

Staff Report – Item 4

To: The Governing Board

From: Inder Khalsa, General Counsel
Donald Eckert, Executive Director

Item 4: **Authorize staff to notice member agencies and proceed with adopting the Second Amended and Restated Joint Powers Agreement for Pioneer Community Energy with any changes requested by the Governing Board.**

Date: 11/16/2023

RECOMMENDATION

Authorize staff to notice member agencies and proceed with adopting the Second Amended and Restated Joint Powers Agreement for Pioneer Community Energy with any changes requested by the Governing Board.

BACKGROUND

In 2015, the Placer County and the City of Colfax entered into a Joint Powers Agreement (JPA) for the purpose of establishing the Sierra Valley Energy Authority to operate a PACE program. In 2017, the JPA was amended and restated to rename the agency Pioneer Community Energy, create a community choice aggregation program, and add the cities of Auburn, Lincoln, Rocklin, and the Town of Loomis as member agencies. Since then, that First Amended and Restated JPA has been amended five times to make minor text changes and add new members.

At the October 19, 2023, meeting, the General Counsel provided a presentation to the Governing Board regarding the desirability of adopting a Second Amended and Restated JPA. The Governing Board directed General Counsel to prepare a draft Second Amended and Restated JPA for Board consideration and discussion. The Board provided direction that amendments to the JPA for
The General Counsel is now seeking input and direction from the Board with respect to the draft Second Amended and Restated JPA and initiation of the formal amendment process.

ANALYSIS & DISCUSSION

As shown in the attached redline showing changes proposed to the First Amended and Restated Agreement, the proposed Second Amended and Restated JPA would make the following revisions and changes to the JPA:

- **Name.** Change name of agency to Pioneer Community Energy throughout (this was legally effectuated by a resolution adopted in 2017 but references to Sierra Valley Energy Authority remained in the First Amended and Restated); likewise changed references to "the Authority" to "Pioneer" for ease of reading.
- **Recitals.** Update recitals to reflect history of Pioneer and subsequent amendments.
- **Effective date.** Revise effective date to reflect Second Amended and Restated.
- **Exhibit A for List of Members.** Remove references to specific member agencies in Sections 2 and 5 and of the JPA, moving the list of the members to a new Exhibit A for easier reference and updating.
- **Special Voting Requirements.** Revise Section 8 to separate the discussion of involuntary termination of a member from the discussion of general amendments to the JPA. We moved but did not change the requirement that amendments of the JPA require a 2/3 vote of the Governing Board.

- **Amendments.** Revise Section 19, Amendments, to specify that only amendments to Section 4, Powers, and the addition of new member agencies requires approval by separate resolutions of each of the member agencies and to make other changes to streamline the amendment process.
- **Satisfied/completed obligations.** Revise sections that have now been completed to indicate they are satisfied (for example, Section 9E, which describes the provision of start-up funding by Placer County).
- **Clean-up.** Fix incorrect cross references, revise confusing references and typos.

The bulk of the changes proposed are clarifying or clerical in nature. Adopting a clearer Second Amended and Restated JPA will provide the public, staff, and legal counsel with a clearer reference document for questions of governance, eliminating the need to check amendments (at least in the near term). It also provides an opportunity to correct or eliminate outdated references, resulting in a document that is easier to understand.

The primary substantive proposed change to the JPA is to Section 19, Amendment. Currently, notice of proposed amendments must be sent to each member agency 30 days in advance of the Board considering the amendment. A two-thirds majority of the Board is required to approve an amendment. Further, the amendment must be approved by separate resolution of each of the member agencies, and finally, notice must be provided to members after the amendment is final.

Staff recommends that the amendment process be simplified for amendments that do not directly impact the member agencies or change the nature of Pioneer or its powers. Based on direction received at the October 19 Governing Board meeting, the attached draft would provide a different amendment process for amendments to Section 4 (Powers) and amendments to add a new party to the JPA. For those amendments, separate resolutions of each member agency would be required.

All other amendments could be approved by the Board with a two-thirds vote, with notice provided to the member agencies 30 days prior and after the action. Individual member agency approval by resolution would not be required. This is intended to allow amendments that are more internal in nature (affecting board membership, basic governance, etc.) to proceed with solely a Board vote. That said, member agencies would be given notice and the opportunity to object to any proposed amendment.

STRATEGIC PLAN

The recommendation supports the Operational Excellence priority.

FISCAL IMPACT

The proposed Second Amended and Restated JPA will not have any direct fiscal impact beyond the time of staff and General Counsel to process the amendment.

ATTACHMENTS

1. Draft Second Amended and Restated JPA
2. Redline showing changes made between the First and Second Amended and Restated JPA (as amended by Amendments 1-5).