



## ABERDEEN CITY COUNCIL

December 21, 2015

### COUNCIL MEETING AGENDA

7:15 p.m. Third Floor, City Hall

### COMMITTEE OF THE WHOLE

- A. Guest Speakers
- B. Additions to Agenda
- C. Department Heads
- D. Mayor's Report
- E. Non-Standing Committee Reports

### COUNCIL MEETING

- I. ROLL CALL
- II. FLAG SALUTE
- III. APPROVAL OF MINUTES
- IV. PUBLIC COMMENT Re: Agenda Items (Please limit your comments to 3 minutes)
- V. FINANCE COMMITTEE
  - A. Committee Chair Report
  - B. Approval of expenditures
    - 1. Recommend approval of expenditures and payroll.
  - C. Reports & Communications
  - D. Resolutions
    - 1. Resolution authorizing the Mayor and Finance Director to execute purchase and sale agreements for the real property commonly known as 107 S. F Street and the parcel at the corner of E. Wishkah St. and Fuller Way.
- VI. PUBLIC WORKS
  - A. Committee Chair Report
  - B. Reports & Communications
    - 1. Report from Public Works and Public Works Director recommending that City Staff be authorized to sign the Project Review Reimbursable Agreement with WSDOT for the completion of the Downtown Restriping Project.
    - 2. Report from Public Works and Public Works Director authorizing signing and acceptance of the TIB Relight Washington Grant.
  - C. Resolutions
    - 1. Resolution authorizing execution of a professional services agreement with Forterra NW to provide the consulting services in the scope of work adopted by the Interlocal Agreement between the cities of Aberdeen and Hoquiam for joint development of a master plan addressing flooding issues incorporating the watersheds of the Chehalis, Wishkah, and Hoquiam Rivers and the Grays Harbor Estuary.

**VII. PUBLIC SAFETY**

- A. Committee Chair Report
- B. Reports & Communications
  - 1. Report from Public Safety and Chief of Police recommending that the City of Aberdeen accept the generous donation from the Tamaki Foundation and dedicate the use of funds to the Police Canine Program.

**VIII. SPECIAL AGENDA ITEMS**

- A. Reports & Communications
  - 1. Report from Personnel and the Human Resources Director recommending revisions to policy 11.40 'Policy Against Unlawful Harassment'.
  - 2. Report from Personnel and the Human Resources Director recommending revisions and additions to various City Personnel Policies regarding Attendance and Leaves.

**IX. CITY COUNCIL COMMENT PERIOD**

**X. PUBLIC COMMENT PERIOD (Please limit your comments to 3 minutes)**

**XI. EXECUTIVE SESSION**

The City of Aberdeen does not discriminate against or exclude anyone from participation in public meetings. Requests for assistance should be made by contacting the Finance Department at 360-537-3236, 48 hours in advance of the meeting. Thank you.

**RESOLUTION No. 2015 - \_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO EXECUTE PURCHASE AND SALE AGREEMENTS FOR THE REAL PROPERTY COMMONLY KNOWN AS 107 SOUTH F STREET AND THE PARCEL AT THE CORNER OF EAST WISHKAH STREET AND FULLER WAY.**

**WHEREAS, Dale C. Underwood, the owner of the property commonly known as 107 South F Street (the Crystal Steam Bath building), has agreed to sell the property to the city for \$120,000;**

**WHEREAS, Druzianich Family Holdings, LLC, the owner of the property at the corner of East Wishkah Street and Fuller Way (billboard site next to Pourhouse), has agreed to sell the property and assign the existing billboard lease to the city for \$81,850;**

**WHEREAS, the purchase of both properties is solely and specifically for the Gateway Center project and is reimbursable to the city under Department of Commerce Contract No. 16-93205-036 with funds appropriated under the department's Local Community Projects 2016 Program; NOW, THEREFORE,**

**BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF ABERDEEN:** the Mayor and Finance Director are authorized to execute a standard form commercial purchase and sale agreement for the property at 107 South F Street with a purchase price of \$120,000.00 and for the parcel at the corner of East Wishkah Street and Fuller Way with a purchase price of \$81,850 requiring the city to pay all escrow fees and title insurance and the seller to pay all real estate excise taxes.

**PASSED and APPROVED on \_\_\_\_\_ 2015.**

\_\_\_\_\_  
Bill Simpson, Mayor

ATTESTED:

\_\_\_\_\_  
Kathryn Skolrood, Finance Director

**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

MR. MAYOR:

THE MEMBERS OF  
YOUR COMMITTEE ON: Public Works and the Public Works Director

TO WHOM IT WAS REFERRED: Downtown Traffic Impact Moderation Project Funding

REPORTS AS FOLLOWS: On July 22, 2015, City Council approved a contribution of \$2,000 towards the completion of the WSDOT Downtown Restriping Project. This project has been completed and the final costs for the project have come in at just under \$27,500. WSDOT is deducting \$10,000 to cover the cost of what it would have taken to just refresh the existing markings on Wishkah and Heron. The remaining \$17,500 is the City of Aberdeen's responsibility and includes the previously approved \$2,000 plus an additional amount of \$15,500. The total amount paid by the City is not to exceed \$17,500.

THEREFORE, IT IS RECOMMENDED: That City Staff be authorized to sign the Project Review Reimbursable Agreement with WSDOT authorizing an additional \$15,500 from City funds in addition to the previously approved \$2,000 to cover the full amount the City owes to WSDOT for the completion of the Downtown Restriping Project.

\_\_\_\_\_  
Rick Sangder  
Deputy Public Works Director

Reported \_\_\_\_\_, 2015

Adopted \_\_\_\_\_, 2015

\_\_\_\_\_  
Kathi Hoder, Chair

\_\_\_\_\_  
Margo Shortt, Vice-Chair

\_\_\_\_\_  
Doug Paling, Member

\_\_\_\_\_  
Alan Richrod, Member



<b>Project Review Reimbursable Agreement</b>		Applicant or Local Agency <b>City of Aberdeen</b>	
		Billing Address <b>City of Aberdeen 200 East Market Street Aberdeen Wa. 98520</b>	
Region		Contact Email <b>rsangder@aberdeenwa.gov</b>	
Agreement Number <b>J C1367</b>	Contact Name <b>Rick Sangder</b>	Contact Phone <b>360 537 3228</b>	
<b>Estimated Costs</b> This estimate is based on the best available information to date and includes WSDOT's Indirect Cost Rate		<b>\$17,500</b>	Surety Amount \$ <input checked="" type="checkbox"/> Not Applicable
SR <b>101</b>	MP <b>83 - 85</b>	Project Name <b>US 101 Aberdeen restriping project</b>	
<b>Detailed Description of Work by WSDOT</b>			
Project Review <input type="checkbox"/> Inspection <input type="checkbox"/> Other (see description of work) <input checked="" type="checkbox"/>		<b>Region Striping for the restriping of the US 101 couplets to cover costs above and beyond normal maintenance striping.</b>	

This AGREEMENT is made and entered into by and between the Washington State Department of Transportation, hereinafter the "WSDOT," and the above named "APPLICANT OR LOCAL AGENCY", hereinafter "ENTITY,"

WHEREAS, the ENTITY has requested WSDOT to perform the above described work, and WSDOT is authorized and willing to perform the work, and

WHEREAS, the ENTITY is responsible for the costs associated with the work,

NOW THEREFORE, pursuant to the terms, conditions and performances contained herein and/or attached hereto, and by this reference made a part of this Agreement, it is mutually agreed between the Parties hereto as follows:

**1. GENERAL**

1.1 The WSDOT agrees to perform the above described work requested by the ENTITY, using state labor, equipment and materials.

1.2 To secure payment of the potential costs incurred in the review process, WSDOT requests that a Surety Amount in the form of Bond, Assignment of Escrow, Irrevocable Letter of Credit, Check or Money Order in the amount listed above accompany the endorsed original copy of this Agreement.

1.3 All WSDOT reviews, and/or inspections provided by WSDOT are solely for the benefit of WSDOT and not for the ENTITY or any other third party.

## **2. PAYMENT**

2.1 The ENTITY, in consideration of the faithful performance of the work by WSDOT, agrees to reimburse WSDOT for the actual direct and related indirect costs associated with the work, including WSDOT's current administrative indirect cost rate.

2.2 The ENTITY agrees to make payment for the work by WSDOT within thirty (30) calendar days from receipt of billing from WSDOT.

2.3 The ENTITY agrees that if it fails to make payment within thirty (30) calendar days of the invoice, the WSDOT may charge interest in accordance with RCW 43.17.240 and may elect to send the outstanding invoice(s) to a WSDOT contracted collection agency resulting in the assessment of additional fees and/or penalties.

