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November 19, 2020

Delray Beach City Commission
100 NW 1st Avenue
Delray Beach, FL 33444

Commissioners:

On August 25, 2020, City Attorney Lynn Gelin notified me that on August 24, 2020, the City Commission adopted a list of written charges setting forth alleged reasons for the City's intent to terminate me for misconduct pursuant to Florida Statute 443.036(29). **(Tab 1)** Each one of the charges presented by the City are baseless and should be dismissed. The only thing that the City has proven with these charges is that the City is willing to go to great lengths to retaliate against me for exposing government wrong doing. I am a whistleblower and I am protected by Florida law. It is time for this to end so that I can go back to City Hall to fix the serious problems that I inherited that left unaddressed, are a threat to the safety and well being of the citizens of Delray Beach.

Before addressing each of the charges individually, it is important to point out that more than half of the charges are alleged violations of procurement and personnel policies. Aside from the fact that the City Manager has the authority to make and change administrative policies, which the City Auditor has already admitted to in public, both the charges and the City Auditor's investigative report failed to take into consideration the emergency powers that were granted to me by the City Commission during the COVID-19 state of emergency **(Tab 2)** and in fact, **it was City Attorney Lynn Gelin who recommended that the procurement policies be waived and I followed her advice and implemented her recommendations. (Tabs 3 & 4).** It is very concerning that the City Auditor would fail to include such dispositive information about the City Attorney's role. It is even more concerning that the City Attorney herself would not have disclosed her own involvement when reviewing the charges and report. Just as in the previous investigation on the Fisher matter, we once again have the City Attorney consulted for a legal opinion, rendering advice to me as the City Manager in my official capacity and then allowing disciplinary charges to move forward against me based on my actions that were consistent with her legal advice.

In short, I was advised to waive policies and procedures at my discretion. The City Commission granted those powers to me because they recognized that the City was facing the effects of a world wide pandemic and the local government, like governments all over the nation, would need to be able to respond to emergencies quickly and the normal bureaucratic processes and procedures were not nimble enough to address a public health crisis the likes of which the world has not seen in over one hundred years.

On March 13, 2020, the Delray Beach City Commission approved Resolution No. 70-20 "DECLARING A STATE OF EMERGENCY PURSUANT TO CHAPTER 95 OF THE CITY CODE OF ORDINANCES AND AUTHORIZING THE CITY MANAGER TAKE ANY AND ALL ACTIONS DEEMED NECESSARY, IN ACCORDANCE THEREWITH, TO PROTECT AND PRESERVE THE HEALTH, SAFETY, WELFARE, LIVES, AND PROPERTY OF THE CITIZENS OF THE CITY OF DELRAY BEACH AND THE PUBLIC AT LARGE; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES." **(Tab 2)**

The Commission's adopted resolution included the following:

Resolution No. 70-20
Section 2. The City Manager, or designee, is hereby authorized take **any and all actions deemed necessary, at his/her discretion**, to protect and preserve the health, safety, welfare, lives, and property of the citizens of the City of Delray Beach and the public at-large.
Resolution No. 70-20
Section 4. This State of Emergency shall remain in full force and effect until terminated by the City Manager, with such termination to be ratified by the City Commission, if practicable, or upon the certification of the Mayor.

At no time during my tenure from March 13, 2020 until my suspension did the City Commission terminate the State of Emergency and in fact, the City Commission renewed it throughout the period of time that I was there. Once the City Commission declared the local state of emergency and authorized me to manage the emergency, City Code Section 95.05 was in effect. **(Tab 5)**

City Code Section 95.05. - DECLARATION OF A STATE OF EMERGENCY states the following:
(D) Upon declaration of a state of local emergency and during the existence of a declared state of local emergency, the Mayor or designated city official, in addition to any other powers conferred upon the Mayor or designated city official by F.S. Chapter 252, F.S. Chapter 870, or other law, has the power and authority among other non enumerated powers to:
(2) Waive the procedures and formalities otherwise required of the city by law or ordinance pertaining to:
(a) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
(b) Entering into contracts;
(c) Incurring obligations;

(d) Employment of permanent and temporary workers;
(e) Utilization of volunteer workers;
(f) Rental of equipment;
(g) Acquisition and distribution, with or without compensation, of supplies, materials, and facilities;
(h) Appropriation and expenditure of public funds.

Finally, on March 24, 2020, City Attorney Lynn Gelin emailed me the following ***"George: After speaking with Allyson and Jen Alvarez, I am recommending that you execute the attached Resolution (authorized under Chapter 95) waiving procurement policies during this current state of emergency. If this meets with your approval, please execute and provide the original to the Clerk."*** **(Tabs 3 & 4).** I signed, at the City Attorney's recommendation, Resolution No. 76-20 on March 24, 2020 which included "Section 6 - A valid public emergency exists justifying the waiver of formal competitive sealed bids and competitive selection procedures for the acquisition of such services, equipment, goods and/or materials, as may be required." This resolution was then ratified by the City Commission on March 31, 2020 and was in effect throughout the remainder of my tenure. Again, notably, the City Attorney's written legal advice to me is omitted from the City Auditor's analysis and conclusions.

As of March 13, 2020, I had the authority, among other things, to direct the purchase of goods and services and to hire personnel, without the procedures and formalities required of the City by laws or ordinances as well as the City administrative policies and procedures and personnel policies, which were already within the delineated powers of the City Manager. Even prior to March 13, 2020, City purchasing policies provided for the ability to make emergency purchases. Therefore, all of the written charges pertaining to purchasing decisions and personnel procedures from March 13, 2020 on must be dismissed because the policy violations cited by the City were not applicable. This includes the following charges: II, III 3rd paragraph, IV, V, VI, VII, IX (parts involving alleged policy violations).

Charge IA

On or about January 2020, you implemented a software application known as "Basecamp" for which you designated yourself as the administrator, outside of the oversight of the IT Department. Basecamp is a project management software that is cloud-based. As the administrator, you had to ability to determine who would have access to the program. Once a project was created in Basecamp, you had the sole discretion to determine what member of City staff could view the program. You would assign tasks within the program and communicate with the City's staff within Basecamp. Notably, the City Clerk, who is the Custodian of Records and responsible for responding to Chapter 119 requests, had limited access to Basecamp as determined only by you. Your actions violate Chapter 119 and constitute misconduct under Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

My implementation and use of Basecamp is neither a violation of Chapter 119 nor does it constitute misconduct. Quite the opposite. Basecamp is a secure, cloud based project management system that has been in business since 2004 and is used by governments and businesses nationwide. **(Tab 6).** I was using it to hold City staff accountable for successful completion of City projects and deadlines. **(Tab 7)** It was neither a secret nor uncommon. Basecamp actually is significantly more transparent than many systems currently in use by the City since it has the ability to track all records associated with a specific project so that if anyone wanted to find out chronologically what was happening with a particular project, what files, emails, photos and inter-staff dialogue was taking place with a particular project, they could find it in Basecamp. It also can track when meetings were held on the project, who attended the meetings, and what happened at the meetings. The system also has a search feature and a chronological log that makes it easy to find out what was going on throughout the entire project, who was responsible for which task, which deadlines were met, which deadlines were missed, and what information was exchanged at the very moment in time that decisions were made. All of that information was securely stored on Basecamp's cloud and could be retrieved at any time.

Numerous members of the staff had access to the entire database. Many more had access to the projects that were assigned to them. I personally trained numerous staff members on the system in order to encourage its usage and to generate excitement for the system and the increase in accountability and transparency. **(Tab 8)** Obviously some employees didn't like the increase in accountability but unless something changes within the organization, the City will continue to fail. The fact that the data was stored on Basecamp's secure cloud and not on the City server is a new reality of how many modern, cloud based software services currently work. Any public records created in Basecamp were secure and easily accessible for all public records requests, as is evidenced by the City having retrieved and reviewed all of the files after I was suspended and locked out of the system.

The argument that Chapter 119 requires all public records to be stored on the City server and directly accessible to the City Clerk and the IT Department is patently false. Chapter 119 does not require that the City Clerk and/or the IT Department have all public records in their exclusive custody. The City Attorney knows this, the City Auditor knows this, the Mayor knows this, and members of the City Commission know this because most of them regularly create and store public records that are not stored on the City server. In fact, the City Attorney, the City Auditor, the Mayor, and members of the City Commission regularly store public records on their ***private*** devices such as cell phones, tablets, and home computers. In fact, a recent public records request made that I made for public records stored on the private devices of the City Attorney, the City Auditor, Mayor Petrolia, and Deputy Vice Mayor Johnson just for the year 2019 uncovered hundreds (and likely thousands if the City fully complies with my request) of public records that were being stored on their private devices and private email accounts, outside of the reach of the City Clerk or the IT Department, which, most importantly is totally permitted by Chapter 119. **(Tab 9)** Additionally, there are thousands of paper documents in every City office in every City building that are created and stored every day that are not stored on the IT server, not available to

the IT staff instantaneously, and not available to the City Clerk instantaneously. This is also not a violation of Chapter 119.

