

**TRES HERMANOS CONSERVATION AUTHORITY  
SPECIAL BOARD OF DIRECTORS MEETING  
February 20, 2019  
6:00 p.m.**

**CITY OF INDUSTRY  
CITY COUNCIL CHAMBER  
15651 E. STAFFORD STREET  
CITY OF INDUSTRY, CALIFORNIA**

**A G E N D A**

1. **CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**ROLL CALL**

2. **PUBLIC COMMENTS:** At this time, members of the public may address the Authority regarding any items within the subject matter jurisdiction of the Authority provided NO action or discussion may be taken on any item not appearing on the agenda, except the Authority may BRIEFLY respond to statements made or questions posed. Comments are limited to five minutes per speaker.

3. **CONSENT CALENDAR:**

- 3.1 Consideration to adopt Resolution THCA No. 2019-02 establishing Regular Meeting times for the Tres Hermanos Conservation Authority on the third Wednesday of the month at 6:00 pm at the City of Industry City Council Chambers located at 15651 Stafford Street in the City of Industry.

**Recommended Action:** Adopt Resolution THCA No. 2019-02 establishing Regular Meeting times on the third Wednesday of the month at 6:00 pm at City of Industry City Hall

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Copies of staff reports or other written documentation relating to agenda items are on file in the Office of the City Clerk at Industry City Hall, and are available for public inspection. If requested, the agenda will be made available in an alternative format to a person with disability as required by Section 202 of the Americans with Disabilities Act of 1990. If you have questions regarding an agenda item, please contact the Authority Secretary at (626) 333-2211 during regular business hours.

In an effort to comply with the requirements of Title II of the Americans with Disabilities Act of 1990, the Tres Hermanos Conservation Authority requires that any person in need of any type of special equipment, assistance or accommodation(s) in order to communicate at a public meeting, must inform the Authority Secretary a minimum of 72 hours prior to the scheduled meeting.

- 3.2 Agreement for general counsel services and conflict of interest waiver

**Recommended Action:** Authorize the Chair to approve the service agreement and conflict of interest waiver.

4. **OLD BUSINESS:** None.

5. **NEW BUSINESS:**

- 5.1 Discussion regarding insurance.

**Recommended Action:** Discuss and provide direction to Staff.

- 5.2 Discussion regarding the possibility of creating a Tres Hermanos Conservation Authority Website.

**Recommended Action:** Discuss and provide direction to Staff.

6. **CLOSED SESSION:**

- 6.1 CONFERENCE WITH LEGAL COUNCIL – EXISTING LITIGATION  
Pursuant to Government Code section 54956.9(d)(1).

Case Name: San Gabriel Valley Water and Power, LLC v. City of Chino Hills; City of Chino Hills City Council; City of Diamond Bar; City of Diamond City Council; City of Industry; City of Industry City Council; Successor Agency to the Industry Urban-Development Agency; Board of Directors of the Successor Agency to the Industry Urban-Development Agency; Tres Hermanos Conservation Authority.

Case No.: San Bernardino Superior Court Case No.: CIVDS 1904434

7. **AUTHORITY DIRECTOR COMMENTS:**

8. **ADJOURNMENT:**

**TRES HERMANOS CONSERVATION AUTHORITY  
STAFF REPORT**

**AGENDA NO. 3.1**

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**Date:** February 20, 2019  
**To:** Board of Directors  
**From:** Troy Helling, Executive Director  
**Subject:** Establishment of Regular Meeting Times

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**Recommendation:**

That the Board of Directors adopt Resolution THCA No. 2019-02 establishing Regular Meeting times on the third Wednesday of the month at 6:00 pm at City of Industry City Hall.

**Background/Discussion:**

Section 3.4 of the Tres Hermanos Conservation Authority Joint Powers Agreement (JPA) requires that all meetings of the Conservation Authority be called, noticed and conducted in accordance with the Ralph M. Brown Act or other relevant open meeting laws. Section 3.4 of the JPA also requires that the Board of Directors establish regular meeting times for the Conservation Authority by resolution. Meetings are to be held at the City Hall of the Member whose City Manager serves as Executive Director, which is City of Industry. The attached Resolution establishes the Regular Meeting time as the third Wednesday of each month at 6:00 pm at City of Industry City Council Chambers located at 15651 Stafford Street, City of Industry as discussed at the February 7, 2019 meeting.