2.4 Upon payment of all WSDOT invoices by ENTITY, WSDOT will release rights of remaining Surety Amount.

## **3. INCREASE IN COST**

3.1 The Parties agree that the estimated cost of the work may be exceeded by up to twenty-five (25) percent. In the event costs exceed the estimated costs by more than twenty-five (25) percent the Parties agree to modify the estimated cost of work by written amendment, signed by both Parties.

## **4. ASSIGN ENT**

4.1 This Agreement, and any claim arising under this Agreement, shall not be assignable or delegable by either Party, either in whole or in part.

## **5. INDE NIFICATION**

5.1 The ENTITY shall defend, protect and hold harmless WSDOT, its officers, officials, employees, and/or agents from and against all claims, suits or actions arising from the negligent acts or omissions of ENTITY, its officers, officials, employees, assigns, contractors, sub-contractors, tenants, sub-tenants, licensees, invitees and/or agents while performing under the terms of this Agreement. This defense and indemnity obligation shall not include such claims, actions, costs, damages, or expenses which may be caused by the sole negligence of WSDOT, its officers, officials, employees, contractors, sub-contractors and/or agents; provided, however, that if the claims, suits or actions are caused by or result from the concurrent negligence of (a) WSDOT, its officers, officials, agents, contractors, sub-contractors or employees and (b) the ENTITY, its officers, officials, employees, assigns, contractors, sub-contractors, tenants, sub-tenants, licensees, invitees and/or agents, or involves those actions covered by RCW 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the ENTITY or its officers, officials, employees, assigns, contractors, sub-contractors, tenants, sub-tenants, licensees, invitees and/or agents. ENTITY specifically assumes potential liability for the actions brought by ENTITY'S employees and solely for the purposes of this indemnification and defense, ENTITY specifically waives any immunity it may be afforded in connection with such claims under the State industrial insurance law, Title 51 RCW. ENTITY recognizes that this waiver was the subject of mutual negotiations.

## **6. A END ENT**

6.1 This Agreement may be amended by the mutual agreement of the Parties. Such amendments shall not be binding unless they are in writing and signed by persons authorized to bind each of the Parties.

## **7. TERMINATION**

7.1 Either Party may terminate this Agreement, with or without cause, by providing written notice to the other of such termination and specifying the effective date thereof at least thirty (30) calendar days before the effective date of such termination. The ENTITY will reimburse WSDOT for all charges up to the date of termination.

## **8. DISPUTES**

8.1 The Parties shall work collaboratively to resolve disputes and issues arising out of, or related to this Agreement. Disagreements shall be resolved promptly and at the lowest level of hierarchy.

8.2 In the event that a dispute arises under this Agreement which cannot be resolved as outlined in Section 8.1 between the Parties, the dispute will be settled in the following manner: Each Party will appoint a member to a dispute board. The members so appointed will jointly appoint a third member to the dispute board who is not employed by or affiliated in any way with either Party. The dispute board will evaluate the facts, contract terms, and applicable statutes and rules and make a determination of the dispute. The determination of the dispute board will be final and binding on the Parties. Any costs associated with appointing the third member will be equally shared between the Parties. Each Party shall be responsible for its own costs, including attorneys fees.

8.3 The Parties agree that any legal action to enforce any right or obligation under this Agreement may only be brought in Thurston County Superior Court.

## **9. TERM OF AGREEMENT**

9.1 The term of the Agreement shall begin upon the date of execution and shall remain in effect until WSDOT has completed the above described work and the ENTITY has made full payment, whichever comes last, unless modified according to Section 6, "AMENDMENT," above.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date last signed by the PARTIES below.

**ENTITY**

**WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION**

Signature:

Printed:

*Bill Sim*

Title:

*a r*

Date:

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

TIN:

*-60*

OR

Social Security Number:

\_\_\_\_\_

**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

MR. MAYOR:

THE MEMBERS OF  
YOUR COMMITTEE ON: Public Works and the Public Works Director

TO WHOM IT WAS REFERRED: State of Washington Transportation Improvement Board  
(TIB) Relight Washington Grant

REPORTS AS FOLLOWS: The City of Aberdeen has been selected by the State of Washington Transportation Improvement Board's Relight Washington Program and has been awarded a grant in the amount of \$168,197. This program aims to reduce the City's streetlight operating costs while saving energy and renewing dated infrastructure by converting existing metered streetlights to energy efficient LED streetlights. The City will benefit from lower rates after installation. The total cost of the project is \$261,197 which includes the \$168,197 from this grant and a \$93,000 rebate from GH PUD. The funds will be used for purchasing the supplies needed for this project. GH PUD will be responsible for installing the new LED streetlights and will subsequently be reimbursed from TIB for their services.

THEREFORE, IT IS RECOMMENDED: That the City Council authorize the Mayor to sign the attached grant agreement and authorize staff to begin work along with GH PUD on the Relight Project, subject to the review and approval of the TIB.

\_\_\_\_\_  
Rick Sangder  
Deputy Public Works Director

Reported \_\_\_\_\_, 2015

Adopted \_\_\_\_\_, 2015

\_\_\_\_\_  
Kathi Hoder, Chair

\_\_\_\_\_  
Margo Shortt, Vice-Chair

\_\_\_\_\_  
Doug Paling, Member

\_\_\_\_\_  
Alan Richrod, Member



City of Aberdeen  
S-W-189(001)-1  
LED Streetlight Conversion

STATE OF WASHINGTON  
TRANSPORTATION IMPROVEMENT BOARD  
AND  
CITY OF ABERDEEN  
GRANT AGREEMENT

THIS GRANT AGREEMENT ("Agreement") is made and entered into between the WASHINGTON STATE TRANSPORTATION IMPROVEMENT BOARD ("TIB") and the CITY OF ABERDEEN, a Washington state municipal corporation ("RECIPIENT").

WHEREAS, the TIB has developed a grant program, Relight Washington, to provide for the conversion of standard streetlights to LED lighting ("Project") for eligible cities and towns to reduce municipal electrical costs, and

WHEREAS, the above-identified city is eligible to receive a Project grant and attests that it has the legal authority to receive such grant and to perform the Project pursuant to the terms of this grant,

NOW, THEREFORE, pursuant to chapter 47.26 RCW and chapter 479 WAC, the above recitals that are incorporated herein as if fully set forth below, and in consideration of the terms, conditions, and performances contained herein, and the attached Exhibits, if any, which are made a part hereof,

IT IS UTUALLY AGREED AS FOLLOWS:

1. GRANT

TIB agrees to grant funds in the amount of ONE HUNDRED SIXTY-EIGHT THOUSAND ONE HUNDRED NINETY-SEVEN AND 00/100 dollars (\$168,197) for the Project pursuant to terms contained herein, and the RECIPIENT agrees to accept such grant funds and agrees to perform and be subject to the terms and conditions of this Agreement.

2. USE OF TIB GRANT FUNDS

TIB grant funds may come from Motor Vehicle Fuel Tax revenue. Any use of these funds for anything other than for highway or street Project improvements is prohibited and shall subject the RECIPIENT to the terms, conditions and remedies set forth in Section 9.

3. PROJECT AND BUDGET

The Project shall provide for the conversion of identified streetlights within RECIPIENT's city limits. The RECIPIENT agrees to enter into an agreement with or otherwise provide for a service provider to perform the actual conversion work. The RECIPIENT further agrees that it shall be solely responsible for and shall pay its service provider's invoices for costs of the work. The Project and Budget may be amended by the Parties, pursuant to Section 6.



#### 4. PROJECT DOCUMENTATION

The RECIPIENT agrees to and shall make reasonable progress and submit timely Project documentation, as applicable, throughout the term of this Agreement and Project.

Required documents include, but are not limited to the following:

- a) Documentation to support all costs expended for the Project.
- b) Project Closeout Form.

#### 5. BILLING AND PAYMENT

The RECIPIENT may submit progress payment requests to the TIB as necessary. If billable amounts are greater than \$50,000, RECIPIENT shall submit requests for payments on a quarterly basis. If progress payments are not regularly requested, reimbursements may be delayed or scheduled in a to be determined payment plan.

#### 6. RECORDS MAINTENANCE

6.1 The RECIPIENT shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the Project work described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. RECIPIENT shall retain such records for a period of six years following the date of final payment. At no cost to TIB, these records shall be provided when requested, including materials generated under the Agreement, and shall be subject at all reasonable times to inspection, review or audit by TIB personnel, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

6.2 If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

#### 7. INCREASE OR DECREASE IN TIB GRANT FUNDS

RECIPIENT may request an increase in the TIB grant funds for the Project. Requests must be made in writing and will be considered by TIB and awarded at the sole discretion of TIB. An increase in grant funds shall be by amendment pursuant to Section 14. If an increase is denied, the recipient shall be solely liable for costs incurred in excess of the Agreement grant amount.

