



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council **Date:** November 15, 2016

From: Joseph Moon **Item No:** 10
Public Services Manager
Public Services Department

Subject: APPROVAL OF LEGAL SERVICES ENGAGEMENT LETTER FOR THE
APPLE VALLEY CHOICE ENERGY (AVCE) CCA

T.M. Approval: _____ **Budgeted Item:** Yes No N/A

RECOMMENDED ACTION:

1. That the Town Council Accept the Troutman Sanders LLP Legal Services Engagement Letter for Apple Valley Choice Energy (AVCE).
2. That the Town Council authorize the Town Manager to execute the Engagement Letter.

SUMMARY:

Due to the specialized nature of contracts relating to the establishment of the Community Choice Aggregation Program, staff is requesting utilizing Troutman Sanders LLP to provide certain legal services to Apple Valley Choice Energy (AVCE). The Engagement Letter outlines the scope of the engagement, the financial terms and all other aspects of this engagement. AVCE will engage Troutman Sanders LLP to provide legal services in connection with the review, revision, negotiation and finalization of the following documentation for AVCE's 2016 Energy Services Request for Proposals ("RFP"): (i) the EEI Master Agreement and Cover Sheet, Confirmation and any supporting credit documentation such as parent guarantees and letters of credit (the "Energy Supply Agreements") and (ii) the deposit account control agreement, intercreditor and collateral agency agreement and security agreement (the "Lockbox Agreements"). The legal services relating to the Energy Supply Agreements and the Lockbox Agreements are collectively referred to below as the "Engagement."

A complete Scope of Services, Fees and Hourly Rates are outlined in the attached Engagement Letter.

FISCAL IMPACT:

The immediate fiscal impact will be determined by the number of documents required. Future payments if necessary will be provided from funds collected from the operation of the AVCE program.

ATTACHMENT:

1. Troutman Sanders LLP Engagement Letter

STEPHEN C. HALL
503.290.2336 telephone
stephen.hall@troutmansanders.com

TROUTMAN SANDERS

TROUTMAN SANDERS LLP
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Portland, Oregon 97204
503.290.2400 telephone
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October 31, 2016

VIA EMAIL

Marc Puckett
Assistant Town Manager of
Finance and Administration
14955 Dale Evans Parkway
Apple Valley, CA 92307

Re: Troutman Sanders LLP's Representation of Apple Valley Choice Energy

Dear Mr. Puckett:

We are pleased that you have requested Troutman Sanders LLP (the "Firm") to provide legal services to Apple Valley Choice Energy ("AVCE") and we thank you for the opportunity to be of assistance.

The purpose of this Engagement Letter (the "Agreement") is to verify your approval as to the scope of our engagement, the financial terms of our engagement, and all other aspects of this engagement, as follows:

1. Scope of Engagement. By means of this Agreement, AVCE is engaging the Firm to provide legal services in connection with the review, revision, negotiation, and finalization of the following documentation for AVCE's 2016 Energy Services Request for Proposals ("RFP"): (i) the EEI Master Agreement and Cover Sheet, Confirmation, and any supporting credit documentation such as parent guarantees and letters of credit (the "Energy Supply Agreements") and (ii) the deposit account control agreement, intercreditor and collateral agency agreement, and security agreement (the "Lockbox Agreements"). The legal services relating to the Energy Supply Agreements and the Lockbox Agreements are collectively referred to below as the "Engagement."

2. Fees and Hourly Rates. Our billing practice is to charge for our legal services, based primarily on the amount of time, including travel time, devoted to a matter at hourly rates for the particular professionals involved. These hourly rates are based upon these professionals' experience, expertise, and standing. Our current hourly rates are in these ranges: partners \$385 - \$1,075; associates \$245 - \$697; and paralegals \$105-335. My rate for this work is \$625/hr. These rates are modified by us from time to time, and any new rates would be implemented immediately after they are adopted and would apply to legal services rendered after the effective date of the new rates which will be reflected on your bill.

ATLANTA BEIJING CHARLOTTE CHICAGO HONG KONG NEW YORK ORANGE COUNTY PORTLAND
RALEIGH
RICHMOND SAN DIEGO SAN FRANCISCO SHANGHAI TYSONS CORNER VIRGINIA BEACH WASHINGTON,
DC

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We believe that our hourly rates are comparable with the rates charged for the same kinds of work by lawyers and other professionals of similar experience, expertise and standing. We try to use associate and paralegal support on projects where appropriate, and we will be happy to discuss the staffing of your project with you.

We will charge for all activities undertaken in providing legal services to you under this Agreement, including but not limited to the following: conferences, including preparation and participation; preparation and review of correspondence and other documents; legal research; court and other appearances; including preparation and participation; and telephone calls, including calls with you, other attorneys or persons involved with this matter, and governmental agencies. The legal personnel assigned to your matter will confer among themselves about the matter, as required. When they do confer, each person will charge for the time expended. Likewise, if more than one of our legal personnel attends a meeting, court hearing or other proceeding, each will charge for the time spent. We will charge for travel time, both local and out of town.