Respectfully submitted,



Daniel Fox  
Deputy Executive Director

Reviewed by,



Troy Helling  
Executive Director

**RESOLUTION THCA NO. 2019-02**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TRES HERMANOS CONSERVATION AUTHORITY ESTABLISHING REGULAR MEETING TIMES.**

**WHEREAS**, Section 3.4 of the Tres Hermanos Conservation Authority Joint Powers Agreement (JPA) requires that all meetings of the Conservation Authority be called, noticed and conducted in accordance with the Ralph M. Brown Act or other open meeting laws;

**WHEREAS**, Section 3.4 of the JPA also requires the Board of Directors to establish regular meeting times for the Conservation Authority by resolution; and

**WHEREAS**, Section 3.4 of the JPA further designates that meetings shall be held at the city hall of the Member whose City Manager is serving as Executive Director, which is currently the City of Industry.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Conservation Authority as follows:

**Section 1.** Regular Meetings of the Tres Hermanos Conservation Authority shall be held on the third Wednesday of the month at 6:00 p.m. in the City of Industry Council Chambers located at 15651 E. Stafford Street, City of Industry, CA 91744.

**Section 2.** This Resolution shall take effect immediately upon its passage and adoption.

**PASSED, APPROVED, AND ADOPTED** this 20<sup>th</sup> day of February, 2019.

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Cory C. Moss  
Chair, Board of Directors  
Tres Hermanos Conservation Authority

Resolution THCA No. 2019-02

ATTEST:

I, Julie Gutierrez-Robles, Secretary of the Tres Hermanos Conservation Authority, do hereby certify that the foregoing Resolution was duly and regularly passed, approved and adopted by the Board of Directors of the Tres Hermanos Conservation Authority, at its special meeting held on the 20<sup>th</sup> day of February 2019, by the following Roll Call vote:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

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Julie Gutierrez-Robles  
Secretary  
Tres Hermanos Conservation Authority

**TRES HERMANOS CONSERVATION AUTHORITY  
STAFF REPORT**

**AGENDA NO. 3.2**

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**Date:** February 20, 2019  
**To:** Board of Directors  
**From:** Troy Helling, Executive Director  
**Subject:** Agreement for General Counsel Services and Conflict of Interest Waiver

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**Recommendation:**

That the Board of Directors approve the general counsel services and conflict of interest waiver for Woodruff, Spradlin & Smart.

**Background/Discussion:**

Section 3.9 of the Amended and Restated Tres Hermanos Conservation Joint Powers Agreement (the "JPA"), the Diamond Bar City Attorney is to serve as the Tres Hermanos Conservation Authority initial general counsel; provided, however, that the Board of Directors is to appoint a general counsel within six months of the JPA Effective Date, who is not providing any legal services to any of the Authority Members.

Respectfully submitted,

Reviewed by,



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Daniel Fox  
Deputy Executive Director



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Troy Helling  
Executive Director

## AGREEMENT FOR GENERAL COUNSEL SERVICES

THIS AGREEMENT (the "Agreement") is made and entered into as of this \_\_\_\_ day of February, 2019, by and between the TRES HERMANOS CONSERVATION AUTHORITY, a California joint powers authority ("Authority"), and the law firm of WOODRUFF, SPRADLIN & SMART, a Professional Corporation (hereinafter "WS&S").

### RECITALS

- A. Pursuant to Section 3.9 of the Amended and Restated Tres Hermanos Conservation Joint Powers Agreement (the "JPA"), the Diamond Bar City Attorney is to serve as the Tres Hermanos Conservation Authority ("Authority") initial general counsel; provided, however, that the Board of Directors ("Board") is to appoint a general counsel within six months of the JPA Effective Date, who is not providing any legal services to any of the Authority Members.
- B. Section 3.9 of the JPA further provides that the costs of such general counsel services shall be considered Maintenance Costs. Extraordinary legal services, as defined in the JPA, such as prosecuting on behalf of, or defending the Authority shall be considered Extraordinary Costs.
- C. The Board and WS&S desire to enter into this Agreement wherein WS&S shall provide such legal services as are necessary for the proper function of the office of the General Counsel for the Authority.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

