

MARR JONES & WANG

A LIMITED LIABILITY LAW PARTNERSHIP

Labor and Employment Law

August 15, 2016

CONFIDENTIAL - FINAL REPORT

Via E-mail (enomura@honolulu.gov)

Ernest H. Nomura, Esq.
Deputy Corporation Counsel
Department of the Corporation Counsel
City and County of Honolulu
530 South King Street, Room 110
Honolulu, Hawaii 96813

Re: Final Report of Fact-Finding Investigation

Dear Mr. Nomura:

Thank you for engaging Marr Jones & Wang LLP to conduct a confidential fact-finding investigation to address the allegations raised by [REDACTED] and [REDACTED] (collectively, the “Complainants”) against Daniel Grabauskas. Below is a the Final Report of this Investigator’s investigation.

I. EXECUTIVE SUMMARY

This Investigator was unable to substantiate many of the allegations made by the Complainants against Grabauskas. Below are the Complainants’ allegations followed by the Investigator’s determination:

A. Allegations By [REDACTED]

1. Grabauskas violated the City and County of Honolulu’s (the “City”) Workplace Violence Policy by intimidating her into withholding information from the HART Board and by threatening her employment.
Unable to substantiate.
2. Grabauskas prevented [REDACTED] from performing the duties of her position as HART [REDACTED] by having her withhold information from the HART Board and by retaliating against her when she

773565/0377.012

Pauahi Tower • 1003 Bishop Street, Suite 1500 • Honolulu, Hawaii 96813
Phone: (808) 536-4900 • Fax: (808) 536-6700 • Direct: (808) 566-5665 • E-mail: msakae@marrjones.com

raised issues regarding [REDACTED] performance and improper drawdowns. *Unable to substantiate.*

3. Grabauskas concealed and covered up [REDACTED] known or suspected job performance deficiencies that resulted in improper compliance and financial management of at least \$18,276,358 of which \$5,457,318 represented the amount drawn down against a large federal grant with the FTA of \$1.55 billion through December 2015. *Unable to substantiate.*
4. Grabauskas coerced [REDACTED] to resign or be terminated from her position at HART when she and a direct manager [REDACTED] raised concerns of improper drawdowns by [REDACTED] against the FTA grant that came to their attention during the course of HART's annual independent financial audit. *Unable to substantiate.*
5. Grabauskas retaliated against [REDACTED] by revising her position description. *Unable to substantiate.*
6. Grabauskas created a hostile work and abusive work environment. *Based on the information gathered throughout this Investigation, the Investigator finds it more likely than not that Grabauskas engaged in behavior that a reasonable person could find intimidating or offensive when he raised his voice, swore and indirectly or directly threatened employees' jobs when he was upset.*
7. Grabauskas discriminated against women, specifically [REDACTED], [REDACTED] and [REDACTED]. *Unable to substantiate.*

See Exhibit 1A ([REDACTED] First Interview Statement) attaching Exhibits E (Summary of [REDACTED] Complaint) and L (Letter from [REDACTED] Esq. dated April 22, 2016 ("[REDACTED] Letter")).

B. Allegations by [REDACTED]

1. Grabauskas created a hostile environment during a meeting a May 3, 2013 meeting attended by [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] regarding the Art in Transit Procurement. *Unable to substantiate.*
2. Grabauskas was condescending to [REDACTED] when he said, "What would you know, you're just an artist." *Unable to substantiate.*
3. Grabauskas created a culture of "don't make waves or you will be fired." *Unable to substantiate.*

4. Grabauskas favored certain staff. *Unable to substantiate without further interviews. See fn 18 below. [REDACTED] provided much of the information in support of this allegation (including identifying several potential witnesses) in her Second Interview Statement.*
5. Because Grabauskas eliminated [REDACTED] job, [REDACTED] is forced to the job of an architect even though she is not an architect. *Unable to substantiate.*
6. When [REDACTED] stood up to Grabauskas, he marginalized [REDACTED] and stopped inviting him to meetings even though he had the most expertise. *Unable to substantiate.*
7. Grabauskas is vindictive and tried to get [REDACTED] silenced, punished or terminated for speaking to a reporter after he left. *Unable to substantiate.*

See Exhibit 2A ([REDACTED] First Statement), Exhibit C (Summary of [REDACTED] Complaint).

II. PURPOSE AND SCOPE

This Investigator was retained on April 28, 2016 to serve as an independent fact-finding Investigator with respect to complaints raised by the Complainants. Thus, the purpose of this investigation was to gather the facts necessary for a decision maker to determine whether there is merit to the allegations raised by the Complainants. The Investigator is not acting as a legal advisor or a decision maker on whether any policies were violated or what action, if any, should be taken as a result of the complaints and this Investigator's findings.

Specifically, this Investigator was retained by the City on behalf of the HART Board, Human Resources Committee to conduct an independent investigation for a decision maker to determine whether there is merit to the allegations by the Complainants described in in Section I (Executive Summary) above.

III. APPLICABLE POLICIES/LAWS¹

This Investigator reviewed the following policies which may be relevant to this investigation, excerpts of which are quoted below:

A. HART's Equal Employment Opportunity Program

1. EEO Program

Section A: Purpose

¹ Although [REDACTED] attorney attached the City's Sexual Harassment Policy to his letter, both Complainants confirmed that they are *not* alleging sexual harassment; therefore, this Investigator did not consider the Sexual Harassment Policy in drafting the Report. Exhibit 1B, ¶ 108; Exhibit 2B, ¶ 43.

General: No person in the United States shall, on the grounds of race, color, creed, national origin, *sex*, disability, or age, be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through federal assistance under Section 19 of the 1964 Urban Mass Transportation Act (UMTA).

Compliance: The HART Executive Director shall ensure compliance with the general purpose of this program. HART affirms its commitment to treat all applicants for employment and all employees without regard to race, religion, creed, color, national origin, *sex*, age, disability, veterans, marital status, or any other class protected by local, state or federal law.

Equal Employment Opportunity Program

Policy Statement

1. The Honolulu Authority for Rapid Transportation (HART) is an Equal Employment Opportunity (EEO) employer. HART affirms its commitment to treat all applicants for employment and employees without regard to race, religion, creed, color, national origin, *sex*, age, disability, veteran status, marital status or any other class protected by local, state, or federal law. HART and its employees are prohibited to discriminate against an applicant for employment or employee on the basis of race, color, religion, creed, *sex*, age, national origin, or any other basis protected by local, state, or federal law, or to be excluded from participation in, or denied the benefits of, or be subject to discrimination under any project, program, or activity funded in whole or in part through federal financial assistance.
2. This policy extends to all areas of employment including recruitment, selection and placement compensation, promotion, transfer, discipline, demotion, lay-off, *termination*, training, *daily working conditions*, benefits and all other terms and conditions of employment.

Exhibit 3 at 4, 6, 19 (emphases added).

B. The City's Workplace Violence Prevention Policy

I. POLICY

To maintain and promote safe work environment for all employees, free from acts or threats of violence. A safe work environment is the joint responsibility of management and employees. Acts or threats of physical violence, including harassment, *intimidation and other disruptive behavior* in the workplace will not be condoned or tolerated. All reported incidents of workplace violence shall be taken seriously and shall be dealt with appropriately.

II. APPLICABILITY

The City and County of Honolulu's prohibition against acts or threats of violence shall apply to all employees including managers, supervisors, contract and temporary workers and volunteers. . . .

III. PROHIBITED BEHAVIORS

- A. "Acts or threats of violence" include conduct against persons or property *sufficiently severe, offensive, or intimidating to alter employment conditions or to create a hostile, abusive, or intimidating work environment* for any City employee or group of City employees. Such behavior can include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm.

Examples of conduct that may be considered "acts of threats of violence" prohibited under this policy include, but are not limited to, the following:

5. Use of foul language directed at another person in a threatening or hostile manner.
6. Intimidating or attempting to coerce an employee to do wrongful acts.

IV. RESPONSIBILITIES

A. Employee

It is the responsibility of all employees to be aware of how their behavior, physical and verbal, affects other people. *Employees shall eliminate behavior (including teasing and joking) that a reasonable person would find intimidating, hostile or offensive.*

Do not ignore violent, threatening, harassing, intimidating or other disruptive behavior. *If an employee observes or experiences such behavior, it should be reported promptly to the appropriate supervisor or manager for preventive or corrective action.* In the event of imminent danger, immediately call "911" for police assistance.

B. Supervisor

Do not tolerate offensive behaviors and act immediately and consistently to correct such behavior. Promptly take corrective action whenever an employee reports an act or threat of violence. Work with departmental personnel officer on taking appropriate action to report the act or threat of violence to the appointing authority. . . .

V. NON-RETALIATION

There shall be no retaliation or discrimination by any person against an employee who in good faith has complained of acts or threats of violence, conducted an investigation of a complaint, or acted as a witness during an investigation of a complaint. Retaliatory conduct should be reported by the individual to his/her supervisor and dealt with promptly and seriously by management.

Exhibit 4 (emphases added).

C. Hawaii Revised Statutes § 378-62 (Whistleblowers' Protection Act)

Discharge of, threats to, or discrimination against employee for reporting violations of law. An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because:

(1) The employee, or a person acting on behalf of the employee, reports or is about to report to the employer, or reports or is about

to report to a public body, verbally or in writing, a violation or a suspected violation of:

(A) A law, rule, ordinance, or regulation, adopted pursuant to law of this State, a political subdivision of this State, or the United States; or

(B) A contract executed by the State, a political subdivision of the State, or the United States,

unless the employee knows that the report is false

Haw. Rev. Stat. § 378-62.

IV. BACKGROUND

A. Background of Grabauskas's Employment

Grabauskas has been the Executive Director and Chief Executive Officer of HART since April 9, 2012. Exhibit 5 (Grabauskas Statement), ¶ 2. Reporting directly to Grabauskas are **Chief Financial Officer** [REDACTED], his **Private Secretary** [REDACTED], **Board Administrator** [REDACTED], **Deputy Director** [REDACTED], **Project Director** [REDACTED], **Director of Administrative Services** [REDACTED], **Director of Government Relations** [REDACTED], **Civil Rights Officer** [REDACTED], the Director of Communications, the Director of Operations and Maintenance, the Director of Quality Assurance and Quality Control, and the Chief Safety and Security Officer.² See Exh. 1A, Exhibit A (December 2015 Organization Chart).

Up until 2014, Grabauskas's areas of oversight included several additional positions. Exh. 5, ¶¶ 70-71. In 2014, the FTA informed HART, because of the size of the project, that it needed to identify a Project Director whose job would be to oversee the direct delivery of the project. *Id.* When Project Manager [REDACTED] was hired, several areas that had reported to Grabauskas began reporting to [REDACTED]. *Id.* Grabauskas retained oversight of the administrative and supportive functions, including the area overseen by [REDACTED], Budget and Finance. *Id.*

B. Background of [REDACTED] Employment

Grabauskas hired [REDACTED] as the [REDACTED] and [REDACTED] of HART in June 2012. Exh. 1A, ¶ 2. Reporting directly to [REDACTED] are her secretary, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and the Senior Advisor and Risk Manager. Exh. 1A, ¶ 6 and Exhibit A.

² The Investigator interviewed the individuals whose positions and names are in bold.

³ This Investigator understands that [REDACTED] recently resigned from his position.

Like Grabauskas, after [REDACTED] was hired, several areas [REDACTED] had been overseeing were moved under [REDACTED]. Compare Exhibits U and V, attached to Exh. 5.

[REDACTED] resigned as HART's [REDACTED] in January 2016, but later rescinded her resignation. See Exh. 1A, Exhibit L. It is unclear whether the rescission was formally accepted, but the Investigator understands that [REDACTED] personal services contract has since been submitted for renewal for another year.

C. Background of [REDACTED] Employment

[REDACTED] has been HART's [REDACTED] since February 16, 2012. Exh. 2A, ¶ 2. Reporting to [REDACTED] is the [REDACTED] [REDACTED] reports directly to Deputy Director of [REDACTED] who reports to Director of [REDACTED], who reports to [REDACTED]

[REDACTED] reported to the [REDACTED] until January 2016, when his position was eliminated. Exh. 2A, ¶ 4.

D. The Structure of HART

The individuals who work at HART are made up of a handful of civil service employees (including [REDACTED] and [REDACTED]), employees on one-year personal services contracts (including [REDACTED] and [REDACTED]) and consultants. Exhibit 6 [REDACTED] Third Statement), ¶ 20. According to [REDACTED], because the consultants are paid significantly more than both City civil service and City personal services contracts employees, HART endeavors to replace the consultants with City employees as much as possible. *Id.* [REDACTED] First Statement), ¶ 33.

V. RESOURCES

A. Witness Interviews

During the course of the investigation, the undersigned interviewed thirty-four individuals, including Grabauskas and the Complainants. The Interviewees are listed below alphabetically by last name. The in-person interviews took place at the offices of Marr Jones & Wang throughout May and June 2016.

“◆” denotes Interviewees with Exhibits attached to their Interview Statement.

“*” denotes additional e-mails exchanged after the witnesses' interviews. The e-mails are attached to the end of the witnesses' statements.

“o” denotes Interviewees whose Interview Statements are unsigned.

Name of Interviewee	Mode of Interview	Date(s) of Interview
Accused		
Daniel Grabauskas◆	In Person	May 20, 2016

Name of Interviewee	Mode of Interview	Date(s) of Interview
Complainants		
██████████ ♦	In Person	May 3, 2016
██████████	In Person	June 17, 2016
██████████ ♦	In Person	May 9, 2016
██████████	In Person	June 20, 2016
Witnesses		
██████████ *	In Person	May 18, 2016
██████████ ♦	By Telephone	May 16, 2016
██████████	In Person	May 27, 2016
██████████ ♦ *	In Person	May 13, 2016
██████████ ♦	By Telephone	May 25, 2016
██████████	In Person	May 6, 2016
██████████	In Person	May 16, 2016
██████████ ♦ *	In Person	May 12, 2016
██████████ °	In Person	May 17, 2016
██████████	Via E-mail	July 5, 2016 (response date)
██████████ °	By Telephone	May 24, 2016
██████████	In Person	May 25, 2016
██████████	By Telephone	May 16, 2016
██████████	In Person	May 13, 2016
██████████ °	In Person	May 10, 2016
██████████	In Person	May 9, 2016
██████████ ♦ *	In Person	May 11, 2016
	By Telephone	June 20, 2016
██████████	In Person	May 19, 2016
██████████	In Person	May 6, 2016
	By Telephone	May 17, 2016
██████████ *	In Person	May 11, 2016
██████████	By Telephone	May 27, 2016
██████████ *	In Person	May 11, 2016

Name of Interviewee	Mode of Interview	Date(s) of Interview
██████████ ♦ *	In Person	May 6, 2016
	By Telephone	May 11, 2016
	By Telephone	May 17, 2016
██████████	In Person	May 12, 2016
██████████ ♦	In Person	May 5, 2016
██████████ *	By Telephone	May 16, 2016
██████████ ♦ *	In Person	May 31, 2016
██████████	In Person	May 24, 2016
██████████ *	In Person	May 16, 2016
██████████	In Person	June 2, 2016
██████████	In Person	May 11, 2016

Each witness who was interviewed in person reviewed and signed a disclosure statement that outlined the purpose and parameters of the interview, prior to the witness' first interview. The disclosures note, among other things, that the interview is voluntary, the importance of providing honest and accurate information to the best of the witness' knowledge and recollection, and HART and the City's prohibition on retaliation.