Another tell tale sign of how disingenuous this false Basecamp charge is can be found right on the City Attorney's own desk. Lynn Gelin herself subscribes to a cloud based service called WestLaw and stores data on the WestLaw server and not on the City server. In fact, every time the City Attorney does a search on the WestLaw legal database, the City Attorney's search history and other information is stored on the WestLaw server and not on the City's IT server. **(Tab 10)**. In addition, hundreds of employees throughout the City organization are using (and have been for years) a variety of cloud based services that store public records on a variety of clouds and are neither stored on the City server, nor instantaneously available to the City Clerk nor the IT Department. For example, the Parks Department uses a project management cloud based service called Trello, which is very similar to Basecamp. **(Tab 11)**

Other examples of cloud based services being used by the City include:

CodeRed - Purchased by emergency management (Fire) outside IT completely.

Pontem. Cemetery system purchased without IT.

Neogov - HR Software. Totally cloud based.

Selectron - Utility PAYMENTS are all cloud based.

Finally, there are currently about 200 cell phones and 100 tablets that the City purchased and issued to City employees throughout the City organization and across all departments. **(Tab 12)** All of those employees can and regularly do create public records on those devices and many of those records are stored only on the devices and not on the IT server. Most importantly, neither the IT Department nor the City Clerk have instantaneous access to those devices, which again is permissible under Chapter 119.

Chapter 119 contemplates that the City's designated Custodian of Records will not always possess every public record in the organization. Section 119.07 (1)(a) states that "Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records." **(Tab 13)**

Charge IB

On or about March 2020, you directed the installation of a private network for your own use, which was not connected to the City's network. Your direction included the installation of a modem and router in your office. As part of this network, you were able to conduct City business

without the oversight of the IT Department, which is customary pursuant to City policy. As a result, the record-keeping and retention required by Chapter 119 was compromised, as the IT Department had no ability to maintain oversight over this network and your use of same. Your actions in violating Chapter 119 are violations of Florida Statute Section 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

False Statement #1
"you directed the installation of a private network for your own use".

This statement is evidence of reckless disregard of the truth and was written to slander me. Here are the facts. On January 9, 2020, I had a scheduled meeting with Mayor Petrolia, the City Clerk and other staff members to review the agenda with the Mayor. This was my first agenda meeting with the Mayor since becoming the City Manager. **(Tab 14)** I was told by staff that it was customary at agenda review meetings for the Clerk to access the agenda via the internet and project it on the screen for the Mayor to review. At the meeting, staff was unable to access the agenda because the City WiFi was not working. IT staff was dispatched to fix it and the meeting resumed after about a 20 minute delay. **(Tab 15)** After some questioning of staff by me after the meeting, I learned that there was a history of problems with the WiFi in City Hall. The signal at times was unreliable. I also discovered that the staff was using an unsecured public WiFi system, one that is not password protected and is accessible to anyone that is close enough to City Hall to receive the WiFi signal. Unsecured public WiFi leaves all users open to hacking attacks and subjects the City to internet threats.

A December 30, 2019 memo from former IT Director Jessica Cusson also identified City wide WiFi as a top issue in the IT Department stating that "We do not have consistent WiFi coverage for city buildings. Our existing infrastructure will not support it without loss of signal or congestion on the network." **(Tab 16)**

In addition, on March 1, 2020, Governor DeSantis issued Executive Order Number 20-51 directing the State Health Officer and Surgeon General to declare a public health emergency in the State of Florida in response to the COVID-19 pandemic. **(Tab 17)** I asked the IT Department whether ordering Comcast WiFi for the Manager's Department would resolve the WiFi service problems in the City Manager's Department and better prepare us for the pending emergency. IT staff researched the issue, corresponded with Comcast, and ordered and oversaw the installation of Comcast WiFi. **(Tab 18)** The service that was installed was internet WiFi, which was paid for with government funds, used for City business, and used by numerous employees in the Manager's office suite. It was also used to provide Internet to devices on the television screens in the Manager's office and the Manager's conference room to project presentations and other information during meetings with Commissioners and/or staff. The system did not store any data, was not a server, was not used for private purposes, and was not the only Comcast internet service in the City. In fact, there were and continue to be a number of internet accounts supplied

by Comcast in numerous City facilities. **(Tab 19)** As the Commission knows firsthand, shortly after the installation of the WiFi in the City Manager's Department, I was regularly and consistently using the WiFi for video conferencing meetings, City Commission meetings, for monitoring the beach cam and for managing the local emergency.

False Statement #2
"As part of this network, you were able to conduct City business without the oversight of the IT Department, which is customary pursuant to City policy."

First of all, the first part of this statement is evidence of the City Attorney and City Auditor attempting to undermine the City Charter. Section 3.01 (2) of the City Charter vests with the City Manager the power "to direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law." **(Tab 20)** Therefore, it is in fact the City Manager who oversees the work of the IT Department, not the other way around. The suggestion that it is the IT Department that oversees the business conducted by the City Manager is absurd and contrary to what the City Charter says. Whatever policy the City Attorney and Auditor believe is "customary" does not supersede the powers granted to the City Manager by the voters through the City Charter.

False Statement #3
"As a result, the record-keeping and retention required by Chapter 119 was compromised, as the IT Department had no ability to maintain oversight over this network and your use of same. Your actions in violating Chapter 119 are violations of Florida Statute Sectioris 443.036(29)(a),(b),(d), and (e)."

IT had possession and control over all of the account information, set up all of the password information, and paid the monthly bills. **(Tab 21)** I was told what the password was by IT staff and the only control I had over it was whether or not to connect the devices to it and to use it - just like other employees in the office suite and other employees that may have been in the office suite who had asked for the password to utilize it while working there.

The Comcast equipment did not store files so even if the Chapter 119 arguments raised with the City Attorney and Auditor were true, which they are not as mentioned above, there were no files for the IT Department to access.

It should be also noted that the Mayor has stated publicly on numerous occasions that a "private server" was discovered in my office. This information is false. All of the computer equipment in my office was ordered by the City IT Department, (some before I even arrived) and was installed by the IT Department, including a backup device to secure all data that was on the Mac desktop computer. **(Tab 22)** All of it was City equipment. The back up device was installed by IT to ensure that even if the desktop failed for any reason or if files were erased from the desktop, the backup would chronologically save the files, so even if I erased any files on the desktop, the files would still be preserved on the backup drive. All of the settings for the backup device were

set by IT staff. It was not private equipment and none of it was a "server". This misinformation spread by the Mayor was designed to raise suspicion and to create a false perception. Then on top of that, the Mayor demanding a computer forensics analysis was additional political theater aimed at slandering me. It is ironic that the Mayor claims to be so "astounded" by a fake narrative that ***she created***, particularly since it was Mayor Petrolia herself that pled the 5th Amendment at the suggestion of Lynn Gelin during a deposition over the questions of her using her own private computer and private email account to conduct City business. **(Tab 35)**

Finally, as stated above, there are currently about 200 cell phones and 100 tablets that the City purchased and issued to City employees all over the City organization across all departments, the vast majority of which have their own independent access to the internet via cell service, outside of the control and oversight of the IT Department. **(Tab 12)** All of those employees can and regularly do create public records on those devices and many of those records are stored only on the devices and not on the IT server, with no back up devices attached to them. Most importantly, neither the IT Department nor the City Clerk have instantaneous access to those devices, which again is permitted by Chapter 119. **(Tab 23)** In addition, the vast majority of those 300 devices utilize web browsers that are not under the control of the IT Department. There is absolutely no difference for oversight purposes between me accessing the internet via a Comcast WiFi signal and an employee in the Parks Department accessing the internet via a City issued smart phone and/or a City issued tablet that has cellular service.

Chapter 119 contemplates that the City's designated Custodian of Records will not always possess every public record in the organization. Section 119.07 (1)(a) states that "Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records." **(Tab 13)**

Charge II

On, June 5, 2020, you sent a letter of termination to Suzanne Fisher and to the City Commission. Thereafter, you also emailed the letter of termination to all of the Department Heads. That letter of termination accuses Ms. Fisher of "highly unethical conduct," a perplexity for lying," "creating internal acrimony," and "making false charges," based on allegations of which you did not have any personal knowledge. According to the City's Personnel Policies and Procedures, "out of respect for our staff, it is the City's policy that matters involving the conduct and discipline of current or former City employees are not to be discussed in a public forum or with the general public." In fact, a 66- page presentation was created for the media about Ms. Fisher in the event that there were media requests related to her. Further, you shared Ms. Fisher's confidential and exempt PER-6 Complaint with certain members of City staff. Thereafter, the Complaint was improperly provided to the media by one of the recipients before the conclusion of the investigation. Your actions are serious policy violations and constitute violations of Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

It is highly likely that if there was any violation of the spirit of the City Personnel Policy referenced above, it was a member of the City Commission that violated the policy. I emailed Ms. Fisher the pre-termination letter on June 5, 2020. A copy of the email was sent to members of the City Commission. On June 8, 2020, a records request was submitted to the City from Mr. Ari Whiteman that read "Please supply me a copy of the email from Mr. Gretsas to Ms. Fisher Dated Jun 5th". **(Tab 24)** Unless the City Attorney is in the habit of leaking personnel matters to Ari Whiteman, it is more than likely that one or more of you who received the email shared the information, which triggered a records request.

