AGENCY SHOP AGREEMENT

CITY OF SAN JOSE
AND
ASSOCIATION OF LEGAL PROFESSIONALS OF SAN JOSE

1. The City of San Jose ("City") and the Association of Legal Professionals of San Jose ("ALP" or "Association") enter into this 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.

2. Definitions:

   a. "Agency Shop," as used in this Agreement, 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 this Agreement.

   b. "Agency Fee" collected from non-member bargaining unit employees pursuant to this Agreement shall be limited to ALP'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.

   c. "City-ALP Agreement" means either a tentative agreement or a memorandum of agreement negotiated and executed by the City and ALP governing the terms and conditions of employment of employees in classifications represented by ALP for a stated period of time, whichever is in effect.

3. This Agreement will be placed in effect thirty (30) calendar days following execution by the Association and the City, and after notice of the Agency Fee has been provided to employees in classifications represented by the Association.

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 ALP 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 this Agreement, while such employee is assigned to a classification represented by ALP, dues uniformly required as a condition of membership, pursuant to the Association's constitution and by-laws provided that the employee has signed an appropriate dues deduction card (Exhibit A).

      (2) Within thirty (30) calendar days of execution of this Agreement (or within thirty (30) calendar days of hire for employees hired after the execution of this Agreement), 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 Agreement

      (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.

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.

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 Section 2(b) above of this Agreement. 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 Section 7 below of this Agreement.

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
(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 Section 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. 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).

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.

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 this Agreement.

11. Rescission of Agency Shop Agreement / Agency Fee:

Pursuant to Government Code Section 3502.5, following implementation, this Agreement (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 the effective City-ALP Agreement, but, in no event, shall there be more than one (1) vote taken during such term.

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 the effective City-ALP 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.

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. This Agreement shall not be effective unless and until executed by both parties. This Agreement shall be incorporated into the City-ALP Agreement.

For CITY:

7.19.12

Marco Mercado Date
Senior Executive Analyst

For ALP:

7/19/2012

VERA TODOROV Date
President

Exhibit A

ASSOCIATION OF LEGAL PROFESSIONAL OF THE CITY OF SAN JOSE MEMBERSHIPAPPLICATION AND DUES DEDUCTION AUTHORIZATION

I hereby apply for membership in the Association of Legal Professionals (ALP) of the City of San Jose and designate ALP as my authorized bargaining representative.

Name:	Date of Hire:	Employee ID No:
Signature:	Title:	Department:

CONTACT INFORMATION

Home Address:	Cell Phone No:	Home email:

I authorize the City of San Jose (City) to deduct from my earnings monthly dues in the amount of **$25 per pay period for the first two pay periods of each month** to provide for the regular payment of the current membership rates as established by ALP, and under agreement with the City. Any changes to the amount to be deducted shall be certified by ALP and automatically implemented by City.

Please return this application to: Ellen Donnelly or Vera Todorov