This Investigator took notes of each interview on a laptop during the interview. Although not verbatim, the Investigator endeavored to capture the witness' actual words whenever possible. After the interview, the interviewees were asked to review their statement and revise them as the interviewees felt necessary. Each interviewee was then asked to sign at the end of the notes, as revised, and return the notes to the Investigator. The statements are attached hereto as Exhibit 6 (in alphabetical order).

Certain individuals who were identified during the investigation as potential witnesses were contacted, but this Investigator was unable to interview them. These individuals were ██████████⁴ ██████████ ██████████, and ██████████.

B. Other Documents Reviewed

1. October 29, 2014 Employment Agreement between Grabauskas and HART and its attachment. **Exhibit 7.**
2. Statement of Duties and Responsibilities for ██████████. **Exhibit 8.**
3. April 22, 2016 letter from ██████████ to Grabauskas. **Exhibit 9.**

⁴ This Investigator spoke with ██████████ who declined to be interviewed. ██████████ indicated that he was concerned about repercussions from his employer ██████████ if he became involved with the Investigation.

VI. INVESTIGATOR'S FINDINGS & EVIDENCE

A. Assessment of Dan Grabauskas

This Investigator found Grabauskas generally credible.⁵ With respect to the allegations made by [REDACTED], Grabauskas provided credible explanations in response to the allegations made against him, some of which this Investigator found were supported by documentation and the statements by the interviewed witnesses, others were not.

Grabauskas seemed genuinely surprised by the allegations made against him by [REDACTED] and this Investigator credits Grabauskas when he said he thought he and [REDACTED] had a good working relationship.

B. Assessment of [REDACTED]

This Investigator found [REDACTED] credible. This Investigator interviewed [REDACTED] twice. During the first interview, [REDACTED] seemed nervous and tense. During the second interview, [REDACTED] seemed more relaxed. She listened to Grabauskas's explanations and provided responses to his explanations in a calm, non-defensive manner.

C. Assessment of [REDACTED]

This Investigator also met with [REDACTED] twice. During the first interview, [REDACTED] was able to convey her complaints to the Investigator in a calm and rational manner. She cried once when discussing Grabauskas's demeanor during the May 2013 meeting. During her second interview [REDACTED] seemed more emotional and cried several times, such as when she described feeling unappreciated at work. At times, [REDACTED] responded to Grabauskas's explanations to her allegations with anger and generally seemed incredulous that he did not agree with her allegations.

D. Specific Findings of the Investigator

1. Allegations By [REDACTED]

Based on the preponderance of evidence standard, this Investigator was unable to substantiate allegations that Grabauskas (1) "conceal[ed] and cover[ed] up known or suspected employee job performance deficiencies," (2), "retaliat[ed] by coercing [REDACTED] to resign or be terminated from [her] position at HART," when she raised issues regarding [REDACTED] performance and improper drawdowns, (3) retaliated against [REDACTED] by revising her position description; (4) prevented [REDACTED] from performing the duties of her position as HART [REDACTED] by intimidating her into withholding information from the HART Board, (5) intimidated her by threatening her employment, and (6) discriminated against women. This Investigator finds that it was more likely than not that Grabauskas (1) engaged in behavior that a

⁵ Grabauskas's counsel, Louise Ing of the firm Alston Hunt Floyd & Ing, was present during his interview, but Grabauskas answered all of the Investigator's questions without interruption or assistance from Ing.

reasonable person could find intimidating or offensive and (2) used words either suggesting or directly stating that he was going to fire people.

(1) **Concealing and covering up the known or suspected job performance deficiencies of [REDACTED]**

With respect to [REDACTED] first two allegations, [REDACTED] complaints appear to stem from her concerns regarding [REDACTED] performance and purported improper drawdowns against the FTA grant. Specifically, [REDACTED] alleges that when she attempted to present Grabauskas with a corrective action plan to address [REDACTED] performance issues, he refused to look at it and thereafter retaliated against her by forcing her to resign on January 7, 2016.

[REDACTED] was recruited from [REDACTED] to Hawaii to become HART's [REDACTED] and began working at HART on April 8, 2014. Exh. 6 ([REDACTED] Statement), ¶ 2; see also Exh. 1A, ¶¶ 19, 20, Exhibit G; Exh. 5, ¶¶ 8, 14.

During the hiring process, Grabauskas [REDACTED] [REDACTED] and [REDACTED] interviewed [REDACTED] Exh. 6 ([REDACTED] Statement), ¶¶ 7, 8. Exh. 5, ¶ 9.⁶ [REDACTED] agreed that [REDACTED] was the best candidate they had interviewed for the [REDACTED] position. Exh. 1A, ¶ 19.

[REDACTED] Version

[REDACTED] stated that within months of [REDACTED] hire, the managers in her department expressed concerns about [REDACTED] ability to perform the duties of her position. Exh. 1A, ¶ 23. This was corroborated by [REDACTED] (former [REDACTED]), [REDACTED], and [REDACTED] ([REDACTED]), all three of whom indicated that [REDACTED] had performance issues. Exh. 6 ([REDACTED] First Statement), ¶¶ 6, 10, 11; ([REDACTED] Statement), ¶ 13; [REDACTED] Statement), ¶¶ 11-12.

When [REDACTED] first spoke to Grabauskas about [REDACTED] performance issues, Grabauskas directed [REDACTED] to "try to work with her" and [REDACTED] agreed. Exh. 1B, ¶ 3.

The second time [REDACTED] spoke to Grabauskas about [REDACTED] performance issues was on September 18, 2014. See Exh. 1B, Exhibit AA at ¶ 6. According to [REDACTED], she provided Grabauskas with written documentation of "what [her] issues and observations were regarding [REDACTED] performance to-date." Exh. 1B, ¶ 19. Although in the agenda [REDACTED] drafted for her meeting with Grabauskas [REDACTED] referred to the document as a "Work duty corrective

⁶ During her interview [REDACTED] questioned why Grabauskas would involve himself in the hiring of someone in her [REDACTED] group that reported directly to her, however, this Investigator credits Grabauskas when he explained that he participated in the hiring process because (1) the [REDACTED] position is a critical position that is the key interface point with the FTA and he "wanted to make sure it got done right," and (2) the difficulty in finding an individual with FTA grants management experience. Exh. 1A, ¶ 20; Exh. 5, ¶¶ 7-8. [REDACTED] does not dispute that [REDACTED] position is "very important." Exh. 1A, ¶ 54.

action plan," [REDACTED] stated it was not a corrective action plan, but a document to inform Grabauskas, "this is where we are at" with [REDACTED] performance. *Id.*, ¶¶ 18-19, Exhibit AA, ¶ 6.

When [REDACTED] presented Grabauskas with the document, he looked at it and told her, "This isn't what I mean, it needs to be more of a corrective action plan." *Id.*, ¶ 25. [REDACTED] told Grabauskas "Yes, I know that," and that she "wanted his ok to move ahead. It's a significant process, and I wanted to make sure he and I were on the same page, and because in the prior meeting he said give [REDACTED] time, and I had agreed to do so." *Id.*, ¶ 28. In response to Grabauskas's directive, [REDACTED] spent the next month working on the corrective action plan.⁷ *Id.*, ¶ 25.

In or around October 15, 2014, [REDACTED] had [REDACTED] "look at" a copy of [REDACTED] corrective action plan ("Draft CAP"), *see* Exh. 1A, Exhibit J, but asked [REDACTED] not to discuss it with Grabauskas because she planned to address it during her regularly-scheduled 2:00 p.m. meeting with Grabauskas the following day. Exh. 1A, ¶ 36. [REDACTED] looked at the Draft CAP and said, "You definitely have a problem, this looks good." *Id.*, ¶ 35. The next morning at 10:30 a.m., [REDACTED] came into [REDACTED] office and told her, "I mentioned [REDACTED] CAP to [REDACTED], and [REDACTED] not happy." *Id.*, ¶ 37. According to [REDACTED], she was "incredulous" that [REDACTED] "did specifically what [she] asked him not to," but was thankful that [REDACTED] gave her a "heads up." *Id.*

At around 11:00 a.m. on October 16, 2014, Grabauskas came into [REDACTED] office and closed the door, put his hands on his hips and said, "Now you're messing with me!" Exh. 1A, ¶ 38; Exh. 1B, ¶ 36. According to [REDACTED], this confirmed [REDACTED] statement that Grabauskas was angry with her. Exh. 1A, ¶ 38. [REDACTED] attempted to provide Grabauskas with the Draft CAP, but Grabauskas would not take it from her. *Id.*, ¶ 39. He told [REDACTED] that "he had made up his mind and that he was moving [REDACTED] to Planning, Permitting and Right of Way under [REDACTED]" *Id.* [REDACTED] stated, "I felt like I did something very wrong when I was just following his instructions." *Id.* She further explained, "[REDACTED] rant at me went on for several minutes. I tried 3 times to explain it to him, but each time I tried, he got louder and angrier at me so I stopped trying to have a rational[] conversation with him altogether. I just sat in my chair, and waited until he was done berating me, and he finally left." *Id.* [REDACTED] stated that it "was one of the most one-sided, vociferous exchanges between [REDACTED] and myself that was unproductive, anxiety and fear-causing for me." *Id.*, ¶ 40. [REDACTED] could not recall whether he used expletives, but stated,

I had no doubt that he was extremely displeased with me and that I had crossed the line with him. He said, "Now you're messing with me!" It was personal. I was surprised. I understood him to mean, "you have done something that has violated me personally,

⁷ [REDACTED] approached [REDACTED] ([REDACTED]) about the process of drafting a corrective action plan, but [REDACTED] told her there was no process and "didn't provide [her] with anything that [she] could follow or use" so she drafted the corrective action plan based on her experience. *Id.*, ¶ 26.

therefore I don't want to hear what you have to say. So I will move [REDACTED] and have her abilities independently assessed by someone else."

Id., ¶ 42.

According to [REDACTED], she believed Grabauskas did not want her to document [REDACTED] performance deficiencies and "it was clear to [her] that Dan was angry that [she] put something in writing about [REDACTED]. He didn't want [her] to bring this up." *Id.*, ¶ 49.

When [REDACTED] first moved to Planning, Permitting and Right of Way ("Planning"), [REDACTED] initially continued to have [REDACTED] review the FTA grant drawdowns. *Id.*, ¶ 63. However, after about a month, [REDACTED] discontinued this practice and [REDACTED] did not review the grant drawdowns before [REDACTED] and Grabauskas (and later [REDACTED] and Grabauskas) signed off on them. *Id.*, ¶¶ 63, 86; *see also* Exhibit 1C (May 11, 2016 e-mail from [REDACTED] and its attachments); Exhibit 1D (May 13, 2016 e-mail from [REDACTED] and its attachments). According to [REDACTED] the fiscal expenditures (including the Federal Financial Reports and drawdowns against the grant) for October 2014 to date, have not been reviewed by Budget and Finance. Exh. 1A, ¶¶ 63, 71.

In the fall of 2015, in preparing for an audit by independent financial auditors, [REDACTED] discovered improper drawdowns against the FTA grants, specifically, drawdowns against real estate transactions that have not yet closed and cash collateral for Owner Controlled Insurance Program ("OCIP"). Exh. 1A, ¶¶ 73-74, Exhibit F; Exh. 6 ([REDACTED] Statement), ¶¶ 20-21. Although the audit did not result in a finding, she and [REDACTED] felt they had a professional obligation to raise the improper drawdowns issue and addressed it with [REDACTED] and [REDACTED] (the [REDACTED]).⁸ Exh. 1A, ¶ 73.

In October 2015, [REDACTED] e-mailed [REDACTED] about the drawdowns. Exh. 5, Exhibit J (Oct. 16, 2015 E-mail from [REDACTED] to [REDACTED]). According to [REDACTED], [REDACTED] was doing [REDACTED] a "favor" by pointing out the improper grant reimbursement, but [REDACTED] was "arguing and saying 'prove it.'" Exh. 1A, ¶ 74. The e-mails between [REDACTED] and [REDACTED] (cc'ing [REDACTED] and [REDACTED]) continued through January 7, 2016 at 2:48 p.m. when [REDACTED] ended their communications writing:

Please stop sending me any further emails regarding this matter.
As I have reiterated in all my previous emails, the issues are for
YOU, as HART's [REDACTED], to make the
determination whether the expenditures are eligible for
reimbursement.

⁸ [REDACTED] left HART in October 2015. *Id.*, ¶ 2. At that time, [REDACTED] began reporting to directly to [REDACTED] rather than the new [REDACTED], because of [REDACTED] experience working with the FTA. *Id.*, ¶ 15.

Arguing with me will not resolve the matter, because this is not my area.

I will say it again, THIS IS YOUR AREA OF RESPONSIBILITY AND YOU MUST MAKE THE DETERMINATIONS AS TO THE ELIGIBILITY OF THOSE EXPENDITURES.

("January 7 E-mail"); *Id.*, ¶ 74, Exhibit L (caps in original.)

That same day (January 7, 2016) Grabauskas called [REDACTED] into his office and told her "he wanted to look for another [REDACTED] and move in a different direction." *Id.*, ¶ 75. Although [REDACTED] never spoke directly with Grabauskas about the improper drawdowns [REDACTED] believes [REDACTED] was keeping Grabauskas informed about the drawdown issue and, as a result, Grabauskas asked her to resign in retaliation for doing her job as [REDACTED] *Id.*, ¶¶ 76-77.

Grabauskas's Response

Grabauskas stated that his assessment of the concerns raised by [REDACTED] regarding [REDACTED] "was that at least there was a personality issue between [REDACTED] and [REDACTED] and also [REDACTED]; they were not getting along with her." Exh. 5, ¶ 13. Grabauskas stated that he had concerns because [REDACTED] seemed to want to immediately fire [REDACTED] *Id.*, ¶ 14; Exhibit B, ¶ 6. However, Grabauskas did not think it was fair to fire [REDACTED] a couple of months after she had relocated Hawaii. *Id.*, ¶ 15. Grabauskas asked [REDACTED] to develop a corrective action plan to help [REDACTED] because the person [REDACTED] described to him was different from the person they had hired – someone with excellent references, including high marks from the FTA – after a long process of looking. *Id.*, ¶ 14. According to Grabauskas, [REDACTED] never drafted a corrective action plan, but instead provided him with reasons to terminate [REDACTED] *Id.*, ¶¶ 14, 28, 35, 42.

