CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: March 18, 2024

ITEM: Motion to Approve the Conflict Waiver with Ahlers & Cooney, P.C. regarding Waukee Community School District

FINANCIAL IMPACT: None known

SYNOPSIS: Ahlers & Cooney, P.C. which represents the City on matters relating to urban renewal/economic development matters, has advised that they have been recently asked to represent Waukee Community School District on various real estate matters concerning the Brookview Elementary School property including easement agreements, a 28E agreement and related real estate documents with the City which results in a conflict of interest.

To formally disclose and remedy that situation Ahlers & Cooney, P.C. have prepared a consent and waiver letter for signature by the City. The Waukee Community School District will also be asked to sign a similar consent.

OUTSTANDING ISSUES (if any): None.

RECOMMENDATION: Acknowledge and accept the consent and authorize the Mayor to sign the consent on behalf of the City and direct the City Clerk to attest to the Mayor's signature.

Lead Staff Member: Jessica Grove, Deputy City Attorney

STAFF REVIEWS

Department Director	Greta Truman, City Attorney
Appropriations/Finance	
Legal	
Agenda Acceptance	

AHLERS COONEY
ATTORNEYS

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March 1, 2024

Sent via email only: *jessica.grove@wdm.iowa.gov*

Jessica D. Grove, Deputy City Attorney
City of West Des Moines
4200 Mills Civic Parkway
West Des Moines, IA 50265

Dear Jessica:

We were recently asked to represent Waukee Community School District (the "District") with respect to various real estate matters concerning the Brookview Elementary School property, which is expected to involve several contracts between the District and City of West Des Moines, Iowa (the "West Des Moines"), including easement agreements, a 28E agreement, and related real estate documents. As you know, our firm also currently represents West Des Moines on certain matters unrelated to this conveyance, such as urban renewal/economic development matters ("West Des Moines Representations"). The purpose of this letter is to inform you that the proposed representation of the District and West Des Moines Representations present an ethical conflict of interest for our firm, and to seek the consent of West Des Moines to our representation of the District in this matter.

While this work is not within the scope of our West Des Moines Representations, this representation is a concurrent conflict of interest under the ethical standards governing the practice of law in Iowa. From a 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, but our firm's representation of the District on the matter will be directly adverse to West Des Moines 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 West Des Moines to allow us to proceed. We will be seeking the same consent from the District by separate letter.

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 either party to the other in our prior or ongoing representation of the parties.

In deciding whether to consent, you should consider how our representation as described above could or may affect you. 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 you are not required to do so, we recommend that you seek the advice of a lawyer outside of our Firm if you have any questions or concerns about whether you should sign this conflict waiver.

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

Sincerely,

Ahlers & Cooney, P.C.

Jenna H.B. Sabroske

Jenna H.B. Sabroske

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 Waukee Community School District with respect to the above-referenced transaction due to the separate West Des Moines Representations.

Dated this _____ day of _____, 2024.

CITY OF WEST DES MOINES, IOWA:

By: _____
Mayor

By: _____
City Clerk

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