Municipal Employees' Federation (MEF) & Confidential Employees' Organization (CEO), AFSCME Local 101 – City of San Jose Negotiations 2011

MEF/CEO PROPOSAL: INCLUDES COUNTER TO CITY PROPOSAL ON COST OF REQUESTING LIST OF ARBITRATORS (2/28/11)

Proposed MEF Language

ARTICLE 20 GRIEVANCE PROCEDURE

20.1 Any dispute between the City and the Union regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution #39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the Union may file a grievance on behalf of such employee(s).

Deleted: appropriate

20.2 Procedures

20.2.1 Grievances involving the interpretation or application of Resolution #39367, as amended, including any grievance filed pursuant to Section 22 of that Resolution, shall be filed in writing with the Municipal Employee Relations Officer, or designee, and shall be processed in accordance with applicable impasse resolution procedures of that Resolution.

20.2.2 Grievances involving the interpretation or application of this Agreement shall be processed in accordance with the procedures set forth in this Article 20.

20.2.3 Alternative to the Grievance Procedure. As an alternative to the formal grievance procedure, MEF and Employee Relations may, through mutual agreement, meet and attempt to resolve on an informal basis, problems which arise involving contract interpretation, Civil Service rules, or other matters affecting the relationship between the Union and the City.

The Office of Employee Relations and MEF may review an issue on an ad hoc basis on its merits and its relationship to the contract. The result of these discussions may be:

1. To create a side agreement for immediate implementation.
2. To continue the current practice for discussions during the next contract period.
3. To change practice to conform to the contract language.
4. To maintain the status quo.

If the issue cannot be resolved through this process, the Union maintains the option to proceed through the appropriate grievance procedure.

20.3 Step I

20.3.1 An employee may present the grievance orally either directly or through the Union representative to the immediate supervisor. The grievance must be presented within ten (10) working days the grievant or the Union first became aware of, or should have become aware of the alleged violation of the Agreement. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee a verbal reply.

20.3.2 If the employee is not satisfied with the reply of their immediate supervisor, the employee may appeal the grievance to Step II.

20.4 Step II

20.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director or designee within five (5) working days following the receipt of the immediate supervisor's verbal reply.

20.4.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem.
- The alleged facts upon which the grievance is based.
- The section of the MOA claimed to have been violated and the specific violation claimed.
- The remedy requested by the grievant.

20.4.3 The Department Director or designee, may arrange a meeting between the Director, the employee, the appropriate Union representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director or designee, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

20.4.4 If the employee is not satisfied with the decision, the employee may appeal the grievance to Step III.

20.5 Step III

20.5.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer or

designee within ten (10) working days following receipt of the written decision at Step II.

20.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer or designee shall schedule a meeting with the employee, the appropriate Union representative, and the Department Director or designee to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within ten (10) working days following the meeting.

20.5.3 If the decision of the Municipal Employee Relations Officer or designee is unsatisfactory, the appropriate Employee Organization representative may appeal the grievance to Step IV - Arbitration.

20.6 Step IV - Arbitration

20.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Union representative may appeal the grievance to Arbitration. The appropriate Union representative shall notify the Municipal Employee Relations Officer or designee in writing, within ten (10) working days following receipt by the employee of the written answer at Step III.

20.6.2 Within ten (10) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer or designee with the appropriate Union representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.

20.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Either party shall notify the other that such a request is being made. Any costs associated with obtaining a list from the State of California Conciliation Service shall be divided equally between the parties.

20.6.4 Within ten (10) working days following receipt of the above referenced list, the parties shall meet to select the arbitrator. The right to strike the first name shall be determined by lot and the parties shall alternately strike one name from the list until only one (1) name remains, and that person shall be the arbitrator.

20.6.5 The parties shall meet at least ten (10) working days prior to the arbitration hearing date for the purpose of pre-arbitration settlement or narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing.

20.6.6 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon

the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues, involved.

20.6.7 The decision shall be sent to the Municipal Employee Relations Officer or designee and to the employee or appropriate representative of the Union.

20.6.8 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing. Court reporter fees are also shared equally among the parties.

20.6.9 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this agreement, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.

20.6.10 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

Proposed CEO Language

ARTICLE 12 GRIEVANCE PROCEDURE

12.1 Any dispute between the City and an employee, or, where provided, the appropriate representative of the Employee Organization, regarding the interpretation or application of the written Memorandum of Agreement, or the interpretation or application of the Employer-Employee Resolution No. 39367, as amended, shall be considered a grievance. A grievance may be initiated only by the employee directly affected except as otherwise provided herein. Where the dispute directly affects a significantly large group of employees in the representation unit, the Union may file a grievance on behalf of such employee(s).

Deleted: appropriate Employee Organization

12.2 Grievances involving the interpretation or application of Resolution No. 39367, as amended, shall be filed in writing with the Municipal Employee Relations Officer and shall be processed in accordance with the applicable provisions of the resolution.