### AGREEMENT

1. **Definitions.** Capitalized terms used herein shall have the same meaning as provided in the JPA, unless otherwise defined herein.
2. **Retention of WS&S.** Authority hereby retains and employs WS&S to provide all legal services incident to general counsel representation for the Board and the Authority. In this regard, David DeBerry is designated as the General Counsel for the Authority. Mr. DeBerry is authorized to assign other attorneys of WS&S to provide the Authority's legal services as is necessary and proper.
3. **Scope of Duties.** Authority retains and employs WS&S to provide legal services required in connection with Authority's operation as a joint powers authority pursuant to Government Code § 6250 et seq. WS&S shall provide those legal services reasonably required to advise and represent Authority and shall take reasonable steps to keep Authority informed of the progress of the representation and to respond in a timely manner to the inquiries of Authority regarding pending matters. The Board may, in its discretion, assign legal services to attorneys other than the WS&S which are reimbursed as Extraordinary Costs. It is understood that the legal services to be performed and the functions of the General Counsel shall include, but are not limited to, the following:

2.1 Represent and advised the Board and all Authority officers in matters of law pertaining to their office. Give advice or opinion on the legality of all matters under consideration by the Board or by any of the boards and commissions or officers of the Authority;

2.2 Attend all meetings of the Board and attend all other meetings of Authority boards, commissions, and committees when so requested by the Board or the Executive Director;

2.3 Assist in the preparation and review of ordinances, resolutions, contracts, deeds, leases and other legal documents;

2.4 As requested, approve the form of contracts made by and between the Authority and bonds given to the Authority, endorsing same;

2.5 Upon request, prepare legal opinions for as are necessary for the proper function of the Authority;

2.6 Oversee services provided by other legal specialists retained by the Authority for specialized legal issues, as deemed appropriate by the Executive Director;

2.7 Coordinate legal activities with outside agencies, as applicable;

2.8 Represent the Authority in civil litigation; and

2.9 Perform such other legal duties as may be required by the Board in the performance of the functions list in subparagraphs A-H.

3. **Independent Contractor.** WS&S and any attorneys or other persons employed by WS&S, shall at all times be considered an independent contractor and not an employee of the Authority and not entitled to any benefits of the Authority's employees. Except to the extent provided herein, the Authority, its officers, agents and employees, if any, shall not have any control over the conduct of WS&S.

4. **Fees, Costs and Expenses.**

4.1 Authority agrees to pay WS&S at the rates set forth in Exhibit "A," which is attached hereto and is incorporated herein by reference.

4.2 Authority agrees to pay out-of-pocket costs and expenses associated with WS&S' work pursuant to Exhibit "A".

5. **Statements/Task-Billing.** WS&S shall prepare and present to Authority detailed monthly statements for professional and other services rendered to Authority for the month preceding the statement, indicating each task performed by WS&S. Authority shall pay the statements within 30 days of receipt of the same. WS&S shall update Authority, upon request, regarding the status of WS&S' billings.

**Insurance and Indemnification.**

6.1. WS&S shall carry Professional Liability/Errors and Omissions and Automotive Liability insurances in an amount not less than \$2 million per occurrence and \$4 million in aggregate. The Authority shall be named as a certificate holder and an additional insured on the Automotive Liability policy. All insurance coverage shall be provided by an insurance company with a rating of A-, VII or greater in the latest edition of Best's Insurance Guide and authorized to do business in the State of California. Such policies shall not be canceled or materially changed absent 30 days' prior written notice to the Authority. With respect to Professional Liability/Errors and Omissions insurance, WS&S agrees to maintain such insurance for at least three years after termination of this Agreement as long as such insurance is reasonably available on the market.

6.2. WS&S agrees to indemnify, defend and hold harmless, the Authority, its Board, officers, agents and employees from and against and claim, demands, damages, injury or judgment which arises out the negligent performance or willful misconduct of WS&S in performing under this Agreement.

7. **Term and Termination.** The term of this Agreement shall commence on February 7, 2019 (date of Authority's first Board Meeting), until terminated by either party. WS&S shall serve under the terms of this Agreement at the pleasure of Authority, and by a majority vote of the Board, Authority hereby reserves the right to terminate this Agreement, with or without cause, upon 10 days written notice to WS&S for any reason or to require substitute attorney personnel. When WS&S' services are terminated, all unpaid charges shall be due and payable to WS&S for work actually performed up to the time of termination and for any other work it completes at the direction of the Authority. WS&S may terminate this Agreement with or without cause upon 90 days written notice to the Authority.

