CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Manager
EMPLOYEE RELATIONS

SENT VIA EMAIL

March 12, 2013

Vera Todorov
President
Association of Legal Professionals (ALP)
c/o City Attorney's Office
200 E. Santa Clara Street
San Jose, CA 95113

RE: Package Proposal for Settlement and Mediation

Dear Vera:

We are in receipt of your letter dated February 26, 2013. We agree that the City and ALP should aim to resolve a majority of issues that remain, and engage in mediation only over those issues where we remain apart. To that end and per discussions between the City and ALP, we plan on meeting tomorrow to discuss the enclosed proposal in the morning and engage with the mediator, if needed, on those issues where we remain apart in the afternoon.

Accordingly, please find enclosed a Package Proposal for settlement that incorporates Tentative Agreement 1 reached between the City and ALP on January 14, 2013, as well as the discussions we have had during our negotiation sessions on February 6th and February 20th, in addition to elements proposed by ALP on February 5th, February 19th, and February 21st.

As you will see, the City's Package Proposal is an attempt to come to an overall agreement with ALP on Memorandum of Agreement (MOA) for Fiscal Year 2012-2013. We have noted the source of each article and section in the enclosed proposal, including Tentative Agreement 1, but would like to bring the following issues to your attention:

Article 4 – "Agreement Conditions"

While the City and ALP have been in general agreement over a majority of the language in this Article, our enclosed proposal reflects discussions we had on February 6th and attempt to address the concerns ALP raised during that negotiation session over the reopener language for Retiree Healthcare and Measure B. However, we would like to reiterate the City's concerns as provided to you on February 21st that, despite what we believed to be useful discussions on February 6th, ALP's February 19th "replacement" package proposal appeared regressive in that it removed language ALP had previously proposed to the City.

In addition, we have included language proposed by ALP regarding a "lockout" in the section entitled "Concerted Activity." We have also added language that clarifies what actions ALP is expected to take under this provision in response to the concerns ALP raised during our meeting on February 6th. With these changes, we hope that the parties are in agreement over this issue.

Article 14 – "Retiree Healthcare"

Given that negotiations over Retiree Healthcare are ongoing, we have included language that reflect the status quo over this issue.

Article 16 – "Health Insurance," and Article 17 – "Dental Insurance"

We have included the language previously discussed by the City and ALP regarding the parties' meet and confer obligations, as well as confirming language regarding cost sharing.

We have not included the language contained in ALP's February 19th and February 21st proposals which include language about the "substantially" similar health and dental coverage which has previously been proposed then removed by ALP, nor did we include the language about the cost to the City which, prior to February 19th, ALP has never raised.

While there are other matters that remain at issue, such as ALP's proposed "Cost of Living" language, the enclosed package proposal reflects our understanding of the negotiations between the City and ALP over twenty (20) negotiation sessions dating back to May of last year, on an MOA.

We understand that ALP will need to review the enclosed proposal and, per prior conversations, we are open to discussing the proposal tomorrow.

Please let me know if you have any questions.

Sincerely,

Marco Mercado
Senior Executive Analyst

c: Jennifer Schembri, Deputy Director of Employee Relations
Charles Sakai, Renne Sloan Holtzman & Sakai LLP
City Negotiation Team
ALP Negotiation Team

Enclosure

CITY OF SAN JOSE AND ALP
CITY PROPOSED TENTATIVE AGREEMENT

TENTATIVE AGREEMENT

THIS PROPOSED TENTATIVE AGREEMENT IS SUBMITTED IN AN ATTEMPT TO REACH AN OVERALL SETTLEMENT ON THE TERMS OF A MEMORANDUM OF AGREEMENT BETWEEN THE CITY AND ALP. THIS PROPOSAL INCLUDES TERMS PREVIOUSLY AGREED TO BY THE CITY AND ALP ON OR ABOUT JANUARY 14, 2013.

IN THE EVENT EITHER PARTY REJECTS AN OVERALL TENTATIVE AGREEMENT, EACH PARTY RESERVES THE RIGHT TO MODIFY, AMEND AND/OR ADD PROPOSALS.

THIS PROPOSED TENTATIVE AGREEMENT IS CONSIDERED TENTATIVE AND SHALL NOT BE CONSIDERED FINAL OR BINDING UNTIL A FINAL AGREEMENT ON ALL TERMS HAS BEEN REACHED AND BOTH RATIFIED BY ASSOCIATION MEMBERS AND APPROVED BY CITY COUNCIL.

FOR THE CITY:

Marco Mercado Date
Senior Executive Analyst

FOR ALP:

Vera Todorov Date
President
Association of Legal Professionals (ALP)

1. PURPOSE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

2. DEFINITIONS

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

3. PERIOD OF MEMORANDUM OF AGREEMENT

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

4. AGREEMENT CONDITIONS

- Please see attached.

5. RECOGNITION

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

6. MANAGEMENT RIGHTS

- Please see attached. As proposed by ALP on February 19, 2013.

7. ASSOCIATION RIGHTS

- Please see attached. As proposed by ALP on February 19, 2013.

8. AGENCY SHOP

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

9. WAGES

- Please see attached. As proposed by ALP on February 21, 2013.

10. BILINGUAL PAY

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

11. PROFESSIONAL DEVELOPMENT PROGRAM (PDP)

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

12. PROFESSIONAL MEMBERSHIPS

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

13. RETIREMENT

- Please see attached. As proposed by ALP on February 21, 2013.

14. RETIREE HEALTHCARE

- Please see attached.

15. DEFERRED COMPENSATION PLAN

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

16. HEALTH INSURANCE

- Please see attached.

17. DENTAL INSURANCE

- Please see attached.

