

Ms. Rao:

In accordance with the Minnesota Government Data Practices Act (“MGDPA”), the data you seek on former Regulatory Services Director Gregg Stubbs may not be released because it is classified as private data. Further, the specific MGDPA section reference in support of your request is not applicable to Mr. Stubbs because he is not a “public official.” As such, the data you seek are classified as private and may not be disclosed. Minn. Stat § 13.43, Subd. 2 and 4.

Pursuant to Minnesota Statutes, section 13.03, government data are public unless otherwise classified. Minnesota Statutes, section 13.43 classifies personnel data on individuals who are current or former employees of a government entity. Subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies all other types of personnel data as private.

Under section 13.43, subdivision 2, public data includes, among other things, the final disposition of any disciplinary action and data documenting the basis for the action. During his tenure with the City of Minneapolis, no “final discipline” was imposed on Mr. Stubbs. As a result, to the extent the data you seek may arguably relate to an investigation that could have led to discipline, the data is classified, under subdivision 2 and subdivision 4, as private.

For purposes of section 13.43, subdivision 2(e), “public official” means:

- (1) the head of a state agency and deputy and assistant state agency heads;
- (2) members of boards or commissions required by law to be appointed by the governor or other elective officers;
- (3) executive or administrative heads of departments, bureaus, divisions, or institutions within state government; and,
- (4) the following employees:
 - (i) the chief administrative officer, or the individual acting in an equivalent position, in all political subdivisions;
 - (ii) individuals required to be identified by a political subdivision pursuant to section 471.701;
 - (iii) in a city with a population of more than 7,500 or a county with a population of more than 5,000, individuals in a management capacity reporting directly to the chief administrative officer or the individual acting in an equivalent position; and
 - (iv) in a school district, business managers, human resource directors, and individuals defined as superintendents, principals, and directors under Minnesota Rules...

Clearly, Mr. Stubbs does not fit any of the definitions contained in clauses (1) through (3) which apply to state agencies. He also does not fit any of the definitions contained in clauses (4)(i) through (4)(iv). Mr. Stubbs is not the chief administrative officer for the City of Minneapolis: is not one of the City’s 3 highest paid employees (employees required to be identified by §471.701); does not report to the Chief Administrative Officer (or equivalent) and does not work in a school district.

Clause (4)(iii), defines a “public official” to include the following employees:

in a city with a population of more than 7,500 or a county with a population of more than 5,000, ***individuals in a management capacity reporting directly to the chief administrative officer or the individual acting in an equivalent position.*** (emphasis added)

Although Mr. Stubbs works in a management capacity for the City of Minneapolis, which has a population of more than 7,500, he does not report to “the chief administrative officer or the individual acting in an equivalent position.”

Because of the City of Minneapolis’ mayor-council form of government, there is no chief administrative officer or “city manager” type position. The closest position to “an individual acting in an equivalent position” would be the position of the City Coordinator. The City Coordinator is responsible for the internal administrative duties of the City. Positions reporting to the City Coordinator include the Director of the 911 call center, Minneapolis 311, the Director of Human Resources, the head of the Convention Center and the Finance Director.

The Director of Regulatory Services reports to the City’s Executive Committee. The Executive Committee is made up of the Mayor, the President of the City Council and three additional members of the City Council. Actions of the Executive Committee are approved by the City Council. This reporting structure is set forth in the City Charter. Mpls. City Charter, Chapter 3 Section 4.

Mr. Stubbs does not meet the definition of a “public official” under section 13.43, subdivision 2(e)(4)(iii) because as Director of Regulatory Services he did not report directly to the chief administrative officer (a position that does not exist in the City of Minneapolis) or an individual acting in an arguably equivalent position (the City Coordinator). As a result, Mr. Stubbs is not a public official as defined by section 13.42, subdivision 2(e). The data you seek is therefore private personnel data under 13.43, Subd. 4, and may not be disclosed.

Likewise, the resignation or termination of Mr. Stubbs while a putative complaint or charge is pending also does not render the data public data because, section 13.43, subdivision 2(f)(1), only applies to “public officials” as defined in subdivision 2(e)(4).

