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18 **UNITED STATES BANKRUPTCY COURT**

19 **EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION**

20 In re:  
21 CITY OF VALLEJO, CALIFORNIA,  
22 Debtor.

23 **Case No. 08-26813**

24 Chapter 9

25 DC No. WS-1

26 **[No Hearing Requested]**

27 **NATIONAL PUBLIC FINANCE GUARANTEE CORPORATION'S *EX PARTE***  
28 **APPLICATION FOR AN ORDER PURSUANT TO BANKRUPTCY RULE 2004**  
**AUTHORIZING EXAMINATION OF DEBTOR CITY OF VALLEJO, CALIFORNIA AND**  
**PRODUCTION OF DOCUMENTS**

National Public Finance Guarantee ("National") hereby moves this Court for an Order pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 2004 for Debtor City of Vallejo, California (the "Debtor" or the "City") to (1) appear for an examination and (2) produce the documents described on Exhibit A attached hereto and incorporated by reference as though set forth in full. In support of this *ex parte* application, National respectfully represents as follows:

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1           1.       National insures<sup>1</sup> the Vallejo Public Financing Authority Certificates of Participation  
2 (1999 Capital improvements Project) (the “1999 COPs”), for which Wells Fargo Bank, N.A. acts as  
3 trustee (the “1999 Trustee”). National has also issued<sup>2</sup> a Debt Service Reserve Surety Bond (the  
4 “Surety Bond”) pursuant to a Financial Guaranty Agreement with the City dated as of July 13, 1999  
5 (the “Financial Guaranty Agreement”). Copies of the Trust Agreement dated as of July 1, 1999 (the  
6 “Trust Agreement”), the Statement of Insurance issued by MBIA and the Financial Guaranty  
7 Agreement are attached as Exhibits A, B and C to National's Exhibit List filed and served herewith.  
8 The proceeds of the 1999 COPs funded the construction of Fire Station #7; financed improvements  
9 to Fire Station #1, 2, 3, 4, 5 and 6; and provided upgrades to the fire and police communications  
10 systems; among other capital improvement projects in Vallejo California. See Declaration of Gary  
11 Saunders in support of the Application (the “Saunders Decl.”) at ¶ 4. The 1999 COPs are secured  
12 pursuant to statute by Motor Vehicle License Fees successor taxes (“VLFs”) allocated from time-to-  
13 time by the State of California. Id.

14           2.       Commencing in May, 2009, the Debtor suspended certain principal and interest  
15 payments owed to the 1999 Trustee under the agreements covering the 1999 COPs. Id. at ¶ 5. Due  
16 to this payment default and the continuing payment default resulting from the City’s failure to pay  
17 full amounts due to the Vallejo Public Financing Authority each month from July 2009 forward, the  
18 City has failed to make required payments of the 1999 COPs and the 1999 Trustee has filed claims  
19 with National that National has paid as draws on the Surety Bond held in the Debt Service Reserve  
20 established under the Trust Agreement. Id. It is expected that substantial additional claims will be  
21 presented to and paid by National under both the Statement of Insurance and the Surety Bond as a  
22 result of this case and the City’s actions herein. Id. Accordingly, a payment default by the City  
23 under the 1999 COPs has occurred, holders of 1999 COPs are receiving their full contractual  
24 principal and interest because of the payments by National and National has subrogation claims  
25 against the City on behalf of such holders and is a creditor in this case. Id. As of the filing of this

26 \_\_\_\_\_  
27 <sup>1</sup> National Public Finance Guarantee Corporation, a stock insurance corporation, duly organized and existing under the  
28 laws of the State of New York, is the reinsurer pursuant to the Quota Share Reinsurance Agreement, effective as of  
January 1, 2009, by and between MBIA Insurance Corporation (“MBIA”) and MBIA Insurance Corp. of Illinois, now  
known as National Public Finance Guarantee Corporation. MBIA insured the 1999 COPs and issued the Surety Bond  
upon their original issuance.

<sup>2</sup> See footnote 1.

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1 application, National has made claim payments in the aggregate amount of approximately  
2 \$141,492.23, and the City has failed to indemnify and reimburse National for such claim payments  
3 under the Financial Guaranty Agreement. Id.

4 3. On December 22, 2009 and as amended on March 23, 2010, the City Council of the  
5 Debtor approved as a draft the Bankruptcy Workout Plan (the "Proposed Plan"). Id. at ¶ 6. Under  
6 the Proposed Plan, holders of the 1999 COPs are not given any value on account of the VLFs.  
7 Rather, holders of the 1999 COPs are expected to forgo the VLFs and forgive four years of interest  
8 and defer payments of principal for three years in order to fund distributions to other creditors of  
9 equal or lesser rank, including distribution on rejection damages claimed by members of various  
10 unions. Id.

