**38.3.5 Formal Process: STEP 4 – Arbitration AND same language changes to 39.8.5—Discipline.**

38.3.5.1 Complaints Filed With: If the Union is not satisfied with the results rendered in Step 3, the Union may require that the grievance be referred to an impartial arbitrator by notifying the applicable Grievance Appeal Officer.

38.3.5.2 Filing Period: Such notification of desire to go to arbitration must be filed in writing with the Grievance Appeal Officer within thirty (30) days of the conclusion of Step 3 with a copy to the Director of Human Resources. ~~Provided further that the Union shall forward to the City the Union’s portion of the California State Mediation and Conciliation Services (CSMCS) fee within sixty (60) days of receipt of the City Manager’s response. Failure by the Union to meet either the thirty (30) day or sixty (60) day deadline for both referral to Arbitration and payment of the CSMCS fee shall be deemed as a full and complete waiver by the Union to appeal the City Manager decision to Arbitration and the City Manager decision shall be final and binding on all parties.~~

38.3.5.3 Process: ~~The impartial arbitrator shall be selected from the California State Mediation and Conciliation Services (CSMCS) unless another party is mutually agreed upon. CSMCS will provide a list of five (5) arbitrators. The City and the Union will alternately strike a name until one remains. The remaining name will be the arbitrator.~~

An impartial arbitrator shall be selected on a rotating basis from a list of arbitrators to be agreed upon by the parties within ninety (90) days following adoption of this Agreement, which shall be appended to this Agreement, provided however that any request for arbitration arising prior to agreement between the parties on the list of arbitrators shall be processed in accordance with Section 38.3.5.3 of the predecessor 2021-2024 MOU.

The first arbitration shall utilize the first arbitrator on the list and each arbitrator will be used in succession until each arbitrator on the list has been utilized, at which point the next arbitration will be heard by the first arbitrator on the list.

Once a matter has been appealed to arbitration, the City will notify the arbitrator next in line on the list. The selected arbitrator shall offer five (5) or more hearing dates within six (6) months of the date of selection. Each party shall endeavor to make themselves available for at least one (1) of the hearing dates offered by the arbitrator.

The cost of the arbitrator’s decision shall be borne equally by the parties.

The arbitrator may hear testimony, receive written briefs, interview witnesses, and conduct any investigations she or he deems appropriate, and shall render a final and binding decision to the parties which will end the formal grievance process.

No Arbitrator shall entertain, hear, decide or make recommendations on any dispute involving a deposition over which a formally recognized employee organization has jurisdiction unless such dispute falls within the definition of a grievance as specified in this Section.

Proposals to add or to change the Agreement or written agreements or addenda supplementary hereto shall not be arbitrable and no proposal to modify, amend or terminate the Agreement, nor any matter or subject arising out of or in connection with such proposal may be referred to arbitration under this Section; and neither any Arbitrator shall have the power to amend or modify or recommend amendment or modification of the Agreement, or any written agreements or addenda supplementary hereto or to establish or recommend establishment of any new terms and conditions of employment.

No changes in this Agreement or interpretation thereof (except interpretations resulting from arbitration proceedings hereunder) will be recognized unless agreed to by the City Manager and the Union.