Leita Walker
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September 27, 2012

Susan L. Segal
Minneapolis City Attorney
City Hall, Room 210
350 S. 5th St.
Minneapolis, MN 555415

Re: Minnesota Government Data Practices Request

Dear Susan:

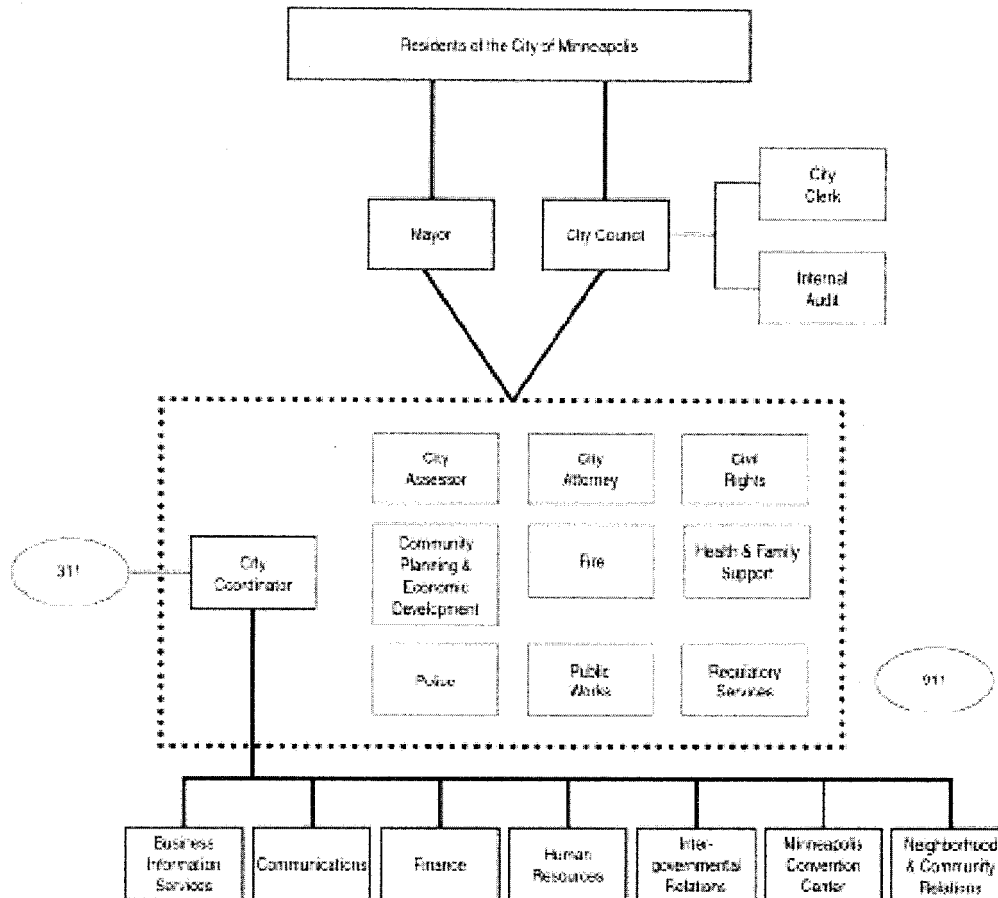
This firm represents Star Tribune Media Company LLC in connection with various newsgathering matters. We are writing about an August 17, 2012, request that Star Tribune reporter Maya Rao submitted to the City of Minneapolis pursuant to the Minnesota Government Data Practices Act. Specifically, Ms. Rao requested “any documents associated with a complaint or charge made against Greg Stubbs, including, but not limited to, any investigation of a complaint or charge.”

On August 30, 2012, Matt Laible emailed to Ms. Rao an unsigned letter which he identified as “the City Attorney’s Office’s response to your data request.” Star Tribune does not agree with the conclusions reached in that letter regarding whether Greg Stubbs was a “public official” under Minn. Stat. § 13.43 subd. 2(e)(4) and hereby requests that the City reconsider its position.

As we read the City’s letter, its position is that Mr. Stubbs was not a public official under § 13.43 subd. 2(e)(4)(iii) because he did not report to the City Coordinator—the position the City unilaterally deemed “equivalent” to the position of chief administrative officer—but instead reported to the Executive Committee, which is comprised of the Mayor, the President of the City Council, and three additional members of the City Council.