On June 10, 2020, the City responded back to Mr. Whiteman asking him to "Please be specific as to what e-mail Ms. Fisher on June 5th (Subject?)". **(Tab 24)** Mr. Whiteman responded back on the same day with "OK, Tell Mr Gretsas it's the only email regarding Ms Fisher's Disciplinary hearing. It's not that difficult to figure it out. This should take less than 5 min to get for me and not cost me a dime. Thank you." **(Tab 24)** How would Mr. Whiteman have known it was the only email regarding that topic that was sent to the City Commission without a City Commissioner discussing it with him?

So it is very clear that not only did someone tell Mr. Whiteman that the email existed but he also knew it was the only email that I had sent the Commission on the matter. This is very damning evidence and further proceedings may one day reveal which Commissioner leaked the information. Mr. Whiteman is known for regularly requesting public records and posting information about the City on Facebook and at least one member of the Commission is known to regularly communicate with Mr. Whiteman.

On June 11, 2020, after receiving approval from the City Attorney's office, a staff member from the IT Department who processes public records, released my email to Mr. Whiteman. **(Tab 24).** It was only after hearing that the email had been released that I sent a copy of it to members of the Executive Leadership Team so that they could read it for themselves and not selected excerpts from Facebook. In fact, I mentioned specifically in my email to the Executive Leadership Team that I was sending the email to them because the City had already released it to Mr. Whiteman and that I did not want them to read about the Fisher issue on Facebook.

I did not speak to the public about the Fisher matter but certainly understood that once the email had been released to Mr. Whiteman, it would likely become a public matter and likely generate media attention based on Ms. Fisher's high ranking position as Assistant City Manager. It is not a policy violation for a City Manager to consult with his inner office staff in preparation for likely press attention, which of course there was. The 66 page document was prepared as a detailed response and chronology in the event that the decision became a public matter but it was never released to the media and never released to anyone from the public.

Finally, Fisher's complaint was published in the Boca Raton Tribune on June 16, 2020, 6 days after the City received the complaint. No one in the City Manager's office sent it to the Tribune. Records do however indicate that after Deputy Vice Mayor Johnson received Fisher's complaint, she forwarded it to her private email address. **(Tab 25)** Mr. King, after receiving a request from the Palm Beach Post for the document 6 days after the Tribune had posted the document, remembered having seen it on the Tribune website, retrieved it from the Tribune website, and forwarded it to the Post. The document had already been in the public domain at least for 6 days but likely a lot longer depending on whether any City Commissioner had forwarded it to the public.

Charge III

On or about February 2020, you contracted with Timothy Edkin to perform an assessment of the City's Information Technology Department to "determine the effectiveness of meeting the needs of key governmental operations, including an analysis and evaluation of the procedures and processes used to deliver essential services" to the City. Mr. Edkin was known to you as you had worked together for the City of Fort Lauderdale. On Mr. Edkin's first day of employment, he was appointed as the City's Interim Director of Information Technology. Given his unrestricted access to criminal data servers within the City, Mr. Edkin, at a minimum, was required to provide his fingerprints and a background check to the City pursuant to Florida Department of Law Enforcement (FDLE) regulations as well as City policy in order to preserve the integrity of the City's data. You were made aware of this requirement and refused to mandate same. Your actions refusing to mandate Mr. Edkin's compliance, among other things, demonstrate a conscious disregard of the City's interest and deliberate violation of the behavior expected from a City Manager, a willful violation of the standards set by the State of Florida, and is misconduct pursuant to Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

Additionally, as referenced above, on or about March 2020, at your direction, Mr. Edkin installed a private network, for your use, outside of the oversight of the IT Department. The network was not connected to the City's network. By performing your duties outside of the City's network, the IT department was unable to perform its duties in maintaining the safety and security of the City's information. Furthermore, the private network was not in compliance with Florida Statute Chapter 119. The direction you gave to create a private network, outside of the City's network, is a violation of Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

Finally, Mr. Edkin was fully paid by the City in the amount of approximately $64,000 before he provided his final assessment report, a condition of his Agreement with the City. You authorized payment to Mr. Edkin prior to receipt and review of this deliverable. This action demonstrates a conscious disregard of the City's interests and amounts to a deliberate violation or disregard of the reasonable standard of behavior which the City would expect of its City Manager. The payment of Mr. Edkin, in full, prior to receipt and review of his contractually-obligated assessment is a violation of Florida Statute Sections 443.036(29)(a),(b),(d), and (e). It should be noted that the City had already obtained an assessment of the IT Department in 2019.

These charges are all without merit. They should be dismissed.

False Statement #1
"Given his unrestricted access to criminal data servers within the City"

Mr. Edkin did not have access to any of the servers, especially to criminal data servers, which were behind locked doors and Mr. Edkin's access card did not work on that door. Mr. Edkin's access card did not allow him entry into the server room at all and he was never in the server room unless accompanied by an IT staff person. He also did not have any admin passwords or access.

False Statement #2
"Mr. Edkin, at a minimum, was required to provide his fingerprints and a background check to the City pursuant to Florida Department of Law Enforcement (FDLE) regulations as well as City policy in order to preserve the integrity of the City's data."

Mr. Edkin did not have access to any of the servers, especially to criminal data servers, which were behind locked doors and Mr. Edkin's access card did not work on that door. Mr. Edkin's access card did not allow him entry into the server room at all and he was never in the server room unless accompanied by an IT staff person.

In addition, the fingerprinting policy referred to in the written charges does not apply to "Department Heads" or any "person employed part time or for temporary duty only". **(Tab 26)** Mr. Edkin was the Department Head, on a temporary basis.

Finally, and most importantly, this is yet another example where the City Attorney provided advice to me, I relied on her advice and implemented her advice, and then the City Attorney now accuses me of misconduct for actions taken based on her recommendation. Below are the facts.

On February 18th, City Attorney Lynn Gelin contacted me and complained that the then IT Director Jessica Cusson had overstepped her bounds and had improperly directed a member of Gelin's staff. Ms. Gelin was upset because Ms. Cusson had interfered with the procurement process for Mr. Edkin's contract. Mr. Edkin's contract had been initially executed and Ms. Cusson, without consulting Ms. Gelin, contacted one of Gelin's attorney's insisting that there was " a CJIS requirement for a Security Addendum on contracts for IT Services". The then Purchasing Director Jennifer Alvarez notified Ms. Gelin of what Ms. Cusson was doing and Ms. Gelin directed Ms. Alvarez to redirect Cusson to Gelin. In an email to Alvarez responding to Alvarez' concerns about Cusson's interference, Gelin said, "She can send it to me. She doesn't get to direct my staff. She didn't know about this?" **(Tab 34)**

Gelin also expressed her concern to me that she was extremely concerned about Cusson's behavior and felt that she was under qualified for the Director's position and was likely going to be a problem for the organization and recommended to me that she be asked to resign. I already had concerns with Cusson's behavior, followed Gelin's advice and signed a separation agreement

that Gelin had drafted within two hours of the conversation. **(Tab 34)** More importantly, Gelin handled the final execution of Edkin's contract, which did not include the CJIS Security Addendum that Cusson had recommended, and put no language in the contract about CJIS or fingerprinting and neither Gelin nor Alvarez nor the HR Director ever said anything about fingerprinting being a requirement. **(Tab 36)** And the reason for that is quite simple - neither CJIS certification nor fingerprints were required.

False Statement #3
"on or about March 2020, at your direction, Mr. Edkin installed a private network, for your use, outside of the oversight of the IT Department."

This statement is evidence of reckless disregard of the truth and was written to slander me. Here are the facts. On January 9, 2020, I had a scheduled meeting with Mayor Petrolia, the City Clerk and other staff members to review the agenda with the Mayor. **(Tab 14)** I was told by staff that it was customary at agenda review meetings for the Clerk to access the agenda via the internet and project it on the screen for the Mayor to review. At the meeting, staff was unable to access the agenda because the City WiFi was not working. IT staff was dispatched to fix it and the meeting resumed after about a 20 minute delay. **(Tab 15)** After some questioning of staff by me after the meeting, I learned that there was a history of problems with the WiFi in City Hall. The signal at times was unreliable. I also discovered that the staff was using an unsecured public WiFi system, one that is not password protected and is accessible to anyone that is close enough to City Hall to receive the WiFi signal.

