EXHIBIT A

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Attorneys for Plaintiff
San Jose Police Officers' Association

FILED
SEP 20 2012
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY _____ DEPUTY
A. Floresca
UCS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS' ASSOCIATION, Plaintiff, v. CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE, and DOES 1-10, inclusive, Defendants.	No. 1-12-CV-225926 (and Consolidated Actions 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574, and 1-12-CV-227864) **~~[PROPOSED]~~ ORDER DENYING STAY AND GRANTING IN PART MOTION TO CONSOLIDATE** BY FAX

CBM-SF\SF562816

The Motion to Consolidate and Stay State-Court Actions, brought by Defendant City of San Jose, came before this Court on a regularly-scheduled hearing in Department 2 on August 23, 2012, the Honorable Patricia Lucas presiding. Arthur A. Hartinger and Michael C. Hughes of Meyers, Nave, Riback, Silver & Wilson, appeared on behalf of Defendants City of San Jose (the "City") and Debra Figone, in her official capacity as City Manager, in all actions. Christopher E. Platten, of Wylie, McBride, Platten & Renner, appeared on behalf of plaintiffs and petitioners in *Sapien v. City of San Jose*, No. 1-12-CV-225928 ("*Sapien*"), *Harris v. City of San Jose*, No. 1-12-CV-226570 ("*Harris*"), and *Mukhar v. City of San Jose*, No. 1-12-CV-226574 ("*Mukhar*"). Vishtasp M. Soroushian, of Beeson, Tayer & Bodine, APC, appeared on behalf of plaintiff and petitioner AFSCME Local 101 in *American Federation of State, County, and Municipal Employees, Local 101 v. City of San Jose*, No. 1-12-CV-227864 ("*AFSCME*"). Gregg McLean Adam, of Carroll Burdick & McDonough LLP, appeared on behalf of Plaintiff San Jose Police Officers' Association in *SJPOA v. City of San Jose*, No. 1-12-CV-225926 ("*SJPOA*"). Harvey L. Leiderman, of Reed Smith, LLP, appeared telephonically on behalf of "Necessary Parties in Interest" Boards of Administration for the San Jose Police and Fire Department Retirement Plan and the Federated City Employees' Retirement Plan.

In these opposed motions, Defendant City of San Jose moved to consolidate these related cases for all purposes, and further moved to stay these cases in favor of a case it filed in federal district court, *City of San Jose v. San Jose Police Officers' Association*, N.D. Cal. case no. 5:12-cv-02904-LHK.

Having considered the parties' submissions, the arguments of counsel at the hearing, and the record in this case, and good cause appearing: THE COURT ORDERS that the City of San Jose's motion to stay is DENIED for the reasons stated on the record at the hearing on the motion.

IT IS FURTHER ORDERED THAT the City's Motion to Consolidate is GRANTED in part, without prejudice to renewal of the motion at trial to consolidate for

trial purposes. The lead case shall be *SJPOA v. City of San Jose*, Case No. 1-12-CV-225926. Cases Nos. 1-12-CV-225926 ("*SJPOA*"), 1-12-CV-225928 ("*Sapien*"), 1-12-CV-226570 ("*Harris*"), 1-12-CV-226574 ("*Mukhar*"), and 1-12-CV-227864 ("*AFSCME*") are hereby consolidated with Case No. 1-12-CV-225926 only for pre-trial purposes. All future discovery and pleadings in these matters shall bear Case No. 1-12-CV-225926 and shall be filed in that action.

IT IS FURTHER ORDERED that the parties shall meet and confer concerning case management and details of the consolidation. The parties shall file a proposed stipulation and order concerning case management by September 25, 2012. If the parties are unable to reach agreement, they shall file a joint case management conference statement outlining the areas of agreement and disagreement by September 25, 2012.

AND IT IS FURTHER ORDERED THAT the initial case management conference is set for October 9, 2012 at 10 a.m. in Department 2.

IT IS SO ORDERED.

Dated: 9/17/12

Hon. Patricia Lucas
Judge of the Superior Court
of Santa Clara County

Patricia M. Lucas

APPROVED AS TO FORM AND CONTENT:

Dated: September 12, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By _____
Arthur A. Hartinger

Attorneys for Defendants City of San Jose and Debra Figone, in her official capacity as City Manager

Dated: September __, 2012

WYLIE, MCBRIDE, PLATTEN & RENNER

By _____
John McBride
Christopher E. Platten
Attorneys for Plaintiffs in *Sapien, Harris* and *Mukhar*

Dated: September 12, 2012

BEESON, TAYER & BODINE, APC

By _____
Teague P. Paterson
Vishtasp M. Soroushian
Attorneys for Plaintiffs in *AFSCME*

APPROVED AS TO FORM AND CONTENT:

Dated: September __, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By _____
Arthur A. Hartinger

Attorneys for Defendants City of San Jose and Debra Figone, in her official capacity as City Manager

Dated: September 12, 2012

WYLIE, MCBRIDE, PLATTEN & RENNER

By _____
John McBride
Christopher E. Platten

Attorneys for Plaintiffs in *Sapien, Harris* and *Mukhar*

Dated: September 12, 2012

BEESON, TAYER & BODINE, APC

By _____
Teague P. Paterson
Vishtasp M. Soroushian

Attorneys for Plaintiffs in *AFSCME*

Dated: September 12, 2012

REED SMITH

By Harvey Liederman
Harvey Liederman
Attorneys for Necessary Parties Board of Administration of the Federated City Employees' Retirement Plan and the Board of Administration for the San Jose Police and Fire Department Retirement Plan

Dated: September 12, 2012

CARROLL, BURDICK & McDONOUGH LLP

By
Gregg McLean Adam
Jonathan Yank
Gonzalo C. Martinez
Amber L. West
Attorneys for Plaintiff in *SJPOA*

EXHIBIT B

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Linda M. Ross
Attorney at Law
Direct Dial: (510) 808-2078
lross@meyersnave.com

meyers | nave

September 4, 2012

VIA E-MAIL

John McBride
Christopher E. Platten
Mark S. Renner
WYLIE, MCBRIDE, PLATTEN & RENNER
2125 Canoas Garden Avenue, Suite 120
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Gregg McLean Adam
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Teague P. Paterson
Vishtap M. Soroushian
BEESON, TAYER & BODINE, APC
Ross House, 2nd Floor
483 Ninth Street
Oakland, CA 94607-4051

Re: Consolidation and City of San Jose's Federal Claims

Dear Counsel:

This letter confirms our conference call discussion on Friday, August 31, 2012, about the state and federal actions concerning Measure B.

Extension of dates in federal action. In our Friday discussion, we asked you to agree to continue the dates for the Initial Disclosures and Motions to Dismiss in the federal action to give the parties time to organize and agree to procedures for the consolidation of the state court actions. We made this proposal in an attempt to conserve the parties' resources and that of the federal court. Since Judge Lucas has decided not to stay the state court actions, it is now clear that we will be litigating in state court. For that reason, the City is contemplating the litigation of all claims – state and federal – in state court, and is seeking time to procedurally effect that course. We ask again that you consider stipulating to a continuance of the dates in federal court, to conserve resources while we work on the logistics of the consolidated state court actions.

