

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 17

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Legal Services – General Counsel

DATE: June 17, 2019

RECOMMENDATION

Authorize the Interim General Manager to enter into a legal services agreement to continue to retain the legal services of Harriet Steiner from Best, Best & Krieger as co-general counsel for Valley Clean Energy.

BACKGROUND and ANALYSIS

Valley Clean Energy (VCE), began its pre-launch feasibility phase in 2015/16 with legal services provided jointly by the two entities involved in the formation of the CCA at that time: Yolo County and the City of Davis. Each provided strengths and depth of subject matter such as JPA formation, countywide perspective, utility formation (e.g. Clean Water District), electricity utility formation (e.g. SMUD annexation), and experience during PG&E's 2001/02 bankruptcy. VCE's legal services needs have evolved but are still well served by the joint approach and are specifically managed to minimize duplicative efforts.

Recently the City of Davis transitioned to another legal firm to provide City Attorney services. This triggered the need to assess VCE legal services. VCE staff believe that the combination of continuity, depth of knowledge, and cost effectiveness of retaining Harriet Steiner from Best, Best & Krieger (BBK), as co-general counsel for VCE warrants the staff recommendation. Staff would note that these legal services would continue to be retained at the current discounted local agency rate of \$213/hr with a CPI based adjustment in January 2020; for reference, typical public agency rates range from \$225 to \$450/hr. In addition, the letter agreement allows for reconsideration of these services at the sole discretion of VCE (e.g. transition of legal staff, etc.).

If approved, the contract would be retroactive to June 1, 2019 to coincide with the ending of BBK's contract with the City of Davis.

CONCLUSION

Staff believes that the combination of continuity, depth of knowledge, and cost effectiveness of retaining Harriet Steiner from Best, Best & Krieger (BBK), as co-general counsel for VCE provides a strong value for the organization.

ATTACHMENT

Legal Services Agreement – Harriet Steiner/BBK



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May 29, 2019

BY EMAIL & U.S. MAIL

Mitch Sears
Interim General Manager
Valley Clean Energy
604 Second Street
Davis, CA 95616

Re: Legal Services Agreement

Dear Mitch:

ABOUT OUR REPRESENTATION

Best Best & Krieger LLP is pleased to represent Valley Clean Energy Alliance (“VCEA”) Specifically, we will represent VCEA as co-general counsel, together with the Yolo County Counsel. I will be the assigned VCEA co-general counsel. This letter constitutes our agreement setting the terms of our representation.

CONFIDENTIALITY AND ABSENCE OF CONFLICTS

An attorney-client relationship requires mutual trust between the client and the attorney. It is understood that communications exclusively between counsel and the client are confidential and protected by the attorney-client privilege.

To also assure mutuality of trust, we have maintained a conflict of interest index. The California Rules of Professional Conduct defines whether a past or present relationship with any party prevents us from representing your firm. Similarly, VCEA’s name will be included in our list of clients to ensure we comply with the Rules of Professional Conduct with respect to VCEA.

We have checked the following names against our client index: Pacific Gas & Electric, and the Sacramento Municipal Utilities District (“SMUD”) As you are aware there are existing waivers regarding SMUD that continue in place. Based on that check, we can represent VCEA. Please review the list to see if any other persons or entities should be included. If you do not tell us to the contrary, we will assume that this list is complete and accurate. We request that you



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update this list for us if there are any changes in the future. In addition, as you are aware, if as we take on additional matters for VCEA, we will continue to review potential conflicts prior to taking on new matters for VCEA.

EFFECTIVE DATE

The Agreement is effective June 1, 2019. If we have performed legal services at your request while waiting for VCEA to sign and return this Agreement, VCEA will still be required to pay for those services even if VCEA decides not to sign and return this Agreement.

YOUR OBLIGATIONS ABOUT FEES AND BILLINGS

We have already discussed the fee arrangement with you. We will continue to represent VCEA at the current rate of \$213/hour for general counsel work. Absent our request and your consent to a different fee structure, this fee will adjust by the change in the cost of living or CPI on January 1 of each year.

To the extent that VCEA requires any additional specialized work (such as pension or personnel work), we will notify you and that work will be at the then current public agency standard rates for the attorney doing the work. Standard public agency rates range from \$225 to \$450 per hour. As we discussed, BBK reviews its rates periodically. Should BBK desire a fee increase or modification in the future, we will contact you and discuss the proposed revised rates with you before implementing any change.

Attached to this letter is a memorandum that describes the other aspects of our firm's billing policies. You should consider this memorandum part of this agreement as it binds both of us. For that reason, you should read it carefully.

INSURANCE

We are also pleased to let you know that Best Best & Krieger LLP carries errors and omissions insurance with Lloyd's of London. After a standard deductible, this insurance provides coverage beyond what is required by the State of California.

NEW MATTERS

Based on our engagement as co-general counsel, we would anticipate representing VCEA on a variety of matters. Routine general counsel matters will be included under this engagement letter. Specialty work will be discussed in advance and new matters may be set up for each such



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matter. In addition, as appropriate, we may determine that a particular new matter should have a new signed supplement to this agreement.

HOW THIS AGREEMENT MAY BE TERMINATED

You, of course, have the right to end our services at any time. If you do so, you will be responsible for the payment of fees and costs accrued but not yet paid, plus reasonable fees and costs in transferring the case to you or your new counsel. By the same token, we reserve the right to terminate our services to you upon written notice, order of the court, or in accordance with our attached memorandum. This could happen if you fail to pay our fees and costs as agreed, fail to cooperate with us in this matter, or if we determine we cannot continue to represent you for ethical or practical concerns.