The Office of the City Coordinator 2010–14 Business Plan¹ contains the following organizational chart:

¹ Available at
http://www.minneapolismn.gov/www/groups/public/@citycoordinator/documents/webcontent/convert_286305.pdf.



We read this chart as indicating that the City Coordinator and the Director of Regulatory Services are at the *same* organizational level and that *both* report to the Mayor and City Council. Section 4 of the Minneapolis City Charter confirms this conclusion by making clear that that the Executive Committee has “the exclusive power to appoint and remove” the heads of all of the departments that fall within the dotted-line box above.

In other words, Mr. Stubbs did not report to the City Coordinator *because he reported to the City Coordinator’s boss*. See also Rules of the Executive Committee, Rule 9 (stating that the “City Coordinator shall staff the Executive Committee”);² Executive Position Description: Director, Regulatory Services at 2 (noting that Director of Regulatory Services works with the City Coordinator).³

² Available at http://www.minneapolismn.gov/www/groups/public/@council/documents/webcontent/convert_266304.pdf.

³ Available at <http://www.minneapolismn.gov/www/groups/public/@communications/documents/webcontent/wcms1p-088865.pdf>.

If the City Coordinator is “equivalent” to a chief administrative officer, then the Executive Committee—which is more empowered than the City Coordinator—is more than equivalent to that position, and individuals who report to the Executive Committee ought to be considered “public officials.” The City’s self-serving conclusion to the contrary ignores the plain meaning of the statute.

It also ignores the spirit of the statute and the intent of the legislature to provide *greater* access to data about municipal officials. Under the City’s current interpretation of § 13.43 subd. 2(e)(4)(iii), only the heads of the departments at the *bottom* of the organizational chart would be “public officials” under Minn. Stat. § 13.43 subd. 2(e)(4)(iii). Meanwhile, the City would shield from disclosure the information specified in Minn. Stat. § 13.43 subd. 2(e) where that information relates to the head of a department that actually provides essential services to City residents, such as the *Chief of Police* or the *Chief of the Fire Department*. The City’s logic is apparently that these individuals are not public officials because they report to a higher power than the City Coordinator. This is an absurd result.

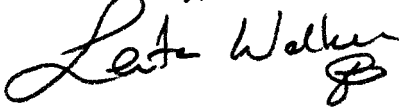
For all of these reasons, Star Tribune requests that the City seriously reconsider its interpretation of the recently amended statute and that it find that Stubbs was a “public official” and release the requested data.

In addition, and regardless whether Mr. Stubbs is or is not a “public official”: Pursuant to § 13.43 subd. 2(e)(6), “the *complete* terms” (emphasis added) of any settlement agreement between the City and Mr. Stubbs is public and such settlement agreement should have been produced as responsive to Ms. Rao’s August 17 request. Therefore, on behalf of Star Tribune, we request that you immediately provide a copy of the settlement agreement.

Please note that the word “complete” was added to subd. 2(e)(6) by an amendment that Governor Dayton signed into law on May 4, 2012. Given this modification, Star Tribune does not believe there is any basis upon which to redact the settlement agreement. If the City refuses to produce an unredacted copy of the settlement agreement, please provide, in writing, the specific statutory provision under the MGDPA that permits it to withhold the agreement and/or any of its terms. Please also note that because the settlement agreement apparently involved payment of more than \$10,000 of public money, it “must include specific reasons for the agreement.”

In addition, and to the extent such information is not contained in the settlement agreement itself, please provide documents sufficient to show both (1) the date on which Mr. Stubbs resigned as director of regulatory services and (2) the effective date of the settlement agreement.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leita Walker", with a stylized initial "L" and "W".