Stipulation to City's cross-complaint in state court raising federal claims. In your court filings and elsewhere, and during our call on Friday, you have stated that the City is free to litigate its federal claims in state court. As we consider our options, we are researching whether the City must file a motion in state court for leave to file a cross-complaint. Can you please confirm by Thursday, September 6, that you are willing to stipulate to the City filing a cross-complaint that would include federal claims, and that you will not seek to remove that action to federal court.

Very truly yours,

Linda M. Ross

LMR:jf

1961694.1

EXHIBIT C

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Telphone: (510) 808-2000

meyers | nave

September 26, 2012

Honorable Lucy Koh
United States District Court
280 South First Street
San Jose, CA 95113

Re: *City of San Jose Police v. San Jose Police Officers' Association et al.*
Case No. 5-12-CV-02904 LHK
MN File No. 135-021

Dear Judge Koh:

We write on behalf of the City of San Jose to alert you to circumstances that will affect the hearing on the Motion To Dismiss or Stay, set for October 4, 2012.

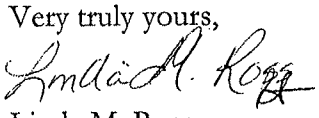
Defendants' Motion To Dismiss or Stay contends that this federal action should be dismissed or stayed in favor of five actions pending in state court, brought under state law, that challenge the legality of Measure B, San Jose's pension reform measure. Recently, Santa Clara Superior Court Judge Patricia Lucas ordered that the five state court actions be consolidated for pretrial purposes and denied the City's motion to stay those actions. Therefore, the state court actions will be proceeding in a consolidated fashion in state court. Judge Lucas has scheduled a Case Management Conference for October 9, 2012, to consider the parties' proposals for consolidated discovery and motion procedures.

Given that the legality of Measure B will be litigated in state court, the City would like to avoid a multiplicity of actions, and will be seeking leave to file its federal claims in the consolidated state court action in the form of a Cross-Complaint. If the state court grants the City leave to file its Cross-Complaint, the City will be in a position to dismiss this federal action without prejudice or request a stay.

We write because we would like to avoid further unnecessary costs in connection with this federal action. We previously asked defendants to stipulate to a continuance of the October 4, 2012 hearing before this Court in order to avoid unnecessary expense, create time to work out the logistics of filing for leave to bring the Cross-Complaint in state court and permit the City to potentially dismiss this federal action. Defendants refused. Nonetheless, the City is moving forward to file its Cross-Complaint in state court and will be seeking a stipulation from defendants to do so.

We are alerting the Court to these circumstances in the event the Court wishes to continue the October 4 hearing and Case Management Conference to give the City time to obtain leave to file its Cross-Complaint in state court. Even if this Court keeps the Motion and Case Management Conference on calendar for October 4, the City wanted to inform the Court about these circumstances in order to avoid any unnecessary work by this Court and its staff in preparing for the motion hearing and conference.

Very truly yours,



Linda M. Ross
LMR:kt
1969810.1

EXHIBIT D

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Linda M. Ross (SBN: 133874)
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Facsimile: (510) 444-1108

Attorneys for Plaintiff
City of San Jose

ENDORSED
FILED

2012 OCT 22 A 8:52

David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By: A. Ramirez
Deputy Clerk

IN THE SUPERIOR COURT FOR THE

COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS' ASSOCIATION, Plaintiff, v. CITY OF SAN JOSE AND BOARD OF ADMINISTRATORS FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE, Defendants.	No. 1-12-CV-225926 (and Consolidated Actions 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574, and 1-12-CV-227864) **STIPULATION AND [PROPOSED] ORDER GRANTING LEAVE TO CITY OF SAN JOSE TO FILE CROSS COMPLAINT RAISING FEDERAL CLAIMS**

WHEREAS, Plaintiffs in this consolidated state court case bring claims under state law to challenge the legality of Measure B, a retirement benefit modification measure enacted by San Jose's voters at the June 5, 2012 election;

WHEREAS, the City of San Jose has drafted a Cross-Complaint, attached hereto as Exhibit A, to assert claims for declaratory relief under federal law, arising out of the same facts and circumstances as Plaintiffs' state law claims, and seeks leave of Court, under Code of Civil Procedure Section 428.50(c) to file the Cross-Complaint in this consolidated action;

WHEREAS, the litigation of the federal and state claims in one action will avoid a multiplicity of actions, and will conserve the resources of the parties and the judiciary;

WHEREAS, Plaintiffs agree to the filing of the Cross-Complaint, but reserve their legal arguments as to the validity of the substance of City's federal claims for declaratory relief;

THEREFORE, the parties to this consolidated state court action stipulate as follows:

1. The City's request for leave to file the Cross-Complaint, attached as Exhibit A, satisfies the requirement in Code of Civil Procedure Section 428.50(c) that the Court may grant leave for the filing of a Cross-Complaint in the interest of justice.

2. Upon the signing of this Order by the Court, the City may file and serve its Cross-Complaint.

DATED: October 19, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____
Arthur A. Hartinger
Linda Ross
Attorneys for Defendant
City of San Jose

DATED: October 5, 2012

CARROLL, BURDICK & MCDONOUGH

By: _____
Gregg McLean Adam
Jonathan Yank
Gonzalo C. Martinez
Amber L. West
Attorneys for San Jose Police Officers' Assoc.

DATED: October __ 2012

WYLIE, MCBRIDE, PLATTEN & RENNER

By: _____
John McBride
Christopher E. Platten
Attorneys for Plaintiffs in the Sapien, Harris and Mukhar cases

DATED: October ___, 2012

BEESON, TAYER & BODINE, APC

By: _____
Teague P. Paterson
Vishtasp M. Soroushian
Attorneys for Plaintiffs in AFSCME

THEREFORE, the parties to this consolidated state court action stipulate as follows:

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2. Upon the signing of this Order by the Court, the City may file and serve its Cross-Complaint.

DATED: October ___, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____

Arthur A. Hartinger
Linda Ross
Attorneys for Defendant
City of San Jose

DATED: October ____, 2012

CARROLL, BURDICK & MCDONOUGH

By: _____

Gregg McLean Adam
Jonathan Yank
Gonzalo C. Martinez
Amber L. West
Attorneys for San Jose Police Officers' Assoc.

DATED: October 11 2012

WYLIE, MCBRIDE, PLATTEN & RENNER

By: _____

John McBride
Christopher E. Platten
Attorneys for Plaintiffs in the Sapien, Harris and Mukhar cases

DATED: October ___, 2012

BEESON, TAYER & BODINE, APC

By: _____

Teague P. Paterson
Vishtasp M. Soroushian
Attorneys for Plaintiffs in AFSCME

THEREFORE, the parties to this consolidated state court action stipulate as follows:

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2. Upon the signing of this Order by the Court, the City may file and serve its Cross-Complaint.

