



September 3, 2020

Board of Directors  
Ventura Regional Sanitation District  
Ventura, California

## **CONSENT AND WAIVER OF CONFLICT OF INTEREST FOR ARNOLD LAROCHELLE MATHEWS VANCONAS & ZIRBEL, LLP (“A TO Z LAW”) REPRESENTATION**

### **RECOMMENDATION**

Approve, and Authorize the General Manager to sign, the Consent and Waiver of Conflict of Interest form regarding A to Z Law’s representation in the matter of an amendment to VRSD Contract No. 15-0014, as revised, (TWSD Contract No. T15-003, as revised).

### **FISCAL IMPACT**

The approval of the Consent and Waiver and Conflict of Interest for the use of the A to Z Law firm in this contractual matter will likely result in savings of thousands of dollars in District staff and legal counsel time when compared to the effort that would be spent to develop a sufficient baseline of information for outside special counsel to provide these same legal services.

### **BACKGROUND/ANALYSIS**

The VRSD Board received a letter and report from District staff regarding the TWSD’s ongoing transition to supplying all of its management, customer service, and finance services in-house. Based on that Board letter and report, your Board directed District staff to work with the Executive Committee for continued refinement of the analysis.

The Executive Committee has held two meetings on this subject to date, and recently recommended staff to further develop the details and documents required for their ongoing analysis. Ultimately, an amendment to the interagency agreement between TWSD and VRSD would be produced for the Executive Committee’s consideration and then the VRSD Board’s approval.

### **PROPOSAL**

A to Z Law represents both VRSD and TWSD as general legal counsel. John M. Mathews for TWSD and Robert N. Kwong for VRSD. This fact alone is not the basis of the request for a consent and waiver of the conflict of interest. The conflict of interest arises because of the proposed amended interagency agreement between the agencies.

Both the General Manager of TWSD and the General Manager of VRSD have been active in proposing and negotiating the terms and conditions of the amended interagency agreement between their respective agencies. Both general managers believe that the development of the amendment will be straightforward in concept and detail. Because of their working relationship and the nature of this amended interagency agreement, they both believe that the process toward a final agreement for execution by both sides would be hindered, not aided, by the use of outside special counsel as was done in the past when the interagency agreement was amended. The requested consent and waiver will allow A to Z Law to maintain representation in this matter and facilitate this mutually beneficial amendment to the interagency agreement for both agencies.

In order to provide services to their respective Districts, Mr. Robert N. Kwong and Mr. John M. Mathews of A to Z Law request the Board to approve a Consent and Waiver of Conflict of Interest form ("the Waiver") in accordance with Rule 1.7 of California Rules of Professional Conduct, which allows for this representation through a consent and waiver of a conflict of interest. The Consent and Waiver form is attached as Exhibit 2 to the August 20, 2020 A to Z Law letter and incorporated herein by reference.

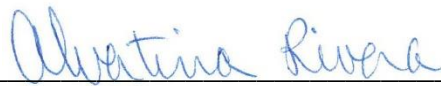
The TWSD Board approved the Consent and Waiver at their meeting of August 24, 2020.

This letter and the associated documents have been reviewed by Legal Counsel as to form.

If you should have any questions or need additional information, please contact me by phone at (805) 658-4600 or via email at [christheisen@vrzd.com](mailto:christheisen@vrzd.com).

ALVERTINA RIVERA, DIRECTOR OF FINANCE

APPROVED FOR FISCAL IMPACT:

  
Alvertina Rivera, Director of Finance

APPROVED FOR AGENDA:

  
Chris Theisen, General Manager

Attachments: August 20, 2020 letter from Messrs. Robert N. Kwong and John M. Mathews of A to Z Law, including Consent and Waiver of Conflict of Interest form.



ARNOLD LAROCHELLE MATHEWS  
VANCONAS & ZIRBEL LLP

Writer's Email  
jmathews@atozlaw.com  
[rkwong@atozlaw.com](mailto:rkwong@atozlaw.com)

August 20, 2020

*Via First Class Mail and E-Mail*

[ChrisTheisen@vrsd.com](mailto:ChrisTheisen@vrsd.com)

[MarkNorris@Triunfowsd.com](mailto:MarkNorris@Triunfowsd.com)

Chris Theisen  
Ventura Regional Sanitation District  
1001 Partridge Drive, Suite 150  
Ventura, CA 93003

Mark Norris  
Triunfo Water & Sanitation District  
1001 Partridge Drive, Suite 150  
Ventura, CA 93003

