STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
Case Type: Other Civil

Zachary E. Coppola Court File No. _____

Plaintiff, Judge _____

vs.

SUMMONS

The City of Minneapolis,

Defendant.

THIS SUMMONS IS DIRECTED TO DEFENDANTS, ABOVE-NAMED:

1. **YOU ARE BEING SUED**. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS**. You must give or mail to the person who signed this Summons a written response called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

Dean B. Thomson
Fabyanske, Westra, Hart & Thomson, P.A.
333 South Seventh St., Suite 2600
Minneapolis, MN 55402

3. **YOU MUST RESPOND TO EACH CLAIM**. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS**. If you do not Answer within 21 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to

respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. **LEGAL ASSISTANCE**. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.

6. **ALTERNATIVE DISPUTE RESOLUTION**. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

FABYANSKE, WESTRA, HART & THOMSON, P.A.

Dated: November 8, 2023

By: */s/ Dean B. Thomson*
Dean B. Thomson (#141045)
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ATTORNEYS FOR PLAINTIFF

ACKNOWLEDGMENT

I acknowledge that costs, disbursements and reasonable attorney and witness fees may be awarded under Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

/s/ Dean B. Thomson
Dean B. Thomson (#141045)

STATE OF MINNESOTA DISTRICT COURT

COUNTY OF HENNEPIN FOURTH JUDICIAL DISTRICT
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Plaintiff,

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The City of Minneapolis,

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COMPLAINT

INTRODUCTION

1. Minnesota's procurement and public information laws ensure taxpayers either get what they pay for or know who to blame when they don't. Unfortunately, in its distribution and award of funds from the federal and state government for violence prevention programs, the City of Minneapolis (the "City") acts like it is above these laws. This lawsuit seeks to change the City's behavior and prevent illegal procurement awards for the benefit of the public.

2. Plaintiff became concerned over the City's procurement practices after the "Feeding Our Future" scandal revealed that hundreds of millions of public dollars had been improperly awarded to unqualified recipients who promised to feed hungry children during the COVID pandemic and instead absconded with those funds when those programs and expenditures were not properly monitored. Plaintiff became concerned that the City was awarding violence prevention contracts in similarly questionable ways and began to investigate whether they suffered from the same type of problems that plagued "Feeding Our Future".

3. To see if the City's violence prevention program was being properly administered, Plaintiff, a Minneapolis resident, sent the City multiple data requests over the past year concerning the procurement practices of its Office of Violence Prevention. In responding to Plaintiff's requests, the City repeatedly and unreasonably delayed responding and inexcusably provided Plaintiff with seemingly as little information as possible. The City's stonewalling not only took a repeated pattern, but the City made misrepresentations to Plaintiff concerning his data requests and then resorted to silence when called out on those misrepresentations.

4. The Minnesota Governmental Data Practice Act (the "Act") requires municipalities to answer data requests within a reasonable period of time, but the City's response time has been anything but "reasonable". In fact, Plaintiff has had to send over five data requests over 13 months just to get basic information about who has received government funding and on what basis. Yet many months later, Plaintiff still has not received all the data he has requested from outstanding Data Practices requests.

5. Equally troubling, the little data actually provided to Plaintiff demonstrates that the City treats procurement laws with the same disregard it gives public information laws. Specifically, in awarding federally funded violence prevention contracts under a request for proposal ("RFP"), the City failed to put in place even the most basic competitive bidding or proposal evaluation procedures, resulting in an arbitrary and capricious procurement process. The City has improperly, arbitrarily and capriciously – and therefore illegally - awarded significant public funds to violence prevention programs. The contracts awarded pursuant to these illegal procurements should be void and unenforceable, and the programs suspended before more public funds are improperly spent.

6. Many of the violence prevention programs are also improperly using federal public funds. For example, One Family One Community ("One Family"), an organization that has

received at least $175,000 in funds from the City describes itself as "a true grass roots organization, working to advance a dual mission of housing access and civic engagement while teaching self-reliance and political self-determination."[1] The organization operates a lobbyist association named the Community Housing Development Coalition, which lobbies the City for issues related to housing, public safety, transportation, and human services. Thus, the City is paying a lobbyist to lobby the City. Not only is this a conflict of interest, but all federally funded violence prevention contracts expressly prohibit the use of funds for lobbying or political activities, so this use of federal funds is illegal.

7. Another organization that received an $85,000 contract award for violence prevention work in 2022 also has a history rooted in political activism. This organization was founded by individuals who led a successful statewide movement to provide unemployment benefits to high school students during the Covid-19 pandemic. The organization's website describes that experience in the following language: "We led an intergenerational coalition of lobbyists, journalists, and stakeholders in a successful year-long effort to change the discriminatory state law, in the only divided legislature in the country at the time." In celebration of the political leaders who helped support their lobbying efforts, Bridgemakers and its partner organization hosted an awards ceremony for Sate leaders and presented awards to the Walz-Flanagan Administration and Attorney General Ellison amongst others. As mentioned above, federally funded contracts prohibit lobbying and political activities, and this use of federal funds is illegal.

[1] Plaintiff has no objection to and, in fact, supports programs that provide alternative means of violence prevention. Nevertheless, Plaintiff currently has insufficient information regarding the full activities of this contractor and others mentioned in this Complaint and reserves his right to investigate whether their activities have the requisite reasonable relationship to violence prevention.

8. Not only do the two organizations above have a history of lobbying, but both have conducted consulting related to voter registration. Specifically, One Family engaged in voter registration work until at least 2019. Multiple tweets are still posted on One Family's twitter page offering to provide money to individuals who pledged to vote, along with job offers for canvassing and phone banking work. Similarly, in 2020 Bridgemakers and its partner organization lead a Statewide youth voter registration effort. Again, use of federal funds for this purpose is illegal.

