CITY OF PACIFIC GROVE

300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO:	Honorable Mayor and Members of the City Council
FROM:	Ben Harvey, City Manager
MEETING DATE:	July 19, 2017
SUBJECT:	Memorandum of Agreement with the County of Monterey and the Cites of Monterey County Regarding a Credit Guaranty for Monterey Bay Community Power
CEQA:	This action does not constitute a "project" as defined by the California Environmental Quality Act (CEQA) guidelines section 15378.

RECOMMENDATION

Enter into an agreement with the County of Monterey to provide the Monterey Bay Community Power Credit Guaranty to River City Bank on behalf of itself and the Cities of Monterey County, provided that each City agrees to provide its proportional share of the Credit Guaranty.

DISCUSSION

Monterey Bay Community Power (MBCP) is a regional project among local government agencies in Monterey, San Benito and Santa Cruz Counties that aims to provide electricity to residents and businesses through the Community Choice Energy (CCE) model enabled by the State of California in 2002. MBCP began formation as a joint powers authority (JPA) in early 2017, with the intent to serve customers as early as Spring 2018. The City of Pacific Grove is a member agency of the MBCP JPA.

Pursuant to discussions and direction from the MBCP Operations Board, the County of Monterey is prepared to provide a Credit Guaranty to River City Bank up front on behalf of the MBCP member jurisdictions in Monterey County, with each member remaining responsible for its proportional share of the Credit Guarantee. The cities within Monterey County who are members of MBCP are City of Carmel-by-the-Sea, City of Gonzales, City of Greenfield, City of Marina, City of Monterey, City of Pacific Grove, City of Salinas, City of Sand City, City of Seaside, and the City of Soledad, collectively "Cities". (Exhibit A of the MBCP Memorandum of Agreement Credit Guaranty (Agreement), attached).

MBCP requires start-up and initial working capital up to an estimated $3,000,000 (three million dollars). The Agreement provides that the Credit Guaranty shall be a shared responsibility and will be distributed on a per-seat basis with shared seat members (such as the City of Pacific

Grove) dividing the Credit Guarantee among the Cities sharing those seats (the City of Pacific Grove shares its seat with the Cities of Carmel-by-the-Sea and Monterey).

Rather than enter into separate agreements with all MBCP member agencies, it is proposed that River City Bank instead enter into just three (3) separate agreements with the Counties of Monterey, San Benito and Santa Cruz to provide a pro-rata share of the Credit Guaranty as follows:

1.	Monterey County	$1,363,636	45.45%
2.	San Benito County	$545,455	18.18%
3.	Santa Cruz County	$1,090,909	36.36%

The County of Monterey agrees to provide the Credit Guaranty to River City Bank on behalf of itself and the Cities, provided that each City agrees to provide its proportional share of the Credit Guaranty to the County in accordance with the terms of the Agreement (attached). Each of the Cities' Credit Support Obligation is set forth in Exhibit C of the Agreement. The Credit Support Obligation is a percentage share of the Credit Guaranty. Each of the Cities that share a MBCP seat (such as the City of Pacific Grove) will be responsible for 3.03% of the Credit Guaranty. This translates to approximately $91,000 for the City of Pacific Grove.

At the time that this agenda report was written, Exhibit B (Credit Guaranty) of the Agreement was not yet available. The County of Monterey has requested that River City Bank provide a revised copy of the Credit Guaranty to reflect recent changes with San Benito County's portion. Please note that this omission from the Agreement does not affect the City of Pacific Grove's pro-rata share or agreement terms/conditions with the County of Monterey. Once the revised copy is received from River City Bank, the County of Monterey will forward Exhibit B to the City of Pacific Grove to include within the Agreement.

OPTIONS

1. Take no action.
2. Provide alternate direction.

FISCAL IMPACT

The dollar amounts shown in Exhibit C of the Agreement are estimates based on a total Credit Guaranty of $3 million. However, the actual dollar amount required to fulfill the City's Credit Support Obligation could exceed or be less than the dollar amounts in Exhibit C because the dollar amount will be contingent on the amount of credit advanced to MBCP (which shall not exceed $3 million), the interest accrued, and River City Bank's expenses. The City is agreeing to provide its percentage share, which is estimated to be approximately $91,000.

