

## VALLEY CLEAN ENERGY ALLIANCE

### Staff Report – Item 12

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**TO:** Valley Clean Energy Alliance Board of Directors

**FROM:** Mitch Sears, Interim General Manager

**SUBJECT:** Legal Services – Contract Amendment for Regulatory Legal Services

**DATE:** February 13, 2020

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#### **RECOMMENDATION**

Adopt a resolution approving an amendment to the legal services agreement with Keyes and Fox for regulatory legal services modifying the terms and timing of the agreement.

#### **BACKGROUND and ANALYSIS**

Valley Clean Energy (VCE), engaged Keyes and Fox (K&F) to provide regulatory legal services in June 2018. The original contract was structured on a calendar year basis through the end of 2019. As with other service contracts, staff is attempting to align them with the fiscal year calendar (July - June), to ease administration and budgetary planning for VCE. In discussions with K&F in late 2019 regarding contract renewal, staff proposed and K&F accepted the concept of a contract extension to June 30, 2020 to align with the fiscal year.

The attached contract amendments provide for this extension with an updated scope of work to include the regulatory filings and CPUC activities that are scheduled for the first half of 2020 (Attachment 3, Scope of Services). The “not to exceed” amounts for the existing scope of work tasks are also reset to account for the additional 6 months of the revised contract (Jan – June 2020). Additionally, the amendments include a cost of living based increase to rates at an average of 5-6% over the 2019 K&F rates (Attachment 5, pg4 – Payment/Rates).

The amendment to the K&F rate schedule and corresponding “not to exceed” amounts for tasks contained in the amended scope of work are within the current fiscal year budget for regulatory legal services (FY 19/20). Note, K&F is performing minor tasks related to PG&E bankruptcy monitoring at the CPUC. As directed by the Board, legal services activities related to the PG&E bankruptcy are accounted for in VCE’s contingency budget for this fiscal year.

#### **CONCLUSION**

The proposed amendments are necessary for VCE’s continuing regulatory compliance activities and staff is recommending approval of the amendments because the rates are competitive with the market, the services delivered continue to be of high quality, and that this action will allow VCE to simplify administration by aligning contracts with VCE’s fiscal year calendar. Therefore,

staff is recommending that the Board approve the modifications included in the attached contract amendments with K&F.

**ATTACHMENTS**

1. Resolution
2. Legal Services Agreement Amendment – K&F
3. Legal Services Agreement Amendment – Exhibit A (Scope of Services)
4. Legal Services Agreement Amendment – Exhibit C (Schedule of Services)
5. Legal Services Agreement Amendment – Exhibit D (Payment and Rates)

Note: no changes are proposed to contract exhibit B.

**VALLEY CLEAN ENERGY ALLIANCE**

**RESOLUTION NO. 2020- \_\_\_\_\_**

**A RESOLUTION OF THE VALLEY CLEAN ENERGY ALLIANCE APPROVING AMENDMENT TWO (2) 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**, the Valley Clean Energy Alliance (“VCE”) is a joint powers agency 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”), the City of Davis (“Davis”), the City of Woodland and the City of Winters (“Cities”) (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, 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**, to align the contract from a calendar year to a fiscal year (July – June) to ease administration and budgetary planning for VCE, in late 2019, staff proposed and Keyes & Fox LLC accepted the concept of a contract extension to June 30, 2020 to align with the fiscal year; and,

**WHEREAS**, in addition to the contract time extension to align with VCE’s fiscal year, the scope of work and budgeted amounts have been updated to be consistent with the contract extension.

**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 Two (2) to the Keyes & Fox LLC Agreement for regulatory legal services modifying the terms and time of the agreement as set forth in the attached Exhibit A - Amendment Two (2) to Keyes & Fox LLC Agreement.

**PASSED, APPROVED, AND ADOPTED**, at a regular meeting of the Valley Clean Energy Alliance, held on the \_\_\_ day of \_\_\_\_\_ 2020 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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Don Saylor, VCE Chair

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Alisa M. Lembke, VCE Board Secretary

Attachment: Exhibit A - Amendment Two (2) to Keyes & Fox LLC Agreement

## **Exhibit A**

**Amendment Two (2) to Keyes & Fox LLC Agreement**

**AMENDMENT NO. TWO (2)**  
**TO THE AGREEMENT FOR CONSULTANT SERVICES**  
**BETWEEN**  
**VALLEY CLEAN ENERGY ALLIANCE**  
**AND**  
**KEYES & FOX LLP**

**1. Parties and Date.**

This Amendment No. Two (2) to the ~~Consultant Services~~ Agreement for Consultant Services is made and entered into as of this ~~31st~~<sup>6th</sup> day of January 20~~19~~<sup>20</sup>, 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 (“VCEA”) and Keyes & Fox LLP, a Limited Liability Partnership with its principal place of business at 580 California St., 12<sup>th</sup> Floor San Francisco, California 94104 ~~436 14<sup>th</sup> Street, Suite 1305, Oakland, California 94612~~ (“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 and Amendment No. One to that Agreement dated February 6, 2019. (“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 six months to expire on June 30, 2020 and, therefore, to revise the scope of services, and provide the not-to-exceed compensation amount for the additional six (6) months.

