

**VALLEY CLEAN ENERGY ALLIANCE****Staff Report – Item 10**

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To: Board of Directors

From: Mitch Sears, Executive Officer

Subject: Keyes & Fox – contract amendment for the Demand Flexibility Docket increase

Date: May 9, 2024

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**RECOMMENDATION**

Adopt a resolution authorizing the Executive Officer, in consultation with VCE Legal Counsel, to execute Amendment Seven (7) increasing the total amount not to exceed for the demand flexibility docket by an additional \$37,000 for 2024.

**BACKGROUND & DISCUSSION**

The VCE Board has previously authorized the Executive Officer to execute a contract and subsequent contract extensions with Keyes & Fox LLP for legal services related to regulatory compliance and regulatory advocacy. The original contract expired December 31, 2018 with a not to exceed amount of \$66,667. Subsequently, the following amendments extending the original contract were approved by the Board:

- Amendment 1: on January 23, 2019 (Resolution 2019-001) provided for a term starting January 1, 2019 expiring December 31, 2019 increasing the total amount not to exceed by an additional \$142,600;
- Amendment 2: on February 13, 2020 (Resolution 2020-002) provided for a term starting January 1, 2020 expiring June 30, 2020 increasing the total amount not to exceed by an additional \$88,300;
- Amendment 3: on June 11, 2020 (Resolution 2020-017) provided a term starting July 1, 2020 expiring June 30, 2021 increasing the total amount not to exceed by an additional \$180,800;
- Amendment 4: on June 10, 2021 (Resolution 2021-013) provided a term starting July 1, 2021 expiring June 30, 2022 increasing the total amount not to exceed by an additional \$177,000;
- Amendment 5: on July 14, 2022 (Resolution 2022-019) provided a term starting July 1, 2022 expiring December 31, 2023 increasing the total amount not to exceed by an additional \$287,500.
- Amendment 6: on December 14 2023 (Resolution 2023-015) extended the Keyes & Fox contract one (1) year covering the time period of January 1, 2024 through December 31, 2024 and increased the not to exceed amount by an additional \$278,000, for a total cumulative amount not to exceed of \$1,220,867 since 2018.

The Keyes & Fox contract provides the following scope of services: 1) determine and review regulatory compliance obligations, 2) support VCE staff as its expert regulatory resource and 3) review contracts between VCE and third parties.

In addition to services provided to VCE, Keyes & Fox provides regulatory counsel support to CalCCA and other CCA joint CPUC filings. Since a majority of VCE's advocacy in proceedings before regulators has been through CalCCA since program launch in 2018, the need for substantial amount of regulatory advocacy for VCE by Keyes & Fox is anticipated to be limited at this time. However, VCE requires continued regulatory counsel support for CPUC filings and regulatory activities specific to VCE (e.g. Resource Adequacy filings, Integrated Resource Plan submissions, etc). The scope of Keyes & Fox work for VCE is similar to regulatory counsel work required by all individual CCA's.

The recommended Seventh Amendment Seven (7) increases the total amount not to exceed for the demand flexibility docket by an additional \$37,000 for 2024 related to AgFit expansion regulatory requirements. Accordingly, Exhibits D – Payment have been updated. All other provisions remain unchanged.

#### **FISCAL IMPACT**

Staff will return in June for a summary of all AgFit expansion costs for a general programs budget transfer to current accounted for in VCE's 2024 Budget.

#### **ATTACHMENTS**

1. Resolution 2024-XXX including the following exhibits:
  - a. Seventh (7<sup>th</sup>) Amendment
  - b. Amended Exhibit D - Payment

**VALLEY CLEAN ENERGY ALLIANCE****RESOLUTION NO. 2024-\_\_\_\_\_****A RESOLUTION OF VALLEY CLEAN ENERGY ALLIANCE APPROVING THE SEVENTH (7<sup>TH</sup>) AMENDMENT TO THE KEYES & FOX LLP AGREEMENT FOR REGULATORY COMPLIANCE AND ADVOCACY LEGAL SERVICES AND AUTHORIZING VCE'S EXECUTIVE OFFICER TO EXECUTE THE AMENDMENT**

**WHEREAS**, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

**WHEREAS**, on June 26, 2018 an agreement was entered into between Valley Clean Energy and Keyes & Fox LLP to provide legal services related to regulatory compliance and regulatory advocacy in the amount not to exceed \$66,667, expiring December 31, 2018; and

**WHEREAS**, Keyes & Fox LLP also provides regulatory counsel support to CalCCA and other Community Choice Aggregators on joint California Public Utilities Commission filings; and