With respect to the conversation on October 16, 2014, Grabauskas denied it occurred. First, he stated that on October 15, 2014 he was in Washington D.C. and was flying back to Hawaii on October 16, 2014. *Id.*, ¶ 33. He stated he met with [REDACTED] on October 8 and October 29, 2014. *Id.*, ¶ 34. Although Grabauskas admitted to being "irritated" with [REDACTED] because he had asked her four times to draft a corrective action plan and she had not done it, he denied saying to her, "Now you're messing with me," or that she tried to hand him the Draft CAP. *Id.*, ¶¶ 28, 35, 36. In fact, Grabauskas had never seen the Draft CAP before the Investigator showed it to him during his Interview. *See id.*, ¶ 36. Grabauskas claimed that if [REDACTED] had given him the Draft CAP, he would have read it. *Id.*, ¶ 42.

According to Grabauskas, after months of [REDACTED] not providing a CAP, he decided to move [REDACTED] under [REDACTED], who was the [REDACTED], so that [REDACTED] could evaluate [REDACTED] performance. *Id.*, ¶ 28.

Around this same time, (early 2015), HART was preparing for the FTA's Triennial Review, which is a "top to bottom" audit, every three years of transit agencies. Exh. 5,

¶ 20. It was HART's first triennial review since its existence. *Id.* In preparation for the Triennial Review, Grabauskas hired a consultant [REDACTED], who had been with the FTA for [REDACTED] years as the [REDACTED]. *Id.* As part of [REDACTED] assessment of HART, Grabauskas asked [REDACTED] to assess [REDACTED] performance. *Id.*; Exh. 6 ([REDACTED] Statement), Exhibit F.

Both [REDACTED] and [REDACTED] reported no issues with [REDACTED] performance. Exh. 5, ¶¶ 20, 23. [REDACTED] told this Investigator that she believed [REDACTED] drawdowns were done correctly and that [REDACTED] "encouraged [REDACTED] to work with the FTA and collaborate with them because it's the funding entity. She did that. FTA was willing to help us. [REDACTED] was very diligent about reading the regulations or circulars and checking the requirements." Exh. 6 ([REDACTED] Statement), ¶ 17. [REDACTED] told this Investigator that he "thought [REDACTED] knew what she was going." Exh. 6 ([REDACTED] Statement), ¶ 10. [REDACTED] further stated, "Dan has asked me whenever I'm out there to touch base with [REDACTED] to make sure she is following Federal requirements in terms of submitting grant applications and drawdowns. I've talked to FTA Region 9 staff. They are happy with her and the quality of her work." *Id.*

According to [REDACTED] current supervisor, [REDACTED] during the Triennial Review the FTA said [REDACTED] did a good job.⁹ Exh. 6 ([REDACTED] Statement), ¶ 30.

As evidence that he was not upset that [REDACTED] documented [REDACTED] performance issues and that [REDACTED] was more interested in terminating [REDACTED] than improving her performance, Grabauskas provided this Investigator with an e-mail dated October 1, 2014 in which [REDACTED] asks whether she can send one or two people to California for Triennial Review training, including [REDACTED] and/or someone else . . . , Exh. 5, Exhibit D (Oct. 1, 2014 4:19 p.m. E-mail), to which Grabauskas responds,

Sounds like this is also a training opportunity for [REDACTED]
As to that, *you didn't yet bring me her staff recovery plan,* [REDACTED]

Exh. 5, Exhibit D (Oct. 1, 2014 4:32 p.m. E-mail) (emphasis added). In response, [REDACTED] writes, "We can probably only send one from HART at this point, and I'm recommending [REDACTED]; and *I'm working on her recovery plan now that [REDACTED] is back,* and can take on the audit again." *Id.* (emphasis added). Grabauskas responds, "Just send two. [REDACTED] and [REDACTED]." *Id.* [REDACTED] writes, "Right, roger that." *Id.* Grabauskas then forwards the e-mail chain to [REDACTED] writing, "UGH [REDACTED]?" *Id.* Grabauskas stated he had asked [REDACTED] to reach out to the former [REDACTED] to assess [REDACTED] performance, but that [REDACTED] declined because of issues working with [REDACTED]. *Id.*, ¶¶ 15-16.

With respect to the allegedly improper drawdowns, Grabauskas claimed he was unaware of the specific issues relating to the drawdowns until April 29, 2016, when this Investigator sent him the exhibits attached to [REDACTED] lawyer's letter, which included the

⁹ The Triennial Review did not result in any findings regarding inappropriate drawdowns at HART. Exh. 5, ¶ 21.

January 7 E-mail. Exh. 5, ¶ 49. After receiving the E-mail, on May 9, 2016, Grabauskas reached out to [REDACTED], [REDACTED], [REDACTED] and [REDACTED] asking --

Is there a question of (in)eligible draw downs on the federal grant?
[S]pecifically, regarding: properties not yet in escrow; properties in eminent domain; and/or collateral and escrows; OCIP? Either they are or not – and FTA should be able to answer. If they are ineligible costs, are we having to reimburse? What is the status? There was no finding in the audit last year that I am aware of, or the FTA Triennial was there? Or is this possible a recent occurrence. Can someone fill me in?

Exh. 5, Exhibit J. On May 10, 2016, [REDACTED] responded to Grabauskas with specific citations supporting the eligibility of the draw downs.¹⁰ *Id.*, ¶ 25, Exhibit J. Also on May 10, 2016, Grabauskas told [REDACTED] to follow up with the FTA to make sure “we’re not missing anything.”¹¹ Exh. 6 ([REDACTED] Statement), ¶ 31. Grabauskas also asked the FTA verbally, when its staff was in Hawaii in May 2016, whether there were any issues with [REDACTED] drawdowns, and the FTA responded there were none. Exh. 5, ¶ 25.

[REDACTED] stated that [REDACTED] told him that she was having a problem with [REDACTED] and wanted to fire [REDACTED] from HART. Exh. 6 ([REDACTED] First Statement), ¶ 9. After [REDACTED] First Interview with this Investigator, [REDACTED] reviewed his e-mails for a corrective action plan, but did not find a correction action plan from [REDACTED] only “critiques” that documented the problem. *Id.* According to [REDACTED], [REDACTED] ‘plan’ did not include goals,

¹⁰ [REDACTED] has *not* asked the FTA about the eligibility of the drawdowns at issue because she “found the clauses, guidance and circulars, to base, support [her] answers.” See Exh. 6 ([REDACTED] June 16, 2016 E-mail).

¹¹ When this Investigator asked [REDACTED] for the results of his follow up conversation with the FTA, he responded as follows:

I called and spoke with [REDACTED] (FTA’s [REDACTED] our overall FFGA grant) after our conversation and asked him about having someone review our grants process. I stated that HART did not have that redundant expertise and I wanted someone to review our grant processes. He indicated that HART had recently had a Triennial Review in which HART’s grant process was found to be very good. He did not see the need for a review. When I emphasized that I just wanted an outside review, he stated that he would try to find someone, but he never got back to me. Subsequently, last week, I contacted his direct [REDACTED] ([REDACTED]) who was finalizing the response on the Triennial review and asked that she comment on HART’s grant process. She responded that the overwhelming majority of the comments were directed towards the City & County’s work and HART had hardly any comments. Still, I asked that she include whatever comments were appropriate about HART’s grant process. I have not received any feedback since.

See Exh. 6 [REDACTED] June 17, 2016 E-mail).

resources to achieve the goals (like training), target schedule for meeting the goals, or consequences for not meeting the goals." *Id.*; see Exh. 6 (June 17, 2016 E-mail). [redacted] sent [redacted] the "Draft Corrective Action Plan" on October 10, 2014. Exh. 6 ([redacted] First Statement), ¶ 9. At [redacted] request, [redacted] met with [redacted] to discuss the Draft CAP, at which time [redacted] told [redacted] she needed to include a timeline for reaching certain goals, identify additional resources, and establish a periodic review schedule to assess progress. See June 17, 2016 e-mail.

Based on [redacted] notes from his meetings with Grabauskas, [redacted] stated he first talked to Grabauskas about [redacted] problems with [redacted] on October 22, 2014. Exh. 6 ([redacted] First Statement), ¶ 9.

With respect to [redacted] conversation with Grabauskas, according to [redacted] [redacted] had come to him saying, "I need your help, I need your backing, I want to fire [redacted]" *Id.*, ¶ 10. [redacted] asked how he could help because the problems were all technical grant management problems. *Id.* [redacted] asked [redacted] to support her with Grabauskas, which he understood as [redacted] wanting him to talk to Grabauskas about it. *Id.* [redacted] then went to Grabauskas and told him, "[redacted] came to see me, she wants to fire [redacted]" *Id.*, ¶ 11. Grabauskas responded, "What? Why?" and [redacted] said, "I thought she talked to you about it," to which Grabauskas responded, "no." *Id.* Grabauskas directed [redacted] to "Tell her to talk to me about it." *Id.*, ¶ 12. [redacted] described Grabauskas as "annoyed" during their conversation. *Id.*, ¶ 19.

[redacted] then went to [redacted] and told her, "I talked to Dan about it, He's mad." *Id.*, ¶ 13. [redacted] said, "why did you do that?" and [redacted] responded, "You told me to." *Id.* [redacted] said, "That's not what I meant. I didn't want you to talk to him, I asked for your support." *Id.*

[redacted] confirmed that [redacted] moved to Planning under [redacted] during the week of October 26, 2014 to conduct an evaluation of [redacted] abilities. Exh. 6 ([redacted] June 2, 2016 E-mail). The move became permanent in November 2014. *Id.*

[redacted]: [redacted] corroborated Grabauskas's recollection that [redacted] wanted to terminate [redacted] "about less than 90 days into [redacted] employment" and that Grabauskas directed [redacted] to draft a corrective action plan. Exh. 6 ([redacted] First Statement), ¶ 7, ([redacted] Second Statement), ¶ 2.

[redacted]

According to [redacted], [redacted] and [redacted] did not get along and [redacted] was "communicating with upper level staff that [redacted] performance was substandard and [she] was not performing at the level [redacted] expected when [redacted] came in." Exh. 6 ([redacted] Statement), ¶ 5. [redacted] offered to help and Grabauskas told [redacted] that he had directed [redacted] to place [redacted] on a recovery plan to improve her deficiencies, but that [redacted] was struggling with the corrective action plan. *Id.*, ¶ 7. [redacted] described Grabauskas as "frustrated with [redacted] about how she was dealing with [redacted]" *Id.*, ¶ 7.

Grabauskas told [REDACTED] during a one-on-one meeting that he had decided to have [REDACTED] report to her effective immediately. *Id.*, ¶ 8. Grabauskas asked [REDACTED] to assess [REDACTED] and they discussed the items [REDACTED] would assess: "[I]f she [REDACTED] could do that job? What areas does she need to improve? What can we do? Can we send her [to] training? If she cannot do the job and she's not the right person, then we can move forward." *Id.*, ¶ 8. Grabauskas informed [REDACTED] that he would talk to [REDACTED]. *Id.* Grabauskas later told [REDACTED] that when he talked to [REDACTED], she seemed "bewildered and surprised" and that Grabauskas "was surprised by her reaction because they had talked about what he wanted from [REDACTED] regarding [REDACTED] assessment." *Id.*, ¶ 9. [REDACTED] later told [REDACTED] that Grabauskas had "pretty much yelled at her" and that [REDACTED] felt "blind-sided." *Id.*, ¶ 10. Although [REDACTED] was not present at the meeting between Grabauskas and [REDACTED], [REDACTED] view was that Grabauskas did not yell at [REDACTED] but was "direct with her." *Id.*

[REDACTED] corroborated that she reached out to [REDACTED] to assess [REDACTED] technical abilities, and, if she found deficiencies, to train her. *Id.*, ¶ 20. However, [REDACTED] declined. *Id.*

According to [REDACTED], [REDACTED] "flourished" under her. *Id.*, ¶ 12.

[REDACTED] corroborated that [REDACTED] asked her to come back to work to HART, but to train (as oppose to assess) [REDACTED] performance. Exh. 6 ([REDACTED] Statement), ¶¶ 15, 16. [REDACTED] stated she declined because she had care giving duties. *Id.*

Second Interview: During her Second Interview [REDACTED] denied that she wanted to immediately fire [REDACTED]. Exh. 1B, ¶ 19. When asked about the agenda she for her September 18, 2014 meeting with Grabauskas (the second meeting regarding [REDACTED] performance), in which she wrote:

[REDACTED]: Work duty corrective action plan-- see separate document.

Next steps: need to take action ASAP, [REDACTED]? We can try to find someone via HART recruitment.

[REDACTED] can perform duties, but need him doing what he's doing re internal audit/invoice review.

Need to have someone who has solid accounting skills; having worked on federal grants preferable. Most true Accountants should be able to manager grant."

and whether it suggested she was already looking for [REDACTED] replacement, [REDACTED] stated, [REDACTED] would have been the most expedient way to find someone, as [REDACTED] had suggested contacting [REDACTED] with [REDACTED] about [REDACTED] not working out in a prior meeting with me on this matter." Exh. 1B, ¶ 16; Exhibit AA (emphasis added). [REDACTED] agreed that she could

not unilaterally decide to terminate [REDACTED] and that she would need Grabauskas's agreement and approval to terminate her.¹² *Id.*, ¶ 20.

Findings:

Based on the above, this Investigator cannot substantiate that Grabauskas "covered up or concealed" [REDACTED] performance deficiencies or improper drawdowns. This Investigator sees no reason why Grabauskas would attempt to cover up or conceal improper drawdowns or the performance deficiencies of the [REDACTED] at the risk of an audit finding, or other serious repercussions. Grabauskas also appears to have taken reasonable action in response to the concerns raised by [REDACTED] regarding [REDACTED] performance deficiencies, including, by having [REDACTED] and [REDACTED] assess [REDACTED] performance, reaching out to the former [REDACTED], and asking the FTA about [REDACTED] performance. In addition, once Grabauskas became aware of the alleged improper drawdowns he reached out to [REDACTED], [REDACTED] and [REDACTED] and spoke to [REDACTED] about following up with the FTA.