A December 30, 2019 memo from former IT Director Jessica Cusson also identified City wide WiFi as a top issue in the IT Department stating that "We do not have consistent WiFi coverage for city buildings. Our existing infrastructure will not support it without loss of signal or congestion on the network." **(Tab 16)**

In addition, on March 1, 2020, Governor DeSantis issued Executive Order Number 20-51 directing the State Health Officer and Surgeon General to declare a public health emergency in the State of Florida in response to the COVID-19 pandemic. **(Tab 17)** I asked the IT Department whether ordering Comcast WiFi for the City Manager's Department would resolve the WiFi service problems in the City Manager's Department and to be better prepared for the pending emergency. IT staff researched the issue, corresponded with Comcast, and ordered and oversaw the installation of Comcast WiFi. **(Tab 18)** The service that was installed was internet WiFi, which was paid for with government funds, used for City business, and used by numerous employees in the Manager's office suite. It was also used to provide Internet to devices on the television screens in my office and the Manager's Department conference room to project presentations and other information during meetings with Commissioners and/or staff. The system did not store any data, was not a server, was not used for private purposes, and was not the only Comcast internet service in the City. In fact, there were and continue to be a number of internet accounts supplied by Comcast in numerous City facilities. **(Tab 19).** And as the Commission knows, shortly after the installation of the WiFi in the City Manager's Department,

I was regularly and consistently using the WiFi for video conferencing meetings, City Commission meetings, for monitoring the beach cam and for managing the local emergency.

False Statement #4
"By performing your duties outside of the City's network, the IT department was unable to perform its duties in maintaining the safety and security of the City's information"

First of all, the first part of this statement is evidence of the City Attorney and City Auditor attempting to undermine the City Charter. Section 3.01 (2) of the City Charter vests with the City Manager the power "to direct and supervise the administration of all departments, offices and agencies of the City, except as otherwise provided by this Charter or by law." **(Tab 20)** Therefore, it is in fact the City Manager that oversees the work of the IT Department, not the other way around. The suggestion that it is the IT Department that oversees the business conducted by the City Manager is absurd and contrary to what the City Charter says. Whatever policy the City Attorney and Auditor believe is "customary" does not supersede the powers granted to the City Manager by the voters through the City Charter.

False Statement #5
"Furthermore, the private network was not in compliance with Florida Statute Chapter 119. The direction you gave to create a private network, outside of the City's network, is a violation of Florida Statute Sections 443.036(29)(a),(b),(d), and (e)."

IT had possession and control over all of the account information, set up all of the password information, and paid the monthly bills. **(Tab 21)** I was told what the password was and the only control I had over it was whether or not to connect his devices to it and to use it - just like other employees in my office suite and other employees that may have been in the office suite who had asked for the password to utilize while working in his office.

The Comcast equipment did not store files so even if the Chapter 119 arguments raised with the City Attorney and Auditor were true, which they are not as mentioned above, there were no files for the IT department to access.

It should be also noted that the Mayor has stated publicly on numerous occasions that a "private server" was discovered in my office. This information is false. All of the computer equipment in my office was ordered by the City IT Department, (some before I even arrived) and was installed by the IT Department, including a backup device to secure all data that was on the desktop computer. **(Tab 22).** All of it was City equipment. It was not private equipment and none of it was a "server". This misinformation spread by the Mayor was designed to raise suspicion and to create a false perception. Then on top of that, the Mayor demanding a computer forensics analysis was additional political theater aimed at slandering me. It is ironic that the Mayor claims to be so "astounded" by a fake narrative that ***she created***, particularly since it was Mayor Petrolia herself that pled the 5th Amendment five times at the suggestion of Lynn Gelin during a

deposition over the questions of her using her own private computer and private email account to conduct City business. **(Tab 35)**

Finally, as stated above, there are currently about 200 cell phones and 100 tablets that the City purchased and issued to City employees all over the City organization across all departments, the vast majority of which have their own independent access to the internet via cell service, outside of the control and oversight of the IT Department. **(Tab 12)** All of those employees can and regularly do create public records on those devices and many of those records are stored only on the devices and not on the IT server, with no back up devices attached to them. Most importantly, neither the IT Department nor the City Clerk have instantaneous access to those devices, which again is totally permitted by Chapter 119. **(Tab 23)** In addition, the vast majority of those 300 devices utilize web browsers that are not under the control of the IT Department. There is absolutely no difference for oversight purposes between me accessing the internet via a Comcast WiFi signal and an employee in the Parks Department accessing the internet via a City issued smart phone and/or a City issues tablet that has cell service.

The issue with Chapter 119 is not where the records are stored but rather whether the holder of public records turns them over when a request is made for them. In fact, Chapter 119 contemplates that the City's designated Custodian of Records will not always possess every public record in the organization. Section 119.07 (1)(a) states that "Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records." **(Tab 13)**

False Statement #6

The payment of Mr. Edkin, in full, prior to receipt and review of his contractually-obligated assessment is a violation of Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

As City Attorney Gelin well knows, Mr. Edkin's original contract was amended to include supervising the department after Gelin recommended that the former IT Director be asked to leave and I implemented her recommendation. Mr. Edkin was paid according to the hours that he worked and his primarily responsibilities morphed into overseeing the IT Department, recruiting for a new IT Director, and giving me an analysis of the strengths and weaknesses of the Department. Mr. Edkin performed all three tasks with distinction, worked many more hours than what he charged the City for, identified significant issues within the IT Department, and saved the City millions of dollars.

I initially asked Mr. Edkin to assist me because the previous IT Director had placed a $2 million purchasing item on the agenda that if approved would have allowed the IT Department to purchase an additional $2 million in technology goods and services. The item did not offer

specific details of what was going to be purchased. It only defined several budget categories that would be charged with the purchases. I wanted to be confident that the expenditures requested were necessary for the technological health of the City. I was being pressured to bring the item to the Commission by the former IT Director, being told of "dire consequences" for the City technology if the item was not placed on the agenda and approved by the Commission. I wanted a full review of the request being proposed before presenting the item to the City Commission.

I was also concerned about a proposal to spend $1 million to extend the City's fiber network to the City's proposed new fire station as part of a combination Fire Station/Emergency Operations Center that did not pass the smell test. I was concerned about the total cost of the fire station project and was looking for areas where expenses could be reduced.

The length of Mr. Edkin's engagement and the priorities were further complicated by Covid-19. Based upon the original SOW, Mr. Edkin was expected to be finished by early April. Even after the radical change in the SOW on the first day with the discharge of the IT Director, Mr. Edkin still expected to complete the contract by early May. Covid-19, however, greatly interfered with the normal process of business for IT which extended Mr. Edkin's stay. Mr. Edkin extended his on-site presence until an IT Director was hired and transition was complete; staying even after contractual hours had been expended, at Mr. Edkin's own expense.

In addition to stopping millions of dollars of unexplained expenditures, Mr. Edkin found other significant issues that were obviously uncomfortable for the bureaucracy to hear. Below are some major findings that were presented verbally to me before Mr. Edkin left and which was memorialized after he returned home. **(Tab 27)**

• No work organization – departmental activities were not separated between projects and tasks. The activity is dependent mostly upon the person responsible for the work deciding what and how things will get done. They write their tasks on the walls – an innovative idea – but it's difficult to determine from a management standpoint exactly what is being worked on.

• No project planning – Mr. Edkin did not see any tool that is used to manage projects. Particularly in IT, project tasks, responsibilities, and timelines are important in order to track and deliver major activity. Such planning doesn't exist. Projects become task items written on the walls. IT staff works hard and delivers much but more task organization would increase output.

• No priorities – no one sets priorities. There's no formal method for reviewing work and assigning personnel based upon priorities. No priority lists exist that could be provided to management so that management could have input on the importance of various items. IT exists within a bubble with little outside governance of their activities.

• No goals – no statements of work targets, no targets of achievements, no long- or short-range plans that are offered or followed.

• No measurement tools used to define/track work efforts or obtain customer information. For example, the budget book lists IT goals like customer satisfaction but they have no means to measure such.

• No deadlines established except sometimes with the vendors. Customers may request activity by a certain date, but without project plans, priorities, goals, etc. there's no way to control deadlines. IT will apply and push vendors for deadlines, but as a matter of course there's no method of controlling internal work on a deadline.

• No operational procedures – didn't see any backup specifications, controlling documents, processing flows, etc.

• Help Desk backlog over 600 tickets – can't manage that many tickets when you know the numbers are wrong. IT has a great Help Desk system and the users themselves enter tickets. But there's very little management of the process to determine what gets fixed in what order. You can't grind through 600 open items and be able to control the process.