CLIENT FILE

If you do not request the return of your file, we will retain your file for five years. After five years, we may have your file destroyed. If you would like your file maintained for more than five years or returned, you must make separate arrangements with us.

CONFLICT WAIVER

In a large firm with multiple offices representing public and private clients, actual or possible conflicts sometimes arise between existing or potential clients. We may be required to ask for a conflict waiver in that event. BB&K asks for your understanding and cooperation if we request a conflict waiver in order to undertake or continue representation of another client in a manner that will not be specifically detrimental or adverse to you in any matter in which another BB&K attorney represents you.

THANK YOU

On a personal note, we are pleased that you have selected us to continue to represent VCEA. We look forward to a long and valued relationship with you and appreciate your confidence. If you have any questions at any time about our services or billings, please do not hesitate to call me.



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If this letter meets with your approval, please sign and date it, and return the original to us. As we have discussed, upon approval the effective date of this agreement will be June 1, 2019. We have enclosed a separate signed copy of this letter for your records.

Sincerely,

Harriet A. Steiner
of BEST BEST & KRIEGER LLP

AGREED AND ACCEPTED:

By: _____
Mitch Sears

Dated: _____

Approved as to form:

Eric May
VCEA Co-General Counsel

BEST BEST & KRIEGER LLP'S BILLING POLICIES

Our century of experience has shown that the attorney-client relationship works best when there is mutual understanding about fees, expenses, billing and payment terms. Therefore, this statement is intended to explain our billing policies and procedures. Clients are encouraged to discuss with us any questions they have about these policies and procedures. Clients may direct specific questions about a bill to the attorney with whom the client works or to our Accounts Receivable Department. Any specific billing arrangements different from those set forth below will be confirmed in a separate written agreement between the client and the firm.

Fees for Professional Services

Unless a flat fee is set forth in our engagement letter with a client, our fees for the legal work we will undertake will be based in substantial part on time spent by personnel in our office on that client's behalf. In special circumstances which will be discussed with the client and agreed upon in writing, fees will be based upon the novelty or difficulty of the matter, or the time or other special limitations imposed by the client.

Hourly rates are set to reflect the skill and experience of the attorney or other legal personnel rendering services on the client's behalf. Time is accrued on an incremental basis for such matters as telephone calls (minimum .3 hour) and letters (minimum .5 hour), and on an actual basis for all other work. Our attorneys are currently billed at public agency rates from \$225 to \$450 per hour, and our administrative assistants, research assistants, paralegals and law clerks are billed at rates from \$170 to \$220 per hour. These hourly rates are reviewed annually to accommodate rising firm costs and to reflect changes in attorney status as lawyers attain new levels of legal experience. Any increases resulting from such reviews will be instituted automatically and will apply to each affected client, after advance notice.

Fees For Other Services, Costs and Expenses

We attempt to serve all our clients with the most effective support systems available. Miscellaneous expenses are covered by a standard administrative charge, currently set at 4%, which compensates the cost of normal photocopying, long distance telephone calls, regular mail postage, telecopy charges and other expenses as to which individual itemization is impractical. Costs specific to your matter such as investigation and filing fees, process server fees, required costs of travel, out-of-town lodging and meals, mileage at the current IRS-approved rate per mile, courier and express delivery and mail services, deposition and court reporter fees, computerized legal research, major photocopying, conference calls and staff overtime, as needed, are itemized and will appear on your monthly statement as separate items.

No separate charge is made for secretarial or word processing services; those costs are included within the above hourly rates.

We may need to advance costs and incur expenses on your behalf on an ongoing basis. These items are separate and apart from attorneys' fees and, as they are out-of-pocket charges, we need to have sufficient funds on hand from you to pay them when due. We will advise the

client from time to time when we expect items of significant cost to be incurred, and it is required that the client send us advances to cover those costs before they are due.

Monthly Invoices and Payment

Best Best & Krieger LLP provides our clients with monthly invoices for legal services performed and expenses incurred. Invoices are due and payable upon receipt.

Each monthly invoice reflects both professional and other fees for services rendered through the end of the prior month, as well as expenses incurred on the client's behalf that have been processed by the end of the prior month. Processing of some expenses is delayed until the next month and billed thereafter.

Our fees are not contingent upon any aspect of the matter and are due upon receipt. All billings are due and payable within ten days of presentation unless the full amount is covered by the balance of an advance held in our trust account. If a bill is not paid within 30 days, a late charge of one percent per month on the unpaid invoice shall be added to the balance owed, commencing with the next statement and continuing until paid.

It is our policy to treat every question about a bill promptly and fairly. It is also our policy that if a client does not pay an invoice within 60 days of mailing, we assume the client is, for whatever reason, refusing to pay. We will then advise the client by letter that the client may pay the invoice within 14 days or the firm will take appropriate steps to withdraw as attorney of record. If the delay is caused by a problem in the invoice, we must rely upon the client to raise that with us during the 14-day period. This same policy applies to fee arrangements which require the client to replenish fee deposits or make deposits for anticipated costs.

From time to time clients have questions about the format of the bill or description of work performed. If you have any such questions, please ask them when you receive the bill so we may address them on a current basis.

BEST BEST & KRIEGER LLP