18. HEALTH AND DENTAL IN LIEU

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

19. LIFE INSURANCE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

20. FLEXIBLE SPENDING ACCOUNTS

- Please see attached. As proposed by ALP on February 21, 2013.

21. OPTIONAL BENEFITS

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

22. LONG-TERM DISABILITY

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

23. EMPLOYEE ASSISTANCE PROGRAM

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

24. SUBSTANCE ABUSE PROGRAM

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

25. HOLIDAYS

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

26. VACATION

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

27. VACATION SELLBACK

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

28. EXECUTIVE LEAVE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

29. SICK LEAVE

- Please see attached. As proposed by ALP on February 21, 2013.

30. SICK LEAVE PAYOUT

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

31. MILITARY LEAVE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

32. DISABILITY LEAVE SUPPLEMENT

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

33. LEAVES OF ABSENCE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

34. BEREAVEMENT LEAVE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

35. TIME DONATION PROGRAMS

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

36. JURY DUTY

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

37. WITNESS LEAVE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

38. MANAGEMENT PERFORMANCE PROGRAM

- Please see attached. As proposed by ALP on February 21, 2013.

39. EMPLOYEE TRAVEL/MILEAGE

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

40. CONTRACTING OUT

- Please see attached. From City-ALP Tentative Agreement 1 dated January 14, 2013.

41. TELECOMMUTING

- Please see attached.

This Memorandum of Understanding ("Agreement") is entered into at San Jose, California, on this ____ day of _____, 2013, between the City of San Jose ("City") and the Association of Legal Professionals ("Association").

1. PURPOSE

The parties agree that the purposes of this Agreement are:

1.1 To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein,

1.2 To provide an orderly and equitable means of resolving differences which may arise under this Agreement, and

1.3 To set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the Association.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

2. DEFINITIONS

2.1 For the purpose of this Agreement, words, phrases and terms used herein shall be deemed to have the meanings specified in Section 2- Definitions of Resolution No. 39367 of the Council of the City of San Jose and in Part 2- Definitions of Chapter 3.04 of Title III, of the San Jose Municipal Code unless it is apparent from the context or from the specific language that a different meaning is intended.

2.2 For purposes of this Agreement, "Domestic Partner" means a person registered as a domestic partner with the City's Human Resources Department.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

3. PERIOD OF MEMORANDUM OF AGREEMENT

3.1 Except where a specific provision of this Agreement expressly provides otherwise, the Agreement shall become effective on July 1, 2012, ("Effective Date"), and shall remain in effect through June 30, 2013.

3.2 This Agreement expires on June 30, 2013. It is mutually agreed that the first meeting of the parties to negotiate a successor agreement will be held no later than fifteen (15) calendar days after the City or Association receives notice from the other, which may be any date after January 1 of the year in which the current Agreement terminates.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

4. AGREEMENT CONDITIONS

4.1 Full Understanding, Modification and Waiver

4.1.1 This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Memoranda of Understanding, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

4.1.2 Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

4.1.3 Retiree Healthcare. Notwithstanding any other provision of this Agreement, the parties agree to continue to meet and confer over retiree healthcare benefits and funding upon the request of either party. This may include but is not limited to alternatives to reduce the cost of retiree healthcare benefits and options for current employees that comply with IRS regulations and other applicable laws. Applicable impasse dispute resolution procedures shall apply.

4.1.4 Measure B. Notwithstanding any other provision of this Agreement, the parties agree to meet and confer over retirement benefits upon request of either party in the event that the pension modification ballot measure, also known as Measure B, in part or in whole, is declared invalid or otherwise modified or changed by any court of competent jurisdiction or any other administrative process, or by any applicable State or Federal law or regulation.

Negotiations between the City and the Association shall commence within 14 days upon notice of either party that any action referenced in the previous paragraph has occurred. The City and the Association shall negotiate in good faith in an effort to reach a mutual agreement. Applicable impasse dispute resolution procedures shall apply.

4.2 Separability. Notwithstanding any other provisions of this Agreement to the contrary, in the event that any Article, or subsections thereof, of this Agreement shall be declared invalid by any court of competent jurisdiction, or by any applicable State or Federal law or regulation, or should a decision by any court of competent jurisdiction or any applicable State or Federal law or regulation diminish the benefits provided by this Agreement, or impose additional obligations on the City, the parties shall meet and confer on the Article or subsections thereof affected. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

4.3 Concerted Activity It is understood and agreed that:

4.3.1 No lockout of employees represented by the Association shall be instituted by the City during the term of this Agreement.

4.3.2 Participation by any employee represented by the Association in picketing with respect to any issue concerning matters within the scope of representation provided or proposed to be provided by the City of San Jose for employees in this unit, or participation in a strike, work stoppage or slowdown, or any other concerted activity which diminishes services provided by an employee in this unit, or the failure to perform lawfully required work shall subject the employee to disciplinary action up to and including discharge.

4.3.3 If the Association, its officers or its authorized representatives violate subsection 4.3.2 above or tolerate the violation of provision 4.3.2 above and after notice to responsible officers or business representatives of the Association has been provided by the City, such officers or business representatives fail to take such prompt affirmative action as is within their power to correct and terminate the conduct described in subsection 4.3.2 above, in addition to any other law, remedy or disciplinary action to which it or its officers or representatives may be subject, said Association shall, by action of the Municipal Employee Relations Officer, also be subject to suspension or revocation of the recognition granted to such Association and the Municipal Employee Relations Officer may suspend or cancel any or all payroll deductions payable to or in behalf of members of such Association, and prohibit or restrict the use of any City facility of any nature whatsoever and prohibit or restrict access by said officers or representatives to work or duty stations of employees in the representation unit.

