

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 13

To: Board of Directors

From: Mitch Sears, Interim General Manager

Subject: Keyes & Fox – Contract Extension

Date: June 10, 2021

RECOMMENDATION

Adopt a resolution authorizing the Interim General Manager, in consultation with VCE Legal Counsel, to execute an amendment extending VCE's existing contract with Keyes & Fox LLP for Regulatory and Legal Services in an amount not to exceed \$177,000.

BACKGROUND & DISCUSSION

The VCE Board has previously authorized the Interim General Manager to execute a contract and subsequent contract extension with Keyes & Fox LLP for legal services related to regulatory compliance and regulatory advocacy. The original contract expired December 31, 2018 and the extension is set to expire June 30, 2021.

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 amendment will extend the Keyes & Fox contract one year to June 30, 2022. Several additional CPUC proceedings (e.g. Annual report on vehicle-grid integration strategies pursuant to a recent CPUC decision), have been added to the recommended contract renewal adding less than \$7,500 total to the contract cost. All other provisions of the contract remain unchanged.

FISCAL IMPACT

The costs associated with the Keyes & Fox contract extension are accounted for in VCE's proposed FY

2021/22 Budget scheduled for Board consideration at this meeting (June 10, 2021).

Costs for the Keyes & Fox contract extension is a time and materials-based contract not to exceed \$177,000.

ATTACHMENTS

1. Resolution including the following exhibits:
 - a. Contract Extension
 - b. Amended Exhibit A – Scope of Services
 - c. Amended Exhibit C – Schedule of Services
 - d. Amended Exhibit D - Payment

AMENDMENT NO. FOUR (4)
TO THE AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
VALLEY CLEAN ENERGY ALLIANCE
AND
KEYES & FOX LLP

1. Parties and Date.

This Amendment No. Four (4) to the Agreement for Consultant Services is made and entered into as of this 30th day of June, 2021 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 (“VCEA”) and Keyes & Fox LLP, a Limited Liability Partnership with its principal place of business at 580 California St., 12th Floor San Francisco, California 94104 (“K&F”). VCEA and K&F are sometimes individually referred to as “Party” and collectively as “Parties.”

2. Recitals.

2.1 Keyes & Fox LLP. VCEA and K&F have entered into an agreement entitled “Agreement for Consultant Services” dated June 26, 2018 for the purpose of retaining K&F to provide the services described in the Agreement, Amendment No. One to that Agreement dated February 6, 2019, Amendment No. Two to that Agreement dated December 31, 2019 and Amendment No. Three to that Agreement dated June 30, 2020. (collectively referred to as “Agreement”)

2.2 Amendment Purpose. VCEA and K&F desire to amend the Agreement to extend the Agreement for an additional twelve months to expire on June 30, 2022 and, therefore, to revise the scope of services, and provide the not-to-exceed compensation amount for the additional twelve (12) months.

2.3 Amendment Authority. This Amendment No. Four (4) is authorized pursuant to Section 6.10 of the Agreement.

3. Terms.

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, as amended, shall begin on July 1, 2021

and shall end on June 30, 2022, unless amended as provided in the 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 one hundred seventy seven thousand and no/100 dollars (\$177,000) without written approval of VCEA. 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.

3.4 Continuing Effect of Agreement. Except as amended by this Amendment No. Four (4), all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. Four (4). From and after the date of this Amendment No. Four (4), whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. Four (4).

3.5 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. Four(4).

3.6 Severability. If any portion of this Amendment No. Four (4) 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. FOUR (4) TO THE AGREEMENT FOR
CONSULTANT SERVICES
BETWEEN VALLEY CLEAN ENERGY ALLIANCE
AND KEYES & FOX LLP**

IN WITNESS WHEREOF, the Parties have entered into this Amendment No. Four (4) as of the 30th day of June 2021.

VALLEY CLEAN ENERGY ALLIANCE

KEYES & FOX LLP

By: _____
Mitch Sears
Interim General Manager

By: _____
Its: _____ Partner

Printed Name: _____ Sheridan Pauker

APPROVED AS TO FORM:

By: _____
Harriet Steiner
VCEA Attorney

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) 2020 RPS Compliance Report; (2) 2021 and 2022 RPS Procurement Plans; (3) D.19-11-016 and additional mid-term procurement compliance requirements and reporting; (4) 2022 IRP preparation; (5) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (6) Monthly Load Migration Forecast (12 templates total); (7) Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total); (8) Power Content Label Audit (October 2021); (9) Energy Storage Procurement Tier 2 Advice Letter (January 2022); (10) Emission Performance Standard Advice Letter (February 2022); (11) Supplier Diversity Report (March 2022); and (12) Annual report on vehicle-grid integration strategies pursuant to D.20-12-029 (March 2022). Once complete, K&F will submit the above-referenced filings and complete required service, as well as filing and serving the Annual Data Privacy Report (April 2022)¹ to appropriate regulatory authorities on behalf of VCE.

Task 3: Support VCEA staff team as its expert regulatory resource by (i) 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 (ii) 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. PPA negotiations will be billed to separate matters and are not included within this task.

¹ There is a 3-year audit due in April 2022, however, EQ/K&F's involvement would likely be restricted to filing/service only. This audit requires IT specialization that EQ/K&F does not have.

