slide: 38]

Legacy Creditors (Pensions and OPEB)

Detroit has significant OPEB liabilities and unfunded pension liabilities (i.e., unfunded actuarial accrued liabilities reported as approximately \$5.7 billion and \$643 million, respectively).

Recent work by Milliman suggests that unfunded pension liabilities are substantially greater than \$643 million and may exceed \$2 billion.

Given the magnitude of these liabilities, sound and long-term restructuring of Detroit's obligations will require across the board sacrifice from legacy creditors.

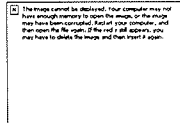
As between pension and retiree health (OPEB), OPEB poses the greater liability challenge. Pensions have substantial underfunding, but also significant plan assets; by contrast, there is no funding of OPEB and it is a significant cash drain. The City's annual health premiums far exceed principal and interest payments on general obligations.

Tools are available for an equitable restructuring.

OPEB has less legal protections under state law than pensions, providing a greater ability to cut and equitably restructure.

Pensions have certain state constitutional protections, but reasonable pension changes may be made that avoid the legal strategy of having to argue that federal bankruptcy law under chapter 9 overrides state constitutional protections.

Formulating a unified labor negotiation strategy will be critical to success. The benefit structure should be holistically analyzed to determine what changes are appropriate and necessary and can be rationally justified by other retained benefits.



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Potential Pension Reform Initiatives

- Jones Day Has Significant Public and Private Pension Experience
 - We Know, Respect and Are Prepared to Work with the City's Other Advisors on Benefit Issues
 - Plan Must Be Developed Collaboratively Between City and Its Advisors

- A Framework for Pension Reform Could Include the Following Elements:
 - Require All New Employees to Participate in DCPs, Rather than DBPs
 - Prospectively Eliminate COLAs for active members
 - Raise Retirement Ages, Reduce Early Retirement Subsidies
 - Consider Changes to Secondary/Ancillary Features of DBPs

- *We believe that existing basic pension formulas can be preserved for current active members while saving significant sums for Detroit*



[Speaker Notes For Slide: 40]

Potential Pension Reform Initiatives.

We understand that the City has engaged other pension and benefit experts on these issues.

We know, regularly work with and respect the City's other advisors and would look forward to working with them to refine the recommendations to fit within a restructuring or chapter 9 strategy.

We have significant public pension experience, and well know the differences between federally-regulated private sector arrangements and public plans.

We have begun the process of evaluating the pension issues facing the City. Any plan would need to developed based on the collaborative work of the City and its advisors after further review. Based on what we know, and our experience in other matters, we believe a framework for pension could include the following elements:

Require all new employees to participate in defined contribution plans, rather than defined benefits plans.

Prospectively eliminate COLAs for all active members.

Raise retirement ages for certain employees, reduce early retirement subsidies.

Additional changes to secondary and ancillary features of defined benefit pension arrangements.

Proposed changes could allow most existing basic pension formulas to be preserved for current active members while saving significant sums for the City. But legislative action – e.g., amendment to the City Charter and Ordinances – may be necessary to achieve certain of these changes.

If needed, chapter 9 could be used as a means to further cut back or compromise "accrued financial benefits" otherwise protected under the Michigan Constitution.

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Potential OPEB Reform Initiatives

- Evaluate Benefits of De-linking Retiree Health Plan from Active Employee Health Plan Design and Contribution Structure
- Design of a New Replacement OPEB Plan Could Include the Following:
 - Increase Retirement Age
 - Transition Younger Retirees to State-Based Exchanges and Federal Subsidies under Affordable Care Act
 - Increase Use of the Medicare Programs – Part A, Part B, and Part D
 - Impose Reasonable Retiree Premiums (For Existing Retirees, Link to COLAs)
 - Audit Records to Cut Off Funding to Unqualified Dependents
 - Consider Defined Contribution Model for Future Retirees
- Consider Funding of OPEB through Tax-Exempt Trust
- Evaluate Required Scope of Coverages under City Code
- Be Prepared for Argument that Adverse 6th Circuit Law Applies
 - 6th Circuit Adverse Cases Involve Private Sector Plans, but Unions Likely Will Argue They Are Applicable Here

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[Speaker Notes For Slide: 42]

Potential OPEB Reform Initiatives.

We have begun the process of evaluating the OPEB issues facing the City. Any plan needs to address both the long-term OPEB liability, and the significant annual cost for coverage. This would need to be developed based on the collaborative work of the City and its advisors after further review. Based on what we know, and our experience in other matters, we believe a framework for OPEB obligations could include some or all of the following elements:

The City Should Evaluate "De-Linking" of Benefits Under Retiree Health Plans from Plan Design and Contribution Structure for Active Employees.
Linking OPEB benefits to plan for active employees generates large inefficiencies and costs. It will be more difficult to address the \$5.7 billion underfunding of OPEB benefits without severing this link.

Design New Replacement OPEB Plan

Retiree healthcare currently is provided to many younger individuals who are not objectively recognized as retirees. Modifications could increase retirement age to cover only "true" retirees (as opposed to persons in their 40s), to decrease costs and transition younger retirees to state-based exchanges (based on residence) and available federal subsidies under Affordable Care Act.

Better use of the Medicare programs – Part A, Part B, and Part D (drug benefits) to provide the fundamental coverage to true retirees.

Impose reasonable retiree premiums; link retiree premiums to pension COLAs.

Audit records to cut off funding of benefits to ineligible dependents.

Consider defined contribution model for retirees.

Also Consider Funding of OPEB through a Tax Exempt Trust

Available in the non-ERISA, governmental plan setting based on existing IRS guidance (e.g., Private Letter Ruling 201136007; September 9, 2011).

Provides more flexibility than a VEBA, but still need cash or other assets to fund such a trust, so this may not be a viable approach.

Language in the Detroit City Code establishing the OPEB obligations may allow argument that the scope of currently offered coverages is not required.

Also, unlike accrued pension benefits, OPEB obligations are not constitutionally protected.

Must be aware, and wary, of Sixth Circuit law that is favorable to unions/retirees and adverse to actions the City may wish to take.

Much of the most concerning Sixth Circuit law is predicated on federal ERISA and the Labor Management Relations Act (relating to private sector plans), which are inapplicable to municipal plans.

But we should anticipate an argument that this reasoning should be applied as a matter of state law to municipal plans, and the City should be prepared for that.

Chapter 9 could be used, or threatened, as a means to accomplish a compromise of benefit costs (rejecting contracts or compromising claims).

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Labor Issues

- **Renegotiation of CBAs Must Focus on Economic Stability**
- **Immediately Conduct Supporting Financial Analysis**
 - **Establish Necessary Savings**
 - **Demonstrate Fair Allocation Between Personnel and Non-Personnel Costs**
- **Demonstrate a Commitment to the Unions That They Are Partners**
 - **Demonstrate That Near-Term Sacrifices Provide Long-Term Benefits**
- **Formulate Easy-to-Understand Messages for Membership/Public**
- **Consider Need to Amend City Charter and Code, or other Legislative Action, for Pension/OPEB Changes**

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Labor

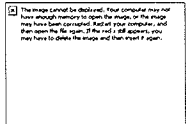
Renegotiating collective bargaining agreements to terms that provide economic sustainability will be key to the City's recovery.

Financial analysis must be conducted at the outset – and must be unimpeachable – to show the savings needed and how those necessary savings are being allocated between personnel vs. non-personnel related costs.

Will need to demonstrate a commitment to unions that they are partners in this process and the near term sacrifices will provide longer term benefits to their members (preservation of jobs – a return to financial health for Detroit).

In addition to conveying these economic needs at the bargaining table, we must be prepared to provide simple, easy to understand messaging to the membership and the public.

City charter and ordinances governing pensions may provide an additional hurdle that will need to be overcome via legislative amendment. Renegotiating collective bargaining agreements will not automatically supersede ordinances and charter. There appears to be somewhat more flexibility on the retiree medical expenses, but here too there may be a need for legislative action.



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Municipal Debt – Overview of Approach

- **Viable Threat of Chapter 9 is Critical**
 - **Only Chapter 9 Allows Non-Consensual Impairment of Municipal Debt**

- **Fair Sacrifice Needed from Municipal Debtholders**
 - **Employees/Retirees Already Sacrificed (and May Again)**
 - **Investors Accepted City's Credit and Were Compensated for Risk**
 - **Investors Have Adjusted Credit Terms to Their Benefit as City's Finances Worsened**

- **City Should Make Clear That It is Not Prepared to Dedicate Scarce Resources to Prefer Debtholders over Residents, Businesses and Revenue-Driving Activities**

- **Refinanceable Bond Debt Presents a Unique Opportunity**
 - **Potential for Advantageous Fixed Rates Over an Extended Term**

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[Speaker Notes For Slide: 46]

Municipal Debt [Emphasize Jones Day's significant expertise/experience with respect to municipal finance, a core competency that may separate Jones Day from other firms.]

Chapter 9 is only real mechanism to impair significant debt without consent, so the viable threat of chapter 9 is critical especially to deal with municipal debtholders. This creates real leverage.

Sacrifice by municipal debtholders is important, especially since employees and retirees have already made real personal sacrifices, and may be asked for more.

Providers and investors in funded debt accepted the City's credit and were compensated for the risk.

We are prepared to deal with these parties as creditors of the City in transparent and fair manner.

It should be made clear that the City is not prepared to dedicate scarce resources to prefer debtholders over residents, businesses and revenue driving activities.

Any effort of General Obligation creditors to obtain the collateral protections of special revenue bonds should be approached with caution.

Different types of debt receive different treatment in municipal bankruptcy cases.

General obligation bonds are treated as general debt in chapter 9. A municipality is not required to make payments of either principal or interest on account of such bonds during the case.

Certain restrictions on how debt may be readjusted in traditional bankruptcy proceedings do not apply in chapter 9. Thus, Detroit would be able to impose favorable terms upon general obligation bonds (e.g., the imposition of non market interest; drastically extended repayment terms; delays in cash payments) pursuant to a Plan of Adjustment, the only caveat being that such terms are consistent with State law.