4.3.3.1 "Prompt and affirmative action," as provided in subsection 4.3.3 above, is defined as follows:

(a) The Association, in addition to any other action provided for in its bylaws, must provide immediate written notice to the employee and/or employees engaging in the conduct described in subsection 4.3.2 above, that:

(1) The concerted activity is not authorized by the Association; and

(2) The employee and/or employees are violating the terms of this Agreement; and

(3) It is the Association's position that the employee and/or employees must honor the terms of the Agreement and return to work immediately.

4.4 Non-Discrimination

4.4.1 The parties agree that they, and each of them, shall not discriminate against any employee on the basis of race, religion, color, creed, age, marital status, national origin, ancestry, sex, sexual orientation, physical or mental disability, pregnancy, actual or perceived gender identity and political affiliation.

4.4.2 The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Union, or because of any authorized activity on behalf of the Union.

5. RECOGNITION

5.1 Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Association is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit A, attached and incorporated by reference into this Agreement. Such classifications constitute an appropriate unit.

5.2 Deputy City Attorney or Senior Deputy City Attorney - Unrepresented.

5.2.1 As of July 11, 2012, no City employee represented by the Association was performing legal services on behalf of the City on labor relations and employment directly affecting the Association and employees represented by the Association.

5.2.2 In the event that the City desires to utilize the legal services of an employee represented by the Association to perform legal services on labor relations and employment matters where the employee will be privy to decisions of City management, the City and the Association agree that the City Attorney may designate up to one (1) Deputy City Attorney or Senior Deputy City Attorney to perform these types of legal services. Any employee so designated will become an unrepresented employee in the Executive Management and Professional Employees unit (Unit 99).

5.2.3 The designation of the Deputy City Attorney or Senior Deputy City Attorney shall be at the discretion of the City Attorney with the express prior written consent of the selected employee. The designated employee shall become exempt upon receipt of written notification to the Association by the City of the name and classification of the employee so exempted. The job specification will not change for this position. The designated employee will be unrepresented and subject to the benefits and compensation for Unit 99.

5.2.4 The City Attorney may change the employee designated for the exempt position at any time pursuant to the notice and consent provisions above. Immediately upon such designation, the newly designated employee shall be transferred to Unit 99 and the employee who no longer performs such legal services for the City shall be represented by the Association and subject to the benefits and compensation for ALP.

5.2.5 The City hereby withdraws its May 15, 2012 proposed classification/designation of "Sr. Deputy City Attorney – Labor and Employment (U)" in Unit 99. ALP hereby withdraws its June 14, 2012 appeal of the City's proposed action. The City and the Association reserve their respective rights under Resolution 39367 and the Meyers Milias Brown Act. Neither the City nor the Association is waiving any respective rights under Resolution 39367 and the Meyers Milias Brown Act.

5.2.6 The terms described in this section are effective July 11, 2012, and shall remain in effect until amended or rescinded by mutual agreement of the parties.

5.2.7 Section 5.2 incorporates a side letter agreement executed by the City and Association on July 11, 2012, and July 10, 2012, respectively. As of the date of that the parties entered into this Agreement, the City Attorney has already designated an attorney for the exempt position in accordance with Section 5.2.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

6. MANAGEMENT RIGHTS

6.1 Except to the extent that the rights are specifically limited by the provisions of this Agreement or by any applicable law, the City retains all rights, powers and authority granted to it pursuant to any law or the City Charter, including, but not limited to, the right: (a) to direct the work force, (b) to increase, decrease or re-assign the work force, (c) to hire, promote, demote, discharge or discipline for cause, (d) to transfer or reclassify employees, (e) to provide merit increases, (f) to assign employees special work requirements, and (g) to determine the necessity, merits, mission and organization of any service or activity of the City or of any City Department, Agency or Unit. The City's failure to exercise a management right does not preclude the City from exercising it at some time in the future.

6.2 Except to the extent that the rights are specifically limited by the provisions of this Agreement or by any applicable law, the City has the sole and absolute right to determine the nature and type of, assign, re-assign, revoke assignments of or withdraw assignments of, City equipment, including motor vehicles, to or from employees during, after or before hours of duty, without consultation or meeting and conferring with the employees affected or the Association representing such employee.

6.3 Principle Authorized Agent: For purposes of administering the terms and provisions of the various ordinances, resolutions, rules and regulations adopted pursuant to this Agreement, the City's principal authorized agent shall be the Municipal Employee Relations Officer, or his/her duly authorized representative, except where a particular City representative is otherwise designated.

****** As proposed by ALP on February 19, 2013 ******

7. ASSOCIATION RIGHTS

7.1 Except to the extent that the rights are specifically limited by the provisions of this Agreement or by any applicable law, the Association retains all rights, powers and authority granted to it pursuant to any law, including, but not limited to, the right to be the exclusive representative of employees in the Association on all matters relating to employer-employee relations, including but not limited to wages, hours, and other terms and conditions of employment.

7.2 Principle Authorized Agent: The Association's elected President, or his/her duly authorized representative, is the Association's principal authorized agent.

7.3 Authorized Representatives: The City shall recognize up to three (3) Association representatives who are properly designated by the Association. The Association agrees to properly notify the Municipal Employee Relations Officer of any changes of employees designated as representatives. The Association may also designate different representatives and alternates for the purposes of labor negotiations.

7.4 Release Time: The City recognizes that members of the bargaining unit represented by the Association are paid on a salary basis and have ethical responsibilities with regard to the completion of their workload. Due to the nature of this employment, the parties agree that release time is generally not necessary as Association officials already have the flexibility to manage their time within the limits set forth in this agreement and the City's rules.