11 4. National believes that the Proposed Plan is not fair and equitable or in the best  
12 interest of creditors with the rights of National and, if presented as a plan of adjustment, cannot be  
13 confirmed by this Court. Id. at ¶ 7. National has (in the past) requested the information that is the  
14 subject of this Application from the Debtor by letters dated March 19, 2010 and May 5, 2010 and by  
15 email on April 20, 2010. Id. As of the date hereof, the City has not provided the requested  
16 information. In order to fully evaluate the Proposed Plan and offer a sensible and equitable counter-  
17 proposal or objection, additional information is needed from the Debtor. Id.

18 5. Rule 2004 provides, in pertinent part, that:

19 "On motion of any party in interest, the court may order the  
20 examination of any entity.

21 The examination of an entity under this rule... may relate  
22 ... to the acts, conduct, or property or to the liabilities and  
23 financial condition of the debtor, or to any matter which  
24 may affect the administration of the debtor's estate..." Fed.  
25 R. Bankr. P. 2004(a) and (b).

26 6. The scope of a FRBP 2004 examination is "unfettered and broad," and has been  
27 termed "a quick 'fishing expedition.'" In re Dinubilo, 177 B.R. 932, 930-42 (Bankr. E.D. Cal. 1993);  
28 see also In re Drexel Burnham Lambert Group, Inc., 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991); In  
re Johns-Manville Corp., 42 B.R. 362, 364 (S.D.N.Y. 1984).

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7. National submits that the examination and documents to be produced relate to, among other things, property of the Debtor and the financial condition of the Debtor – both of which affects the administration of the Debtor's bankruptcy case – and more specifically the treatment of National's claim under the Proposed Plan and what the Debtor has been doing with VLFs, which the City has pledged as a guarantee of the 1999 COPs. Moreover, National submits that this Rule 2004 examination is well within the scope of such examinations.

8. Rule 2004 does not require "notice and a hearing" but only "a motion of any party in interest." Thus, a hearing on this application is not necessary.

WHEREFORE, National respectfully requests that this Court issue an Order pursuant to FRBP 2004 for the Debtor to (1) appear for an oral examination on July 1, 2010 at 10:00 a.m. at the San Francisco office of Winston & Strawn LLP 101 California Street, San Francisco, California 94111-5802, (2) produce the documents described on the attached Exhibit A on or before June 24, 2010 at 5:00 p.m. at the San Francisco office of Winston & Strawn LLP 101 California Street, San Francisco, California 94111-5802, and (3) granting such other and further relief as is just and proper under the circumstances.

Dated: May 17, 2010

WINSTON & STRAWN LLP

By: /s/ Richard A. Lapping  
Richard A. Lapping  
Attorneys for Movant,  
National Public Finance  
Guarantee Corporation

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EXHIBIT A

DEFINITIONS

1  
2  
3 1. "DOCUMENT" means a writing, as defined in Rule 34 of the Federal Rules of Civil  
4 Procedure and Rule 1001 of the Federal Rules of Evidence, and includes any kind of written,  
5 typewritten, or printed material whatsoever, any kind of graphic material, and any computer readable  
6 media including, but without limitation, papers, agreements, contracts, notes, memoranda,  
7 correspondence, e-mails, studies, working papers, letters, telegrams, invoices, personal diaries,  
8 journal entries, reports, records, books, forms, indexes, transcriptions and recordings, magnetic  
9 tapes, disks and printed cards, data sheets, data processing cards, personal calendars, interoffice  
10 memoranda, minutes and records of any meetings, financial statements, financial calculations,  
11 estimates, reports of telephone or other oral conversations, appointment books, maps, drawings,  
12 charts, graphs, photographs, and all other writings and recordings of every kind, however produced  
13 or reproduced, whether signed or unsigned, and whether in computerized databases or other  
14 electronic format or whether hard copies thereof. The term "DOCUMENT" further includes,  
15 without limitation, the original and all file copies and other copies that are not identical to the  
16 original no matter how or by whom prepared, and all drafts prepared in connection with any  
17 documents, whether used or not. If the original of any document is not in your possession, custody  
18 or control, a copy of that document should be produced. The term "DOCUMENT" also includes any  
19 COMMUNICATION that otherwise meets the definition of "DOCUMENT," and the term  
20 "COMMUNICATION" includes any DOCUMENT that otherwise meets the definition of  
21 "COMMUNICATION."

22 2. A DOCUMENT is one RELATING TO a subject if, for example, it constitutes,  
23 comprises, describes, sets forth, shows, reflects, analyzes, refers to, evidences, comments upon,  
24 mentions, is connected to, discusses, contains quantitative data relating to, or pertains to the subject.