• Budget awareness – Information Technology is used to obtaining budget approval for their requests except for FTEs. Prior City Managers and the Commission did not demonstrate tight scrutiny or requests. Didn't even perform mid-year review and adjustments. This lack of "making their case" also leads to not understanding the need to pare budgets, pressure vendors for discounts, etc. The coming cycle is going to be extremely difficult and much reduction will be required and IT could struggle determining cuts because it hasn't been the past practice.

• No time management – nothing to determine how much time a task should take and no follow up tracking back to the estimates. IT gets a great deal of work done, but the process is haphazard.

• Work areas are unkempt. Equipment – hardware, cables, cords – piled everywhere. Lots of old equipment hanging around; computer room not significantly better. It appears to be very unorganized. Personal work stations are, for the most part, typical. All of the equipment stacked in a haphazard manner. IT personnel are not generally known for their work area organization, but the situation here is extreme. I don't know what they planned on doing with the overflow of material if/when they ever got fully staffed.

Charge IV

On or about March 2020, you commissioned the creation of a television studio at the Arts Garage, a City-owned building. In order to accomplish this goal, you directed City staff to make purchases in excess of $25,000, for various equipment to outfit the studio. You directed staff to make these purchases without following the City's procurement policies. The City's Purchasing Policies require a competitive solicitation process for purchases in excess of $2500. Further, the policies require that "in the event a Department Director, or an authorized designee, determines that an emergency situation exists which require an immediate response, a contract may be awarded regardless of the amount of expenditure upon receiving City Manager approval. A

purchase order will be issued by the Purchasing Department upon receipt of acceptable supporting documentation from the requesting department." Last, the City's Purchasing Card (P-Card) Policy provides, "Single or multiple purchases of goods, commodities and services that are equal to or more than $2500 require departmental approval and may be made using the City of Delray Beach purchasing card, check request, or petty case." Your failure to follow the City's purchasing policies in procuring equipment for the television studio and your failure to properly document that the purchases for the television studio were an emergency is a violation of Florida Statute Sections 443.036(29)(a),(b),(d), and (e). Your failure to abide by the City's policies related to the use of purchasing cards are misconduct pursuant to Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

As part of your creation of a television studio, on or about March 202Q, you hired Joshua Padgett as a Videographer who reported directly to the City Manager. Mr. Padgett was hired as a part-time employee at the rate of $50/hour. Mr. Padgett is well-known to you as he was also employed by the City of Homestead. You hired Mr. Padgett without a posting of the position. City of Delray Beach Personnel Policy PER-20 states, "It is the policy of the City of Delray Beach to post every open position on the City's website and to utilize an online application process. Notwithstanding the foregoing, this policy shall not apply to positions that report directly to the City Manager, which include Department Heads, the Executive Assistant to the City Manager, and senior management staff positions with the City Manager's Office, such as Deputy or Assistant City Managers or Assistants to the City Manager." In addition, your hiring of Joshua Padgett at a wage greater than 20% of the minimum pay grade without proper documentation was in violation of City policy. The City' s Personnel Policies require justification for salaries above the minimum level for a position. No memorandum detailing "exceptional considerations, such as advanced experience, education/training, or qualification that significantly exceed the minimum requirements of a position" was put forth by you. Your actions show a conscious and substantial disregard for the City's policies, is not the behavior expected of a City Manager, and is willful misconduct under Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

On March 22, 2020, I emailed a list of needed communications equipment to Jennifer Alvarez, the then Purchasing Director and current Interim City Manager and asked her: **"Jennifer. What would be the process of acquiring this equipment and getting it by Wednesday?"** Ms. Alvarez emailed me back on the same day with the following response: **"Hi Mr. Gretsas - If this falls under the declared emergency, please advise and the process is as simple as placing the order with the vendor. If you have the vendor contact info, I'm happy to work directly with them to get the order started. Jennifer" (Tab 28)**

Ms. Alvarez was advised that the equipment was for the purpose of broadcasting emergency information regarding COVID-19 and its impact locally and that the City Manager wanted to start broadcasting by March 25th. Ms. Alvarez had already been provided a copy of Resolution No. 70-20 which was approved by the City commission on March 13, 2020 "DECLARING A

STATE OF EMERGENCY PURSUANT TO CHAPTER 95 OF THE CITY CODE OF ORDINANCES AND AUTHORIZING THE CITY MANAGER TAKE ANY AND ALL ACTIONS DEEMED NECESSARY, IN ACCORDANCE THEREWITH, TO PROTECT AND PRESERVE THE HEALTH, SAFETY, WELFARE, LIVES, AND PROPERTY OF THE CITIZENS OF THE CITY OF DELRAY BEACH AND THE PUBLIC AT LARGE; PROVIDING AN EFFECTIVE DATE AND FOR OTHER PURPOSES." **(Tab 2)**

The City of Delray Beach Purchasing Policies and Procedures Manual recognized the need to make purchases quickly in an emergency. **(Tab 29)** According to the policy, "Emergency disaster purchases are those purchases needed due to unforeseen acts of nature, civil unrest, riot, terrorism or force majeure, to include but not limited to: hurricanes, tornados, floods, fire, etc.; and only when the Federal, State, Count, or City governments or the City Manager declares that a state of emergency exists.

For acquisitions of this type, the following procedures apply:
a. The Requesting Department Director or designee, after verbal consultations with the Purchasing Director and the City Manager, shall have the authority to enter into any contract when the Director determines, based on his/her expertise, that such work is necessary to preserve the life and safety of City residents and the wider community;
b. The Requesting Department Director or designee shall first contract with vendors which are already on City contracts for the goods or services needed;
c. All disaster purchases that are acquired without full and open competition or under an existing contract must be subsequently ratified by the City Manager or City Commission, as appropriate.

AUTHORITY TO AWARD EMERGENCY PURCHASES
In the event a Department Director, or an authorized designee, determines that an emergency situation exists which requires an immediate response, a contract may be awarded regardless of the amount of expenditure upon receiving City Manager approval. A purchase order will be issued by the Purchasing Department upon receipt of acceptable supporting documentation from the requesting department. If the expenditure is in excess of $65,000, the City Manager shall present the circumstances to the City Commission for ratification.

Ms. Alvarez coordinated all of the purchases with City staff and sent a variety of emails to me and involved staff along the way. **(Tab 30)** Even on the issue of increasing the amount on the P-Card, Ms. Alvarez provided staff with the policies and it was followed as per her direction.

From: "Alvarez, Jennifer" <alvarezj@mydelraybeach.com>
Date: March 23, 2020 at 9:16:08 AM EDT
To: "Love, Allyson" <lovea@mydelraybeach.com>
Cc: "Kalka, Marie" <kalkam@mydelraybeach.com> Subject: Emergency P-Card Purchases
Good Morning Allyson – Please see the snip below of the P-Card Policy which allows purchases during times of an emergency declaration. Procedurally, the City Manager or Department Head makes the request to the Finance Director to adjust card limits due to the emergency, and the

Finance Director approves the request and makes the necessary changes to the card limits. Once the limits are changed, the purchases can be made with the P-Card.

Please advise if I can provide any more information.

Jennifer

Even though the existing policies were followed, once the City Commission declared the local state of emergency on March 13, 2020 and authorized me to manage the emergency, City Code Section 95.05 was in effect and allowed for those policies to be waived and for me to waive the procedures and take any and all actions that I deemed necessary. **(Tab 5)**

City Code Section 95.05. - DECLARATION OF A STATE OF EMERGENCY states the following:
"(D) Upon declaration of a state of local emergency and during the existence of a declared state of local emergency, the Mayor or designated city official, in addition to any other powers conferred upon the Mayor or designated city official by F.S. Chapter 252, F.S. Chapter 870, or other law, has the power and authority among other non enumerated powers to:
(2) Waive the procedures and formalities otherwise required of the city by law or ordinance pertaining to:
(a) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;
(b) Entering into contracts;
(c) Incurring obligations;
(d) Employment of permanent and temporary workers;
(e) Utilization of volunteer workers;
(f) Rental of equipment;
(g) Acquisition and distribution, with or without compensation, of supplies, materials, and facilities;
(h) Appropriation and expenditure of public funds.

Finally, on March 24, 2020, City Attorney Lynn Gelin emailed me the following ***"George: After speaking with Allyson and Jen Alvarez, I am recommending that you execute the attached Resolution (authorized under Chapter 95) waiving procurement policies during this current state of emergency. If this meets with your approval, please execute and provide the original to the Clerk."*** *I*, at the City Attorney's recommendation, signed Resolution No. 76-20 on March 24, 2020 which included "Section 6 - A valid public emergency exists justifying the waiver of formal competitive sealed bids and competitive selection procedures for the acquisition of such services, equipment, goods and/or materials, as may be required." **(Tabs 3&4)** This resolution was then ratified by the City Commission on March 31, 2020 and in effect throughout my tenure.