In the event the Association believes that release time is necessary for some specific purpose, it shall request release time from the City Attorney, including (1) the reason release time is needed, (2) the individual(s) for whom release time is sought, and (3) the amount of time requested. The City Attorney may allow reasonable requests for release time unless the City Attorney believes that the request would negatively impact the ability of the City Attorney's office to perform its work in a timely and effective manner.

****** As proposed by ALP on February 19, 2013 ******

8. AGENCY SHOP

8.1 Effective July 19, 2012, the City and the Association entered into an agreement to implement an Agency Shop agreement pursuant to California Government Code section 3502.5 and other applicable rules or law, including Section 14 entitled "Payroll Deductions" of the City's Employer-Employee Relations Resolution No. 39367 which is incorporated as though set forth in its entirety herein.

8.2 Definitions:

a. "Agency Shop," as used in this section, means "an arrangement that requires an employee, as a condition of employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues and general assessments of the organization, as may be amended from time to time by the Association." The "service fee" may also be referred to as an "Agency Fee" or "Agency Shop Fee" under the applicable rules and law and in Section 5.

b. "Agency Fee" collected from non-member bargaining unit employees pursuant to this Agreement shall be limited to the Association's annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the City's Municipal Employee Relations Officer or designee, from time to time, by the designated officer of the Association as the Agency Fee.

The Agency Fee does not include the amounts used for the Association's political activity or other categories of expenses deemed as non-chargeable to Association members by applicable law.

8.3 This Agency Shop agreement was effective on August 19, 2012, thirty (30) calendar days following execution by the Association and the City, and after notice of the Agency Fee was provided to employees in classifications represented by the Association.

8.4 Unless otherwise agreed, all applicable dues deductions, Agency Fee, or charitable contributions (if eligible), for the month shall be deducted by the City from wages earned by the employee while in a classification represented by the Association from the first two (2) bi-weekly pay periods each month. All deductions shall be in the bi-weekly amount certified to the City's Municipal Employee Relations Officer or designee, from time to time by the designated officer of the Association as the regular bi-weekly dues and Agency Fee.

a. Dues Deductions:

(1) The City will deduct from the wages of each employee covered by Section 5, while such employee is assigned to a classification represented by the Association, dues uniformly required as a condition of membership, pursuant to the Association's constitution and by-laws provided that the employee has signed a dues deduction card in a form approved by the Association and the City.

(2) Effective August 19, 2012, (or within thirty (30) calendar days of hire for employees hired after July 19, 2012), covered employees will execute written authorization for either Association dues deductions, Agency Fee, or, if eligible, the charitable contribution. In the absence of written authorization, the employee will be deemed an Agency Fee payer and City will deduct the Agency Fee from the employee's paycheck pursuant to this section

(3) Once initiated, dues deductions shall continue until the authorization is revoked in writing by the employee. An employee may only revoke a dues authorization by delivering the written notice of revocation to the City's Municipal Employee Relations Officer or designee, with a copy to the Association. The written notice of revocation shall be delivered to the Municipal Employee Relations Officer or designee either in person at the Office of Employee Relations or by regular U.S. Mail, with a copy to the Association.

8.5 All applicable dues deductions and/or Agency Fee withheld by the City will be transmitted by the City to the treasurer of the Association, or its other designated officer, at the address specified by the Association in writing and accompanied by a list of the employees for whom the deduction was made. The Association agrees that such information and lists will be treated in a confidential manner. The deductions and the list will be remitted to the Association not later than twenty-one (21) calendar days following the pay period in which the deductions were made.

8.6 Employee Rights:

a. The parties recognize that employees in a classification represented by the Association have the right to join and/or participate, or, alternatively, the equal right to refuse to join and/or participate, in the Association or its lawful activities. Neither party shall discriminate against an employee in the exercise of these alternative rights.

b. Pursuant to an Agency Shop agreement, as provided under State law and this section, employees must either voluntarily join the Association or must pay the Agency Fee; membership in the Association shall not be compulsory. An employee has the right to choose either to:

(1) Become a member of the Association; or

(2) To pay the Association a fee for representation services as described in Subsection 5.2(b) above. The amount of the Agency Fee will be a uniform amount established by the Association and limited as provided by law. The amount of the Agency Fee and any changes in the fee will be certified in writing to the City's Municipal Employee Relations Officer or designee by the President of the Association; or

(3) To refrain from either of the above courses of action upon the grounds set forth in Subsection 8.7 below.

8.7 Employees Exempted from Obligation to Pay Association:

Any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment; however:

a. The employee will be required, in lieu of periodic dues, initiation fees, or agency fees, to pay sums equal to dues, initiation fees, or agency fees to a non-religious and non-labor charitable fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, as follows:

(1) The employee may choose the organization from the following list of qualifying organizations designated by the City and Association:

(a) Legal Aid Society of Santa Clara County; or

(b) Any charity jointly agreed upon by the City and the Association, which charity cannot be affiliated in any manner with the Association or be related to an established religious organization.

(2) If the employee refuses to choose a qualified charity, the employee will be deemed to have selected the Legal Aid Society of Santa Clara County.

(3) Charitable contributions, if applicable, will be transmitted to the applicable charity by the Association.

b. Employees requesting an exemption from paying an agency fee pursuant to this Subection 8.7 must submit a request in writing and provide verification of such membership in a qualifying bona fide religion, body or sect to the City's Municipal Employee Relations Officer or designee. The Municipal Employee Relations Officer or designee shall provide notification to the Association of the determination within five (5) calendar days.

8.8 The Association will keep an adequate itemized record of its financial transactions and shall make available annually, upon request, to the City and to employees in classifications represented by the Association, within sixty (60) calendar days after the end of its fiscal year, a detailed financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or a certified public accountant, as provided in Government Code section 3502.5(f).