Although this Investigator found Grabauskas did not cover up or conceal improper drawdowns, it is beyond the scope of this Investigation and this Investigator's knowledge to determine whether the drawdowns at issue were proper or improper. However, this Investigator notes that despite the heated internal disagreement over the drawdowns, it does not appear that anyone, other than [REDACTED], claims to have authoritative knowledge of grants management. This includes high-level managers in Budget and Finance or in Planning:

- The [REDACTED] who brought the improper drawdown issue to [REDACTED] attention, [REDACTED] wrote in e-mails, that grants was "not my area" and "I am not a Federal grant expert." Exh. 6 ([REDACTED] Statement), Exhibit B (January 7, 2016 2:48 pm e-mail from [REDACTED] to [REDACTED]); Exh. 5, Exhibit J (October 26, 2015 e-mail from [REDACTED] to [REDACTED]).
- When this Investigator asked [REDACTED] about the drawdowns he responded, "I'm not really an expert on drawdowns." Exh. 6 ([REDACTED] Statement), ¶ 8.
- [REDACTED], who currently oversees [REDACTED] stated, "I am not a Grants person. There is no one overseeing her drawdowns to make sure she's doing it correctly [REDACTED] is familiar with it, but I don't think he's intimately familiar with it." Exh. 6 ([REDACTED] Statement), ¶ 35.
- When this Investigator asked [REDACTED] about the draw downs, [REDACTED] responded, "This is a grants issue; [REDACTED] the point on it."

¹² [REDACTED] understanding of the procedure for terminating [REDACTED] employment could explain why Grabauskas was upset with [REDACTED] after [REDACTED] told him, "[REDACTED] came to see me, she wants to fire [REDACTED]" since Grabauskas neither agreed to nor approved [REDACTED] termination. However, as explained above, Grabauskas denied being upset with [REDACTED] during the October 2014 meeting.

Moreover, Grabauskas's understanding of how drawdowns occur seems to be at odds with [REDACTED] and [REDACTED] understanding. Grabauskas explained:

Drawdowns are prepared and submitted as a request for funds for reimbursement. The FTA reviews the request on their side and there's back and forth. Once FTA approves the request, they drawdown funds from our account and reimburse HART. I can't put a document in file and take money like an ATM. They physically have to approve it. This what [REDACTED] doesn't understand. The documentation has to go in, it has to be reviewed by the FTA and the region. We don't have money, but for the FTA approving it. . . . The FTA reviews our requests. There's a [REDACTED] counterpart at the FTA Regional Office. If they approve our request then they send us money.

Exh. 5, ¶¶ 46-47.

[REDACTED] explanation of drawdowns differed: "Usually, unless you're under some type of restriction, you can just go in and drawdown the Federal money automatically without anyone at the FTA checking it. But I know that I've always said to [REDACTED] and she's been good about this, if you've got any question in your mind about something just give the FTA a call. I think she's done that many times." Exh. 6 [REDACTED] Statement), ¶ 13. [REDACTED] explanation corroborates [REDACTED] concern that no one at HART is reviewing [REDACTED] drawdowns from the FTA grant. See Exh. 1A, ¶¶ 63-64.

(2) **Retaliation by coercing [REDACTED] to resign or be terminated from her position at HART for raising issues regarding [REDACTED] performance and improper drawdowns.**

[REDACTED] Version

See [REDACTED] version at Allegation (1) above regarding [REDACTED] concerns with [REDACTED] performance and allegedly improper drawdowns.

[REDACTED] alleges Grabauskas terminated her employment on January 7, 2016 as a result of [REDACTED] January 7 E-mail (relating to [REDACTED] allegedly improper drawdowns), which she believes Grabauskas was informed about by [REDACTED] Exh. 1A, ¶ 78. According to [REDACTED], during the January 7 meeting, Grabauskas "put . . . the reason he wanted to get another [REDACTED] on [REDACTED]. He never said 'I.' He said 'the Board.' I was stunned and thought I was on good terms with [REDACTED] Id., ¶ 81. [REDACTED] then called [REDACTED], who "laughed" and said "Is that what he told you?" Id., ¶ 82. [REDACTED] then told [REDACTED] "[REDACTED] told me it was an internal operational staffing issue." [REDACTED] responded by telling [REDACTED] that she "wasn't aware of any internal staffing issues. It had been well over a year since [REDACTED] was moved to Planning. As far as I knew, my staff did not have any issues with me." Id.

Grabauskas's Response

Grabauskas admitted to asking [REDACTED] to resign as [REDACTED] from HART on January 7, 2016, but denied being aware of an issue with improper drawdowns until after [REDACTED] complaint. Exh. 5, ¶ 49. Grabauskas stated he did not see the January 7, 2016 e-mails between [REDACTED] and [REDACTED] until the Investigator provided him with the attachments to [REDACTED] letter. *Id.*, ¶¶ 49, 63. [This is supported by the statements of [REDACTED], [REDACTED] and [REDACTED], all of whom told this Investigator that they did show Grabauskas the January 7 E-mail and did not discuss the improper drawdowns with him until May 2016.¹³ Exh. 6 [REDACTED] Statement), ¶ 38; ([REDACTED] Statement), ¶ 33; ([REDACTED] Statement), ¶ 12.]

Grabauskas stated he asked [REDACTED] to resign because of performance deficiencies; over the years certain Board members had come to him [REDACTED], [REDACTED], and [REDACTED] expressing concern about [REDACTED] performance, including that she did not present well and that she rolled her eyes in response to questions from Board members. *Id.*, ¶¶ 51, 60-62. According to Grabauskas, during his evaluation in 2014, while discussing staffing issues, [REDACTED] raised [REDACTED] by name and told Grabauskas, "I think your biggest staffing deficiency is on the financial end." *Id.*, ¶ 60.

Despite [REDACTED] performance issues, some of which had been raised within a year after she had been hired, like [REDACTED], Grabauskas had hired [REDACTED] and felt a responsibility "to make it work." Exh. 5, ¶ 59. Grabauskas said to [REDACTED], "go take speech coaching lessons. Places where you can learn how to present." *Id.* According to Grabauskas, [REDACTED] did not pursue any training. *Id.*

Grabauskas also understood that [REDACTED] had issues with how she interacted with subordinates. When [REDACTED] moved from Budget and Finance to Planning, [REDACTED] described being "brutalized" by [REDACTED] to [REDACTED]. *Id.*, ¶ 41. According to Grabauskas he asked [REDACTED] and senior managers to talk to [REDACTED] about her issues interacting with others and her performance, including [REDACTED], [REDACTED] and [REDACTED].¹⁴ *Id.*, ¶ 41. Grabauskas also spoke to [REDACTED] about her interpersonal relationships with her colleagues. *Id.*, ¶ 59.

In the fall of 2015, with [REDACTED] doing most of the work of the [REDACTED] during the legislative session, Grabauskas, after discussing [REDACTED] performance issues with [REDACTED] decided "when things hadn't improved with [REDACTED] interpersonal issues and she wasn't a key

¹³ After the June 16, 2016 HR Committee meeting, this Investigator confirmed with [REDACTED] that he never discussed the allegedly improper drawdowns with anyone other than [REDACTED] and even then it was at a very general level because "I really didn't know enough about the drawdown of Federal Grants to discuss it at all." Exh. 6 ([REDACTED] June 17, 2016 3:00 p.m. E-mail) [REDACTED] also confirmed that he never showed the January 7 E-mail to [REDACTED]. Exh. 6 ([REDACTED] June 17, 2016 9:52 a.m. E-mail).

¹⁴ [REDACTED], [REDACTED] and [REDACTED] confirmed that Grabauskas asked them to help [REDACTED]. Exh. 6 [REDACTED] Statement), ¶¶ 8-9, Exhibit A; ([REDACTED] Statement), ¶ 37; ([REDACTED] June 2, 2016 E-mail). [REDACTED] recalled being asked to mentor [REDACTED], but not [REDACTED]. *Id.* [REDACTED] June 2, 2016 E-mail).

player in budget stuff that it became clear a change was needed." *Id.*, ¶¶ 51, 59. Grabauskas denied that [REDACTED] had anything to do with his decision to terminate [REDACTED]:

My asking for [REDACTED] resignation had nothing to do with [REDACTED] [REDACTED] had been moved and was no longer an issue. We had gone through a difficult financial storm in 2015 and [REDACTED] wasn't the person that could stand up at the hearings. We anticipated further problems would likely arise and we needed a strong [REDACTED] to work through them. We need someone who has the facility with the numbers, and understands how financing works. [REDACTED] tended to parrot well what other people said, but she had difficulty testifying before Council and defending our budget and answering questions.

Id., ¶ 55.

Although Grabauskas decided to terminate her employment in 2015, he waited until the new year because of a death in [REDACTED] family and the holidays. *Id.*, ¶¶ 51, 58. During the January 7, 2016 meeting, he told [REDACTED] "this is never an easy conversation to have with someone. I made the determination that we need a different person as [REDACTED]" *Id.*, ¶ 50. In response to [REDACTED] allegation that he cited feedback from [REDACTED] as the reason for her termination, Grabauskas said that he "mentioned and she knew that I had heard concerns about her from Board members. I don't remember if I identified the Board members."¹⁵ *Id.*, ¶ 54.

[REDACTED]: [REDACTED] confirmed that he and Grabauskas discussed [REDACTED] performance "a number of times" over the course of two years. Exh. 6 ([REDACTED] Statement), ¶¶ 16-17. [REDACTED] stated of [REDACTED] termination, "I don't think it was a wrong decision." *Id.*, ¶ 16.

[REDACTED]: When [REDACTED] moved from Budget and Finance to Planning, [REDACTED] described being bullied by [REDACTED] to [REDACTED] Exh. 6 ([REDACTED] Statement), ¶ 14. [REDACTED] was concerned that [REDACTED] could assert a hostile work environment claim against [REDACTED] and reported it to Grabauskas. *Id.*

¹⁵ According to Grabauskas, on January 12, 2016 when [REDACTED] announced that she was leaving to the staff, she said "nice things" about him and HART. Exh. 5, ¶ 53. Grabauskas was "struck by what [he] thought was a well done farewell," and e-mailed her later that day, writing, "I thought that was a classy job this morning BTW." *Id.*, Exhibit P. [REDACTED] responded, Thanks, and I truly meant every word of it [REDACTED] ☺ *Id.* At that point, Grabauskas stated he and [REDACTED] were "amicable." Exh. 5, ¶ 53.

Corroboration by Former Board Members

██████████ performance issues were corroborated by three former Board members, ██████████ and ██████████, all of whom questioned her ability to perform HART's ██████████ position.

- ██████████: The ██████████ until April 2016 and former ██████████ provided the following assessment of ██████████ performance:

[I] made it clear to mr g that hiring and dismissal of staff was not the board's preview. It was solely his responsibility. He did ask me about ██████████ performance from what I saw at board meeting presentations, quality of work and experience. *I told him what ██████████ the ██████████ ██████████ had relayed to me. That her performance reflected more of a ██████████ I agreed with that assessment. Her presentations and answers to questions at mtgs did not reflect a total understanding of the issues in depth. From my limited observations, I did not believe she had the depth of experience needed for that complex job.*

However, I did react with total surprise at her comment dan told her the board and I were the reason for her departure. I was frankly very surprised by that comment. *I made it clear the board does not and did not make that decision and to my knowledge has never had a meeting to discuss her performance nor taken any action. I told her dan does routinely asks for feedback from stakeholders that she comes in contact with. But it was his decision.*

In the past, dan did inform me and other board members individually that ██████████ had personnel management issues but I had no details. Basically overall he was not satisfied with her performance. This was before the end of 2015.

In our brief conversation, ██████████ asked me to be a reference for her, to keep my eye out for other positions in town and also wanted to meet at some point. I agreed to be a reference and tell her of any opportunities that I may come across that may be a better fit. We never scheduled a time to meet. That was the only conversation.

Id. (██████████ July 5, 2016 E-mail Statement) (emphases added).

- [REDACTED]: Former [REDACTED] who was on the Board from July 2011 through June 2015, recalled speaking to Grabauskas about [REDACTED] performance after a Board meeting, saying "you need to talk to her [REDACTED], if the Board asks her questions, three times in a row, she needs to answer three times." Exh. 6 ([REDACTED] Statement), ¶¶ 4, 5. [REDACTED] told this Investigator,

My general sense is that, without unduly disrespecting her, *I lacked the confidence in her ability to answer questions both in person and in Board meeting, but especially at Board meetings when you hope that the [REDACTED] would be prepared and have answers. Her abilities in that regard were disappointing, although she generally appeared to be helpful and wanting to help.* I don't recall ever having that conversation with [REDACTED] to tell her that directly. I do recall talking to Dan about that gap in her perceived abilities more than once, at least twice. For me to say something that harsh to Dan at the Board meeting, I would have said something earlier.

Yes, [REDACTED] rolled her eyes at that Board meeting, in response to questions from Board members. The former [REDACTED] would always ask very detailed questions. There was a concern whether she could answer his questions to his satisfaction. Everyone asked good questions, but he asked detailed questions assuming she had a basic understanding of finances.

I had a general sense from him [REDACTED] that there was room for improvement when it came to [REDACTED] *was not quite at the level we were expecting of a [REDACTED] in answering questions in a very high profile, high stress situation; I was never sure if that was stemming from a lack of comprehension or a lack of confidence in public speaking.* Whether the questioning was at the Legislature, the City Council, or at HART Board meetings, it felt like we had to disproportionately rely on [REDACTED] ability to answer questions and provide facts, as opposed to [REDACTED]

Id., ¶¶ 5, 7, 8 (emphasis added). [REDACTED] further stated that [REDACTED] reached out to her in late 2015: "Late last year, [REDACTED] contacted me as I believe she was exploring employment at the [REDACTED]. I was extremely busy, and would have had difficulty recommending her, so I did not call her back." *Id.*, ¶ 15.

- [REDACTED]: [REDACTED], who was on the Board from July 2011 through July 2015, is the former [REDACTED] Exh. 6 ([REDACTED] Statement), ¶ 3. While [REDACTED] he had "many interactions" with [REDACTED]. *Id.* He described his interactions with [REDACTED] at Board meetings as follows:

I absolutely saw [REDACTED] roll her eyes when she was asked questions by the Board. Those were some of the presentation issues. She would get frustrated at certain questions, questions she didn't answer particularly well consider her level of responsibilities.

I told Dan directly that he ought to talk to [REDACTED]; *I told him directly that she wasn't ready for the position and he should look for someone more qualified.* It was within a year of her starting.

Exh. 6 ([REDACTED] Statement), ¶¶ 5-6 (emphasis added).

[REDACTED] Second Interview

During her Second Interview, [REDACTED] denied that Grabauskas talked to her about her performance except "once maybe twice in 4 years," with January 7, 2016 being the second time. Exh. 1B, ¶ 56. The first time, "he said it in passing. The message [she] got was, 'he was concerned about his standing with the Board and basically we're in this together.'" *Id.* She further claimed Grabauskas was "never really specific about what the Board said about me. . . . When [she] asked for specifics he wouldn't provide any." *Id.* [REDACTED] "thought it was a control issue for Dan to keep [her] afraid of being fired." *Id.*, ¶¶ 56, 96 ("probably three times, Dan would mention non-positive things or relay vague criticism, then just let it go. He would never own his statements.").