DATED: October ___, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: _____

Arthur A. Hartinger
Linda Ross
Attorneys for Defendant
City of San Jose

DATED: October ____, 2012

CARROLL, BURDICK & MCDONOUGH

By: _____

Gregg McLean Adam
Jonathan Yank
Gonzalo C. Martinez
Amber L. West
Attorneys for San Jose Police Officers' Assoc.

DATED: October __ 2012

WYLIE, MCBRIDE, PLATTEN & RENNER

By: _____

John McBride
Christopher E. Platten
Attorneys for Plaintiffs in the Sapien, Harris and Mukhar cases

DATED: October 5, 2012

BEESON, TAYER & BODINE, APC

By: _____

Teague P. Paterson
Vishtasp M. Soroushian
Attorneys for Plaintiffs in AFSCME

ORDER

IT IS SO ORDERED.

This Court having found that it is in the interest of justice, the City of San Jose is granted leave to file a Cross-Complaint substantially in the form of Exhibit A hereto.

Patricia Lucas

Dated: October ___, 2012
OCT 2 2 2012

The Honorable Patricia M. Lucas
San Jose Superior Court

1978553.1

EXHIBIT E

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Telephone: (510) 808-2000
Facsimile: (510) 444-1108

Attorneys for Defendant and
Cross-Complainant, City of San Jose

ENDORSED

2012 NOV 16 P 5:00

Deputy Clerk

D. Weiss

COURT SERVICES

EXEMPT FROM FILING FEES
GOV'T CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

SAN JOSE POLICE OFFICERS' ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSE AND BOARD OF ADMINISTRATORS FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE,

Defendant.

Case No.112CV225926

Consolidated with Case Nos. 112CV225928, 112CV226570, 112CV226574, 112CV227864

Assigned for all purposes to the Honorable Patricia M. Lucas

CROSS-COMPLAINT FOR DECLARATORY RELIEF

[C.C.P. Section 1060]

BY FAX

1. Contracts Clause, Article I, Section 9, United States Constitution
2. Takings Clause, 5th and 14th Amendments, United States Constitution
3. Due Process Clause, 5th and 14th Amendments, United States Constitution

ROBERT SAPIEN, MARY KATHLEEN McCARTHY, THANH HO, RANDY SEKANY and KEN HEREDIA, Plaintiffs, vs. CITY OF SAN JOSE, DEBRA FIGONE, in her official capacity as City Manager of the CITY OF SAN JOSE, and Does 1 through 15, Defendants and Respondents. THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN, Necessary Party in Interest.	Case No. 112CV225928
TERESA HARRIS, JON REGER, and MOSES SERRANO, Plaintiffs and Petitioners, vs. CITY OF SAN JOSE, DEBRA FIGONE, in her official capacity as City Manager of the CITY OF SAN JOSE, and Does 1 through 15, Defendant and Respondent. THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN, Necessary Party in Interest.	Case No. 112CV226570
JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON and KIRK PENNINGTON, Plaintiffs and Petitioners, vs. CITY OF SAN JOSE, DEBRA FIGONE, in her official capacity as City Manager of the CITY OF SAN JOSE, and Does 1 through 15, Defendant and Respondent.	Case No. 112CV226574

THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN, Necessary Party in Interest.	
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 101 on behalf of its members, Plaintiff and Petitioner, v. CITY OF SAN JOSE and DEBRA FIGONE, in her official capacity as City Manager, Defendants and Respondents, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN, Necessary Party in Interest.	Case No 112CV227864
CITY OF SAN JOSE, Cross-Complainant, v. SAN JOSE POLICE OFFICERS' ASSOCIATION, ROBERT SAPIEN, MARY KATHLEEN McCARTHY, THANH HO RANDY SEKANY AND KEN HEREDIA TERESA HARRIS, JON REGER, AND MOSES SERRANO, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON, AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL; and DOES 1-100; Cross-Defendants.	**Case No.112CV225926** *Consolidated with Case Nos. 112CV225928. 112CV226570, 112CV226574, 112CV227864*

INTRODUCTION

1. This declaratory relief action is brought to resolve a dispute arising under the United States Constitution, including the federal contracts clause, the takings and due process clauses, and the first amendment. This Court has concurrent jurisdiction with the federal courts over these federal law claims. *Taflin v. Levit*, 493 U.S. 455, 458 (1990); *Cianci v. Superior Court*, 40 Cal. 3d 903, 910 (1985).

2. This action is brought under Case No. 112-CV-22596 based on this Court's Order, that the five cases brought by Cross-defendants listed in the caption be consolidated for pretrial purposes. The five cases brought by Cross-defendants raise only state law claims. This action seeks declaratory relief under the federal constitutional counterparts of the state law constitutional claims brought by Cross-defendants in these five consolidated actions.

3. The City of San Jose ("the City") is committed to providing services that are essential to the quality of life and well-being of San Jose residents, including police protection; fire protection, street maintenance, libraries, and community centers ("Essential City Services").

4. In this context, the City Council voted to place Measure B on the ballot for the June 5, 2012 election. A true and correct copy of Measure B is attached hereto as Exhibit 1.

5. The City's ability to provide Essential City Services has been and continues to be threatened by dramatic budget cuts caused in large part by the climbing and unsustainable cost of employee benefit programs, exacerbated by the economic crisis. For example, in the last few years, City payments for employee retirement costs have dramatically increased from $107 million in 2009-10 to $245 million in 2011-12 and are projected to be $319 million in 2014-15 — approximately 24% of the City's General Fund. In March 2012, Moody's downgraded San Jose's general obligation and lease revenue bonds, in part because of San Jose's "[i]ncreasing retirement cost burden."

6. Measure B is intended to adjust post-employment benefits in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for the City's workers. Without the reasonable cost containment provided in Measure B, the economic viability of the City, and hence, the City's employment benefit

programs, will be placed at risk.

7. The City contends that Measure B does not violate employee vested rights. San Jose is a Charter City with "plenary authority" to provide for the compensation of its employees in its Charter. The San Jose City Charter reserves the City's right to create and amend the City's retirement plans. The City's Charter and Municipal Code permit modification of employee contribution rates to the City's retirement systems to defray unfunded liabilities, as well as the other changes contained in Measure B. For these reasons, the City has retained the right for the City's voters to make changes to employee contribution rates and to make the other changes contained in Measure B.

8. An actual controversy has arisen and now exists between the parties relating to the legality of Measure B for which the City desires a declaration of rights. A declaratory judgment is necessary to confirm that Measure B does *not* impair any vested rights, does not violate the contracts clause contained in the federal constitution, and does not violate federal due process guarantees, or any of the other federal constitutional rights alleged by Plaintiffs/Cross-defendants, or that plaintiffs otherwise do not state a claim. This Cross-complaint is necessary because Plaintiffs, Petitioners and Cross-defendants have failed to raise the federal constitutional issues in their state court complaints. This Cross-Complaint is necessary because Plaintiffs, Petitioners and Cross-defendants contend, on behalf of themselves and their members, that Measure B contains provisions that violate employee vested rights to certain retirement contributions and benefits and is (all or in part) a violation of the federal and state contracts clauses, federal and state due process guarantees, and other laws.