9. Relatedly, Plaintiff discovered that violence prevention contracts are replete with apparent conflicts of interest. For example, the Founder and Director of Black Family Blueprint, another organization that received over $185,000 in violence prevention funds between 2021 and 2023, was a City Council appointed member of the City's Violence Prevention Steering Committee from 2019 to 2020. Likewise, the Executive Director of another organization, Corcoran Neighborhood Organization that has received over $1,000,000 in violence prevention funds since 2021 was the Vice President Commissioner at Large of the Minneapolis Park & Recreation Board from January, 2022 until November, 2023. Also, the Founder and Executive Director of One Family has described herself as an advisor to Mayor Jacob Frey. This same individual was a Mayoral appointee to the City's Advisory Committee on Housing and served on the Committee between 2019 and 2022. The Founder and sole employee of Cause and Effect, an organization that has received multiple violence prevention contract awards, is a City employee. Additionally, the Executive Director of another organization, Change Equals Opportunity, that has received violence prevention contracts every year since the initiative started in 2017, also serves as a violence prevention consultant to the City in an individual capacity. These apparent conflicts of interest deserve further scrutiny, but Plaintiff has been prevented from further investigating these

apparent conflicts because the City has improperly refused to provide him with public documents he has requested pursuant to the Act.

10. Plaintiff became more concerned about whether public funds were being misused after discovering that certain contractors had been found liable for actions demonstrating a lack of fiscal responsibility. For example, in July 2022 the Founder and Executive Director of One Family was found liable in a Hennepin County District Court case for failing to pay back $77,347.42 of accumulated principal and interest on a $77,000 loan. This individual claimed that she never took out the loan, but instead had been defrauded by a consultant whom she had hired to help her business. The District Court, however, found that she offered no evidence or facts to support her claim. In fact, she could not even remember how much she had paid the alleged consultant, how she had paid the consultant, or when the payment occurred. One month before this judgement was rendered, One Family received a $75,000 contract award for violence prevention services. In response to his Data Practices request for information about this contract, the City has been unable or unwilling to provide invoices proving how this grant money was spent.

11. This lawsuit does not attempt to prevent the City from spending significant funds on alternatives to traditional policing methods as a means of violence prevention. Rather, it is an attempt by Plaintiff, acting as a private attorney general, to make sure the City follows the law in spending and administering these funds. Thus, Plaintiff requests the Court's intervention to compel the City's compliance with the Minnesota Government Data Practices Act and enjoin the City from spending any more funds related to the violence prevention RFP until significant changes are made to the award process for these lucrative contracts and to ensure proper public oversight of them.

JURISDICTION AND VENUE

12. This Court has proper jurisdiction and venue under Minn. Stat. 13.08 Subd. 4.

13. Venue is proper in this Court pursuant to Minn. Stat. § 13.08, subd. 3.

FACTUAL ALLEGATIONS

14. Plaintiff is a citizen of the City of Minneapolis (the "City"), the State of Minnesota (the "State"), and the United States of America (the "U.S."), and pays taxes imposed on him by the City, State, and the U.S. As a citizen taxpayer, Plaintiff has standing to bring this action.

15. The Department of Neighborhood Safety (the "Department"), formerly known as the Office of Violence Prevention (the "OVP"), leads the City's public health approach to violence prevention.

16. In its own words, the Department works to "reduce violence through prevention, intervention, and healing."

17. The Department operates at least nine different programs and initiatives that are intended to reduce violence.

18. The Department relies on contractors to operate many of the Department's programs and initiatives.

19. For over a year Plaintiff has sought to understand the procurement procedures utilized by the Department in awarding contracts to these contractors. Plaintiff has made multiple data requests to the City through the City's OpenCity Portal (the "Portal") for this purpose.

20. In responding to Plaintiff's requests, the City has consistently violated the Minnesota Government Practices Act (the "Act") by refusing to provide Plaintiff with public data. Moreover, on the occasions that the City has produced Plaintiff's requested data, it took far longer than what is required under the Act.

21. The City has established a Violence Prevention Fund (the "VPF") to fund many of its violence prevention programs. The City describes the VPF in the following language: "For a

successful citywide violence prevention approach, we must include strategies rooted in the experience and wisdom of the community. To do that, we set up a Violence Prevention Fund in 2019. We use the Violence Prevention Fund to invest in grassroots strategies that come from the community."

Plaintiff's First Data Request.

22. On October 11, 2022, Plaintiff submitted his first Data Request numbered DR22_037583 ("Data Request One)" through the City's Portal seeking to obtain the proposals submitted by four contractors seeking funding from the VPF in response to an RFP seeking the award of money from the VPF (the "VPF RFP").

23. In 2021, the VPF awarded $1,104,967 worth of grants to contractors for Violence Prevention work. There is no publicly available budget that shows 2022 VPF grant totals. The 2022 VPF grants were federally funded, at least partially, by money allocated to the City through the American Rescue Plan Recovery ("ARPA").

24. The purpose of the VPF RFP was to "identify qualified agencies to implement community-driven violence prevention approaches that serve Minneapolis residents and that promote safety, resilience, connectedness, and healing in the city as a whole." The City also stated the VPF RFP was issued as part of a "competitive solicitation process."

25. At the time Plaintiff sent Data Request One, three of the contractors whose proposals Plaintiff requested had executed contracts with the City arising out of the VPF RFP.

26. The City refused to comply with Plaintiff's request and instead merely provided Plaintiff a list of all contractors who submitted a proposal in response to the VPF RFP.

27. To justify this decision the City stated: "As not all of the contracts related to this RFP have been executed yet, the only data that is currently public is a list of vendors who submitted proposals. See MN Stat Chapter 13.591 Subdivision 3(d) [sic]."

28. Further, the City stated: "You will have to submit a new request at a later date, after all contracts have been awarded and signed, to get access to the other data you requested." The City, however, also stated it could not provide an estimate for when the contracts would be executed and that there was no specific deadline for their execution.