I had the authority, among other things, to direct the purchase of goods and services and to hire personnel, without the procedures and formalities required of the City by-laws or ordinances as well as the City administrative policies and procedures and personnel policies, which were already within the delineated powers of the City Manager. A local state of emergency had been declared by the City Commission on March 13, 2020. **(Tab 2)** On March 20, 2020, the City Manager approved Resolution No. 75-20, which ordered all non-essential retail and commercial establishments to be closed. **(Tab 31)** This was on top of previous orders banning large public gatherings, bar closings, and the closing of City parks and other City facilities. By March 22, 2020, the City was literally shutting down and was at the height of the emergency. **(Tab 32)** The City did not have adequate broadcasting equipment to provide the steady stream of real time information that residents and businesses needed at that time. And retail establishments all over nation were closing down, with the chances of obtaining equipment becoming slimmer and slimmer.

I asked staff to find a secure space within the City that would be large enough for emergency management staff and communications staff to gather with adequate equipment to participate in the daily 10 am Palm Beach County Emergency Coordination meetings and then to process the information and broadcast it to the public as quickly as possible. I had extensive experience with this format in Homestead, where Mr. Padgett and I had set up a broadcast facility within the City's Emergency Operations Center and broadcast information on Facebook live during hurricanes and tropical storms which included live interviews with the Police Chief, Director of Emergency Management, Public Works Director and others. Residents were able to text their questions directly to Mr. Padgett as the host and get them answered in real time. The format in Homestead was well received, was viewed by tens of thousand of residents and won national awards.

Because of out experience in Homestead, Mr. Padgett and I were able to accomplish in days what took 6 months in Homestead to create and we were able to create it at a fraction of the cost. In literally a few days, the City was broadcasting real time information about the emergency situation including the latest information about the local spread of the disease, openings and closings, available services and food distributions, police and fire statistics, and other important information. There was nothing frivolous about the purchases that were made and the purchases were all handled by the Purchasing Department appropriately. The prices that were obtained were competitive and the total cost for all of the equipment was $25,786.11. To have been able to equip a professional broadcast studio in less than a week for less than $26,000 in equipment is unheard of and should have been commended, not condemned, particularly since $9,000 of the $26,000 was for computers that can be used for other City purposes when the studio is not in use.

Mr. Padgett's role was to coordinate the operation and get the broadcasts going and keep them going. He was more than a video camera operator and editor. He was recruited by me and answered directly to me as stated above because we had worked together on a similar project in Homestead, shared the same vision, and knew how to get the studio up and running quickly and cheaply. The hourly rate that he was paid was comparable to what he gets paid in Homestead.

By the City Auditor's own admission, City Personnel policies allow for the City Manager to select direct reports without a selection process and allow the City Manager to hire within the salary range.

The City Manager also has the authority to approve starting salaries in excess of 20%. Even the City Auditor does not deny that. Her main point in justifying this charge is that I should have written a memo to myself explaining the reason why I was making the decision. This is utter nonsense. According to the City's Personnel policies, "Requests for a starting salary that is up to twenty percent 20% above minimum salary level for a position shall require the approval of the Human Resources Director. Requests for a starting salary that is more than twenty percent (20%) above the minimum salary level for a position require the Human Resources Director's review with recommendations to the City Manager for final approval. No manager has the authority to extend an offer of employment that is above the minimum salary for a position to a candidate without the Human Resources Director's and/or City Manager's prior approval." **(Tab 33)** Clearly, the policy puts the authority in the City Manager's hands and does not require the City Manager to write a memo to himself about why he wants his own approval for the starting pay for someone he is planning to hire.

In addition, City Code Section 95.05. - DECLARATION OF A STATE OF EMERGENCY allows for the City Manager to "Waive the procedures and formalities otherwise required of the city by law or ordinance pertaining to: (d) Employment of permanent and temporary workers" and therefore, there could not have been a violation of policy since Mr. Padgett was hired after the state of emergency was declared. **(Tab 5)**

Charge V

You hired Jason King on or about March 2020. Mr. King is well-known to you as he was also employed by the City of Homestead. You directed City staff to reclassify a position in the City's Utilities Department to accommodate the hiring of this employee for the City Manager's office. The reclassification resulted in a position with a significantly higher job and pay grade classification. You did so despite the fact that the City was under an investigation by FDOH for reclaimed water and the Utilities Department was responsible for the issues related to reclaimed water. At that time, the City had engaged outside contractors to assist City staff in inspecting properties throughout the City. Mr. King's starting salary was more than the 20% minimum salary level for this newly-created position. The City's Personnel Policies require justification for salaries above the minimum level for a position. No memorandum detailing "exceptional considerations, such as advanced experience, education/training, or qualification that significantly exceed the minimum requirements of a position" was put forth by you. Your hiring of Jason King shows a conscious and substantial disregard of the City's interests, violates the City's policies, and is misconduct under Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

The City Manager has the authority to approve starting salaries in excess of 20%. Even the City Auditor does not deny that. Her main point in justifying Charge V is that I should have written a memo to myself explaining the reason why I was making the decision. This is utter nonsense. According to the City's Personnel policies, "Requests for a starting salary that is up to twenty percent 20% above minimum salary level for a position shall require the approval of the Human Resources Director. Requests for a starting salary that is more than twenty percent (20%) above the minimum salary level for a position require the Human Resources Director's review with recommendations to the City Manager for final approval. No manager has the authority to extend an offer of employment that is above the minimum salary for a position to a candidate without the Human Resources Director's and/or City Manager's prior approval." **(Tab 33)** Clearly, the policy puts the authority in the City Manager's hands and does not require the City Manager to write a memo to himself about why he wants his own approval for the starting pay for someone he is planning to hire. Additionally, the HR Director was assigned to the task of handling Mr. King's hiring and at no point throughout the process did he raise any concerns about the process or any conflicts with policy.

In addition, City Code Section 95.05. - DECLARATION OF A STATE OF EMERGENCY allows for the City Manager to "Waive the procedures and formalities otherwise required of the city by law or ordinance pertaining to: (d) Employment of permanent and temporary workers" and therefore, there could not have been a violation of policy since Mr. King was hired after the state of emergency was declared. **(Tab 5)**

Charge VI

The position created by you for Joshua Padgett directly reported to the City Manager. Accordingly, you were charged with reviewing and approving Mr. Padgett's time sheets. Investigation revealed that you failed to take this action and/or failed to direct your staff to take this action, demonstrating a disregard of the reasonable standard of behavior the City would expect of an employee. It should be noted that on March 24, 2020, Caler, Donten, Levine, Cohen, Porter & Veil, P.A. issued an opinion on the City's 2019 Comprehensive Annual Financial Report (CAFR), which included a management letter comment related to payroll processing. Specifically, the CAFR noted inaccuracies regarding time sheets processed for payment. You received a copy of the CAFR, including the management letter, on April 13, 2020. Your failure to review Mr. Padgett's timesheets prior to processing same shows a conscious and substantial disregard of the City's interests, violates the City's policies, and is misconduct under Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

The timesheets were received by Amanda Villain, reviewed, and then forwarded to Assistant City Manager Allyson Love, who reviewed every one of them, and then approved them electronically

through the Tyler system. I had received a legal opinion from the City Attorney that I was able to delegate this authority to ACM Love, and a document was drafted and signed by me as per the recommendation of the City Attorney. **(Tab 37)** I, however, was well aware of the hours that Mr. Padgett was working as I was directing the initiative through Padgett and all the staff involved.

The City Auditor, in her Investigative Report, falsely claims that because there was no supervisor's signature on Mr. Padgett's timesheets that that in itself suggests that the timesheets were not reviewed by a supervisor. She fails to mention, however, that Mr. Padgett's timesheet information was sent to ACM Love via email and then electronically approved by ACM Love in the Tyler system, which is the best evidence that the timesheets were reviewed and approved by Ms. Love and in fact, her electronic signature is a requirement for payment whereas the signing of the paper timesheet is only a requirement for the employee.

Charge VII

The City's Personnel Policies state that an employee's "[r]efusal to fully and truthfully cooperate in a formal investigation related to the operation of the City, conducted by or at the direction of the City," can provide a basis for disciplinary action. Investigation has revealed instances in which you were untruthful in your testimony concerning the events surrounding the Fisher investigation. Your failure to truthfully cooperate in the City's formal investigation is a blatant violation of the City's policy, completely contrary to the standards expected of a City Manager and constitutes serious misconduct in violation of Florida Statute Sections 443.036(29)(a),(b), (d), and (e).

These charges are all without merit. They should be dismissed.

1) Questions were raised about what I told the Norton Blue investigator about how I obtained information about Will Carter and Andy Reeder from two City employees. I testified truthfully about what those employees told him. The two employees were interviewed after I gave my testimony and there were differences in the testimony. One of the employees called me after she had been called into the City Attorney's office to be questioned. She said that she had walked out of the interview and declined to tell them anything. She was clearly scared to death about being called in out of the blue and was afraid she was going to get into trouble. I was the one who advised her to go back to the City Attorney's office and cooperate with them and to tell them the truth.