9. This action does not seek to recover any damages, attorneys' fees or costs against the Cross-defendants, or any employees or retirees who may be impacted in this action. This is solely an action for declaratory relief to confirm the legality of Measure Band to avoid delay in implementing Measure B's provisions in good faith.

10. The City Council reasonably and responsibly anticipated this legal dispute at the time it voted to place Measure B on the ballot, and thus incorporated a grace period into the measure with respect to the increased employee contributions — the component of the Measure

with the most direct economic impact on employees. The grace period delays implementation of increased pension contributions (which are an important component of the cost containment/ sustainability features in Measure B) until June 23, 2013. This grace period is intended to permit adjudication of the legality of this component of Measure B before it impacts City employees.

11. In light of the threat to Essential City Services, the express grace period referenced above, and the need for the City to begin implementation of Measure B, it is urgent that the Court swiftly adjudicate the legality of Measure B. The City asks this Court to place this matter on a preferential and expedited schedule to confirm that the changes enacted in Measure B are lawful, and thus resolve the controversy.

PARTIES

12. Plaintiff City of San Jose is a California municipal corporation, organized as a Charter City under the California Constitution and laws of the State of California. The City provides its residents with essential services such as police protection, fire and emergency response, libraries, parks and community centers. The City has provided its employees with a generous variety of fringe benefits, including two defined benefit pension plans and retiree health benefits, among other benefits. The City comprises various constituent boards and divisions, including the Boards of Administration for the San Jose Police and Fire Department Retirement Plan and the Federated City Employees' Retirement System.

13. Plaintiff and Cross-defendant the San Jose Police Officers Association ("SJPOA") is an employee association that represents San Jose's police officers and negotiates with the City over the wages, hours and other terms and conditions of employment for its members. In its Complaint, the SJPOA contends that all or part of Measure B violates the vested rights of SJPOA members to certain retirement and other post-employment benefits, and is illegal for other reasons.

14. Plaintiffs, Petitioners and Cross-defendants Robert Sapien, Mary Kathleen McCarthy, Thanh Ho, Randy Sekany, and Ken Heredia, are current and retired San Jose firefighters and members of San Jose Firefighters I.A.F.F. Local 230. In their Complaint, they contend that all or part of Measure B violates their vested rights to certain retirement and other post-

employment benefits.

15. Plaintiffs, Petitioners and Cross-defendants Teresa Harris, Jon Reger, and Moses Serrano are current and retired City employees and members of the City Association of Management Personnel, IFPTE, Local 21 ("CAMP"). In their Complaint, Cross-defendants contend that all or part of Measure B violates their vested rights to certain retirement and other post-employment benefits.

16. Plaintiffs, Petitioners and Cross-defendants John Mukhar, Dale Dapp, James Atkins, William Buffington, and Kirk Pennington are current and retired San Jose City employees and members of the International Union of Operating Engineers, Local No. 3 ("Local No. 3"). In their Complaint, Plaintiffs, Petitioners and Cross-defendants contend that all or part of Measure B violates their vested rights to certain retirement and other post-employment benefits.

17. Plaintiff, Petitioner and Cross-defendant Municipal Employees Federation ("MEF"), AFSCME, Local 101, is an employee organization that represents a wide range of City employees and negotiates with the City over wages, hours and other terms and conditions of employment for its members. In its Complaint, MEF contends that all or part of Measure B violates the vested rights of its members to certain retirement and other post-employment benefits.

18. The true names and capacities of Cross-defendants sued as DOES 1 through 100 are unknown to Cross-complainant the City. DOES 1 through 100 are named as Cross-defendants because the City is ignorant of the names or identities of other parties who contend that all or part of Measure B violates their vested rights to retirement and other post-employment benefits or is illegal for other reasons. The City will amend this cross-complaint to identify their names and capacities when it becomes aware of them.

JURISDICTION AND VENUE

19. This Court has concurrent jurisdiction with the federal courts over the federal claims brought in this complaint. The federal claims addressed in this declaratory relief action and the state claims addressed in the five consolidated state cases listed in the caption arise from the same transactions and occurrences, the enactment of Measure B.

///

20. The Court has personal jurisdiction over the parties, and venue is appropriate in this Court, because the parties are located and conduct business in the County of Santa Clara and this action arises from conduct occurring in the City of San Jose.

CONSOLIDATION

21. At the hearing held on August 23, 2012, this Court ordered consolidation of the cases listed in the caption for pretrial purposes under the caption for Case No. 112CV22596.

GENERAL ALLEGATIONS

22. The City of San Jose provides generous retirement and post-employment benefits for its employees subject to representation of rights clauses. The City provides two defined benefit pension plans for its employees, one for police and fire employees ("Police and Fire Plan"), the other for all other "miscellaneous" employees ("Federated Plan"). Under the Police and Fire Plan, an employee can retire at age 50 with 25 years of service, at age 55 with 20 years of service, or at any age with 30 years of service. The employee receives 2.5% of final compensation for each of the first 20 years of service. For each year over 20 years, police receive an additional 4%. After 20 years, fire fighters receive 3% for all years of service. Police and fire retirees receive monthly payments constituting up to 90% of their final monthly compensation and a yearly COLA of 3% per year.

23. Under the Federated Plan, an employee can retire at age 55 with 5 years of service or at any age with 30 years of service. The employee receives 2.5% of final compensation for each year of service. A Federated Plan retiree receives monthly payments constituting up to 75% of final monthly compensation, and a yearly COLA of 3% per year.

24. The City's yearly cost of pay for employee retirement benefits has dramatically increased, and has thus negatively impacted the City's ability to provide Essential City Services. The increase in pension costs is attributable to enhanced retirement benefits, increased employee salaries, and the downturn in the financial markets.

25. Between Fiscal Years ("FY") 1998-99 to 2009-10, the City's annual contributions for pension and retiree health benefits increased from approximately $54 million to $107 million. (City Auditor Report, "Pension Sustainability: Rising Costs Threaten

The City's Ability to Maintain Service Levels," pp. 18-22.) For FY 2012-13, the City's annual costs are projected to be $245 million, with City contribution costs of 66% of payroll for police and fire and 52% of payroll for Federated employees. By FY 2014-15, the City's annual contributions are projected to be $319 million, with City contribution costs of more than 78% of payroll for police and fire and 65% of payroll for Federated employees. (City of San Jose, Future Retirement Costs Study Session, March 29, 2012.)

26. Because of rising retirement costs, the City has been forced to lay off employees and reduce services. In the last few years, staffing has been reduced as follows: police officers (22%), fire department (13.5%) (before restoration from federal grants), library staff (26%), and parks and recreation staff (35%). These cuts have resulted in fewer police patrols, an increase in violent crime, and reduced fire, library, parks and other community services. ("Fiscal and Service Level Emergency Report; An Evaluation of Conditions in the City of San Jose," Appendix A — Impacts on Services, pp. 270-271, 289-290, 293, 297, 309-310.)