Leita Walker

cc: Randy Lebedoff
Matt Laible



Office of the City Attorney

Susan L. Segal
City Attorney

350 South 5th Street – Room 210
Minneapolis MN 55415

October 11, 2012

Office 612 673-2010
Civil Division Fax 612 673-3362
Criminal Division Fax 612 673-2189
CPED FAX 612 673-5112
TTY 612 673-2157

Leita Walker
Faegre Baker Daniels L.L.P.
2200 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-3901

**Via Email and
U.S. Mail**

Re: Minnesota Government Data Practices Act Request of August 17, 2012 and
Reconsideration Letter of September 27, 2012

Dear Ms. Walker:

Your letter of September 27, 2012, to City Attorney Susan Segal has been referred to me for response. Your letter was a follow-up to a response of Matt Laible to a data practice request of Star Tribune reporter Maya Rao on August 17, 2012. Ms. Rao's request is set forth as follows:

Matt,

I request the following under Data Practices Act Minnesota Statutes Chapter 13, specifically under the provision stating that "upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public," and under the subsequent amendment signed into law by Gov. Dayton in May 2012 establishing that data relating to a complaint or charge against city managerial employees is public if "the complaint or charge results in disciplinary action or the employee resigns or is terminated from employment while the complaint or charge is pending; or potential legal



claims arising out of the conduct that is the subject of the complaint or charge are released as part of a settlement agreement with another person.”

Specifically, I request any documents associated with a complaint or charge made against Greg Stubbs, including, but not limited to, any investigation of a complaint or charge.

Thanks,

Maya

Laible responded on August 30, 2012 with the City Attorney’s Office’s response. In that response, the City Attorney’s Office explained as follows: (1) during his tenure with the City of Minneapolis, Mr. Stubbs had no final discipline; and (2) any data related to Mr. Stubbs would be private data because Mr. Stubbs was not a “public official” under Minnesota Statutes, §13.43, subd. 2(e), and more specifically, under clause 4. Because Mr. Stubbs had no final discipline and was not a “public official,” there was no City data responsive to Ms. Rao’s request.

In your letter, you indicated your disagreement with the position taken by the City and requested that the City reconsider its position that Mr. Stubbs was not a “public official.”

Based in part upon a chart contained in the City Coordinator’s 2010-14 Business Plan, you argue that Mr. Stubbs is a “public official.” You state that if the City Coordinator is the “equivalent” of a chief administrative officer, and both the City Coordinator and the Director of Regulatory Services report directly to the Executive Committee, then both the City Coordinator and the Director of Regulatory Services should be “public officials.” Finally, you argued that your interpretation meets the perceived spirit and intent of §13.43, subdivision 2(e)(4)(iii).

We have considered your arguments, but continue to be of the opinion that our interpretation is correct. Under the 2012 amendment, a public official includes “the chief administrative officer, or the individual acting in an equivalent position,” plus “individuals in a management capacity reporting directly to the chief administrative officer or the individual acting in an equivalent position.” The City Coordinator is the individual in the closest position in the City to an individual acting in an equivalent position to a chief administrative officer.

Further explanation of the duties and roles of the City Coordinator may be useful. The City Coordinator position is created in the City Charter, Chapter 3, section 3. The general duties of the position are prescribed by the City Council by ordinance or resolution. *Id.* The general duties of the City Coordinator are set forth in M.C.O. 21.10:

There shall be an office of city coordinator as a branch of city government which shall provide administrative and management services for the city, including but not limited to planning, budgeting and fiscal management, program monitoring and evaluation, personnel, data processing and purchasing. The coordinator shall coordinate city activities as directed by the city council and shall supervise Emergency Management, 311, the Minneapolis Convention Center, and such other activities as the city council may direct. The Minneapolis Emergency

Communications Center shall be a division of the coordinator's office and its user board shall be responsible for its operation.

In addition, the City Coordinator supervises the office of the budget and the purchasing department and appoints the directors of those departments. M.C.O. §§ 21.30 and 21.40; Charter, Ch. 4, sec. 19. A partial list of other management level appointments made by the City Coordinator includes those positions identified in M.C.O. §21.50 as well as the Human Resources director (Law of Minnesota, 1969, Ch. 690) and the Intergovernmental Relations director (Laws of Minnesota, 1989, Ch. 54).

The City Coordinator also is required to approve requisitions by any department head under the jurisdiction of the City Council for permanent employees at certain grade levels (M.C.O. §20.30), is authorized to recommend which city employees shall be allowed to take home city vehicles (M.C.O. §30.40), and supervises the city's job bank program (§M.C.O. 20.810).