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

Docket Number	Subject Matter
I.15-08-019	Investigation into PG&E Organization, Culture & Governance
R.16-02-007 and R.20-05-003	Integrated Resource Planning Rulemakings
R.17-06-026	Power Charge Indifference Adjustment Rulemaking
R.20-11-003	Ensuring Summer 2021 Reliability Rulemaking
R.11-05-005, R.15-02-020, and R.18-07-003	RPS Rulemakings
A.18-12-009	PG&E Test Year 2020 Phase I GRC
A.19-11-019	PG&E 2020 Phase II GRC
A.21-06-XXX	PG&E Test Year 2023 Phase I GRC
A.XX-XX-XXX	PG&E 2023 Phase II GRC (<i>filing date TBD, likely in 2022</i>)
R.19-01-006	Wildfire Cost Recovery Methodology Rulemaking
R.19-03-009	Direct Access Rulemaking
R.19-07-017 and R.21-03-001	Wildfire Fund Non-Bypassable Charge (AB 1054) Rulemakings
R.17-09-020 and R.19-11-009	Resource Adequacy Rulemakings (2021-2022)
A.20-06-011	PG&E Regionalization Application
A.21-06-XXX (TBD)	2022 PG&E Energy Resource and Recovery Account Forecast Proceeding (filed June 1, 2021)
A.21-03-008	2020 PG&E Energy Resource and Recovery Account Compliance Proceeding
R.21-03-011	Rulemaking on Provider of Last Resort

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 2020, 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 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. 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 July 1, 2021 and runs through June 30, 2022.
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 in 2021 will be performed at the hourly billing rates set forth below as “Keyes & Fox LLP 2021 Hourly Rates”. Historically, rate increases have been between 5-8% per year.

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 of \$4,500</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) 2020 RPS Compliance Report; (2) 2021 and 2022 RPS Procurement Plans; (3) D.19-11-016 and additional mid-term procurement compliance requirements and reporting; (4) 2022 IRP preparation; (5) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (6) Monthly Load Migration Forecast (12 templates total); (7) Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total); (8) Power Content Label Audit (October 2021); (9) Energy Storage Procurement Tier 2 Advice Letter (January 2022); (10) Emission Performance Standard Advice Letter (February 2022); (11) Supplier Diversity Report (March 2022); and (12) Annual report on vehicle-grid integration strategies pursuant to D.20-12-029 (March 2022). Once complete, K&F will submit the above-referenced filings and complete required service, as well as filing and serving the Annual Data Privacy Report (April 2022) ¹ to appropriate regulatory authorities on behalf of VCE.</p>	<p>Billed hourly with a Do-Not-Exceed of \$72,000</p>

¹ There is a 3-year audit due in April 2022, however, EQ/K&F's involvement would likely be restricted to filing/service only. This audit requires IT specialization that EQ/K&F does not have.

Services Keyes & Fox LLP Will Provide	Fee Structure
<p><u>Task 3:</u> Support VCEA staff team as its expert regulatory resource by (i) 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 (ii) 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>Billed hourly with an annual Do-Not-Exceed of \$70,000</p>
<p><u>Task 4:</u> 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. 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 \$10,000</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, 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 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. 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 2021 Hourly Rate Sheet

Attorneys

Kevin Fox, Partner	395
Sheridan Pauker, Partner	350/385+
Tim Lindl, Partner	320
Jake Schlesinger, Partner	295
Scott Dunbar, Partner	260
Ann Springgate, Of Counsel	295
Caryn Lai, Counsel	320
Lilly McKenna, Associate	265
Julia Kantor, Associate	245
Lee Ewing, Associate	245
Beren Argetsinger, Associate	225
Melissa Birchard, Associate	235

Non-Attorneys

Justin Barnes	185/265*
Miriam Makhyoun	190/255*
Ben Inskeep	150/205*
Blake Elder	125
Vannessa Luthringer	100
Alicia Zaloga	95

+ 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 PCE matters during travel. If work is performed for another client during travel, PCE 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 PCE.

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2021- _____

A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT FOUR (4) TO THE KEYES & FOX LLP AGREEMENT FOR REGULATORY COMPLIANCE AND ADVOCACY LEGAL SERVICES AND AUTHORIZING THE VCE INTERIM GENERAL MANAGER TO EXECUTE THE AMENDMENT

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, 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 and refining the previous scope of services and budget for 2019; 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) and updated the scope of work and budget consistent with the contract extension; and,

WHEREAS, on June 11, 2020 Amendment Three (3) to the Keys & Fox LLP agreement was approved extending the term through June 30, 2021, revising the scope of service, and setting a not exceed amount of \$180,000; and,

WHEREAS, Amendment Four (4) extends the Agreement for another year to expire June 30, 2022, revises the scope of service, and sets a not exceed amount of \$180,800.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance hereby authorizes the VCE Interim General Manager, in consultation with VCE Legal General Counsel, to finalize, approve and execute on behalf of VCE Amendment Four (4) to the Keyes & Fox LLC Agreement for regulatory legal services modifying the terms and not to exceed amount as set forth in the attached Exhibit A - Amendment Four (4) to Keyes & Fox LLC Agreement.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ____ day of _____ 2021 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Don Saylor, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachment: Exhibit A - Amendment Four (4) to Keyes & Fox LLC Agreement

Exhibit A

Amendment Four (4) to Keyes & Fox LLC Agreement