With respect to her behavior and performance at Board meetings, [REDACTED] stated she did not recall rolling her eyes at a Board meeting. Exh. 1B, ¶¶ 72, 86. She recalled a Board meeting where there was a "snafu regarding budget documents." *Id.*, ¶ 81.

There was one time in a Board meeting when there was a snafu regarding budget documents. Budget documents I had sent to the [REDACTED] to be included in the Board Member's binders were inadvertently left out. I didn't notice

that they were missing from the Board Member's binders since I had my set of documents until just before the item was going to be discussed by the Board. [REDACTED] didn't have a copy of the budget, and said that HART needed to be transparent about adopting the budget, and he was right about having the relevant budget information available to HART Board members and the public prior to them adopting a budget for the upcoming fiscal year.

Some Board Members may have been confused about what [REDACTED] and I were discussing in the public meeting. I think Dan [REDACTED], [REDACTED], and some board members were confused about what the problem was. I understood what [REDACTED] was saying, that we need to have the budget detail documents that had been inadvertently omitted from Board Member's meeting binders and perhaps not made available to the public on HART's website and physically at the meeting before the Board could vote to adopt the new fiscal year budget. This was a transparency and public discussion process issue.

Given that coordinating the budget process was my responsibility, I quickly left the meeting room after a short recess had been called by [REDACTED]. I found a City office at Kapolei Hale, and made copies for the Board and public. I don't think everyone else completely understood what [REDACTED] and I were talking about until after I returned and distributed the needed budget detail information.

[REDACTED] was happy, I was relieved to have been able to resolve the issue quickly as the Board needed to adopt a budget at that meeting or it would have been a problem.

It was after this meeting, later in the afternoon in the office that Dan stopped by my office to touch in on what happened earlier at the Board meeting in Kapolei Hale. *I recall he said [REDACTED] wondered or said something to him about me seeming upset or irritating [REDACTED] at the meeting. I told Dan I was planning on calling [REDACTED] and would to touch in with him and apologize for the snafu at the meeting. I called [REDACTED] shortly after talking with Dan, and [REDACTED] said "not a problem, I should apologize to you." We ended our phone conversation on a good note. I stopped by Dan's office before heading out for the day, and told him [REDACTED] and I had talked and he and I were good. Dan said great.*

Exh. 1B, ¶¶ 81-85 (emphasis added).

With respect to former [REDACTED] assessment of her, [REDACTED] stated:

With me and him, [REDACTED] and me and numbers. [Grabauskas] would never say or directly address me as a supervisor, "this is the issue I have with you" or provide constructive feedback with respect to my performance or interaction with the Board. *Dan would say, "Some people might think that you don't know your numbers."* On the one hand, he's saying, "you should be more definitive." I think that happened once. [REDACTED] was testing me in public. You never knew where he was going, I was just a prop to get his message to the media for public consumption.

So after that [REDACTED] asked me a question once in a public meeting, I made sure I knew the numbers. You didn't know where he was going because you were just a prop to make a point. There was an audience, he was just trying to make his point and it wasn't to me. For [REDACTED] it was a power thing, he always had to be the smartest guy in the room, so why would he tell you where he was going?

Exh. 1B, ¶¶ 93-94 (emphasis added).

With respect to her relationship with former Board Member [REDACTED], [REDACTED] recalled an incident where she told him she could not answer his question because it was not her "kuleana":

[REDACTED] started asking specific project and contract package cost estimating questions, and I told him that I didn't know the answer to his questions because I don't come up with the numbers and he said, "Who does?" I told him Project Controls, who reports to [REDACTED] who reports to Dan. [REDACTED] had been on the project for a year, and Dan hadn't introduced him to the Board although he had been attending HART Board meetings and sat in the first or second row each meeting.

[REDACTED] *asked questions the Council wanted to know about cost estimates. He asked me, and I said it was not my bailiwick.* I set up a meeting with [REDACTED], [REDACTED], [REDACTED], and Dan sent [REDACTED]. [REDACTED] was sent by Dan because he didn't want to be at the meeting, but instructed [REDACTED] to report back to him on it. I think Dan got nervous because I was letting [REDACTED] and [REDACTED] talk to people who knew or should know what was going on at HART regarding cost and schedule estimates. I was also there. [REDACTED] was there and took us off track so [REDACTED] didn't get to ask or get answers to all his questions.

I understood how [REDACTED] could be frustrated. I said "[REDACTED] it's not my kuleana. Here's who you need to talk to." But it was too

late for him. He was not going to be re-appointed regardless of what he found out from HART staff (which was very little).

Exh. 1B, ¶¶ 77-79 (emphases added).

After [REDACTED] left the Board, [REDACTED] recalled Grabauskas informing her that [REDACTED] was not "completely pleased" with her performance, but did not provide her with specifics.

I remember Dan saying something about [REDACTED] not being completely pleased with me after [REDACTED] left the HART Board. I don't know what Dan and [REDACTED] had discussed because Dan did not choose to share this with me after I asked Dan to be more specific about what [REDACTED] said to him about me or my job performance. [REDACTED] was not re-appointed to the HART Board by the City Council in June 2015.

Exh. 1B, ¶ 80.

Findings:

Based on the above, this Investigator cannot substantiate the allegation that Grabauskas coerced [REDACTED] to resign in retaliation for raising issues regarding [REDACTED] performance and the improper drawdowns. This Investigator finds that it is more likely than not that Grabauskas asked [REDACTED] to resign because of her performance issues.

Although beyond the scope of this Investigation to determine whether Grabauskas effectively addressed [REDACTED] performance issues with her before January 7, 2016, this Investigator notes that two former employees expressed frustration with the manner in which Grabauskas handled what they viewed as [REDACTED] "bullying" and "hostile" behavior: (1) [REDACTED] stated that she found it "demoralizing" that even though she reported the bullying of [REDACTED] to Grabauskas, there were no consequences for [REDACTED] for behaving in such a poor manner, and (2) former [REDACTED] stated she "found working with [REDACTED] to be a hostile work environment. . . . Dan was responsible for perpetuating a hostile work environment because he didn't do anything to relieve us of the hostile work environment under [REDACTED]"¹⁶ Exh. 6 ([REDACTED] Statement), ¶ 40; ([REDACTED] Statement), ¶ 24.

(3) Retaliation by Revising [REDACTED] Position Description

[REDACTED] Version

[REDACTED] further complained that Grabauskas retaliated against her in the summer of 2015 when he had [REDACTED] update her position description and remove grants management from her areas of responsibility. Exh. 1A, ¶ 85, Exhibits B, D [REDACTED] stated that after her

¹⁶ After the HR Committee meeting this Investigator also received unsolicited emails regarding complaints of [REDACTED] demeanor. Exh. 6 [REDACTED] E-mail dated June 28, 2016), [REDACTED] E-mail dated July 11, 2016).

resignation in January 2016, when HART posted her position, Grabauskas moved grants management back under the [REDACTED] *Id.*, ¶ 84, Exhibits C, E at 5 (“Other Potential Attempts to Retaliate against me by Mr. Grabauskas”). Based on the removal of grants management from her duties and Grabauskas’s reinsertion of grants management in the recent [REDACTED] job posting, [REDACTED] alleges “Dan is pushing me out, and covering it up, and he plans on putting grants management back in Finance after I leave HART.” *Id.*, ¶ 87. [REDACTED] further alleges:

Mr. Grabauskas knew that the financial management of the FTA (federal) grant best belonged in the Budget and Finance section of HART, and not the Planning area. I also believe Mr. Grabauskas did not want to openly address or admit his functional organizational change while I was the [REDACTED] as it would be admitting that he had erred in removing [REDACTED] from Budget and Finance (my) supervision in October 2014 to the Director of Planning.

Id., Exhibit E at 5.

Grabauskas’s Response

Grabauskas did not recall [REDACTED] updating her position description in the summer of 2015, but stated it would not surprise him because HART’s employees have annual contracts that are up for renewal at the end of the fiscal year (July 1 to June 30). Exh. 5, ¶¶ 64, 65. He further explained that when HART submits the form to renew an employee’s contract, the Department of Human Resources (DHR) reviews the position description to ensure it matches up with the organization charts and that changes in staffing could lead to a decrease in pay. *Id.* Grabauskas stated it was [REDACTED] job to submit the renewal paperwork and to advocate for the employees, if necessary. *Id.*

With respect to the posting for the [REDACTED] position after [REDACTED] resignation, Grabauskas denied that grants management was moved back under the [REDACTED] *Id.*, ¶ 67. He stated that the posting “simply lists as a skill ‘knowledge of grant reporting.’” *Id.* According to Grabauskas:

I have no intention of moving [REDACTED]. Even if [REDACTED] was the [REDACTED] I wouldn’t move [REDACTED]. [REDACTED] role is bigger now anyway. She is not just the [REDACTED], but she now helps on a monthly basis when PMOC comes in, she has taken on as her responsibility preparation for the two-day day meetings and for the quarterly meetings. She has taken on that responsibility. She reports to the Project Director, now our lead FTA liaison [REDACTED] is our number 2 person in contact with the FTA. That is working out very well. [REDACTED] was previously our FTA lead liaison person. When [REDACTED] left, it became [REDACTED]. After [REDACTED] left [REDACTED] moved

under [REDACTED]. [REDACTED] has great rapport. She gets along with [REDACTED]. There is no reason to move [REDACTED]

Id., ¶ 67.

[REDACTED]

According to [REDACTED], in the summer of 2015, the DHR felt there were five or six individuals who were being overpaid based on their position descriptions. Exh. 6 ([REDACTED] First Statement), ¶ 21. [REDACTED] position was one of the positions because many of her functions were removed from her oversight, including Procurement, Grants Administration, Project Controls, Document Controls, Configurations, and Risk Management. *Id.*, ¶ 23. [REDACTED] stated he “successfully defended her classification and pay level even with the reduction of responsibility.” *Id.*, ¶¶ 23, 25. [REDACTED] denied Grabauskas’s involvement in the change in [REDACTED] position description. *Id.*, ¶ 22.

With respect to the posting for the [REDACTED] position, [REDACTED] stated that it only provides for “knowledge” of grant reporting requirements because “[t]he [REDACTED] has to know grants management.” *Id.*, ¶ 27. [REDACTED] denied that Grabauskas was involved in drafting the job posting other than the salary range. *Id.*, ¶ 28.

[REDACTED]: [REDACTED] denied being aware of any plan to move [REDACTED] back under Finance if there was a new [REDACTED] Exh. 6 ([REDACTED] Statement), ¶ 36.

Findings:

Based on the above, the Investigator is unable to substantiate the allegation that Grabauskas retaliated against [REDACTED] by having [REDACTED] revise the [REDACTED] position description to remove grants management and, thereafter, reinserting it as a job requirement. First, having [REDACTED] remove grants management from her position description is consistent with her actual job duties since [REDACTED] had been removed from her area of responsibility. Second, although the language of the posting requires that the [REDACTED] have “extensive knowledge” of grants management, the “Duties” of the position does not list grants management under the [REDACTED] responsibilities.

(4) Preventing [REDACTED] from performing the duties of her position as HART [REDACTED] by intimidating her into withholding information from the HART Board:

Version

According to [REDACTED] in August 2015, Grabauskas directed [REDACTED] to withhold financial plan update information from the Chair of the Board [REDACTED] “because he [Grabauskas] thought [REDACTED] would share the information with others and he didn’t want that to happen.” Exh. 1A, ¶ 129. While Grabauskas was on vacation in Maine [REDACTED] came to the HART office and asked about the updated cost and revenue estimates. *Id.*, ¶¶ 129-30. [REDACTED]

responded that [REDACTED] "should talk to Dan," and [REDACTED] called Grabauskas in Maine and left a voicemail. *Id.*, ¶131. Also present during this discussion was [REDACTED] *Id.*, ¶ 133.

[REDACTED] told [REDACTED], that Grabauskas had directed her not to disclose the information to [REDACTED] *Id.*, ¶ 132. [REDACTED] informed [REDACTED] she should have disclosed the information to [REDACTED] *Id.*

Grabauskas's Response

In response to the allegation, Grabauskas stated that the cost estimate for completion had changed from \$554 million to \$778 million. Exh. 5, ¶ 89. He provided the Investigator with an e-mail chain among Grabauskas, [REDACTED] and [REDACTED] Subject: "Financial Plan O&M slide," in which Grabauskas wrote, "[*Were*] these also discussed with [REDACTED]? Did he have an opinion?" *Id.*, ¶ 89, Exhibit X (Aug. 12, 2015 7:54 a.m. E-mail) (emphasis added.) In response [REDACTED] wrote, "No we have not discussed this with [REDACTED] yet, *thought u said not to yet*. Can if u want. Lemme know if u want us to give [REDACTED] the current draft of the plan and meet to go over with him before u get back in town." *Id.* (Aug. 12, 2015 9:07 a.m. E-mail) (emphasis added). Grabauskas could not find an e-mail that stated "go ahead tell [REDACTED]" *Id.*, ¶ 89. When the Investigator asked why [REDACTED] believed Grabauskas directed her not to talk to [REDACTED] about the numbers, Grabauskas did not know, but speculated that he said, "make sure it's right, we don't want to give [REDACTED] wrong numbers." *Id.*, ¶ 90.

[REDACTED] Second Interview

When the Investigator showed [REDACTED] the August 12, 2015 E-mail chain during her Second Interview, [REDACTED] stated that she "laughed" when she read Grabauskas's e-mail asking whether she the numbers were discussed with [REDACTED]. Exh. 1B, ¶ 52. She explained,

Dan does this a lot. He says something to you in person, and then writes something else (the opposite) on emails. When Dan wrote this, I was confused. Both [REDACTED] and I remembered Dan telling us not to share the most recent cost/schedule information with [REDACTED] while he was on vacation. I remember asking [REDACTED] shortly after I got Dan's email "Did you see Dan's response?" He said he had, and we both laughed about it—Dan saying/asking us if we had done exactly what he had told us NOT to do before he left on vacation re not providing [REDACTED] with our new #s before Dan got back.

What Dan wrote here is the opposite of what he instructed us not to do, not to share the update information with [REDACTED]. I thought "Okay, this is 180 degrees from what you told us before you left, but tell/write me back an email to confirm that you have reversed your instructions to me/us." Hence I wrote in my email back to Dan "Can if you want. Lemme know if u want us to give

the current draft of the plan and meet to go over with him before u get back in town." Dan never responded to my email, hence I didn't seek out to tell him.

It was after this August 12 e-mail that I spoke to [redacted] in-person, and said "talk to Dan." I wouldn't have two parallel conversations with my boss and my boss's boss unless I had a reason to, and I didn't. I believe that Dan wanted things to play out that way—having everyone not knowing what each other knew.

Exh. 1B, ¶¶ 52-54 (emphasis added).

