

**ASSOCIATE MEMBER AMENDMENT TO THE JOINT EXERCISE
OF POWERS AGREEMENT FOR THE ESTABLISHMENT OF THE
PIONEER COMMUNITY ENERGY (MPOWER PROGRAM)**

This Associate Member Amendment to the Joint Exercise of Powers Agreement for the Establishment of Pioneer Community Energy (mPOWER Program) ("Pioneer Agreement Amendment") is made and entered into on the _____ day of _____, 20___, by the City of Roseville ("Local Agency") and Pioneer Community Energy ("Pioneer"; together with the Associate Member, the "Parties").

RECITALS

WHEREAS, Pioneer is a joint exercise of powers authority established pursuant to Chapter 5 of Division 7, Title 1 of the Government Code of the State of California (Section 6500 and following) (the "Joint Exercise of Powers Act") and the Joint Exercise of Powers Agreement for the Establishment of Pioneer Community Energy, effective as of August 8, 2015, as amended from time to time (the "Pioneer Agreement").

WHEREAS, Pioneer Community Energy was established by the County of Placer ("County of Placer") and the City of Colfax ("City of Colfax") and the County of Placer and the City of Colfax are referred to as the "Regular Members" in this Pioneer Agreement Amendment.

WHEREAS, the cities of Auburn, Lincoln, Rocklin and the Town of Loomis elected to join Pioneer Community Energy for the purposes of participating in Pioneer's Community Choice Aggregation Program in 2017; and therefore, along with the County of Placer and the City of Colfax, are referred to as the "Regular Members" in this Pioneer Agreement Amendment.

WHEREAS, Chapter 29 of The Improvement Act of 1911, being Chapter 29 of Part 3 of Division 7 of the California Streets and Highways Code (as now enacted or as such legislation may be amended from time to time, "Chapter 29") authorizes certain local agencies to establish voluntary contractual assessment programs, commonly referred to as a Property Assessed Clean Energy ("PACE") program, to fund certain renewable energy sources, energy and water efficiency improvements, electric vehicle charging infrastructure and seismic strengthening improvements that are permanently fixed to residential, commercial, industrial, agricultural or other real property; and

WHEREAS, Pioneer intends to establish a PACE program to be known as the "mPOWER Program" pursuant to Chapter 29, which will authorize the implementation of a PACE financing program for cities and county throughout the State and the financing of the improvements specified from time to time in Chapter 29 ("Improvements"); and

WHEREAS, Local Agency desires to allow owners of property within its jurisdiction to participate in the mPOWER Program and to allow Pioneer to conduct proceedings under Chapter 29 to finance Improvements to be installed on such properties; and

WHEREAS, this Pioneer Agreement Amendment will permit Local Agency to become an Associate Member of Pioneer and to authorize the implementation of such program within the jurisdiction of Local Agency; and

WHEREAS, pursuant to the Joint Exercise of Powers Act, the Parties are approving this Pioneer Agreement Amendment to allow for the provision of PACE services, including the operation of a PACE financing program, within the jurisdictional territory of Local Agency; and

WHEREAS, the Pioneer Agreement Amendment sets forth the rights, obligations and duties of Local Agency and Pioneer with respect to the implementation of the mPOWER Program within the jurisdictional territory of Local Agency.

MUTUAL UNDERSTANDINGS

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions hereinafter stated, the Parties hereto agree as follows:

A. Pioneer Agreement Amendment.

1. The Pioneer Agreement. Local Agency agrees to the terms and conditions of the Pioneer Agreement, attached.

2. Associate Membership. By adoption of this Pioneer Agreement Amendment, Local Agency shall become an Associate Member of Pioneer on the terms and conditions set forth herein and the Pioneer Agreement and consistent with the requirements of the Joint Exercise of Powers Act. The rights and obligations of Local Agency as an Associate Member are limited solely to those terms and conditions expressly set forth in this Pioneer Agreement Amendment for the purposes of implementing the mPOWER Program within the jurisdictional territory of Local Agency. Except as expressly provided for by this Pioneer Agreement Amendment, Local Agency shall not have any rights otherwise granted to Pioneer's Regular Members by the Pioneer Agreement, including but not limited to the right to vote on matters before the Governing Body, the right to amend or vote on amendments to the Pioneer Agreement, and the right to sit on committees or boards established under the Pioneer Agreement or by action of the Governing Body, nor shall Local Agency have any of the obligations otherwise imposed on Pioneer's Regular Members. Local Agency shall not be considered a member for purposes of the first sentence of Section 19 of the Pioneer Agreement.