Conversely, the Executive Committee has limited administrative duties. Pursuant to Charter, Ch. 3, sec. 4, the Executive Committee consists of the Mayor, the President of the City Council, and up to three additional members of the City Council. As you note, the Executive Committee has "the exclusive power to appoint and remove" certain department heads. However, you fail to note that language in section 4 that clarifies that the "appointment" or "removal" of those department heads is only effective upon approval by the City Council. In effect, the appointment or removal by the Executive Committee under the city charter is a recommendation to the City Council. Although those recommendations are the only duties of the Executive Committee under the charter, the City Council by resolution has given it certain limited functions as follows:

- Directs the labor negotiations of the City, but final contracts must be referred to appropriate council committees and approved by the City Council.
- Refers new ideas and programs and policy issues to the appropriate City Council committees for further action.
- Considers implementation of policies and procedures initiated by the City Council or the Mayor and refers them to the appropriate City Council committees.
- Arranges ceremonial functions.
- Coordinates interagency issues.

See Resolution 85R-052 and Rules of the Executive Committee.

Simply stated, the Executive Committee does not have the broad administrative duties of the City Coordinator and does not act in a position equivalent to a chief administrative officer. Stated another way, if the legislature had intended to capture all department heads appointed by a city as a "public official" it could have simply stated so as it did in the case of state agencies, departments, bureaus, boards, commissions and institutions (See Minn. Stat. §13.43, subdivision 2(e), clauses (1), (2) and (3)) or as it did when it identified specific positions in school districts (Minn. Stat. §13.43, subdivision (2)(e)(iv)). Instead, the legislature restricted the definition of "public official" for cities with a population of more than 7,500 to the chief administrative officer or the individual acting in an equivalent position.

Based on the prior August 30, 2012 response of the City Attorney's Office and this supplemental response, the City Attorney's Office confirms that Mr. Stubbs, acting as the Director of Regulatory Services, did not report to

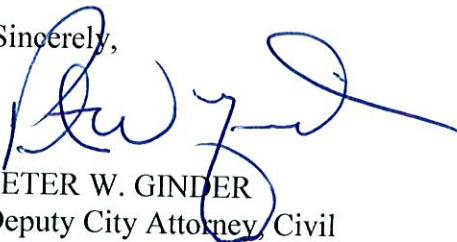
Ms. Walker
October 11, 2012
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an individual acting in an equivalent position to a chief administrative officer and therefore did not meet the statutory definition of a public official.

You also requested a copy of any settlement agreement between the City and Mr. Stubbs. Please find enclosed a copy of the signed Settlement Agreement and Full Release of All Claims between Mr. Stubbs and the City of Minneapolis.

If you have any further questions, feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "P. Ginder", with a long horizontal flourish extending to the right.

PETER W. GINDER
Deputy City Attorney, Civil
(612) 673-2478

Enclosures

SETTLEMENT AGREEMENT AND FULL RELEASE OF ALL CLAIMS

A. Identification of Parties and Agreement.

This is a Settlement Agreement and Full Release of All Claims (hereinafter "Release") between Gregory K. Stubbs (hereinafter "Employee"), and the City of Minneapolis (hereinafter "City"):

B. Agreement Terms.

WHEREAS, Employee has been employed by the City as "Director of Regulatory Services" since November 28, 2011, for a term ending January 2, 2014, pursuant to a written employment agreement;

WHEREAS, the City desires to sever the employment relationship and allow the employee to resign his position;

WHEREAS, Employee has agreed to release the City from any and all causes of action or claims the Employee may have against the City in exchange for the payment of severance and other consideration;

NOW, THEREFORE, in consideration of the premises and mutual promises contained herein, it is agreed as follows:

C. Release.

THIS RELEASE IS INTENDED BY ME TO BE A FULL RELEASE OF ALL CLAIMS WHEREBY I EXTINGUISH ALL MY CLAIMS AGAINST THE CITY OF MINNEAPOLIS AS HEREINAFTER ENUMERATED, IN EXCHANGE FOR THE CONSIDERATION SET

FORTH HEREIN, WHICH I DEEM TO BE FAIR AND REASONABLE.