Chapter 9, however, provides certain protections to creditors holding liens upon special project revenues. This may be of particular importance to Detroit, given the scope of its special project debt (e.g., bonds issued in connection with the construction/overhaul of water and sewer plants, collateralized with the revenues and fees earned by such projects).

Specifically, the "special revenues" from these projects remain subject to the liens of the bondholders in the specific projects and those revenues (1) must be used to fund the "necessary operating expenses" of the special project or to pay back bondholders and (2) may not be diverted to support the general obligations of the municipality.

Defining what constitutes the "necessary operating expenses" of a given special project has been the subject of litigation in other chapter 9 cases (most recently, Jefferson County); courts appear inclined to interpret the phrase narrowly. The Jefferson County case is for review by the Eleventh Circuit.

With a credible threat of chapter 9, the City has leverage:

Cramdown in chapter 9 is possible if there is one accepting impaired class, meaning that a non-accepting class of debtholders could be bound by the Plan of Adjustment to compromise their debt.

Amortizations of debt suggest that municipal debt holders have been adjusting their credit terms to their benefit as the City's finances have worsened. This supports a greater sacrifice at this point by debtholders.

This also appears to a readily re-financeable structure, and there is a unique opportunity to obtain advantageous fixed rates for an extended period if the negotiations are conducted properly.

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Treatment of POC debt and related swaps should be carefully evaluated because the unique structure could raise issues in a restructuring.

Swap counterparties may assert termination rights and must be addressed promptly.

Can build on negotiations that have been ongoing.

Termination rights not impacted by bankruptcy do to safe harbors, but treatment of claims may remain an issue.

Notwithstanding safe harbors, recent granting of collateral on swap debt could be avoidable if there was fraud. LIBOR rate cases may be relevant.

City should consider addressing swaps through market transactions.

For substantial insured debt, the credit insurers will have to be engaged in a meaningful way at the outset.

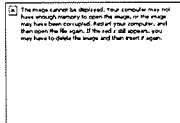
Jones Day is experienced dealing with monoline insurers with the economic interest relating to insured debt.

Monolines are involved in both bond and POC debt.

Funding solutions should be coordinated with the State, which is expected to be an instrumental party in any new financing transaction or other revenue generating or cost cutting transactions (e.g., Belle Isle lease, regional transportation authority, funding to support Detroit Downtown Development Authority and possible new arena and commercial developments).

Again, receipt of State funding out-of-court may implicate eligibility concerns.

Debt negotiations should account for need for some excess debt capacity to cover potential shortfalls, provide flexibility and, if needed, fund any legacy debt solutions.



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PART V – ADDITIONAL PROCESS POINTS

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Pay Careful Attention to Political Implications of Restructuring

- All Decisions and Actions Will Have Political Implications and Consequences
- Political Implications of Proposals Should Be Identified and Vetted as Early as Possible
- Ensure that All Statements Are Consistent with Overall Communications Plan

The Jones Day team has extensive experience in cases of national significance and understands this imperative.

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[Speaker Notes For Slide: 51]

Every decision and action taken by the City in responding to its financial crises will have political implications and, potentially, political consequences.

Political aspects of all proposed actions have to be identified and vetted as early as possible.

Every statement (including any court filings or arguments in court) must be consistent with an overall communications plan.

Statements made in collective bargaining must be carefully considered. Prospect of negotiation positions and statements being leaked to media outlets is significant.

Must be strong sensitivity to public relations campaigns by various constituencies.

The Jones Day team has extensive experience in cases of national significance and interest and understands these imperatives.

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Understand and Anticipate Positions of Creditors

- **Employees/Retirees Will Argue:**
 - **Obligations Cannot Be Modified as a Matter of Law**
 - **Modifications Make City Less Attractive to Qualified Job Candidates**
 - **Continuing Contractual Relationship Should Be Preferred over Debt**
- **Debtholders/Monoline Insurers Will Argue:**
 - **Repayment of Debt Essential to Continuing Access to Credit Markets**
 - **State Has a Moral/Practical Obligation to Ensure Repayment**
 - **Defer – and Provide Security for – Obligations Instead of Impairment**
- **City Responses Must Be Reasoned and Consistent**
- **Concessions Will Not Be Made to Give Any Group an Unfair Advantage**
- **Critically, New Revenues Must Be Preserved for Reinvestment**
 - **New Funders Cannot Be Compelled to Accede to Creditor Demands**
 - **Earmark New Money for Legally/Politically Sound Revitalization Activities**

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[Speaker Notes For Slide: 53]

Anticipated Positions of Creditors:

Municipal employees and their representatives will contend:

Obligations to them cannot be modified as a matter of law.

Obligations to employees should not be modified because the City has to be able to attract job candidates and cannot fall behind pay and benefit packages provided by either nearby municipalities or other unionized businesses.

Obligations to employees do not have to be impaired to the same extent as borrowed money creditors because their claims are connected to contracts that have to continue in effect.

Debt holders and insurers will contend:

Repayment of borrowed money claims is essential to access to financing markets going forward. This argument is used to justify extreme budget austerity and asset sales, whether or not beneficial on a long term basis.

The State of Michigan has a moral or practical obligation to ensure repayment of City debt. This argument is used to attempt to convince the State to contribute State resources to the satisfaction of City debt and to induce the State to pressure the City to make choices favoring debt repayment over other priorities.

Deferral of obligations, even if ability to pay in the future is uncertain or questionable, is a preferred approach to deal with inability to satisfy obligations. Usually this approach is coupled with demands for security that will improve the position of borrowed money creditors in any subsequent debt restructuring.

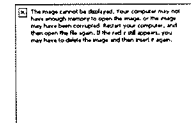
The City must be prepared to respond to these competing points of view in a reasoned and consistent manner.

Concessions should not be made to one group – such as debtholders – to give them an unfair advantage.

Most critically, as the City gains access to new revenues, it must develop an approach that preserves those revenues for reinvestment in the City and not just to pay off preexisting debts.

As seen in the Chrysler case, new funders or buyers cannot be compelled to accede to creditor demands.

New money may be earmarked for revitalization activities as long as the transaction is legally and politically sound.



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Plan of Adjustment Issues

- Enabling Legislation May Be Necessary
 - E.g., Authorization of Financing Techniques
 - Identify and Draft Necessary Legislation Early to Avoid Delays
- Best Interests Test
 - Demonstrate Reasonable Efforts to Satisfy Debts to the Extent Possible
- Cram Down: Impose Terms of Plan on Dissenting Creditor Classes
 - A Municipality Must Raise Taxes to the Extent Possible Without Triggering a “Death Spiral”
 - Expert Testimony on Tax Burdens May Be Needed

It is crucial to focus on the plan approval standards throughout the debt adjustment process in case a Chapter 9 case is required.



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[Speaker Notes For Slide: 55]

Plan of Adjustment

The goal of a chapter 9 filing for Detroit would be to emerge with a successful "Plan of Adjustment," in which the City's debts are reduced and/or restructured in a manner that is feasible given its budget and consistent with its long term revitalization strategy

The Plan of Adjustment is a document that would establish the treatment of the various classes of creditors' claims against Detroit.

Enabling Legislation May Be Necessary

Often, transactions contemplated by or specified in a Plan of Adjustment must be also authorized by legislation.

Examples of such legislation include authorization of financing techniques.

Needed legislation should be identified and drafted as early in the process as possible to avoid delays as bills move their way through the legislature.

Key Confirmation Standards

Best Interests Test

Applicable to all creditors, whether or not the creditor is in a class that has accepted the plan.

As generally applied, requires a troubled municipality to make reasonable efforts under all the circumstances to satisfy its debts to the greatest extent possible. The strategy outlined above should help us support this finding.

Cram Down

Confirmation of a non-consensual plan is possible under chapter 9.

Senior classes must be paid before more junior classes can receive any distribution.

Applied to municipalities with unlimited taxing power, a municipality must use its ability to raise taxes the extent possible without triggering a "death spiral" that would ultimately destroy the municipality.

Traditionally, this question has been determined based upon expert testimony.

Tax burdens in other comparable municipalities should be important as well.

It is crucial to focus on these standards through the debt adjustment process and continuing to build the case that if necessary, the City can confirm a Plan of Adjustment that does not provide for payment in full of all indebtedness.

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[Speaker Notes For Slide: 57]

Any Chapter 9 Process Should Be Comprehensive

A chapter 9 Plan of Adjustment can only accomplish a narrow band of economic compromises.

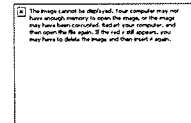
This type of debt restructuring is critical, but other fundamental changes of great importance can only occur outside of the Plan of Adjustment.

If a chapter 9 case is commenced, the City should use the process to address as many additional items as possible, not just the core debt readjustment issues in a Plan of Adjustment.

Negotiating in the chapter 9 environment – or even in the shadow of chapter 9 – is a powerful tool to pursue the City's revitalization agenda.

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Key Restructuring Lessons

- **Develop Comprehensive Plan, Supported by Defensible Budget and Assumptions**
- **Develop Out-of-Court Approach That Translates to Chapter 9**
- **Set Clear Positions Early**
- **Be Inclusive and Communicate**
- **Pursue Shared Sacrifice Without Compromising Long-Term Revitalization Goals**

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[Speaker Notes For Slide: 59]

Key Restructuring Lessons

Develop comprehensive plan, supported by defensible budget and assumptions.

Develop out-of-court approach that will work if needed in chapter 9.

Set positions early.

Be inclusive and communicate.

Pursue shared sacrifice without compromising long-term revitalization goals.

