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January 25, 2024

VIA EMAIL

Mr. Jeff Sigurdson
Executive Director
Minnesota State Campaign Finance and Public Disclosure Board
190 Centennial Building
658 Cedar Street
St. Paul, Mn 55155

Re: ACEC/MN Comments Regarding Proposed Regulations

Dear Jeff:

I'm an attorney licensed to practice in Minnesota, and I work with the American Council of Engineering Companies of Minnesota "ACEC/MN" on a volunteer basis to help them address various legal issues which may affect the membership. ACEC/MN's members are consulting engineering firms which provide professional services to the State, Counties, municipalities, other governmental entities, and private businesses.

As an association, ACEC/MN has reviewed the 2023 changes in the statute regarding lobbyist registration and reporting as well as the and the recent advisory opinions issued by this Board. Based upon these advisory opinions, we are concerned that work which consulting engineers perform on a daily basis will be considered "lobbying" under the statutory changes. There are three types of services which consulting engineers provide to their clients that we are concerned could be considered "lobbying" but that we believe should be exempted. This letter will address each of those instances along with our recommendations with regard to the proposed regulations.

I. Consulting Engineer Hired as a City Engineer.

The majority of municipalities throughout the state of Minnesota do not have a full-time, on-staff city engineer. Instead, those cities hire a consulting engineering firm and one of the employees of that consulting engineering firm acts as the city engineer for the municipality on an as-needed basis. As the city engineer, the individual is technically an employee of the consulting engineering firm, but he or she takes on the role that a typical city engineer would take on such as evaluating potential projects, master planning, providing information to the city council, and advocating on behalf of projects which he or she believes are in the city's best interest. I have attached to this letter for your reference a map which shows the number of municipalities who rely on consulting engineering firms to act as the City Engineer.

The statute as revised provides that only "employees" of the political subdivision are exempt from registering as a lobbyist if their work involves communication with the intent to influence the official action of the political subdivision. The City engineers in over 90% of the municipalities in the state are not "employees" in the traditional sense. As a result, we are in support of your regulations expanding the definition of "employee" to those hired by the municipality by contract. Our request is that it be clear from the regulation that those hired as a city engineer are considered an employee of the municipality even if their actual employer is a consulting engineering firm. In the alternative, this issue can be addressed by adopting the exemption of professional advice from the definition of influence the official action of the political subdivision outlined in Section 3 below.

II. Consulting Engineer Hired by the Municipality for Master Planning or in Connection with a Specific Project.

Consulting engineering firms are often hired by political subdivisions either for overall master planning to address anticipated growth or changes in the needs for infrastructure or with respect to a particular project. For example, a municipality which is expanding may hire a consulting engineer to provide advice and design with regard to sewers and drinking water lines needed to serve a new development. These consulting engineering firms are tasked with providing the municipality advice as to size, routing, use, and future expandability and make recommendations to the municipality's city engineer and elected council based upon their engineering analysis and opinion.

Under the statutory revisions, providing the City Staff or the Council directly could be considered an "attempt to influence the official action of the political subdivision". The consulting engineer hired by the City would then have to be registered as a lobbyist even though what they are doing is providing the engineering advice they were hired to provide.

ACEC/MN is in favor of the regulations as proposed as long as it's clear that the definition of "employee" under the statute includes those under contract with the political subdivision to provide advice and direction.

III. Consulting Engineering Firm Hired by a Property Owner and/or Developer in Connection with a Project.

The third way in which consulting engineers interact with political subdivisions is as a consultant hired by a developer or landowner pursuing a project under the jurisdiction of the particular political subdivision. For example, in many cases, a municipality will enter into a development agreement with the landowner with regard to a particular project such as a residential subdivision. Under that development agreement, the engineer, at the developer's expense, designs infrastructure for the project which meets the city's requirements. In connection with this work, the engineer often needs to provide information to the municipality with respect to the proposed designs to ensure that the designs meet the municipality's approval and the relevant ordinances. In addition, there needs to be discussion regarding making the municipality's existing infrastructure available to the new project.

Under the new definition of lobbying in the statute, these discussions with the City engineer, other staff, or the City council could also be considered for the "purpose of influencing the official action of the political subdivision" and therefore lobbying. Your proposed regulations do not address this situation which occurs thousands of times a year throughout the state of Minnesota. As a result, we seek an exception in the regulations for engineers and other licensed design professionals working on the behalf of their clients in such a scenario.

Our recommendation is for the regulations to make it clear that recommendations and opinions offered by professionals licensed under Minnesota Statutes § 326.02-326.15 are not "communications for the purpose of attempting to influence the official action of a political subdivision" when those individuals are making recommendations, offering opinions or providing information regarding matters within their licensed profession. This change to the regulation would insulate architects, engineers, land surveyors, landscape architects, geologists, and certified interior designers from being considered lobbyists while practicing their professions as defined by Minnesota Statutes § 326.