Later, I was told that there was a difference between what the two employees had said and what I had said. I asked to meet with the investigator again so that I could provide evidence to prove what I had said was true. The investigator said that she did not have time to meet with me because she had a deadline to get the report in but that I could send her whatever information that I had. Despite sending copies of text messages and notes to the investigator, there was no follow up call or questions and it was pretty clear that the investigator had already decided what the

report was going to say. If the motive was to get to the truth, they would have granted me a second interview so that I could have cleared up whatever confusion there was. One of the employees said that she never gave me a packet of information about Ms. Fisher but I have proof that she did. The second employee claimed that he never had a conversation with me about Andy Reader and Will Carter but I have proof that he did. All of that could have been cleared up but the investigator declined my requests to address the new allegations.

In her July 2nd memo to the City Attorney, the investigator, Suhaill Morales wrote that she was retained by the City Attorney to "conduct an independent investigation". The term "independent" is a term of art that represents that the author has no relationship with either party and is functioning as a neutral. If fact, I have come to learn that on precisely the same day as Ms. Morales wrote that she was "independent" as it relates to the City and me, the City was sued in the matter of Pacheco v. City of Delray Beach. This litigation was assigned to Ms. Morales and her firm by Ms. Gelin as City Attorney. This was never disclosed to me or my counsel and to date has not been disclosed.

2) The City Auditor has accused me of being untruthful in my testimony related to questions about Ms. Carter's claims that I yelled at her during the first broadcast at the Arts Garage. There were at least five people present during this alleged incident. Only two were interviewed about it by Norton Blue even though they could have interviewed all five who were present. Ms. Carter, who knew that I wanted her to resign from her position, is the one making the claim. I was asked the following questions during the interview:

Morales: Do you remember if you yelled at her (Gina Carter) in front of her subordinates and the individuals that worked at the arts garage?
Gretsas: I don't recall ***ever*** yelling at her.
Morales: Do you recall if you told her that she was incompetent that day?
Gretsas: Zero, one hundred percent I did not. I have never called her incompetent. That's a lie.

Approximately three months later, the City Auditor questioned Carter's direct subordinate about the alleged incident, which allegedly occurred over 6 months ago. The City Auditor claims that he corroborated Carter's testimony and therefore concluded that I was untruthful. Not only is Carter an unreliable witness but asking her direct subordinate 6 months later about the incident without interviewing the other witnesses is suspect. In fact, Mr. Padgett was in the room at the time and was interviewed by the City Auditor about other issues but she never asked him about the incident nor did she interview the other witnesses in the room.

3) The City Auditor claims that I denied that I had my staff obtain information about Ms. Fisher and that texts show the opposite.

I was not untruthful. I had no reason to be untruthful about whether I had my staff obtain information about Ms. Fisher. I had every right to ask my staff to gather whatever information

that I felt that I needed. After almost four hours of questioning by the investigator, I was asked questions about which specific employees I had spoken to about the Fisher situation.

Morales: Between the time that you first learned of the Will Carter incident June 2nd and the time that you prepared your report, how many people did you speak with about this.
Gretsas: Oh I don't remember. I don't know. My office is kind of nebulous so I mean I have some people that I trust in and out but I don't remember. I think, uh, let me get my timeline back here. I certainly would have spoken to some of my people inside my office.

Then I was asked how I obtained emails related to Fisher:

Morales: How did you get these emails?
Gretsas: I asked IT for a search.

Then I was asked specifically whether I asked Jason King and Gemma Torcivia "to pull up information about Fisher". I did not recollect asking them for information on Fisher. The text messages that are highlighted in the City Auditor's report that were meant to prove that I was untruthful relate primarily to issues involving the Golf Course contract, Fisher emails (which I had already answered that I had asked IT for), and other communications involving the preparation of the Fisher termination letter and reactions to events that occurred after the pre-termination letter was sent. I had nothing to hide in regard to where I had obtained information about Fisher. Throughout the almost four hours of testimony, I mentioned where I obtained the information.

I was not asked about the mechanics of the golf course investigation, which in my mind, was not the same thing as being asked about information specific to Fisher. I, as was my right, asked numerous employees for information about the golf course contract and its implementation. While researching the golf course, I had also stated that at some point the City Attorney told me to stop investigating the golf course because it was "making you look bad". So it is no surprise now that the City Attorney and the City Auditor are attempting to shift the conversation from me exposing improprieties with the golf course contract to a conversation about alleged inconsistencies in my answers about which employees helped me uncover wrong doing.

Charge VIII

On July 31, 2020, you authored a document entitled, "Written Complaint Pursuant to Section 112.318(6) Florida Statutes" ("Complaint"). In a subsequent memorandum provided to the Commission, City records, some of which were authored by you prior to your suspension, negated the statements put forth in your Complaint and proved that the statements were, in fact, false. Upon information and belief, the Complaint was forwarded to residents of the City by you, causing widespread panic and concern. Your willful and deliberate dissemination of false statements constitutes a conscious disregard of the City's interests and a deliberate violation of the reasonable standards expected of any employee, especially a city manager. Accordingly, your

conduct in authoring and distributing a document containing clear factual inaccuracies and misstatements is serious policy violation and constitutes violations of Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

The statements in my whistle blower letter are all true and backed up with documents. The letter and the documents are attached. **(Tab 38)** The letter describes in detail how in my very short time serving as the City Manager, I uncovered significant unethical and illegal conduct within the government and notified the City Commission in writing about what I found. Being the eighth Delray Beach City Manager in 7 years, I refused to enable the City's organizational culture of corruption to continue and so I decided to challenge the status quo and demand accountability. A small group of disgruntled employees, working in concert with Mayor Petrolia and City Attorney Gelin, smeared my good reputation with phony allegations for the sole purpose of ousting me from my position.

Let's recap what I discovered in my brief time as City Manager:

Residents Were Left Unprotected From Drinking Toilet Water - Damning evidence has been exposed that Mayor Petrolia directed me to lie to the public and tell them that she had no role in the reclaimed water catastrophe. A plethora of public records and video tape prove beyond a shadow of doubt that Mayor Petrolia did in fact have a role in a series of City actions that led to members of the public being exposed to toilet water in their drinking water. Mayor Petrolia:

- voted to approve contracts to expand the reclaimed water project on her watch;
- was Mayor while the expansion work was done;
- was Mayor when the expanded system was turned on despite the fact that contractors and City staff knew that devices to protect the public from drinking toilet water were not installed;
- was Mayor when a cross connection was discovered in which toilet water was mixed with drinking water; and
- was Mayor while the City failed to take corrective action for over a year after the cross connection was discovered.

After suspending me on charges that were eventually dropped by the City, and after the City accused me of lying about the severity of the toilet water mixup, on July 1, 2020, the Florida Department of Health issued a warning letter to the City that in their opinion, a variety of possible violations may have occurred including:

- Failure to implement cross-connection program
- Failure to issue Public Notice within 24 hours of discovery of cross-connections

- Failure to report cross-connections to Department within 24 hours; multiple occurrences
- Failure to ensure adequate back flow protection is provided at all customer connections throughout its potable water distribution system; multiple locations affected
- Failure to ensure adequate back flow protection is provided at all locations served by both potable and reclaimed water, multiple locations affected.
- Failure to evaluate the customer's premises for cross connections and adequate back flow protection at new or existing service connections whenever customer connects to reclaimed water; multiple locations
- Failure to conduct periodic inspections of customer connections; multiple locations
- Multiple cross-connections identified by City of Delray Beach employee at service connections throughout distribution system
- Failure to maintain copies of any written reports, summaries, or communications relating to cross-connection control program or sanitary surveys of the system including, but not limited to cross-connection control program or sanitary surveys of the system including, but not limited to records of installation, inspection, maintenance, and replacement of back flow prevention devices and assemblies
- Potable and reclaimed pipes and fixtures not color coded as required
- The City of Delray Beach submitted one or more false statements or representations including that no illnesses were reported.

In essence, the Health Department's letter confirmed issues that I had already notified the commission of in writing on May 5, 2020.

Drinking Water Storage Tanks Not Cleaned in 38 Years

I notified the City Commission in writing that the City had not been cleaning the storage tanks that hold the drinking water that goes directly into people's homes and businesses. Rule 62-555.350(2) of the Florida Administrative Code requires in part that the "finished drinking water storage tanks, ... shall be cleaned at least once every five years to remove biogrowths, calcium or iron/manganese deposits, and sludge from inside the tanks". No records of any cleanings are on file and the clear well, which holds a tremendous amount of drinking water, had not be cleaned in 38 years as of the date of my letter.