#### 8. TERM OF AGREEMENT

This Agreement shall be effective upon execution by the Parties and shall continue through closeout of the grant amount, or modification thereof, or unless terminated as provided herein. In no event shall the Agreement term exceed two years, unless extended by Agreement amendment pursuant to Section 14.



## 9. DEFAULT AND TERMINATION

### 9.1 NON-COMPLIANCE

- a) In the event TIB determines, in its sole discretion, the RECIPIENT has failed to comply with the terms and conditions of this Agreement, TIB shall notify the RECIPIENT, in writing, of the non-compliance.
- b) RECIPIENT shall provide a written response within ten (10) business days of receipt of TIB's notice of non-compliance, which shall include either a detailed plan to correct the non-compliance, a request to amend the Project, or a denial accompanied by supporting details. An agreement to amend the Project must be pursuant to Section 14.
- c) RECIPIENT shall have thirty (30) days in which to make reasonable progress toward compliance pursuant to its plan to correct or implement an amendment to the Project.
- d) Should RECIPIENT dispute non-compliance, TIB will investigate the dispute and may withhold reimbursement payments or prohibit the RECIPIENT from incurring additional reimbursable costs during the investigation.

### 9.2 DEFAULT

RECIPIENT may be considered in default if TIB determines, in its sole discretion, that:

- a) RECIPIENT is not making reasonable progress toward correction and compliance.
- b) TIB denies the RECIPIENT's request to amend the Project.
- c) After investigation, TIB confirms RECIPIENT'S non-compliance.

TIB reserves the right to order RECIPIENT to immediately stop work on the Project and TIB may stop Project progress payments until the requested corrections have been made or if the Agreement is terminated.

### 9.3 TERMINATION

- a) In the event of default as determined pursuant to Section 9.2, TIB shall serve RECIPIENT with a written notice of termination of this Agreement, which may be served in person, by email or by certified letter. Upon service of notice of termination, the RECIPIENT shall immediately stop work and/or take such actions necessary as may be directed by TIB.
- b) In the event of default and/or termination, the RECIPIENT may be liable for damages as authorized by law including, but not limited to, repayment of grant funds.
- c) The rights and remedies of TIB provided in this Agreement are not exclusive and are in addition to any other rights and remedies provided by law.

### 9.4 TERMINATION OR SUSPENSION FOR NECESSITY

TIB may, with ten (10) days written notice, terminate or suspend this Agreement, in whole or in part, because funds are no longer available for the purpose of meeting TIB's obligations. If this Agreement is so terminated, TIB shall be liable only for payment required under this Agreement for Project work performed or costs incurred prior to the effective date of termination.



## 10. DISPUTE RESOLUTION

- a) The Parties shall make good faith efforts to quickly and collaboratively resolve any dispute arising under or in connection with this Agreement. The dispute resolution process outlined in this Section applies to disputes arising under or in connection with the terms of this Agreement.
- b) Informal Resolution. The Parties shall use their best efforts to resolve disputes promptly and at the lowest organizational level.
- c) In the event that the Parties are unable to resolve the dispute, the Parties shall submit the matter to non-binding mediation facilitated by a mutually agreed upon mediator. The Parties shall share equally in the cost of the mediator.
- d) Each Party agrees to participate to the fullest extent possible in resolving the dispute in order to avoid delays or additional incurred cost to the Project.
- e) The Parties agree that they shall have no right to seek relief in a court of law in accordance with Section 11 until and unless the Dispute Resolution process has been exhausted.

## 11. GOVERNANCE, VENUE, AND ATTORNEYS FEES

This Agreement shall be construed and interpreted in accordance with the laws of the state of Washington and venue of any action brought hereunder shall be in the Superior Court for Thurston County. The Parties agree that each Party shall be responsible for its own attorneys' fees and costs.

## 12. INDEMNIFICATION, HOLD HAR LESS, AND WAIVER

12.1 Each Party, shall protect, defend, indemnify, and save harmless the other Party, its officers, officials, employees, and authorized agents, while acting within the scope of their employment as such, from any and all costs, claims, judgments, and/or awards of damages (both to persons and/or property), arising out of, or in any way resulting from, a Party's own negligent acts or omissions which may arise in connection with its performance under this Agreement. No Party will be required to indemnify, defend, or save harmless the other Party if the claim, suit, or action for injuries, death, or damages (both to persons and/or property) is caused by the sole negligence of the other Party. Where such claims, suits, or actions result from the concurrent negligence of the Parties, the indemnity provisions provided herein shall be valid and enforceable only to the extent of a Party's own negligence.

12.2 Each Party agrees that its obligations under this section extends to any claim, demand and/or cause of action brought by, or on behalf of, any of its officers, officials, employees or authorized agents. For this purpose, each Party, by mutual negotiation, hereby waives, with respect to the other Party only, any immunity that would otherwise be available to it against such claims under the Industrial Insurance provision of Title 51 RCW.

12.3 The obligations of this indemnification and waiver Section shall survive termination of this Agreement.



**RESOLUTION No. 2015 - \_\_\_\_\_**

**A RESOLUTION AUTHORIZING EXECUTION OF A PROFESSIONAL SERVICES AGREEMENT WITH FORTERRA NW TO PROVIDE THE CONSULTING SERVICES IN THE SCOPE OF WORK ADOPTED BY THE INTERLOCAL AGREEMENT BETWEEN THE CITIES OF ABERDEEN AND HOQUIAM FOR JOINT DEVELOPMENT OF A MASTER PLAN ADDRESSING FLOODING ISSUES INCORPORATING THE WATERSHEDS OF THE CHEHALIS, WISHKAH, AND HOQUIAM RIVERS AND THE GRAYS HARBOR ESTUARY**

**BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF ABERDEEN:** the Mayor is authorized to execute the attached professional services agreement with Forterra NW.

**PASSED and APPROVED** on \_\_\_\_\_ 2015.

\_\_\_\_\_  
Bill Simpson, Mayor

ATTESTED:

\_\_\_\_\_  
Kathryn Skolrood, Finance Director

## PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (the "Agreement") is entered into by and between the city of Aberdeen, a Washington municipal corporation ("City") and Forterra NW, a Washington nonprofit corporation ("Consultant"). This Agreement is dated for reference purposes this 21<sup>st</sup> day of December, 2015.

1. Scope of Agreement. City engages Consultant to provide consulting services for City, including but not limited to those services described in Exhibit A, attached hereto and incorporated herein by this reference, hereafter the "Scope of Work."

2. Responsibilities of Consultant. Consultant shall report to the Community Development Director of City. Consultant agrees to provide services set forth in the Scope of Work . Jordan Rash will be Consultant's project lead under this Agreement, and all of Consultant's work for City will be made by Jordan Rash or under his/her supervision and subject to his/her approval.

3. Independent Consultant Status. Consultant acknowledges and agrees that Consultant is an independent Consultant and not an agent or an employee of City. Consultant's methods and techniques shall be in accordance with good and reputable business practices. Consultant acknowledges that Consultant is responsible to pay and agrees to pay any and all applicable federal and state self-employment taxes, business taxes and/or fees in connection with his activities under this Agreement, and that Consultant will abide by all applicable federal, state, and local laws in connection with the services provided.

4. Compensation and Payment. City shall pay Consultant up to Two-Hundred Fifty-Thousand Dollars (\$250,000.00) for Consultant's performance under this Agreement, as stated in the Budget included in the Scope of Work, from grant funds to be received from Grays Harbor County. Consultant shall submit invoices on a quarterly basis, and payment shall be made to Consultant within thirty days of receipt of invoice. The total paid to Consultant under this Agreement shall not exceed Two-Hundred Fifty-Thousand Dollars (\$250,000.00), unless excess payments are approved in advance by City.

5. Agreement Term. The term of this Agreement shall be from December 21, 2015 through October 31, 2016. This Agreement may be amended only by written amendment mutually executed by the parties.

6. Office Space. Consultant will supply its own office space, equipment, and administrative support for its work under this Agreement.

7. Indemnification. Consultant agrees to defend, indemnify and hold harmless City, its officers, directors, employees, agents, and affiliates (collectively, the "City Indemnitees" under this paragraph) from and against any and all third-party claims, lawsuits and demands and the associated liabilities, damages, costs and expenses (including reasonable attorneys' fees) (the "Claims") arising from bodily injury, death, or property damage, caused by any negligent act, omission, or failure of Consultant or its officers, directors, employees, or agents under this Agreement.

