



Roll Call Number

Agenda Item Number

44

Date December 8, 2014

**AUTHORIZING THE MAYOR TO EXECUTE CONFLICT AND WAIVER FORM
AND AUTHORIZING RETENTION OF THE AHLERS & COONEY, P.C. LAW FIRM
TO PROVIDE LIMITED LEGAL REPRESENTATION IN DISCUSSIONS WITH
THE DES MOINES WATER WORKS**

WHEREAS, the Legal Department recommends the retention of Ahlers & Cooney, P.C. to provide limited legal representation regarding environmental law associated with discussions with Des Moines Water Works; and

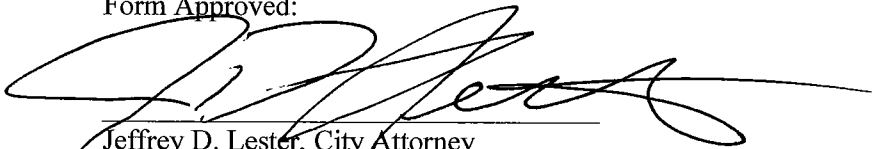
WHEREAS, Jane B. McAllister of the Ahlers & Cooney, P.C. law firm has requested a waiver be signed by the City.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, that:

1. The Jane B. McAllister of the Ahlers & Cooney, P.C. law firm hereby be retained to provide legal advice regarding environmental law associated with discussions with the Des Moines Water Works; and
2. The City acknowledges the waiver and consent to any conflict, express or implied, regarding the representation of the City in representations with Des Moines Water Works and authorizes the Mayor to execute a conflict and waiver form evidencing same.

Moved by _____ to adopt.

Form Approved:



Jeffrey D. Lester, City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GATTO				
GRAY				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

Mayor

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

City Clerk

AHLERS & COONEY, P.C.

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Direct Dial:
515.246.0373

November 21, 2014

Mayor and Council Members
City of Des Moines, Iowa

Dear Mayor and Council Members:

Our firm has long been privileged to represent the City of Des Moines ("City") on a variety of legal matters and has several matters on-going currently. We enjoy this relationship and appreciate the opportunity to serve the City. Recently, the City Attorney has asked us to review and counsel the City with regard to certain issues related to the environmental law associated with the proposed use of Gray's Lake by Des Moines Waterworks ("Gray's Lake Representation").

Our firm, on occasion, also represents the Des Moines Waterworks on financing matters ("Waterworks Representation"). While we do not believe our representation of both parties on differing matters presents a direct conflict of interest, it is our duty to inform you of the nature of the concurrent representation of the City and Waterworks before beginning the Gray's Lake Representation. The matters for which our firm is currently representing the City include urban renewal, public works, labor relations, environmental and finance.

While the Gray's Lake Representation and the Waterworks Representation are not related to each other, such representation could be perceived as a concurrent conflict of interest under the ethical standards governing the practice of law in Iowa. From a strict legal perspective, a concurrent conflict of interest exists under Iowa rules if (1) *the representation of one client will be directly adverse to another client*; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. We know that the second condition stated above does not apply to this situation, as noted above, but our firm's representation of Waterworks and the City in the Gray's Lake Representation will technically be directly adverse to the City because they are concurrent representations.

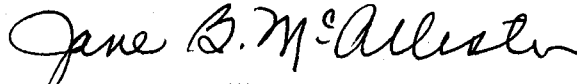
The state's ethical rules allow a law firm to concurrently represent two adverse parties if (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the

representation does not involve the assertion of a claim by one client against another represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent, confirmed in writing. We believe confidently that our attorneys will be able to provide competent and diligent representation to each of their affected clients as the matters being addressed are totally unrelated, the representation is not prohibited by law, and there will not be an assertion of a claim as described. The purpose of this letter is to seek the written consent of the City in order to proceed. We are requesting the same from Waterworks.

Please feel free to contact me with any questions or concerns. If you consent to the concurrent representation, please so indicate below and return a copy of this fully executed letter to my attention. Thank you.

Very truly yours,

AHLERS & COONEY, P.C.


Jane B. McAllister

JBM/cms

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The City Council of the City of Des Moines, Iowa hereby waives and consents to any actual, potential, or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of the City of Des Moines and the Des Moines Waterworks with respect to the above referenced representations.

Dated this _____ day of November, 2014.

CITY OF DES MOINES, IOWA

By: _____
Mayor

By: _____
City Clerk