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 8

9 UNITED STATES BANKRUPTCY COURT
 10 EASTERN DISTRICT OF CALIFORNIA
 11 SACRAMENTO DIVISION
 12

13 In re:
 14 CITY OF STOCKTON, CALIFORNIA,
 15 Debtor.

Case No. 2012-32118
 D.C. No. OHS-11
 Chapter 9

**MOTION FOR AN ORDER
 APPROVING DISCLOSURE
 STATEMENT WITH RESPECT TO
 THE PLAN FOR THE ADJUSTMENT
 OF DEBTS OF CITY OF STOCKTON,
 CALIFORNIA, DATED OCTOBER 10,
 2013, AND SETTING CONFIRMATION
 PROCEDURES; MEMORANDUM IN
 SUPPORT THEREOF**

Date: November 18, 2013
 Time: 1:00 p.m.
 Dept: Courtroom 35
 Judge: Hon. Christopher M. Klein

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NOTE: The Bankruptcy Court Has Not Yet Approved The Disclosure Statement Pursuant To Section 1125(b) Of The Bankruptcy Code For Use In The Solicitation Of Votes In Favor Of Or In Opposition To The Plan Of Adjustment Of Debts Described Herein. The Filing And Distribution Of This Motion For Order Approving Disclosure Statement, Etc. Therefore Is Not Intended As, And Should Not Be Construed To Be, A Solicitation Of Acceptance Or Rejection Of That Plan Or Of Any Other Plan Of Adjustment.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The City filed the Plan and Disclosure Statement on October 10, 2013. Pursuant to
4 Bankruptcy Code § 1125,¹ this Court's approval of the Disclosure Statement is necessary before
5 the City can solicit votes in favor of the Plan and otherwise proceed toward confirmation of the
6 Plan. Because it believes that the Disclosure Statement contains adequate information of a kind,
7 and in sufficient detail, that would enable a typical holder of claims in a class impaired under the
8 Plan to make an informed judgment with respect to the Plan, the City requests that the Court
9 approve the Disclosure statement pursuant to § 1125(b). Should the Court approve the Disclosure
10 Statement, the City also requests that the Court approve the voting and confirmation procedures
11 described herein.

12 **II. FACTUAL BACKGROUND**

13 **A. The Plan and Disclosure Statement.**

14 The Plan involves the restructuring of the approximately \$300 million of publicly held
15 securities, certain of which evidence and represent undivided fractional interests in General Fund
16 leases of many of the City's capital assets. Some of these leased assets are important and/or
17 essential to municipal operations (such as the Main Police Facility, Fire Stations 1, 5, and 14, the
18 Maya Angelou Southeast Branch Library, the Stewart/Eberhardt Building, the Stockton Arena,
19 and certain parking structures). The Plan also addresses and resolves (1) the City's obligations to
20 current and former employees; (2) claims arising from tort and breach of contract lawsuits against
21 the City; and (3) various other claims. The Plan does not seek to alter the City's pension
22 obligations to its employees, its retirees, or to CalPERS, the trustee of the applicable pension
23 trusts.

24 The Bankruptcy Code requires that a plan proponent prepare and file a "disclosure
25 statement" that provides information of a kind, and in sufficient detail, that would enable a typical
26 holder of claims in a class impaired under that plan to make an informed judgment with respect to
27

28 ¹ All code section citations in the Motion and Memorandum are to the United States Bankruptcy Code, 11 U.S.C.
§101 *et seq.*, unless otherwise noted.

1 the plan. See 11 U.S.C. § 1125. As detailed more fully below, the City submits that the
2 Disclosure Statement provides such information.

3 Should the Court approve the Disclosure Statement, the City will provide copies of the
4 Disclosure Statement and ballots to all known holders of impaired claims in the Impaired
5 Classes.² In the event of a rejection of the Plan by any of the Impaired Classes, the City will
6 request that the Court confirm the Plan in accordance with the cramdown provisions of
7 Bankruptcy Code § 1129(b), which provisions permit confirmation notwithstanding such
8 rejection if the bankruptcy court finds, among other things, that the plan at issue “does not
9 discriminate unfairly” and is “fair and equitable” with respect to each rejecting class.

10 For the conservation of judicial and party resources, the City requests that the Court not
11 only rule on the adequacy of the Disclosure Statement, but also approve voting procedures and
12 deadlines for the confirmation of the Plan.

