

VALLEY CLEAN ENERGY ALLIANCE**Staff Report – Item 23**

TO: Board of Directors

FROM: Mitch Sears, Executive Officer

SUBJECT: Approve Amendment 2 to the Joint Powers Agreement

DATE: July 14, 2022

RECOMMENDATION

Adopt resolution approving Second Amendment to Valley Clean Energy Alliance Joint Exercise of Powers Agreement (JPA Agreement) and authorizing the Executive Officer, in consultation with legal counsel, to take necessary implementing actions.

BACKGROUND & DISCUSSION

On December 12, 2019 the City of Winters became a signatory and party to VCE's JPA Agreement. Pursuant to the JPA Agreement, each party has a voting share which is determined by dividing the party's annual energy use by all of the parties' total annual energy. February 2022 marked the completion of enrolling City of Winters customers and their annual energy use has been calculated, triggering the need to update Exhibits C (Annual Energy) and D (Voting Shares) to the JPA Agreement. In addition, the City of Winters will be added to the list of parties provided in Exhibit B (List of Parties) to the JPA Agreement.

The Joint Powers Agency Agreement provides that the annual energy use and voting shares exhibits (Exhibits C – Annual Energy and D – Voting Shares) be updated to reflect annual changes in energy usage. The current Joint Powers Agreement requires that revisions to Exhibits C or D be made through an amendment to the JPA Agreement. Amendments require at least 30 days notification to all member prior to the Board taking action on the amendment (per Section 7.4 Amendment of the JPA), and each amendment to the Agreement must be filed with the Secretary of State and other local agencies.

Given the factual and technical nature of the Annual Energy and Voting Shares exhibits and the need to update them annually, staff and General Counsel believe that going through the amendment process to update these exhibits each year is unnecessarily time-consuming and cumbersome. Therefore, in addition to updating Exhibits B, C, and D, the proposed Second Amendment also creates a more streamlined process for updating them in the future. If the Board approves the Second Amendment, future updates to these Exhibits may be approved by the Board without going through the amendment process.

On June 9, 2022, VCE provided written notice to each jurisdiction of the proposed Second Amendment.

CONCLUSION

Section 3.7.5 Special Voting Requirements for Certain Matters of the JPA requires an affirmative vote of two-thirds of Directors to approve an amendment to the JPA Agreement. Staff is recommending that the VCE Board approve the Second Amendment, streamlining the process for updating Exhibits C and D, as well as adopting updated Exhibits B, C, and D. Staff is also asking that the Board authorize the Executive Officer, in consultation with legal counsel, to take necessary steps to implement this action.

Attachments

1. Resolution 2022-XXX
2. Second Amendment

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2022 - ____

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE VALLEY CLEAN ENERGY ALLIANCE (VCE)
APPROVING AMENDMENT TWO (2) TO VCE'S JOINT POWERS AGENCY (JPA) AND
AUTHORIZING EXECUTIVE OFFICER IN CONSULTATION WITH LEGAL COUNSEL TO UPDATE
EXHIBITS B – LIST OF PARTIES, C – ANNUAL ENERGY, AND D – VOTING SHARES**

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, under Section 2.4.2 of the JPA Agreement creating Valley Clean Energy Alliance, the Board of Directors may allow other cities and counties to become members in the VCE JPA and thereby to participate in VCE’s Community Choice Energy program (the “Program”) provided certain conditions are met; and,

WHEREAS, in September 2019 the VCE Board, Cities of Davis and Woodland, and Yolo County approved the First Amendment to the JPA to create an Associate Member classification and on November 14, 2019 the City of Winters became an Associate Member; and,

WHEREAS, on November 5, 2019 the City of Winters completed the membership requirements with the passing of an ordinance authorizing its participation in the community choice program as required by Public Utilities Code Section 366.2(c)(12); and,

WHEREAS, the City of Winters membership in Valley Clean Energy JPA was approved via Resolution 2019-016 effective December 12, 2019; and,

WHEREAS, pursuant to the JPA each party has a voting share which is determined by dividing the party’s annual energy use by all of the parties’ total annual energy; and,

WHEREAS, February 2022 marked the completion of enrolling City of Winters customers and their annual energy use has been calculated; and,

WHEREAS, changes to Exhibits require an amendment of the Agreement, which requires that VCEA provide written notice to all Parties of amendments to the Agreement at least 30 days prior to Board action on the amendment; and,

WHEREAS, given the factual nature of the information included in Exhibits C and D, VCE desires to amend the Agreement to provide that these Exhibits may be modified with Board approval and without going through a full amendment process; and,

WHEREAS, in accordance with Section 7.4 of the JPA, on June 9, 2022, VCE provided written notice to each jurisdiction of Amendment 2, including updating Exhibits B – List of Parties, Exhibit C – Annual Energy, and D – Voting Shares.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. Approve the Second Amendment to the VCE’s Joint Exercise of Powers Agreement (JPA).
2. Authorize the Executive Officer in consultation with legal counsel to file the amended Second Amendment with the Secretary of State, Yolo County Local Agency Formation Commission, and take any other necessary steps to implement the Joint Powers Agreement.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the _____ day of _____ 2022, by the following vote:

- AYES:
- NOES:
- ABSENT:
- ABSTAIN:

Jesse Loren, VCE Chair

Alisa M. Lembke, VCE Board Secretary

Attachments:

1. Second Amendment to JPA with updated Exhibits B, C and D

**SECOND AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT
RELATING TO AND CREATING THE VALLEY CLEAN ENERGY ALLIANCE**

This Second Amendment amends the Joint Exercise of Powers Agreement Relating To and Creating the Valley Clean Energy Alliance (“VCEA”), which was originally entered into as of October 25, 2016 (the “Original Agreement”) as between the County of Yolo, the City of Davis, and the City of Woodland (the “Parties”). The Original Agreement was subsequently amended by that certain First Amendment to the Joint Exercise of Powers Agreement Relating To and Creating the Valley Clean Energy Alliance (the “First Amendment”), dated September 12, 2019 (collectively, the “JPA Agreement”). On December 12, 2019, the City of Winters became a signatory and Party to the Agreement pursuant to Section 2.4.2 of the Agreement.