25 3. "COMMUNICATION" or "COMMUNICATIONS" refers to any transmission of  
26 information, the information transmitted and any process by which information is transmitted, and  
27 includes written and documented communications, as well as oral communications, or any other  
28 exchange of information, response, in-person conversation or affirmative contact between one or

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1 more PERSONS.

2 4. "RELATING TO" shall mean pertaining to, mentioning, commenting on, connected  
3 with, discussing, describing, analyzing, explaining, showing, reflecting, referring to, dealing with,  
4 comprising, consisting of, containing, resulting from, or recording a particular subject in whole or in  
5 part either directly or indirectly or being in any way logically or factually connected with the matter  
6 discussed or identified.

7 5. "PERSON" or "PERSONS" include natural persons, proprietorships, partnerships,  
8 firms, corporations, federal, state and local governments, limited liability companies, political  
9 subdivisions, groups, associations or organizations.

10 6. "DEBTOR" shall mean Debtor City of Vallejo, California and its agents and  
11 employees.

12 7. "YOU" and "YOUR" as used herein means DEBTOR and any person acting on his  
13 behalf or at its direction.

14 8. "NATIONAL" shall mean National Public Finance Guarantee Corporation, a stock  
15 insurance corporation, duly organized and existing under the laws of the State of New York, and its  
16 predecessors and successors.

17 9. "1999 COPs" shall mean the Vallejo Public Financing Authority Certificates of  
18 Participation (1999 Capital improvements Project), for which Wells Fargo Bank, N.A. acts as  
19 trustee.

20 10. "VLFs" shall mean the California Department of Motor Vehicle License Fees.

21 11. "PROPERTY TAX IN-LIEU OF VLFs" shall mean disbursements from or through  
22 Solano County Vehicle License Fee Property Tax Compensation Fund.

23 12. "PROPOSED PLAN" shall mean the Bankruptcy Workout Plan that was proposed  
24 by the Debtor to the City Council of the City of Vallejo on December 22, 2009 and as amended on  
25 March 23, 2010.

26 13. "1999 TRUSTEE" shall mean Wells Fargo Bank, N.A.

27 **INSTRUCTIONS**

28 1. The conjunctives "and" and "or" are to be construed both conjunctively and

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1 disjunctively, and each includes the other wherever such dual construction serves to bring with the  
2 scope of and demand any writings that otherwise would not fall within its scope.

3 2. The singular form includes the plural and vice versa wherever dual construction will  
4 serve to bring within the scope of any demand any writings which would otherwise not fall within its  
5 scope.

6 3. The use of a verb in any tense shall be construed as the use of the verb in all other  
7 tenses.

8 **DOCUMENTS TO BE PRODUCED**

9 1. DOCUMENTS reporting the current and historical property tax rate/base and sales  
10 tax rates for the period from fiscal year 1999-00 to and including fiscal year 2009-10.

11 2. Any and all DOCUMENTS containing the complete reports on tax revenue  
12 projections (including, without limitations, VLFs and PROPERTY TAX IN-LIEU OF VLFs) or any  
13 other subject prepared or delivered by the property tax and sales tax consultants referred to in the  
14 PROPOSED PLAN.

15 3. Documents containing or reporting the amount of VLFs and PROPERTY TAX IN-  
16 LIEU OF VLFs received by the DEBTOR in fiscal year 2009-10.

17 4. The DOCUMENTS containing the DEBTOR'S comprehensive annual financial  
18 reports for fiscal years 1999-00, 2000-01, 2001-02, and 2002-03.

19 5. DOCUMENTS RELATING TO or reporting the wage, salary, bonus, overtime pay,  
20 health benefits and pension contribution history of the DEBTOR'S employees by rank and  
21 association for the period from fiscal year 1999-00 to and including fiscal year 2009-10.

22 6. DOCUMENTS RELATING TO or reporting the total number of the DEBTOR'S  
23 employees by association for the period from fiscal year 1999-00 to and including fiscal year 2009-  
24 10.

25 7. The DOCUMENTS containing the International Association of Fire Fighters'  
26 collective bargaining agreement with the DEBTOR.

27 8. The DOCUMENTS containing the International Brotherhood of Electrical Workers'  
28 collective bargaining agreement with the DEBTOR.

1 9. DOCUMENTS listing or reporting the ten (10) largest tax payers and their  
2 respective percentage contribution to the DEBTOR.

3 10. Any and all DOCUMENTS RELATING TO the DEBTOR'S new revenue and/or  
4 fee initiatives and their expected revenue impact.

5 11. Any and all DOCUMENTS RELATING TO the compensation surveys the  
6 DEBTOR had prepared from 2005 to the present that are available for public distribution.

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