27. On March 6, the City Council voted to call an election on June 5, 2012 "for the purpose of voting on a ballot measure to amend the San Jose City Charter to add a new Article XV-A." As presented to the voters, Measure B reads: "PENSION MODIFICATION. Shall the Charter be amended to modify retirement benefits of City employees and retirees by: increasing employees' contributions, establishing a voluntary reduced pension plan for current employees, establish pension cost and benefit limitations for new employees, modify disability retirement procedures, temporarily suspend retiree COLAs during emergencies, require voter approval for increases in future pension benefits."

28. Measure B is entitled "The Sustainable Retirement Benefits and Compensation Act." The "Findings" for the Act state that the City's ability to provide its citizens with "Essential City Services" -- such as police and fire protection, street maintenance and libraries -- is threatened by budget cuts. (Section 1501-A.) The stated "Intent" of the Act is to "ensure the City can provide reasonable and sustainable post-employment benefits while at the same time delivering Essential City Services." (Section 1502-A.)

///

29. Measure B contains the following provisions, among others:

A. Employee Contribution Rates (Section 1506-A).

Beginning June 23, 2013, the Act requires that the compensation of current employees be adjusted to defray the unfunded liabilities in their pension plans. The Act requires employees to make additional contributions to the retirement system in increments of 4% of pensionable pay per year up to a maximum of 16% of pensionable pay per year, but no more than 50% of the costs per year to amortize any pension plan unfunded liabilities. The adjustments in compensation will be treated as additional retirement contributions to employees' retirement accounts.

B. VEP (Section 1507-A).

Under the Act, as an alternative to having their pay adjusted, employees may voluntarily opt into a "Voluntary Election Program." Under this program, employees retain their yearly accrual rate for years already served (2.5% per year Federated and 2.5%, 4% Police and Fire), retain their maximum retirement benefit as a percentage of pay (75% Federated, 90% Police and Fire), pay employee contributions based on the existing Charter formula, but do not pay for any unfunded liability.

In exchange for no reduction in pay, the VEP provides a different pension plan. The VEP reduces the accrual rate for future service (2% per year), raises the eligibility age for retirement over time (55 to 62 for miscellaneous, 50 to 57 for safety), limits cost of living adjustments to a maximum of 1.5% based on the CPI, and requires "final compensation" to be determined by an average of the three highest years of pay instead of one, among other changes.

Implementation of the VEP is contingent upon IRS approval. Unless and until the VEP is implemented, employees are subject to the pay adjustment in Section 1506-A.

C. Disability Retirements (Section 1509-A).

Under the Act, to receive a disability retirement, City employees "must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire." City employees are considered "disabled" if they "cannot do the work they did before" and "cannot perform any other jobs described in the City's classification plan" or in the case of safety employees, "cannot

perform any other jobs described in the City's classification plan in the employee's department." Determinations of disability will be made by an independent panel of medical experts appointed by the City Council, with a right to appeal to an administrative law judge.

D. Emergency Measures to Contain Cost of Living Adjustments (Section 1510-A).

Under the Act, if the City Council "adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees," the City may temporarily suspend cost of living adjustments in whole or in part for up to five years.

E. Supplemental Payments to Retirees (Section 1511-A).

The Act discontinues the Supplemental Retiree Benefit Reserve and returns its assets to the appropriate retirement trust fund. Any supplemental payments to retirees may not be funded from plan assets.

F. Retiree Healthcare (Section 1512-A).

The Act requires employees to contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

G. Savings (Section 1514-A).

In the event a court determines that Section 1506-A is illegal, then to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions, which shall not exceed 4% per year, capped at a maximum of 16% of pay. The Act includes additional provisions for severance of any provisions that are somehow found unenforceable.

FIRST CAUSE OF ACTION.
(Declaratory Judgment, C.C.P. Section 1060)
Contracts Clause, Article I, Section 10 of United States Constitution

30. Cross-complainant City of San Jose incorporates by reference all paragraphs set forth above as though fully set forth herein.

31. Cross-defendants have asserted that the following provisions of Measure B are illegal under federal and state law. Cross-defendants raise only state law claims in their complaints. Cross-complainant City of San Jose seeks a declaratory judgment that the

following provisions of Measure B do not violate the contracts clause of the United States Constitution, Article I, §10, or that plaintiffs otherwise do not state a claim:

A. Section 1506-A, Employee contribution rates.

B. Section 1507-A, Voluntary election program ("VEP").

C. Section 1509-A, Disability retirement.

D. Section 1510-A, Emergency measure to contain COLAs.

E. Section 1511-A, Supplemental retiree benefit reserve.

F. Section 1512-A, Employee contributions towards retiree healthcare.

G. Section 1514-A, Savings through compensation adjustment.

32. An actual controversy over the legality of Measure B under the federal contracts clause has arisen between the City and Cross-defendants. Cross-defendants contend that some or all of the employee compensation, contributions and benefits affected by Measure B are vested contractual rights and that parts or all of Measure B violate the federal and state contracts clauses. The City contends that employee compensation contributions, and benefits affected by Measure B are not vested contractual rights and that Measure B does not violate either the federal or state contracts clauses, or that plaintiffs otherwise do not state a claim:

SECOND CAUSE OF ACTION.
(Declaratory Judgment, C.C.P. Section 1060)

Takings Clause, United States Constitution, 5th and 14th Amendments

33. Cross-complainant City of San Jose incorporates by reference all paragraphs set forth above as though fully set forth herein.

34. Cross-defendants have asserted that Measure B is illegal under federal and state law as an illegal taking of private property. Cross-defendants have raised only state law claims in their complaints. Cross-complainant City of San Jose seeks a declaratory judgment that the following provisions of Measure B do not violate takings clause of the United States Constitution, Fifth Amendment, or that plaintiff's otherwise do not state a claim:

A. Section 1506-A, Employee contribution rates.

B. Section 1507-A, Voluntary election program ("VEP").

C. Section 1509-A, Disability retirement.

D. Section 1510-A, Emergency measure to contain COLAs.

E. Section 1511-A, Supplemental retiree benefit reserve.

F. Section 1512-A, Employee contributions towards retiree healthcare.

G. Section 1514-A, Savings through compensation adjustment.

35. An actual controversy over the legality of Measure B under the federal takings clause has arisen between the City and Cross-defendants. Cross-defendants contend that some or all of the employee compensation, contributions and benefits affected by Measure B are vested contractual or property rights and that parts or all of Measure B violate the federal and state takings clauses. The City contends that the employee compensation, contributions and benefits affected by Measure B are not vested contractual or property rights under the City's Charter, Municipal Code and past practices, and that no provision of Measure B violates the federal or state takings clauses, or that plaintiffs otherwise do not state a claim.