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PART VI – OTHER ISSUES

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Select Asset Monetization Issues

- Evaluate Impact of Any Asset Sale on Chapter 9 Eligibility
- Water and Sewer
 - Various Legal and Practical Challenges Facing Monetization of DWSD Assets
 - Regional Stakeholders Will Seek Input
 - Consider Collaboration with EPA and Regional Partners to Develop Creative Solutions
- Lease/Operating Agreements
 - Could Evaluate for Airport or Other Assets
 - Recent Collaborations with State Could Be a Model
- Airport Privatization Under FAA Pilot Program

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[Speaker Notes For Slide: 62]

Asset Sale/Privatization/Monetization Issues (Select Issues)

Concerns regarding eligibility for Chapter 9 may be implicated by asset monetization.

Any transaction should be reviewed and structured to address any eligibility issues (e.g., earmarking of funds).

Water and Sewer

Detroit Water and Sewer Department services much of southeast Michigan (Wayne, Oakland, Macomb counties).

Much of the DWSD's infrastructure is owned and operated by these surrounding counties (and the communities located therein), complicating efforts at restructuring. DWSD services nearly 100 "first-tier" and "second-tier" customers (e.g., from the surrounding counties), all of whom would seek input with respect to restructuring.

Monetization of assets could be challenging.

The Detroit City Charter prohibits the sale of "any city-owned public utility furnishing water and sewerage services, unless approved by a majority of city voters voting on the question at a regular or special election."

Statutes/codes/caselaw may require that funds received from disposition be allocated (e.g., to pension/OPEB liabilities) in a fashion that frustrates ability to allocate funds towards restructuring initiatives.

Monetization of assets may trigger consequences under existing debt and derivative documents.

Open question whether limited universe of "purchasers" could assume liabilities.

An emergency manager, a chapter 9 proceeding or changes to law could be required to overcome obstacles.

Consider different rate structures, regional authority.

EPA litigation complicates the circumstances.

Possibly could explore with EPA and other recipients of services how to make this self-sustaining and profitable.

Negotiating in the shadow of bankruptcy could provide useful leverage for creative solutions.

Combination Lease/Operating Agreement

Could be used for airport or other assets.

The proposed Belle Isle lease may be a model for this kind of transaction.

With respect to the Coleman Young airport, for example, Detroit could evaluate entering into an arrangement combining a lease of airport property with an airfield operating agreement, with the end result being similar to the transfer of possession and operating responsibility to a private operator while falling short of a full lease of the airport.

Under this model, Detroit would remain responsible for major operating and development decisions, but the burden of operating the airport on a daily basis would be alleviated.

Might be more attractive to airport than FAA pilot program to sell asset that we can discuss (comes with various conditions).

Airport Privatization Under FAA Pilot Program [De-emphasize in light of potential unavailability of program]

Privatization of Detroit airports historically impeded by federal aviation law preventing cities from retaining the proceeds of an airport sale or transfer.

A recent FAA pilot program – adopted by Congress in 1996 – for the privatization of airports, however, may allow Detroit to privatize an airport freed from federal restrictions on the use of proceeds.

Program recently used to sell Midway Airport, with cash value going to the City of Chicago

Under the program, the FAA is authorized to exempt up to ten airports from the relevant federal statutory and regulatory requirements (i.e., to repay Federal grants; return

DTM00128793

Prepare for Legal Challenges

- In a Chapter 9 Setting, Legal Challenges of Various Actions Are Inevitable
 - Jones Day Is Well Positioned to Address These Challenges
 - Substantial 6th Circuit Experience
 - Knows How to Expedite Review
- Various Challenges to PA 436/Emergency Manager Authority Possible
 - Challenges at Ballot Box: Renewed Referendum Process
 - Other Legal Challenges in Court
 - Challenges Could Cause Delay, Threaten Progress
 - Jones Day Can Work With the City's Current Advisors to Address Efficiently

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[Speaker Notes For Slide: 64]

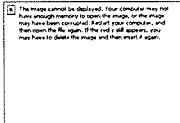
Prepare for Legal Challenges

If a chapter 9 case is commenced, it is anticipated that parties will to raise numerous legal challenges to the City's efforts. Jones Day is well prepared and positioned to address these challenges. We have substantial 6th Circuit experience. Also know how to expedite proceedings.

The City also should be prepared to address expected challenges to PA 436 and the Authority of any Emergency Manager. These challenges could delay restructuring initiatives or threaten to overturn progress made under these authorities.

Challenges could include:

Challenges at Ballot Box. Critics of PA 436 have already indicated that legal challenges to the law will be forthcoming. Stand Up for Democracy (which led the effort to reject PA 4) has suggested that it will begin a similar referendum process with respect to PA 436 (although appropriation component of PA 436 may insulate it).
Legal Challenges. Critics of PA 436 are likely to challenge the statute on grounds that the powers over contracts granted to emergency managers (including the power to reject, modify or terminate CBAs) violate the Contracts Clause of the U.S. Constitution.
Further challenges could include (1) whether PA 436 can be insulated from the referendum process through inclusion of a minor appropriation, (2) whether the law properly grants unelected emergency managers the power to displace elected officials/disenfranchise the electorate and (3) whether PA 436 was properly enacted in light of the voter rejection of PA 4 (which has been characterized by some as "substantially similar").



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EPA Litigation Issues

- **Restructuring Strategy Must Account for EPA Litigation and Rulings of Judge Cox**
- **Consider Approaches to Consolidate Issues with the Rest of the Restructuring Process**
- **Consider How EPA Litigation Could Impede or Assist Detroit in Chapter 9**

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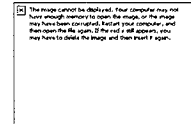
[Speaker Notes For Slide: 66]

Other EPA Litigation Issues

Need to coordinate strategy with relevant aspects of EPA litigation, including rulings regarding CBAs and bargaining

Consider approaches to consolidate these discrete issue with the rest of the restructuring process.

Consider how EPA case could impede or be used to assist in any chapter 9 case.



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PART VII – CONCLUSION

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Jones Day Is the Right Choice for Detroit

- **We are committed to this project, which we view as a matter of particular importance given our Midwestern, industrial roots**
- **We are committed to working with the City and its advisors and stakeholders to find and pursue real solutions that will revitalize the City of Detroit**
- **We have a wealth of experience, expertise, creativity and energy throughout our firm**
- **We are here to help, as part of the team, in whatever way we can**

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69



[Speaker Notes For Slide: 69]

Jones Day Is the Right Choice for Detroit:

We are committed to this project, which we view as a matter of particular importance given our Midwestern, industrial roots.

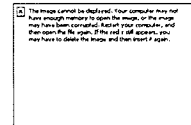
We are committed to working with the City and its advisors and stakeholders to find and pursue real solutions that will revitalize the City of Detroit.

We have a wealth of experience, expertise, creativity and energy throughout our firm.

We are here to help, as part of the team, in whatever way we can.

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ANNEX A:
THE REST OF THE JONES DAY TEAM

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The Jones Day Team



Jeffrey Ellman
Restructuring



Evan Miller
Employee Benefits



Sarah Heck Griffin
Public Pensions



David Kates
Public Finance



Brian Sedlak
Public Projects
& Infrastructure



Peter Clarke
Public Projects
& Infrastructure



Rebecca MacPherson
Public Projects
& Infrastructure



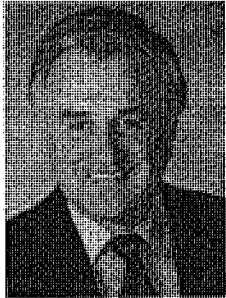
Naveen Rao
Public Projects
& Infrastructure

DTM100128802

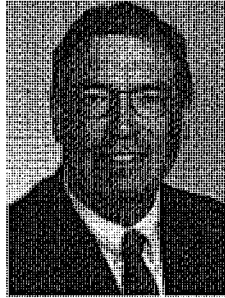
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The Jones Day Team



Robert Louis Ford
Labor



Lawrence DiNardo
Labor



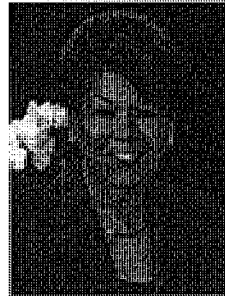
Wesley Johnson, Jr.
Mergers & Acquisitions



Beth Heifetz
Issues & Appeals



Richard Deane
Litigation



Yvette McGee Brown
Litigation



Jayant Tambe
Litigation



Chad Readler
Litigation

DTM100128803

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ANNEX B:
CERTAIN REFERENCES

DTM100128804

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References

The Honorable John E. Ryan (Retired)
United States Bankruptcy Court for the Central District of California
760-522-6016

Thomas W. Hayes
Former Treasurer and Director of Finance, State of California
916-806-6200

Chris Varelas
Founding Partner, Riverwood Capital
650-618-7377

DTM100128805

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

In re:

Case No. 13-53846

CITY OF DETROIT, MICHIGAN

In Proceedings Under
Chapter 9

Debtor.

Hon. Steven W. Rhodes

**JOINDER OF AMBAC ASSURANCE CORPORATION
IN THE LIMITED OBJECTION OF SYNCORA GUARANTEE INC. AND
SYNCORA CAPITAL ASSURANCE INC. TO DEBTOR'S MOTION FOR
ENTRY OF AN ORDER AUTHORIZING THE
PUBLIC LIGHTING AUTHORITY TRANSACTION**

Ambac Assurance Corporation (“Ambac”), a creditor and party in interest in the above-captioned case,¹ by and through its undersigned counsel, hereby joins in the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor’s Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction [Docket No. 1557] (the “Limited Objection”). In support of this joinder, Ambac adopts and incorporates the arguments in the Limited Objection in their entirety as if fully set forth in this joinder.

¹ Ambac is a creditor and party in interest as it is the bond insurer of certain of the City’s general obligation bonds. Specifically, Ambac insures approximately \$170,000,000 of the City’s general obligation bonds. As bond insurer, Ambac is obligated to pay to bondholders the full scheduled principal of and interest on the insured bonds when due as required by its bond insurance policy to the extent the City does not satisfy such obligations under the insured bonds. Under relevant provisions of the applicable bond documents, insurance policies, and applicable law, to the extent Ambac makes payments under its policies, it is subrogated to the rights of bondholders and effectively steps into the shoes of the bondholders.

