

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 12**

To: Board of Directors

From: Mitch Sears, Executive Officer

Subject: Keyes & Fox – contract extension for regulatory legal services

Date: December 14, 2023

RECOMMENDATION

Adopt a resolution authorizing the Executive Officer, in consultation with VCE Legal Counsel, to execute an amendment extending VCE's contract with Keyes & Fox LLP for regulatory compliance and advocacy legal services for one (1) year and in an amount not to exceed \$278,000 for FY 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.

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 Sixth Amendment will extend the Keyes & Fox contract one (1) year covering the time period of January 1, 2024 through December 31, 2024 and increase the not to exceed amount by an additional \$278,000, for a total cumulative amount not to exceed of \$1,220,867 since 2018. Accordingly, Exhibits A – Scope of Services, C – Schedule of Services, and D – Payment have been updated. All other provisions remain unchanged.

FISCAL IMPACT

The costs associated with the Keyes & Fox contract extension are accounted for in VCE's Calendar Year (CY) proposed 2024 Budget.

Costs for the Keyes & Fox contract extension is a not to exceed amount of \$278,000 for the time period of January 1, 2024 through December 31, 2024 and is a time and materials-based agreement.

ATTACHMENTS

1. Resolution 2023-XXX including the following exhibits:
 - a. Sixth (6th) Amendment
 - b. Amended Exhibit A – Scope of Services
 - c. Amended Exhibit C – Schedule of Services
 - d. Amended Exhibit D - Payment

VALLEY CLEAN ENERGY ALLIANCE**RESOLUTION NO. 2023- _____****A RESOLUTION OF VALLEY CLEAN ENERGY ALLIANCE APPROVING THE SIXTH (6TH) 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, Amendment Six (6) extends 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 FY 2024, or a total cumulative amount not to exceed of \$1,220,867.

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 Sixth (6th) Amendment to the Keyes & Fox LLC Agreement for regulatory compliance and advocacy legal services attached hereto and incorporated herein extending agreement term for one (1) year effective January 1, 2024 terminating December 31, 2024, and increasing the total amount not to exceed by an additional \$278,000, for a total cumulative not to exceed amount of \$1,220,867, and updating the Exhibits, as set forth in Attachment A – Sixth 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 _____ 2023 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Tom Stallard, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment A: Sixth (6th) Amendment to Keyes & Fox LLC Agreement

ATTACHMENT A

SIXTH (6TH) AMENDMENT TO KEYES & FOX LLC AGREEMENT

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

1. Parties and Date.

This Sixth Amendment to the Consultant Services Agreement (“5th Amendment”), is made and entered into as of this 1st day of January 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 2nd 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 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 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 expiring June 30, 2021 increasing the total amount not to exceed by an additional \$180,800; and, 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 expiring June 30, 2022 increasing the total amount not to exceed by an additional \$177,000 (collectively referred to as “Agreement”). 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.

Cumulatively, the Agreement to date (up to and including Amendment No. 5) provides that the total amount not to exceed is \$942,867.

3. VCE and K&F now desire to further amend the Agreement to extend the term by one (1) year for an expiration date of December 31, 2024 and increase the not to exceed amount by an additional \$278,000, for a total cumulative amount not to exceed of \$1,220,867.

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

3.1. Amendment. Section 1.4 of the Agreement is hereby amended in its entirety to read as follows:

1.4 Term. The term of this Agreement, which began on May 1, 2018 shall end on December 31, 2024, unless amendment as provided in this Agreement, or when terminated as provided in Article 5.

3.2 Amendment. Section 4.1 of the Agreement is hereby amended in its entirety to read as follows:

4.1 Compensation This is a “time and materials” based agreement. Consultant shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement at the rates, in the amounts and at the times set forth in Exhibit D. Notwithstanding the provisions of Exhibit D, the total compensation shall not exceed an additional Two Hundred and Seventy-Eight Thousand and no/100 dollars (\$278,000), or a total cumulative amount of One Million, Two Hundred Twenty Thousand, Eight Hundred and Sixty-Seven and no/100 dollars (\$1,220,867) without written approval of VCE. Extra Work may be authorized, as described below, and if authorized, will be compensated at the rates and manner set forth in this Agreement.