**WHEREAS**, on January 23, 2019 Amendment One (1) to the Keyes & Fox LLP agreement was approved extending the term through December 31, 2019, refining the previous scope of services and budget for 2019, and increasing the total amount not to exceed by an additional \$142,600; and,

**WHEREAS**, on February 13, 2020 Amendment Two (2) to the Keyes & Fox LLP agreement was approved extending the term through June 30, 2020 to align the contract from a calendar year to a fiscal year (July – June), increasing the total amount not to exceed by an additional \$88,300, and updating the scope of work and budget consistent with the contract extension; and,

**WHEREAS**, on June 11, 2020 Amendment Three (3) to the Keyes & Fox LLP agreement was approved extending the term through June 30, 2021, revising the scope of service, and increasing the total amount not to exceed by an additional \$180,800; and,

**WHEREAS**, on June 30, 2021 Amendment Four (4) to the Keyes & Fox LLP agreement was approved extending the term through June 30, 2022, revising the scope of services, and increasing the total amount not to exceed by an additional \$177,000; and,

**WHEREAS**, on July 14, 2022 Amendment Five (5) to the Keyes & Fox LLP agreement was approved extending the term eighteen (18) months to expire on December 31, 2023 to align with the

Budget Calendar Year 2023, revising the scope of services, and increasing the total amount not to exceed by an additional \$287,500;

**WHEREAS**, on December 14, 2023 Amendment Six (6) extended the Agreement for one (1) year to expire on December 31, 2024, revises the scope of services, and increases the total amount not to exceed by an additional \$278,000 for 2024, or a total cumulative amount not to exceed of \$1,220,867;

**WHEREAS**, Amendment Seven (7) increases the total amount not to exceed for the demand flexibility docket by an additional \$37,000 for 2024.

**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. Authorizes the VCE Executive Officer, in consultation with VCE Legal General Counsel, to finalize, approve and execute on behalf of VCE the Seventh (7<sup>th</sup>) Amendment to the Keyes & Fox LLC Agreement increasing the total amount not to exceed for the demand flexibility docket by an additional \$37,000 and update the Exhibit D, as set forth in Attachment A – Seventh Amendment to Keys & Fox LLC Agreement, with any clarifying or clerical revisions requested by the Executive Officer and approved by General Counsel.

**PASSED, APPROVED, AND ADOPTED**, at a regular meeting of the Valley Clean Energy Alliance, held on the \_\_\_ day of \_\_\_\_\_ 2024 by the following vote:

AYES:  
 NOES:  
 ABSENT:  
 ABSTAIN:

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Lucas Frerichs, VCE Chair

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Alisa M. Lembke, VCE Board Secretary

**Attachment A:** Seventh (7<sup>th</sup>) Amendment to Keyes & Fox LLC Agreement

**ATTACHMENT A**

**Seventh (7<sup>TH</sup>) AMENDMENT TO KEYES & FOX LLC AGREEMENT**

**SEVENTH AMENDMENT**  
**TO THE AGREEMENT FOR CONSULTANT SERVICES**  
**BETWEEN**  
**VALLEY CLEAN ENERGY ALLIANCE**  
**AND**  
**KEYES & FOX LLP**

**1. Parties and Date.**

This Seventh Amendment to the Consultant Services Agreement (“7<sup>th</sup> Amendment”), is made and entered into as of this [ ] day of May 2024, by and between **Valley Clean Energy Alliance**, a Joint Powers Agency, existing under the laws of the State of California with its principal place of business at 604 2<sup>nd</sup> Street, Davis, California 95616 (“VCE”) and Consultant, **Keyes & Fox LLP**, a Limited Liability Partnership, with its principal place of business at 580 California Street, 12th Floor, San Francisco, California 94104 (“K&F”). VCE and K&F are sometimes individually referred to as “Party” and collectively as “Parties.”

**Recitals.**

1. On June 26, 2018, VCE and K&F entered into an “Agreement for Consultant Services,” for the purpose of retaining K&F to provide services described in the Agreement. The Agreement was for a term starting May 1, 2018, expiring December 31, 2018, for a total amount not to exceed \$66,667.