ORIGINAL

8. Termination. Either party may terminate this Agreement, with or without cause, upon 30 day's written notice to the other party. Upon termination of this Agreement, Consultant shall be entitled to receive payment for services rendered through the last day of its engagement under this Agreement. All other rights and obligations under this Agreement shall cease except for the rights and obligations of the parties under Paragraph 7 and all procedural and remedial provisions of this Agreement.

9. Work Products. All work products generated by Consultant under this Agreement shall be owned by the city of Aberdeen and the city of Hoquiam, jointly and severally, during and upon conclusion of the term of this Agreement. Use, distribution and publication of all work products are the sole responsibility of each city, whether acting jointly or independently.

10. Notices.

Notices to City shall be sent to the following address:

City of Aberdeen  
Attn: Lisa Scott, Community Development Director  
200 East Market Street  
Aberdeen, WA 98520

Notices to the Consultant shall be sent to the following address:

Forterra  
Attn: Darcey Hughes  
901 5th Avenue, Suite 2200  
Seattle, WA 98164

11. Subcontracting and Assignment. Consultant may subcontract portions of the Scope of Work as specifically contemplated in the Scope of Work, and may otherwise subcontract portions of the Scope of Work with the prior written permission of City. Consultant shall not assign this Agreement without the prior written permission of City.

12. Governing Law. This Agreement and all issues relating to its validity, interpretation, and performance shall be governed by and interpreted under the laws of the State of Washington. Venue is Grays Harbor County for disputes.

13. Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable, such provision shall be fully severable and the remainder of this Agreement shall remain in full force and effect.

14. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of each party hereto and each party's respective successors, heirs, assigns, and legal representatives.

15. Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to its subject matter and supersedes all prior agreements and

understandings, whether written or oral, relating to its subject matter. No amendment, modification, or termination of this Agreement shall be valid unless made in writing and signed by each of the parties. [ADD counterparts provision in additional section if desired]

Executed on the 21<sup>st</sup> day of December, 2015

CITY OF ABERDEEN

FORTERRA

\_\_\_\_\_  
Bill Simpson, Mayor

\_\_\_\_\_  
By:

Title:

Attest:

EIN:

\_\_\_\_\_  
Kathryn Skolrood, Finance Director

**EXHIBIT A:  
SCOPE OF WORK**

# CITY OF ABERDEEN COMMITTEE REPORT

**MR. MAYOR:**

**Hon. William Simpson**

**THE MEMBERS OF  
YOUR COMMITTEE ON:**

**Public Safety and Chief of Police**

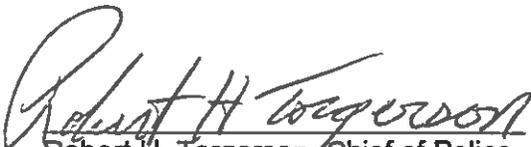
**IN REFERENCE TO:**

**Acceptances of Funds for use for Canine  
Program**

**Report and recommend as follows:**

The Aberdeen Police Department has received funds from the Tamaki Foundation in the amount of \$15,000. This is the annual maintenance fee for Titus for budget year 2016.

It is our recommendation that the City of Aberdeen accepts this generous donation from the Tamaki Foundation and dedicates the use of the funds only for the Police Canine Program.

  
Robert H. Torgerson, Chief of Police

Reported: December 21, 2015

Adopted: December 21, 2015

\_\_\_\_\_  
Tawni Andrews, Chair

\_\_\_\_\_  
Alice Phelps

\_\_\_\_\_  
Jerry Mills

\_\_\_\_\_  
James Cook

**THE TAMAKI FOUNDATION**

**PRESIDENT**  
Meriko Tamaki

4616 25<sup>th</sup> Ave NE  
Suite 37  
Seattle, WA 98105

**BOARD OF DIRECTORS**  
David Tredway, Esq.  
Fr. John Martin, S.J.  
Steven Boyd, Esq.

December 9, 2015

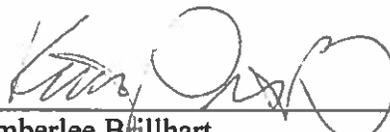
Chief Robert H. Torgerson  
Aberdeen Police Department  
210 East Market Street  
Aberdeen, Washington 98520

Dear Chief Torgerson:

On behalf of Ms. Tamaki and the board of directors of The Tamaki Foundation, please find enclosed \$15,000 for the annual maintenance for the K-9 program for 2016.

This payment is the final payment of our four year commitment. The Tamaki Foundation has been pleased to support your K-9 program, and send our sincere wishes to your K-9 team for a happy holiday season.

Sincerely,

  
\_\_\_\_\_  
Kimberlee Brillhart  
Administrative Assistant, The Tamaki Foundation

LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN

Mayor: Hon. Bill Simpson

The Members of  
Your Committee On: Personnel

To Whom Was Referred: Proposed Change to Policy 11.40 regarding the City's  
Policy Against Harassment

*Reports and Recommends as Follows:* On December 17, 2015, members of the Personnel Committee met and discussed changes Policy 11.40 regarding the City's policy against harassment.

This policy has been recommend for updating by the City's liability insurance provider, WCIA. The proposed revisions are modeled after their sample policy language. The revisions include providing at least two routes for reporting harassment and more clearly defining the responsibilities of receiving and investigating a complaint.

The unions were notified of this policy revision on Tuesday, December 8, 2015.

It is recommended that the City Council adopt the attached revisions to City Personnel Policy 11.40 effective immediately.

  
\_\_\_\_\_  
Debbie Lund  
Human Resources Director

PERSONNEL COMMITTEE

  
\_\_\_\_\_  
Bill Simpson, Chairman

Reported: December 21, 2015

\_\_\_\_\_  
Peter Schave, Council President

Adopted: \_\_\_\_\_, 2015

  
\_\_\_\_\_  
Tim Alstrom, Member

## 11.40 Policy ~~Concerning~~ Against Unlawful Harassment.

### A. Purpose.

To establish a policy and procedure defining the City's position on harassment and providing guidance to any employee who believes he or she has been exposed to harassment by another employee of the City of Aberdeen.

### B. Applicability.

This policy shall be followed by all City departments and divisions.

### C. Policy.

It is the policy of the City of Aberdeen to provide a work environment for its employees which is ~~harmonious and~~ free from ~~intimidation~~ unlawful harassment. ~~Toward this end, the~~ The City will not tolerate any form or degree of harassment ~~because of~~ based on race or ethnic background, gender, ~~including sexual harassment,~~ national origin, religion, age, marital status, pregnancy or maternity status, sexual orientation, gender identity, genetic information, disability, or veteran status and any other class protected by federal, state, or local law. Prompt investigation of harassment complaints shall be undertaken and appropriate disciplinary action, up to and including termination, shall be taken against any employee who is found guilty of any form of unlawful harassment.

### D. Definitions.

1. Harassment (non-sexual): Verbal or physical ~~intentional effort~~ conduct ~~to that~~ denigrates ~~another such as innuendoes, ridicule, slurs, intimidation, jokes, gestures, threats or spreading rumors arising out of dislike, or shows~~ hostility or aversion, antagonism, insensitivity, or lack of respect for other toward an individual ~~because of race or ethnic background, gender, religion, age, disability, or veteran status~~ based on the individual's protected status or characteristics that:
  - a) Has the purpose or effect of creating an intimidating, hostile, or offensive work environment; or
  - b) Has the purpose or effect of unreasonably interfering with an individual's work or performance; or
  - c) Otherwise adversely affects an individual's employment opportunities

The City's prohibition on unlawful harassment encompasses conduct at work, as well as off-duty behavior that adversely affects the work environment.

Examples of behavior that could constitute or contribute to harassment include but are not limited to: using epithets, slurs, or negative stereotypes; threatening, intimidating, or engaging in hostile acts that relate to protected status or characteristics such as those referred to above; jokes or pranks that refer to or denigrate a protected status; or placing on walls, bulletin boards, or elsewhere on the work premises or circulating in the workplace written, electronically transmitted or graphic material that denigrates or

shows hostility or aversion toward a person or group because of a protected characteristic.

2. **Sexual Harassment:** Sexual harassment is unwelcome behavior of a sexual nature that affects terms and conditions of employment, including unsolicited, unwelcome sexual conduct or advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that interferes with an employee's work performance, or that creates an intimidating, hostile, or offensive working environment. Sexual harassment also includes conduct that links favorable treatment in employment to sexual favors. It also can involve unwelcome touching or other physical contact and/or verbal conduct, such as requests for sexual favors, repeated use of lewd remarks and "off-color" jokes and posting in the work place of cartoons and pictures of a sexual nature.