Since I was suspended, the City engaged in an extensive disinformation campaign in an attempt to discredit my claims until addition documents were uncovered confirming that I was correct.

The Slug Incident

I also notified the City Commission in writing that one of the smaller drinking water storage tanks, prior to it being cleaned, had an equipment failure and the water levels ran almost down to the bottom and churned up the sediment that has been laying down at the bottom for decades. By the time staff filled up the tank, a large cloud of contamination, referred to by the staff as a "slug", made its way through the drinking water and into the homes of countless customers who reported brown and black stuff coming out of their faucets. The public now knows that the brown stuff that was coming out of their faucets was the result of the City not cleaning the water tanks and failing to ensure that the telemetry and alarm systems were working properly.

The Over Chlorination Issue

Chlorine in public water systems is used to kill viruses and bacteria. Too much chlorine however is not permitted because it can be a danger to human health. In fact, too much chlorine is considered a contaminant in the water. It can be toxic. That's why the law requires that if a city detects too much chlorine 3 days in a row, they are required to notify the public of the contamination. I discovered that City staff had detected excessive chlorination of the drinking water over 20 consecutive days without notifying the public. City documents prove that what I said is accurate.

Toxic Chemicals Discovered In The Reclaimed Water

I warned in my letter that there might be additional safety issues with the City's reclaimed water program. Shortly after my letter was sent to the Commission, it was discovered that reclaimed water and sludge from the South Central Regional Wastewater Treatment Plant that serves the cities of Delray Beach and Boynton Beach, Florida, were found to have high levels of per- and polyfluoroalkyl substances (PFAS), according to testing done for Public Employees for Environmental Responsibility (PEER). **(Tab 39)**

PFAS are a family of chemicals with direct links to cancers, motor disorders in children, obesity, endocrine disruption, and liver and thyroid diseases. The CDC recognizes that exposure to PFAS may impact the immune system and reduce antibody responses to vaccines. PFAS are known as "forever chemicals" due to their persistence in the human body and the environment.

Mayor Violating Charter

Documents forwarded to you by me showed evidence that the Mayor was not only violating the City Charter by giving direction to me when I was there but also Interim City Manager Jennifer Alvarez. The documents included pleas for help from Ms. Alvarez to City Attorney Gelin on how to deal with the Mayor's charter violations. **(Tab 40)**

Mayor Enemies List

After I was suspended, I also uncovered a scheme on the part of Mayor Petrolia to punish her political enemies by attempting to direct me to get the County Property Appraiser to raise the taxes of her political opponents. **(Tab 41)** On May 6, 2020, Mayor Petrolia dropped off a stack of property records to my office with handwritten notes from her on issues that she had identified about the properties that needed to be addressed by the Property Appraiser. There were a total of 29 property addresses in the stack.

Out of a total of 32,847 taxable properties in the City of Delray Beach, Mayor Petrolia identified only 29 properties that she felt were under appraised. And of those that she identified, the vast majority of them were properties in which either:

1) the owner/developer of the property gave her political opponent campaign contributions instead of her own campaign, and/or
2) the land use attorney/lobbyist for the developer of the property raised campaign contributions to her opponent's campaign instead of her own campaign, and/or
3) the owner of the property was a developer who was building projects that she was vocally opposed to.

In some cases, she also included properties associated with individuals who supported Commissioners Johnson and Bathhurst in this past 2020 City Commission election for me to target them for tax increases as well.

Charge IX

Upon receiving information that the Complaint was sent to residents of the City, City staff sought to obtain said emails pursuant to Chapter 119. To date, you have refused to provide same. Florida Chapter 119 imposes obligations on employees, including those who are suspended. Individuals who choose to conduct the business of the City using their personal email accounts, as was the case here, are subject to the mandates of Chapter 119 and are responsible for ensuring that their emails are maintained in accordance with public records laws. Your failure to comply with Chapter 119 constitutes violations of Florida Statute Sections 443.036(29)(a),(b), (d), and (e).

Violations of Chapter 119 can subject an individual to criminal or civil sanctions and, more importantly, subject the City to liability as well. Your flagrant disregard to comply with the simplest of policies is, bluntly stated, alarming. As the Commission has now been made aware, there appears to be a pattern of your noncompliance, ranging from your use of Basecamp against the advice of City staff, your direction to create a private network for your use, and your refusal to comply with Chapter 119. Your willful and deliberate conduct in disregarding the policies of the City (and the State) creates an unnecessary liability for the City and does not appear to be in accordance with the expectations any employer would have of its employees.

Your deliberate conduct seemingly meant to circumvent public records laws is particularly egregious and against everything that government should stand for- transparency and openness.

Your intentional noncompliance with City policy is not isolated to Chapter 119. A recurring theme surrounding your refusal to comply with numerous City policies including, purchasing, personnel, and finance policies is evident throughout. However, as if your personal involvement in these matters wasn't enough, you hired your cronies to assist you with these efforts. In addition, you placed other members of City staff in the untenable position of having to stand by while you circumvented policies or risk repercussions. The foregoing conduct is a violation of Florida Statute Sections 443.036(29)(a),(b),(d), and (e).

These charges are all without merit. They should be dismissed.

Charge IX seeks to sanction me related to communications I allegedly had with private citizens after my suspension. On September 1, 2020, attorney Joanne O'Connor sent an email to My attorney, Carmen Rodriguez, regarding public records. In her correspondence, however, Ms. O'Connor correctly defined my restrictions while on the suspension imposed by the City. Ms. O'Connor, writing on behalf of the City, herself wrote "As a result of his suspension, Mr. Gretsas is precluded from performing any duties, services or functions on behalf of the City and no actions taken by him can be deemed to bind the City. An interim City Manager has since been appointed to assume Mr. Gretsas responsibilities." **(Tab 42)** Thus, Ms. O'Connor confirmed that while on suspension, I was no longer acting in my official capacity in any function on behalf of the City.

Ms. Rodriguez responded immediately in relevant part as follows: "... Mr. Gretsas has been more than happy to cooperate with the City's public records obligations and has corresponded with Katerri Johnson and provided her with access to all records available to him. Since your letter does not make reference to any specific records, I want to address a few areas that have come to our attention. Recently, Ms. Gelin wrote and requested copies of certain communications that she alleges Mr. Gretsas has sent since his suspension. As your letter so correctly states, however, "as a result of his suspension, Mr. Gretsas has been precluded from performing any duties, services or functions on behalf of the City and no action taken by him can be deemed to bind the City." Thus, we can agree that any communications Mr. Gretsas may have had from his personal devices after the date of his suspension would not be in his official capacity and none of those communications therefore constitute public records. As to communications prior to his suspension, the City is in possession of all his City emails and any emails from his Gmail account that were public records have already been provided to Katerri Johnson. Any paper documents that existed were left in his office. He has no public records that the City is not already in possession of. As to cmdbmac@mydelraybeach.com, you are incorrect to refer to this as an account that he "created." This account was set up by the IT department and the IT department established the password(s) for that account. All details relating to that account should be stored within the IT department. Here are the only passwords that he has in his possession: [passwords redacted for the City's protection]. Anything else that was created by

the IT department, including the Apple ID, ICloud, WiFi were on a sheet of paper on his desk. They were not created by him and he did not store anything on them. If the City would like to reset a password and you would like his cooperation, he would be happy to assist with that. Again, he no longer has access to this account (or any other City account) and has no access to account information. If we can assist further on this issue, please do not hesitate to contact me." **(Tab 42)** Despite my evidencing to be fully open for discussion on the matter, Ms. O'Connor never responded.

On September 14, 2020, Ms. Gelin emailed me to request my assistance relating to access to certain accounts that were active prior to my suspension. I fully cooperated and, in fact, a time certain was scheduled whereby I gladly agreed to work with IT to assist them. A call was set for the same day at 3pm. I waited for the call that never came. Having heard nothing, at 3:12pm, I emailed Ms. Gelin: "So far no one has called I am standing by for the call." At 3:15pm, Mr. Gelin responded, "I apologize..the issue has been handled. Your assistance is no longer needed. Thank you again." Thus the allegation is completely unsupported by the facts, including communications with representatives of the City and the City Attorney, which the City Auditor oddly failed to uncover in her purported investigation.

Conclusion

After reading this rebuttal to the Charges, it should be clearly apparent and very concerning to the Commission that City staff is providing them with a false and incomplete narrative to dictate a result as to my employment that is inconsistent with the facts on all counts here. A purported report, missing critical documents, including the written advice of the City Attorney on matters as to which I have been specifically charged, is a gross disservice to the citizens of Delray Beach and a violation of my rights.

I ask that you take the necessary time to review all of the information that I have included in the tabs which prove that everything that I have said is true and that some of the people that you have been relying on since my departure have misled you. And finally, I ask that you dismiss each and every one of the charges and reinstate me immediately.

Sincerely,

George Gretsas