WHEREFORE, for the reasons set forth in the Limited Objection, Ambac respectfully requests that the Court (i) grant the relief requested in the Limited Objection, and (ii) grant such other and further relief as the Court may deem just and proper.

Respectfully Submitted,

ARENT FOX LLP

Dated: November 7, 2013

By: /s/ Carol Connor Cohen
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Counsel for Ambac Assurance Corporation

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

In re:)	
	)	Chapter 9
)	
CITY OF DETROIT, MICHIGAN,	)	Case No. 13-53846
)	
Debtor.	)	Hon. Steven W. Rhodes

**JOINDER OF THE MICHIGAN COUNCIL 25 OF THE AMERICAN FEDERATION
OF STATE, COUNTY & MUNICIPAL EMPLOYEES, AFL-CIO AND SUB-
CHAPTER 98, CITY OF DETROIT RETIREES TO THE LIMITED OBJECTION OF
SYNCORA GUARANTEE INC. AND SYNCORA CAPITAL ASSURANCE INC. TO
DEBTOR’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE PUBLIC
LIGHTING AUTHORITY TRANSACTION**

Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees (the AFSCME retiree chapter for City of Detroit retirees) (collectively, “**AFSCME**”) through its counsel, hereby joins in the limited objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (“**Syncora**”) dated November 6, 2013 [Docket No. 1557] (the “**Limited Objection**”) to the Debtor’s Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction [Docket No. 1341] (the “**Motion**”). AFSCME respectfully adopts and incorporates the arguments of Syncora set forth in the Limited Objection and further respectfully states as follows:

1. While AFSCME has no *per se* objection to the City seeking to address its problem with street lights for the safety and benefit of all of the City’s residents, AFSCME is particularly concerned given the apparent bare bones disclosures in the Motion and further concerns set forth at length by Syncora, including that (i) 27% of the amount of the proposed bond funding (representing approximately \$192 million of the \$705 million financial

commitment in the transactions proposed in the Motion) will be utilized to simply finance the transaction; (ii) the City previously anticipated spending a total of approximately \$1.7 million on public lighting capital improvements in the June 14, 2013 Creditors Proposal (and yet now seeks to enter into an approximately \$705 million financial commitment); and (iii) the City will be locking up millions of dollars a year in utility tax revenues **for 30 years** to finance the transactions.

2. The pledge **now** of these critical revenue streams, when viewed in conjunction with revenues potentially being pledged by the City in its recently filed Postpetition Financing Motion [Docket No. 1520], could better be utilized to help revitalize the City and at the same time provide for a more meaningful recovery to all creditors, including the City's active and retired employees. At minimum, in a case such as this, the City has not explained or demonstrated why significant pledges of the City's limited revenue streams should be pursued at this juncture as opposed to at a later date at which time all interested parties may be in the process of negotiating and formulating a comprehensive plan of adjustment.

WHEREFORE, for the reasons set forth in the Limited Objection, AFSCME respectfully requests that the Court deny the Motion and grant such other and further relief as the Court may deem just and proper.

Dated: November 8, 2013

LOWENSTEIN SANDLER LLP

By: /s/ Sharon L. Levine

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Employees (AFSCME), AFL-CIO and Sub-
Chapter 98, City of Detroit Retirees*

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

In re:)	
	)	Chapter 9
)	
CITY OF DETROIT, MICHIGAN,	)	Case No. 13-53846
)	
Debtor.	)	Hon. Steven W. Rhodes
)	

CERTIFICATE OF SERVICE

The undersigned certifies that on October 11, 2013, *Joinder of the Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to the Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction* was filed with the Clerk of the Court using the CM/ECF system, which provides electronic notification of such filing to all counsel of record.

Dated: November 8, 2013

/s/ Lisa M. Bonito
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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN**

In re)) Chapter 9
)	
CITY OF DETROIT, MICHIGAN,	)	) Case No. 13-53846
)	
Debtor.	)	) Hon. Steven W. Rhodes
)	

**JOINDER OF FMS WERTMANAGEMENT AÖR TO THE LIMITED OBJECTION
OF SYNCORA GUARANTEE INC. AND SYNCORA CAPITAL ASSURANCE INC.
TO DEBTOR’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE PUBLIC LIGHTING AUTHORITY TRANSACTION**

FMS Wertmanagement AÖR (“**FMS**”) through its counsel, hereby joins (the “**Joinder**”) in the limited objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (“**Syncora**”) dated November 6, 2013 [Dkt. No. 1557] (the “**Limited Objection**”) to the Debtor’s Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction [Dkt. No. 1341] (the “**Motion**”)¹. In support of this Joinder, FMS respectfully states the following:

1. FMS asserts the arguments set forth in the Limited Objection and incorporates those paragraphs as if fully set forth herein.
2. The City is seeking this Court’s authority to enter into the PLA Transaction, with the goal of improving the City’s public lighting system. Unfortunately, the City’s Motion fails to provide its creditors and other parties in interest in this Case with sufficient information to evaluate this Motion on its merits. Without more fulsome disclosures, FMS cannot decipher if this Motion is in the City’s best interest, let alone the best interest of the City’s creditors and citizens.

¹ Capitalized terms used in this Joinder but not otherwise defined herein shall have the meaning ascribed to such terms in the Motion.

3. As the Limited Objection states in more detail, it is premature for the City to pursue public reinvestment initiatives which are better addressed during and through a plan of adjustment.

WHEREFORE, for the reasons set forth in the Limited Objection and this Joinder, FMS respectfully requests that the Court deny the motion and grant such other and further relief as may be just and proper.

Dated: November 8, 2013

Respectfully submitted,

SCHIFF HARDIN LLP

By: /s/ Karen V. Newbury

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Karen V. Newbury
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Attorneys for FMS Wertmanagement AöR

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
(Southern Division)**

In re)	
	)	Chapter 9
CITY OF DETROIT, MICHIGAN,)	
	)	Case No. 13-53846-swr
Debtor.)	
	)	Hon. Steven W. Rhodes
)	
	)	Re: Docket Nos. 1341 & 1557

JOINDER OF HYPOTHEKENBANK FRANKFURT AG, HYPOTHEKENBANK FRANKFURT INTERNATIONAL S.A., AND ERSTE EUROPÄISCHE PFANDBRIEF- UND KOMMUNALKREDITBANK AKTIENGESELLSCHAFT IN LUXEMBURG S.A. IN THE LIMITED OBJECTION OF SYNCORA GUARANTEE INC. AND SYNCORA CAPITAL ASSURANCE, INC. TO DEBTOR’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE PUBLIC LIGHTING AUTHORITY TRANSACTION

Hypothekenbank Frankfurt AG, Hypothekenbank Frankfurt International S.A., and Erste Europäische Pfandbrief- und Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A. (collectively “EEPK”), by its undersigned attorneys, hereby joins in the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance, Inc. (Docket No. 1557) (the “Syncora Objection”), to Debtor’s Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction (Docket No. 1341) (the “Motion”).

Accordingly, for the reasons set forth in the Syncora Objection, EEPK requests that this Court deny the Motion and grant it such other and further relief as is just and proper.

Dated: November 11, 2013.

/s/ Matthew G. Summers

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*Attorneys for Hypothekenbank Frankfurt AG,
Hypothekenbank Frankfurt International S.A., Erste
Europäische Pfandbrief- und Kommunalkreditbank
Aktiengesellschaft in Luxemburg S.A.*

CERTIFICATE OF SERVICE

I, Matthew G. Summers, state that on November 11, 2013, I filed a copy of the foregoing Joinder in the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance, Inc. to Debtor's Motion for Entry of an Order Authorizing the Public Lighting Authority Transaction of with the Clerk of Court using the Court's ECF system and I hereby certify that the Court's ECF system has served all registered users that have appeared in the above-captioned case. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

/s/ Matthew G. Summers

Matthew G. Summers

E-mail: summersm@ballardspahr.com

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

In re)	
	)	Chapter 9
CITY OF DETROIT, MICHIGAN,)	
	)	Case No. 13-53846
)	
Debtor.	)	Hon. Steven W. Rhodes
)	

**MOTION OF THE OBJECTORS FOR (I) CLARIFICATION REGARDING
THE PURPOSE OF THE HEARING FOR DEBTOR’S MOTION FOR
ENTRY OF AN ORDER AUTHORIZING THE DEBTOR TO ENTER INTO
AND PERFORM UNDER CERTAIN TRANSACTION DOCUMENTS
WITH THE PUBLIC LIGHTING AUTHORITY AND GRANTING OTHER
RELATED RELIEF AND (II) LEAVE TO CONDUCT LIMITED
DISCOVERY**

The Objectors¹ submit this motion for (i) clarification of the purpose of the hearing set for *Debtor’s Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief* [Docket No. 1341] (the “PLA Motion”); and (ii) leave to conduct limited discovery relating to the PLA Motion pursuant to Local Rule 7026-3 of the United States Bankruptcy Court of the Eastern District of Michigan. In support of this motion, the Objectors respectfully represent as follows:

¹ Syncora Guarantee Inc. and Syncora Capital Assurance Inc. (collectively, “Syncora”), Ambac Assurance Corporation, and Michigan Counsel 25 of the American Federation of State, County and Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees join in this motion.

