



# MEMO

## Legal Department

### Item No. 9

**To:** Mayor Haila, Ames City Council

**From:** Mark O. Lambert, City Attorney

**Date:** March 6, 2020

**Subject:** Ahlers & Cooney conflict waiver request

The Ahlers & Cooney Law Firm (“Ahlers”) in Des Moines handles certain labor-law issues for the City of Ames. Ahlers also represents the Iowa Association of Municipal Utilities (IAMU) in utility regulatory matters of interest to the association.

As you know, the City of Ames is in the process of appealing a recent decision by the Iowa Utilities Board (IUB) regarding the Ames Electric Services’ service territory.

The IAMU has been a party to the proceedings before the IUB, and will be a party in the matter of the City’s appeal of the IUB order to district court. The IAMU’s staff attorney has been representing the IAMU in this matter while it was before the IUB, but not that it is on appeal to the courts, the IAMU is having the Ahlers law firm represent the IAMU in the City’s appeal for judicial review.

Attorney conflict of interest rules generally prohibit an attorney or a law firm from representing a client who is involved in a matter that involves another client. A conflict of interest waiver is just a way for the City to say that it is okay with us, as an Ahlers client, that Ahlers is representing IAMU in this matter. Since Ahlers works with the City on labor law issues, and this is a utility law matter, there is no direct conflict here. Also, the IAMU’s interests align with the City’s (although it is always theoretically possible that the interests will diverge somewhat at some point). We will continue to be represented on appeal by David Lynch of the Brown Winick Law Firm in Des Moines.

It is the recommendation of the City Attorney that the Council approve the Conflict of Interest Waiver for Ahlers.

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March 3, 2020

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City of Ames  
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Troy DeJoode  
Executive Director  
Iowa Association of Municipal Utilities  
1735 NE 70th Ave.  
Ankeny, Iowa 50021

RE: Conflict Waiver

Dear Mr. Lambert and Mr. DeJoode:

This letter follows prior communications between our office and each of you. As we indicated in those communications, our firm has been contacted to represent the Iowa Association of Municipal Utilities (“IAMU”) in the lawsuit filed on February 21, 2020 by Ames Municipal Electric System in the Iowa District Court for Story County, Case No. CVCV051775, and removed to the United States District Court of the Southern District of Iowa, Case No. 4:20-cv-00073 (collectively, the “Lawsuit”), and the underlying administrative proceedings before the Iowa Utilities Board. The Lawsuit is entitled *Ames Municipal Electric System v. Iowa Utilities Board*. The Lawsuit is a judicial review proceeding from an order of the Iowa Utilities Board modifying an exclusive service territory. The City of Ames is represented in the Lawsuit and the underlying administrative proceedings before the Iowa Utilities Board by attorney David Lynch of the Brown Winick firm.

Our firm enjoys an existing client relationship with IAMU, for which we provide a variety of legal services. Our firm also enjoys an existing client relationship with the City of Ames, for which we provide legal services relating to collective bargaining and employment issues. These services for the City have primarily been provided by attorney Aaron Hilligas. While this representation of the City is unrelated to the pending Lawsuit and the underlying administrative proceedings (collectively, the “Litigation”), the involvement of our firm in representing IAMU in the pending Litigation presents the potential for a concurrent conflict of interest because it is possible that the City and IAMU could take differing or adverse positions in the Litigation. However, under Iowa’s ethics rules, this potential conflict can be waived 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 unrelated, the

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representation is not prohibited by law, there will not be an assertion of a claim as described, and the City of Ames is represented by outside legal counsel in the Litigation.

The purpose of this letter is to (1) disclose the above information, (2) obtain the consent of each of the Parties (the City of Ames and IAMU) to proceed with our firm's representation of IAMU in connection with the Litigation, and (3) obtain each Party's waiver of any actual, potential or perceived conflict of interest in connection with our firm's representation of IAMU in the Litigation; if such consent and waiver is available. If applicable, I would request that both of you date and sign where indicated at the end of this letter after approval by your governing body or otherwise in compliance with your internal policies or procedures for authority to execute this waiver and consent letter.

Although we are asking the City and IAMU to provide their consent and waiver to enable our representation of IAMU in the Litigation, the City and IAMU are not obligated to do so. We are pleased to answer any further questions which the City or IAMU may have about this matter. In addition, the City and IAMU should each seek the advice of a lawyer outside of our firm if they have any questions or concerns about whether they should sign this consent and conflict waiver.

If you are in agreement with the contents of this letter, we would request you each sign and date the WAIVER AND CONSENT below and return it to us. If you disagree with or otherwise believe anything herein to be incorrect or mistaken in any way, then please let us know as soon as possible. Finally, should you have any questions on this matter, please don't hesitate to contact me at 515-246-0372.

Very truly yours,

AHLERS & COONEY, P.C.

By



Jason M. Craig

JMC:pn

**WAIVER AND CONSENT**

The undersigned representatives of the City of Ames and Iowa Association of Municipal Utilities have had the opportunity to seek advice from independent counsel of their own choosing concerning any conflict of interest associated with Ahlers & Cooney's representation of IAMU as described herein, and knowingly and voluntarily waive any such actual, potential or perceived conflict of interest and consent to such representation.

CITY OF AMES:

Dated: \_\_\_\_\_, 2020

By \_\_\_\_\_

IOWA ASSOCIATION OF MUNICIPAL UTILITIES:

Dated: \_\_\_\_\_, 2020

By \_\_\_\_\_