13 **B. Voting Procedures, Balloting Deadline, Confirmation Hearing, And Other**
14 **Important Dates, Deadlines, And Procedures.**

15 **1. Proposed Solicitation and Confirmation Procedures.**

16 Should the Court approve the Disclosure Statement, the City proposes the following
17 procedures to ensure that the solicitation of votes to accept or reject the Plan proceeds in an
18 orderly fashion:

19 ***Solicitation Packages.*** The City will serve the following documents on all parties entitled
20 to vote on the Plan (the documents, collectively, constitute the “Solicitation Package”): (1) the
21 Disclosure Statement; (2) the Plan (which will be an exhibit to the Disclosure Statement); (3) a
22 form of ballot approved by the Court; (4) a notice of the Confirmation Hearing and related
23 deadlines and procedures (the “Confirmation Notice”); and (5) a Plan supplement that contains
24 new contractual and related agreements with the City’s creditors.

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28 ² Unless otherwise defined here, capitalized terms shall have the meaning defined in the Plan or the Disclosure Statement.

1 ***Service on Parties Not Entitled To Vote.*** The City also will serve a courtesy copy of the
 2 Solicitation Package on all parties or their counsel who have filed and served a request for special
 3 notice.

4 The City proposes to use the official form of ballot (Official Form No. 14) or a variant
 5 thereof for each Impaired Class. Proposed forms of such ballots will be filed and served prior to
 6 the hearing on approval of the Disclosure Statement.

7 **2. Proposed Vote Tabulation Procedures.**

8 In order to calculate accurately and efficiently all votes cast to accept or reject the Plan,
 9 the City proposes that the following vote tabulation procedures be approved in connection with
 10 the Plan:

11 ***Voting Deadline.*** As set forth below, the City requests that the Court establish a deadline
 12 for voting on the Plan (“Voting Deadline”) that is 28 days after the Solicitation Package is served.

13 ***Non-Filing Parties.*** Pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(2), any
 14 party who has not timely filed a proof of claim and whose claim is not subject to § 925 will not be
 15 eligible to vote to accept or reject the Plan.

16 ***Amount of Claim Voted.*** Solely for tabulation purposes, the amount of an eligible claim
 17 voted to accept or reject the Plan will be, as applicable: (1) the fixed liquidated amount set forth
 18 in a proof of claim (the “Claim Amount”)³, which proof of claim (a) was filed on or before the
 19 applicable claims bar date, and (b) is not subject to a pending objection or request for
 20 estimation filed on or before the Voting Deadline; or (2) the amount estimated for voting purposes
 21 by order of the Bankruptcy Court. The claim amount set forth in a ballot will not prejudice the
 22 rights of the City or any other party in interest from objecting to the amount of such claim for
 23 allowance and distribution purposes.

24 In the case of Retiree Health Benefit Claimants, the City, after consultation with the
 25 Retirees Committee, will soon file an updated creditors list setting forth the amount of each
 26 Retiree Health Benefit Claim. No Retiree Health Benefit Claimant was or is required to file a
 27

28 ³ The Claim Amount will include only those liquidated dollar amounts specified in a proof of Claim. For example, if a proof of claim lists a claim for “\$100 plus accrued interest and attorney’s fees,” then the Claim Amount will be \$100.

1 separate proof of claim, and the amount of each Retiree Health Benefit Claim for tabulation
2 purposes shall be the amount set forth in the updated creditors list. If any Retiree Health Benefit
3 Claimant submits a proof of claim for his or her Retiree Health Benefit Claim in an amount
4 different from that set forth in the updated creditors list, the amount of such Retiree Health
5 Benefit Claim for tabulation purposes shall be the amount listed in the proof of claim if such
6 proof of claim is not subject to a pending objection. If such proof of claim is subject to a
7 pending objection, the amount of such Retiree Health Benefit Claim for tabulation purposes shall
8 be the amount listed in the amended creditors list.

9 ***Multiple Ballots.*** If, on or before the Voting Deadline, a creditor casts more than one
10 ballot voting the same claim, then the last ballot received prior to the Voting Deadline will
11 supersede any prior ballot(s).

12 ***Acceptance/Rejection.*** If a creditor submits a ballot that (1) fails to indicate whether the
13 creditor accepts or rejects the Plan, or (2) purports both to accept and reject the Plan, then such
14 ballot will be counted as a vote to accept the Plan.

15 ***Invalid Ballots.*** The following types of ballots will be disregarded for purposes of
16 tabulating votes to accept or reject the Plan: (1) ballots that are incomplete (other than with
17 respect to acceptance or rejection); (2) ballots that were not received by the ballot Tabulator on or
18 before the Voting Deadline; and (3) ballots purporting to vote one or more claims that are
19 unclassified or not otherwise entitled to vote under the Plan.

20 ***Ballot Tabulator.*** Rust Consulting/Omni Bankruptcy will serve as the City's ballot
21 Tabulator to receive and tabulate the ballots for the Plan and prepare the ballot tabulation
22 analysis.

