



**Roll Call Number**

**Agenda Item Number**

17

**Date** August 10, 2015

**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 CONJUNCTION  
WITH THE IOWA EVENTS CENTER HOTEL DEVELOPMENT**

WHEREAS, the Legal Department recommends the retention of Ahlers & Cooney, P.C. to provide limited legal representation regarding financing and development of the Iowa Events Center Hotel Project; and

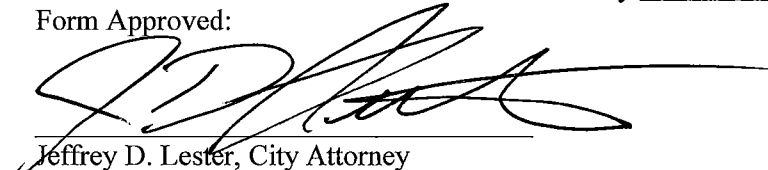
WHEREAS, William J. Noth of the Ahlers & Cooney, P.C. law firm has informed that the firm is also providing certain advice and counsel for Polk County and IEC Hotel Corporation with respect to the Iowa Events Center Hotel Project and has requested a waiver be signed by the City.

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

1. William J. Noth of the Ahlers & Cooney, P.C. law firm hereby be retained to provide legal advice regarding financing and development of the Iowa Events Center Hotel Project.
2. The City Council acknowledges the waiver and consent to any conflict, express or implied, regarding the representation of the City, Polk County and IEC Hotel Corporation with respect to the proposed Iowa Events Center Hotel Project 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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DES MOINES, IOWA 50309-2231  
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WWW.AHLERSLAW.COM

WILLIAM J. NOTH  
wnoth@ahlerslaw.com

Direct Dial  
(515)246-0332

August 5, 2015

Mayor and Council Members  
City of Des Moines, Iowa  
400 Robert D. Ray Drive  
Des Moines, Iowa 50309

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 we have 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 provide assistance as needed to the Legal Department with regard to the City's obligations relating to the development and financing of the proposed Iowa Events Center (IEC) Hotel Project ("City Representation"). We also anticipate serving as bond counsel to the financing of the IEC Hotel Project which may involve work with and for the IEC Hotel Corp.

Our firm, on occasion, also represents Polk County ("County") on certain financing and litigated matters, and we currently are advising the County in connection with the proposed IEC Hotel project ("County Representation"). While we do not believe our representation of both parties will present a direct conflict of interest, it is our duty to inform you of the nature of the concurrent representation of the City and County before beginning the City Representation.

Because the City Representation and the County Representation are 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

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interest of the lawyer. We do not believe that the first prong of the test will apply to this situation, but our firm's representation of County and the City in connection with the proposed Hotel project could raise questions under the second prong.

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 client as the matters being addressed by us will primarily relate to the financings being undertaken by each client, 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 the County. If and when necessary, we will additionally seek consent from IEC Hotel Corp. and would ask that the consent conferred by the City now also extend to that representation.

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,



William J. Noth

WJN:dc

cc: Jeff Lester

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, Polk County, Iowa, and the IEC Hotel Corp. with respect to the above referenced representations.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF DES MOINES, IOWA

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

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