3.3 Amendment. Exhibits A, C and D of the Agreement are hereby replaced in their entirety by the Exhibits A, C and D attached hereto, which are incorporated herein.

4. Except as amended by this Sixth Amendment, all other provisions of the Agreement will remain in full force and effect.

5. If any portion of this Sixth 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 SIXTH 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 Sixth Amendment as of the 1st day
of January 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 A

SCOPE OF SERVICES

| Services Keyes & Fox LLP Will Provide |
|---|
| <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><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), (11) and (11) 2024 Integrated Energy Policy Report Electricity Resource Planning Forms (September 2024). Once complete, K&F will submit the above-referenced filings and complete required service to appropriate regulatory authorities on behalf of VCE.</p> |
| <p><u>Task 3:</u> Support VCE staff team as its expert regulatory resource by (i) monitoring key regulatory proceedings (as listed below), 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><u>Task 4:</u> Review contracts entered between VCE and SMUD and VCE and third parties. PPA negotiations will be billed to separate matters and are not included within this task.</p> |
| <p><u>Task 5:</u> 2024 Integrated Resource Plan (IRP) development, drafting, legal review, and filing.</p> |

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

| Docket Number | Subject Matter |
|--|---|
| R.20-05-003 and successor | Integrated Resource Planning Rulemakings |
| R.17-06-026 | Power Charge Indifference Adjustment Rulemaking |
| R.11-05-005, R.15-02-020, R.18-07-003, and R.24-XX-XXX | RPS Rulemakings |
| A.21-06-021 | PG&E Test Year 2023 Phase I GRC |
| A.24-XX-XXX | PG&E 2023 Phase II GRC (<i>expected 9/30/2024</i>) |
| R.23-03-007 | Wildfire Fund Non-Bypassable Charge (AB 1054) Rulemakings |
| R.19-11-009, R.21-10-002 and R23-10-011 | Resource Adequacy Rulemakings (2021-2022, 2023-2024, and 2025-2026 or equivalent) |
| A.20-06-011 | PG&E Regionalization Application |
| A.23-05-012 and A.24-05-XXX | PG&E Energy Resource and Recovery Account Forecast Proceeding (2023-2025) |
| A.20-02-009, A.22-02-015, A.23-02-018, and A.24-02-XXX | PG&E Energy Resource and Recovery Account Compliance Proceeding (2019-2023) |
| R.21-03-011 | Provider of Last Resort Rulemaking |
| R.21-10-001 | Safety Culture Assessments |
| A.24-03-XXX | Diablo Canyon Power Plant Extended Operations Cost Forecast proceeding |
| R.18-12-006 | Transportation Electrification |
| R.19-01-011 | Building Decarbonization OIR |
| A.22-05-002 et al | PG&E DR Programs, Pilots, and Budgets for 2023-2027 |
| R.19-09-009 | Microgrids OIR |
| R.22-07-005 | Demand Flexibility |
| R.22-10-010 | CCA BioMAT |

| Docket Number | Subject Matter |
|---------------|-------------------------------|
| R.22-11-013 | DER Customer Programs |
| A.22-09-018 | PG&E Asset Transfer |
| 23-LMS-01 | CEC Load Management Standards |

Note Re: Regulatory Advocacy: Since the vast majority of VCE’s advocacy in proceedings before regulators is anticipated to be through CalCCA and others during 2022-23, 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 in Exhibit D.

EXHIBIT C

SCHEDULE OF SERVICES

The scope of this contract commences on January 1, 2024 and terminates December 31, 2024. The schedule may be extended by mutual agreement in writing by both parties.

EXHIBIT C

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&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 \$70,000</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 \$45,000 |
| <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

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

Non-Attorneys

| | |
|------------------------|----------|
| Justin Barnes | 230/290* |
| Miriam Makhyoun | 260/290* |
| Blake Elder | 200/240* |
| Jason Hoyle | 180/220* |
| Alicia Zaloga | 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.