1. DEFINITION.

- a. I, me, my, employee, and their include both me and anyone who has or obtains any legal rights or claims through me. These terms include all heirs and assigns.
- b. The City as used herein, shall at all times mean the City of Minneapolis, its successors and assigns, and each of its past, present, and future Mayors, City Council Members, Department Heads, attorneys, agents, representatives, employees, predecessors and successors in interest and assigns of any of them, whether in their individual or official capacities, or former employees of the City in their official and individual capacities.
- c. My claims means all of the rights I now have to any relief of any kind from the City, whether or not I now know about those rights, arising out of my employment with the City and termination of my employment agreement including, but not limited to, claims for violation of the Age Discrimination in Employment Act; violation of the Older Workers Benefit Protection Act, violation of the Minnesota Human Rights Act; violation of The Americans with Disabilities Act; violation of Title VII; violation of the Minnesota Veterans Preference Act; or any other rights I may have, pursuant to my employment agreement, Minneapolis Civil Service Commission Rule, Labor Agreement or Special Law, violation of any other federal, state or local laws, including the federal or state Constitutions, and including civil rights laws, based on age or any other protected class status; breach of my employment contract; fraud or

misrepresentation; defamation; intentional or negligent infliction of emotional distress; breach of the covenant of good faith and fair dealing; promissory estoppel; negligence or any other breach of duty; wrongful termination of employment; retaliation; harassment; violation of the Whistle Blowers' Statute and/or my conduct as a "whistle blower"; violation of the Family and Medical Leave Act; violation of the federal Fair Labor Standards Act; violation of Minn. Stat. § 181.932, et seq.; violation of Minn. Stat. § 176.82 (obstructing employee seeking benefits); attorneys' fees; breach of public policy; failure to pay wages or benefits; accrued vacation or sick leave; any other claims for unlawful employment practices whether legal or equitable; any claims I could bring in any forum or court or pursuant to any grievance procedure; and any and all causes of actions or claims that I may have against the City of Minneapolis.

However, this Release shall not affect any claims that could be made under Minnesota's Worker's Compensation Act, Minn. Stat., ch. 176, or any welfare benefit plan or any pension or retirement plan through the City.

2. AGREEMENT TO RELEASE MY CLAIMS. As consideration for a severance payment totaling \$64,729.50, an amount equal to six months of salary, which I will receive within 30 days upon the expiration of the notice and rescission periods specified in this Agreement, I agree to resign my employment with the City effective August 17, 2012 and I further agree to give up, waive, and absolutely and unconditionally release the City from all My Claims against it. I will not bring any lawsuits, file any charges, complaints or notices, or cause to be filed any lawsuits,

charges, complaints or notices, or make any other demands against the City based on My Claims. The money I am receiving is a full and fair payment for the release of all My Claims. The City does not owe me anything in addition to what I will be receiving as agreed in this release, which is a full and fair payment for the release of all My Claims.

3. TAXABILITY OF SETTLEMENT. I understand that the amount set forth in paragraph 2 herein will be treated by the City as compensation and that, in accordance with my W-4 form on file on the effective date of my termination, the City is withholding state and federal taxes and any FICA and Medicare contributions, if appropriate, from said amount.
4. COBRA. The City agrees that Employee will retain his right to participate in the City's health and dental insurance plans in force upon his removal from his appointed position by payment of the full monthly premium costs for the period provided under federal COBRA, and/or applicable state or federal law. The City further agrees that the City will pay the employee's first six months of COBRA payments for the Employees health and dental insurance. Thereafter, COBRA payments shall be the responsibility of the employee.
5. RELOCATION EXPENSES. The City agrees to pay employee \$6,000.00 for relocation expenses and shall make payment within 30 days upon the expiration of the notice and rescission periods specified in this Agreement.
6. NON DISPARAGEMENT. The City agrees that it shall not disclose any data except in accordance with the Minnesota Data Practices Act.
7. NO ADMISSION OF LIABILITY. I understand that this release is in settlement of all

claims I may now have against the City, and that the City does not in any manner admit to any wrongdoing or to the validity of any of My Claims and expressly denies each of them.