29. The City then unilaterally closed Data Request One without providing the requested information to Plaintiff.

30. The City's position that the proposals are not public data until all of the contracts related to the VPF RFP are executed is clearly wrong under the Act's plain language. The relevant language in §13.591 Subd. 3(b) states that all data submitted by all proposers, with the exception of trade secrets, becomes public data after the government entity "has completed negotiating the contract with the selected vendor." The plain language can only be interpreted to mean that all proposals become public when the government finishes negotiating the contract with a particular vendor to receive an award under the RFP even though separate contracts with other vendors might not yet be awarded or negotiated. The City's contrary interpretation requires that the Act be rewritten to state that no proposals become public until the government entity has exhausted the grant fund and completed negotiating all the contracts with all the selected vendors. The Legislature could have written the Act this way by inclusion of the word "all", but it did not. City officials are not free to revise the Act to their liking so they can keep public data hidden.

31. Moreover, the City's interpretation is unlawful because it denies taxpayers and proposers their right to challenge executed contracts awarded under an RFP. Specifically, the VPF

RFP does not specify the number of contracts that will be awarded to proposers. Additionally, as mentioned above, the City has explicitly stated that there is no deadline for when "all" contracts related to the VPF RFP must be awarded. The City also refuses to provide any timeline or estimate for when "all" of the contracts will be awarded. Taken together, this allows the City to spend significant project funds, and potentially almost all the funds, while indefinitely denying the public access to proposals and executed contracts by claiming that it has not yet negotiated "all" of the contracts under the RFP.

32. The consequence of denying the public access to proposals is that taxpayers and proposers are effectively foreclosed from determining whether public funds are being properly awarded or spent, which is one of the purposes of the Act – to shine sunlight on the hidden practices of the City. Obviously it is impossible to evaluate the procurement process or how the expenditures are being spent without reading the proposals, the award data, the contracts, and the invoices from the vendors. Because our State guarantees the right to taxpayers and proposers to challenge contracts awarded under an RFP, the public must have access to proposals for a particular contract the moment the contract is negotiated, even under an RFP that allows for the award of multiple contracts to multiple vendors.

33. As of the present, the City has not provided the proposals requested by Plaintiff in Data Request One.

Plaintiff's Second Data Request.

34. On January 18, 2023, Plaintiff submitted his second Data Request numbered DR23_041024 through the Portal ("Data Request Two") seeking the proposals submitted by two contractors in response to the VPF RFP. Additionally, the request sought the contracts awarded to

these two contractors under the RFP, as well as the invoices submitted for payment associated with the contracts.

35. On February 3, 2023, the City produced only the same list of proposers it provided in response to Data Request One. The City then unilaterally closed Data Request Two.

36. The City used the same excuse to justify its refusal to produce the data – i.e. its reading of Minn. Stat. §13.591 Subdivision 3(b), but as explained above, the City's reading of the statute in regard to the requested proposals is clearly wrong. Further, the City's reading of the statute is even more egregious in regard to the requested contracts and invoices because 13.591 Subdivision 3(b) only pertains to data submitted by a business to a government entity in response to a request for proposal. Obviously, contracts and invoices are not data submitted in proposals.

37. On February 7, 2023, Plaintiff responded to the City and asked what language in Minn. Stat §13.591 Subdivision 3(b) justified its decision to withhold the requested contracts from Plaintiff.

38. On February 9, 2023, the City responded by merely copying the text of the statute. As explained above, the section of the Act cited by the City does not apply to executed contracts or invoices submitted for payment.

39. On February 14, 2023, Plaintiff responded and demanded that the City produce the one set of invoices that he requested so he could determine if public money was being properly requested or paid.

40. On February 17, 2023, the City produced only one of the contracts Plaintiff requested in Data Request Two but did not provide any invoices or proposals. By its production of one of the executed contracts awarded under the VPF RFP, the City by its conduct effectively

admitted its interpretation of the Act was wrong. Nevertheless, the City did not provide the other contract requested but instead unilaterally closed Data Request Two for a second time.

41. As of the present, the City has not provided the proposals submitted in response to the VPF RFP pursuant to Data Request One or the proposals, invoices, and the second contract requested by Plaintiff in Data Request Two.

Plaintiff's Third Data Request.

42. On December 16, 2022, Plaintiff made his third data request numbered DR22_040071 ("Data Request Three") through the Portal seeking information related to a particular contractor's violence prevention work with the City in the years of 2020 and 2021. The reason for the request is that this contractor had promised that over 50% of the funds awarded would go to employees hired to staff the proposed violence prevention program.

43. Specifically, Data Request Three requested that the City produce the following:

- Item One: names of all staff paid by the contractor for violence prevention work and the amount paid to each staff member.
- Item Two: receipts for all transportation costs related to the contract.
- Item Three: receipts for all supply and resource costs related to the contract.
- Item Four: records of all insurance carried by the contractor.

44. Five weeks later, on January, 25, 2023, Plaintiff asked the City if it had any updates to his request because the City had not provided any response.

45. On the same day, the City responded and stated that it was waiting on the contractor's accountant to provide it with the requested information. According to the Act, the contractor is obligated to respond to a data practices request just as the City is so obligated in Minn. Stat. § 13.05 Subd. 11.

46. On January 30, 2023, Plaintiff again asked the City if it had any updates and requested that the City produce any relevant data that it had regarding Data Request Three.

47. On January 31, 2023, six weeks after the request, the City produced only the Item Four data, the insurance carried by the contractor, but did not provide an update on the other Items.

48. On February 7, 2023, Plaintiff again wrote to the City and asked if it had any updates on the outstanding Items.

49. On February 13, 2023, Plaintiff again wrote to the City and asked if it had any updates on the outstanding Items.

50. The City never responded to Plaintiff's questions until May 26, 2023, more than five months after Plaintiff submitted Data Request Three, when it produced data allegedly responsive to Items Two (receipts for all transportation costs) and Three (receipts for all supply and resource costs). The City never provided records related to the number of employees hired by the contractor or the amounts they had been paid. The City then unilaterally closed Data Request Three even though its response was incomplete.