8.9 Notice of Objection to Association Expenditures:

The Association shall provide an annual written notice to each employee in a classification represented by the Association who is required to pay the Agency Fee. The notice shall include:

a. The amount of the Association dues (if applicable) and the Agency Fee; and

b. The percentage of the Agency Fee amount that is attributable to chargeable expenditures and the basis for this calculation.

Any employee who is required to pay an Agency Fee may object to the payment of an Agency Fee amount that includes non-chargeable expenditures, and challenge the calculation of the non-chargeable expenditures. An Agency Fee objection must be filed with the Association within thirty (30) calendar days following distribution of the annual written notice.

8.10 The City and the Association may agree upon a process for the collection and remittance of voluntary dues deductions from represented employees that are in addition to those specified in Section 8.

8.11 Rescission of Agency Shop Agreement / Agency Fee:

Pursuant to Government Code Section 3502.5, following implementation, this section (including the Agency Shop) may be rescinded by a majority of all votes cast by the employees in the bargaining unit. Rescission will be subject to all of the following conditions:

a. A request for such a vote must be supported by a petition, filed with the City's Municipal Employee Relations Officer or designee, containing the signatures of at least thirty (30) percent of the employees in the bargaining unit;

b. The vote is by secret ballot; and

c. The vote may be taken at any time during the term of this Agreement, but, in no event, shall there be more than one (1) vote taken during such term.

8.12 Indemnification, Defense, and Hold Harmless:

a. The Association shall indemnify, defend, and hold the City harmless against any and all suits, claims, demands and any other liabilities that may arise out of or by reason of any action that shall be taken or not taken by the City in connection with the City's interpretation, application, administration, or enforcement of any section in this Agreement pertaining to dues deductions and/or Agency Fee. The existence of or extent of any indemnification obligation under this Section shall be subject to the City's grievance procedure or, upon adoption of an agreed-upon grievance procedure in this Agreement, in accordance with such agreement's grievance procedure, if any.

b. If, through inadvertence or error, the City fails to make the authorized deduction, or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively. It is expressly understood and agreed that the Association will refund to the employee any Association dues deductions and/or Agency Fee erroneously withheld from an employee's wages by the City and paid to the Association. In the event the Association fails to refund the dues deductions or Agency Fee erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Association.

8.13 The City and the Association have reached an agreement on the above terms in response to the Association's request for an agency fee agreement and majority support of employees represented by the Association at the City and Association monitored agency shop election on May 2, 2012.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

9. WAGES

9.1 Salary ranges for classifications represented by the Association as of the effective date of this Agreement and set forth in Exhibit A shall remain in effect during the term of this Agreement.

****** As proposed by ALP on February 21, 2013 ******

10. BILINGUAL PAY

An employee who is required to use a non-English language on a regular basis may be eligible to receive a bi-weekly payment of $29 for oral only bilingual or $40 per pay period for oral/written translation. Employee must be certified as bilingual by the Human Resources Department.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

11. PROFESSIONAL DEVELOPMENT PROGRAM (PDP)

11.1 The City will reimburse each eligible Association employee for up to at least $1,000 for certain professional development costs in accordance with City's "Professional Development Program – Association of Legal Professionals of San Jose ("ALP"), as set forth in Section 4.3.6 of the City Policy Manual on the Effective Date.

11.2 Temporary employees ***are not eligible*** for this benefit.

*** ***As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013*** ***

12. PROFESSIONAL MEMBERSHIPS

12.1 The City shall pay for each Association member who is an "active" attorney and who is in a classification requiring membership in good standing with the California State Bar the dues for membership in the California State Bar Association and one (1) section.

12.2 The City shall pay the membership dues for the Santa Clara County Bar Association for each Association member who is an "active" attorney and who is in a classification requiring membership in good standing with the California State Bar, and subject to the availability of funds in the budget of the Office of the City Attorney as determined by the City Attorney.

12.3 For each Association member who is not covered by Subsections 9.1 and 9.2 above, for any membership other than those covered by Sections 9.1 and 9.2 above, he/she is eligible for reimbursement for membership fees or dues paid for the maintenance of a license required to perform employee's job and for dues paid for membership in one (1) additional job-related professional association. Employees represented by the Association who are "active" attorneys and who are in a classification requiring membership in good standing with the California State Bar are not eligible for reimbursement under this section.

12.4 Temporary employees ***are not eligible*** for this benefit.

*** ***As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013*** ***

13. RETIREMENT

13.1 Employees represented by the Association are covered by the Federated City Employees' Retirement System. Retirement benefits shall be provided in accordance with the provisions of the plan, City Charter and/or Municipal Code.

*** ***As proposed by ALP on February 21, 2013*** ***

14. RETIREE HEALTHCARE

Employees may be eligible to receive retiree healthcare benefits, in accordance with the San Jose Municipal Code.

Effective June 28, 2009, the City and employees represented by the Association began transitioning from the current partial pre-funding of retiree healthcare benefits to full pre-funding of the Annual Required Contribution (ARC) over a period of five years. The Federated Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty-year period so that it shall be paid by June 30, 2039 (closed amortization).

The cash contribution rate for plan members shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year. Notwithstanding the limitations on the incremental increases, by the end of the five year phase-in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.385 of the San Jose Municipal Code.

15. DEFERRED COMPENSATION PLAN

15.1 The City will provide full-time Association employees with the option of participating in the City's deferred compensation plan as set forth in Chapter 3.48 of Title 3 of the San Jose Municipal Code on the Effective Date.