8. 21 DAYS TO CONSIDER ADEA RELEASES. I have been given twenty-one (21) days, under the Age Discrimination in Employment Act, within which to consider this Settlement Agreement and Full Release of All Claims. It was proposed to me on August 10, 2012, together with written advice to consult an attorney prior to signing it. I was given until August 31, 2012 (21 days from date Agreement was proposed), within which to consider it. I have been given the opportunity to consult with an attorney and have given the agreement full consideration.
9. 7 DAYS TO RESCIND RELEASE OF ADEA CLAIMS. I understand that I may rescind (that is, cancel) this Settlement Agreement and Full Release of All Claims, under the Age Discrimination in Employment Act, within seven (7) calendar days of signing it. To be effective, my rescission must be in writing and delivered to the City in care of Susan L. Segal, Minneapolis City Attorney, 350 S. 5th Street, Room 210, Minneapolis, Minnesota 55415, either by hand or by mail within the relevant rescission period. If sent by mail, the rescission must be:
 - a. Postmarked within the 7-day period;
 - b. Properly addressed to Susan L. Segal, Minneapolis City Attorney, 350 S. 5th Street, Room 210, Minneapolis, Minnesota 55415;
 - c. Sent by certified mail, return receipt requested.
10. 15 DAYS TO RESCIND RELEASE OF MHRA CLAIMS. I understand that I may rescind (that is, cancel) this Settlement Agreement and Full Release of All Claims,

under the Minnesota Human Rights Act, within fifteen (15) calendar days of signing it. To be effective, my rescission must be in writing and delivered to the City in care of Susan L. Segal, Minneapolis City Attorney, 350 S. 5th Street, Room 210, Minneapolis, Minnesota 55415, either by hand or by mail within the relevant rescission period. If sent by mail, the rescission must be:

- a. Postmarked within the 15-day period;
- b. Properly addressed to Susan L. Segal, Minneapolis City Attorney, 350 S. 5th Street, Room 210, Minneapolis, Minnesota 55415;
- c. Sent by certified mail, return receipt requested.

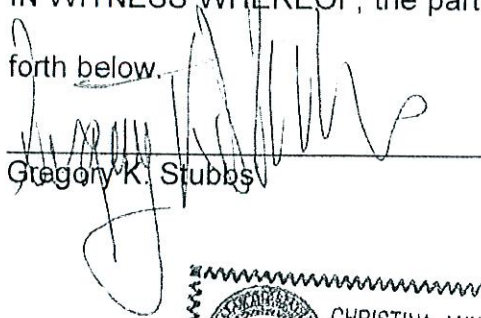
11. COMPLETE UNDERSTANDING. I have carefully read this Settlement Agreement and Full Release of All Claims and understand all its terms. I have had an opportunity to fully discuss this Settlement Agreement and Full Release of All Claims with an attorney of my own choosing and understand the consequences explained to me by my attorney, if I have so consulted with one. I have fully negotiated this Settlement Agreement and Full Release of All Claims with the City. In agreeing to sign this Settlement Agreement and Full Release of All Claims, I have not relied on any statements or explanations made by the City, its representatives or attorneys.

12. COMPLETE AND BINDING AGREEMENT. I understand and agree that Settlement Agreement and Release contains and sets forth all of the terms agreed upon by the parties regarding MY CLAIMS. There are no other written or oral agreements of any nature.

13. COMPLETE SATISFACTION OF ALL CLAIMS. I understand and agree that acceptance of the above consideration is in full and complete satisfaction of My Claims including any and all claims for attorneys' fees.

14. VOLUNTARY AGREEMENT. I acknowledge that I have entered into this Settlement Agreement and Full Release of All Claims voluntarily and without coercion.

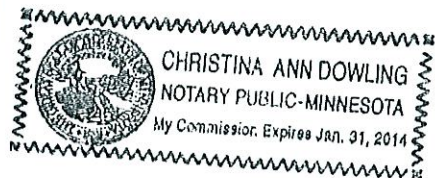
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below.


Gregory K. Stubbs

Dated: August 13, 2012

Subscribed and sworn to before me this 13th day of August 2012


Notary Public



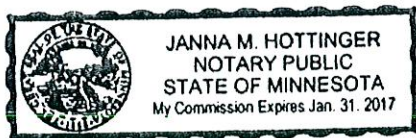
AND


City of Minneapolis

By: 

R.T. Rybak,
Mayor, as Chairperson of Executive Committee

Dated: 8/17/12




8/17/12