

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

TO: Valley Clean Energy Alliance Board of Directors

FROM: Mitch Sears, Interim General Manager

SUBJECT: Legal Services – Contract Amendment for General Counsel Services

DATE: February 13, 2020

RECOMMENDATION

Adopt a resolution approving an amendment to the legal services agreement with Best, Best & Krieger for co-general counsel services modifying the terms and timing of the agreement.

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.

In June 2019 the Board approved retaining the co-general counsel approach for legal services and continued the contracts and terms with Best, Best & Krieger (BBK) and the Yolo County Counsel's Office. At that time, BBK informed staff that the rate in the existing contract was below its standard rate for public entities (\$325/hr). In late 2019, BBK approached staff to revisit the VCE contract rate (\$213/hr) to bring it closer in line with its public entity rate. After discussion, BBK agreed to a rate similar to its City Attorney rate for the City of Woodland (~\$250/hr). BBK also agreed to a step approach for the first half of 2020 to \$235/hr, increasing to \$250/hr at the beginning of the new fiscal year in July 2020.

The amendment to the BBK rate is within the current fiscal year budget for general counsel legal services. As directed by the Board, BBK's activities related to the PG&E bankruptcy are accounted for in VCE's contingency budget for this fiscal year.

CONCLUSION

Staff believes that these modified rates are favorable in the market for CCA general counsel legal services and that the quality of the general counsel legal services provided continues to be high. Therefore, staff is recommending that the Board approve the rate modifications included

in the attached amended contract with BBK, retroactive to January 1, 2020. Note: no modifications are proposed for the contract with County Counsel's office.

ATTACHMENTS

1. Resolution
2. Legal Services Agreement Amendment – BBK

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2020- _____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT ONE (1) TO THE BEST, BEST & KRIEGER AGREEMENT FOR CO-GENERAL COUNSEL LEGAL SERVICES AND AUTHORIZING THE VCE INTERIM GENERAL MANAGER TO EXECUTE THE AMENDMENT

WHEREAS, the Valley Clean Energy Alliance (“VCE”) is a joint powers agency established under the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”), and pursuant to a Joint Exercise of Powers Agreement Relating to and Creating the Valley Clean Energy Alliance between the County of Yolo (“County”), the City of Davis (“Davis”), the City of Woodland and the City of Winters (“Cities”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate, and manage energy programs; and,

WHEREAS, in June 2019 an agreement was entered into between VCE and Best, Best & Krieger (“BBK”) for continued legal services as VCE’s general co-counsel with Yolo County Counsel’s Office; and,

WHEREAS, BBK informed staff that the rate in the existing contract was below its standard rate for public entities; and,

WHEREAS, to bring the existing contract rate closer in line with the market for CCA general counsel legal services and BBK’s public entity rate, a step approach to increase the hourly rate was proposed.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance hereby authorizes the VCE Interim General Manager to execute on behalf of VCE Amendment One (1) to the Best, Best & Krieger Agreement for legal services modifying the terms, retroactive to January 1, 2020, as set forth in the attached Exhibit A - Amendment One (1) to Best, Best & Krieger Agreement.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____ 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment: Exhibit A - Amendment One (1) to Best, Best & Krieger Agreement

Exhibit A

Amendment One (1) to Best, Best & Krieger Agreement

AMENDMENT NO. ONE (1)
TO THE LEGAL SERVICES AGREEMENT
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
BEST BEST & KRIEGER, LLP

1. Parties and Date.

This Amendment No. One (1) to the Legal Services Agreement is made and entered into as of this 13th day of February 2020, by and between Valley Clean Energy Alliance, a Joint Powers Agency, existing under the laws of the State of California (“VCEA”) and Best Best & Krieger, LLP, a Limited Liability Partnership (“BB&K”). VCEA and BB&K are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 . VCEA and BB&K entered into a legal services agreement effective June 1, 2019 for the purpose of retaining BB&K to provide legal services described in the Agreement and to serve as Co-General counsel to VCEA. (“the “ Agreement”)

2.2 Amendment Purpose. VCEA and BB&K desire to amend the Agreement to revise the hourly rate for legal services under the Agreement.

3. Terms.

3.1 Amendment. The section of the Agreement entitled “Your Obligations about Fees and Billings” is hereby amended in its entirety to read as follows:

YOUR OBLIGATIONS ABOUT FEES AND BILLINGS

We have already discussed the fee arrangement with you. We will continue to represent VCEA at the rate of ~~\$213~~ \$235/hour from January 1, 2020 until July 1, 2020 and the rate of \$250/hour thereafter until July 1, 2020 and the rate of \$250/hour thereafter 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 July 1 of each year, beginning on July 1, 2021.

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 currently range from \$225 to ~~\$450~~ ~~\$495~~ 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.

3.4 Continuing Effect of Agreement. Except as amended by this Amendment No. One (1), all other provisions of the Legal Services Agreement remain in full force and effect and shall govern the actions of the parties. From and after the date of this Amendment No. One (1) whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. One (1).

3.6 Severability. If any portion of this Amendment No. One (1) is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

[Signatures on Next Page]

**SIGNATURE PAGE FOR AMENDMENT NO. ONE (1) TO THE AGREEMENT FOR
CONSULTANT SERVICES
BETWEEN VALLEY CLEAN ENERGY ALLIANCE
AND BEST BEST & KRIEGER, LLP**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. ONE (1) as of
the __ day of February 2020.

VALLEY CLEAN ENERGY ALLIANCE

BEST BEST & KRIEGER, LLP

By: _____
Mitch Sears
Interim General Manager

By: _____
Its: _____ Partner

Printed Name: _____

APPROVED AS TO FORM:

By: _____
Eric May
VCEA Attorney