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25 UNITED STATES BANKRUPTCY COURT
26 EASTERN DISTRICT OF CALIFORNIA
27 SACRAMENTO DIVISION

28 In re:
29 CITY OF VALLEJO, CALIFORNIA,
30 Debtor.

31 Official Unsecured Creditors Committee
32 of City of Vallejo Retirees,

33 Plaintiff,

34 v.

35 City of Vallejo, California,
36 Defendant.

37 Case No. 2008-26813

38 Adv. No. 2010-02136

39 DC No. OHS-1

40 Chapter 9

41 **REQUEST FOR JUDICIAL NOTICE
42 IN SUPPORT OF CITY'S MOTION
43 TO DISMISS FIRST AMENDED
44 COMPLAINT [FED. R. BANKR. P.
45 7012(B)]**

46 Date: June 28, 2010

47 Time: 9:00 a.m.

48 Crtrm: A

Judge: Hon. Michael S. McManus

1 Pursuant to Federal Rule of Bankruptcy Procedure 9017, incorporating Federal
2 Rule of Evidence 201, Debtor City of Vallejo (the “City”) respectfully requests that the Court
3 take judicial notice of the following document in support of its Motion to Dismiss First Amended
4 Complaint:

5 1. Vallejo City Council Resolution No. 88-489 N.C. (the “Resolution”), dated on
6 or around August 9, 1988, and entitled “Resolution Electing to Be Subject to Public Employees’
7 Medical and Hospital Care Act Only With Respect to Members of the International Brotherhood
8 of Electrical Workers, Local 2376, Fixing the Employer’s Contribution for Employees and the
9 Employer’s Contribution for Annuitants at Different Amounts.” The Resolution is attached
10 hereto as Exhibit A.

11 As a general rule, the Court may take judicial notice of any fact that is “not subject to
12 reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the
13 trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy
14 cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court shall take judicial notice if
15 requested by a party and supplied with the necessary information. Fed. R. Evid. 201(d); *see*
16 *United States v. Ritchie*, 342 F.3d 903, 909 (9th Cir. 2003) (“Facts are indisputable, and thus
17 subject to judicial notice, only if they are either ‘generally known’ . . . or ‘capable of accurate and
18 ready determination by resort to sources whose accuracy cannot be reasonably questioned. . . .
19 ’”). Additionally, a court may take judicial notice of matters of public record. *See Saldate v.*
20 *Wilshire Credit Corp.*, 2010 WL 624445, *3 (E.D. Cal. 2010); *North County Cmty Alliance v.*
21 *Salazar*, 573 F.3d 738, 746 n.1 (9th Cir. 2009).

22 Because the Resolution is a document of public record whose authenticity is not subject to
23 dispute, the City respectfully requests that the Court take judicial notice of the attached
24 Resolution.

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Dated: May 6, 2010

ORRICK, HERRINGTON & SUTCLIFFE LLP

/s/ Marc A. Levinson
Marc A. Levinson
Norman C. Hile
Michael Weed
Attorneys for the City of Vallejo, Debtor

Dated: May 6, 2010

RENNE SLOAN HOLTZMAN SAKAI LLP

/s/ Charles D. Sakai
Charles D. Sakai
Genevieve Y. Ng
Steven P. Shaw
Attorneys for the City of Vallejo, Debtor

EXHIBIT A

RESOLUTION NO. 88-489 N.C.

RESOLUTION ELECTING TO BE SUBJECT
TO PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT
ONLY WITH RESPECT TO MEMBERS OF INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL 2376,
FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND
THE EMPLOYER'S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS

BE IT RESOLVED by the Council of the City of Vallejo as follows:

WHEREAS, Government Code Section 22850.3 provides that a contracting agency may elect upon proper application to participate under the Public Employees' Medical and Hospital Care Act with respect to a recognized employee organization only; and

WHEREAS, Government Code Section 22857 provides that a contracting agency may fix the amount of the employer's contribution for employees and the employer's contribution for annuitants at different amounts provided that the monthly contribution for annuitants shall be annually increased by an amount not less than 5 percent of the monthly contribution for employees, until such time as the amounts are equal; and

WHEREAS, the City of Vallejo, hereinafter referred to as Public Agency is a local agency contracting with the Public Employees' Retirement System; and

WHEREAS, the Public Agency desires to obtain for the members of the International Brotherhood of Electrical Workers, Local 2376, who are employees and annuitants of the agency, the benefit of the Act and to accept the liabilities and obligations of an employer under the Act and Regulations; now, therefore

BE IT RESOLVED, that the Public Agency elects, and it does hereby elect, to be subject to the provisions of the Act; and

BE IT FURTHER RESOLVED, that the employer's contribution for each employee shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of his/her family members in a health benefits plan; and

BE IT FURTHER RESOLVED, that the employer's contribution for each annuitant shall be the amount necessary to pay the cost of his/her enrollment, including the enrollment of his/her family members, in a health benefits plan up to a maximum of \$75.00 per month; and

BE IT FURTHER RESOLVED, that the employer's contribution for each annuitant shall be increased annually by five percent of the monthly contribution for employees, until such time as the contributions are equal; and

BE IT FURTHER RESOLVED, that the contributions for employees and annuitants shall be in addition to those amounts contributed by the Public Agency for administrative fees and to the Contingency Reserve Fund; and

BE IT FURTHER RESOLVED, that the governing body appoint and direct, and does hereby appoint and direct the City Manager to file with the Board of Administration of the Public Employees' Retirement System a certified copy of this resolution, and to perform on behalf of said Public Agency all functions required of it under the Act and Regulations of the Board of Administration; and

BE IT FURTHER RESOLVED, that coverage under the Act be effective September 1, 1988.

ADOPTED by the Council of the City of Vallejo at a regular meeting held on August 9, 1988, by the following vote:

AYES: Councilmembers Boschee, Hoffman, Intintoli, Kay, Moore and Palmaffy

NOES: None

ABSENT: Councilmember Higgins, excused

ANTHONY J. INTINTOLI, JR., MAYOR

ATTEST:

MILDRED R. WATSON, CITY CLERK

xprsr3lv

THE WITHIN INSTRUMENT IS A
CORRECT COPY OF THE
ORIGINAL ON FILE IN THIS OFFICE.

DATE: 8-10-88

ATTEST: *Mildred R. Watson*

for MILDRED R. WATSON
CITY CLERK & EX-OFFICIO CLERK OF THE
COUNCIL OF THE CITY OF VALLEJO