15.2 The City will provide part-time Association employees with the option of participating in the City's PTC plan as set forth in Chapter 3.50 of title 3 of the San Jose Municipal Code on the Effective Date.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

16. HEALTH INSURANCE

16.1 The City will provide health coverage for eligible employees and their dependents in accordance with one of the available plans.

16.2 During the term of this Agreement, the City will continue to make available at least one of each type of the health coverage plans set forth in Subsections 16.2.1 through 16.2.3. In the event that the City is unable to make one of the foregoing types of plans available, the parties will meet and confer over a replacement plan.

The City may offer any other additional health coverage plans at its discretion, including but not limited to the Kaiser 1500 deductible plan.

16.2.1 Non-Deductible HMO. A non-deductible health maintenance organization ("Non-Deductible HMO"), that include the following co-pays:

(a) Office visit co-pay of $25,

(b) Prescription co-pay of $10 for generic and $25 for brand name,

(c) Emergency room co-pay of $100, and

(d) Inpatient/outpatient procedure co-pay of $100.

16.2.2 Non-Deductible POS. A non-deductible point of service plan.

16.2.3 Non-Deductible PPO. A non-deductible preferred provider organization.

16.3 Premium: Effective December 23, 2012, for full time employees, the City pays eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan.[1] If the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO plan. In the event that an employee chooses a plan that is lower cost than the City's contribution toward the lowest priced Non-Deductible HMO Plan, the employee shall pay nothing towards the premium. However, the City's contribution will continue to be based on eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan (at the rate most recently provided to the City).

16.4 Dual Coverage: An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

17. DENTAL INSURANCE

17.1 The City will provide dental insurance for eligible employees and their dependents in accordance with one of the two available plans, one of which is an indemnity plan and the other of which is a dental health maintenance organization plan. Both of these plans are described in detail in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Human Resources Department. In the event that the City is unable to make one of the foregoing types of plans available, the parties will meet and confer over a replacement plan.

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[1] *The City's contribution is prorated as follows for part-time employees based on hours scheduled:*

- *30 – 39 hours = 75%*
- *25 – 29 hours = 62.5%*
- *20 – 24 hours = 50%*
- *Less than 20 hours = none*

17.2 For full-time employees, the City will pay 100% of the lowest priced plan for the employee or the employee and dependent coverage.[2] For any other plan, the City will pay 95% for the employee or the employee and dependent coverage.

17.3 An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

****** As proposed by ALP on February 6, 2013 ******

18. HEALTH AND DENTAL IN LIEU

18.1 The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have alternative health and/or dental insurance coverage to drop the City's insurance and receive a payment in lieu.

18.2 An employee may choose, during open enrollment or within thirty (30) days of a qualifying event, to drop health and/or dental coverage and receive a payment in-lieu equal to the amounts described in Section 19.3 below.

18.3 Employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive the following payments per pay period:

	Health in-lieu	Dental in-lieu
If eligible for family coverage*	$221.84	$19.95
If NOT eligible for family coverage	$89.09	$19.95

* A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

18.4 Loss of Health Coverage: If the alternative health coverage is lost prior to the annual open enrollment period, the employee must notify the City immediately. The City must receive the required enrollment form and written verification of lost coverage from the former provider (employer, group or insurer) **within 30 days of the loss of coverage. Also within this 30-day period the employee must pay all unpaid premiums and refund any excess in-lieu payments which were received** to be restored to a City health insurance plan of his or her choice on the date when alternate coverage terminated. Proof of eligibility will be required for any dependent that was not previously covered by a City health or dental insurance plan. Re-enrollment in the plan shall be in accordance with the carriers' enrollment procedures.

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[2] *The City's contribution is prorated as follows for part-time employees based on hours scheduled:*

- *30 – 39 hours = 75%*
- *25 – 29 hours = 62.5%*
- *20 – 24 hours = 50%*
- *Less than 20 hours = none*

18.5 Loss of Dental Coverage: If the alternative dental coverage is lost prior to the annual open enrollment period, the employee must notify the City immediately. The City must receive the required enrollment form and written verification of lost coverage from the former provider (employer, group or insurer) **within 30 days of the loss of coverage. Also within this 30-day period the employee must pay all unpaid premiums and refund any excess in-lieu payments which were received** to be restored to a City dental insurance plan of his or her choice on the date when alternate coverage terminated. Proof of eligibility will be required for any dependent that was not previously covered by a City health or dental insurance plan. Re-enrollment in the dental insurance plan shall not be retroactive.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

19. LIFE INSURANCE

19.1 The City shall pay the full premium for employee coverage equal to two (2) times the employee's annual salary. Additional employee coverage equal to two (2) times the employee's annual salary, up to $750,000 of total coverage, is available at employee cost. Dependent coverage from $2,000 up to $10,000 for spouse and/or dependent children is also available at employee cost.

19.2 Part-time and temporary employees ***are not eligible*** for this benefit.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

20. FLEXIBLE SPENDING ACCOUNTS

The City shall offer Association members the option of participating in either of the following flexible spending accounts as in effect on the Effective Date: (1) Dependent Care Assistance and (2) Medical Reimbursement Programs.

****** As proposed by ALP on February 21, 2013 ******

21. OPTIONAL BENEFITS

Optional benefits are available for employee, spouse, Domestic Partner and children at employee expense. The City shall continue to make available at least the following three optional benefits: vision insurance, personal accident insurance and long-term care insurance.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

22. LONG-TERM DISABILITY

22.1 The City will continue to offer employees the option to purchase long-term disability insurance which will subsidize their income in the event of a non-work related injury or illness. The City does not participate in the State Disability Insurance plan. Therefore, if an employee suffers a non-work related injury or illness and is unable to work, the employee would not receive any City compensation.