2. On January 23, 2019, the VCE Board of Directors (“Board”) approved Resolution 2019-001 approving Amendment No. One to that Agreement, which provides for a term starting January 1, 2019, and expiring December 31, 2019, increasing the total amount not to exceed by an additional \$142,600; on February 13, 2020, the Board approved Resolution 2020-002 approving Amendment No. Two to that Agreement, which provides for a term starting January 1, 2020, and expiring June 30, 2020, increasing the total amount not to exceed by an additional \$88,300; on June 11, 2020, the Board approved Resolution 2020-017 approving Amendment No. Three to that Agreement, which provides for a term starting July 1, 2020, and expiring June 30, 2021, increasing the total amount not to exceed by an additional \$180,800; on June 10, 2021, the Board approved Resolution 2021-013 approving Amendment No. Four to that Agreement, which provides for a term starting July 1, 2021, and expiring June 30, 2022, increasing the total amount not to exceed by an additional \$177,000; on July 14, 2022, the VCE Board approved Resolution 2022-019 approving Amendment No. Five extending the term by eighteen months for an expiration date of December 31, 2023, and increased the not to exceed amount by an additional \$287,500; and on December 14, 2023, the VCE Board

approved Resolution 2023-015 approving Amendment No. Six, extending the term by twelve months for an expiration date of December 31, 2024, and increased the not to exceed amount by an additional \$287,500 (collectively referred to as “Agreement”). Cumulatively, the Agreement to date (up to and including Amendment No. 6) provides that the total amount not to exceed is \$1,220,867.

3. VCE and K&F now desire to further amend the Agreement to replace Exhibit D to Amendment No. 6 in its entirety with Exhibit D attached hereto. Such amendment shall increase the not to exceed amount for the Demand Flexibility OIR task from \$45,000 to \$82,000.

**Now therefore**, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Amendment. Exhibits D of the Agreement is hereby replaced in its entirety by the Exhibit D attached hereto, which is incorporated herein.
2. Except as amended by this Seventh Amendment, all other provisions of the Agreement will remain in full force and effect.
3. If any portion of this Seventh Amendment is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

**SIGNATURE PAGE FOR SEVENTH AMENDMENT TO THE AGREEMENT FOR CONSULTANT SERVICES  
BETWEEN VALLEY CLEAN ENERGY ALLIANCE  
AND KEYES & FOX LLP**

IN WITNESS WHEREOF, the Parties have entered into this Seventh Amendment as of the [ ]  
day of May 2024.

VALLEY CLEAN ENERGY ALLIANCE

KEYES & FOX LLP

By: \_\_\_\_\_  
Mitch Sears  
Executive Officer

By: \_\_\_\_\_  
Its: \_\_\_\_\_ Partner

Printed Name: \_\_\_\_\_ Sheridan Pauker

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Inder Khalsa  
VCE Attorney



**EXHIBIT D**

**PAYMENT**

Subject to adjustments necessary for the do-not-exceed levels related to Tasks 1-5 (“Do-Not-Exceed”) below, all work in 2024 will be performed at the hourly billing rates set forth below as “Keyes & Fox LLP 2024 Hourly Rates”. Historically, rate increases have been between 5-8% per year.

Keyes & Fox LLP (“K&F”) will invoice Valley Clean Energy Alliance (“VCE”) monthly. K&F will keep an hourly total of any time spent on VCE matters. K&F invoices will list the matter worked on and provide information on the dates of service, time involved, attorney or other personnel responsible and activity undertaken. Any unpaid amounts after forty-five (45) days will accrue interest at a rate of nine percent (9%) per annum. All fees for services will be earned as of the time of invoicing.

Expenses, travel time, and time for filing and service are included in the fee structure outlined below unless they are associated with “Extra Work” pursuant to Section 4.5 of this Agreement and, in that case, will be billed at cost (for expenses) or at the billable rates below (for time spent travelling, filing and serving).

Services Keyes & Fox LLP Will Provide	Fee Structure
<p><u>Task 1:</u> Maintain a calendar of regulatory compliance filing obligations and deadlines and provide a weekly snapshot highlighting upcoming filing dates and responsibilities. The weekly snapshot includes CPUC, CAISO, CEC, CARB, and U.S. EIA compliance deliverables.</p>	<p>Billed hourly with a Do-Not-Exceed of \$5,500</p>
<p><u>Task 2:</u> Review compliance filings to ensure they are complete and correct prior to filing. A compliance review will be conducted for the following filings: (1) 2023 RPS Compliance Report; (2) Final 2023 and Draft 2024 RPS Procurement Plans; (3) D.19-11-016, D.20-12-044, D.21-06-035, D.23-02-040 and additional reliability procurement compliance requirements and reporting; (4) Power Content Label Review (October 2024); (5) Energy Storage Procurement Tier 2 Advice Letter (January 2024); (6) Emission Performance Standard Advice Letter (February 2024); (7) Supplier Diversity Report (March 2024); (8) Annual report on vehicle-grid integration strategies pursuant to D.20-12-029 (March 2024), (9) Annual Data Privacy Report (April 2024), (10) SB 255/GO 156 Supplier Diversity Report (March 2024), and (11) 2024 Integrated Energy Policy Report Electricity Resource Planning Forms (August/September 2024). Once complete, K&amp;F will submit the above-referenced filings and complete required service to appropriate regulatory authorities on behalf of VCE.</p>	<p>Billed hourly with a Do-Not-Exceed of \$65,000</p>
<p><u>Task 3:</u> Support VCE staff team as its expert regulatory resource by (i) monitoring key regulatory proceedings (as listed in Exhibit A), notifying VCE in a timely manner of issues arising in those proceedings that will critically impact VCE, and attending monthly Board Meetings to explain such issues, if necessary, and (ii) drafting monthly informational memos for the Board of Directors covering the key regulatory proceedings and additional proceedings that may have an impact on VCE’s compliance obligations.</p>	<p>Billed hourly with an annual Do-Not-Exceed of \$33,000</p>
<p><u>Task 4:</u> Review contracts entered between VCE and third parties. PPA negotiations will be billed to separate matters and are not included within this task.</p>	<p>Billed hourly with a Do-Not-Exceed of \$17,000</p>