8. **Notice.** Any notices required by this Agreement shall be given by personal service or by delivery of such notice by first-class mail, postage prepaid. Such notices shall be addressed to each party at the address listed below. Either party may change the information in such notice upon written notice as provided herein.

**Authority:**

Tres Hermanos Conservation Authority  
15625 East Stafford Street  
City of Industry, CA 91744

Attn: Troy Helling, Executive Director

**WS&S:**

Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626

Attn: David A. DeBerry, Director

9. **Non-Discrimination.** WS&S shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, disability or national origin.

10. **Conflicts of Interest.** WS&S represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any legal representation which is in conflict with the legal services to be provided the Authority under this Agreement; provided that WS&S represents the City of Diamond Bar as its City Attorney and pursuant to Section 3.9 of the JPA, the Board and Members have agreed that WS&S' representation of the Authority and the City of Diamond Bar shall not, in and of itself, constitute a conflict of interest. Attached hereto as Exhibit "B" is a waiver of conflict of interest and in executing this Agreement, the Board approves the waiver of conflicts noted therein. However, if any actual conflict of interest arise as between the Authority and the City of Diamond Bar not included in such waiver, WS&S shall either obtain additional written waivers from both entities or recuse itself from the matter giving rise to the conflict of interest. WS&S represents that no Authority employee or official other than the members of WS&S has a material financial interest in WS&S. During the term of this Agreement and/or as a result of being awarded this contract, WS&S shall not offer, encourage or accept any financial interest in WS&S's business from any Authority employee or official.

11. **Files.** All legal files of WS&S pertaining to the Authority shall be and remain the property of Authority. WS&S shall control the physical location of such legal files in a secure and accessible location during the term of this Agreement and be entitled to retain copies of such files, at WS&S' expense, upon termination of this Agreement.

12. **Modifications to the Agreement.** Unless otherwise provided for in this Agreement, modifications relating to the nature, extent or duration of WS&S' professional services to be rendered hereunder shall require the written approval of the parties. Any such written approval shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services and the agreed-upon billing rate to be charged by WS&S and paid by the Authority.

13. **Assignment and Delegation.** This Agreement contemplates the personal professional services of WS&S and it shall not be assigned or delegated without the prior written consent of the Authority. WS&S shall supervise delegated work, except where precluded from doing so by virtue of a conflict of interest and where otherwise agreed to by the parties hereto.

14. **Legal Construction.**

15.1 This Agreement is made and entered into in the State of California and shall, in all respects, be interpreted, enforced and governed under the laws of the State of California.

15.2 This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

15.3 The article and section, captions and headings herein have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction.

15.4 Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

16. **Entire Agreement.**

This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, and contains all covenants and agreements between the parties with respect to such matter,

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated in the preamble to this Agreement and represent that they are authorized to bind their respective parties.

ATTEST:

TRES HERMANOS CONSERVATION AUTHORITY

By \_\_\_\_\_  
Secretary, Board of Directors

By \_\_\_\_\_  
Chairman, Board of Directors

WOODRUFF, SPRADLIN & SMART

By \_\_\_\_\_  
Lois M. Bobak  
President/Managing Director

**EXHIBIT "A"**

**WOODRUFF, SPRADLIN & SMART  
Rates and Billing Practices**

**Hourly Rates for Legal Personnel**

All Attorneys	\$222
Extraordinary legal services:	\$271
Paralegals	\$155

***Billing Increment***

- Attorneys shall bill in increments of one-tenth of an hour (six minutes).
- Attorneys shall not bill for secretarial time, including time spent for faxing, mailing, arranging for messengers, or calendaring.