This Second Amendment is effective upon approval by the Parties, who agree as follows:

RECITALS

- A. The Parties share various powers under California law, including but not limited to the power to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.
- B. Pursuant to the Agreement, each Party to the Agreement shall have a “voting share” which is determined by dividing the Party’s annual energy use by all of the Parties’ total annual energy. This information is provided in Exhibit C, “Total Annual Energy,” and Exhibit D “Voting Shares” to the Agreement, and is necessary in order for the Parties to conduct weighted voting by voting shares pursuant to Section 3.7 of the Agreement.
- C. Sections 3.7.1 and 3.7.2 of the Agreement provide that Exhibits C and D of the Agreement shall be revised no less than annually as necessary to account for changes in the number of Parties and changes to the Parties’ Annual Energy Use.
- D. Changes to Exhibits C and D require an amendment of the Agreement, which requires that VCEA provide written notice to all Parties of amendments to the Agreement at least 30 days prior to Board action on the amendment.
- E. Given the factual nature of the information included in Exhibits C and D, VCEA desires to amend the Agreement to provide that these Exhibits may be modified with Board approval and without going through a full amendment process.
- F. Furthermore, VCEA desires to update Exhibits C and D effective with the date of this Second Amendment.

AGREEMENT

NOW, THEREFORE, in Consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the Parties as follows:

1. Section 3.7.1 of the Agreement is hereby amended to read as follows:

3.7.1 Voting Shares.

Each member agency shall have a voting share as determined by the following formula: (Annual Energy Use/Total Annual Energy) multiplied by 100, where

- (a) "Annual Energy Use" means, (i) with respect to the first two (2) years following the Amendment Date, the annual electricity usage, expressed in kilowatt hours ("kWh"), within the Party's respective jurisdiction and (ii) with respect to the period after the second anniversary of the Amendment Date, the annual electricity usage during the prior Fiscal Year, expressed in kWh, of accounts within a Party's respective jurisdiction that are served by VCEA; and
- (b) "Total Annual Energy" means the sum of all Parties' Annual Energy Use. The initial values for Annual Energy Use will be designated in Exhibit C, and shall be adjusted annually as soon as reasonably practicable after January 1, but no later than March 1 of each year. An adjustment to Exhibit C shall not constitute an amendment of this Agreement pursuant to Section 7.4, but may be approved by the Board and kept on file with the Secretary.
- (c) The combined voting share of all Directors representing a member agency shall be based upon the annual electricity usage within the member agency's jurisdiction; the combined voting share of a county shall be based upon the annual electricity usage within the unincorporated area of the county.

For the purposes of Weighted Voting, if a member agency has more than one director present and voting, then the voting shares allocated to the entity shall be equally divided amongst its Directors that are present and voting.

2. Section 3.7.2 is hereby amended to read as follows:

3.7.2 Exhibit Showing Voting Shares. The initial voting shares will be set forth in Exhibit D. Exhibit D shall be revised no less than annually as necessary to account for changes in the number of Parties and changes in the Parties' Annual Energy Use. Revisions to Exhibit D shall not constitute an amendment of this Agreement pursuant to Section 7.4, but may be approved by the Board and kept on file with the Secretary.

3. Exhibit B of the JPA Agreement is hereby amended to include the City of Winters as a Party to the Agreement as shown in Attachment 1 to this Second Amendment.

4. Exhibit C of the JPA Agreement is hereby amended as shown in Attachment 2 to this Second Amendment.

5. Exhibit D of the JPA Agreement is hereby amended as shown in Attachment 3 to this Second Amendment.

6. All other provisions of the JPA Agreement not expressly modified by this Second Amendment shall remain in full force and effect.

EXHIBIT B
LIST OF PARTIES

Parties: County of Yolo

 City of Davis

 City of Woodland

 City of Winters

Attachment 1

Amendment 2 to VCEA JPA
Approved _____, 2022

EXHIBIT C

ANNUAL ENERGY USE / VOTING SHARES

Unincorporated Yolo County	283,073,212 kWh
Davis	205,538,829 kWh
Woodland	259,671,593 kWh
Winters	26,080,710 kWh

Attachment 2

Amendment 2 to VCEA JPA
Approved _____, 2022

EXHIBIT D
VOTING SHARES

Unincorporated Yolo County	283,073,212 kWh	36.6 votes
Davis	205,538,829 kWh	26.5 votes
Woodland	259,671,593 kWh	33.5 votes
Winters	<u>26,080,710 kWh</u>	<u>3.4 votes</u>
Total	774,364,344 kWh	100

Attachment 3

Amendment 2 to VCEA JPA
Approved _____, 2022