

Staff Report – Item 4

To: The Governing Board

From: Patrick Enright, General Counsel
Don Eckert, Executive Director

Item 4: **Adopt Resolution of the Governing Board of Pioneer Community Energy Approving the Revised Second Amended and Restated Joint Powers Agreement for Pioneer Community Energy**

Date: 6/20/2024

RECOMMENDATION

Adopt a Resolution of the Governing Board of Pioneer Community Energy Approving the Revised Second Amended and Restated Joint Powers Agreement (hereinafter "**Revised JPA**") for Pioneer Community Energy with any changes requested by the Governing Body.

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.

On November 16, 2023, the Governing Board considered the Second Amended and Restated JPA and authorized staff to give thirty (30) days-notice to each member agency and proceed with the formal amendment process. Since the thirty (30) days has been provide and the Revised JPA is a continuation of the process to amend the JPA per comments from Board Agencies, there is no requirement to provide an additional thirty (30) days prior to the Governing Board approving the Revised JPA.

At the January 18, 2024 meeting, the Board of Directors approved the Second Amended and Restated Joint Powers Agreement (hereinafter "**Second JPA**"). Any amendment to the JPA requires a vote of all Board Members. Pioneer forwarded the Revised JPA to each of the Members. All of the Board Members have adopted Resolutions to approve the Revised JPA except for the Town of Loomis ("Loomis") and the City of Rocklin ("Rocklin").

The proposed Second JPA made 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 were clarifying or clerical in nature. The primary substantive proposed change to the Second JPA was to Section 19. Currently, notice of a proposed amendment 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.

The Second JPA approved by the Board of Directors on January 18, 2024, simplified the amendment process that do not directly impact the member agencies or change the nature of Pioneer or its powers. The Second JPA provided a simplified process for amendments except for amendments to Section 4 (Powers) and amendments to add a new party to the JPA. For all amendments, except for section 14 and to add a new member, the Second JPA may be amended by a 2/3 vote of the Board of Directors. There is no longer a requirement for each member agency to approve by resolution the amendments to the JPA. For those amendments to section 4 and to add a new member, there was still the requirement for a separate resolution of each member agency to amend the JPA.

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 thirty (30) days written notice and an opportunity to object to any proposed amendment.

Status of Approval of Second Amended and Restated Joint Powers Agreement

All Members Agencies approved the Second JPA except for Loomis and Rocklin. Loomis and Rocklin have different concerns, but the concerns revolved around the amendment to section 19 of the Second JPA that eliminated the requirement for most amendments to the JPA to be approved by resolution of each of the Member Agencies.

To address these concerns, Loomis proposed three options that greatly expand the amendments that need approval by resolution of all of the Board Agencies or do increase the time for Member Agencies to have to consider any amendments before the Pioneer Board of Directors approve any amendments, Staff after meeting with Loomis representatives is recommending that prior to the Board approving any amendment that each Member Agencies receive at forty-five (45) days written note, which is an increase from thirty (30) days. Loomis had request sixty (60) days, but is agreeable to forty-five (45) days. This also addresses Loomis' concern that their Council only meets once a month and give the Town Council an opportunity to comment before any proposed amendment. Please attached a copy of the options that Loomis proposed for modifying the Second JPA.

Rocklin is requesting that Section 19 be amended to include section 14.A and B concerning the withdrawal of members from the JPA. Therefore, any amendment to section 14.A and B will require a resolution of approval from each of the Member Agencies.

ANALYSIS & DISCUSSION

Staff had discussions with representatives from Loomis and Rocklin and proposes the following modifications to the Second Amended and Restated Joint Powers Agreement as originally adopted by the Board of Directors in January.

- **Amendments.** Revise Section 19, Amendments, to specify that besides amendments to Section 4, Powers, and the addition of new member agencies, that a unanimous vote of all of the members agencies is required to amend section 14.A and B of the JPA addressing withdrawals from the JPA. Any changes to Sections 4, 14.A and B and adding a new member will require approval by separate resolutions of each of the member agencies and to make other changes to streamline the amendment process.
- **Expand Notice Requirement.** Revise section 19 to require at least 45 days' notice to all Members of any proposed amendments to the JPA. This is an increase from thirty (30) days' notice, and reflect that the Town of Loomis has only one regular meeting per month to consider any proposed amendments.
- **Change Title of Executive Director to Chief Executive Officer.** Per the Employment Agreement recently entered into with Executive Director changing his title to Chief Executive Officer this change will ratify the change in title for the Executive Director.

There are no other changes from the 2nd JPA adopted by the Board of Directors on January 18, 2024. If the Board of Directors approve the Revised JPA, the Revised JPA 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.

STRATEGIC PLAN

The report supports the Strategic Priority: Operational Excellence.

FISCAL IMPACT

The Revised 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. Resolution Approving Revised Second Amended and Restated JPA
2. Second Amended and Restated JPA approved by the Board on January 19, 2024
3. Redline version between the Second Amended and Restated JPA and the Revised Second Amended and Restated JPA.
4. Options of Town of Loomis