[redacted]
[redacted] denied that Grabauskas directed him and [redacted] to withhold information from the Board:

Dan couldn't possibly withhold information from [the Board]. It's absurd to say he was withholding the information when he sent it to the FTA. What Dan was telling [redacted] is that [redacted] was the [redacted] [redacted] was [redacted] Committee. Technically it should go through [redacted] [redacted] would take all the numbers and run with it. The rest of the Board and especially [redacted] would get upset at being left in the dark. So Dan was concerned about [redacted] getting information before other Board members, not that we should withhold information from the Board. Additionally, you can tell from the e-mail there's a lot of detail. Dan wanted to go over the information himself to make sure he understands the numbers before giving it to a Board member.

The allegation that he withholds information from the Board, it's absolutely ludicrous.

Exh. 6 [redacted] Second Statement), ¶¶ 5-6.

With respect to the August 12, 2015 E-mails, [redacted] stated that Grabauskas did not want the information to be released piecemeal so that certain individuals were provided information before others:

The e-mail proves Dan didn't say withhold information to the Board because the email asks about if [redacted] had comments. I don't know if Dan's email was addressing a portion of draft financial report or the entire report, but clearly he's was not hiding it. The report was even sent to a Council Member, so it was not hidden from review.

We had met before Dan went on vacation and a lot of it is he wanted to look at it first. A couple of Board Members complained to him that he would give information to [REDACTED]. [REDACTED] would run with numbers and run with it to the [REDACTED]. [REDACTED] a numbers guy and he would get far in advance, or misunderstand the assumptions in a number and it would get in the press before other Board Members had reviewed the information. Dan said he want[ed] release of the financial information to be coordinated and not go out piecemeal.

I don't know if he forgot his directive to [REDACTED] and I or he was referring to a portion of the financial plan. The whole plan, it has to do with the capital, how much ridership, and cost of operation, there are many parts. He may have been talking about parts as opposed to the whole plan.

Dan never said to keep information from the Board.

Id., ¶¶ 8-11.

With respect to [REDACTED] allegation that Grabauskas contradicts his verbal directives in e-mails, [REDACTED] stated:

I don't think Dan says one thing and e-mails us to do another. [REDACTED] and I would meet with Dan and we would get out of the meeting and [REDACTED] wouldn't remember what Dan told us what to do. It was [REDACTED] who didn't concentrate and frequently forgot what Dan said to do in the meetings. I felt like I needed to be in meetings with Dan and [REDACTED] when financial issues were discussed to clearly understand Dan's direction.

The Investigator asked whether after Dan sent the August 12, 2015 at 7:54 a.m. e-mail [REDACTED] came into my office and we both laughed about it. I don't know if we were laughing. Dan had said we should all be in sync. What I take from this e-mail is that it proves he did not say, "Hey keep this withheld." He's clearly was not saying withhold the information from the Board, since he asked what were [REDACTED] comments. This email is regarding the update of the financial plan going to the FTA. There's a lot of financial information and assumptions that has to be synced. The plan also includes operating costs once the rail up and running. Not many talked about operating costs, not many know the operating cost assumptions. Again, Dan is not saying withhold information. Dan

wants to be certain in the assumptions in the financial plan and coordinate the release.

Id., ¶¶ 7, 14.

Finally, ██████ stated he was not uncomfortable responding to ██████ questions when he was at the HART office on the day in question:

The meeting with ██████, ██████, and ██████. I wasn't uncomfortable talking to ██████. ██████ had trouble with a lot of numbers. She wasn't a person who got into any level of detail. She was very high level. Detailed questions she couldn't answer. A lot of times ██████ and other Board Members or staff would come to me to asked detailed question. So ██████ must have told ██████ that Board Members should be directed to her. ██████ said he had to stop by and ██████ immediately went to get ██████. I don't think ██████ was uncomfortable, but she wanted ██████ to be there even though ██████ couldn't answer ██████ questions.

I was able to answer ██████ questions. I think that was about GET global assumptions. He stopped in a couple of times. That was a small portion of the financial plan.

Id., ¶¶ 12-13.

██████: ██████ confirmed that she was present during a meeting with ██████, ██████, and ██████. Exh. 6 (██████ Statement), ¶ 9. After the meeting ██████ said to ██████, "why didn't you provide ██████ with more specifics about HART's internal discussion on the project financials, especially since ██████ is meeting with councilmembers about this." *Id.* ██████ stated that ██████ responded that Grabauskas specifically told her not to discuss the financials with Board members. *Id.* ██████ assumed it was because the discussions were still preliminary and ongoing analysis was pending. *Id.*

Findings:

Although it seems that ██████ genuinely believed she was directed not to inform ██████ about certain financial information, based on the e-mail where Grabauskas asked whether ██████ solicited ██████ opinion and ██████ understanding of Grabauskas's directive to them before he left for his vacation, the Investigator finds that it was more likely than not that there was a misunderstanding between ██████ and Grabauskas on whether information could be shared with ██████ and therefore cannot substantiate the allegation that Grabauskas prevented her from performing her functions as HART ██████ by intimidating her into withholding information from the Board.

(5) **Grabauskas intimidated [REDACTED] by threatening her employment:**
[REDACTED] recounted three instances where she believed Grabauskas threatened her employment.

First, in 2013, during a one-on-one meeting with Grabauskas, [REDACTED] stated that Grabauskas was "ridiculing" her about something and when they were almost done, [REDACTED] got up from her chair and began moving toward the closed door in his office. Exh. 1A, ¶ 113. When Grabauskas noticed that she was moving to leave, he said, "Hey, if you leave now, you're leaving the stage." *Id.* [REDACTED] sat back down until he was done. *Id.* [REDACTED] understood that Grabauskas had "just made a threat to my continued employment and verbally abused me again." *Id.* When asked by the Investigator what they were discussing, [REDACTED] stated, "I don't recall what we were talking about. It doesn't matter, we were talking about work." Grabauskas's Response: Grabauskas denied the incident ("I don't use the phrase 'leave the stage' I don't even know what that means, I have never ridiculed her. I've been critical and that's different from ridiculing"). Exh. 5, ¶ 75.

Second, in October 2013, during a one-on-one meeting, Grabauskas was in a "bad mood" and said "something about his needing to keep the HART Board of Directors happy." Exh. 1A, ¶ 117; Exh. 1B, ¶ 87. Grabauskas's Response: Grabauskas stated he did not recall making the statement, but stated he would say the same thing now: "make sure [the Board] is happy they're the boss." Exh. 5, ¶ 76. Grabauskas said he often reminds the staff that their responsibility is to be responsive to the Board. *Id.*

Third, in October 2015, during the meeting when Grabauskas said to [REDACTED] about [REDACTED] CAP, "Now you're messing with me!" Exh. 1A, ¶¶ 38, 42. [REDACTED] felt her employment was being threatened. Grabauskas's Response: As discussed above, Grabauskas denied making this statement.

In another instance that was not directed specifically at [REDACTED], in October 2014, the senior managers attended a meeting retreat where they discussed improving communication at HART. Exh. 1A, ¶ 118. [REDACTED] believes Grabauskas personalized the meeting and felt threatened. *Id.*, 119. During the next senior management meeting, Grabauskas "threaten [them] back" by saying, "If I go down, I'm taking as many of you with me as I can." *Id.*, ¶ 119. Several individuals corroborated hearing the statement (or a similar statement), including, [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Exh. 6 ([REDACTED] Statement), ¶ 11; ([REDACTED] Statement), ¶ 20; ([REDACTED] Statement), ¶ 13; ([REDACTED] Statement), ¶ 41; ([REDACTED] Statement), ¶ 31; ([REDACTED] Statement), ¶ 11. [REDACTED] believed that the statement meant Grabauskas planned to scapegoat them, while others did not appear to take it as a threat. Grabauskas's Response: Grabauskas denied making this statement, but stated he would say, "we all hang together or hang separately," which meant, "Hey team let's all stay together." Exh. 5, ¶ 79. Grabauskas acknowledged that someone may have taken that statement as a threat, but denied that he meant it as a threat. *Id.*

Findings:

With respect to the allegation that he threatened [REDACTED] employment, because of the passage of time and the lack of context and witnesses, especially with respect to the two purported statements made in 2013, it is difficult to substantiate the allegation that Grabauskas threatened [REDACTED] job during the three, one-on-one meetings. Even if they occurred as described by [REDACTED], it is not clear to the Investigator that the statements were threats to [REDACTED] employment, especially the statement about the need to "keep the HART Board of Directors happy." This Investigator also recognizes that it is possible that the "threats" to [REDACTED] employment were Grabauskas's attempts to address [REDACTED] performance issues (albeit ineffectively) and that she misinterpreted discussions to improve her performance as "threats" to her employment.

With respect to the allegation that Grabauskas said, "If I go down, I'm taking as many of you with me as I can," This investigator finds that Grabauskas more likely than not made the statement.

(6) Other threats to employment not alleged by [REDACTED]

- [REDACTED] stated that in 2015 Grabauskas told Engineers, "If you don't get this done by a certain date, I'm just going to fire all of you guys."¹⁷ Exh. 6 ([REDACTED] Statement), ¶ 23. [REDACTED] and [REDACTED] corroborated hearing Grabauskas make that statement at least once. Exh. 6 ([REDACTED] Statement), ¶ 20; [REDACTED] Statement), ¶ 32. [REDACTED] stated she heard him say it "various groups." *Id.* Grabauskas's Response: Grabauskas denied making this statement, but recalled stating, "hey guys we need to get this done or we're all going to get fired." Exh. 5, ¶ 86.

- [REDACTED] stated that Grabauskas made her cry in the spring/summer of 2014 when he told her "he should fire people, including [her]." Exh. 6 ([REDACTED] Statement), ¶ 22. [REDACTED] stated it happened again in the spring of 2015. *Id.*, ¶ 23. Grabauskas thought [REDACTED] was being "too easy" on her staff and said he wanted to fire several of them. *Id.* Grabauskas told [REDACTED] that if she "couldn't or wouldn't fire them, then he would do it for [her], and if he did that that he wouldn't need [her]" effectively threatening her job. *Id.* [REDACTED] stated Grabauskas's treatment of her "factored in" to her decision to leave. *Id.*, ¶ 25. Grabauskas's Response: Grabauskas stated [REDACTED] was one of the individuals he promoted while he has been with HART and that she was a consummate professional. Exh. 5, ¶ 101. He further stated, "If someone needs to be let go, I would not be in a position to tell her that." *Id.*

Findings: This Investigator credits the statements of [REDACTED], [REDACTED] and [REDACTED] and finds Grabauskas more likely than not used words either suggesting or directly stating that he was going to fire people.

¹⁷ However, [REDACTED] denied that Grabauskas threatened his job (an allegation made by [REDACTED]). Exh. 6 ([REDACTED] Statement), ¶ 23.

(7) **Grabauskas created a hostile and abusive work environment**

a. **Grabauskas raises his voice and uses foul language in a threatening or hostile manner** – Both current and former employees stated Grabauskas swears in the office, including using the “F” word. Exh. 6 (██████████ Statement), ¶ 8; (██████████ Statement), ¶ 9; (██████████ Statement), ¶ 8; (██████████ Statement), ¶ 9; (██████████ Statement), ¶ 12; (██████████ Statement), ¶ 24; (██████████ Statement), ¶ 9; (██████████ Statement), ¶ 22; (██████████ Statement), ¶ 14; (██████████ Statement), ¶ 36; (██████████ Statement), ¶ 34; (██████████ Statement), ¶ 23; (██████████ Statement), ¶ 8. None of the witnesses stated that the use of the “F” word was targeted at anyone, but that he used it when he was frustrated or angry and that he raised his voice. Grabauskas generally seemed to only swear in front of higher-level managers, however, his (██████████) stated that she has heard him swear and was “very offended” by it. Exh. 6 (██████████ Statement), ¶ 8. (██████████) stated that she was intimidated when he yells and that the yelling should stop. *Id.* (██████████ Statement), ¶¶ 26-27. With the exception of (██████████) and the former (██████████), who stated she was intimidated by Grabauskas because “he’s the boss,” the managers who witnessed Grabauskas’s swearing stated they were not intimidated by Grabauskas. *Id.* (██████████ Statement), ¶ 13; (██████████ Statement), ¶ 20 (██████████ Statement), ¶ 15; (██████████ Statement), ¶ 18 (██████████ Statement), ¶ 27; (██████████ Statement), ¶ 23; (██████████ Statement), ¶ 47; (██████████ Statement), ¶ 24; (██████████ Statement), ¶ 10.

Several lower-level employees who do not report directly to Grabauskas stated that they did not witness Grabauskas swear or raise his voice and did not believe he created a hostile work environment.

- (██████████) stated: “I can be very clear on this. I’ve worked in transit for 22 years and I have worked in a lot of environments all over the world. In my opinion, no, Dan has not created a hostile work environment.” Exh. 6 (██████████ Statement), ¶ 16.
- (██████████) stated: “I don’t agree that Dan created a hostile work environment. I was sad when I saw the news that they wanted to get rid of Dan. . . . Dan’s very, very nice. In the hallway Dan always smiles, Dan thanks me for everything I’ve done. I’ve never seen Dan angry or anything at anybody. . . . I’ve never heard him swear. . . . I’ve never heard Dan swear, never ever.” *Id.* (██████████ Statement), ¶¶ 10, 13.
- (██████████ Assistant): “In my interactions with Dan, he has never used swear words or raised his voice with me. I have not seen him swear or raise his voice with others. . . . I was surprised by the allegations. . . . I have not experienced a hostile work environment by Dan.” *Id.* (██████████ Statement), ¶¶ 10, 20.
- (██████████): “Dan has never raised his voice to me or to anyone in my presence. . . . He was a consummate professional.

He gave clear guidance and instructions. His feedback was brief and on point. It was a pleasure to work with him." *Id.* (██████████ Statement), ¶¶ 8, 11.

- ██████████: "I have not heard Dan raise his voice during meetings. I have not heard him swear in meetings. . . . I think he's done a spectacular job of being respectful of everyone in the group. . . . Overall he's a fair man. He's a mentor. He's interested in your on a one-on-one basis. He doesn't treat you like [a] subordinate or pull rank on you. He always wanted to make sure that I had his support and that I should feel comfortable talking to him about my observations without having any reservations." *Id.* (██████████ Statement), ¶¶ 9, 12.
- ██████████ Assistant): "I've never heard Dan swear. It's a confident no to the question whether I heard Dan swear. I've never heard Dan raise his voice in anger. . . . As a professional, I think Dan has been great." *Id.* (██████████ Statement), ¶¶ 11, 16.

Grabauskas's Response: Grabauskas admitted, "I swear on occasion when I'm angry about something. Not every time. . . . When I'm angry do I drop an occasional 'F bomb'? I'm not the only one. . . ." Exh. 5, ¶¶ 104, 106. Grabauskas further explained:

I think anytime a boss raises their voice or says they're displeased, it gets people intimidated. If a Board member says to me "I'm not happy with what you're doing," I'm intimidated. There are days when you do good things and bad days. Part of the job of management is not to intimidate, but it is to make clear when something is not up to snuff or when someone is not getting us where we need to go.