12.3 STEP I

12.3.1 An employee may present the grievance orally either directly or through the Employee Organization representative to the immediate supervisor. The grievance must be presented within ten (10) working days the grievant or the Union first became aware of, or should have become aware of the alleged violation of the Agreement. The immediate supervisor shall make whatever investigation is necessary to obtain the facts pertaining to the grievance. Within ten (10) working days after receiving the oral grievance, the immediate supervisor shall give the employee an oral reply.

12.3.2 If the employee is not satisfied with the reply of his/her immediate supervisor, he/she may appeal the grievance to Step II.

12.4 STEP II

12.4.1 If the employee desires to appeal the grievance to Step II, the grievance shall be reduced to writing and presented to the Department Director, or his/her designated representative, within five (5) working days following the receipt of the immediate supervisor's oral reply.

12.4.2 To ensure clear communication and assist in resolving the grievance, the written grievance shall contain the following information:

- A clear statement of the problem
- The alleged facts upon which the grievance is based
- The section of the MOA claimed to have been violated and the specific violation claimed
- The remedy requested by the grievant
- The grievance shall be signed and dated by the employee

12.4.3 The Department Director, or his/her designated representative, may arrange a meeting between himself/herself, the employee, the appropriate Employee Organization representative, and the immediate supervisor to attempt to resolve the grievance. In any event the Department Director, or his/her designated representative, shall give a written decision to the employee within ten (10) working days following receipt of the written appeal to Step II.

12.4.4 If the employee is not satisfied with the decision he/she may appeal the grievance to Step III.

12.5 STEP III

12.5.1 If the employee desires to appeal the grievance to Step III, the employee shall indicate in writing the reason for the appeal and present it along with the original written grievance to the Municipal Employee Relations Officer within five (5) working days following receipt of the written decision at Step II.

12.5.2 Within ten (10) working days after receipt of the appeal to Step III, the Municipal Employee Relations Officer shall hold a meeting with the employee, the appropriate Employee Organization representative, and the Department Director or his/her designated representative to discuss the matter. A written decision shall be given to the employee or the appropriate Employee Organization representative within five (5) working days following the meeting.

12.5.3 If the decision of the Municipal Employee Relations Officer is unsatisfactory, the appropriate Employee Organization representative may appeal the grievance to Step IV - Arbitration.

12.6 STEP IV - ARBITRATION

12.6.1 If the grievance has been properly processed through the previous steps of the procedure and not resolved, the appropriate Employee Organization representative may appeal the grievance to Arbitration. The appropriate Employee Organization representative shall notify the Municipal Employee Relations Officer in writing, within fourteen (14) working days following receipt by the employee of the written answer at Step III.

12.6.2 Within fourteen (14) working days following the receipt of the notice of appeal to Step IV, a meeting shall be arranged by the Municipal Employee Relations Officer with the appropriate Employee Organization representative to prepare a joint statement of the issue, or issues, to be presented to the arbitrator. The employee may also be permitted to attend. If the parties are unable to agree upon the issue, or issues, each party will prepare its statement of the issue, or issues, and jointly submit the separate statement of issue, or issues, to the arbitrator. At the beginning of the hearing referred to herein, the arbitrator shall determine what the issue, or issues, are.

12.6.3 The parties may mutually agree upon the selection of the arbitrator or shall jointly request the State of California Conciliation Service to provide a list of seven (7) persons qualified to act as arbitrators. Either party shall notify the other that such a request is being made. Any costs associated with obtaining a list from the State of California Conciliation Servcie shall be divided equally between the parties.

12.6.4 The parties shall meet at least ten (10) working days prior to the arbitration hearing date for the purpose of pre-arbitration settlement or narrowing issues for arbitration, discussing possible stipulations and exchanging documents intended for use at the hearing

12.6.5 The arbitrator shall hold a hearing on the issue, or issues, submitted, or as determined by the arbitrator, if the parties have not mutually agreed upon the issue, or issues, and render a written decision and reasons for the decision as soon after the hearing as possible. The decision shall be binding on both parties, and shall be limited to the issue, or issues, involved.

12.6.6 The decision shall be sent to the Municipal Employee Relations Officer and to the employee or appropriate representative of the Employee Organization.

12.6.7 Each of the parties shall pay for the time and expenses of its representatives and witnesses through all stages of the arbitration procedure and shall contribute equally to the fee and expenses of the arbitrator. The arbitrator's fee shall be determined in advance of the hearing.

12.6.8 The parties agree that the arbitrator shall not add to, subtract from, change or modify any provision of this agreement and shall be authorized only to apply existing provisions of this Agreement to the specific facts involved and to interpret only applicable provisions of this agreement, except that in the event it is a dispute concerning the arbitrability of the grievance, the arbitrator shall have the authority to rule on the issue of arbitrability, to wit: Whether or not the grievance involved an interpretation of the Agreement. However, the arbitrator will have no authority to rule on the issue of whether

or not the grievance is a matter that is within the scope of representation, as defined under the Meyers-Milias-Brown Act.

12.6.9 The parties agree that the time limits set forth herein are of the essence of this procedure and are to be strictly complied with. Time limits may be extended only by written mutual agreement of the parties.