51. Moreover, the data produced by the City in response to Items Two and Three of Data Request Three are not actually responsive to what Plaintiff asked for in his request.

52. Items Two and Three both requested "receipts" for certain expenditures incurred by the Contractor.

53. The data provided to Plaintiff does not contain receipts for the costs supposedly incurred. Specifically, the data does not contain any information regarding what goods or services were purchased with each expenditure, who the goods or services were purchased from, when the goods or services were purchased, or why they were necessary for the program. The City only produced a spreadsheet listing costs allegedly claimed by the vendor with no back-up or detail.

54. Additionally, the City did not produce any data for Item One and stated that it did not have that data available, even though it could have – and should have – demanded it from the contractor pursuant to the Act.

55. Item One requested the names of all staff paid by the contractor for violence prevention work and the amount paid to each staff member because the contractor's contract with the City states that the contractor was to employ a team of seven outreach workers in order to carry out its contractually obligated violence prevention services.

56. As of present, the City has not provided Plaintiff with data responsive to Items One, Two, and Three of Data Request Three.

Plaintiff's Fourth Data Request.

57. As mentioned above, the Department operates at least nine different programs and initiatives intended to reduce violence in the City of Minneapolis.

58. One program that has been in operation since 2017 is Group Violence Intervention ("GVI").

59. According to the Department, GVI is "one component" of its "continuum of public health-oriented violence prevention and intervention services intended to reduce the impact of violence on communities." GVI operates under the premise that a small number of individuals, namely young male gang/group members who make up roughly .5% of the population, are responsible for up to 70% of homicides in cities throughout the country. As such, GVI seeks to keep these individuals non-violent by replacing enforcement with deterrence.

60. The Department claims that in December of 2022 it "undertook a competitive solicitation process and issued a Request for Proposals (RFP) to meet the need to continue to implement and expand GVI services."

61. The December 2022 GVI RFP (the "GVI RFP") was issued pursuant to Council Action Number 2022A-0763.

62. The City intends to spend a total of $2.5 million on contracts awarded under the GVI RFP.

63. The primary funding source for contracts awarded under the GVI RFP is the Federal Government. Specifically, most of the money comes from the City's grant under the American Rescue Plan Act ("ARPA"). Additionally, part of the funding comes from the City's General Fund.

64. The Department states that the GVI RFP "was used to identify consultants qualified to provide GVI support and outreach services as part of both the new youth-focused GVI and traditional GVI strategies."

65. On March 20, 2023, the Department announced that it had "initially identified" four contractors (the "Identified Contractors") "with whom to pursue" GVI contracts.

66. On March 20, 2023, Minneapolis City Council authorized contracts with all four Identified Contractors.

67. On March 23, 2023, Mayor Jacob Frey approved the authorization of the Identified Contractors' contracts.

68. On June 13, 2023, Plaintiff sent his fourth data request numbered DR23_046628 ("Data Request Four") through the Portal seeking the following items of data:

- Item 1: RFP issued pursuant to Council Action Number 2022A-0763.
- Item 2: List of all contractors who submitted a proposal to this RFP.
- Item 3: Names of all Evaluators of the proposals submitted in response to this RFP.
- Item 4: Proposals of all contractors who were awarded a contract pursuant to this RFP.

- Item 5: All data related to the evaluation and grading of the proposals sent in response this RFP.

69. On July 5, 2023, the City produced data to the Portal stating it was "responsive to items 1, 2, and 4" of Plaintiff's request. The City also stated that it was "working to determine if there are any further responsive data for your request."

70. The data responsive to Item 1 contained the GVI RFP.

71. The data responsive to Item 2 contained the names of ten contractors, including the four Identified Contractors.

72. The data the City claimed as "responsive" to Item 4, however, only contained one proposal. Moreover, the contractor who submitted this proposal was not one of the approved Identified Contractors, so it is not clear how it could have been awarded a contract.

73. On July 23, 2023, Plaintiff asked the City to confirm that none of the Identified Contractors received an award under the GVI RFP. Additionally, Plaintiff asked if the City could provide an update on Items 3 and 5.

74. On July 25, 2023, the City responded to Plaintiff and stated that it "provided all responsive data for items 1, 2, and 4." This answer was false as Plaintiff later discovered that, at the time this answer was provided, the Department had in fact awarded multiple contracts under the GVI RFP. Additionally, the City stated it was "still working with the department to determine if we hold any responsive data for items 3 and 5."

75. On August 9, 2023, nearly two months after Plaintiff submitted Data Request Four, the City produced data it claimed as "responsive" to Items 3 and 5 of Data Request Four. Shortly afterwards, the City closed Data Request Four.

76. The Data produced by the City in response to Item 3 ("Names of all Evaluators of the proposals submitted in response to this RFP") contained the names of ten Reviewers.

77. The data produced by the City in response to Item 5 ("Initial Item 5 Data") contained the following:

1) The "Total Review Score" for each contractor;

2) Each contractor's "Approved" or "Declined" status;

3) A "Grading Scoresheet" containing the grades and comments left by the Reviewers; and

4) Information concerning the availability of potential reviewers.

Plaintiff's Fifth Data Request.

78. Believing (and correctly as it turns out) that he had not been given all responsive documents to Data Request Four, Plaintiff on September 6, 2023, had to submit his fifth data request numbered 23_049947 ("Data Request Five") through the Portal seeking "all data generated by the City" in responding to Items 3, 4, and 5 of Data Request Four.

79. On October 13, 2023, the City produced information responsive to Data Request Five. Shortly afterwards, the City closed Data Request Five.

80. The information produced by the City in response to Data Request Five included additional data that was responsive to Item 5 of the prior Data Request Four, but was not produced to Plaintiff in Data Request Four ("Withheld Item 5 Data").

81. The Withheld Item 5 Data contains the following highly relevant documents:

1) Emails to the Reviewers outlining the grading and evaluation processes and procedures for the RFP;

2) A PowerPoint attached to the above mentioned emails further detailing grading and evaluation processes and procedures for the RFP;

3) Notes from the Review Sessions conducted by the Reviewers after grading the proposals.