Id., ¶ 107.

Based on the number of corroborating witnesses, this Investigator finds that Grabauskas more likely than not raised his voice and used the "F" word in anger.

b. On April 18, 2016, Grabauskas called ██████████ and ██████████ "shits" – This Investigator asked five attendees of the April 18, 2016 Board pre-meeting whether they heard Grabauskas call the Board members "shits." Of the five, four did not recall hearing the statement, and one (██████████) confirmed that she heard him say it. Exh. 6 (██████████ Statement), ¶ 50. ██████████ stated the term was used in the context of "we had to do something because some of the Board members were being 'shits.'" *Id.* Grabauskas stated he did not recall making the statement. Exh. 5, ¶ 87. This Investigator finds ██████████ credible and finds that more likely than not, Grabauskas called the Board members "shits."

c. Grabauskas made [REDACTED] cry – [REDACTED] confirmed that Grabauskas made her cry in the spring summer of 2014. See subsection (5) above.

d. Grabauskas made [REDACTED] cry – [REDACTED] denied that Grabauskas made her cry; she was crying because her mother had just passed away and she was talking to Grabauskas in his office about a deadline and became emotional. Exh. 6 ([REDACTED] Statement), ¶ 3. This Investigator credits [REDACTED] and finds that Grabauskas did not make [REDACTED] cry.

e. Grabauskas “hit the roof” when he found out [REDACTED] was trying to transfer to another department – [REDACTED] applied for a job to work under [REDACTED] (former [REDACTED]) without informing Grabauskas. Exh. 6 ([REDACTED] Statement), ¶ 2. When [REDACTED] told Grabauskas that “[REDACTED] is going to hire [REDACTED] for her opening,” Grabauskas became upset and said, “what do you mean ‘she’s going to’? How come no one talked to me?” *Id.* Grabauskas told [REDACTED] that having [REDACTED] transfer to another position would be a “very controversial move to move her from the [REDACTED] position without consultation with [REDACTED].” *Id.* [REDACTED] told [REDACTED] that Grabauskas was upset about the transfer. *Id.*, ¶ 3. [REDACTED] stated Grabauskas was distant with her “for a few months” after this incident. Exh. 6 ([REDACTED] Statement), ¶ 45. [REDACTED] believed Grabauskas viewed her attempt to change jobs as disloyalty towards him. *Id.* Grabauskas’s Response: [REDACTED] came to him about an opening in procurement, but Grabauskas did not believe the position in procurement a perfect fit. Exh. 5, ¶ 105. Grabauskas denied that he “hit the roof.” *Id.* In fact, he was “empathetic to the challenges [REDACTED] was having with a Board member at the time.” *Id.* Grabauskas claimed [REDACTED] is one of the few friends he has made at work. *Id.* Based on the above, the Investigator cannot substantiate that Grabauskas “hit the roof” when he heard [REDACTED] attempted to accept a job working for the [REDACTED], but finds that Grabauskas did not want [REDACTED] to change positions.

(8) Grabauskas discriminated against women (specifically [REDACTED], [REDACTED] and [REDACTED]). The witnesses this Investigator spoke with, including the women identified by [REDACTED], did not corroborate the allegation that Grabauskas discriminated against women. Exh. 6 ([REDACTED] Statement), ¶ 7; ([REDACTED] Statement), ¶ 31; ([REDACTED] Statement), ¶ 32; see also *id.* ([REDACTED] Statement), ¶ 33 (“Dan did not discriminate against women. I think he was equal opportunity with his behavior. I don’t think he discriminated men, women[,] consultants or staff.”). Grabauskas’s Response: Grabauskas stated he is “equally tough on men and women.” Exh. 5, ¶ 107. Based on this Investigator’s interviews, Grabauskas seemed to swear and raise his voice with women and men, equally. Thus, this Investigator cannot substantiate that Grabauskas discriminated against women.

Findings: Most of the witnesses this Investigator spoke with stated they did not find Grabauskas intimidating. However, several witness stated that they found Grabauskas intimidating or offensive when he swore and/or raised his voice. Based on the above, this Investigator finds that more likely than not Grabauskas engaged in behavior that could have intimidated or offended a reasonable person.

2. Allegations by [REDACTED]

Based on the Investigator's Investigation, this Investigator was unable to substantiate [REDACTED] allegations that Grabauskas (1) was condescending to [REDACTED] when he said "What do you know, you're just an artist," (2) favored certain staff by rewarding them with trips they did not earn, (3) created a culture of "don't make waves or you will be fired," and (4) is vindictive and retaliated against [REDACTED] for speaking to a reporter. As discussed above, this Investigator finds that it is more likely than not that Grabauskas engaged in behavior that could have intimidated or offended a reasonable person. Finally, this Investigator finds that it is beyond the scope of this Investigation and the Investigator's knowledge to determine whether [REDACTED] is doing the job of a [REDACTED]

(1) Grabauskas created a hostile environment during a meeting a May 3, 2013 meeting attended by [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] regarding the Art in Transit Procurement.

[REDACTED] Version

[REDACTED] alleges that during a meeting on May 3, 2013, Grabauskas "erupted into an angry tired of swearing and foul language." Exh. 2A, Exhibit C. When Grabauskas walked into the meeting he was "tense" and said "something to the affect, why are we all here?" *Id.* Before anyone could respond, Grabauskas --

[E]rupted into an angry tirade of swearing and foul language. "If you think I'm going to approve these documents," (he held up the document that I [REDACTED] had given him, waving them in the air . . .) "If you think I'm willing to get fucked in the public over that you are mistaken, fuck this. I am not going to get fucked by a bunch of politicians over you. I was not given enough time to review this material. Fuck this, I don't get fucked for nobody."

Id.

According to [REDACTED], Grabauskas's "face was getting red, his body language was threatening, waving the documents. I perceived his body language as threatening. . . . This hostile and intimidating rant went on for at least 8 minutes. . . . I felt totally responsible and intimidated since it was my documents that he had in his hand" *Id.*

After the meeting, [REDACTED] turned to [REDACTED] and said, "what was that? What just happened?" and [REDACTED] responded, "consider yourself baptized, we get this all the time This is normal." *Id.* [REDACTED] understood [REDACTED] comments as indicating "the manager's acceptance of Dan's behavior as 'business as usual.'" Exh. 2A, ¶ 46. [REDACTED] felt that Grabauskas "abusive treatment," was a "reprimand and that [she] feared termination on [her] personal service contract and [that she] can be terminated at any time." *Id.*, Exhibit C.

██████████ stated that as a result of the May 3, 2013 meeting, the group agreed to slide the date for the Call for Artist request for procurement. *Id.*

In support of this allegation, ██████████ provided several e-mails, including an e-mail dated May 8, 2013 from ██████████ to ██████████, where ██████████ wrote, "*To avoid what happened last time*, I suggest ██████████ (or ██████████) show the final proof, the Q&A and any other documents relative to the program for the unveiling to Dan." Exh. 2A, Exhibit J (emphasis added). ██████████ interpreted ██████████ e-mail as follows:

I understood that ██████████ was referring to the May 3rd meeting incident. What I conjecture is that ██████████ didn't want to get involved with Dan in communicating the public relations portion of the Art in Transit rollout. I didn't know her relationship with Dan, but to the observer, there was a sense of fear and intimidation, reluctance to be the messenger.

Exh. 2A, ¶ 28.

This Investigator spoke with ██████████ and ██████████¹⁸ neither of whom recalled the meeting.

- ██████████ stated, "I don't remember the May 3, 2013 meeting I guess because it wasn't something that was my responsibility. There were also other things going on in my life that were more important. My mother was in hospice care. She passed on May 12, 2013." Exh. 6 (██████████ Statement), ¶ 10. ██████████ also did not recall saying "consider yourself baptized, we get this all the time," but stated she "could have" said it. *Id.*, ¶ 7. ██████████ recalled Grabauskas raising his voice and swearing at another meeting, when they were having a pre-meeting to prepare for a public meeting. *Id.*, ¶ 29.
- ██████████ stated, "I don't recall details of a specific meeting more than three years ago . . . I don't recall anything out of the ordinary regarding that art in transit issue." Exh. 6 (██████████ Statement), ¶ 2. With respect to the May 8 e-mail, ██████████ stated that she did not specifically recall the e-mail because of the passage of time, but thought she meant, "let's get complete sign off so we don't have to rush or re-do things at the last minute." *Id.*, ¶ 10. ██████████ further stated she did not find Grabauskas intimidating – "I spent more time with him than most people because we're at media events and I drove him here and there. . . I felt that I was able to speak my mind and tell Dan what I thought." *Id.*, ¶ 4.

¹⁸ ██████████ declined to be interviewed. ██████████ did not respond to this Investigator's request for an interview, and this Investigator was unable to obtain ██████████ contact information.

████████ further stated that as a result of the May 3, 2013 meeting with Grabauskas, she "tried to keep her contact with Dan to a minimum, to slip in and out and run." Exh. 2A, ¶ 47.

Grabauskas's Response

Grabauskas stated he was surprised by ██████████ complaint because he believed they always had a good rapport and thought her work was outstanding. Exh. 5, ¶¶ 116, 117. When this Investigator read ██████████ account of the meeting to Grabauskas, Grabauskas stated that he did not specifically recall the meeting and described the use of "F" bombs as "excessive. *Id.*, ¶ 112. However, he admitted to using the "F" word at meetings and further stated he could have been upset that he was not given enough time to review the procurement documents before they were scheduled to be released. *Id.* Grabauskas provided e-mails regarding the request for procurement, including a June 28, 2013 e-mail where ██████████ wrote to Grabauskas, "Thank you for your support!" in response to information that 542 people downloaded the Call for Artists from the City's website and 404 applications were submitted. *Id.*, Exhibit DD.

In response to ██████████ statement that she avoided Grabauskas after the May 3, 2013 meeting, Grabauskas provided the Investigator with an e-mail dated January 10, 2014 where ██████████ wrote to Grabauskas, "Thank you Dan! I appreciate your support," in response to Grabauskas directing ██████████ and ██████████ to approve Art-In-Transit meetings that would occur on holidays (which would incur overtime costs). *Id.*, Exhibit EE. Grabauskas also provided an e-mail dated June 5, 2014 e-mail where ██████████ asked to meet with Grabauskas for five to ten minutes before he left the office. *Id.*, Exhibit II. Grabauskas stated that he worked with ██████████ frequently when they were giving public presentations together on station designs, but those meetings ended and because she is several layers down in the organization, he has not talked to ██████████ since July 2015. *Id.*, ¶¶ 117-18.

██████████ Second Interview

In response to Grabauskas's reaction to her complaint, ██████████ stated "It does not surprise me that Dan was surprised by my allegations. I have only been professional with him at the highest level in what I produced and what I put out for the project, well beyond my job description and reason for my hire." Exh. 2B, ¶ 3. She stated she wrote, "Thank you Dan! I appreciate your support!" (Exh. 5, Exhibit EE) because she was being professional and because she was "happy" about the final numbers coming in as projected. Exh. 2B, ¶¶ 6, 7.

████████ further stated that when she did the community presentations with Grabauskas, at first she was uncomfortable, but she "understood the nature of [her] role and why presenting the culture and art information was important to the community. Being around Dan is tense because of that May 2013 meeting and because [she] know[s] what he's done to other people. [She's] always on guard." Exh. 2B, ¶ 10.

██████████ stated that there was an incident in September 2014 where “[she] saw a man behind the façade” after Grabauskas sent her flowers while she was on sick leave for six week. He hugged her and ██████████ saw “the start of tears.” Exh. 2B, ¶ 4.

Findings:

Because of the passage of time and the lack of corroboration, it is difficult for this Investigator to determine whether the May 3, 2013 meeting occurred as described by ██████████, and therefore cannot substantiate the allegation as described. However, as discussed above, this Investigator finds more likely than not that Grabauskas engaged in behavior that could have intimidated or offended a reasonable person.

(2) Grabauskas was condescending to ██████████ when he said, “What would you know, you’re just an artist.”

██████████ Version

██████████ alleged as follows:

██████████ and I were meeting with Dan about the need to launch a system-wide strategic branding and marketing effort. We were attempting to relay the need for advance planning to create and maintain consistent graphics for an effective identity (logos, branding symbols, colors, font type, station names, and system name). Timely decisions on these elements would affect the station signage package during construction and wayfinding signage throughout the system and even roadway signage. If these issues were not dealt with in a timely fashion, it would constitute a change order and increase project costs. Dan was sitting behind his desk and we were sitting across in his guest chairs. Dan pointed and waved his finger at us and he was saying “What would you know, you’re just an artist, what would you know, you’re just an architect.” In my mind, I thought, like calm down Dan, oh no, he’s going to go at it again. It was in the spring or early summer of 2013.

Exh. 2A, ¶ 15.

Grabauskas’s Response: Grabauskas denied the allegation and stated he was “an art enthusiast” and “would never denigrate an artist.” Exh. 5, ¶ 125.

Findings: Based on the passage of time and lack of corroborating witnesses, this Investigator is unable to substantiate the allegation.

(3) **Grabauskas favored certain staff by rewarding them with trips they did not earn.**¹⁹

Version

alleged that "management appears to reward the 'favored staff' with conference travel for promoting projects or tasks that they did not do." Exh. 2A, ¶ 85. However, admitted she never asked Grabauskas if she could travel. Exh. 2B, ¶ 22.

appears to have been one of the "favored" staff (despite his threats to terminate her employment). During her interview, admitted that she and her staff were given the opportunity to travel off-island, however, she stated that she advocated for her staff to take the trips. Exh. 6 (Statement), ¶ 30. She did not know whether other senior managers did the same for their staff. *Id.*

Grabauskas's Response: In response to the allegation, Grabauskas stated there were two presentations in 2014 that incorporated culture and art, but they were a small part of the overall presentation. Exh. 5, ¶ 129. The first one Grabauskas presented and the second presented. *Id.*, ¶¶ 129, 130. did not ask to travel whereas asked to go. *Id.*, ¶ 129.

Findings: Based on the above, this Investigator is unable to substantiate the allegation.²⁰

(4) **Because Grabauskas eliminated job, is forced to do the job of an architect even though she is not an architect.**

Version

alleged as follows:

Dan eliminated position. Our section supervisor mentioned, "suck it up and do the work of the architect." I've been told, "don't make waves." I have a Master of Fine Arts; I am not an architect with an AIA after my name. Staff have asked me questions they should ask the Chief

¹⁹

²⁰ In her Second Statement, elaborated on her complaints of favoritism (including adding back details she had deleted from her First Statement), but her allegations would be difficult to substantiate without several follow up interviews to determine whether the favoritism alleged is perceived or real. The follow up interviews would include interviews with (Architect), and Grabauskas. See Exh. 2B, ¶¶ 11-31.