12.7 Release Time

12.7.1 The Employee Organization President and/or a designated representative shall be authorized release time to appear at Civil Service Commission or City Council meetings when such bodies are considering matters affecting the Employee Organization, to attend Federated Retirement Board meetings, and to attend meetings to which he/she is called by the City Administration regarding matters affecting the Employee Organization, so long as this participation does not result in overtime to perform their usual and customary duties. Participation at such meetings should be in lieu of usual and customary duties and will not result in overtime compensation.

12.7.2 Employees will be granted release time in order to donate blood at City sponsored blood drives. Employees will be granted two (2) hours of release time per calendar quarter to donate platelets.

12.8 Stewards

12.8.1 Stewards shall be designated in the ratio of approximately one (1) steward for every fifty (50) employees in the representation unit. It is recognized that shift and geographical locations may require an adjustment to the above ratio.

12.8.2 The Employee Organization agrees that it shall certify as Stewards only full-time employees who have satisfactorily completed an initial probationary period during the employee's current term of employment.

12.8.2.1 A Steward shall function under the terms of the grievance procedure and only on the shift and in the department(s) or sections of a department(s) for which he/she has been certified. Exceptions to this paragraph may be made by mutual agreement of the parties. Should a Steward be required to leave his/her assigned duties to investigate and/or process a grievance, he/she shall secure the permission of his/her immediate supervisor and inform the supervisor of the general nature of the grievance, and report back to the supervisor upon returning to his/her assigned duties. Permission for a Steward to leave his/her assigned duties shall not be unreasonably withheld. In the event it is necessary for a Steward to handle a grievance in a department other than the department to which he/she is regularly assigned, the Steward shall report to the immediate supervisor of the aggrieved employee, the employee involved in the grievance, or the function being investigated.

12.8.2.2 In the event the parties agree that a Steward or other representative of the Employee Organization is permitted to investigate and/or process a grievance other than as provided in 12.8.2.1 above, such

representative shall continue to investigate and/or process the grievance, even if the department or section of a department in which the grievance arose is subsequently assigned to another representative.

12.8.3 Although the grievances may be investigated and/or processed during normally scheduled working hours, the Employee Organization agrees that the time spent by its designated representatives shall be kept to a minimum and that no Employee Organization representative shall be entitled to any additional compensation or premium pay for any time spent in processing grievances outside such representative's regularly scheduled hours. The Employee Organization also agrees it will not process grievances during periods of overtime.

12.8.4 The Employee Organization agrees to properly notify the Municipal Employee Relations Officer of any changes of employees designated as Stewards.

12.8.5 The parties agree that they have a mutual interest in well-trained Stewards. Toward this end, certified Stewards shall be granted a maximum of eight (8) hours paid release time during each year of this agreement to participate in training sessions related to the provisions of this agreement, jointly conducted by Employee Organization and City representatives, according to an outline of such training activities to be submitted by the Employee Organization and approved by the City prior to the conduct of any such training sessions.

12.9 General Provisions

12.9.1 Any grievance not filed or appealed within the time limits specified shall be considered settled on the basis of the last disposition given. In the event the grievance is not answered within the time limits set forth herein, either the employee, except for appeals to Step IV, or the appropriate Employee Organization representative may appeal the grievance to the next higher step within the time limits provided.

12.9.2 The Employee Organization agrees that it will not initiate or pursue any other avenue of redress on any matter properly within the scope of representation until the provisions of this Article, including arbitration, have been utilized.

12.9.3 Working days as used in this Article shall be defined as the regularly scheduled working days of the employee or appropriate Employee Organization representative filing or appealing the grievance and the regularly scheduled working days of the appropriate representative of the City responsible for replying to the grievance.

12.9.4 If an employee desires to file a grievance involving separation from City employment pursuant to the application of Article 13, entitled Leaves of Absence, the employee shall file the grievance in writing at Step II within ten (10) calendar days following the date of separation.

12.9.5 Any of the time limits specified in Steps I through IV may be extended by written mutual agreement of the parties.

12.10 Department Labor Management Committees

12.10.1 Purpose:

To serve as an advisory committee to Management and to facilitate positive union-management relations. These collaborative efforts between labor and management have proven successful in the past and are encouraged when appropriate.

12.10.2 Structure:

A Labor Management Committee may be established in a department by mutual agreement. Management and labor each selects an equal number of committee representatives. By mutual consent of the parties the number of committee members may be modified. This forum will be conducted on a consensus basis. The Labor Management Committee will set up meetings on an ad hoc basis as determined by the parties. If all parties are in agreement, a joint department labor management committee may be established to include, or join with, other bargaining units.

12.10.3 Authority:

Training and guidelines will be provided by the Office of Employee Relations. The Labor Management Committee is not authorized to meet and confer to create contractual obligations nor to change the MOA to authorize any practice in conflict with existing contracts or rules. The Office of Employee Relations and CEO President or Business Agent will be involved in a Labor Management Committee meeting upon request. As appropriate the Labor Management Committee shall keep both parties informed of their discussions and any written material they generate. This process is not designed for individual grievances, disciplines, or to replace the Steward system.