THIRD CAUSE OF ACTION.
(Declaratory Judgment, C.C.P. Section 1060)

Federal Due Process Clause, United States Constitution, 5th and 14th Amendments

36. Cross-complainant City of San Jose incorporates by reference all paragraphs set forth above as though fully set forth herein.

37. Cross-defendants have asserted that Measure B is illegal under federal and state law as a violation of their due process rights. Cross-defendants raise only state law claims in their complaints. Cross-complainant City of San Jose seeks a declaratory judgment that the following provisions of Measure B do not violate the federal due process clause, United States Constitution, Fifth Amendment, or that plaintiffs otherwise do not state a claim:

A. Section 1506-A, Employee contribution rates.

B. Section 1507-A, Voluntary election program ("VEP").

C. Section 1509-A, Disability retirement.

D. Section 1510-A, Emergency measure to contain COLAs.

E. Section 1511-A, Supplemental retiree benefit reserve.

F. Section 1512-A, Employee contributions towards retiree healthcare.

G. Section 1514-A, Savings through compensation adjustment.

38. An actual controversy over the legality of Measure B under the federal due process clause has arisen between the City and Cross-defendants. Cross-defendants contend that the changes to employee compensation, contributions and benefits affected by Measure B violate federal and state due process rights. The City contends that the changes to employee compensation, contributions and benefits affected by Measure B do not violate federal or state due process rights, or that plaintiffs otherwise do not state a claim.

PRAYER

WHEREFORE, Cross-plaintiff City of San Jose prays for relief as follows:

1. For a judicial declaration under California Code of Civil Procedure Section 1060 that the provisions of Measure B listed under the City's causes of action do not violate the contract clause of the federal constitution, the takings clause of the federal constitution, or federal constitutional rights to due process, or that plaintiffs otherwise do not state a claim.

2. For such other relief as this Court may order.

DATED: November 16, 2012

MEYERS, NAVE, RIBACK, SILVER & WILSON

By: Linda M. Ross

Linda M. Ross
Attorneys for Cross-Complaint and
Defendant City of San Jose

1980832.1

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

At the time of service, I was over 18 years of age and **not a party to this action.** I am employed in the County of Alameda, State of California. My business address is 555 12th Street, Suite 1500, Oakland, CA 94607.

On November 16, 2012, I served true copies of the following documents described as

CROSS-COMPLAINT FOR DECLARATORY RELIEF on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Meyers, Nave, Riback, Silver & Wilson's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 16, 2012, at Oakland, California.

JILALA H. FOLEY

SERVICE LIST

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Harvey L. Leiderman REED SMITH, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105	Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926) AND Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928) AND Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV226574) AND Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)

1995396.1

EXHIBIT 1

FULL TEXT OF MEASURE B

ARTICLE XV-A
RETIREMENT

PUBLIC EMPLOYEE PENSION PLAN AMENDMENTS - TO ENSURE FAIR AND SUSTAINABLE RETIREMENT BENEFITS WHILE PRESERVING ESSENTIAL CITY SERVICES

The Citizens of the City of San Jose do hereby enact the following amendments to the City Charter which may be referred to as: *"The Sustainable Retirement Benefits and Compensation Act."*

Section 1501-A: FINDINGS

The following services are essential to the health, safety, quality of life and well-being of San Jose residents: police protection; fire protection; street maintenance; libraries; and community centers (hereafter "Essential City Services").

The City's ability to provide its citizens with Essential City Services has been and continues to be threatened by budget cuts caused mainly by the climbing costs of employee benefit programs, and exacerbated by the economic crisis. The employer cost of the City's retirement plans is expected to continue to increase in the near future. In addition, the City's costs for other post employment benefits – primarily health benefits – are increasing. To adequately fund these costs, the City would be required to make additional cuts to Essential City Services.

By any measure, current and projected reductions in service levels are unacceptable, and will endanger the health, safety and well-being of the residents of San Jose.

February 8, 2012

Without the reasonable cost containment provided in this Act, the economic viability of the City, and hence, the City's employment benefit programs, will be placed at an imminent risk.

The City and its residents always intended that post employment benefits be fair, reasonable and subject to the City's ability to pay without jeopardizing City services. At the same time, the City is and must remain committed to preserving the health, safety and well-being of its residents.

By this Act, the voters find and declare that post employment benefits must be adjusted in a manner that protects the City's viability and public safety, at the same time allowing for the continuation of fair post-employment benefits for its workers.

The Charter currently provides that the City retains the authority to amend or otherwise change any of its retirement plans, subject to other provisions of the Charter.

This Act is intended to strengthen the finances of the City to ensure the City's sustained ability to fund a reasonable level of benefits as contemplated at the time of the voters' initial adoption of the City's retirement programs. It is further designed to ensure that future retirement benefit increases be approved by the voters.

Section 1502-A: INTENT

This Act is intended to ensure the City can provide reasonable and sustainable post employment benefits while at the same time delivering Essential City Services to the residents of San Jose.

February 8, 2012

The City reaffirms its plenary authority as a charter city to control and manage all compensation provided to its employees as a municipal affair under the California Constitution.

The City reaffirms its inherent right to act responsibly to preserve the health, welfare and well-being of its residents.

This Act is not intended to deprive any current or former employees of benefits earned and accrued for prior service as of the time of the Act's effective date; rather, the Act is intended to preserve earned benefits as of the effective date of the Act.

This Act is not intended to reduce the pension amounts received by any retiree or to take away any cost of living increases paid to retirees as of the effective date of the Act.

The City expressly retains its authority existing as of January 1, 2012, to amend, change or terminate any retirement or other post employment benefit program provided by the City pursuant to Charter Sections 1500 and 1503.

Section 1503-A. Act Supersedes All Conflicting Provisions

The provisions of this Act shall prevail over all other conflicting or inconsistent wage, pension or post employment benefit provisions in the Charter, ordinances, resolutions or other enactments.

The City Council shall adopt ordinances as appropriate to implement and effectuate the provisions of this Act. The goal is that such ordinances shall become effective no later than September 30, 2012.

February 8, 2012

Section 1504-A. Reservation of Voter Authority

The voters expressly reserve the right to consider any change in matters related to pension and other post employment benefits. Neither the City Council, nor any arbitrator appointed pursuant to Charter Section 1111, shall have authority to agree to or provide any increase in pension and/or retiree healthcare benefits without voter approval, except that the Council shall have the authority to adopt Tier 2 pension benefit plans within the limits set forth herein.

Section 1505-A. Reservation of Rights to City Council

Subject to the limitations set forth in this Act, the City Council retains its authority to take all actions necessary to effectuate the terms of this Act, to make any and all changes to retirement plans necessary to ensure the preservation of the tax status of the plans, and at any time, or from time to time, to amend or otherwise change any retirement plan or plans or establish new or different plan or plans for all or any officers or employees subject to the terms of this Act.

Section 1506-A. Current Employees

(a) "Current Employees" means employees of the City of San Jose as of the effective date of this Act and who are not covered under the Tier 2 Plan (Section 8).