2.3 Amendment Authority. This Amendment No. Two (2) 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 January 1, 2020 and shall end on June 30, 2020, 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 ~~eighty-eight one hundred forty two~~ thousand ~~threesix~~ hundred and no/100 dollars (\$~~88142,360~~0) 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. Two (2), all other provisions of the Agreement remain in full force and effect and shall govern the actions of the parties under this Amendment No. Two (2). From and after the date of this Amendment No. Two (2), whenever the term “Agreement” appears in the Agreement, it shall mean the Agreement as amended by this Amendment No. Two (2).

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. Two (2).

3.6 Severability. If any portion of this Amendment No. Two (2) 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. ONE (1) 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. ~~TWO (2)ONE~~  
(1) as of the ~~31st~~<sup>6<sup>th</sup></sup> day of ~~January, February~~ 2019.

VALLEY CLEAN ENERGY ALLIANCE

KEYES & FOX LLP

By: \_\_\_\_\_  
Mitch Sears  
Interim General Manager

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

~~J. Lindl~~ \_\_\_\_\_

Printed Name: \_\_\_\_\_ ~~Sheridan Pauker~~ ~~Timothy~~

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) RPS Compliance Report; (2) Revised 2019 RPS Procurement Plan; (23) 2020 RPS Procurement Plan; (4) 2020 IRP; (35) Month-Ahead Resource Adequacy (RA) templates (12 templates total); (46) Monthly Load Migration Forecast (12 templates total); (57) 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 and (3) IRP 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 <a href="#">Rulemaking</a>
<a href="#">I.15-08-019</a>	<a href="#">Investigation into PG&amp;E Organization, Culture &amp; Governance</a>
R.16-02-007	Integrated Resource Planning <a href="#">Rulemaking</a>
R.17-06- <del>02605</del>	Power Charge Indifference Adjustment <a href="#">Rulemaking</a>
R.17-09-020	Resource Adequacy <a href="#">Rulemaking (2019 – 2020)</a>
A.17-12-011, <i>et al.</i>	PG&E Rate Design Window Proceeding
<a href="#">R.18-07-003</a>	<a href="#">RPS Rulemaking</a>
A.18-12-009	PG&E Phase I GRC
<del>A.19-06-XXX (TBD)</del>	<del>2020 PG&amp;E Energy Resource and Recovery Account Compliance Proceeding (Filed late February 2019)</del>
<a href="#">R.19-01-006</a>	<a href="#">Wildfire Cost Recovery Methodology Rulemaking</a>
<a href="#">A.19-02-018</a>	<a href="#">2018 PG&amp;E Energy Resource and Recovery Account Compliance Proceeding</a>
<a href="#">R.19-03-009</a>	<a href="#">Direct Access Rulemaking</a>
A.19-06- <del>001XXX</del> (TBD)	2020 PG&E Energy Resource and Recovery Account Forecast Proceeding ( <del>Filed June 1, 2018</del> )
<a href="#">I.19-06-015</a>	<a href="#">Investigation into PG&amp;E Violations Related to Wildfires</a>
<del>R.18-10-007</del>	<del>Utility Wildfire Mitigation Plan</del>
<del>A.18-11-018</del>	<del>PG&amp;E 2019 Rate Design Window</del>
<del>I.15-08-019</del>	<del>PG&amp;E Organization Culture &amp; Governance</del>
<del>A.19-08-XXX (TBD)</del>	<del>PG&amp;E Phase II GRC (c. Aug. 2019)</del>
<del>R.19-XX-XXX (TBD)</del>	<del>IRP Rulemaking (New Docket)</del>
<del>R.19-01-XXX (TBD)</del>	<del>Wildfire Cost Recovery Rulemaking (c. Jan 2019)</del>
<a href="#">R.19-07-017</a>	<a href="#">Wildfire Fund Non-Bypassable Charge (AB 1054) Rulemaking</a>
<a href="#">I.19-09-016</a>	<a href="#">Investigation of PG&amp;E Bankruptcy Plan</a>
<a href="#">R.19-11-009</a>	<a href="#">Resource Adequacy Rulemaking (2021-2022)</a>
<a href="#">A.19-11-019</a>	<a href="#">PG&amp;E Phase II GRC</a>
<a href="#">R.20-XX-XXX (TBD)</a>	<a href="#">IRP Rulemaking (New Docket)</a>
<a href="#">A.20-XX-XXX (TBD)</a>	<a href="#">2021 PG&amp;E Energy Resource and Recovery Account Forecast Proceeding (c. February 2020)</a>