Subject: Ventura Regional Sanitation District ("VRSD") and Triunfo Water and Sanitation District ("TWSD") Conflict Waiver

Dear Messrs. Theisen and Norris:

As both districts and their respective Board of Directors are aware, the law firm of Arnold LaRochele Mathews VanConas & Zirbel LLP ("A to Z Law") serves as general legal counsel to both TWSD and VRSD as well as to their respective legislative or decision-making bodies. Robert N. Kwong serves as general legal counsel for VRSD and John M. Mathews serves as general legal counsel for TWSD. As general counsel, Mr. Mathews and Mr. Kwong provide a wide range of legal services to your respective district's operations, activities, services and functions. A to Z Law is thus in the position representing both VRSD and TWSD in the current matter of an amendment to VRSD Contract No. 15-014 and TSD Contract No. T15-002, Agreement for Wastewater and Potable Water Facilities Operation, Maintenance, Management and Other Closely Related Services Between Triunfo Sanitation District and Ventura Regional Sanitation District ("Amendment"). Mr. Kwong and Mr. Mathews wish to remain as general legal counsel to your respective district, but the interests of VRSD and TWSD are directly adverse in the Amendment.

The purpose of this letter is to confirm the disclosures previously made to VRSD and TWSD, and to request that VRSD and TWSD confirm in writing their consent and waiver as to any of the actual or potential conflicts by A to Z Law's concurrent representation of VRSD and

GARY D. ARNOLD | KENDALL A. VANCONAS\* | ROBERT N. KWONG | SUSAN L. MCCARTHY  
ELANA CUZZO | JOSHUA S. SMITH  
OF COUNSEL JOHN M. MATHEWS | DENNIS LAROCHELLE | MARK A. ZIRBEL | DEAN W. HAZARD

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TWSD regarding the Amendment. But the interests of TWSD and VRSD are directly adverse in these contract negotiations.

Rule 1.7 of the Rules of Professional Conduct of the State Bar of California, which is attached as Exhibit 1 and incorporated herein by reference, generally permits clients to give informed written consent to representation in conflict of interest situations. Informed written consent under these Rules requires written disclosure to the clients of the relevant circumstances and of the actual and foreseeable adverse consequences to the clients arising by reason of the actual or potential conflicts of interest. Regarding the Amendment, Mr. Kwong would be representing the interests of VRSD and Mr. Mathews the interests of TWSD.

A to Z Law can and will provide adequate legal representation to both districts during these Amendment negotiations and document drafting. Any concern about a conflict of interest in such representation is significantly ameliorated by the fact that most, if not all, of the Amendment negotiations have taken place by and between each district's general manager. This development has precluded the need for Mr. Kwong and Mr. Mathews to be the primary negotiators for their respective district when crafting the terms and conditions of the proposed Amendment. A to Z Law's role in the Amendment will mainly involve: (a) drafting the final Amendment terms to conform to what the respective district general managers have already discussed and concurred; and (b) ensuring the legality and enforceability of the Amendment.

In making this decision to consent to A to Z Law representing both districts in the Amendment, both district's should consider that there is a remote possibility that Mr. Kwong, Mr. Mathews, or the other attorneys and staff at A to Z Law may acquire or have already acquired information from or about either district which Mr. Kwong, Mr. Mathews, or the other attorneys and staff at A to Z would have a duty not to disclose or use. We can assure both districts that the attorneys representing each respective district client will at all times protect the interests of their respective district. Regardless, it is possible that one or both district clients may feel that A to Z Law has divided loyalties in this matter. While we will do all we can to avoid this, we nonetheless disclose this possibility to both district clients.

If your respective district is willing to allow A to Z Law to represent both VRSD and TWSD in this upcoming contract/Amendment negotiation under these circumstances, we request the authorized representative for each district provide his or her informed written consent by signing the Consent and Waiver of Conflict of Interest attached hereto as Exhibit 2. As counsel to VRSD and TWSD, we will assume that Mr. Theisen will advise VRSD and Mr. Norris will advise TWSD regarding the importance of this consent.

