

# VALLEY CLEAN ENERGY ALLIANCE

## Staff Report – Item 11

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To: Valley Clean Energy Alliance Board of Directors

From: Mitch Sears, Interim General Manager, VCEA

Subject: Keyes & Fox – Contract Amendment

Date: January 23, 2019

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**RECOMMENDATIONS:** Authorize the Interim General Manager, in consultation with VCE Legal Counsel, to amend VCE's existing contract with Keyes & Fox LLP for Regulatory and Legal Services in an amount not to exceed \$142,600.

**BACKGROUND & DISCUSSION:** The VCEA Board has previously authorized the Interim General Manager to execute a contract with Keyes & Fox LLP for legal services related to regulatory compliance and regulatory advocacy for an amount not to exceed \$66,667 that expired December 31, 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 VCEA 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 the vast majority of VCE's advocacy in proceedings before regulators is anticipated through CalCCA during 2019, the need for substantial amount of regulatory advocacy for VCE by Keyes & Fox is anticipated to be very 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. Note: though not a specific line item in the attached scope of work for Keyes and Fox, staff believes experienced regulatory counsel will be critical as VCE and other CCA's determine best course of action in the context of the pending PG&E bankruptcy filing.

The recommended amendment will extend the Keyes & Fox contract to December 31, 2019 and refine the previous scope of services for 2019, for an amount not to exceed \$142,600. All other provisions of the contract remain unchanged. Staff will work with VCE's legal counsel to finalize and execute the recommended amendment.

**FISCAL IMPACT:** The costs associated with the Keyes & Fox contract amendment are accounted for in the VCE's FY 2018/19 Budget approved by the Board at the June 6, 2018 meeting and the projected Proforma costs for 2019/2020.

Costs for the Keyes & Fox contract amendment is a time and materials-based contract not to exceed \$142,600.

### ATTACHMENT

Draft - Amended Exhibit A – Scope of Services  
Draft - Amended Exhibit C – Schedule of Services  
Draft - Amended Exhibit D - Payment

**EXHIBIT A**

**SCOPE OF SERVICES**

**Services Keyes & Fox LLP Will Provide**

Task 1: 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.

Task 2: Review compliance filings after they are prepared by SMUD to ensure they are complete and correct prior to filing. A compliance review will be conducted for the following filings: (1) RPS Compliance Report; (2) RPS Procurement Plan; (3) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (4) Monthly Load Migration Forecast (12 templates total); (5) Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total). Once complete, K&F will submit the (1) RPS Compliance Report and (2) RPS Procurement Plan filings to appropriate regulatory authorities on behalf of VCE.

Task 3: Support VCEA staff team as its expert regulatory resource by (i) participating in California Community Choice Association’s (“CalCCA’s”) weekly regulatory call to keep abreast of positions and activities and informing VCEA of any proceedings that will directly impact VCE in a way that CalCCA is not directly addressing, (ii) monitoring key regulatory proceedings (initial list in Exhibit A), notifying VCEA in a timely manner of issues arising in those proceedings that will critically impact VCEA, and attending monthly Board Meetings to explain such issues, if necessary, and (iii) drafting monthly informational memos for the Board of Directors covering the key regulatory proceedings and additional proceedings that may have an impact on VCEA’s compliance obligations.

Task 4: Review contracts entered between VCEA and SMUD and VCEA and third parties. K&F understands many of the key contracts between VCEA and SMUD have already been executed and that the need for additional contracting with SMUD and third parties will be limited, so K&F proposes setting aside a small portion of the total budget for this item.

An initial list of the key regulatory proceedings at the California Public Utilities Commission discussed above is as follows:

Docket Number	Subject Matter
R.11-05-005	Renewable Portfolio Standard
R.16-02-007	Integrated Resource Planning
R.17-06-005	Power Charge Indifference Adjustment
R.17-09-020	Resource Adequacy
A.17-12-011, <i>et al.</i>	PG&E Rate Design Window Proceeding
A.18-12-009	PG&E Phase I GRC
A.19-06-XXX (TBD)	2020 PG&E Energy Resource and Recovery Account Compliance Proceeding (Filed late February 2019)
A.19-06-XXX (TBD)	2020 PG&E Energy Resource and Recovery Account Forecast Proceeding (Filed June 1, 2018)
R.18-10-007	Utility Wildfire Mitigation Plan
A.18-11-018	PG&E 2019 Rate Design Window
I.15-08-019	PG&E Organization Culture & Governance
A.19-08-XXX (TBD)	PG&E Phase II GRC (c. Aug. 2019)
R.19-XX-XXX (TBD)	IRP Rulemaking (New Docket)
R.19-01-XXX (TBD)	Wildfire Cost Recovery Rulemaking (c. Jan 2019)

Note re Regulatory Advocacy: Since the vast majority of VCEA’s advocacy in proceedings before regulators is anticipated to be through CalCCA and others during 2019, the need for drafting of motions for party status, pleadings, responses to discovery requests, comments related to compliance filings, or Advice Letters; conducting significant legal or policy research; reviewing or providing feedback to VCEA 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. For example, the tasks above do not include responses to discovery requests or the filing of individual VCEA comments in the Power Charge Indifference Adjustment docket (R.17-06-026). To the extent VCEA 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 in Exhibit D.