22.2 The City shall continue to offer employees a choice of two long-term disability plans, one with a 30-day waiting period and another with a 60-day waiting period. Employees must use accrued leave balances to receive compensation during the thirty (30) or sixty (60) day waiting period when using the long-term disability benefit.

22.3 Temporary employees ***are not eligible*** to purchase long-term disability insurance.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

23. EMPLOYEE ASSISTANCE PROGRAM

23.1 During the term of this agreement, the City will continue to provide an Employee Assistance Program (EAP) at the level of benefit provided as of the Effective Date this agreement.

23.2 Part-time and temporary employees ***are not eligible*** for this benefit.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

24. SUBSTANCE ABUSE PROGRAM

24.1 The Substance Abuse Policy prohibits employees from reporting to work under the influence of alcohol or drugs, exhibiting symptoms of alcohol or drug use, using, possessing, selling or providing drugs or alcohol while on duty, and employees shall not have the ability to work or be on paid standby when impaired as a result of the use of alcohol or drugs. Additionally, employees are required to notify their supervisor when any medication or drug they are taking could create an unsafe and dangerous situation. Employees may be requested to submit to a drug and/or alcohol analysis when there is reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol. Employees represented by the Association shall comply with the City's Substance Abuse Policy.

24.2 The City shall offer to Association members self-referral and rehabilitation/treatment options and benefits in accordance with, the City's Substance Abuse Policy, as set forth in Section 1.4.2 of the City Policy Manual in effect on the Effective Date of this agreement.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

25. HOLIDAYS

Each calendar year full-time employees shall receive (14) paid holidays, which include:

New Years Day
Martin Luther King Day
Presidents' Day
Cesar Chavez Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve Day
Christmas Day
New Years Eve Day

Reimbursement/contribution is prorated for part-time employees based on hours scheduled:

- *30 – 39 hours = 75%*
- *25 – 29 hours = 62.5%*
- *20 – 24 hours = 50%*
- *Less than 20 hours = none*

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

26. VACATION

26.1 Vacation accrues at the following rates for each paid hour (either worked or paid absence):

Years of Service	Annual Hourly Accrual (Full Time)
1 – 5	120 hours
6 – 14	160 hours
15+	200 hours

26.2 Employees may only accrue vacation up to a maximum of two (2) times their annual accrual rate. Once an employee reaches their maximum accrued vacation limit, the employee will not accrue vacation until their vacation balance falls below the maximum limit.

Years of Service	Maximum Accrued Vacation
1 – 5	240 hours
6 – 14	320 hours
15+	400 hours

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

27. VACATION SELLBACK

Effective December 23, 2012 (the first pay period of payroll calendar year 2013), the Vacation Sellback program will be eliminated and no employee will be eligible to sellback any accrued vacation hours.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

28. EXECUTIVE LEAVE

28.1 Employees will receive forty (40) hours of executive leave per payroll calendar year with supervisor approval. Forty (40) additional hours may be available, upon City Attorney approval, for recognition of outstanding performance as part of the Management Performance Program. Executive leave that is not used by the end of the payroll calendar year does not accrue or carry over to the following year.

28.2 When an employee is hired into a position eligible for executive leave, the leave may be prorated during the first year dependent upon the hire date.

28.3 Executive leave is not an accrued benefit and unused leave does not carry over from year-to-year.

28.4 The City Attorney shall administer executive leave in accordance with the City's Executive Leave and Absence policy, as set forth in Section 4.2.4 of the City Policy Manual in effect on the Effective Date of this agreement.

Reimbursement/contribution is prorated for part-time employees based on hours scheduled:

- *30 – 39 hours = 75%*
- *– 29 hours = 62.5%*
- *20 – 24 hours = 50%*
- *Less than 20 hours = none*

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

29. SICK LEAVE

Each full-time employee shall be entitled to sick leave with pay in accordance with the following provisions:

29.1 Accrual: Sick leave shall accrue in an amount equal to the number of hours worked, excluding overtime, multiplied by a factor of 0.04616. Paid leave for holidays, vacation, disability, or other paid leave shall be considered as time worked for purposes of this section.

29.2 Accrued sick leave may be utilized if the employee is required to be absent from work for the following reasons:

29.2.1 The employee is absent from work on account of non-job related illness or injury, including absences of female employees related to pregnancy or childbirth.

29.2.2 The employee is absent from work on account of routine medical or dental appointments of the employee or any of the following persons who need assistance: a child/stepchild for which the employee is legally responsible, or the employee's mother/stepmother, father/stepfather, spouse or Domestic Partner.

29.2.3 The employee is absent from work for the care related to the illness or injury of a child/stepchild for which the employee is legally responsible, mother/stepmother, father/stepfather, spouse or Domestic Partner.

29.2.4 Up to forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, or mother-in-law.

29.3 Accrued sick leave not to exceed three (3) working days may be granted in circumstances where an alleged job-related illness or injury is involved, but the employee fails to provide medical verification of such job-related illness or injury.

29.4 Accrued sick leave also may be used in accordance with the Catastrophic Illness Time Donation Program as set forth in Section 4.2.10 of the City Policy Manual in effect as of the Effective Date of this agreement.

29.5 Except as otherwise provided by resolution of the City Council, paid sick leave shall not be allowed for any absence from work occasioned by intoxication, or use of narcotics not prescribed by a licensed physician.

29.6 If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.

29.7 No employee shall be entitled to or be granted sick leave, either with or without pay, unless he or she, or someone on his or her behalf notifies his or her immediate superior or the City Attorney, of his or her intent to take such sick leave due to a personal or family illness prior to the commencement of the sick leave where such notice is possible; provided, however, that the City Attorney may waive the requirement of such notice upon presentation of a reasonable excuse by such employee.