BACKGROUND

1. On October 23, 2013, the City of Detroit (the “City”) filed a motion requesting authorization pursuant to section 364(c) of the Bankruptcy Code to pledge approximately \$12.5 million of its annual utility tax revenues to secure the Public Lighting Authority’s (the “PLA”) issuance of approximately \$153 million of debt to fund the City’s public lighting system upgrade (the “PLA Transaction”). (PLA Mot. ¶ 17). The PLA Motion also requests that the Court find that the PLA Transaction constitutes a “good faith” financing transaction under section 364(e) of the Bankruptcy Code. (*Id.*)

2. The transaction structure, broadly, is as follows: the Michigan Finance Authority (the “MFA”) first issues certain bonds (“MFA Bonds”) to third party lenders. (PLA Mot. ¶ 6.) The proceeds from this sale are then used to purchase approximately \$153 million of bonds issued by the PLA pursuant to Act 392 (the “Act 392 Bonds”). (PLA Mot. ¶ 6.) The City, in turn, pledges to the trustee for the Act 392 Bonds the lesser of (a) \$12.5 million and (b) the total revenues generated by a utility tax which the City continues to levy pursuant to MCL §§ 141.1151 to 141.1177 (“Act 100”). This pledge is provided pursuant to a trust agreement and Act 392. It requires the transfer of all of the City’s right, title, and interest in the utility tax to the trustee for the Act 392 Bonds and is the primary source for repayment of the Act 392 bonds. (PLA Mot. ¶ 7.) The lighting improvements will

be financed with the proceeds from a \$60 million “bridge loan,” and subsequently the Act 392 bonds. (Ex. 6.1 to PLA Mot. p 22.)

3. The financing is intended to support a short term and long term plan for implementation, which is described on two pages of the Public Authority Lighting Plan in general terms. (Ex. 6.1 to PLA Mot. pp. 23–24.) The operation and maintenance of the City’s lighting infrastructure is the subject of an operations and maintenance agreement (“O&M Agreement”) over which negotiations have not yet begun. (Ex. 6.1 to PLA Mot. p 22.) The City’s Lighting Plan states that it anticipates that it will pay for operations, maintenance, and PLA administrative costs with \$11–12 million a year from the City’s General Fund.² (*Id.*)

4. The City claims that the PLA Transaction is necessary “to finance the cost to construct, improve, enlarge, reduce or extend the City’s Public Lighting System for the benefit of the City.” (PLA Mot. ¶ 6.) The City also suggests that “it is well known that the City and its residents suffer from the City’s inability to maintain the street light system,” and as such the PLA Transaction represents the “best (and perhaps only) opportunity to remedy this public safety concern.” (PLA Mot. ¶ 21.)

5. The PLA Transaction is a large transaction that may adversely affect the position of creditors of the City because it contemplates the diversion of a

² However, the proposed O&M Agreement itself caps the City’s general fund contribution to \$8,024,000. (Ex. 6.2 to DIP Mot. p 8.)

significant source of the City's revenues. For this reason and others, Syncora has submitted its Limited Objection to the PLA Motion which explains the numerous concerns regarding the PLA Transaction [Doc. No. 1557]. As of the filing of this motion, Ambac Assurance Corporation, FMS Wertmanagement AöR, Michigan Council 25 of the American Federation of State, County & Municipal Employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees ("AFSCME"), and Hypothekenbank Frankfurt AG, Hypothekenbank Frankfurt International S.A., and Erste Europäische Pfandbrief- und Kommunalkreditbank Aktiengesellschaft in Luxemburg S.A. (collectively "ECPK") (collectively, the "Objectors") have joined in Syncora's Limited Objection.

6. The Court issued a Notice of Hearing regarding the PLA Motion [Doc. No. 1579] setting a hearing date for the PLA Motion for November 27, 2013. There is no indication of whether this hearing will be evidentiary in nature. The Objectors now bring this motion to clarify the purpose of the November 27 hearing and to seek leave to conduct limited discovery related to the PLA Transaction.

JURISDICTION

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

8. The Objectors respectfully requests the entry of an order substantially in the form attached hereto as Exhibit 1 (i) clarifying the purpose of the hearing on the PLA Motion and (ii) granting the Objectors leave to conduct limited discovery relating to the PLA Motion.

BASIS FOR RELIEF

A. Clarification of the Purpose of the Hearing on the PLA Motion

9. The hearing on the PLA Motion was set by this Court for November 27, 2013 [Doc. No. 1579]. However, there is no indication whether this hearing will be evidentiary in nature. The Objectors believe they will be prejudiced in their ability to participate in a comprehensive hearing on the PLA Motion if the hearing is held prior to their ability to conduct discovery with respect to the PLA Transaction. Accordingly, the Objectors respectfully request that the Court clarify the purpose of the November 27, 2013 hearing.

B. The Objectors' Request for Leave to Seek Limited Discovery Relating to the PLA Motion.

10. Local Bankruptcy Rule 7026-3 states that “[d]iscovery in a contested matter is permitted only upon a court order for cause shown.” E.D. Mich. LBR 7026-3. The Objectors submit that, in this case, good cause exists for limited discovery surrounding the PLA Motion.

11. Courts consider the following factors to determine whether the terms of a postpetition financing transaction under section 364 of the Bankruptcy Code are appropriate: (a) whether the proposed transaction is an exercise of the debtor's reasonable business judgment; (b) whether alternative financing is available on any other basis; (c) whether the proposed transaction is in the best interests of both the estate and its creditors; (d) whether any better offers, bids, or timely proposals are before the court; (e) whether the transaction is necessary, essential, and appropriate to preserve estate assets and for the continued operation of a debtor's business; (f) whether the terms of the proposed financing are fair, reasonable, and adequate given the circumstances; and (g) whether the proposed transaction was negotiated in good faith and at arm's length. *In re Farmland Industries, Inc.*, 294 B.R. 855, 879–80 (Bankr. W.D. Mo. 2003). Discovery is necessary in order to competently assess whether the PLA Transaction meets these requirements.

12. *First*, the Objectors and other creditors have little to no substantive information regarding the negotiation and structuring of the PLA Transaction. The City seeks to secure an order that provides that section 364(e) of the Bankruptcy Code, which states that the negotiations related to this transaction were the result of good faith, arm's length negotiations, applies to and protects the PLA Transaction. (Ex. 1 to PLA Mot. ¶ E.) The City states it needs this determination in order to secure financing from MFA bond buyers in the face of potential appeal

of any potential Court order. (PLA Mot. ¶ 25.) However, the PLA Motion does not provide any meaningful information regarding the negotiations among the PLA, MFA, City, and prospective purchasers. Discovery is required to assess whether the negotiations of the PLA Transactions were conducted in good faith.

13. *Second*, the City does not explain in the PLA Motion whether it entertained alternate lighting or financing proposals or whether any alternative proposals existed. The City claims that PLA Transaction was the “best (and perhaps only) opportunity” to address the City’s lighting concerns. (PLA Mot. ¶ 21.) However, it does not specify any alternative proposals it entertained or why the PLA Transaction is superior to other proposals. Discovery is required to assess whether the PLA Transaction was in fact the best opportunity to address the City’s concerns.

14. *Third*, the PLA Motion does not specify the basis for the necessity of the PLA Transaction or nature of the relationship between the PLA Transaction and the City’s other initiatives or crime problems. In fact, the City does not provide any detailed information regarding the costs and benefits associated with its plan for the City’s lighting or the ultimate scope of the improvements to be made using the proceeds of the PLA Transaction. In order to assess the necessity of the transaction, and consequently the PLA Transaction’s value to the City, its

creditors, and other stakeholders, discovery regarding the City's plan and objectives for the use of the PLA Transaction's proceeds is required.

15. *Fourth*, the PLA Motion and exhibits are unclear as to the actual cost of and other relevant details of the PLA Transaction. For instance, the PLA Motion does not disclose the amount of borrowing or the interest rate. The Lighting Plan states that the borrowing will be \$153 million and the budget attached to the plan contemplates an approximately 7.5% interest rate. (App. G to Ex. 6.1 to DIP Mot. p 2.) However, neither makes clear whether these amounts are contemplated based on the lighting needs or the contemplated permitted debt service payments. Further, the City's Proposal to Creditors contemplated that any PLA plan would move operations and maintenance costs to the Public Lighting Authority. (*See* Ex. B to Dec. of Kevyn D. Orr p 43[Doc. No. 11].) However, the documents are unclear as to the City's full continuing contribution. The O&M Agreement indicates that the City will not pay more than approximately \$8 million for operational and maintenance costs. (Ex. 6.2 to DIP Mot. p 8.) However, the Lighting Plan contemplates this amount to be between \$11 and \$12 million, (Ex. 6.1 to PLA Mot. p 22), and this payment is not included as a source of revenues in the Plan's budget. (App. G to Ex. 6.1 to DIP Mot. p 2.) Consequently, discovery is needed to clarify the details of the City's plan and the costs of the PLA Transaction.

16. Given the limited information that is currently available to the Objectors on these issues, the Objectors request leave to seek limited discovery on topics such as the following:

- (a) The process and analysis surrounding the PLA Transaction;
- (b) The PLA Transaction's compliance with PA 436 and PA 392;
- (c) The current lighting outages affecting the City and the necessity of fixing the lighting system;
- (d) The intended use of the proposed proceeds of the PLA Transaction.

The Objectors may also request depositions of:

- (a) Odis Jones, the Executive Director of the Public Lighting Authority;
- (b) Parties that structured and negotiated the PLA Transaction on behalf of the City, the PLA, and the Michigan Finance Authority.

STATEMENT OF CONCURRENCE SOUGHT

17. Local Bankruptcy Rule 9014-1 provides that "in a bankruptcy case unless it is unduly burdensome, the motion shall affirmatively state that concurrence of opposing counsel in the relief sought has been requested on a specified date and that the concurrence was denied." Local Rule 9014-1(g).

18. Counsel for Syncora sought concurrence from opposing counsel for the relief requested in this motion on November 11, 2013. Counsel for the City agreed that the Objectors were entitled to certain discovery regarding the PLA

Motion. Specifically, counsel for the City stated that it had no objection to the discovery regarding the process and negotiation of the PLA Transaction. The City also stated that it would not move to quash or object to any of the Objectors' proposed depositions.

19. However, counsel for the City stated that the City would object to any discovery relating to the City's need for, and intended use of, the PLA transaction proceeds. According to the City's counsel, information relating to the City's need for, and intended use of, the PLA transaction proceeds is irrelevant and not something that the Court can consider.

RESERVATION OF RIGHTS

20. The Objectors file this motion without prejudice or waiver of its rights under the Bankruptcy Code.

WHEREFORE, the Objectors respectfully request that this Court (a) enter an order substantially in the form attached hereto as Exhibit 1, granting the relief sought herein; and (b) grant such other and further relief as the Court may deem proper.