**EXHIBIT C**

**SCHEDULE OF SERVICES**

The scope of this contract commences on January 1, 2019 and runs through December 31, 2019. The schedule may be extended by mutual agreement in writing by both parties.

EXHIBIT C

## **EXHIBIT D**

### **PAYMENT**

Subject to adjustments necessary for the minimum set fee related to Task 3 and the do-not-exceed levels related to Tasks 1-4 (“Do-Not-Exceed”) below, all work will be performed at the hourly billing rates set forth below as “Keyes & Fox LLP 2019 Hourly Rates”.

Keyes & Fox LLP (“K&F”) will invoice Valley Clean Energy Alliance (“VCEA”) monthly. K&F will keep an hourly total of any time spent on VCEA 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 for 2019 of \$6,600</p>
<p><u>Task 2:</u> Review compliance filings after they are prepared by SMUD to ensure they are complete and correct prior to filing. A compliance review will be conducted for the following filings: (1) RPS Compliance Report; (2) RPS Procurement Plan; (3) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (4) Monthly Load Migration Forecast (12 templates total); (5) Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total). Once complete, K&amp;F will submit the (1) RPS Compliance Report and (2) RPS Procurement Plan filings to appropriate regulatory authorities on behalf of VCE.</p>	<p>Billed hourly with a Do-Not-Exceed for 2019 of \$10,000</p>
<p><u>Task 3:</u> Support VCEA staff team as its expert regulatory resource by (i) participating in California Community Choice Association’s (“CalCCA’s”) weekly regulatory call to keep abreast of positions and activities and informing VCEA of any proceedings that will directly impact VCE in a way that CalCCA is not directly addressing, (ii) monitoring key regulatory proceedings (initial list in Exhibit A), notifying VCEA in a timely manner of issues arising in those proceedings that will critically impact VCEA, and attending monthly Board Meetings to explain such issues, if necessary, and (iii) drafting monthly informational memos for the Board of Directors covering the key regulatory proceedings and additional proceedings that may have an impact on VCEA’s compliance obligations.</p>	<p>\$7,000/month minimum set fee with (a) time spent above the \$7,000 billed hourly and (b) an aggregate Do-Not-Exceed for 2019 for Task 4 of \$115,000</p>

Services Keyes & Fox LLP Will Provide	Fee Structure
<p><u>Task 4</u>: Review contracts entered between VCEA and SMUD and VCEA and third parties. K&amp;F understands many of the key contracts between VCEA and SMUD have already been executed and that the need for additional contracting with SMUD and third parties will be limited, so K&amp;F proposes setting aside a small portion of the total budget for this item.</p>	<p>Billed hourly with a Do-Not-Exceed of \$11,000</p>

Note re Regulatory Advocacy: Since the vast majority of VCEA’s advocacy in proceedings before regulators is anticipated to be through CalCCA and others during 2019, the need for drafting of motions for party status, pleadings, responses to discovery requests, comments related to compliance filings, or Advice Letters; conducting significant legal or policy research; reviewing or providing feedback to VCEA 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. For example, the tasks above do not include responses to discovery requests or the filing of individual VCEA comments in the Power Charge Indifference Adjustment docket (R.17-06-026). To the extent VCEA 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 VCEA will review the Do-Not-Exceed amounts set forth above upon a request from either VCEA 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 2019 Hourly Rates

It is K&F's policy to adjust hourly rates for all personnel at the beginning of the calendar year. Rates quoted here are 2019 rates.

### ATTORNEYS

Kevin Fox	340
Tim Lindl	275
Sheridan Pauker	330
Scott Dunbar	220
Beren Argetsinger	200

### NON-ATTORNEYS

Amanda Vanega	170
Justin Barnes	170
Chelsea Barnes	160
Laurel Passera	140
Ben Inskeep	135
Blake Elder	110
Vanessa Luthringer	90



**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2019- \_\_\_\_\_**

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT ONE (1) TO THE KEYES & FOX LLP CONTRACT AND AUTHORIZING THE VCEA INTERIM GENERAL MANAGER TO EXECUTE THE AGREEMENT UNDER THE TERMS SET FORTH HEREIN**

**WHEREAS**, the Valley Clean Energy Alliance (“VCEA”) is a joint powers authority 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”) and the City of Davis (“Davis”) and the City of Woodland (“City”) (the “JPA Agreement”), to collectively study, promote, develop, conduct, operate and manage energy programs; 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;

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

**WHEREAS**, VCEA and Keyes & Fox negotiated an amendment to the June 26, 2018 agreement that extends the term through December 31, 2019 and refines the previous scope of services for 2019, for an amount not to exceed \$142,600; and,

**NOW, THEREFORE**, the Board of Directors of the Valley Clean Energy Alliance hereby authorizes the VCEA Interim General Manager, in consultation with VCEA Legal Counsel, to finalize, approve and execute on behalf of VCEA the Amendment One (1) to the Agreement in substantial conformance under the terms set forth in this Resolution.

**PASSED, APPROVED, AND ADOPTED**, at a regular meeting of the Valley Clean Energy Alliance, held on the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Tom Stallard, VCEA Chair

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Alisa M. Lembke, VCEA Board Secretary