29.8 An employee may be required to furnish substantiation for any absence for which sick leave payment is requested.

29.9 Any such part-time employee shall be entitled to paid sick leave only for those days and number of hours the employee is in fact regularly assigned to work or would have been required to work, notwithstanding the designation, scheduling and indefinite assignment made pursuant to this Section 11.

****** As proposed by ALP on February 21, 2013 ******

30. SICK LEAVE PAYOUT

30.1 Members of the Federated City Employees' Retirement System who retire with at least fifteen (15) years of service are eligible to receive, upon retirement, payout for a portion of their unused earned sick leave at the rate of:

Accrued Sick Leave Hours	Sick Leave Payout
0 – 399 Hours	50% of final hourly rate
400 – 799 Hours	60% of final hourly rate
800 – 1,200 Hours	75% of final hourly rate

30.1.1 If employee's balance is greater than 1,200 hours, employee is also eligible for a payout of 75% of the value of sick leave in excess of 1,200 hours that is earned but unused during the two (2) years prior to retirement.

30.2 Employees hired on or after September 30, 2012, shall not be eligible for any sick leave payout.

30.3 **Part-Time and Temporary Employees:** Part-time and temporary employees ***are not eligible*** for this benefit.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

31. MILITARY LEAVE

Association members are entitled to military leave in accordance with the City's Military Leave policy, as set forth in Section 4.2.2 of the City Policy Manual in effect on the Effective Date of this agreement.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

32. DISABILITY LEAVE SUPPLEMENT

Effective June 24, 2012, the disability leave supplement is eliminated. Employees will be allowed to integrate accrued vacation leave and then accrued sick once vacation leave has been exhausted.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

33. LEAVES OF ABSENCE

33.1 All requests for leaves of absence without pay shall be made in writing. The City Attorney, or his/her designated representative, may grant an employee a leave of absence without pay for good and sufficient reason, not to exceed twelve (12) months. Such leaves may, however, be extended, not to exceed an additional six (6) months, upon written request of the employee, subject to approval of the City Attorney, or his/her designated representative. Written requests for an extension of a leave shall be submitted prior to the expiration of the leave.

33.2 The City Attorney shall otherwise administer leaves of absences, and Association members shall have the right to leaves of absence, in accordance with the City's Leave of Absence policy, as set forth in Section 4.2.1 of the City Policy Manual in effect on the Effective Date of this agreement.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

34. BEREAVEMENT LEAVE

34.1 Each full-time or benefited part-time employee shall be granted bereavement leave with full pay for up to forty (40) hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner.

- Parent/Step parent
- Spouse/Domestic partner
- Child/Step child
- Brother/Sister
- Step Brother/Step Sister
- Half Brother/Half Sister
- Grandparent/Step-grandparent
- Grandchild
- Great grandparent
- Son/daughter in-law
- Brother/sister in-law
- Step-great grandparents

34.2 All leave must be used within fourteen (14) calendar days following the death of an eligible person as described in Section 26.1. Under extreme circumstances, the fourteen (14) day requirement may be waived by the City Attorney. The decision of the City Attorney shall be final with no process for further appeal.

34.3 The City Attorney shall otherwise administer bereavement leave, and Association members shall have the right to bereavement leave, in accordance with the City's Bereavement Leave policy, as set forth in Section 4.2.5 of the City Policy Manual in effect on the Effective Date of this agreement.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

35. TIME DONATION PROGRAMS

Association employees are entitled to make time donations in accordance with the City's Time Donation Programs policy, as set forth in Section 4.2.10 of the City Policy Manual in effect on the Effective Date of this agreement.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

36. JURY DUTY

Each full-time employee, or each part-time employee who is eligible for benefits, who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America, shall receive the regular base compensation less all jury fees received, excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify his/her immediate supervisor.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

37. WITNESS LEAVE

37.1 Each full-time employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of his/her employment with the City, in any case or proceeding in any Court of this State, or of the United States of America, shall receive his/her regular salary during the terms of his/her service as a witness under subpoena, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action and/or was not acting in the course and scope of his/her employment.

37.2 Upon service of a subpoena, an employee shall immediately advise his/her supervisor and of the time when he/she is required to appear in Court.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

38. MANAGEMENT PERFORMANCE PROGRAM

Performance reviews and merit increases, including bonuses (if applicable), shall be provided at the sole discretion of the City Attorney and shall occur consistent with the City's Management Performance Program, as set forth in Section 3.3.2 of the City Policy Manual as of the Effective Date of this agreement.

****** As proposed by ALP on February 21, 2013 ******

39. EMPLOYEE TRAVEL/MILEAGE

Association members shall be eligible for payment and/or reimbursement for travel and mileage in accordance with the City's Use of City and Personal Vehicles policy, Employee Travel policy, and Mileage Reimbursement policy, as set forth respectively in Sections 1.81, 1.8.2 and 1.8.3 of the City Policy Manual in effect on the Effective Date of this agreement. Notwithstanding the foregoing, the mileage reimbursement rate shall be whatever reimbursement rate is applicable Citywide on the date reimbursement is requested.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

40. CONTRACTING OUT

Without limiting Section 803 of the City Charter, the City agrees to meet and confer with the Association prior to contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by Association members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions, which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.

****** As tentatively agreed to in Tentative Agreement 1 dated January 14, 2013 ******

13. TELECOMMUTING

The City Attorney may allow telecommuting to the extent such telecommuting is consistent with the City's Telecommuting Policy, as set forth in Section 1.7.2 of the City Policy Manual as of the Effective Date of this agreement.