[Remainder of this page intentionally left blank.]

Dated: November 11, 2013

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Chapter 98, City of Detroit Retirees*

SUMMARY OF ATTACHMENTS

- Exhibit 1 Proposed Form of Order
- Exhibit 2 Notice of Motion and Opportunity to Object
- Exhibit 3 None [Brief not required]
- Exhibit 4 None [Separate Certificate of Service to be Filed]
- Exhibit 5 None
- Exhibit 6 None

Exhibit 1
Proposed Order

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

In re)	
	)	Chapter 9
CITY OF DETROIT, MICHIGAN,)	
	)	Case No. 13-53846
Debtor.)	
	)	Hon. Steven W. Rhodes
)	

**ORDER (I) CLARIFYING THE PURPOSE OF THE HEARING FOR THE
MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTOR
TO ENTER INTO AND PERFORM UNDER CERTAIN TRANSACTION
DOCUMENTS WITH THE PUBLIC LIGHTING AUTHORITY AND
GRANTING OTHER RELATED RELIEF AND (II) GRANTING LEAVE
TO CONDUCT LIMITED DISCOVERY**

This matter coming before the Court on the motion of the Objectors¹ clarifying the purpose of the hearing for the *Debtor’s Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief* [Docket No. 1341] (the “PLA Motion”) and entering an order granting leave to conduct limited discovery relating to the PLA Motion; the Court having reviewed the Objectors’ Motion; and the Court having determined that the legal and factual bases set forth in the motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Objectors’ motion.

1. The Objectors' motion is GRANTED.
2. Good cause exists for the Objectors to conduct limited discovery relating to the PLA Motion. The Objectors may now commence discovery.
3. The Objectors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the motion.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

IT IS SO ORDERED.

STEVEN W. RHODES
United States Bankruptcy
Judge

Exhibit 2

Notice of Motion and Opportunity to Object

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

In re)
	) Chapter 9
)
CITY OF DETROIT, MICHIGAN,	) Case No. 13-53846
)
Debtor.	) Hon. Steven W. Rhodes
)

**NOTICE OF MOTION OF THE OBJECTORS FOR (I) CLARIFICATION
REGARDING THE HEARING DATE FOR DEBTOR’S MOTION FOR
ENTRY OF AN ORDER AUTHORIZING THE DEBTOR TO ENTER INTO
AND PERFORM UNDER CERTAIN TRANSACTION DOCUMENTS
WITH THE PUBLIC LIGHTING AUTHORITY AND GRANTING OTHER
RELATED RELIEF AND (II) LEAVE TO CONDUCT LIMITED
DISCOVERY**

PLEASE TAKE NOTICE that on November 11, 2013 the Objectors filed the *Motion of the Objectors for (I) Clarification Regarding the Hearing on Debtor’s Motion for Entry of an Order Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents With the Public Lighting Authority and Granting Other Related Relief and (II) Leave to Conduct Limited Discovery* (the “PLA Discovery Motion”) in the United States Bankruptcy Court for the Eastern District of Michigan (the “Bankruptcy Court”) seeking entry of an order to clarify the hearing date on the City of Detroit’s motion seeking an order authorizing it to enter into certain transactions related to the Public Lighting Authority (the “PLA Motion”) and to seek limited discovery related to the City’s PLA Motion.

PLEASE TAKE FURTHER NOTICE that your rights may be affected by the relief sought in the Motion. You should read these papers carefully and discuss them with your attorney, if you have one. If you do not have an attorney, you may wish to consult one.

PLEASE TAKE FURTHER NOTICE that if you do not want the Bankruptcy Court to grant the Objectors’ Motion or you want the Bankruptcy

Court to consider your views on the Motion, by **November 25, 2013** you or your attorney must:¹

1. File with the court a written response to the Motion. explaining your position explaining your position with the Bankruptcy Court electronically through the Bankruptcy Court's electronic case filing system in accordance with the Local Rules of the Bankruptcy Court or by mailing any objection or response to:²

United States Bankruptcy Court
Theodore Levin Courthouse
231 West Lafayette Street
Detroit, MI 48226

You must also serve a copy of any objection or response upon:

James H.M. Sprayregen, P.C.
Ryan Blaine Bennett
Stephen C. Hackney
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
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- and -

Stephen M. Gross
David A. Agay
Joshua Gadharf
MCDONALD HOPKINS PLC
39533 Woodward Avenue
Bloomfield Hills, MI 48304
Telephone: (248) 646-5070
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¹ Concurrently herewith, the Objectors are seeking expedited consideration and shortened notice of the PLA Discovery Motion. If the Court grants such expedited consideration and shortened notice, the Objectors will file and serve notice of the new response deadline.

² A response must comply with F. R. Civ. P. 8(b), (c) and (e).

2. If an objection or response is timely filed and served, the clerk will schedule a hearing on the Motion and you will be served with a notice of the date, time and location of the hearing.

PLEASE TAKE FURTHER NOTICE that if you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the Motion and may enter an order granting such relief.

[Remainder of this page intentionally left blank]

Dated: November 11, 2013

Respectfully submitted,

KIRKLAND & ELLIS LLP

By: /s/ Stephen C. Hackney

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*Attorneys for Syncora Guarantee Inc. and
Syncora Capital Assurance Inc.*

Exhibit 3

None [Brief Not Required]

Exhibit 4

None [Separate Certificate of Service to be Filed]

Exhibit 5
Affidavits
[Not Applicable]

Exhibit 6

**Documentary Exhibits
[Not Applicable]**

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

In re)
) Chapter 9
)
CITY OF DETROIT, MICHIGAN,) Case No. 13-53846
)
Debtor.) Hon. Steven W. Rhodes
)
) **Expedited Consideration**
) **Requested**

***EX PARTE* MOTION FOR SHORTENED NOTICE AND EXPEDITED
HEARING ON THE MOTION OF THE OBJECTORS FOR (I)
CLARIFICATION REGARDING THE PURPOSE OF THE HEARING FOR
DEBTOR’S MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE
DEBTOR TO ENTER INTO AND PERFORM UNDER CERTAIN
TRANSACTION DOCUMENTS WITH THE PUBLIC LIGHTING
AUTHORITY AND GRANTING OTHER RELATED RELIEF AND (II)
LEAVE TO CONDUCT LIMITED DISCOVERY**

The Objectors¹ submit this *Ex Parte* Motion for an Order Shortening the Notice Period and Scheduling an Expedited Hearing with Respect to the *Motion of the Objectors for Clarification Regarding the Purpose of the Hearing for Debtor’s Motion for Entry of an Order Authorizing the Debtor to Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and Granting Other Related Relief and (II) Leave to Conduct Limited Discovery* (the “PLA Discovery Motion”) and respectfully represent as follows:

¹ Capitalized terms not defined herein have the meanings given to them in the Objectors’ PLA Discovery Motion.

Jurisdiction and Venue

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

Relief Requested and Basis for Relief

2. Pursuant to Bankruptcy Rule 9006(c) and Local Bankruptcy Rule 9006-1(b), this Court may, *ex parte*, shorten the notice period provided by Local Bankruptcy Rule 9014-1 for a party to take any action or file any paper. Fed. R. Bankr. P. 9006(c); E.D. Mich. LBR 9006-1(b).

3. The Objectors respectfully request that, pursuant to Bankruptcy Rule 9006(a) and Local Bankruptcy Rule 9006-1(b), the Court shorten the notice period with respect to the PLA Discovery Motion and schedule an expedited hearing on the PLA Discovery Motion on **November 14, 2013**.

4. Contemporaneously with the filing of this *Ex Parte* Motion, the Objectors filed the PLA Discovery Motion. For the reasons stated in the PLA Discovery Motion, the Objectors seek the entry of an order granting the Objectors leave to conduct limited discovery with respect to the PLA Transaction. The Objectors submit that further discovery is required in connection with the PLA Transaction to assess whether it can meet the requirements for approval by this Court.

5. The hearing on the City's PLA Motion is scheduled for November 27, 2013 pursuant to this Court's order [Doc. No. 1579]. Cause exists to shorten the notice period on the Objectors' PLA Discovery Motion because, absent shortened notice and hearing, the Objectors' PLA Discovery Motion could be heard at the earliest on November 25, 2013, two days prior to the hearing on the City's PLA Motion. Under these circumstances, shortened notice and an expedited hearing are appropriate because they allows the Objectors to obtain the requisite discovery and effectively prepare for the November 27, 2013 hearing on the City's PLA Motion.

6. The Court has set an Omnibus Hearing for November 14, 2013. The Objectors respectfully submit that, for the reasons stated above, good cause exists to shorten the notice period and expedite hearing and request that the Objectors be heard at the November 14, 2013 Omnibus hearing regarding their PLA Discovery Motion.

7. The Objectors will serve this *Ex Parte* Motion to the parties in the above-captioned proceedings and will provide notice of the *ex parte* order upon issuance pursuant to E.D. Mich. LBR 9006-1(b).

Statement of Concurrence Sought

8. In accordance with Local Bankruptcy Rule 9006-1(b), counsel for Syncora sought concurrence from opposing counsel for the relief requested in this

motion on November 11, 2013. Counsel for the City did not object to a November 14, 2013 hearing on the Objectors' PLA Discovery Motion.

Conclusion

WHEREFORE, The Objectors respectfully request that the Court enter an Order, substantially in the form attached as Exhibit 1, granting the relief requested in this *Ex Parte* Motion and granting such further relief as this Court deems appropriate.