Examples of behavior that constitutes or contributes to sexual harassment include:

- a) Unwelcome or unwanted flirtations, propositions, or advances. This includes patting, pinching, brushing up against, hugging, cornering, kissing, fondling, putting ones arm around another, or any other similar physical contact considered unacceptable by another individual.
- b) Requests or demands for sexual favors. This includes subtle or blatant expectations, pressures, or requests for any type of sexual favor accompanied by an implied or stated promise of preferential treatment or negative consequences concerning an individual's employment.
- c) Verbal abuse or kidding that is sexually oriented and considered unacceptable by another individual. This includes comments about an individual's body or appearance when such comments go beyond an isolated innocuous compliment; off-color jokes or offensive language; or any other tasteless, sexually oriented comments, innuendoes, or offensive actions, including leering, whistling, or gesturing.
- d) Participation in fostering a work environment that is generally intimidating, hostile, or offensive because of unwelcome or unwanted sexually oriented conversation, office décor, suggestions, requests, demands, physical contacts, or attention.

#### **E. Procedure for Reporting and Investigating Harassment.**

An employee who feels harassed should immediately ask the offending individual to stop. If that does not work or if the employee is uncomfortable confronting the offending individual, the employee should report the incident promptly. A complaint can be made orally or in writing to the Human Resources Director. In the alternative, as the employee may wish, the complaint may be brought to the attention of the Mayor or Corporation Counsel. If an employee brings the complaint to the attention of another supervisor or manager, the supervisor or manager is obligated to report the complaint in compliance with this policy.

~~In any case in which a supervisor is witness to or confronted with a situation of harassment, the supervisor shall immediately notify the offending party that harassment is not appropriate and will not be tolerated. Ultimate disciplinary action will await~~

~~completion of the reporting procedure.~~

~~If an employee believes he or she is a victim of harassment, the following complaint and investigation procedure should be observed.~~

A harassment complaint will be handled as follows:

- ~~1. Bring the matter to the attention of the immediate, non-involved supervisor. Include the specific allegation, the date(s) the incident occurred, the individuals involved, and any witnesses. A non-involved supervisor is defined as the first person in an employee's chain of command who is not the object of the complaint of harassment.~~ Every complaint is to be reported promptly to the Human Resources Director (or to the Mayor or Corporation Counsel as provided for above) either by the complainant or by the person receiving the complaint. If reported verbally, the person taking the complaint should produce a written statement for the complainant to review and sign.

The written statement should contain as much of the following information as possible.

- The name of the person(s) who the complainant believes have engaged in unlawful harassment,
  - Description of what occurred (what was done or said),
  - Date and time the incident occurred,
  - Names of witnesses, if any,
  - The action(s) of the complainant before, during and after the incident, and
  - Whether or not any hardcopy or electronic documents (e.g. emails, memos, text messages) exist that relate to the incident(s),
  - Name and signature of complainant,
  - Date of the complaint, and
  - Any other information the complainant feels is relevant.
- ~~2. The non-involved supervisor is required to report harassment complaints to his or her department head who, in turn, is required to consult the Human Resources Director and Corporation Counsel.~~ The complaint will be investigated in a timely manner to determine if it has merit. Choice of investigator, level of formality, and the procedures used in the investigation may vary, depending upon the nature of the allegations and full circumstances of the situation, including the context in which the alleged incidents occurred.
  3. Confidentiality will be maintained throughout the investigatory process to the extent practical and consistent with the City's need to undertake a full investigation.
  4. There shall be no retaliation by the City, its officers, elected officials, supervisors, or other employees toward any employee bringing a complaint in good faith or cooperating with the investigation of a harassment complaint.
  5. Where the investigation confirms the allegations, the City will take prompt corrective

action and, where appropriate, discipline the offending individual. Discipline may include verbal and written reprimands, professional counseling, reassignment, or other appropriate action, up to and including termination. The affected individuals will be informed of the outcome of the investigation.~~If the complaint is founded, the department head shall take disciplinary action up to and including termination and inform both the complainant and the offender of the results of the investigation and of the nature of the disciplinary action.~~

- ~~3. Either party may appeal the decision to the Mayor if it is felt that the findings were incorrect or the disciplinary action inappropriate. If a matter is appealed, the Mayor shall consult with the Human Resources Director and Corporation Counsel concerning review of the department head's decision. The Mayor will render a decision and inform all parties of the same.~~
- ~~4. If either party then objects to the Mayor's decision, the matter will be referred to a mutually agreeable arbitrator for review and final decision.~~
- ~~5. Note: If a department head is the subject in a complaint of harassment, the matter should be referred to the Human Resources Director immediately. The Human Resources Director will consult with the Corporation Counsel and the Mayor will be advised. The Mayor or Mayor's designee will be responsible for the investigation and determination.~~
6. Employees who bring complaints may be subject to discipline only if the investigation reveals the complaint was made in bad faith (i.e., statements that were known to be false at the time they were made).

#### **F. Informal Inquiries Responsibility for Enforcement.**

The Human Resources Director shall be responsible for disseminating information on the this policy, for developing training programs and guidelines for preventing sexual or other forms of harassment, and for investigating and resolving allegations of harassment.

All officers, supervisors, and managers (generally, "supervisors") are assigned responsibility for implementing this policy, ensuring compliance with and knowledge of its terms, and for taking immediate and appropriate corrective action if they witness inappropriate behavior or receive a complaint. Supervisors must open and maintain channels of communication to permit employees to raise concerns of sexual or other workplace harassment without fear of retaliation, stop any observed harassment, and treat harassment matters with sensitivity, confidentiality, and objectivity.

A supervisor's failure to carry out these responsibilities may result in disciplinary action up to and including discharge.

~~Nothing in this policy shall prevent an employee from informally discussing any problem of harassment or any other discriminatory activity with any supervisor or department head in his or her chain of command. Additionally, the employee may bring the matter to~~

the attention of the Human Resources Director. The Human Resources Director will keep all informal inquiries in confidence.

**G. Non-Retaliation:**

Employees who report harassment shall not be subjected to any form of retaliation. Any employee responsible for any form of retaliatory conduct shall be subject to disciplinary action up to and including termination.

**H. Confidentiality /Recordkeeping:**

No one other than those necessarily involved will be contacted during the investigation of a complaint. Records about the complaint and the investigation will be kept in a separate affirmative action file, not in the personnel file.

**I. Outside Agencies:**

It is the right of all employees to seek at any time redress by the Washington State Human Rights Commission, or Equal Employment Opportunity Commission, or through a court of law. The City encourages employees to exhaust the administrative remedies in this policy before outside agencies are consulted.

**LEGISLATIVE DEPARTMENT  
CITY OF ABERDEEN**

**Mayor:** Hon. Bill Simpson

**The Members of  
Your Committee On:** Personnel

**To Whom Was Referred:** Proposed Revisions and additions to personnel policies related to Attendance and Leaves

*Reports and Recommends as Follows:* On December 17, 2015, members of the Personnel Committee met and discussed revisions and additions to the personnel policies related to Attendance and Leaves as outlined below: ~

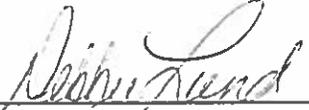
<b>Section</b>	<b>Review of proposal</b>
1.50 Definitions	“Registered domestic partner” is a term used in Washington state law related to leave and included in newly proposed personnel policies. Members of the opposite sex, where one person is 62 or older, can still be domestic partners, which state law considers equivalent to a spouse.
8.40 Vacation Leave	Aberdeen Municipal Code provides for cashout of vacation leave only after 12 months. Also including references to two newer laws allowing the use of vacation leave.
8.50 Sick Leave	(Section A) All contracts and benefit ordinances contain language for maximum accrual, therefore, this proposal removes the number from this policy.  (Section B) Moved language previously in Section D to this section. Removed requirement for minimum of one hour sick leave for appointments to reflect current practice of recording just the time needed to cover the absence. Also included references to two newer laws allowing the use of paid sick leave.
8.55 Domestic Violence Leave	New policy. This became state law in 2008.
8.75 Family Military Leave	New policy. This became state law in 2008.
8.85 Volunteer Emergency Services Personnel Leave	New policy. This became state law in 2010.
8.100 Maternity Disability Leave	Relatively minor change to keep us in compliance with the Washington Law Against Discrimination. Doctors determine the timeframe for recovery from childbirth, not the employer.