82. An email chain produced by the City in Data Request Five also shows that the Withheld Item 5 Data were sent by a City employee to the OpenCity email account, controlled by the City, on June 28, 2023, but was not produced by the City in response to Data Request Four.

83. The City did not provide an explanation for why it did not produce the Withheld Item 5 Data when responding to Data Request Four.

84. The Withheld Item 5 Data are clearly data "related" to the "evaluation and grading" of the RFP and the City had no justification in withholding it. Additionally, the Withheld Item 5 Data are clearly Public Data under the MGDPA because the City produced the data in Data Request Five.

85. The Withheld Item 5 Data shows that the City did not conduct the RFP process for GVI services in a competitive manner or in the way it stated it would conduct the award process, but instead conducted it in an arbitrary and capricious manner.

Plaintiff's Sixth Data Request.

86. In yet another attempt to obtain public data improperly withheld by the City, on November 7, 2023, Plaintiff submitted Data Request Six through the Portal seeking all contracts, proposals, grading and evaluation material, reporting documents, and fiscal oversight and monitoring documents related to the City's violence prevention programs since 2020.

The City's Award Process Was and Is Arbitrary and Capricious.

87. The City's evaluation of the RFP proposals was arbitrary and capricious because it employed evaluation and grading procedures that prevented the Reviewers from scoring the same proposals which made their scoring comparisons between different proposals meaningless.

88. The following scoring chart obtained from the Data Requests shows how the scoring procedures as actually used prevented an "apples to apples" comparison of proposals:

Review Session	Name	Reviewer 1	Reviewer 2	Reviewer 3	Reviewer 4	Reviewer 5	Reviewer 6	Reviewer 7	Reviewer 8	Reviewer 9	Reviewer 10	Total Score	Average Score
20-Dec	Change Starts with Community							59	89	80		228	76.0
20-Dec	Greater Minneapolis Council of Churches							62	78	96		236	78.7
20-Dec	Loop							3	21	10		34	11.3
20-Dec	One Family One Community							80	92	65		237	79.0
20-Dec	Soular Scenes							38	76	80		194	64.7
21-Dec	Cause & Effect	47	93		84	51						275	68.8
21-Dec	Change Equals Opportunity	86	90		94	80						350	87.5
21-Dec	T.O.U.C.H Outreach	91	98		90	88						367	91.8
21-Dec	Urban Youth Conservation	74	80		91	80						325	81.3
21-Dec	W Berry Consulting	75	93		76	87						331	82.8

As the City's own scoring Rules state, "Everyone scores differently." If one set of Reviewers grades one proposal and another set of Reviewers grades another proposal, the average scores of each cannot be compared meaningfully because the Reviewers of the first proposal may grade more leniently or conservatively than the Reviewers of the second proposal. Average scores between proposals can only be meaningfully compared if all the Reviewers score all the proposals. This basic concept was ignored by the City in its evaluation of the proposals.

89. Moreover, the City failed to follow its own announced review procedures or applied them in an inconsistent manner, which only furthered the arbitrary and capricious nature of the RFP process.

90. The grading and evaluation procedures adopted by the City for the RFP are outlined in the subparagraphs below.

a. Contractors were to submit proposals in response to the City's publication of the RFP, which ultimately totaled ten proposals for review.

b. The City would select ten Reviewers composed of City staff and Minneapolis community members to evaluate and grade the proposals. The Reviewers would be divided into two groups. One group of Reviewers ("Review Group

A") were to evaluate and grade five of the proposals based off six scoring categories. The other group of Reviewers ("Review Group B") were to evaluate and grade the other five proposals based off the same six scoring categories. As it actually transpired, there were not five reviewers in either Review Group A or B.

c. After the Reviewers evaluated and graded the proposals, each group of Reviewers was to conduct a Review Session. At the Review Session, the Reviewers were to discuss the proposals and rank the contractors based on their proposal scores. Additionally, even though it undercuts the purpose of individual scoring, reviewers would be given the opportunity to change their scores at the group review sessions.

d. The recommendations and evaluations of the Reviewers were to be sent to former Community Safety Director Alexander. Commissioner Alexander would then make the final decision about which contractors were best qualified to perform GVI work.

e. After Commissioner Alexander selected the most qualified contractors for award, the Department was to negotiate contracts with the Contractors and submit them to City Council and the Mayor for approval and authorization.

91. Had the City even followed the procedures above, the RFP process would still have been arbitrary and capricious, as the two groups of Reviewers did not review and score the same proposals. Thus, any ranking of the proposals given to Commissioner Alexander would have been useless to making an informed decision about which contractors were most qualified.

92. The City, however, failed to follow these procedures, which led to an even less defensible bidding process.

93. Specifically, only four out of the five Reviewers for Review Group B participated in the grading and evaluation of the proposals. Moreover, only two Reviewers for Review Group B participated in the Group B Review Session in which various scores were adjusted. As a consequence, Review Group B inexplicably only utilized the scores of two Reviewers when ranking the proposals and making recommendations to Commissioner Alexander.

94. The absurd results of the City's failure to follow its own procedures are demonstrated in the how the esteemed Greater Minneapolis Council of Churches' (the "Church Council") score changed throughout the review process, which resulted in the City finding the Church Council to be unqualified.

95. Initially, four Reviewers graded the Church Council's proposal, which resulted in GMCC earning the following scores: 62, 78, 96, and 96. This came to a final average score of 83. In comparison, the same Reviewers graded Change Starts with Community's ("Change Starts") proposal, which resulted in the following scores: 59, 89, 80, and 98. This came to a final average total of 81.5.

96. However, because only two Reviewers participated in the Review Group B Review Session, the City decided to only utilize the scores of those two Reviewers in its final rankings and recommendations rather than use the scores from all four Reviewers. This change resulted in the Church Council losing both of its scores of 96, which brought its average score to 70. In comparison, after the same thing was done to Change Starts' scores, Change Starts achieved a higher final average score of 74.