(b) Unless they voluntarily opt in to the Voluntary Election Program ("VEP," described herein), Current Employees shall have their compensation adjusted through additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

amortize any pension unfunded liabilities, except for any pension unfunded liabilities that may exist due to Tier 2 benefits in the future. These contributions shall be in addition to employees' normal pension contributions and contributions towards retiree healthcare benefits.

(c) The starting date for an employee's compensation adjustment under this Section shall be June 23, 2013, regardless of whether the VEP has been implemented. If the VEP has not been implemented for any reason, the compensation adjustments shall apply to all Current Employees.

(d) The compensation adjustment through additional employee contributions for Current Employees shall be calculated separately for employees in the Police and Fire Department Retirement Plan and employees in the Federated City Employees' Retirement System.

(e) The compensation adjustment shall be treated in the same manner as any other employee contributions. Accordingly, the voters intend these additional payments to be made on a pre-tax basis through payroll deductions pursuant to applicable Internal Revenue Code Sections. The additional contributions shall be subject to withdrawal, return and redeposit in the same manner as any other employee contributions.

Section 1507-A: One Time Voluntary Election Program ("VEP")

The City Council shall adopt a Voluntary Election Program ("VEP") for all Current Employees who are members of the existing retirement plans of the City as of the effective date of this Act. The implementation of the VEP is contingent upon receipt of

IRS approval. The VEP shall permit Current Employees a one time limited period to enroll in an alternative retirement program which, as described herein, shall preserve an employee's earned benefit accrual; the change in benefit accrual will apply only to the employee's future City service. Employees who opt into the VEP will be required to sign an irrevocable election waiver (as well as their spouse or domestic partner, former spouse or former domestic partner, if legally required) acknowledging that the employee irrevocably relinquishes his or her existing level of retirement benefits and has voluntarily chosen reduced benefits, as specified below.

The VEP shall have the following features and limitations:

(a) The plan shall not deprive any Current Employee who chooses to enroll in the VEP of the accrual rate (e.g. 2.5%) earned and accrued for service prior to the VEP's effective date; thus, the benefit accrual rate earned and accrued by individual employees for that prior service shall be preserved for payment at the time of retirement.

(b) Pension benefits under the VEP shall be based on the following limitations:

(i) The accrual rate shall be 2.0% of "final compensation", hereinafter defined, per year of service for future years of service only.

(ii) The maximum benefit shall remain the same as the maximum benefit for Current Employees.

(iii) The current age of eligibility for service retirement under the existing plan as approved by the City

Council as of the effective date of the Act for all years of service shall increase by six months annually on July 1 of each year until the retirement age reaches the age of 57 for employees in the Police and Fire Department Retirement Plan and the age of 62 for employees in the Federated City Employees' Retirement System. Earlier retirement shall be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(iv) The eligibility to retire at thirty (30) years of service regardless of age shall increase by 6 months annually on July 1 of each year starting July 1, 2017.

(v) Cost of living adjustments shall be limited to the increase in the consumer price index, (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment following the effective date of the Act will be prorated based on the number of remaining months in the year after retirement of the employee.

(vi) "Final compensation" shall mean the average annual pensionable pay of the highest three consecutive years of service.

(vii) An employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time

worked (including paid leave, but not including overtime).

(c) The cost sharing for the VEP for current service or current service benefits ("Normal Cost") shall not exceed the ratio of 3 for employees and 8 for the City, as presently set forth in the Charter. Employees who opt into the VEP will not be responsible for the payment of any pension unfunded liabilities of the system or plan.

(d) VEP Survivorship Benefits.

(i) Survivorship benefits for a death before retirement shall remain the same as the survivorship benefits for Current Employees in each plan.

(ii) Survivorship benefits for a spouse or domestic partner and/or child(ren) designated at the time of retirement for death after retirement shall be 50% of the pension benefit that the retiree was receiving. At the time of retirement, retirees can at their own cost elect additional survivorship benefits by taking an actuarially equivalent reduced benefit.

(e) VEP Disability Retirement Benefits.

(i) A service connected disability retirement benefit, as hereinafter defined, shall be as follows:

The employee or former employee shall receive an annual benefit based on 50% of the average annual pensionable pay of the highest three consecutive years of service.

(ii) A non-service connected disability retirement benefit shall be as follows:

The employee or former employee shall receive 2.0% times years of City Service (minimum 20% and maximum of 50%) based on the average annual pensionable pay of the highest three consecutive years of service. Employees shall not be eligible for a non-service connected disability retirement unless they have 5 years of service with the City.

(iii) Cost of Living Adjustment ("COLA") provisions will be the same as for the service retirement benefit in the VEP.

Section 1508-A: Future Employees – Limitation on Retirement Benefits – Tier 2

To the extent not already enacted, the City shall adopt a retirement program for employees hired on or after the ordinance enacting Tier 2 is adopted. This retirement program – for new employees – shall be referred to as "Tier 2."

The Tier 2 program shall be limited as follows:

(a) The program may be designed as a "hybrid plan" consisting of a combination of Social Security, a defined benefit plan and/or a defined contribution plan. If the City provides a defined benefit plan, the City's cost of such plan shall not exceed 50% of the total cost of the Tier 2 defined benefit plan (both normal cost and unfunded liabilities). The City may contribute to a defined contribution or other retirement plan only when and to the extent

the total City contribution does not exceed 9%. If the City's share of a Tier 2 defined benefit plan is less than 9%, the City may, but shall not be required to, contribute the difference to a defined contribution plan.

(b) For any defined benefit plan, the age of eligibility for payment of accrued service retirement benefits shall be 65, except for sworn police officers and firefighters, whose service retirement age shall be 60. Earlier retirement may be permitted with reduced payments that do not exceed the actuarial value of full retirement. For service retirement, an employee may not retire any earlier than the age of 55 in the Federated City Employees' Retirement System and the age of 50 in the Police and Fire Department Retirement Plan.

(c) For any defined benefit plan, cost of living adjustments shall be limited to the increase in the consumer price index (San Jose – San Francisco – Oakland U.S. Bureau of Labor Statistics index, CPI-U, December to December), capped at 1.5% per fiscal year. The first COLA adjustment will be prorated based on the number of months retired.

(d) For any defined benefit plan, "final compensation" shall mean the average annual earned pay of the highest three consecutive years of service. Final compensation shall be base pay only, excluding premium pays or other additional compensation.

(e) For any defined benefit plan, benefits shall accrue at a rate not to exceed 2% per year of service, not to exceed 65% of final compensation.

(f) For any defined benefit plan, an employee will be eligible for a full year of service credit upon reaching 2080 hours of regular time worked (including paid leave, but not including overtime).

(g) Employees who leave or have left City service and are subsequently rehired or reinstated shall be placed into the second tier of benefits (Tier 2). Employees who have at least five (5) years of service credit in the Federated City Employees' Retirement System or at least ten (10) years of service credit in the Police and Fire Department Retirement Plan on the date of separation and who have not obtained a return of contributions will have their benefit accrual rate preserved for the years of service prior to their leaving City service.