3. Rights of Pioneer. This Pioneer Agreement Amendment shall not be interpreted as limiting or restricting the rights of Pioneer under the Pioneer Agreement. Nothing in this Pioneer Agreement Amendment is intended to alter or modify the mPOWER Program administered by Pioneer within the jurisdictions of its Regular Members, or any other programs administered now or in the future by Pioneer, all as currently structured or subsequently amended.

B. Implementation of mPOWER Program within Local Agency Jurisdiction.

1. Boundaries of the mPOWER Program within Local Agency Jurisdiction. Local Agency shall determine and notify Pioneer of the boundaries of the jurisdictional territory within Local Agency's jurisdiction within which contractual assessments may

be entered into under the mPOWER Program (the "Program Boundaries"), which boundaries may include the entire jurisdictional territory of Local Agency or a lesser portion thereof.

2. Determination of Improvements Financed by the mPOWER Program. Pioneer shall from time to time determine the types of Improvements that will be eligible to be financed under the mPOWER Program.

3. Establishment of mPOWER Program. Pioneer will undertake such proceedings pursuant to Chapter 29 as shall be legally necessary to enable Pioneer to make contractual financing of Improvements available to eligible property owners within the Program Boundaries.

4. Financing the Installation of Improvements. Pioneer shall develop and implement a plan for the financing of the purchase and installation of the Improvements under the mPOWER Program.

5. Ongoing Administration. Pioneer shall be responsible for the ongoing administration of the mPOWER Program, including but not limited to producing education plans to raise public awareness of the mPOWER Program, soliciting, reviewing and approving applications from residential and commercial property owners participating in the mPOWER Program, establishing contracts for residential, commercial and other property owners participating in such program, establishing and collecting assessments due under the mPOWER Program, adopting and implementing any rules or regulations for the mPOWER Program, and providing reports as required by Chapter 29.

Local Agency will not be responsible for the conduct of any proceedings required to be taken under Chapter 29; the levy or collection of assessments or any required remedial action in the case of delinquencies in such assessment payments; or the issuance, sale or administration of any bonds or other financing instruments issued in connection with the mPOWER Program.

6. Phased Implementation. The Parties recognize and agree that implementation of the mPOWER Program as a whole can and may be phased as additional local agencies execute similar agreements. Local Agency entering into this Pioneer Agreement Amendment will obtain the benefits of and incur the obligations imposed by this Pioneer Agreement Amendment in its jurisdictional area, regardless of whether other local agencies enter into similar agreements.

C. Miscellaneous Provisions.

1. Withdrawal. Local Agency or Pioneer may withdraw from this Pioneer Agreement Amendment upon six (6) months written notice to the other party; provided, however, there is no outstanding indebtedness of Pioneer within Local Agency. The provisions of Section 13 of the Pioneer Agreement shall not apply to Local Agency. Local Agency may withdraw approval for conduct of the mPOWER Program within the

jurisdictional limits of Local Agency upon thirty (30) days written notice to Pioneer without liability to the Pioneer or any affiliated entity. Local Agency withdrawal shall not affect the validity of any voluntary assessment contracts (a) entered prior to the date of such withdrawal or (b) entered into after the date of such withdrawal so long as the applications for such voluntary assessment contracts were submitted to and approved by Pioneer prior to the date of Local Agency's notice of withdrawal.

2. Indemnification and Liability. Pioneer shall defend, indemnify and hold Local Agency and its directors, officials, officers, employees and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries of any kind, in law or equity, to property or persons, including wrongful death, to the extent arising out of the willful misconduct or negligent acts, errors or omissions of Pioneer or its directors, officials, officers, employees and agents in connection with the mPOWER Program administered under this Pioneer Agreement Amendment, including without limitation the payment of expert witness fees and attorney's fees and other related costs and expenses, but excluding payment of consequential damages, provided that the Pioneer shall not be required to defend or indemnify Local Agency and its directors, officials, officers, employees and agents for Local Agency's sole negligence or willful misconduct.