97. Ultimately, as a result of the City's arbitrary score changes, Change Starts was found to be qualified and was awarded a GVI contract. On the other hand, the Church Council, with a long record of community involvement and violence prevention programs, was found to be unqualified and was not given a contract. This is despite the fact that the Church Council initially had a higher average score.

98. Another procedure that the City announced was that the Reviewers were to use six scoring categories, but the data provided to Plaintiff shows that the Reviewers only used four identifiable scoring categories.

99. Moreover, for the scoring categories the City did include, Reviewers failed to follow basic procedures. For example, the "Overall Quality" category allowed Reviewers to award up to twenty total points, but one proposer received a score of twenty-seven points and another a twenty-one points showing that they did not follow the required scoring metric and, thereby, improperly inflated the scores they awarded.

100. In addition to the procedures listed above, the Reviewers were given certain rules that they had to follow when evaluating and grading the proposals.

101. For example, the Reviewers were instructed to follow the No Outside Knowledge Rule. This rule stated that Reviewers must: "Only score an application based on the information provided in the application – don't assume anything and don't use outside knowledge of the agency."

102. In an email to the Reviewers, the City emphasized the importance of the No Outside Knowledge Rule stating: "Scoring should be based solely on the contents of the application and an objective assessment of the application's merits. Do not use past history/experience with the organization or personal knowledge of the applicant agency or its staff in your evaluation."

103. The Reviewers, however, did not follow this rule, which irreparably tainted any evaluations and rankings given to Commissioner Alexander.

104. The following grading and evaluation comments submitted by Reviewers demonstrates their blatant disregard for this rule:

1) "They have been a subcontractor with NorthPoint in receiving funds from the City, but don't mention if they've had their own contract with the City (which I know they have)."

2) "Reviewer is aware that organization has some experience with law enforcement and other potential partner organizations, but this was not clear in proposal"

3) "Has had contracts with the city in the past."

4) "seems like they have done business with the city before..."

5) "As mentioned - David is a sole proprietor and it appears that they will be working I assume with multiple partnerships to access clients, however my concern is how they will be reporting impact as well as how they plan on accessing community in need."

105. The City's failure to ensure compliance with the GVI RFP's scoring rules, however, extended far beyond the No Outside Knowledge rule.

106. The following subparagraphs state the entirety of the "Rules and Tips for Scoring" provided to the Reviewers by the City (the "Rules"):

a) Everyone scores differently – that's ok. Just make sure to be consistent within your own scores.

b) Only score an application based on the information provided in the application – don't assume anything and don't use outside knowledge of the agency.

c) Score applications against the criteria in the RFA, not against other applications.

d) Please use only whole numbers, no fractions or decimals.

e) Make sure all information required in the RFA is contained in the proposal.

f) You can deduct points for a disorganized application, but your score should be primarily based on the quality of the responses.

g) Simply having an answer to each question in the RFA does not necessarily justify a high score.

107. The scoring guidance provided in subparagraphs above were not enforced by the City which led to an arbitrary and capricious scoring results as shown by the comments that correspond to each score.

108. For example, one of the four scoring categories utilized by the City was labeled Fiscal Responsibility and was worth a total of ten evaluation points

109. The Fiscal Responsibility category was graded on the responses to the following questions:

> What makes the consultant equipped to do this work in a fiscally responsible way? In your response, please addressing [sic] the following:
>
> a. Describe your experience with management of funds from an external funder.
>
> b. What tools do you have in place to ensure fiscal responsibility on a project like this?

110. One proposer, Cause and Effect, answered question "a" from the paragraph above as follows: "As a LLC company, I have no employees and I submit invoices to organizations or entities for which I subcontract." Obviously, just sending invoices does not reflect fiscal responsibility. Cause and Effect answered question "b" from the paragraph above as follows:

"N/A". It is impossible for Cause and Effect to be considered fiscally responsible if it has no answer to the question of how it will ensure fiscal responsibility.

111. Nevertheless, one Reviewer gave this proposer an eight out of ten in the Fiscal Responsibility category and left the following comment: "Has not fiscal responsibilities in place but would submit invoices. Need subcontractors. Follow up may be needed for clarification." The score and the comments do not follow the City's Rules that scoring "an application [must be] based on the information provided in the application" or that Reviewers should "make sure all information required in the RFA is contained in the proposal."

112. Another Reviewer gave the same proposer a nine out of ten in the Fiscal Responsibility category and left the following comment: "didn't elaborate due to no employees - will submit invoices on their timeline." Anyone can submit invoices on their own timeline, but that provides no information about how the proposer will ensure its invoices and charges submitted will be reasonable or the type of charges for which the proposer deserves reimbursement. The score given is untethered to the contents of the response and is contrary to the City's caution in its Rules that, "Simply having an answer to each question in the RFA does not necessarily justify a high score."

113. The preceding comments are even more confusing when compared to the evaluation given to the Church Council. Among the "Proposal Concerns" listed in the Review Session Notes for the Church Council's proposal is a comment that reads: " Lack of checks and balances – one person overseeing program design, execution budgeting and financials, staff supervision, etc." This comment is clearly contradicted by the Church Council's proposal, as the proposal names a number specific employees who would oversee the program. Additionally, even if the Church Council had just one person overseeing its project, this should not have been a

concern based on the score given to the Cause and Effect proposal in which no one was identified as providing fiscal oversight. Indeed, out of all the proposers, Minneapolis Churches is the only non-profit to have received a Platinum Seal of Transparency from Guidestar Charity Navigator. This status, provided by a highly trustworthy source, is the highest possible transparency certification that a non-profit can receive.

114. Highlighting similar inconsistencies between scores and comments, one Reviewer gave Cause and Effect a thirty-five out of forty in the Project Plan category and left the following comment: "I am not seeing the answers to the most of the question in the project plan. I guess it is because the consultancy is solely run by one person." The comment is a non-sequitur; just because the consultancy is a one person shop does not mean it cannot articulate a detailed project plan. The comment and score also violates the City's Rules for Reviewers (e.g. "Only score an application based on the information provided in the application"). Yet despite not answering most of the questions, the proposer was awarded 87% of possible points in this category.

