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**EMERGENCY MANAGER
CITY OF DETROIT**

ORDER No. 42

**ORDER ADDRESSING ISSUES RELATING TO THE CONCLUSION
OF THE EMERGENCY MANAGER'S TENURE AND TRANSITION
OF CITY OPERATIONS TO THE MAYOR AND CITY COUNCIL**

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 (the "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 City's Mayor (the "Mayor") and the Detroit City Council (the "Council"); and

Section 9(2) of PA 436 further provides that, during the pendency of the receivership, the Mayor and the Council may exercise such powers "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

On July 18, 2013, consistent with the authorization of the Governor of the State of Michigan provided under Section 18(1) of PA 436, the City filed a petition for relief pursuant to chapter 9 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (as it may be amended, the "Bankruptcy Code") in the United States Bankruptcy Court for the Eastern District of Michigan (the "Bankruptcy Court") with the case caption of "*In re City of Detroit, Michigan*, Case No. 1353846" (the "Bankruptcy Case"); and

On September 16, 2014, the City filed a Seventh Amended Plan for the Adjustment of Debts of the City of Detroit (Docket No. 6908) (as it may be further amended, modified, corrected or supplemented, the "Plan of Adjustment"), and the City is pursuing the Bankruptcy Court's entry of an order confirming the Plan of Adjustment pursuant to the Bankruptcy Code (the "Confirmation Order");¹ and

Section 9(6)(c) of PA 436 provides that the EM may be removed after 18 months in office (such time before removal, the "EM Tenure"); and

On September 25, 2014, consistent with Section 9(6)(c) of PA 436, the City, through the Council and the Mayor, has taken action to remove the EM as of the Effective Date of the Plan of Adjustment (the "City Removal Action"); and

As the end of the EM Tenure approaches and in anticipation thereof and in consideration of the terms of the City Removal Action, the EM believes that this Order is appropriate to: (a) promote the successful transition of City governance from EM back to the Mayor and the Council so they can provide or cause to be provided necessary governmental services essential to the public health, safety and welfare; (b) assist in the City's efforts to rectify its financial emergency; and (c) otherwise fulfill the intents and purposes of PA 436 and chapter 9 of the Bankruptcy Code; and

As part of this Order, the EM has determined, among other things, that (a) certain provisions of previous EM Orders shall be modified, revoked or supplemented; (b) the Mayor, the Council and others shall have responsibility for the orderly and efficient management of the City and the ongoing efforts to rectify the City's financial emergency; and (c) the terms hereof are appropriate to provide for a smooth transition at the conclusion of the EM Tenure and to promote the long-term financial recovery of the City and the health, safety and welfare of the public.

¹ As applicable, capitalized terms not otherwise defined herein have the meanings given to them in the Plan of Adjustment.

It is hereby ordered that:

Restoration of City Governance

1. The powers and authority of the Mayor and the Council that previously were exercised by the EM are hereby restored effective immediately as set forth herein. All salaries and benefits of the Mayor and the members of the Council shall be provided in the normal course. In particular, whereas PA 436 permits the officers of the City to exercise operational control and fulfill their governmental functions during the EM Tenure and with EM approval, the EM agrees that the Mayor and the Council will have, and may exercise, authority over the City's day-to-day operations and activities effective immediately.
2. Previous orders of the EM relating to the powers of the Mayor and the Council and their salaries and benefits (i.e., EM Order Nos. 1, 3, 10, 20 and 31) are hereby rescinded to the extent inconsistent with this Order.

EM Retained Powers and Duties

3. The EM agrees not to exercise his powers under PA 436 to interfere with the powers restored to the Mayor and the Council under paragraph 1 above. The EM further agrees that he will exercise his powers under PA 436 through the conclusion of the EM Tenure only with respect to any action, or the prevention of action, that is necessary or convenient to the purposes described below.
 - a. Management of the Bankruptcy Proceeding. The EM has and will exercise the power to act exclusively on the local government's behalf in the Bankruptcy Case and related proceedings, including, but not limited to, (a) the power to make or authorize filings in the Bankruptcy Case and in any related cases or appeals and (b) the power to secure the services and direct the conduct and payment of all experts, advisors, entities or others that have been retained as of the date of this Order to assist in the Bankruptcy Case and related proceedings, or that the EM determines are necessary based on future developments in the Bankruptcy Case or related litigation.
 - b. Implementation of the Plan of Adjustment. Without limiting the foregoing, the EM has and will exercise the power to take all actions necessary and convenient to obtain confirmation of the Plan of Adjustment and bring into effect the provisions of such confirmed Plan of Adjustment, the Confirmation Order or any other Bankruptcy Court order related to the Bankruptcy Proceeding, or any exhibit to any of the foregoing. This power shall include the power to execute on behalf of the City all documents necessary or appropriate to effectuate any transaction contemplated in the Plan of Adjustment. Specifically, the EM will exercise power and authority relating to the following:
 - i. The LTGO Settlement;