Section	Review of proposal
8.110 Family and Medical Leave (FMLA)	<p>This is a major re-write, but is needed to comply with the 2012 federal law changes. The 2012 changes included Military Caregiver Leave and Call to Active Duty Leave as part of FMLA. 2012 also changed the definition of "serious health condition".</p> <p><u>One new proposal not addressed in the law is located in section "K".</u> If someone is in unpaid leave status, the question will arise about how to treat a holiday that falls in the middle of the unpaid leave. This proposal describes when a holiday would be paid.</p> <p>The other changes are for re-organization or re-formatting of the policy.</p>
8.120 Washington State Family Leave Act	New policy. This law was largely replaced by the federal FMLA law, but there are still some very narrow circumstances in which the state law might apply. This policy is proposed to ensure that we don't forget about this law in those situations.
8.130 Washington State Family Care Act	New policy. In 2003 the state law regarding family care was expanded. This law generates a lot of questions, having it in City policy will be beneficial.

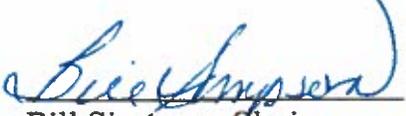
The City of Aberdeen has been in compliance with the "new" state laws, but they were not contained within the personnel policies. The addition of these laws to city policies makes it easier for employees, managers, and human resources to navigate the complex web of intertwined leave laws by having them all in the policy manual.

The unions were notified of this proposal on Tuesday, December 8, 2015.

It is recommended that the City Council adopt the attached revisions and additions to City personnel policies effective immediately.

  
 Debbie Lund  
 Human Resources Director

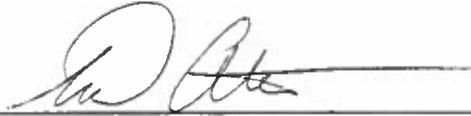
**PERSONNEL COMMITTEE**

  
 Bill Simpson, Chairman

Reported: December 21, 2015

  
 Peter Schave, Council President

Adopted: \_\_\_\_\_, 2015

  
 Tim Alstrom, Member

Addition to 1.50 Definitions

**Registered Domestic Partner.** Domestic partners who meet the qualifications of RCW 26.60.030 and who are registered with the Office of the Secretary of State.



#### **8.40 Vacation Leave.**

Annual vacation leave shall be earned as provided in City benefit ordinances or the appropriate labor agreement. No vacation time shall accrue in excess of the maximum provided in the appropriate ordinance or labor agreement except when the employer requests the employee not to take his or her vacation time.

After the first ~~six~~-twelve months of employment, the City is obligated to compensate any employee for any unused accumulated vacation time prior to retirement or termination.

The method of scheduling and time of taking vacations shall be determined by the department head. Vacation leave taken as part of Domestic Violence Leave is subject to the provisions of Section 8.55 of these policies. Vacation leave taken as part of Family Care Leave is subject to the provisions of Section 8.130 of these policies.



## **8.50 Sick Leave.**

### **A. Accrual Rate/Cap.**

Employees entitled to sick leave shall accrue one day of sick leave for each month of employment. Sick leave can be accumulated up to ~~960 hours unless a different period~~ is the number of hours provided by ordinance or the appropriate labor agreement.

If an employee has used all of his or her accumulated sick leave, additional sick days may be charged against the employee's accumulated vacation time at the employee's option.

### **B. Eligibility.**

To be eligible ~~for to use~~ sick leave, the employee must:

1. be sick to the extent that he or she is unable to perform the job, or
2. need leave to attend a medical, dental, or vision appointment, or
3. need to use leave pursuant to Domestic Violence Leave in accordance with Section 8.55 of these policies, or
4. need to use leave pursuant to Family Care Leave in accordance with Section 8.130 of these policies.

The department head may require satisfactory proof of such ~~sickness—illness or~~ appointment before the employee can be paid for sick leave.

### **C. Recordkeeping.**

The department head shall keep accurate permanent records showing all time off taken by each employee in the department whether for vacation, sick leave or otherwise, and shall indicate on each payroll the period of absence, for any cause, of each employee; and in the case of absence on account of sickness with pay, shall certify that the employee has accumulated such sick leave. In the case of absence on account of vacation, he/she shall certify that the employee has not taken more time off than he or she is entitled.

### **~~D. Medical/Dental Appointments.~~**

~~Sick leave may be used for employee's medical and dental appointments. In any instance involving the use of a fraction of a day of sick leave, the minimum charge to the sick leave account shall be one hour. Additional employee absence over one hour shall be charged to the nearest full hour.~~

### **~~E. Family Care.~~**

~~In accordance with the laws of the State of Washington (RCW 49.12.270 and WAC 296-130-130), employees may use accrued sick leave to care for their children under the age of eighteen with a health condition that requires treatment or supervision as defined in WAC 296-130-020 (6).~~



## **8.55 Domestic Violence Leave**

In accordance with RCW 49.76, an employee who is a victim of domestic violence, sexual assault, or stalking, may take reasonable or intermittent leave, with or without pay, to take care of legal or law enforcement needs or to get medical treatment, social services assistance or mental health counseling. Employees who are family members of a victim may also take reasonable leave to help the victim obtain treatment or seek assistance.

### **A. Definitions**

For the purposes of this policy, the following definitions shall apply:

1. "Dating relationship" has the same meaning as in RCW 26.50.010 or as hereafter amended.
2. "Domestic violence" has the same meaning as in RCW 26.50.010 or as hereafter amended.
3. "Family member" includes the child, spouse, parent, parent-in-law, grandparent or person with whom the employee has a dating relationship.
4. "Intermittent Leave" has the same meanings as in RCW 49.78.020 or as hereafter amended.
5. "Sexual assault" has the same meaning as in RCW 70.125.030 or as hereafter amended.
6. "Stalking" has the same meaning as in RCW 9A.46.110 or as hereafter amended.

### **B. Notice Requirements**

As a requirement of taking leave under this section, an employee shall give his or her department head advance notice of the intention to take the leave. When advance notice cannot be given due to an emergency or unforeseen circumstance, the employee or his or her designee must give notice to department head no later than the end of the first day that the employee takes such leave.

### **C. Type of Leave**

An employee who is absent from work pursuant to this policy may elect to use his or her accrued sick leave, other paid leave, compensatory time or unpaid leave time.

### **D. Verification**

The department head may require that the request for leave be supported by verification that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes described in RCW 49.76. The need for the leave is confidential and will only be released with the employee's consent, by court or administrative agency order, or as otherwise required by law.

#### **E. Protection of position and benefits**

Upon the employee's return, the City shall either return the employee to the same position that was held prior to the leave commencing or return the employee to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. However, these restoration rights do not exist if the employee was hired for a specific term or only to perform work on a project and the project is over.

To the extent required by law, the City shall maintain coverage under any health insurance plan for an employee who takes leave under this policy. The coverage will be maintained for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had not taken the leave.

### **8.75 Family Military Leave**

In accordance with RCW 49.77, during a period of military conflict, an employee who works an average of 20 or more hours per week is entitled to leave under this section.

The employee shall be granted a total of 15 days of unpaid leave per deployment when a spouse who is a member of the armed forces of the United States, national guard, or reserves has been notified of an impending call or order to active duty or has been deployed.

An employee who seeks to take leave under this section must provide his or her department head with notice, within 5 business days of receiving official notice of an impending call or order to active duty or of a leave from deployment, of the employee's intention to take leave.

An employee who takes leave under this section may elect to substitute accrued leave, provided the use meets the criteria for such leave, for any part of the leave under this section.



## **8.85 Volunteer Emergency Services Personnel Leave**

In accordance with RCW 49.12.460, an employee who is a volunteer firefighter, reserve peace officer, or member of the Civil Air Patrol will not be subject to discipline or termination when an emergency call, fire alarm, or emergency service operation prevents them from showing up to work on time.

In the case of a volunteer firefighter working at, or returning from, a fire alarm or emergency call that causes the employee to be late or miss work, the on-scene commander must order the firefighter to remain at the scene. Training and other non-emergency activities do not qualify. Volunteer firefighters cannot be paid and must be away from their regular job when the fire alarm or emergency call comes in to qualify for this leave.

A reserve peace officer, as defined in RCW 41.24.010, must be called to an emergency to be late or miss work. A member of the Civil Air Patrol must be involved in an emergency service operation, as defined in RCW 49.12.460, to be late or miss work.

### **A. Notice Requirements**

An employee shall make every reasonable attempt to give his or her department head advance notice of the need to take leave.

### **B. Type of Leave**

An employee who is absent from work pursuant to this policy may elect to use his or her accrued vacation leave, floating holiday, compensatory time or unpaid leave time.