115. Likewise, another Reviewer gave proposer Urban Youth Conservation a twenty-five out of thirty or 83.3% of possible points in the Consultant Overview category and left the following comment: "Very short and would have put more details to answer those questions." Compare this comment and score to the Rule cautioning, "Simply having an answer to each question in the RFA does not necessarily justify a high score."

116. Beyond the irreconcilable grades and comments left by Reviewers, evidence for an arbitrary and capricious review process also comes from the proposals submitted by contractors determined as qualified by the Reviewers. Specifically, these contractors submitted proposals containing vague generalities about preventing violence, but lacking in any specific details about

how they will actually do it. Thus, Reviewers had little concrete information from which to make informed recommendations or scores.

117. As mentioned above, Commissioner Alexander was "ultimately responsible" for determining which contractors were the most qualified under the GVI RFP and would receive an award of a contract. Moreover, Commissioner Alexander was to use the rankings and recommendations of the reviewers to inform his decision.

118. The evaluation and grading material shown above demonstrates that Commissioner Alexander must have made an arbitrary and capricious decision concerning the qualifications and scoring of contractors because the evaluation and grading material provided to him was itself arbitrary and capricious.

119. Additionally, as mentioned above, Item 5 of Data Request Four requested: "All data related to the evaluation and grading of the proposals sent in response this RFP."

120. As of present, the City has not produced any data related to Commissioner Alexander's evaluation of the proposals and his decision about which proposer was awarded a contract.

121. Ultimately, the entire evaluation and award process for the GVI RFP is best summed up in the Review Session Notes covering the proposal submitted by Change Starts, whom the City claims is the only contractor to receive an award under the GVI RFP. Included is a comment that states: "A lot of text but not a lot of specific detail." Another comment states: "Does not serve as much of the target population as we would like (young men specifically)." Likewise another comment states: "What is their experience serving non-female identified people? Their work seems to be done primarily with women and girls." Finally, the sole comment in the section that asks Reviewers to provide their reasoning for recommending a project states: "They could

have a role in this work, details and dollar amounts can be ironed out later." The Reviewers undisciplined approach to recommending contractors leaves taxpayers no ability to assess if their money is money is actually going to qualified candidates. Instead, all that taxpayers can glean is that the City awarded a GVI contract to an organization that does not serve the small group of young men that the City claims GVI is meant to serve.

122. Because the City has refused to provide proper documentation of its management of the funds it has awarded, and used the Act to conceal its apparent mismanagement, Plaintiff's outstanding Data Requests should be ordered for the protection of public funds.

COUNT ONE: VIOLATION OF THE MGDPA

123. Plaintiff realleges all of the preceding paragraphs.

124. Defendant repeatedly violated multiple provisions of the Act in responding to Plaintiff's data requests.

125. The Act "establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public." Minn. Stat. §13.01 Subd. 3. All of the Items in Plaintiff's outstanding Data Requests are public data because there are no applicable laws, statutes, or classifications that declare the type of information requested as non-public.

126. Moreover, the Act states without any qualifications that a government entity "shall provide copies of public data upon request." Minn. Stat. 13.03 Subd. 3. Defendant violated and continues to be in violation of Minn. Stat. §13.03 Subd. 3 in failing to comply with Plaintiff's outstanding Data Requests, which all seek access to public data.

127. Defendant violated and continues to be in violation of Minn. Stat. §13.03 Subd. 1, which requires public entities to "keep records containing government data in such an arrangement and condition as to make them easily accessible for convenient use." Defendant violated this provision by sending disorganized and incomplete data to Plaintiff.

128. Defendant violated and continues to be in violation of Minn. Stat. §13.03 Subd. 2 (a), which requires that public entities "establish procedures, consistent with this chapter, to insure that requests for government data are received and complied with in an appropriate and prompt manner." Defendant violated this provision by continually taking months, sometimes up to five months, to produce items responsive to Plaintiff's data requests and repeatedly closing Plaintiff's data requests before providing Plaintiff with the public data he requested. There is no excuse for Defendant's untimely responses. For example, it took nearly two months just to determine if it had the names of the GVI RFP Reviewers and the associated grading and evaluation materials, all of which should have been readily available. Defendant also violated this provision by using repeatedly misapplying inapplicable statutes to deny Plaintiff access to data.

129. The totality of the City's actions show that it has absolutely no intention of complying with the Act and is unafraid of openly violating its most important provisions.

130. Plaintiff was attending law school during most of the time period relevant to this case. Due to his legal education, Plaintiff understood the City was grossly violating the Act, such as trying to claim that executed contracts were non-public data under Minn. Stat. §13.591 Subd. 3 (b). Due to his education, Plaintiff persevered in his attempts over six separate requests just to extract the meager and inadequate data the City was willing to provide. Citizens should not have to have a legal education to battle their government to get public information to ensure good government. Plaintiff requests this court to order the City to promptly reply in full to his

outstanding requests and to award statutorily mandated attorney fees for his effort so that other citizens do not have to undertake a similar year-long struggle to get the data to which the Act entitles them.

131. Access to public data is the lifeblood of democracy because voting does not matter if you don't know what you are voting for. The Legislature astutely recognized the significance of this issue when passing the Act and included provisions that allowing State courts to take swift, definitive action to ensure immediate and long term compliance from public entities. Specifically, the Act states that any action to compel compliance under the Act "shall be heard as soon as possible." Minn. Stat. §13.08 Subd. 4 (a). Moreover, the Act states that courts "may make any order or judgment as may be necessary to prevent the use or employment by any person of any practices which violate this chapter." Minn. Stat. §13.08 Subd. 2. The City's actions demand that the Court intervene and hold the City accountable.