In no event shall any of Pioneer's Regular Members, Associate Members or their officials, officers or employees be held individually liable for any damages or liability resulting out of this Pioneer Agreement Amendment. As Pioneer is a public agency separate from the Members, and pursuant to Section 6508.1 of the Joint Powers Act, the debts, liabilities or obligations of Pioneer are not debts, liabilities or obligations of the individual Members unless the governing board of a Member agrees in writing to assume any such debts, liabilities or obligations. A Member who has not agreed to assume such a debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Members agree to assume the debt, liability or obligation of Pioneer. Should any debt, liability or obligation of the Authority not be waived or allowed payable through assets of Pioneer, none of the County or City members shall be liable, except as provided by Government Code sections 895 through 895.8.

3. Environmental Review. Pioneer shall be the lead agency under the California Environmental Quality Act for any environmental review that may be required in implementing or administering the mPOWER Program under this Pioneer Agreement Amendment.

4. Cooperative Effort. Local Agency shall cooperate with Pioneer by providing information and other assistance in order for Pioneer to meet its obligations hereunder. Local Agency recognizes that one of its responsibilities related to the mPOWER Program will include any permitting or inspection requirements as established by Local Agency.

5. Notice. Any and all communications and/or notices in connection with this Pioneer Agreement Amendment shall be either hand-delivered or sent by United States first class mail, postage prepaid, and addressed as follows:

Pioneer:

mPOWER Administrator
Pioneer Community Energy
P.O. Box 1558
Rocklin, CA 95677
530-889-4120

Local Agency:

City Manager
City of Roseville
311 Vernon Street
Roseville, CA 95678
916-774-5362[

6. Entire Agreement. This Pioneer Agreement Amendment, together with the Pioneer Agreement, constitutes the entire agreement among the Parties pertaining to the subject matter hereof. This Pioneer Agreement Amendment supersedes any and all other agreements, either oral or in writing, among the Parties with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matters, and each Party acknowledges that no representation, inducement, promise of agreement, oral or otherwise, has been made by the other Party or anyone acting on behalf of the other Party that is not embodied herein.

7. Successors and Assigns. This Pioneer Agreement Amendment and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns. A Party may only assign or transfer its rights and obligations under this Pioneer Agreement Amendment with prior written approval of the other Party, which approval shall not be unreasonably withheld.

8. Attorney's Fees. If any action at law or equity, including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.

9. Governing Law This Pioneer Agreement Amendment shall be governed by and construed in accordance with the laws of the State of California, as applicable.

10. No Third Party Beneficiaries. This Pioneer Agreement Amendment shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Pioneer Agreement Amendment to maintain a suit for personal injuries or property damages under the provisions of this

Pioneer Agreement Amendment. The duties, obligations, and responsibilities of the Parties to this Pioneer Agreement Amendment with respect to third party beneficiaries shall remain as imposed under existing state and federal law.

11. Severability. In the event one or more of the provisions contained in this Pioneer Agreement Amendment is held invalid, illegal or unenforceable by any court of competent jurisdiction, such portion shall be deemed severed from this Pioneer Agreement Amendment and the remaining parts of this Pioneer Agreement Amendment shall remain in full force and effect as though such invalid, illegal, or unenforceable portion had never been a part of this Pioneer Agreement Amendment.

12. Headings. The paragraph headings used in this Pioneer Agreement Amendment are for the convenience of the Parties and are not intended to be used as an aid to interpretation.

13. Amendment. This Pioneer Agreement Amendment may be modified or amended by the Parties at any time. Such modifications or amendments must be mutually agreed upon and executed in writing by both Parties. Verbal modifications or amendments to this Pioneer Agreement Amendment shall be of no effect.

14. Effective Date. This Pioneer Agreement Amendment shall become effective upon the execution thereof by the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Pioneer Agreement Amendment to be executed and attested by their officers thereunto duly authorized as of the date first above written.

PIONEER COMMUNITY ENERGY

By: _____
Chair
PIONEER COMMUNITY ENERGY

Date: _____

THE CITY OF ROSEVILLE

By: _____
Title:

Date: _____