Docket Number	Subject Matter
<u>A.20-XX-XXX (TBD)</u>	<u>2019 PG&amp;E Energy Resource and Recovery Account Compliance Proceeding (c. June 2020)</u>

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~~2019, the need for drafting of motions for party status, pleadings, ~~responses to~~ 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. For example, the tasks above do not include the drafting of testimony, reply testimony, briefs or hearing attendance in the PG&E Bankruptcy OII docket (I.19-09-016)~~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, 202019 and runs through June 30~~December 31~~, 202019. 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 20~~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 <u>Q1 and Q2</u> 2019 of <del>\$36,360</del></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; <u>(2) Revised 2019 RPS Procurement Plan; (3) 2020 RPS Procurement Plan; (4) 2020 IRP(2) RPS Procurement Plan;</u> <del>(53)</del> Month-Ahead Resource Adequacy (RA) templates (12 templates total); <del>(64)</del> Monthly Load Migration Forecast (12 templates total); <del>(75)</del> Year-Ahead System, Local and Flexible RAR compliance showing (6 templates total). Once complete, K&amp;F will submit the (1) RPS Compliance Report <del>and</del> (2) RPS Procurement Plan <u>and (3) IRP</u> filings to appropriate regulatory authorities on behalf of VCE.</p>	<p>Billed hourly with a Do-Not-Exceed for <u>Q1 and Q2 of 2020</u> of <del>\$240,000</del></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><del>\$67,000</del>/month minimum set fee with (a) time spent above the <del>\$67,000</del> billed hourly and (b) an aggregate Do-Not-Exceed for <u>Q1 and Q2 of 2020</u> for Task 4 of <del>\$60115,000</del></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 <u>for Q1 and Q2 of 2020 of \$511,000</u></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 202019, the need for drafting of motions for party status, pleadings, ~~responses to~~ 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. For example, the tasks above do not include the drafting of testimony, reply testimony, briefs or hearing attendance ~~responses to discovery requests or the filing of individual VCEA comments~~ in the PG&E Bankruptcy Oil Power Charge Indifference Adjustment docket (IR.197-096-0126). 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 2020 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 2020 rates.

### ATTORNEYS

<u>Kevin Fox</u>	<u>360</u>
<u>Tim Lindl</u>	<u>295</u>
<u>Sheridan Pauker</u>	<u>350*</u>
<u>Scott Dunbar</u>	<u>245</u>
<u>Julia Kantor</u>	<u>225</u>
<u>Melissa Birchard</u>	<u>220</u>
<u>Beren Argetsinger</u>	<u>210</u>

\*\$385 for compliance/transactional matters

### NON-ATTORNEYS

<u>Miriam Makhyoun</u>	<u>185/260**</u>
<u>Amanda Vanega</u>	<u>180</u>
<u>Justin Barnes</u>	<u>180/260**</u>
<u>Charlie Coggeshall</u>	<u>180</u>
<u>Ben Inskeep</u>	<u>145/200**</u>
<u>Blake Elder</u>	<u>120</u>
<u>Vanessa Luthringer</u>	<u>95</u>
<u>Alicia Zaloga</u>	<u>90</u>

\*\* expert witness rates

### ATTORNEYS

<u>Kevin Fox</u>	<u>340</u>
<u>Tim Lindl</u>	<u>275</u>
<u>Sheridan Pauker</u>	<u>330</u>
<u>Scott Dunbar</u>	<u>220</u>
<u>Beren Argetsinger</u>	<u>200</u>

### NON-ATTORNEYS

<u>Amanda Vanega</u>	<u>170</u>
<u>Justin Barnes</u>	<u>170</u>

<b>Chelsea Barnes</b>	<b>160</b>
<b>Laurel Passera</b>	<b>140</b>
<b>Ben Inskeep</b>	<b>135</b>
<b>Blake Elder</b>	<b>110</b>
<b>Vanessa Luthringer</b>	<b>90</b>