GOAL ALIGNMENT

Environment

ATTACHMENT

1. Proposed MBCP Memorandum of Agreement Credit Guaranty

_____

Ben Harvey
City Manager

Memorandum of Agreement

Between the County of Monterey and Monterey County Cities

Regarding Credit Guaranty for Monterey Bay Community Power

This Memorandum of Agreement is made and entered into this ____ day of _____, 2017 by and among the County of Monterey ("County"), City of Carmel-by-the-Sea, City of Gonzales, City of Greenfield, City of Marina, City of Monterey, City of Pacific Grove, City of Salinas, City of Sand City, City of Seaside, and the City of Soledad (referred to individually as "City" and collectively as "the Cities"). The County and Cities are hereinafter referred to collectively as the "Parties".

RECITALS

A. The Monterey Bay Community Power Authority (MBCP) is a joint powers agency formed on February 21, 2017 by and among the cities and counties listed on Exhibit A to this Agreement. The members of MBCP share various powers common to each member under California law, including but not limited to the power to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and to purchase, supply, and aggregate electricity for themselves and customers within their jurisdictions.

B. The cities within Monterey County who are members of MBCP are City of Carmel-by-the-Sea, City of Gonzales, City of Greenfield, City of Marina, City of Monterey, City of Pacific Grove, City of Salinas, City of Sand City, City of Seaside, and the City of Soledad (the "Cities").

C. MBCP requires start-up and initial working capital up to an estimated $3,000,000 (three million dollars).

D. MBCP is negotiating with River City Bank to receive a non-revolving line of credit of up to $3,000,000 (three million dollars) for the startup and initial working capital (the "Loan").

E. River City Bank requires a non-revolving credit guaranty ("Credit Guaranty") from one or more of the members of MBCP to guarantee, on a pro-rata basis, the Loan and any enforcement costs. This Credit Guaranty was contemplated in the Joint Exercise of Powers Agreement Relating to and Creating the Monterey Bay Community Power Authority of Monterey, Santa Cruz, and San Benito Counties ("JPA Agreement").

F. The JPA Agreement at section 5.3.4 provides that the Credit Guaranty shall be a shared responsibility and will be distributed on a per-seat basis with shared seat members dividing the Credit Guarantee among the cities sharing those seats; the MBCP Policy and Operations Boards are each composed of eleven seats, so each seat is responsible for one-eleventh ($1/11^{th}$) of the Credit Guaranty.

G. Under the terms of the Credit Guaranty proposed by River City Bank, the Counties of Monterey, San Benito and Santa Cruz (the "Counties") will provide a pro-rata share of the Credit Guaranty to River City Bank, as follows (Pro-rata Share):

1. Monterey County: $1,363,636 (45.45%)
2. San Benito County: $545,455 (18.18%)
3. Santa Cruz County: $1,090,909 (36.36%).

If the County grants the Credit Guaranty, which will be in substantially the same form as Exhibit B, the County will agree to guarantee its pro-rata share of principal and interest on the Loan and River City Bank's enforcement costs. While the Counties have agreed to the pro-rata shares, the actual dollar amount which the County may be called upon to provide pursuant to the Credit Guaranty will depend on the amount of credit utilized by MBCP (which shall not exceed $3 million), the accrued interest on the Loan, and River City Bank's enforcement costs, if any. It is understood that each of the Counties will provide only its Pro-Rata Share of the Credit Guaranty and will not be liable for the other two counties' Pro-Rata Share of the Credit Guaranty.

H. Although the County of Monterey is providing the Credit Guaranty to River City Bank up front on behalf of the County and the Cities, each of the city members of the MBCP within the County of Monterey remain responsible for its proportional share of the Credit Guarantee.

I. The purpose of this Agreement is to commit each of the Cities to provide its proportional share of the Credit Guaranty upon the terms set forth in this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. The County of Monterey agrees to provide the Credit Guaranty to River City Bank on behalf of itself and the Cities, provided that each City agrees to provide its proportional share of the Credit Guaranty (the "Credit Support Obligation") to the County in accordance with the terms of this Agreement.

