



MEMO

Legal Department

Item No. 16

To: Mayor Haila, Ames City Council

From: Mark O. Lambert, City Attorney

Date: October 8, 2020

Subject: Conflict waiver for Ahlers & Cooney Law Firm

The Ames Community School District (ACSD) initiated discussions with the City of Ames Parks & Recreation Department regarding a cost-sharing agreement to light the shared-use path from the Furman Aquatic Center to the high school.

The ACSD uses the Ahlers & Cooney law firm in Des Moines as the district's legal counsel. Ahlers also does some legal work for the City of Ames on unrelated matters (labor law issues). Likewise, Ahlers & Cooney serves as bond counsel to Iowa State University, and the property at issue is leased by the City from ISU, requiring ISU's involvement.

In order for the Ahlers attorneys to have discussions with the Ames City Attorney's Office on this matter, lawyer ethics rules require that a conflict-of-interest waiver be signed, acknowledging that Ahlers represents all three parties on very separate issues, and that the City sees no conflict with Ahlers representing the ACSD on this matter with the City of Ames on the other side.

To be clear, the Ames City Attorney's office will represent the City; Board of Regents counsel will represent ISU, and Ahlers will represent ACSD as we discuss this matter.

I recommend the Council approve the conflict-of-interest waiver.

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Ahlers & Cooney, P.C.
Attorneys at Law

100 Court Avenue, Suite 600
Des Moines, Iowa 50309-2231

Phone: 515-243-7611

Fax: 515-243-2149

www.ahlerslaw.com

James R. Wainwright
515.246.0319

jwainwright@ahlerslaw.com

October 6, 2020

Via Email To:

Christine Stensland, CPA
Chief Financial Officer
Ames Community School District
chris.stensland@ames.k12.ia.us

Mr. Mark Lambert
City Attorney
City of Ames
Mark Lambert
mark.lambert@cityofames.org

Aimee Claeys, Board Counsel
Board of Regents
aimee.claeys@iowaregents.edu

RE: Request for Conflict Waiver

Dear Ms. Stensland, Ms. Claeys, and Mr. Lambert:

Ahlers & Cooney, P.C. (“Ahlers”) represents the Ames Community School District (the “District”) as general counsel and bond counsel. Ahlers represents the City of Ames (the “City”) on specific labor and employment matters. Ahlers represents the Board of Regents as bond counsel and as special litigation counsel on certain matters.

We understand that the District and the City are contemplating sharing the costs associated with the installation of lighting on a pedestrian path between the Furman Aquatic Center and Ames High School (the “Project”). The District has asked our Firm to represent it in negotiating an agreement with the City regarding the Project. We understand the City will be represented by the City Attorney’s office and will not rely on our Firm for any legal advice or representation regarding the Project.

We further understand that the City and the Board of Regents are parties to a September 1, 2007 Lease Agreement regarding the use of certain property as a public park/open space, recreation sport fields, cross country course, and outdoor aquatic center.¹ The Project involves the installation of lighting along a pedestrian path through the leased property connecting the existing path south of the Ames High School to the north side of 13th Street.

Since the District, the City, and the Board of Regents are each current clients of our Firm, any work that we perform for the District on this project will create a concurrent conflict of interest. A concurrent conflict of interest exists 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

¹ A copy of the Lease Agreement is attached.

client, or a third person or by a personal interest of the lawyer. Here, our Firm's representation of the District regarding the Project will be directly adverse to the City and (potentially) the Board of Regents.

Notwithstanding the existence of a concurrent conflict of interest, a lawyer may represent a client 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.

Here, we believe that our Firm will provide competent and diligent representation to each client. Ron Peeler and I will be primarily responsible for representing the District with respect to the Project. Our partner, Aaron Hilligas, represents the City on specific labor and employment matters. Our partner, John Bunz, represents the Board of Regents as bond counsel and our partner, Andrew Tice, represents the Board of Regents in certain litigated matters. Mr. Hilligas, Mr. Bunz, and Mr. Tice will not have any involvement with the Project. Mr. Peeler and I will not have any involvement with their representation of either the City or the Board of Regents regarding the Project.

These concurrent representations are neither prohibited by law nor do they 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. Accordingly, if all parties give informed consent, confirmed in writing, then our Firm may represent each client in the above referenced capacities. If, however, any party declines to provide their informed consent, confirmed in writing, then we may not represent the District regarding the Project. Accordingly, our Firm requests consent from the District, the City, and the Board of Regents to represent the District regarding the Project.

In the event any dispute should arise between the District, the City, and the Board of Regents concerning the Project, we will decline to advise any party with respect to such dispute(s). Should an issue arise for which the District, the City, and the Board of Regents cannot reach agreement on their own, we would need to withdraw from further representation of the District with respect to the Project.

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 the District or the Board of Regents. Similarly, we will not disclose or use any confidential information that we have acquired about the District as a result of our representation of the District to the City or the Board of Regents. Finally, we will not disclose or use any confidential information that we have acquired about the Board of Regents as a result of our representation of the Board of Regents to the City or the District. This conflict waiver merely allows us to represent the District regarding the Project. Although the District, the City, and the Board of Regents are not required to do so, we recommend that they

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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 the District, the City, and the Board of Regents will impair our ability to represent the District regarding the Project or to represent the City in other unrelated matters including, but not limited to, labor and employment matters, or to represent the Board of Regents as bond counsel or in other, unrelated litigated matters. We believe our Firm will continue to provide competent and diligent representation to each client. Although we are asking the District, the City, and the Board of Regents to waive this conflict of interest so that we can represent the District regarding the Project, none of the parties are obligated to do so.

We are pleased to answer any further questions that you may have about this matter. Please present this request 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 the District, or the City, or the Board of Regents declines to waive this conflict of interest.

Sincerely,

AHLERS & COONEY, P.C.

By *Jim Wainwright*

James R. Wainwright

cc: Paula DeAngelo
Iowa State University
deangelo@iastate.edu

Aaron J. Hilligas
John Bunz
Andrew Tice
Ron Peeler

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The Board of Directors of the Ames Community School District 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 Ames in its capacity as labor and employment counsel for the City and in its capacity as bond counsel for the Board of Regents.

Dated this _____ day of _____, 2020.

Ames Community School District:

**By: _____
Superintendent**

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The City Council of the City of Ames hereby waives and consents to any actual, potential, or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of the Ames Community School District in the above referenced matter.

Dated this ____ day of _____, 2020.

City Council of the City of Ames:

**By: _____
Mayor**

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The Board of Regents/Iowa State University hereby waives and consents to any actual, potential, or perceived conflict of interest associated with Ahlers & Cooney, P.C.'s representation of representation of the Ames Community School District in the above referenced matter.

Dated this ___ day of _____, 2020.

Board of Regents/Iowa State University:

By: _____

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