[Remainder of this page intentionally left blank]

Dated: November 11, 2013

/s/ Stephen C. Hackney

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Exhibit 1
Proposed Order

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

In re)	
	)	Chapter 9
CITY OF DETROIT, MICHIGAN,)	
	)	Case No. 13-53846
Debtor.)	
	)	Hon. Steven W. Rhodes
)	

**ORDER GRANTING *EX PARTE* MOTION FOR SHORTENED NOTICE
AND EXPEDITED HEARING ON THE MOTION OF THE OBJECTORS
FOR (I) CLARIFICATION REGARDING THE PURPOSE OF THE
HEARING FOR DEBTOR’S MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTOR TO ENTER INTO AND PERFORM
UNDER CERTAIN TRANSACTION DOCUMENTS WITH THE PUBLIC
LIGHTING AUTHORITY AND GRANTING OTHER RELATED RELIEF
AND (II) LEAVE TO CONDUCT LIMITED DISCOVERY**

This matter having come before the Court on the motion (the “*Ex Parte Motion*”) of the Objectors for the entry of an order shortening the notice period and scheduling an expedited hearing on the *Motion of the Objectors for (I) Clarification Regarding the Purpose of the Hearing for Debtor’s Motion for Entry of an Order Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and Granting Other Related Relief and (II) Leave to Conduct Limited Discovery* (the “PLA Discovery Motion”), the Court having reviewed the Objectors’ motion; and the Court having determined that the legal and factual bases set forth in the motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Objectors' *Ex Parte* Motion is GRANTED.
2. The hearing with respect to the Objectors' PLA Discovery Motion shall be held on November 14, 2013 before Hon. Steven Rhodes.
3. The joining Objectors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the motion.
4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

IT IS SO ORDERED.

STEVEN W. RHODES
United States Bankruptcy
Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

City of Detroit, Michigan,

Debtor.

Chapter 9

Case No. 13-53846

Hon. Steven W. Rhodes

Order Denying Motion for Clarification and Motion to Expedite Hearing

Syncora Guarantee Inc., Syncora Capital Assurance Inc., Ambac Assurance Corporation, and Michigan Counsel 25 of the American Federation of State, County and Municipal employees, AFL-CIO and Sub-Chapter 98, City of Detroit Retirees have filed a motion for clarification regarding the purpose of the hearing for debtor's motion for entry of an order authorizing the debtor to enter into and perform under certain transaction documents with the public lighting authority and for leave to conduct limited discovery. (Dkt. #1638) The objectors have also filed a motion to expedite the hearing on their motion. (Dkt. #1639) The Court concludes that cause has not been established for an expedited hearing. Accordingly, that motion is denied.

The Court further concludes no hearing is necessary to resolve the motion for clarification and that the motion should be denied. The moving party is referred to this Court's "Order Establishing Motion Procedure" entered on August 2, 2013. (Dkt. #283)

Signed on November 12, 2013

/s/ Steven Rhodes

Steven Rhodes

United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
TRANSCRIPT ORDER FORM

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Bay City, MI 48708

211 W. Fort Street
17th Floor
Detroit, MI 48226

226 W. Second Street
Flint, MI 48502

Order Party: Name, Address and Telephone Number

Name Syncora Guarantee & Syncora Capital Assurance

Firm Kirkland & Ellis LLP

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City, State, Zip Chicago, IL 60654

Phone 312.862.3200

Email dustin.paige@kirkland.com

Case/Debtor Name: City of Detroit, MI

Case Number: 13-53846

Chapter: 9

Hearing Judge Hon. Steven Rhodes

Bankruptcy Adversary

Appeal Appeal No: _____

Hearing Information (A separate form must be completed for each hearing date requested.)

Date of Hearing: 11/27/2013 Time of Hearing: 9:00am Title of Hearing: Hearing re Detroit Bankruptcy

Please specify portion of hearing requested: Original/Unredacted Redacted Copy (2nd Party)

Entire Hearing Ruling/Opinion of Judge Testimony of Witness Other

Special Instructions: _____

Type of Request:

- Ordinary Transcript - \$3.65 per page (30 calendar days)
- 14-Day Transcript - \$4.25 per page (14 calendar days)
- Expedited Transcript - \$4.85 per page (7 working days)
- CD - \$30; FTR Gold format - You must download the free FTR Record Player™ onto your computer from www.ftrgold.com

Signature of Ordering Party:

Dustin Paige Date: 12/2/13
By signing, I certify that I will pay all charges upon completion of the transcript request.

FOR COURT USE ONLY

Transcript To Be Prepared By _____

_____ Date _____ By _____

Order Received _____

Transcript Ordered _____

Transcript Received _____

**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. Stephen W. Rhodes
: **Re: Dkt. 1341**
-----X

**SUPPLEMENT TO JOINDER OF THE OFFICIAL COMMITTEE OF RETIREES
TO THE LIMITED OBJECTION OF SYNCORA GUARANTEE INC. AND SYNCORA
CAPITAL ASSURANCE INC. TO DEBTOR'S MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE PUBLIC LIGHTING AUTHORITY TRANSACTION**

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Attorneys for the Official Committee of Retirees

The Official Committee of Retirees (the “Committee”) files this supplement to joinder (Dkt. 1713) to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. dated November 6, 2013 (Dkt. 1557) to the *Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief* (the “Motion”) (Dkt. 1341).

PRELIMINARY STATEMENT

1. The City of Detroit (the “City”) created the Public Lighting Authority (the “PLA”) as a separate municipal corporation to manage and maintain the City's public lighting system. (Motion, at 4.) The PLA reportedly “is responsible for constructing, improving, enlarging, reducing or extending the City's street light system.” (*Id.*, Ex. 6.4, at 3.) Upon completion of the transaction that is the subject of the Motion, (the “PLA Transaction”), “the PLA will commence the improvement of the City's public lighting system and will assume operational control of the portions of the public lighting system the PLA improves.” (*Id.*, at 2.) In order to provide funding for the aforesaid activities by the PLA and induce the PLA to provide the public lighting system improvements contemplated by the PLA Transaction, the City has agreed to “irrevocably pledge and cause the existing and future revenue” generated from the utility tax normally imposed by the City on public utilities and other resellers of electricity “as security for, and the primary source for the repayment of, the [Public Act 392] [b]onds.” (*Id.*, at 5.) The utility tax revenue to which the PLA is entitled to “is the lesser of (i) \$12.5 million, and (ii) the total revenues generated by the [u]tility [t]ax.” (*Id.*)

2. Miller Canfield, P.L.C. (“Miller Canfield”) has been and currently is counsel for the City in the Chapter 9 case. During the eligibility proceedings, the Committee and other objectors (collectively, “Objectors”) questioned the good faith of the City and the Emergency

Manager. Miller Canfield participated in the defense of the City, which defense proved to be successful at the conclusion of the trial. Thereafter, during the November 27, 2013 Hearing on the Motion (the “11/27/13 Hearing”), the Court, as well as other interested parties, learned for the very first time that Miller Canfield also represents the PLA in its negotiations with the City over the PLA Transaction and in connection with the Motion. Following this revelation, the Court was understandably sensitive to the questions of conflict and good faith on the part of others towards the City and raised questions as to (a) whether Miller Canfield's simultaneous representation of the City and the PLA is in compliance with the Michigan Rules of Professional Conduct (hereinafter “M.R.P.C.”), particularly Rule 1.7, and (b) the implications of any conflict due to such simultaneous representation, even if waivable, regarding whether the PLA Transaction was entered into in good faith for purposes of 11 U.S.C. § 364(e).

3. The Committee submits that, in the unique circumstances present here, Miller Canfield is in a conflict of interest position that cannot be cured by client consent and that the ethical violations resulting therefrom preclude a finding that, in entering into the PLA Transaction and extending credit to the City in connection therewith, the PLA was acting in good faith for purposes of 11 U.S.C. § 364(e). Specifically:

(a) Miller Canfield's representation of the PLA in the public lighting negotiations is directly adverse to the City, since it actively represents the City in the Chapter 9 bankruptcy proceedings, and a disinterested lawyer would conclude that, by reason of the knowledge it has necessarily obtained in that latter capacity as to the City's financial strategies, Miller Canfield could not simultaneously represent the PLA without using that knowledge, whether consciously or subconsciously, to the advantage of the PLA and the detriment of the City. This presents a conflict of interest that cannot be cured by consent from either the City or the PLA; and

(b) Under Michigan law, the actions and knowledge of Miller Canfield are imputed to the PLA. Accordingly, the PLA must be treated as having negotiated with the City in a situation where it presumptively had and employed, to its advantage, confidential information of the City to which it should not have had access. From this, it necessarily follows that, for purposes of 11 U.S.C. § 364(e), this Court cannot conclude that, in its negotiations with the City, the PLA acted in good faith. This lack of good faith is further compounded by the PLA's failure to disclose that Miller Canfield was representing it in connection with the PLA Transaction until the 11/27/13 Hearing when, to the surprise of the Court and Objectors, Miller Canfield stood up and announced that, as regards the PLA Transaction, it was in fact not acting for its client the City, but rather was acting for the PLA.

I. MILLER CANFIELD'S SIMULTANEOUS REPRESENTATION OF BOTH THE CITY AND THE PLA GAVE RISE TO AN ETHICAL CONFLICT THAT IS NOT CURABLE BY CLIENT CONSENT

4. Miller Canfield is counsel before this Court for the City. As such, it has among other things participated, as an advocate for the City, in proceedings before this Court, including the recent eligibility trial. Miller Canfield has now violated M.R.P.C. Rule 1.7 by simultaneously representing the PLA in direct, adversarial negotiations against the City, while in possession of inside knowledge of the City's financial condition and strategic plans, including its ability and willingness to commit its scarce financial resources to achieve various ends. This presents a conflict of interest that cannot be waived.

5. According to M.R.P.C. Rule 1.7(a), "A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless: (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and (2) each client consents after consultation." Compliance with this prong is assessed under the "disinterested lawyer" standard; under that standard, "when a disinterested lawyer

would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent.” Rule 1.7(a), Cmt. 5, “Consultation and Consent.”