23 **3. Proposed Confirmation Schedule and Procedures.**

24 The City believes that scheduling a hearing to confirm the Plan ("Confirmation Hearing")
25 in late January or early February will provide sufficient time to prepare the ballot tabulation, legal
26 briefing and evidentiary record required for the Court to consider the confirmation of the Plan.
27 Subject to the Court's availability, and assuming that the Disclosure Statement is approved on or
28 about November 18, 2013, the City proposes that: (i) the date that is no later than 14 days after

1 the hearing at which the Disclosure Statement is approved be fixed as the deadline for the mailing
2 of the Solicitation Packages; (ii) the date that is 28 days after service of the Solicitation Packages
3 be fixed as the Voting Deadline as well as the last date to timely file and serve objections to the
4 confirmation of the Plan; and (iii) a date that is no fewer than 21 days after the Voting Deadline
5 and no fewer than seven days prior to the hearing on confirmation of the Plan be fixed as the last
6 day for the Debtor to file its memorandum in support of the Plan, including the ballot tabulation
7 analysis and any responses to objections to confirmation.

8 To the extent required based on the timing of the approval of the Disclosure Statement
9 and/or the Court's schedule, the Debtor requests that these dates be adjusted accordingly.

10 **III. ARGUMENT**

11 **A. The Court Should Approve The Disclosure Statement Because It Contains** 12 **Adequate Information For Voters In Impaired Classes To Make An Informed** 13 **Judgment On The Plan.**

14 Before the City can solicit votes on the Plan, the Court must approve, after notice and a
15 hearing, a written disclosure statement "containing adequate information." 11 U.S.C. § 1125(b).
16 "Adequate information" is defined as "information of a kind, and in sufficient detail . . . that
17 would enable [a hypothetical investor] to make an informed judgment about the plan." *Id.*
18 § 1125(a)(1). The determination of whether the disclosure statement contains adequate
19 information is a subjective, case-by-case inquiry largely within the discretion of the bankruptcy
20 court. *See, e.g., Tex. Extrusion Corp. v. Lockheed Corp. (In re Tex. Extrusion Corp.)*, 844 F.2d
21 1142, 1157 (5th Cir. 1988). Generally, the information provided should include those factors
22 presently known to the plan proponent that bear upon the success or failure of the proposals
23 contained in the plan. *See In re Stanley Hotel, Inc.*, 13 B.R. 926, 929 (Bankr. D. Colo. 1981); *In*
24 *re Ferretti*, 128 B.R. 16, 19 (Bankr. D. N.H. 1991) ("In short, a proper disclosure statement must
25 clearly and succinctly inform the average unsecured creditor what it is going to get, when it is
26 going to get it, and what contingencies there are to getting its distribution."); *In re Scioto Valley*
27 *Mortg. Co.*, 88 B.R. 168, 170-71 (Bankr. S.D. Ohio 1988) (list of factors).

28 In the context of this case, the Disclosure Statement contains adequate information for any
impaired party to make an informed judgment about the Plan, and should be approved. The

1 Disclosure Statement describes the City, the administration of the Chapter 9 Case (including
2 those actions which form the basis of most claims against the City), and the City's current
3 liabilities and assets. It also describes the Plan, describes the classification of Claims and their
4 treatment under the Plan, informs the holders of Claims of the treatment provided under the Plan,
5 describes the City's treatment of its executory contracts and unexpired leases, describes how the
6 City will implement the Plan (and attaches relevant City long-range financial projections in an
7 exhibit), and explains why the Plan is superior to any available alternative. The Disclosure
8 Statement also includes notices, cautionary statements, and information concerning voting
9 procedures and other important procedures, dates, and deadlines. It also provides contact
10 information for, and urges City retirees to consult with, representatives of the Retirees
11 Committee.

12 In short, the Disclosure Statement represents the City's good faith attempt to present all
13 presently known factors that bear upon the success or failure of the proposals contained in the
14 Plan. That said, the City anticipates receiving comments from interested parties and
15 incorporating changes prompted by such comments prior to filing an amended disclosure
16 statement before the November 18 hearing.

17 **B. The Proposed Form Of Ballot.**

18 Federal Rule of Bankruptcy Procedure 3017(d) provides that ballots for accepting or
19 rejecting the Plan should conform substantially to the official ballot form. As noted above, the
20 Debtor proposes to use Official Form No. 14 as the ballot model for all creditors entitled to
21 vote and will be filing a proposed form of ballot in the future. The City also will seek input
22 from other parties, including the Retirees Committee, regarding the proposed form of ballot
23 before submitting it for the Court's approval.