### **C. Verification**

The department head may require that the request for leave be supported by verification from the agency at which the employee volunteers.



### **8.100 Maternity Disability Leave.**

Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom, for all job related purposes are to be considered temporary disabilities. Accrued sick leave may be used for childbearing or related circumstances (e.g., miscarriage, abortion, or recovery therefrom). If the period of disability because of childbirth or related circumstances extends beyond the employee's accrued sick leave, she may request a leave of absence according to leave of absence policies. Nothing herein shall prevent an employee from requesting a leave of absence occasioned by childbirth beyond the actual period of disability. In any event, the employee must work out the conditions of the leave of absence with the City. To be eligible for sick leave because of childbearing or related circumstances, an employee shall give her supervisor two weeks' notice, if possible, of her anticipated date of departure and intention of return to work.

~~For the purposes of this policy a three to four week period of recovery after childbirth or related circumstances shall be considered reasonable in the absence of extenuating circumstances.~~ The actual period of disability will be determined by the employee's medical provider. Employees shall not be categorically denied the opportunity to work during the entire period of pregnancy, but may continue to work as long as the employee and her physician concurs her ability to work and the demands of the job are satisfied. Proof of the physician's concurrence shall be provided when requested by the City.



## **8.110 Family and Medical Leave.**

In accordance with the Federal Family and Medical Leave Act of 1993, the City of Aberdeen will grant job-protected unpaid family and medical leave to eligible ~~male or female~~ employees ~~for up to 12 weeks per 12 month period~~ for any one or more of the following reasons:

- ~~• Birth, adoption, or placement of foster child, under age 18;~~
- ~~• Care for an immediate family member (spouse, child, or parent) with a serious health condition; or,~~
- ~~• The employee's inability to perform the functions of his/her position due to his/her own serious health condition.~~

### **1. New Child or Health Leave:**

An employee who is eligible for Family Medical Leave (FMLA), may receive up to twelve (12) weeks of unpaid leave in a twelve (12) month period to care for:

- (a) A newborn child, newly adopted child, newly placed foster child;
- (b) a spouse, child or parent with a serious health condition; or
- (c) a personal serious health condition that leaves the employee unable to perform the essential functions of his/her job.

If both spouses are city employees, the city reserves the right to restrict family and medical leave to a total of up to twelve (12) work weeks of unpaid leave in a twelve (12) month period for the birth or adoption of a child or to care for a parent with a serious health condition. The city may opt to limit the use of the family and medical leave to one spouse at a time.

Family and medical leave taken to care for a newborn or newly adopted child must be completed within twelve (12) months of the child's birth or placement for adoption.

### **2. Military Caregiver Leave:**

An employee who is eligible for FMLA, may receive up to twenty-six (26) weeks of unpaid leave in a 12-month period to care for recovering current military service personnel (including National Guard or Reserves) who is a spouse, parent, child or next of kin who develops and is undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred in the line of duty while on active duty in the armed forces. This includes a recovering veteran discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. (The period of October 28, 2009 – March 7, 2013 is excluded from the determination of this five year period.)

### **3. Call to Active Duty Leave:**

An employee who is eligible for FMLA, may receive up to twelve (12) weeks of unpaid leave in a 12-month period when a spouse, parent, or son or daughter on covered active duty in the Armed Forces has a qualifying exigency arising out of active duty or has been notified of an impending call or order to active duty in the armed forces in support of a contingency operation.

While an employee may also take 12-weeks of leave other than military care leave, the total amount that an employee may take of both military and other FMLA leave is 26 weeks in a 12-month period.

#### **A. Definitions.**

For the purposes of this policy, the following definitions shall apply:

1. **"12-Month Period"**: a "rolling" 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken. Each time an employee takes family leave, the remaining leave entitlement would be any balance of the twelve weeks not used during the immediately preceding twelve months. For example, if an employee has taken eight weeks of leave during the past twelve months, an additional four weeks of leave could be taken.

**"Child"**: A person either under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" includes a biological, adopted, foster, stepchild, or legal ward.

**"Contingency Operation"**: Those circumstances and situations as designated so by the US Secretary of Defense.

**"Covered Active Duty"**: Duty during deployment to a foreign country if a member of a regular component of the Armed Forces; for members of a reserve component, it means duty during deployment to a foreign country under a call or order to active duty pursuant to specified provisions of federal law.

**"Eligible Employee"**: A regular employee who has worked for the City for at least twelve months and has worked at least 1,250 hours over the prior twelve months. USERRA-covered military leaves of absence are counted as time worked for purposes of determining FMLA eligibility.

- ~~2. **"12-Month Period"**: Means a "rolling" 12-month period measured from the date leave is taken and continuous with each additional leave day taken. Each time an employee takes family leave, the remaining leave entitlement would be any balance of the twelve weeks not used during the immediately preceding twelve months. For example, if an employee has taken eight weeks of leave during the past twelve months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 1994, four weeks beginning June 1, 1994, and four weeks beginning December 1, 1994, the employee would not be entitled to any additional leave until February 1, 1995. However, on February 1, 1995, the employee would be entitled to four weeks of leave on June 1, etc.~~

- ~~3. **Immediate Family**: Spouse, child, or parent.~~

~~(a) **Spouse**: Means a husband or wife, as a case may be, and does not include unmarried domestic partners.~~

~~(b) Child: Means a child either under 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee's "child" includes a biological, adopted, foster, stepchild, or legal ward.~~

~~(c) Parent: Means the biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. This term does not include in-laws.~~

"Medically Necessary": There must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

"Next of Kin": The nearest blood relative or as further defined by the U.S. Department of Labor.

"Parent": The biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. This term does not include in-laws.

"Qualifying Exigency": Those circumstances and situations as defined by the US Department of Labor as they relate to the return to active military duty including: short notice of deployment, military events and related activities, childcare and school activities, financial and legal arrangements, rest and recuperation (limited to fifteen calendar days), post-deployment activities and additional activities where the City and employee agree to the leave. Qualifying Exigency leave also includes leave to care for a military member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. Such care may include arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, or attending meetings with staff at a care facility.

~~4. "Serious Health Condition": An injury, illness, impairment, or physical or mental condition that involves either: an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities. :~~

~~(a) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;~~

~~(b) Prenatal care by a health provider;~~

~~(c) Any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by a healthcare provider;~~

~~(d) Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days;~~

~~(e) Continuing Treatment means:~~

- ~~i) Two or more visits to a health care provider; or~~
- ~~(ii) Two or more treatments by a health care practitioner on referral from or under the direction of a health care provider; or~~
- ~~(iii) A single visit to a health care provider that results in a regimen of continuing treatment; or~~
- ~~(iv) In the case of serious, long-term, or chronic condition or disability that cannot be cured, being under the continuing supervision of, but not necessarily being actively treated by, a health care provider.~~

In determining whether a serious health condition exists, the term "continuing treatment" shall mean either:

- 1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
  - Treatment two or more times by, or under, the supervision of a health care provider (i.e. in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
  - One treatment by a health care provider (i.e. an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g. prescription medication, physical therapy); or
- 2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
- 3) Any period of incapacity for treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
- 4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
- 5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

**"Serious Injury or Illness for a Covered Veteran":** An injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:

- 1) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank or rating; or

- 2) A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
- 3) A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
- 4) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

“Serious Injury or Illness While Serving in the Armed Forces”: An injury or illness sustained in the line of duty or that existed before a service member's active duty began and were aggravated by service in the line of duty while on active duty in the armed forces that renders the member medically unfit to perform the duties of the member's office, grade, rank or rating and/or as further defined by the U.S. Department of Labor. For veterans, a serious illness or injury is a “qualifying injury or illness” (as defined by the DOL) that was incurred in the line of duty on active duty in the Armed Forces (or that existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that manifested itself before or after the service member became a veteran.

“Spouse”: A husband or wife, as a case may be, and does not include unmarried domestic partners.

#### **B. Relationship to Other Leave.**

1. Federal and state leave will run concurrently provided the leave circumstances qualify under both sets of laws. Where leave qualifies under only one set, the employee retains full leave allowance under the other laws. (See Section ~~II~~ 8.120 - WA - Washington State Family Leave Act - RCW 49.78 and WAC 296-134 and Section ~~III~~ 8.130 - Family Care Act - RCW 49.12.270 and WAC 296-130).
2. Time loss due to Workers' Compensation and LEOFF I Disability Leave shall be counted as medical leave under the Family and ~~Medical~~ Leave Act when no paid leave is used or the employee requests FMLA coverage.