3. Additional Services and Outside Expenditures. Our legal representation may also involve additional services provided by vendors. We will obtain your advance approval before incurring any such additional services on your behalf. You will be required either to pay for these outside additional services directly, or to reimburse us if we make payment for these services on your behalf. We sometimes will make payment for, and then bill you for reimbursement of smaller items such as filing fees, photocopying by outside copying services, electronic discovery services, recording fees, messenger services, service of process, and court fees. When there are substantial expenditures involving vendors (such as for discovery management, document production, depositions, expert witnesses, exhibit preparation, or air fare) or substantial out-of-pocket expenditures (such as extended field expenses, large outside copying jobs, or jury fees), we will require either that you pay those sums to us before we expend them, that you provide an advance deposit for such expenditures, or that you directly contract with and pay the vendor. You will not be billed for any internal Firm costs incurred on your behalf, such as telephone (including long distance charges), telecopy charges, word processing, secretarial overtime, firm couriers, postage (including FedEx, UPS or similar overnight delivery services), printing and photocopying performed in-house.

4. Monthly Statements and Payment Terms. Our practice will be to send a monthly statement of our charges for legal services and for reimbursement of payments made on our client's behalf for outside additional services. The detail in the monthly statement will inform you of the nature and progress of our work and of the charges and expenditures being incurred.

Unless otherwise agreed, each monthly statement is fully due and payable upon receipt, but in no event later than thirty days after its issuance date.

We specifically reserve the right to withdraw from representation of you and to cease performing immediately all services if we do not receive full payment of any amounts owed to us within thirty days of any statement.

5. Withdrawal From Representation. The attorney-client relationship is one of mutual trust and confidence. If you have any questions at all about the provisions of this Agreement, we

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invite your inquiries. We encourage our clients to inquire about any matter relating to our engagement agreements or monthly statements which may be in any way unclear or appear unsatisfactory. If you do not meet your obligation of timely payments or deposits under this Agreement, we reserve the right to withdraw from your representation on that basis alone, subject of course to any required judicial, administrative, or other approvals.

This Agreement is also subject to termination by either party upon reasonable notice for any reason. If there were to be such a termination, however, you would remain liable for all unpaid charges for services provided and expenditures advanced or incurred.

6. Duties Upon Termination of Active Representation. Upon termination of our active involvement in a particular matter for which we had previously been engaged, we will have no further duty to inform you of future developments or changes in law which may be relevant to such matter in which our representation has terminated. Further, unless you and the Firm agree in writing to the contrary, we will have no obligation to monitor renewal or notice dates or similar deadlines which may arise from the matters for which we had been engaged. If your matter involves obtaining a judgment and such judgment is obtained, we will only be responsible for those post judgment services (such as recording abstracts, filing judgment liens, and calendaring renewals of judgments) as are expressly agreed to by you and the Firm in writing and for which you will be obligated to pay.

7. Document Storage Policies. The Firm's policy with regard to documents and other materials at the conclusion of a matter is to maintain them in storage for a period of no more than ten years. All documents and other materials in our file will then be destroyed or discarded without notice to you. Accordingly, if there are any documents or other materials you wish to have retrieved from your file at the conclusion of a matter, it will be necessary for you to advise us of that request to ensure that they are not destroyed.

8. Consent to Electronic Communications. In order to maximize efficiency in this matter, we intend to use state of the art communications devices to the fullest extent possible (e.g., E-Mail, document transfer by computer, cellular telephones, and facsimile transfers). The use of such devices under current technology may place your confidences and privileges at risk. However, we believe the effectiveness involved in the use of these devices outweighs the risk of accidental disclosure. By signing this letter, you acknowledge your consent to the use of these devices.

9. Disclaimer of Guarantee. Nothing in this Agreement should be construed as a promise or guarantee about the outcome of any matter which we are handling on your behalf. Our comments about the outcome of your matter are expressions of opinion only. If we should provide you with an estimate of the fees and costs which may be incurred in connection with our representation of you, it is important that you understand and acknowledge that any such estimate is merely an estimate based on numerous assumptions which may or may not prove to be correct and that any estimate is not a guarantee or agreement of what the maximum amount of fees and/or costs will be.

10. Future Matters. Unless otherwise agreed in writing between us, all other matters referred to us for representation shall be governed by the terms of this Agreement.

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11. Entire Agreement. This Agreement contains all terms of the agreement between us applicable to our representation of you, and may not be modified except by a written agreement signed by both of us.

12. Future Conflict. Our undertaking to represent you in the above matters will not act as a bar so as to prevent us from representing any existing or future client with respect to a claim, litigation or transaction adverse to you, so long as in the course of our representation of you we have not obtained any information that would be adverse to your interests with respect to such claim, litigation or transaction.

13. Client. The Firm's clients for the purpose of our representation are only the persons and entities identified in this Agreement. Unless expressly agreed, we are not undertaking the representation of any related or affiliated person or entity, nor any of their shareholders, partners, officers, directors, agents, or employees.

If this Agreement correctly sets forth your understanding of the scope of the services to be rendered to AVCE by the Firm and if all of the terms set forth in this Agreement are satisfactory, then please sign this Agreement and return it to me so that we will be engaged as your legal counsel. If the scope of services described is incorrect or if the terms set forth are not satisfactory to you, please let us know in order that we can discuss either aspect.

We look forward to working with you and thank you once again for the opportunity to be of service.

Sincerely,

TROUTMAN SANDERS LLP

Stephen C. Hall

I have read and understand the contents of this letter and consent to the Firm representing me on the terms set forth in this letter.

APPLE VALLEY CHOICE ENERGY

Dated: _____, 2016

By: _____
Name: Frank Robinson
Title: Town Manager

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