24 **C. The Court Should Approve The Proposed Procedures For Soliciting And**
25 **Tabulating Votes As Being In Accordance With Applicable Provisions Of The**
26 **Bankruptcy Code And The Bankruptcy Rules.**

27 Federal Rule of Bankruptcy Procedure 2002(b) requires that notice of the
28 Confirmation Hearing be given to all creditors. *See* Fed. R. Bankr. P. 2002(b). Rule 2002(g)
generally provides that notices must be addressed as requested by certain parties in their last

1 request filed in a case and that a proof of claim that designates a mailing address constitutes a
2 filed request to mail notices to such address. *See* Fed. R. Bankr. P. 2002(g). Rule 3017, which
3 by its title applies to chapter 9 cases, sets forth in subdivision (d) the contents of the notice
4 (including companion documents) that must be given in connection with the solicitation of votes
5 to accept or reject a plan. *See* Fed. R. Bankr. P. 3017(d). Rule 3017(d) gives the Court
6 discretion to order that unimpaired creditors need not be served with a copy of the Plan and
7 Disclosure Statement. *Id.* Rule 3017(d) also requires that a form of ballot be mailed to creditors
8 to vote on a plan.

9 Federal Rule of Bankruptcy Procedure 3018(a) authorizes the Court, after notice and a
10 hearing, to set a record date for purposes of voting to accept or reject a Plan. *See* Fed. R.
11 Bankr. P. 3018(a). Rule 3003(c)(2) provides that any creditor whose claim or interest is not
12 scheduled, or is scheduled as disputed, contingent, or unliquidated, must file a proof of claim or
13 interest within such time as set by the Court, and that any creditor who fails to do so “shall not
14 be treated as a creditor with respect to such claim for the purposes of voting and distribution.”
15 Fed. R. Bankr. P. 3003(c)(2). In the Chapter 9 Case, the Court set such time for filing proofs of
16 claim by establishing three bar dates.

17 The proposed procedures set forth above for soliciting and tabulating votes to accept or
18 reject the Plan conform with applicable Bankruptcy Rules and the Bankruptcy Code. The City
19 will cause the Confirmation Notice, which will set forth the time fixed for voting to accept or
20 reject the Plan and filing objections to the Plan, and the date, time and place of the
21 Confirmation Hearing, to be mailed to all creditors. The City will send Solicitation Packages,
22 which will include the Plan, Disclosure Statement, Confirmation Notice and a form ballot, to all
23 creditors entitled to vote on the Plan. The Debtor will mail the Solicitation Package and
24 Confirmation Notice to the address set forth in the most recently filed proof of claim for each
25 creditor. Accordingly, the Court should approve the proposed procedures for soliciting and
26 tabulating votes to accept or reject the Plan.

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1 **D. The Court Should Schedule The Confirmation Hearing And Fix Related Time**
2 **Periods For Filing Objections And Voting To Accept Or Reject The Plan So**
3 **That Confirmation Can Proceed Efficiently.**

4 Federal Rule of Bankruptcy Procedure 3017(c) provides that “[o]n or before approval of
5 the disclosure statement, the court shall fix a time within which the holders of claims and interests
6 may accept or reject the plan and may fix a date for the hearing on confirmation.” Pursuant to
7 Rules 2002(b) and 3020(b)(2), at least 28 days notice must be given by mail to all creditors and
8 equity security holders of the time fixed for filing objections to, and the hearing to consider
9 confirmation of, a plan of reorganization. Finally, Rule 3020(b) provides that, within a time
10 specified by the Court, objections to plan confirmation must be filed with the Court and served on
11 the City, any committee appointed under the Bankruptcy Code, and any other entity designated
12 by the Bankruptcy Court.

13 The City’s proposed confirmation schedule conforms to these requirements. The City will
14 mail the Solicitation Packages and Confirmation Notice no less than 30 days before the
15 Confirmation Hearing and at least 28 days before the deadline to file objections to the Plan, which
16 satisfies the requirements of Rules 2002(b) and 3020(b)(2).

17 Furthermore, the City’s proposed confirmation procedures ensure that interested parties
18 will receive pleadings filed in support of, and in opposition to, confirmation, and that the
19 presentation at the Confirmation Hearing of any documentary evidence and testimony will have a
20 proper substantive and evidentiary foundation.

21 Accordingly, the Court should fix the proposed deadlines and approve the proposed
22 procedures for confirmation.

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IV. CONCLUSION

Therefore, the City respectfully requests that the Court enter an order: (i) approving the Disclosure Statement as containing adequate information; (ii) setting deadlines relating to the confirmation process; and (iii) granting such other and further relief as the Court deems to be just and proper.

Dated: October 10, 2013

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