COUNT TWO: INJUNCTIVE RELIEF

132. Plaintiff realleges all of the preceding paragraphs.

133. Defendant violated the common law of Minnesota regarding public procurement in awarding contracts under the VPF RFP and the GVI RFP in an arbitrary and capricious manner. The City adopted procedures and rules for its violence prevention procurement process that it did not then follow and that did not allow for an objective evaluation of the proposals. Moreover, the City utterly failed to make sure the Reviewers complied with its inadequate procedures and Rules. In essence, these failures opened the procurement process to the opportunity for fraud, favoritism, and improvidence by the Reviewers and former Commissioner Alexander.

134. Nearly seventy years ago, in *Griswold v. Ramsey Cnty.,* the Minnesota Supreme Court ruled that "Irrespective of what lawful method is adopted or used in the letting of public

contracts, it is for the courts to determine whether officials in the exercise of their discretion have applied the method used in an arbitrary, capricious, or unreasonable manner." 65 N.W.2d 647, 651–52 (Minn. 1954).

135. Specifically, *Griswold* says that once a municipality has announced a certain procurement method, it must "pursue such method in a manner reasonably designed to accomplish its normal purpose of giving all contractors an equal opportunity to bid and of assuring to the taxpayers the best bargain for the least money. Clearly, whatever method is adopted in the letting of public contracts, such method may not, contrary to the public welfare, be pursued in an unreasonable, arbitrary, or capricious manner since the taxpayers are entitled to rely for their protection upon the safeguards which are inherent in whatever method is employed." *Id.* at 652. If the procurement proceeds in violation of the procurement procedures announced, "such a contract is void, without any showing of actual fraud or an intent to commit fraud." *Id.* The essential safeguard of the competitive bidding process is to "deprive or limit the discretion of contract making officials in the areas which are susceptible to such abuses as fraud, favoritism, improvidence, and extravagance." *Id.*.

136. Recognizing the deleterious impact that an arbitrary and capricious bidding process presents to the public at large, Minnesota courts have consistently relied on injunctive relief to provide a remedy to taxpayers. In determining the applicability of granting temporary injunctive relief, Minnesota courts apply the longstanding test laid out in *Dahlberg Bros., Inc. v. Ford Motor Co*., which utilizes the following factors: "(1) The nature and background of the relationship between the parties preexisting the dispute giving rise to the request for relief. (2) The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial. (3) The likelihood that one party or the other will prevail on

the merits when the fact situation is viewed in light of established precedents fixing the limits of equitable relief. (4) The aspects of the fact situation, if any, which permit or require consideration of public policy expressed in the statutes, State and Federal. (5) The administrative burdens involved in judicial supervision and enforcement of the temporary decree." 137 N.W.2d 314, 321–22 (Minn. 1965).

137. Injunctive relief is appropriate when there is no adequate remedy at law and the threatened injury is "real, substantial, and irreparable." *Williams v. Rolfe*, 101 N.W.2d 923, 925 (Minn. 1960). The first factor is met because the City's failure to utilize a lawful procurement process on this project harms the public at large by undermining the integrity of the public procurement system. Corruption of the public procurement system is irreparable harm and has no remedy at law. In addition, unless the City is ordered to provide the data Plaintiff has requested in his Data Requests, he will be denied the remedy provided in the Act, namely review of public data, and the wrongs about which he is concerned will continue unabated.

138. The second factor is met because any harm that that the City could claim that the public would suffer by stopping work on these contracts should not be considered because it was caused by Minneapolis own precipitous and illegal actions. As a matter of law, the harm that the public would suffer in proceeding with an illegal contract outweighs any alleged harm in proceeding with an illegal contract.

139. Additionally, the third factor is met because Plaintiff is likely to succeed on the merits as the City's actions are in clear contravention of established public procurement law and Plaintiff has plead detailed facts establishing the City's violations of public procurement law. Moreover, Plaintiff has established he is entitled to the public data he has requested in his Data Requests pursuant to the Act.

140. Likewise, the fourth factor is met because this State has a long history of demanding a public procurement process that does not contain even the appearance of impropriety in order to engender the public trust. The need to apply this standard is especially pressing after the Feeding our Future scandal shocked and appalled Minnesotan citizens. Further, the City concealed its procurement process by withholding public data from Plaintiff, which heightens the public policy considerations behind issuing a temporary injunction.

141. Finally, the fifth factor is met because issuing an injunction stopping work on the Project until the Court can fully consider these facts and ordering the City to produce documents Plaintiff requested pursuant to his Data Requests would not place any administrative burden on the Court.

142. Plaintiff is entitled to temporary, preliminary, and permanent injunctive relief preventing the City from proceeding with, performing, or paying any amounts to any contractors who were awarded a contract under the VPF RFI and the GVI RFP and requiring the City to produce all the documents he has requested pursuant to the Act in his Data Requests.

143. **WHEREFORE**, Plaintiff prays that the Court enter judgment against Defendant and in favor of Plaintiff as follows:

1. On Count One, by issuing a declaratory judgement that the City violated Minn. Stat. §§13.01, Subd. 1, 13.03 Subd. 1, §13.03 Subd. 2 (a), and Subd. 3, and 13.591 Subd. 3(b) and issuing an order that the City produce all outstanding items from Plaintiff's Data Requests.

2. On count two, issuing a Temporary Injunction and Permanent Injunction stopping all work on the VPF RFI and GVI FRP projects and requiring the City to rebid the projects under a competitive procurement process.

3. Awarding Plaintiff his costs, disbursements, and reasonable attorneys' fees incurred in this lawsuit.

4. Awarding Plaintiff such other and further relief as the Court may deem just and proper.

FABYANSKE, WESTRA, HART & THOMSON, P.A.

Dated: November 8, 2023

By: */s/ Dean B. Thomson*

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ACKNOWLEDGMENT

I acknowledge that costs, disbursements and reasonable attorney and witness fees may be awarded under Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.

/s/ Dean B. Thomson
Dean B. Thomson (#141045)