Architect. The workload was incredible before, now with [REDACTED] gone it is much worse.

Exh. 2A, ¶ 52; *see also* Exh. 2B, ¶¶ 32-42. During her second interview, in complaining about her workload, which required her to come into the office at nights during her vacation to do work [REDACTED] would respond to, [REDACTED] stated, "I don't know if [REDACTED] and [REDACTED] are aware of what's happening, but I am angry at this whole dysfunctional system. . . . [REDACTED] needs to be aware of my workload. The better question is, does anyone really care?" *Id.*, ¶¶ 40, 42.

[REDACTED] and [REDACTED]: [REDACTED] denied making the statement "suck it up and do the work of the architect" or "implied anything like that." Exh. 6 [REDACTED] Statement), ¶ 22. [REDACTED] stated that after [REDACTED] left, [REDACTED] mentioned that her workload had increased and in response [REDACTED] transferred the responsibility of station naming to the Planning Group to reduce her workload. *Id.*, ¶ 20. [REDACTED] stated that additional architects are available from HART's general engineering consultant. *Id.* [REDACTED] stated that he asked [REDACTED] whether [REDACTED] needed help and [REDACTED] responded "no, she has co-workers." Exh. 6 [REDACTED] Statement), ¶ 22. The managers directly above [REDACTED], including [REDACTED] and [REDACTED], denied that [REDACTED] is doing the work of an architect. Exh. 6 ([REDACTED] Statement), ¶ 19; [REDACTED] Statement). [REDACTED] is aware that [REDACTED] is not trained as an architect and recognizes that if she were doing the work of an architect, the issue would need to be addressed. Exh. 6 [REDACTED] Statement), ¶ 9.

Findings:

Based on the above, it appears that when [REDACTED] complained about her workload that some work had been transferred from her. Based on her comments during her second interview (that her direct supervisor, [REDACTED], "needs to be aware of [her] workload," and that she did not know whether [REDACTED] and [REDACTED] were aware that she has been coming in on nights during her vacation to do work [REDACTED] would have responded to), it appears she did not follow up with further requests for relief from her workload (especially work that she perceives as the work of the [REDACTED]) from [REDACTED] or his supervisor, [REDACTED]. Therefore, this Investigator cannot substantiate the allegation that she is being "forced" to do the work of the [REDACTED]. The Investigator finds that it is beyond the scope of this Investigation and the Investigator's knowledge to determine whether [REDACTED] is doing the job of [REDACTED], but finds that her superiors do not expect her to do the job of the [REDACTED].

(5) **Grabauskas created a culture of "don't make waves or you will be fired."**

[REDACTED] Version

[REDACTED] alleges several instances where individuals were terminated seemingly without explanation. Many of the incidents occurred several years ago and are based on second and third-hand knowledge.

• [REDACTED]: The termination [REDACTED] appears to be most concerned about was the elimination of [REDACTED] position. According to [REDACTED], "I came forward because with the amount and complexity of the work, the project has the potential to fail without the support and direction of the [REDACTED]. . . The elimination of the [REDACTED] position clearly demonstrates that Dan does not know how to manage a design and construction project of this complexity and magnitude. Dan was not aware or did not even care to ask how the staff, consultants and community interacted with the [REDACTED] position. He did not understand the organizational role. . . [REDACTED] stood up to Dan. He then noticed he was being marginalized." Exh. 2A, ¶¶ 57, 80

With respect to the decision to eliminate [REDACTED] position, it appears to have been Grabauskas's decision. [REDACTED] stated: "*It was Dan's decision to release [REDACTED].* He didn't think there was a need to carry a [REDACTED] on the project. . . But [REDACTED] salary, which was quite high, *we're under pressure to reduce staff especially consultant staff.* But Dan thought the majority of the architectural work is done, the majority left is engineering work, that it was one position we could cut back on." Exh. 6 ([REDACTED] Statement), ¶ 37 (emphasis added). [REDACTED] stated, "*We still need a [REDACTED].* The request to remove [REDACTED] was by Dan. . . No one really asked me about eliminating [REDACTED] position, but *I wouldn't have objected.* . . We felt we could mitigate his leaving by dispersing his residual work among staff we already have. We have other architects. . . *I don't think the leftover work is [REDACTED] level.* *Id.* [REDACTED] Statement), ¶¶ 16, 17, 19 (emphases added). [REDACTED] stated: "[REDACTED] reported to me. I was informed of the elimination of his position, but I was not part of the decision making group. *If they asked me my recommendation [it] would have been to keep him, but I don't know all the circumstances (we have to reduce budget, etc.).*" *Id.* [REDACTED] Statement), ¶ 21 (emphases added)

Grabauskas's Response: "First, [REDACTED] was a consultant, not an employee of HART. When we let [REDACTED] go, we were making a number of changes. We moved from design-bid-build (DBB) to design build (DB) for the remaining 10 miles. When the position of [REDACTED] was created, all remaining stations were going to be DBB. He would oversee design and would work with contractors to make sure it gets built as designed. Once it became DB, design only to approximately 30% and ultimately it was up to the contractor, this shifted risk and reduced cost. No other project I had worked on had a [REDACTED] *We decided to repackage to DB. Consultants come and go. They move on when they are not needed. We have pressure to reduce costs.* I eliminated the position from the [REDACTED] contract along with 2-3 other positions,

going into the next year. Once a year we are going to revisit and question, 'do we need this consultant, do we need these tasks?' He wasn't needed anymore. We contract with [REDACTED], I don't let him go, we go to the consultant and tell them, 'These are the tasks we need and we don't need' and [REDACTED] decides. [REDACTED] didn't work for me, the company he works for work for me. . . . Myself, [REDACTED] and [REDACTED] (HART [REDACTED]) met and discussed a number of different, staffing patterns of what we needed." Exh. 5, ¶¶ 120, 124 (emphasis added).

[REDACTED] Second Interview: In her Second Interview Statement, [REDACTED] attached a PMOC report in which the consultant wrote that "several key positions remain vacant. The most critical positions that HART is diligently working to permanently fill include: *•Architecture and Art Manager . . .*" Exh. 2B, Exhibit NN at 21 (emphasis added).

Findings: Although it is beyond the scope of this Investigation and this Investigator's knowledge to determine whether a [REDACTED] (or an Architecture and Art Manager) is needed on the project, without speaking to [REDACTED] this Investigator does not have enough information to substantiate an allegation that Grabauskas eliminated [REDACTED] position because he "created waves."

- [REDACTED] and [REDACTED] [REDACTED] stated [REDACTED] and [REDACTED], "said something critical of Grabauskas's favored staff and a few weeks later he was gone, then [REDACTED] was gone. Staff have an understanding, an unwritten code: don't cross the line or you get fired." Exh. 2A, ¶ 71. This Investigator spoke with [REDACTED] (the "favored staff" whom [REDACTED] had verbally identified during her interview) and [REDACTED] confirmed that she was aware that [REDACTED] and [REDACTED] disparaged her because [REDACTED] husband (who also worked at HART) overheard [REDACTED] and [REDACTED] talking, but denied that either she or her husband reported it to Grabauskas or asked Grabauskas to fire anyone. Exh. 6 [REDACTED] Statement), ¶ 27. Grabauskas stated he terminated [REDACTED] for performance reasons and denied being aware of [REDACTED] disparaging [REDACTED] Exh. 5, ¶ 127. Based on the above, this Investigator cannot substantiate the allegation that Grabauskas terminated employees because they disparaged "favored staff."

- [REDACTED] and [REDACTED]: [REDACTED] alleged that [REDACTED] [REDACTED], was terminated on a Friday at 4:15 p.m. and was not told the reason for her termination. Exh. 2A, ¶ 75. [REDACTED] believes that [REDACTED] was terminated so they could "slip someone else in." *Id.*, ¶ 77. According to [REDACTED], [REDACTED] personal services contract expired on June 30, 2014 and was not renewed because of poor performance. Exh. 6 [REDACTED] Second Statement), ¶ 5. [REDACTED] stated that he can replace

some positions in two days because he has "a pile of resumes." *Id.*, ¶ 10. [REDACTED] confirmed [REDACTED] needed "mentoring in secretarial, assistant type work." *Id.* ([REDACTED] Statement), ¶ 27. [REDACTED] stated he was on vacation when [REDACTED] was terminated and was told by his supervisor ([REDACTED], who is no longer at HART) when he returned from vacation. *Id.*, ¶ 24. [REDACTED] stated he talked to [REDACTED] replacement (before he accepted her) and was comfortable with her. *Id.*, ¶ 26.

[REDACTED] alleged that in 2012 or 2013, [REDACTED], another secretary, was similarly terminated on a Friday without being told a reason. Exh. 2A, ¶¶ 75, 76. [REDACTED] stated that [REDACTED] was a "weak" secretary and that her supervisor, [REDACTED], wanted to terminate her. Exh. 6 ([REDACTED] Second Statement), ¶ 8.

Grabauskas stated he does not have knowledge of the performance issues of employees he does not interact with and would rely on [REDACTED]. Exh. 5, ¶ 136. This Investigator credits Grabauskas that he would not be familiar with personnel issues of secretaries who did not report to him. Although there is some evidence that the terminations were abrupt, this Investigator cannot substantiate that [REDACTED] and [REDACTED] were terminated for reasons other than their performance.

Findings: Based on the above, this Investigator cannot substantiate that Grabauskas created a culture of "don't make waves or you will be fired."²¹

(6) **Grabauskas is vindictive and retaliated against [REDACTED] for speaking to a reporter.** According to [REDACTED] --

[REDACTED] is scared. He might be willing to talk to the Investigator but he's scared of being fired. Dan is vindictive, not only does he get rid of you, he goes out to hurt your reputation and takes punitive action. Somebody gave [REDACTED] personal email and/or cell phone to a [REDACTED] reporter. After he was gone for quite a few days, he gets a phone call or email from reporter [REDACTED]. She asked, "So you want to talk about your leaving, how long you were there?" [REDACTED] was like "who gave you my contact information?" I believe that Dan releases people's contact information, or someone at his request puts out their information to the press to publicly "out" those personnel.

²¹ In her Second Interview Statement, [REDACTED] attached an E-mail from [REDACTED] to the APTA event organizer in which he appears to be claiming that his request to give a presentation at APTA "almost cost [him his] position here at HART." See Exh. 2B, Exhibit GG (June 1, 2014 10:02 p.m. E-mail). However, this Investigator would need to interview [REDACTED] and others who were involved with the incident before determining whether the claim can be substantiated.

There were also [REDACTED] articles about the departures of [REDACTED] and [REDACTED]. Dan doesn't have everyone that leaves HART "outed," which is interesting. Many very high profile leadership staff have left the project either through termination, position elimination, moving to another job, or retirement and there has been no "outing" to [REDACTED] or other news outlets of their departures. Somebody releases their personal information to [REDACTED].

[REDACTED] responded to the reporter and a short story was published in [REDACTED]. Soon after, he received phone calls from several local [REDACTED] managers. ([REDACTED] was a seconded consultant within HART to act like city staff. His parent company was first [REDACTED] which was bought out by [REDACTED]) The manager said he got a call from national headquarters; someone wanted [REDACTED] punished and reprimanded. [REDACTED] was afraid that he would be terminated. One could infer that Dan may have asked someone in [REDACTED] to look into the situation to have [REDACTED] silenced, punished, or terminated.

Exh. 2A, ¶¶ 38-39.

[REDACTED]: [REDACTED], who is the lead consultant from [REDACTED] on the project stated,

Dan was concerned someone would leave the project and be quoted. The technical staff defers to the Executive Team (Dan and Brennon) or the PI (public information) people to communicate with the media. Staff usually doesn't communicate with the media. Dan was a little taken aback that a staff member would communicate through the media. . . . Dan may have contacted someone higher up at [REDACTED] after the article came out. When the article appeared, Dan did comment to me and I spoke to the person you might be referring to and said "Dan has a concern over this." I did not follow up anymore. So when I said I "think" Dan may have spoken to this person, I don't know if he did. It was [REDACTED], the most [REDACTED] in charge of Projects at [REDACTED].

Exh. 6 ([REDACTED] Statement), ¶ 38, 39, 40.

██████████: This Investigator understands from ██████████ (during a brief conversation) that ██████████ continues to work for ██████████ and that he was reprimanded and directed to refer questions from reporters to the "media people."

Grabauskas's Response

It was alleged that I tried to get ██████████ fired from ██████████ after the ██████████ article by calling ██████████ – That is not true. ██████████ called me to apologize. Consultants represent their company. If you leave an assignment and go to another assignment, and you somehow insult the client you just left, it makes it difficult to get the next client to take that person on. ██████████ is the project principal for the contract ██████████ apologized. It was not my place to tell ██████████ to reprimand ██████████, ██████████ didn't work for me. I did not try to get ██████████ fired. ██████████ called me to apologize as he should have. Also, the ██████████ contract is coming up for re-procurement this year, I'm sure he wanted to make sure we were still on good terms that's why he called. ██████████ used to work for me.

As for the allegation that I release personal information to the press to make people feel bad. - I don't release personal contact information of people who leave. I don't have ██████████ personal contact information. ██████████ was several layers down in the organization at HART. I don't take it personally when people leave. I am a reference for people, including ██████████, ██████████, ██████████ (recently). They're good people. My life brought me here and someone was good enough to give me a recommendation. I'm sad they're leaving, but that doesn't mean you don't help.

Exh. 5, ¶¶ 121, 122.

Findings:

Based on the above, this Investigator finds it more likely than not that Grabauskas had a negative reaction to ██████████ comments to the reporter after he left the project. However, this Investigator cannot substantiate ██████████ "inference" that Grabauskas took any action to have ██████████ silenced, punished or terminated. This Investigator credits ██████████ when he said he reported to his superior, ██████████, that Grabauskas (██████████ client) was "taken aback" by ██████████ statements to the reporter. In this context, this Investigator further credits Grabauskas when he stated ██████████ called him to apologize given their history and the fact that the ██████████ contract is up for re-procurement.

This Investigator further cannot substantiate that Grabauskas released the personal information of ██████████ or other individuals to the media when they left HART. First, there is no

evidence supporting this allegation, and second, it would not make sense for Grabauskas to release [REDACTED] contact information to the press when he did not want [REDACTED] speaking to the press.

VII. CONCLUSION

I hope this Report provides you with the facts you need to exercise your best business judgment in determining whether any City/HART policies have been violated and, if so, to determine appropriate actions to take.

If you believe there is additional information I should consider with respect to the issues addressed in this Report, or additional issues that you would like me to address, please let me know and I will supplement my Investigation and/or this Report as necessary or appropriate.

Very truly yours,



Megumi Sakae

MS:tvf
Enclosures