- ii. The UTGO Settlement;
- iii. The DIA Settlement;
- iv. The settlement with the State related to its participation, including the State Contribution Agreement;
- v. The 36th District Court Settlement;
- vi. All transactions necessary to facilitate the various settlements with city retirees, including, but not limited to, those regarding health care and pension benefits (including, but not limited to, the Retiree Health Care Settlement Agreement, the Restoration Trust Agreement, the Detroit General VEBA Trust Agreement and the Detroit Police and Fire VEBA Trust Agreement);
- vii. All transactions necessary to facilitate the various settlements related to the Detroit Water and Sewerage Department ("DWSD"), including but not limited to:
 - A. The DWSD tender offer and related financings; and
 - B. Creation of the Great Lakes Water Authority and associated transactions, including as set forth in the Memorandum of Understanding, dated September 9, 2014, among the City, the State, Oakland County, Macomb County and Wayne County;
- viii. All transactions needed to secure and implement an Exit Facility and, until that time, compliance with the terms of the existing Postpetition Financing Agreement and Postpetition Financing Order;
- ix. All steps necessary to secure self-insurance coverage for (A) worker's compensation and (B) operation of City motor vehicles;
- x. The Syncora Settlement, including the Development Agreement and the other settlement documents attached to or referenced in the Plan of Adjustment;
- xi. The issuance and distribution of the securities provided by the Plan of Adjustment; and
- xii. Any other transactions or agreements (including related revisions to the Plan of Adjustment) that are reasonable or appropriate to resolve remaining objections to confirmation of the Plan of Adjustment, implement and give effect to the other

provisions of the Plan of Adjustment and the settlements incorporated therein and the address any confirmation issues raised by the Bankruptcy Court.

4. The EM agrees to consult with the Mayor and the Council regarding the terms of any EM Order to be entered after the date hereof and in advance of the Effective Date, and the EM agrees that any such order will be limited to matters related to implementation of the Plan of Adjustment, the conduct of the Bankruptcy Case, the transition of remaining governmental power to the City or any other matter required by law.
5. For the avoidance of doubt, nothing herein shall require the EM to take, or refrain from taking, any action required by applicable law.

Executive Branch Reorganization Plan

6. To assist in the City's efforts to rectify its financial emergency and provide or cause to be provided necessary governmental services essential to the public health, safety and welfare, the Mayor and the Council are authorized restructure City government pursuant to the terms below:
 - a. The Mayor may submit a proposed executive branch reorganization plan to the Council. The plan may provide for the creation, abolition, reassignment, re-naming or reorganization of any department, agency, division, or senior management position within the executive branch, and/or the duties or responsibilities of any such department, agency, division or senior management position in the executive branch. The Mayor may propose amendments at any time to any previously adopted executive branch reorganization plan. In addition to those positions exempt from the classified service by other provisions of this charter, any reorganization plan or amendment may provide for the creation of executive management positions totaling no more than 60 additional positions to serve at the pleasure of the Mayor; provided, however, this provision shall not apply to employees covered by a collective bargaining agreement. All amendments to the plan must originate with the Mayor.
 - b. The Council may approve or reject a proposed reorganization plan or any proposed amendment. If the Council fails to act on the proposed plan or a proposed amendment within 45 days after its submission, the plan or the amendment becomes

effective. Any executive branch reorganization plan submitted by the Mayor may include the Law Department as if such department were a department under the executive branch.

- c. Without limiting the foregoing, the director of each City executive department and the Law Department, shall be appointed by and serve at the pleasure of the Mayor. Nothing in this paragraph shall restrict or otherwise alter the authority of the Council to confirm positions that are subject to confirmation under City Charter.
- d. Any at-will position created by an EM Order shall count as one of the 60 position limitation, whether or not such position serves at the pleasure of the Mayor.
- e. If the Council, in its sole discretion, believes that Corporation Counsel has a conflict of interest, the Council may retain independent counsel.