We believe that this clarification within the regulation is not only consistent with the intent of changes in the statute, but is also in the State's best interest. The municipalities benefit from having licensed professionals with experience in industry providing them information, opinions and recommendations related to issues within their profession. The result of having those engineers considered to be "lobbyists" will be the inability of the political subdivisions to obtain the information, opinions and recommendations directly from the source in connection with potential projects. As a result, projects will take longer to approve, will likely be more expensive, and the

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decisions will be made by the political subdivisions without the full picture often needed to make an informed and rational decision.

IV. Conclusion.

We appreciate the opportunity to comment on the proposed regulations and we are committed to working with the Board to develop regulations which accomplish the legislative goals while also protecting the engineering profession. If you have any questions about these proposals, please do not hesitate to contact me. I would be more than happy to discuss them with you. You can also reach Jonathan Curry, the executive director of ACEC/MN, at 952-593-5533.

Sincerely,

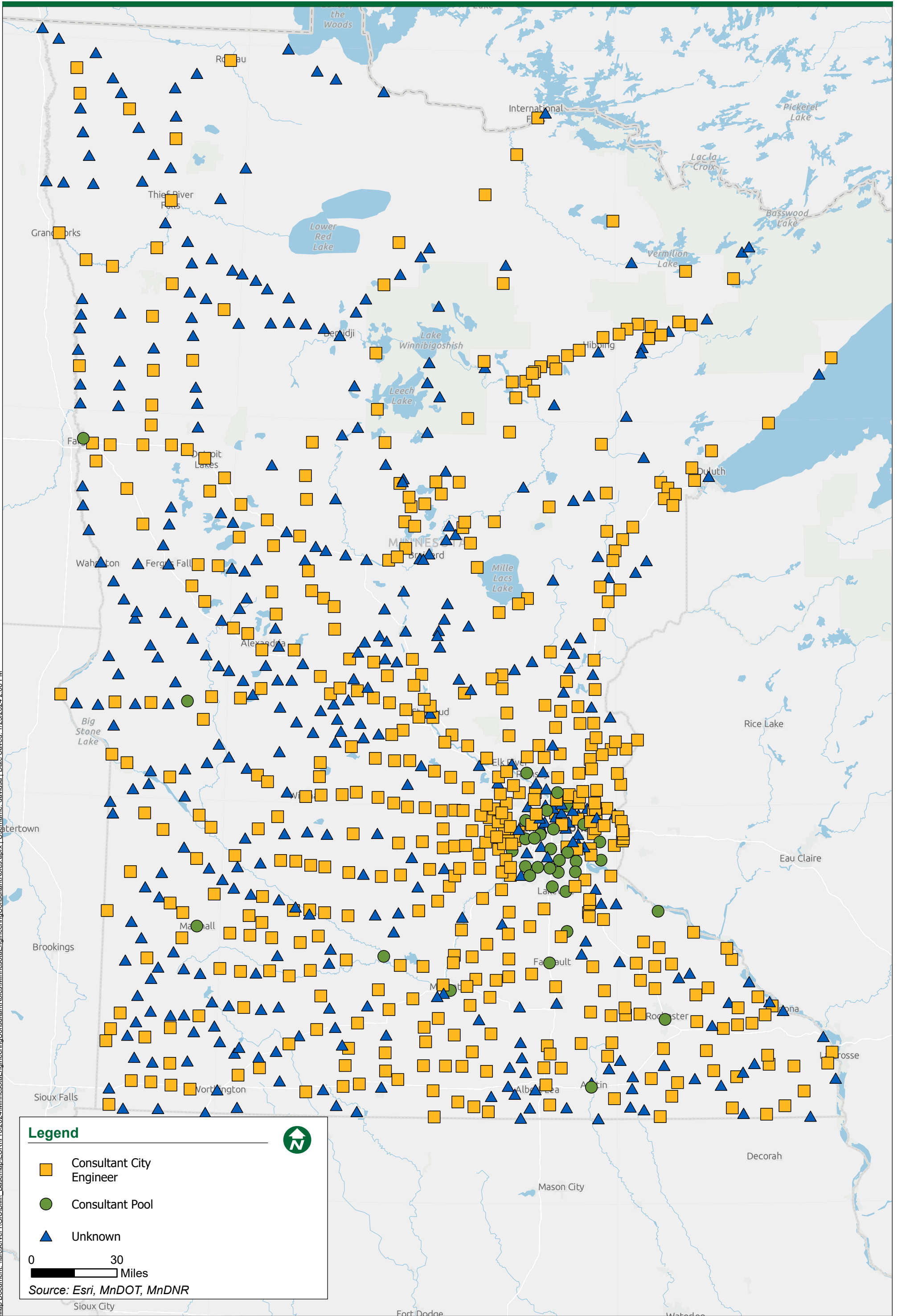
HELEY, DUNCAN & MELANDER, PLLP

s/ Eric R. Heiberg

Eric R. Heiberg

cc: Thomas Poul (via email)
Jonathan Curry (via email)
Megan Engelhardt (via email)

ERH/jb



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