#### **C. Additional Leave.**

1. Pregnancy related disability leave, Section 8.100 Maternity Disability Leave, of this personnel manual (~~see also WAC 160.30.020~~) is may be considered separately from and in addition to this family and ~~medical~~ leave policy when required by law.
2. If an employee needs additional leave beyond the twelve-week period, he or she may request a leave of absence without pay under Section 8.20 Leave of Absence Without Pay, of this personnel manual.

#### **D. Mandatory Use of Accrued Sick Leave, Vacation, & Compensatory Time.**

~~All accumulated sick leave, vacation, and compensatory time must be included in the twelve week family/medical leave.~~ The City requires the employee to use paid leave, provided the use meets the criteria for such leave, concurrently and at the beginning of with Family and Medical Leave, unless a specific provision of a contract or ordinance allows otherwise. If the accumulated paid leave time is less than twelve workweeks, then the additional weeks added to attain the total will be unpaid, unless the employee qualifies for and receives vacation leave donations as provided for under Section 8.41 of these policies. ~~For example, if the employee has six weeks of sick leave and three weeks of vacation time accumulated, a total of nine weeks will be taken as paid leave and three weeks as unpaid leave.~~

### **E. Intermittent or Reduced Leave.**

An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for ~~an immediate family member with a serious health condition or because of a serious health condition of the employee himself or herself, a spouse, child or parent~~ when the certification documentation confirms that the need for intermittent or reduced schedule leave is "medically necessary".

~~1. "Medically Necessary" Means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.~~

~~21.~~ 21. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates ~~recurring periods of leave when the leave is planned based on scheduled medical treatment~~the employee's modified work hours.

~~32.~~ 32. An employee may take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child only with the department's consent.

### **F. Notice Requirement.**

1. An employee is required to give 30 days notice in the event of a foreseeable leave. ~~A "Request for Family/Medical Leave" form should be obtained from the Human Resources Department, completed by the employee, and~~ written statement of the specific reasons for the request shall be submitted to his or her supervisor.

2. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known, followed by a ~~completed "Request for Family/Medical Leave" form.~~ written request.

3. If an employee fails to give 30 days notice for a foreseeable leave with no reasonable excuse for the delay, the leave can be denied until 30 days after the employee provides notice.

4. All requests for FMLA leave submitted to a supervisor or department head must be

forwarded to the Human Resources Director upon receipt.

#### **G. Medical Certification.**

1. ~~For leaves taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Return to Work/Time Loss Certification" with the physicians finding and recommendation to his or her supervisor.~~ The City may require confirmation from the health care provider on the forms provided by the US Department of Labor. Medical certification- Certification must be provided by the employee within 15 days after requested, or as soon as is reasonably possible.
2. The City may require a second or third opinion at City expense, periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report to return to work.
3. All documents related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file in the Human Resources Department.
4. Confirmation of the need for qualifying exigency leave for rest and recuperation leave can include a copy of the military member's rest and recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.

#### **H. Continuation of Health Plan Coverage.**

During the period of unpaid family and ~~and~~ medical leave, the City will continue health insurance coverages as they existed prior to the leave. However, if the employee fails to return from leave not due to illness or circumstances beyond the employee's control, the employee shall reimburse the City for the health insurance costs paid by the City during the period of leave. If an employee is normally required to pay for part of the health insurance premiums, mutually acceptable arrangements for payment of the employee's share of the premiums must be made to ensure continuation of coverage.

#### **I. Employment Protection.**

1. If the employee returns to work within ~~12 weeks~~ the agreed upon time period of following a family and ~~and~~ medical leave, he or she will be reinstated to his or her former position or an equivalent position with equivalent pay, benefits, status, and authority.
2. The employee's restoration rights are the same as they would have been had the employee not been on leave; thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

#### **J. Status Reports While Using Family and Medical Leave.**

The city may require an employee using family and medical leave to periodically report their status and intention to return to work. The city may also require an employee to obtain additional, written medical certification for the need to continue the leave.

#### **KJ. Other Benefits.**

The taking of leave shall not result in loss of any benefits, including seniority or pension rights accrued before the day on which the leave commenced. However, the City shall not grant benefits, including vacation, sick leave, or pension rights during unpaid leaves of absences. Paid holidays will not be provided if the employee is in unpaid leave status the working day before and the working day after the holiday.

#### **K. WA State Family Leave (RCW 49.78, WAC 296-134).**

~~A. In accordance with the laws of the state of Washington, an employee is entitled to twelve workweeks of unpaid family leave during any twenty-four month period to:~~

~~1. Care for a newborn child or adopted child who is under the age of six at the time of placement or adoption;~~

~~2. Care for a child under the age of eighteen years old who has a terminal health condition.~~

~~B. An employee planning to take Family Leave under these provisions shall notify the City 30 days in advance, or as soon as practical, for leave related to a new child and 14 days in advance, or as soon as practical, for medical leave. Application procedures and forms shall be the same as those described above.~~

#### **L. WA State Family Care (RCW 49.12.270, WAC 296-130).**

~~In accordance with the laws of the State of Washington, employees may use accrued sick leave to care for their children under the age of eighteen with a health condition that requires treatment or supervision or to be present when a child receives routine preventive health care.~~

#### **LI. Lactation Room.**

For up to one year after a child's birth, any employee who is breastfeeding her child will be provided reasonable break times as needed to express breast milk for her baby. The City of Aberdeen has designated the separate room ("respite room") located just to the left of the women's restroom on the second floor of City Hall for this purpose. Employees who work off-site or in other locations will be accommodated with a private area as necessary.

Breastmilk can be stored in any City refrigerator in the same manner as any other perishable food for employees. Labeling is recommended for your safety and privacy. Employees storing milk in the refrigerator assume all responsibility for the safety of the

milk and the risk of harm for any reason, including improper storage or refrigeration and tampering.

Nursing mothers using the room, shall identify the room is “in use” by closing the door.

Additional rules for use of the room may be posted in the room.

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## **8.120 Washington State Family Leave Act**

In accordance with RCW 49.78, a pregnant employee, an employee with a registered domestic partner, or an employee with family leave remaining after FMLA has been exhausted for an exigent deployment reason or as a military caregiver, will be entitled to leave under the Washington Family Leave Act. An employee who takes leave under this section may elect to substitute accrued leave, provided the use meets the criteria for such leave, for any part of the leave under this section.



### 8.130 Washington State Family Care Act

In accordance with RCW 49.12.265, an employee can use paid leave to care for family members.

#### A. Permitted Use of Family Care Leave.

An employee may use any or all of the employee's choice of sick leave or other paid time off to care for:

- (a) A "child" less than 18 years of age with a "health condition that requires treatment or supervision", or
- (b) Any child, regardless of age, school attendance or marital status, that is "incapable of self care" because of a "physical or mental disability", or
- (c) A spouse, parent, parent-in-law, or grandparent of the employee who has a "serious health condition" or "emergency condition".

An employee may not take leave until it has been earned.

Use of leave other than sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement, benefits ordinance or City policy, as applicable.

The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave.

#### B. Definitions.

For the purpose of this policy, the following definitions apply:

"Child": A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, or a child of an employee's registered domestic partner, who is:

- (1) Under eighteen years of age; or
- (2) Eighteen years of age or older and incapable of self-care because of a mental or physical disability.

"Emergency condition": A health condition that is a sudden, generally unexpected occurrence or set of circumstances related to one's health demanding immediate action, and is typically very short term in nature.

"Grandparent": A parent of a parent of an employee.

**"Health condition that requires treatment or supervision" includes:**

- (1) Any medical condition requiring treatment or medication that the child cannot self-administer;
- (2) Any medical or mental health condition which would endanger the child's safety or recovery without the presence of a parent or guardian; or
- (3) Any condition warranting treatment or preventive health care such as physical, dental, optical or immunization services, when a parent must be present to authorize and when sick leave may otherwise be used for the employee's preventive health care.

**"Incapable of self-care":** The individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

**"Parent":** A biological or adoptive parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

**"Parent-in-law":** A parent of the spouse or registered domestic partner of an employee.

**"Physical or mental disability":** A physical or mental impairment that limits one or more activities of daily living or instrumental activities of daily living.

**"Serious health condition":** An illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities).

**"Spouse"** means a husband or wife, as the case may be.

All other words have definitions as provided for in Section 1.50 of this policy manual or, in the absence of a definition, utilize the most common meaning of the word.

**C. Notice Requirement.**

Employees unable to report to work because of the need to take family care leave are to notify their immediate supervisor within one hour of the official start time, except in the case of a bona fide emergency. Use of paid leave may not be allowed, at the discretion of the supervisor, unless such report has been made.