



Roll Call Number

Agenda Item Number

29 ✓

Date June 3, 2019

WAIVER AND CONSENT TO CONFLICT OF INTEREST IN REPRESENTATION BY AHLERS & COONEY, P.C. OF THE DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT IN FUELING AND MAINTENANCE SERVICES 28E MATTERS

WHEREAS, Ahlers & Cooney, P.C. represents the Des Moines Independent Community School District ("District") as general counsel and the City of Des Moines in various matters, including economic development matters, real estate matters, and as bond counsel; and

WHEREAS, the District and the City are negotiating terms for a 28E Agreement for Fueling and Maintenance Services between the District and the City of Des Moines which would be mutually beneficial to both parties; and

WHEREAS, the District would like to use Ahlers & Cooney, P.C. for representation in the negotiation and drafting of the proposed 28E Agreement for Fueling and Maintenance Services, which requires a consent and waiver as to the conflict from the District and the City; and

WHEREAS, the City's legal representation in said matters will be provided by an Assistant City Attorney.

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

- 1. That the Mayor is hereby authorized and directed to execute the waiver and consent to an actual, potential or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of the District in the above-described fueling and maintenance matters.
2. That the City Attorney is authorized to withdraw and terminate such waiver and consent for any reason, in his sole discretion, should he determine that termination of the waiver and consent is appropriate.

FORM APPROVED:

MOVED BY \_\_\_\_\_ TO ADOPT.

Handwritten signature of Jeffrey D. Lester, City Attorney

Jeffrey D. Lester, City Attorney

Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, TOTAL, MOTION CARRIED, APPROVED.

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.

Mayor

City Clerk



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April 5, 2019

***Via Email To:***

Dr. Thomas Ahart  
 Superintendent  
 Des Moines Independent Community School  
 District  
 2100 Fleur Drive  
 Des Moines, IA 50321

Mr. Jeff Lester  
 City Attorney  
 City of Des Moines  
 400 Robert D. Ray Drive  
 Des Moines, Iowa 50309

RE: 28E Agreement for Fueling and Maintenance Services between the Des Moines  
 Independent Community School District and the City of Des Moines

Dear Dr. Ahart and Mr. Lester:

Ahlers & Cooney, P.C. represents the Des Moines Independent Community School District (“DMPS”) as general counsel and the City of Des Moines (the “City”) in various matters including, but not limited to, certain economic development matters and as bond counsel. We understand that DMPS and the City are considering entering into a 28E Agreement whereby the City will agree to provide DMPS with fuel storage, management, and dispensing services, and vehicle maintenance and repair services.

As general counsel for DMPS, our Firm has been asked to assist with drafting and negotiating the 28E Agreement on behalf of DMPS. We understand the City will be represented by one of its assistant city attorneys in this matter and will not rely on our Firm for any legal advice or representation regarding the 28E Agreement.

Based on our preliminary review of the terms to be expressed in the 28E Agreement, we do not expect the interests of DMPS will be adverse to those of the City. However, since the City is a current client of our Firm, any work that we perform for DMPS that would be adverse to the City will create a conflict of interest. Therefore, we cannot represent DMPS in this matter unless the DMPS Board and the Des Moines City Council agree to waive the conflict.

In the event there are actual disagreements of substance or content between the Parties, we will decline to advise either party with respect to such issue. Should an issue arise for which the Parties cannot reach agreement on your own, we would need to withdraw from further representation of either party with respect to the proposed Agreement. Should the City Attorney determine that the negotiations or any issues related to the 28E Agreement have become adversarial between the City and DMPS, the City Attorney may withdraw and terminate the City’s waiver and consent given herein, effective upon sending written notice via email to Mr. Wasson with Ahlers & Cooney, P.C. (“Ahlers”) and DMPS’s Superintendent. In that event, Ahlers shall immediately withdraw from further representation of DMPS with respect to the proposed 28E Agreement.

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Please be aware that the Rules of Professional Conduct require that we represent all our clients with diligence and that we protect and maintain their confidences. Accordingly, we will not disclose or use any confidential information that we may have acquired about the City in our prior or ongoing representation of the City to DMPS. Similarly, we will not disclose or use any confidential information that we have acquired about DMPS as a result of our representation of DMPS to the City. This conflict waiver merely allows us to represent DMPS in the drafting of the 28E Agreement.

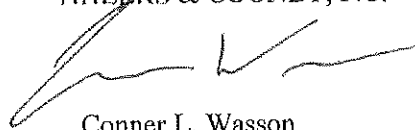
In deciding whether to consent, each party should consider how our representation of DMPS as described above could or may affect them. For example, clients that are asked to waive or consent to conflicts should consider whether there is any material risk that their attorney will be less diligent on their behalf due to the conflict. Similarly, clients should consider whether there is any material risk that their confidential information or other proprietary matters will be used adversely to them due to the conflict. Although DMPS and the City are not required to do so, we recommend that they each seek the advice of a lawyer outside of our Firm if they have any questions or concerns about whether they should sign this conflict waiver.

We do not believe that our obligations of loyalty and confidentiality to DMPS and the City will impair our ability to represent DMPS in the drafting of the 28E Agreement or to represent the City in other unrelated matters including, but not limited to, certain economic development matters and as bond counsel. We believe our Firm will continue to provide competent and diligent representation to both clients. Although we are asking DMPS and the City to waive this conflict of interest so that we can represent DMPS in the drafting of the 28E Agreement, DMPS and the City are not obligated to do so.

We are pleased to answer any further questions that either of you may have about this matter. Please present to your respective governing bodies for their consideration and respond to this request by either signing and returning this waiver letter or informing us that DMPS or the City declines to waive this conflict of interest.

Very truly yours,

AHLERS & COONEY, P.C.



Conner L. Wasson

CLW:ke

cc: R. Mark Cory

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