CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: **January 26, 2016**

ITEM: Motion - Consent of the City of West Des Moines to allow Ahlers & Cooney, P.C. to represent the West Des Moines Community School District

FINANCIAL IMPACT: None

SYNOPSIS: The City of West Des Moines has had an agreement with the law firm of Ahlers & Cooney, P.C. to provide legal services for several years. Ahlers & Cooney, P.C. has requested that consent be given by the City to allow it to represent the West Des Moines Community School District in the review of documents related to the construction of improvements at the Walnut Creek Campus at 815 8th Street (property is being purchased by the Imani Family Church). The documents involve an Ingress/Egress Roadway Easement required to be provided to the City by the School District as a condition of approval for construction of the improvements. The ethical rules of the state of Iowa allow a firm to represent two adverse parties if each affected party gives informed consent in writing of the representation.

As indicated in the request for consent submitted to the City by Ahlers & Cooney, P.C., the representation does not appear to present a conflict among the parties, nor will the representation of the School District be adverse to the City.

RECOMMENDATION:

Approve the motion providing consent to Ahlers & Cooney, P.C. to represent the West Des Moines Community School District regarding the review of documents related to the conditions of approval for reconstruction of Walnut Creek Campus Property.

Lead Staff Member: Richard J. Scieszinski, City Attorney RJS

STAFF REVIEWS

Department Director	Richard J. Scieszinski, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	RTC

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	None		
Date Reviewed			
Recommendation			

AHLERS COONEY
ATTORNEYS

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January 14, 2016

Mayor and Council Members
City of West Des Moines, Iowa

Dear Mayor and Council Members:

Our firm concurrently represents the City of West Des Moines ("City") and the West Des Moines Community School District ("District"). Recently, we have been asked to represent the District with regard to the review of an easement document prepared by the City concerning the Walnut Creek Church Property ("Easement").

We do not believe such representation presents a direct conflict of interest, but it is our duty to inform you of the nature of the concurrent representation. For the District we provide legal services regarding employment, construction, education, labor relations, litigation, real estate and finance. The matters for which our firm is currently representing the City include urban renewal, public works, labor relations, and finance ("City Transactions"). This firm is not representing the City related to the Easement, described above.

While the Easement and the City Transactions 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 the District in reviewing the Easement 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 the District.

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.

Conner L. Wasson

CLW/sp

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The City Council of the City of West 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 West Des Moines and the West Des Moines Community School District with respect to the above referenced transactions.

Dated this _____ day of _____, 2016.

CITY OF WEST DES MOINES, IOWA

By:_____
Mayor

By: _____
City Clerk