**Costs and Expenses**

Extraordinary photocopying <sup>2</sup>	\$0.25 per page or actual cost if sent out
Parking at Courthouse	Actual cost
Filing fees, messenger fees	Actual cost
Jury fees, & expert fees	Actual cost
Phone	No cost



Oath of Office

1384942.1  
1384942.1

DAVID A. DEBERRY  
DIRECT DIAL: (714) 415-1088  
DIRECT FAX: (714) 415-1188  
E-MAIL: DDEBERRY@WSS-LAW.COM

February 15, 2019

**VIA E-MAIL AND FIRST CLASS MAIL**

Cory C. Moss  
Chair, Board of Directors  
Tres Hermanos Conservation Authority  
15651 E. Stafford Street  
Industry, CA 91744

Carol Herrera  
Mayor  
City of Diamond Bar  
21810 Copley Drive  
Diamond Bar, CA 91765

**Re: Waiver of Conflict of Interest**

Dear Chair Moss and Mayor Herrera:

The purpose of this letter is to request the informed written consent of the Board of Directors ("Board") of the Tres Hermanos Conservation Authority ("Authority") and the City Council of the City of Diamond Bar ("City") that Woodruff, Spradlin & Smart ("WS&S") may represent the Authority as General Counsel while at the same time representing the City of Diamond Bar ("City") as City Attorney. Pursuant to Section 3.9 of the joint powers agreement ("JPA") creating the Authority, I was to serve as the Authority's initial general counsel, until the Board appointed a replacement, which pursuant to the JPA is to occur within six months of the JPA's effective date.

While the Authority's and the City's interests will generally be aligned, there is the potential that these client relationships could implicate Rule 3-310 of the California Rules of Professional Conduct with respect to conflicts of interest. Thus, in the interest of full disclosure, I respectfully ask for the Authority's informed written waiver of any actual or potential conflict of interest arising from WS&S' representation of the City as City Attorney while representing the Authority as General Counsel to the extent provided herein.

The pertinent subsections of Rule 3-310 of the Rules of Professional Conduct of the State Bar of California state:

(C) A member [i.e., the lawyer] shall not, without the informed written consent of each client:

(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or

(3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter. ...

(E) A member [i.e., the lawyer] shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

As a general rule, a lawyer owes a client a duty of loyalty which, among other things, requires a lawyer to exercise judgment that is not influenced by factors other than the client's best interests. Thus, one reason for the rule requiring informed written consent of both clients is that, where the attorneys represent one client in a matter adverse to another client, "the first client [may] doubt his attorney's loyalty when the latter accepts unrelated but antagonistic employment." (*Jeffry v. Pounds* (1977) 67 Cal.App.3d 6, 10.) The courts and the California State Bar are concerned that the attorney might favor one client over the other in the work being done in the conflicting matter, or at least that the attorney might give less than undivided loyalty to the client in the matter because of other existing or good relations with the other party.

The extent of this waiver does not apply to any situation in which the Authority and the City are actually adverse to each other in litigation or any administrative proceeding or not otherwise covered by this waiver. This waiver does, however, apply to the recently filed litigation against the City, the Authority and others, by San Gabriel Water & Power, LLC, San Bernardino Superior Court Case No. CIVDS 1904434. The interests of the City and the Authority are, at the time, aligned.

Generally, cities enter into joint powers agreements because they have a common interest in exercising one of their enumerated functions and as such, the interests of the member cities and the joint powers authority created are in alignment and not adverse. In the course of providing advice to the Authority, I may provide advice in a way that the City or Authority does not view as favorable to one or the other. However, the advice I do provide will be based upon the law and the provisions of the JPA and the Board and/or its Members are always free to seek another legal opinion, if it disagrees with that advice.

In signing this waiver, Woodruff, Spradlin & Smart would be permitted to represent the Authority as general counsel and City as City Attorney. The Authority and City will be required

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to execute a waiver in the form herein provided. If providing the consent/wavier is acceptable, respectively, to Authority and City, please sign and date in the spaces below.

Sincerely,

WOODRUFF, SPRADLIN & SMART  
A Professional Corporation

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DAVID A. DEBERRY

February 15, 2019

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**INFORMED CONSENT REGARDING REPRESENTATION  
AND WAIVER OF CONFLICT OF INTEREST**

On behalf of the Authority and the City, respectively, I have read and understand the contents of this letter and hereby consent to, and hereby knowingly and expressly waive any conflict of interest arising from, the law firm of Woodruff, Spradlin & Smart providing legal representation to Authority and the City.

**AUTHORITY**

By \_\_\_\_\_  
Cory C. Moss, Chair  
Board of Directors

Dated: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_  
Julie Gutierrez-Robles  
Secretary, Board of Directors

**CITY OF DIAMOND BAR**

By: \_\_\_\_\_  
Carol Herrera, Mayor  
City of Diamond Bar

Dated: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_  
Tommye Cribbins, City Clerk  
City of Diamond Bar