2. Each of the Cities' Credit Support Obligation is set forth in Exhibit C, attached hereto and incorporated herein by reference. The Credit Support Obligation is a percentage share of the Credit Guaranty: City of Salinas will be responsible for 9.09% of the Credit Guaranty, and each of the Cities that share a MBCP seat will be responsible for 3.03% of the Credit Guaranty. The dollar amounts shown in Exhibit C are estimates based on a total Credit Guaranty of $3 million; however, the actual dollar amount required to fulfill each City's Credit Support Obligation could exceed or be less than the dollar amounts in Exhibit C because the dollar amount will be contingent on the amount of credit advanced to MBCP (which shall not exceed $3 million), the interest accrued, and River City Bank's expenses. It is understood that each City is agreeing to provide its percentage share.

3. In the event that River City Bank collects upon its Credit Guaranty from the County, the County shall calculate the City's Monetary Obligation for each City and provide thirty (30) days written notice to each City of that City's Monetary Obligation. The City's Monetary Obligation shall be equal to that City's share, as determined by that City's Credit Support Obligation, of the total sum provided by the County to River City Bank to fulfill the Credit Guaranty (City's Monetary Obligation). (For example, the City of Salinas' Monetary Obligation will be equal to 9.09% of the total dollar amount River City Bank collects from the Counties pursuant to the Credit Guaranty.)

4. Each of the Cities hereby agrees that, if River City Bank collects upon its Credit Guaranty from the County of Monterey, each City, within thirty (30) days of receipt of notice of City's Monetary Obligation, shall reimburse the County by depositing funds equivalent to the City's Monetary Obligation with the County.

5. As a means of securing payment of each City's Monetary Obligation, each City hereby authorizes the County to withhold each City's Monetary Obligation from property taxes collected on behalf of each City in the event and to the extent that reimbursement has not been paid by that City pursuant to Paragraph 4 of this Agreement. Following written notice to the City of the City's Monetary Obligation, and after property taxes are collected but prior to distribution to the various agencies, the County will deduct the City's Monetary Obligation before distribution of property taxes. This deduction shall occur no sooner than 31 days after notification by the County to the City and shall continue until paid in full. No fees will be charged by the County for administrative services relating thereto.

6. This Agreement shall take effect upon execution by the County and all of the Cities. This Agreement shall remain in effect until terminated in writing by the County. The County shall terminate this Agreement when both following events have occurred: A) the Credit Guaranty to River City Bank has been terminated and is no longer in effect and the County has been released from all obligations thereunder; and B) all amounts due from the Cities to the County under this Agreement, if any, have been collected by the County.

7. Notices required under this Agreement shall be delivered to the addresses listed below. Delivery of notice shall be by personal delivery or by certified mail or other mail delivery service that enables tracking and acknowledgement of receipt. E-mail may be used for informal communications. Each Party shall provide prompt written notification to the other Parties of any change to the contact information and address listed below.

   For County:

   Lew Bauman
   County Administrative Officer
   168 West Alisal Street, 3d floor

Salinas, CA 93901
Phone: (831) 755-5113

For City of Carmel-by-the-Sea:

Chip Rerig
City Administrator
P.O. Box CC
Carmel-by-the-Sea, CA 93921
Phone: (831) 620-2000

For City of Gonzalez:

Rene L. Mendez
City Manager
P.O. Box 647
Gonzales, CA, 93926
Phone: (831) 675-5000

For City of Greenfield:

Jaime Fontes
City Manager
City of Greenfield
P.O. Box 127
Greenfield, CA 93927
Phone: (831) 674-5591

For City of Marina:

Layne Long
City Manager
211 Hillcrest Ave
Marina, CA 93933
Phone: (831) 884-1281

For City of Monterey:

Mike McCarthy
City Manager
580 Pacific Street
Monterey, CA 93940
Phone: (831) 646-3799

For City of Pacific Grove:

Ben Harvey
City Manager
300 Forest Ave. 2nd Floor
Pacific Grove, CA 93950
Phone: (831) 648-3106

For City of Salinas:

Ray Corpuz
City Manager
200 Lincoln Ave
Salinas, CA 93901
Phone: (831) 758-7201

For City of Sand City:

Todd Bodem
City Administrator
1 Sylvan Park
Sand City, CA 93955
Phone: (831) 394-3054 x212

For City of Seaside:

Craig Malin
City Manager
440 Harcourt Avenue
Seaside, CA 93955
Phone: (831) 899-6701