Services Keyes & Fox LLP Will Provide	Fee Structure
<u>Task 5</u> : 2024 Integrated Resource Plan (IRP) development, drafting, legal review and filing.	Billed hourly with a Do-Not-Exceed of \$40,500
<u>Demand Flexibility OIR</u> : Advocate for the expansion of VCE’s AgFIT pilot in R.22-07-005. Anticipated tasks include: comments and reply comments on Proposed Decision, evidentiary filings, ex parte meetings, coordination with other parties, possible Advice Letter preparation or response to Advice Letter.	Billed hourly with a Do-Not-Exceed of \$82,000
<u>Miscellaneous</u> : Miscellaneous compliance, advocacy, research and analysis tasks not otherwise listed above.	Billed hourly with a Do-Not-Exceed of \$35,000

Note re Regulatory Advocacy: Since the vast majority of VCE’s advocacy in proceedings before regulators is anticipated to be through CalCCA and others, the need for drafting of motions for party status, pleadings, discovery requests or responses thereto, comments related to compliance filings, or Advice Letters; conducting significant legal or policy research; reviewing or providing feedback to VCE on CalCCA or other CCA joint filings; attending CalCCA-related calls other than the monthly regulatory call; or attending hearings, workshops or meetings with regulators is anticipated to be very limited at this time. To the extent VCE requires such work, that work, and any associated expenses, travel, and time spent filing and serving documents, shall be considered “Extra Work” pursuant to Section 4.5 of this Agreement and invoiced at the hourly rates listed herein.

K&F and VCE will review the Do-Not-Exceed amounts set forth above upon a request from either VCE or K&F for such a review. Any changes to the Do-Not-Exceed amounts resulting from such review shall not affect the amount of any fees already earned.

## Keyes & Fox LLP 2024 Hourly Rate Sheet

### Attorneys

<b>Kevin Fox, Partner</b>	580
<b>Sheridan Pauker, Partner</b>	460/490+
<b>Tim Lindl, Partner</b>	450
<b>Jason Keyes, Partner</b>	400
<b>Mark Valentine, Partner</b>	400
<b>Jake Schlesinger, Partner</b>	400
<b>Scott Dunbar, Partner</b>	370
<b>Beren Argetsinger, Partner</b>	335
<b>Nikhil Vijaykar, Partner</b>	380
<b>Theresa Cho, Of Counsel</b>	590
<b>Julia Kantor, Associate</b>	370
<b>Andy Ball, Associate</b>	330
<b>Grant Snyder, Associate</b>	305
<b>Alexandra Haggarty, Associate</b>	370
<b>Alissa Greenwald, Associate</b>	295

### Non-Attorneys

<b>Justin Barnes</b>	230/290*
<b>Miriam Makhyoun</b>	260/290*
<b>Blake Elder</b>	200/240*
<b>Jason Hoyle</b>	180/220*
<b>Alicia Zaloga</b>	130

+ Rates with a plus sign are transactional/compliance rates

\* Rates with an asterisk are expert witness rates

*Travel Policy:* Unless special arrangements are made, travel time is billed at the full hourly rate. Every effort will be made to work productively on VCE matters during travel. If work is performed for another client during travel, VCE will not be billed for that time. All reasonable travel expenses are billable – hotel, airfare, car rental, meals, taxi, public transit, etc.

*Work Policy:* Reasonable time for filing and service is billed at regular billable rates.

*Miscellaneous Expenses Policy:* Expenses for postage, photocopying, printing, faxing and other minor expenses directly related to a matter are billable at cost to VCE.