6. Under M.R.P.C. Rule 1.7, as well as other analogous rules in other states, a non-waivable conflict exists where an attorney is privy to certain confidences of one client that can be used to the disadvantage of the other. *See* MI Eth. Op. RI-66, 1990 WL 504887, at *2 (Dec. 21, 1990) (attorney could not represent individual despite client consent because attorney would be in possession of information gained from one representation that would necessarily affect his conduct in other, to the detriment of one of the two clients, even though the two matters were unrelated); IL. Adv. Op. 851, 1983 WL 190427, at *2 (Nov. 8, 1983) (attorney representing a corporation in a bankruptcy proceeding could not also simultaneously file a Workmen's Compensation claim on behalf of a former employee of the corporation because during the attorney's representation of the corporation he may “have learned confidential information which would be susceptible of use on behalf of the individual claimant”; opinion issued pursuant to Illinois Code Rule 5-105, which is substantively similar to Rule 1.7); *Filippi v. Elmont Union Free Sch. Dist. Bd. of Educ.*, 722 F. Supp. 2d 295, 307 (E.D.N.Y. 2010) (disqualifying firm that represented plaintiff in suit against school Board where one firm associate, who was not working on matter, served as vice-president of Board, since associate had access to confidential Board information that could be used to benefit plaintiff).¹

7. In this case, Miller Canfield represents the City in the bankruptcy proceedings, and by virtue of this representation, has necessarily become privy to certain confidential

¹ *See also* MI Eth. Op. RI-307, 1998 WL 1053845, at *3 (May 8, 1998) (due to the differing interests and obligations of each entity, “it is difficult to conceive of a situation in which a disinterested lawyer could confidently and reasonably believe that the lawyer's obligations to the county will not adversely affect the representation of the municipality” by simultaneously representing each in property tax assessments and appeal matters).

information that would not otherwise be known, including the City's financial condition and internal strategies as relate to its willingness and ability to commit funds to secure the PLA Transaction. See ¶ 4 above. The City's interest is to effectuate the public lighting improvements contemplated by the PLA transaction while maximizing its general fund access to utility tax revenues. The PLA's interest is in extracting as much secure funding as possible from the City to support the payments due on the bonds issued by it.

8. Irrespective of any client consent, a disinterested lawyer could not reasonably conclude that Miller Canfield could properly represent both clients. By virtue of its representation of the City, Miller Canfield acquired information concerning the City that would be of substantial advantage to the PLA -- and corresponding detriment to the City -- in the PLA's negotiations with the City. In those circumstances, Miller Canfield's simultaneous representation of both the City and the PLA was in violation of M.R.P.C. Rule 1.7(a). See authorities cited at ¶ 6 above. See also *Fund of Funds, Ltd. v. Arthur Andersen & Co.*, 567 F.2d 225, 236 (2d Cir. 1977) ("Even the most rigorous self-discipline might not prevent a lawyer from unconsciously using or manipulating a confidence acquired in the earlier representation and transforming it to telling advantage in the subsequent litigation . . .").²

² The City's recent assertion that there is no conflict because the City, PLA and MFA have a "common interest" in providing "cost effective financing" (Dkt. 1927, at 4) misses the point--that, because the PLA is a separate municipal entity and will rely on the pledged utility revenues for repayment of the bonds issued by it, the PLA intrinsically and necessarily has an interest in maximizing the amount of the pledged revenues, whereas the City clearly has an interest that is opposite and antagonistic to that, namely to pledge as little utility revenues as possible. The City's unsupported suggestion that Miller Canfield can avoid the conflict by somehow "not" representing the PLA on discrete matters, within the scope of the same representation, on which "the City and the PLA may represent different interests" is made up out of whole cloth. A lawyer either represents a client or does not, and, if there is a representation, the lawyer owes a full and complete duty of loyalty to the client. In this case, the duty of loyalty owed by Miller Canfield to the PLA covers all matters in which the PLA has an interest. In this regard, the City concedes that Miller Canfield represented the PLA in connection with the "PLA Financing Agreements," which include Amended and Restated Trust Agreement (Dkt. 1341, Ex.

II. BECAUSE MILLER CANFIELD'S ACTIONS AND KNOWLEDGE ARE IMPUTED TO THE PLA, THE PLA CANNOT MEET THE "GOOD FAITH" REQUIREMENT SET FORTH IN 11 U.S.C. § 364(e)

9. Section 364(e) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under this section to obtain credit and incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that **extended such credit in good faith**, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal. (emphasis added).

10. Section 364(e) encourages extending "credit to debtors in bankruptcy by eliminating the risk that any lien securing the loan will be modified on appeal." *Keltic Fin. Partners, LP v. Foreside Mgmt. Co., LLC (In re Foreside Mgmt. Co., LLC)*, 402 B.R. 446, 451 (B.A.P. 1st Cir. 2009). However, in order to take advantage of this safe harbor provision, an entity extending post-petition credit to a debtor must have done so in "good faith". While the Bankruptcy Code itself does not provide a definition of "good faith," it has been defined as "honesty in fact in the conduct or transaction concerned." *Unsecured Creditors' Comm. v. First Nat'l Bank & Trust Co. of Escanaba (In re Ellingsen MacLean Oil Co.)*, 834 F.2d 599, 605 (6th Cir. 1987), *cert. denied*, 488 U.S. 817 (1988).

11. As discussed in further detail below, under Michigan law, Miller Canfield's actions and knowledge arising from its concurrent and unethical representation of both the PLA and the City are imputed to the PLA. As a result, during its negotiations with the City, the PLA presumptively had access to confidential City information and was in a position to take unfair advantage of the City in these negotiations. The PLA's honesty has been rendered suspect and in

6.3) to which both the City and the PLA are parties and which governs the utility pledge amounts. The existing tension between the City's interests and those of the PLA was further demonstrated by the PLA's request made mid-hearing that the City drop its request for approval of the Operations and Maintenance Agreement.

these circumstances and on this record the PLA cannot be found to have acted in good faith within the meaning of 11 U.S.C. §364(e).

A. Under Michigan Law, Miller Canfield's Actions and Knowledge Are Imputed to the PLA

12. Under Michigan law, the attorney's relationship with the client is one of agency, and an attorney's actions and knowledge are generally imputed to the client. *See, e.g., Manni v. United States*, No. 89-CV-73621-DT, 1990 U.S. Dist. LEXIS 19579, at *8, n. 4 (E.D. Mich. Jan. 31, 1990) (“it is well settled that the knowledge of an attorney is imputable to his client”) (quoting *Orgeron v. Mine Safety Appliances Co.*, 603 F. Supp. 364, 369 (E.D. La. 1985)); *Creswell v. Comm'r of Soc. Sec.*, No. 11-CV-12492, 2011 U.S. Dist. LEXIS 117756, at *6 (E.D. Mich. Sept. 12, 2011) (“the actions of a privately retained attorney are imputed to the client”); *Krim v. Osborne*, 20 Mich. App. 237, 242 (1969) (“each party is deemed bound by the acts of his lawyer-agent and is considered to have notice of all facts, notice of which can be charged upon the attorney”) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 634 (1962)); *see also In re Estate of Widdifield*, No. 252678, 2005 WL 1522160, at *2 (Mich. App. June 28, 2005) (“[T]he relationship between an attorney and his client is one of agency, and an attorney's assertions and arguments are imputed to the client he represents.”).

13. This rule of imputation applies equally in bankruptcy cases. *See, e.g., Matter of Frankina*, 29 B.R. 983, 985-86 (Bankr. E.D. Mich. 1983) (holding that an attorney's notice of a bankruptcy proceeding is imputed to his client); *In re Shaw*, 210 B.R. 992, 996 (Bankr. W.D. Mich. 1997) (denying party's request to vacate consent judgment that was agreed to by his attorney because “it is well-settled that a party to litigation is bound by the acts of his attorney and is charged with notice of facts to the extent the attorney is so charged”).

14. Accordingly, and as a matter of law, the actions and knowledge of Miller

Canfield, including its concurrent representation of the PLA in the PLA's Chapter 9 negotiations with Miller Canfield's other Chapter 9 client , the City, are imputed, and chargeable, to the PLA.

B. Because it Stands in the Shoes of Miller Canfield, the PLA Did Not Act in Good Faith

15. Given that the acts and knowledge of an attorney are imputed to the client, it necessarily follows that, for purposes of 11 U.S.C. § 364(e), the PLA did not conduct itself in good faith. By virtue of the imputation, the PLA stands in the shoes of Miller Canfield and conducted negotiations with the City while in possession of the confidential City information, discussed above, to which Miller Canfield was privy. That exceeds the bounds of honesty in fact, and put the PLA in a position to take gross advantage of the City in the bargaining process.

16. The foregoing is further compounded by the PLA's apparent intent to obscure the dual role played by Miller Canfield. For reasons unknown, the PLA Transaction documents that were prepared in connection with the PLA Transaction and filed with this Court by the City in support of its Motion identify the PLA's counsel as, and only as, The Allen Law Group, P.C. (*see* Motion, Ex. 6.3, at 14) -- Miller Canfield is not disclosed as counsel for the PLA anywhere therein. It was not until the 11/27/13 Hearing in the City's bankruptcy case that it came out -- and then only serendipitously -- that, so far as the PLA Transaction was concerned, Miller Canfield was in fact acting not for the City but rather for the PLA. The PLA's failure to disclose the conflicted role played by Miller Canfield provides an additional reason why the PLA has not acted with "honesty in fact".³

³ The Committee acknowledges that, if the Court were to conclude either that Miller Canfield's simultaneous representation of the City and the PLA did not give rise to a conflict or that it did but the conflict was both waivable and properly waived (which it should not), then there would be no basis for a determination that the PLA transaction was not entered into in good faith for Section 364(e) purposes.

CONCLUSION

Wherefore, for the above reasons, the Committee respectfully requests that the Court deny the Motion.

Dated: December 4, 2013
New York, New York

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CERTIFICATE OF SERVICE

I, Claude D. Montgomery, hereby certify that service of this Supplement to Joinder of the Official Committee of Retirees to the Limited Objection of Syncora Guarantee Inc. and Syncora Capital Assurance Inc. to Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to Enter Into and Perform Under Certain Transaction Documents with the Public Lighting Authority and (II) Granting Other Related Relief was filed and served via the Court's electronic case filing and noticing system on December 4, 2013.

/s/ Claude D. Montgomery