For City of Soledad:

Michael McHatten
City Manager
248 Main St.
P.O. Box 156
Soledad, CA 93960
Phone: (831) 223-5016

8. This Agreement may be amended or modified only by an instrument in writing signed by all of the Parties.

9. The Parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

10. Time is of the essence in each and all of the provisions of this Agreement.

11. The County and Cities agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

12. Any individual executing this Agreement on behalf of a party represents and warrants that he or she is duly authorized to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

13. The following exhibits are attached hereto and incorporated herein by reference:

Exhibit A	MBCP members
Exhibit B	Form of Credit Guaranty
Exhibit C	Credit Support Table

14. If any section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the portions of this Agreement not held to be unconstitutional or invalid.

15. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the County and each of the Cities have caused this Agreement to be executed by their duly-authorized representative as of the day and year written below.

COUNTY OF MONTEREY

_____ _____

Chairperson of the Board of Supervisors Date

APPROVED AS TO FORM:

_____ _____

Office of the County Counsel Date

CITY OF CARMEL-BY-THE-SEA

_____ _____

Mayor Steve Dallas Date

CITY OF GONZALES

_____ _____

Mayor Maria Orozco Date

CITY OF GREENFIELD

_____ _____

Mayor John P. Huerta, Jr. Date

CITY OF MARINA

_____ _____

Mayor Bruce Delgado Date

CITY OF MONTEREY

_____ _____

Mayor Clyde Roberson Date

CITY OF PACIFIC GROVE

_____ _____

Mayor Bill Kampe Date

CITY OF SALINAS

_____ _____

Mayor Joe Gunter Date

CITY OF SAND CITY

_____ _____

Mayor Mary Ann Carbone Date

CITY OF SEASIDE

_____ _____

Mayor Ralph Rubio Date

CITY OF SOLEDAD

_____ _____

Mayor Fred Ledesma Date

Exhibit A
MBCP Members

County of Santa Cruz

City of Santa Cruz

City of Watsonville

City of Capitola

City of Scotts Valley

County of Monterey

City of Salinas

City of Monterey

City of Pacific Grove

City of Carmel

City of Seaside

City of Marina

City of Sand City

City of Soledad

City of Greenfield

City of Gonzales

County of San Benito

City of Hollister

City of San Juan Bautista

Exhibit B

Non-Revolving Credit Guaranty

[Placeholder for Exhibit B]

Exhibit C

Credit Support Table

Proposed Monterey Bay Community Power Credit Allocation by Jurisdiction

		Seats on Board	Credit Support Percentage		Credit Support Amount
	Santa Cruz County				
1	County of Santa Cruz	1.00	9.09%	$	272,727
2	City of Santa Cruz	1.00	9.09%		272,727
3	Watsonville	1.00	9.09%		272,727
	Santa Cruz Cities Rotating				
4	Capitola	0.50	4.55%		136,364
5	Scotts Valley	0.50	4.55%		136,364
	Subtotal - Santa Cruz County	*4.00*	*36.36%*	*$*	*1,090,909*
	Monterey County				
6	County of Monterey	1.00	9.09%	$	272,727
7	Salinas	1.00	9.09%		272,727
	Monterey Coastal Cities Rotating				
8	Marina	0.33	3.03%		90,909
9	Seaside	0.33	3.03%		90,909
10	Sand City	0.33	3.03%		90,909
	Monterey Peninsula Cities Rotating				
11	Pacific Grove	0.33	3.03%		90,909
12	Carmel	0.33	3.03%		90,909
13	City of Monterey	0.33	3.03%		90,909
	Salinas Valley Rotating				
14	Greenfield	0.33	3.03%		90,909
15	Soledad	0.33	3.03%		90,909
16	Gonzales	0.33	3.03%		90,909
	Subtotal - Monterey County	*5.00*	*45.45%*	*$*	*1,363,636*
	San Benito County				
17	County of San Benito	1.00	9.09%	$	272,727
	San Benito Cities Rotating				
18	Hollister	0.50	4.55%		136,364
19	San Juan Bautista	0.50	4.55%		136,364
	Subtotal - San Benito County	2.00	18.18%	$	545,455
	Total	**11.00**	**100.00%**	**$**	**3,000,000**