(h) Any plan adopted by the City Council is subject to termination or amendment in the Council's discretion. No plan subject to this section shall create a vested right to any benefit.

Section 1509-A: Disability Retirements

(a) To receive any disability retirement benefit under any pension plan, City employees must be incapable of engaging in any gainful employment for the City, but not yet eligible to retire (in terms of age and years of service). The determination of qualification for a disability retirement shall be made regardless of whether there are other positions available at the time a determination is made.

(b) An employee is considered "disabled" for purposes of qualifying for a disability retirement, if all of the following is met:

(i) An employee cannot do work that they did before; and

(ii) It is determined that

1) an employee in the Federated City Employees' Retirement System cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s); or

2) an employee in the Police and Fire Department Retirement Plan cannot perform any other jobs described in the City's classification plan in the employee's department because of his or her medical condition(s); and

(iii) The employee's disability has lasted or is expected to last for at least one year or to result in death.

(c) Determinations of disability shall be made by an independent panel of medical experts, appointed by the City Council. The independent panel shall serve to make disability determinations for both plans. Employees and the City shall have a right of appeal to an administrative law judge.

(d) The City may provide matching funds to obtain long term disability insurance for employees who do not qualify for a disability retirement but incur long term reductions in compensation as the result of work related injuries.

(e) The City shall not pay workers' compensation benefits for disability on top of disability retirement benefits without an offset to the service connected disability retirement allowance to eliminate duplication of benefits for the same cause of disability, consistent with the current provisions in the Federated City Employees' Retirement System.

February 8, 2012

Section 1510-A: Emergency Measures to Contain Retiree Cost of Living Adjustments

If the City Council adopts a resolution declaring a fiscal and service level emergency, with a finding that it is necessary to suspend increases in cost of living payments to retirees the City may adopt the following emergency measures, applicable to retirees (current and future retirees employed as of the effective date of this Act):

(a) Cost of living adjustments ("COLAs") shall be temporarily suspended for all retirees in whole or in part for up to five years. The City Council shall restore COLAs prospectively (in whole or in part), if it determines that the fiscal emergency has eased sufficiently to permit the City to provide essential services protecting the health and well-being of City residents while paying the cost of such COLAs.

(b) In the event the City Council restores all or part of the COLA, it shall not exceed 3% for Current Retirees and Current Employees who did not opt into the VEP and 1.5% for Current Employees who opted into the VEP and 1.5% for employees in Tier 2.

Section 1511-A: Supplemental Payments to Retirees

The Supplemental Retiree Benefit Reserve ("SRBR") shall be discontinued, and the assets returned to the appropriate retirement trust fund. Any supplemental payments to retirees in addition to the benefits authorized herein shall not be funded from plan assets.

February 8, 2012

Section 1512-A: Retiree Healthcare

(a) **Minimum Contributions.** Existing and new employees must contribute a minimum of 50% of the cost of retiree healthcare, including both normal cost and unfunded liabilities.

(b) **Reservation of Rights.** No retiree healthcare plan or benefit shall grant any vested right, as the City retains its power to amend, change or terminate any plan provision.

(c) **Low Cost Plan.** For purposes of retiree healthcare benefits, "low cost plan" shall be defined as the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or Federated City Employees' Retirement System.

Section 1513-A: Actuarial Soundness (for both pension and retiree healthcare plans)

(a) All plans adopted pursuant to the Act shall be subject to an actuarial analysis publicly disclosed before adoption by the City Council, and pursuant to an independent valuation using standards set by the Government Accounting Standards Board and the Actuarial Standards Board, as may be amended from time to time. All plans adopted pursuant to the Act shall: (i) be actuarially sound; (ii) minimize any risk to the City and its residents; and (iii) be prudent and reasonable in light of the economic climate. The employees covered under the plans must share in the investment, mortality, and other risks and expenses of the plans.

(b) All of the City's pension and retiree healthcare plans must be actuarially sound, with unfunded liabilities determined annually

through an independent audit using standards set by the Government Accounting Standards Board and the Actuarial Standards Board. No benefit or expense may be paid from the plans without being actuarially funded and explicitly recognized in determining the annual City and employee contributions into the plans.

(c) In setting the actuarial assumptions for the plans, valuing the liabilities of the plans, and determining the contributions required to fund the plans, the objectives of the City's retirement boards shall be to:

(i) achieve and maintain full funding of the plans using at least a median economic planning scenario. The likelihood of favorable plan experience should be greater than the likelihood of unfavorable plan experience; and

(ii) ensure fair and equitable treatment for current and future plan members and taxpayers with respect to the costs of the plans, and minimize any intergenerational transfer of costs.

(d) When investing the assets of the plans, the objective of the City's retirement boards shall be to maximize the rate of return without undue risk of loss while having proper regard to:

(i) the funding objectives and actuarial assumptions of the plans; and

(ii) the need to minimize the volatility of the plans' surplus or deficit and, by extension, the impact on the volatility of contributions required to be made by the City or employees.

February 8, 2012

Section 1514-A: Savings

In the event Section 6 (b) is determined to be illegal, invalid or unenforceable as to Current Employees (using the definition in Section 6(a)), then, to the maximum extent permitted by law, an equivalent amount of savings shall be obtained through pay reductions. Any pay reductions implemented pursuant to this section shall not exceed 4% of compensation each year, capped at a maximum of 16% of pay.

Section 1515-A: Severability

(a) This Act shall be interpreted so as to be consistent with all federal and state laws, rules and regulations. The provisions of this Act are severable. If any section, sub-section, sentence or clause ("portion") of this Act is held to be invalid or unconstitutional by a final judgment of a court, such decision shall not affect the validity of the remaining portions of this amendment. The voters hereby declare that this Act, and each portion, would have been adopted irrespective of whether any one or more portions of the Act are found invalid. If any portion of this Act is held invalid as applied to any person or circumstance, such invalidity shall not affect any application of this Act which can be given effect. In particular, if any portion of this Act is held invalid as to Current Retirees, this shall not affect the application to Current Employees. If any portion of this Act is held invalid as to Current Employees, this shall not affect the application to New Employees. This Act shall be broadly construed to achieve its stated purposes. It is the intent of the voters that the provisions of this Act be interpreted or implemented by the City, courts and others in a manner that facilitates the purposes set forth herein.

(b) If any ordinance adopted pursuant to the Act is held to be invalid, unconstitutional or otherwise unenforceable by a final judgment, the matter shall be referred to the City Council for determination as to whether to amend the ordinance consistent with the judgment, or whether to determine the section severable and ineffective.

RES NO 76158

ADOPTED this 6th day of March, 2012, by the following vote:

AYES: CONSTANT, HERRERA, LICCARDO, NGUYEN, OLIVERIO, PYLE, ROCHA; REED.

NOES: CAMPOS, CHU, KALRA.

ABSENT: NONE.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

DENNIS D. HAWKINS, CMC
City Clerk