The following sets forth our understanding of the parameters under which we will continue to represent each respective district on the upcoming contract/Amendment negotiation:

1. A to Z Law will not be prevented from representing VRSD in any present or future matters, because of Mr. Mathews' adverse representation of TWSD in the upcoming contract/Amendment negotiations;

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2. A to Z Law will not be prevented from representing TWSD in any present or future matters, because of Mr. Kwong's adverse representation of VRSD in the upcoming contract/Amendment negotiations;
3. Any confidential information held by A to Z Law, Mr. Kwong, or Mr. Mathews with respect to each district, including information regarding its business practices, will not be shared with the other district absent obtaining informed written consent to disclose that information;
4. If necessary, A to Z Law will implement an internal "ethical wall" screening the attorneys and staff representing each respective district in the contract/Amendment negotiations from information and documents obtained by the other attorneys and staff representing the other respective district in this matter; and
5. A to Z Law will limit its representation in this matter to the following:
  - a. Mr. Kwong counseling VRSD on the legality of its proposed Amendment's contractual obligations and commitments;
  - b. Mr. Mathews counseling TWSD on the legality of its proposed Amendment's obligations and commitments; and
  - c. Drafting and reviewing the final Amendment terms and conditions between TWSD and VRSD based upon the understanding and agreement negotiated on such terms and conditions by the respective district general managers.

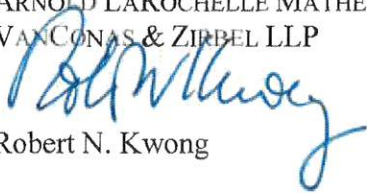
Based upon and subject to the foregoing conditions, we are requesting that VRSD and TWSD confirm these disclosures and understandings, and waive any conflict of interest which may be deemed to exist as a result of A to Z Law's representation of VRSD and TWSD in the upcoming Amendment negotiations and finalization.

We sincerely appreciate your accommodation of our request.

Sincerely,

ARNOLD LAROCHELLE MATHEWS  
VANCONAS & ZIRBEL LLP

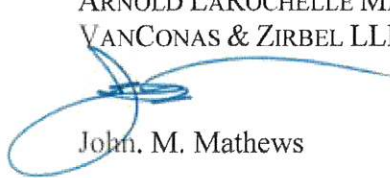
Robert N. Kwong



Sincerely,

ARNOLD LAROCHELLE MATHEWS  
VANCONAS & ZIRBEL LLP

John. M. Mathews



RNK:JMM:em  
Enclosures

# EXHIBIT 1

## EXHIBIT "1"

### Rule 1.7 of California Rules of Professional Conduct

- a) A lawyer shall not, without informed written consent\* from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.
- c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written\* disclosure of the relationship to the client and compliance with paragraph (d) where:
  - 1) the lawyer has, or knows that another lawyer in the lawyer's firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
  - 2) the lawyer knows or reasonably should know that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm, or has an intimate personal relationship with the lawyer.
- d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:
  - 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; and
  - 3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
- e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.

# EXHIBIT 2



**CONSENT AND WAIVER OF CONFLICT OF INTEREST**

Arnold LaRochelle Mathews VanConas & Zirbel LLP (“A to Z Law”) has explained to both the Ventura Regional Sanitation District (“VRSD”) and the Triunfo Water and Sanitation District (“TWSD”) (collectively referred to herein as “Districts”) that the present and potential conflicting interests might exist in the matter of an Amendment to TSD Contract No. T15-003 and VRSD Contract No. 15-014 and has informed the Districts of the possible consequences of these conflicts.

The Districts each acknowledge the disclosure of A to Z Law’s ongoing and continuing representation of VRSD as general legal counsel and A to Z Law’s ongoing and continuing representation of TWSD as general legal counsel, including representation in the upcoming contract/Amendment negotiations between the Districts regarding TSD Contract No. T15-003 and VRSD Contract No. 15-014. The Districts each understand that there presently exists, and may exist in the future, circumstances under which the interests of the Districts may be adverse to the one another. In that regard, A to Z Law has apprised the Districts of the provisions of Rule 1.7 of the Rules of Professional Conduct of the State Bar of California (attached hereto as Exhibit “1”) and of the conflict it will have through the representation of the Districts as described hereinabove.

The Districts have consulted with their legal counsel before signing this Consent and Waiver. VRSD consents and gives approval to the representation by John Mathews of TWSD in connection with the contract negotiations described above and as set forth more fully in the preceding letter, as well as in future matters unrelated to VRSD and the contract negotiation. TWSD consents and gives approval to the representation by Robert Kwong of VRSD in connection with the contract negotiations described above and as set forth more fully in the preceding letter, as well as in future matters unrelated to TWSD and the contract negotiation.

VENTURA REGIONAL SANITATION DISTRICT

By: \_\_\_\_\_  
Chris Theisen, General Manager

Date: September 3, 2020

TRIUNFO WATER AND SANITATION DISTRICT

  
By: \_\_\_\_\_  
Mark Norris, General Manager

Date: August 24, 2020

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