Departmental Restructuring

- 7. Notwithstanding any City or human resources rule, regulation, policy, agreement, ordinance or practice to the contrary, including, but not limited to, the City's Civil Service Rules, and with the approval of the Mayor and the Council in coordination with the Human Resources Department, the City may implement departmental restructurings not inconsistent with any other EM Order. These restructurings may grant department heads the authority to make hiring, retention, promotion, demotion, reassignment and any other related personnel decisions affecting their departments, in consultation with the Human Resources Department. Such reorganizations shall comply with the terms of applicable collective bargaining agreements and provide required notices to impacted employees and labor unions, if applicable.

City of Detroit Police Commission; Police Chief

8. Notwithstanding anything to the contrary in EM Order No. 11, the following powers of the Board of Police Commissioners shall be reinstated effective immediately:
 - a. The power to consult with the Chief of Police, and with the approval of the Mayor, establish policies, rules and regulations;
 - b. The power to review the departmental budget prior to its submission to the Mayor and to make recommendations to the Mayor regarding such budget;
 - c. The power to receive, investigate (including the power to subpoena witnesses, administer oaths, take testimony and require the production of evidence, and to apply to the appropriate court for enforcement of same, and to continue its current investigative staffing levels for this purpose), and recommend resolution of complaints to the Mayor concerning the operation of the Police Department;
 - d. The power to forward all allegations of criminality to the appropriate internal or external law enforcement agency for further investigation; and
 - e. The power to make an annual report to the Mayor, the Council and the public of the handling of such complaints.

All other powers granted to the Chief of Police by Order No. 11 shall continue

9. The Mayor shall have the authority to negotiate and execute a contract that, among other things, extends the current Chief of Police's service to the City.

Tax Collection

10. The City and the State have been negotiating an agreement regarding the State's collection of City income taxes (a "Tax Collection Agreement"), which is important to the City's restructuring efforts. Notwithstanding any City Charter or ordinance provisions to the contrary regarding contract approval processes, the Mayor and the City's Chief Financial Officer (the "CFO") shall take such steps as may be appropriate to assist in negotiating a Tax Collection Agreement and shall promptly enter into and consummate any Tax Collection Agreement negotiated with the State. Within 120 days after the date of execution of a Tax Collection Agreement, the Mayor and the CFO shall take all steps necessary and appropriate to align the City's tax-related processes to effectuate the requirements of this paragraph.

Other EM Orders

11. EM Order No. 5 relating to the transfer of real property owned by the City is revoked and rescinded except that any transfers of real property required under the Plan of Adjustment or the transactions contemplated thereby shall continue to be subject to EM Order No. 5 through the end of the EM Tenure.
12. EM Order No. 7, requiring EM approval of all CDBG, HOME and NSP grants, is revoked and rescinded in its entirety.
13. The City's Inspector General (the "IG") and City's Auditor General (the "AG") shall prepare and deliver a final written report (the "Final IG/AG Report") to the Mayor and the Council within 90 days of the date of this Final EM Order with respect to the subject matter of the 60 Day Report (as defined in EM Order No. 8) and updated reports described in EM Order No. 8. If the EM Tenure has not concluded, a copy of the Final IG/AG Report also shall be provided to the EM. Upon receipt of the Final IG/AG Report by the Mayor and the Council (and, if applicable, the EM), the IG's and the AG's duties under paragraph 3 of EM Order No. 8 shall terminate.

Reporting

14. The Human Resources Director shall file any employment position or new classification that is created on or after the date of this Order with the City Clerk and the Council on the 15th day of each month (or if such date is not a business day, the next succeeding business day), commencing on November 17, 2014. Such report shall include the compensation range of that employment position. Any new position that is created and filled shall be within available appropriations.

Administrative Matters

15. Nothing in this Order shall be interpreted as contrary to applicable law.
16. This Order is effective immediately upon the date of execution below.
17. 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.

18. This Order shall be distributed to the Mayor, Council members and all department heads.

Dated: September ~~25~~²⁴, 2014

By:


Keyyn D. Orr
Emergency Manager
City of Detroit

cc: Governor of the State of Michigan
State of Michigan Department of Treasury
Mayor Michael Duggan
Members of Detroit City Council
City Department Heads