



Monterey County

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Board Report

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Matter Type: General Agenda Item

1. Approve the Memorandum of Agreement Between the County of Monterey and Monterey County Cities Regarding Credit Guaranty for Monterey Bay Community Power ("Cities Agreement"), contingent on approval by all member cities;
2. Approve the Shared Financial Agreement by and Among the County Members of the Monterey Bay Community Power Authority of Monterey, Santa Cruz and San Benito, contingent on approval by all member cities of the Cities Agreement;
3. Approve Non-Revolving Credit Guaranty with River City Bank to provide approximately 45.45% percent of the credit guaranty, contingent on approval by all members of the Cities Agreement; and,
4. Authorize the County Administrative Officer to make modifications to all agreements that do not change the material terms and to execute the agreements on behalf of the County.

RECOMMENDATION:

It is recommended that the Board of Supervisors:

1. Approve the Memorandum of Agreement Between the County of Monterey and Monterey County Cities Regarding Credit Guaranty for Monterey Bay Community Power ("Cities Agreement"), contingent on approval by all member cities;
2. Approve the Shared Financial Agreement by and Among the County Members of the Monterey Bay Community Power Authority of Monterey, Santa Cruz and San Benito, contingent on approval by all member cities of the Cities Agreement;
3. Approve Non-Revolving Credit Guaranty with River City Bank to provide approximately 45.45% percent of the credit guaranty, contingent on approval by all members of the Cities Agreement; and,
4. Authorize the County Administrative Officer to make modifications to all agreements that do not change the material terms and to execute the agreements on behalf of the County.

SUMMARY:

Monterey Bay Community Power (MBCP) is a regional Community Choice Energy Joint Powers Agency that was formed on February 28, 2017. On March 7, 2017, the Monterey County Board of Supervisors adopted a resolution approving the MBCP Joint Exercise of Powers Agreement, and on March 21, 2017, the Board adopted an enabling ordinance establishing the County as a founding member of the MBCP Authority.

MBCP requires start-up and initial working capital in the amount of \$3 million. MBCP is

negotiating with River City Bank (RCB) for a non-revolving line of credit (“loan”) of up to \$3 million for these purposes. Section 5.3.4 of the JPA Agreement provides that there will be a shared responsibility by all members to provide credit support (Credit Guaranty) to the third party lender for such start-up and initial working capital. The JPA Agreement further provides that the Credit Guarantee shall be distributed on a per seat basis, with shared seat members dividing the Credit Guarantee among the cities sharing those seats.

While all member jurisdictions will provide a form of credit support, not all 19 participating jurisdictions will provide their share of the Credit Guarantee directly to the bank. The three participating counties will share the initial Credit Guarantee, providing for their respective member cities, contingent on interagency reimbursement agreements. For the County to provide the Credit Guarantee on behalf of all Monterey County member agencies, the County must enter the following series of interrelated agreements:

- A reimbursement agreement between the County and all participating Monterey County cities (“Cities Agreement”)
- An agreement by and among the Counties of Monterey, Santa Cruz, and San Benito (“Shared Financial Agreement”)
- A Non-Revolving Credit Guaranty between the County and the bank, contingent only upon the execution of the above agreements by all applicable member agencies

On May 3, 2017, the MBCP Policy and Operations Boards of Directors authorized next steps for establishing credit and banking services with RCB. The Counties of Monterey, San Benito, and Santa Cruz have agreed to provide a Credit Guarantee to RCB in a total amount of \$3 million. The Counties of Monterey, San Benito and Santa Cruz will provide their pro-rata share of the Credit Guarantee to River City Bank, as follows:

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

The amount allocated to the County of Monterey is the sum of the pro-rata share, based on MBCP Board seat distribution, for the County and each participating city within Monterey County. The dollar amounts shown above are estimates based on the total credit guarantee of \$3 million. However, the actual dollar amount could exceed or be less than these estimates because the dollar amount will be contingent on the amount of credit advanced to MBCP, the interest accrued, and River City Bank’s expenses. As of the writing of this staff report, County staff is negotiating with the bank as to whether Monterey County’s share is 45.45% or 45.46% (due to a rounding error), a difference of \$164. Staff is requesting Board authorization to the CAO to resolve this and any other non-material issues and finalize the documents.

Although the County is providing the Credit Guarantee to RCB up front on behalf of the County and the Monterey County Cities, each of the city members will remain responsible for their proportional share of the guarantee. The County’s principal amount of the Credit Guarantee is equal to 9.09%, or up to an estimated \$272,727 plus interest and reasonable enforcement costs. Staff has drafted a Memorandum of Agreement Between the County of Monterey and Monterey County Cities Regarding Credit Guaranty for Monterey Bay Community Power (“Cities Agreement”). The purpose of the Cities Agreement is to commit

each of the participating cities to provide their proportional share of the credit guarantee by reimbursing the County if RCB collects upon the Credit Guaranty. The Cities Agreement will become effective when fully executed by the County and all Monterey County member cities.

Additionally, the Counties of Monterey, Santa Cruz, and San Benito will enter into a Shared Financial Agreement by and among the three counties, providing for the share of the credit guarantee required by RCB, and that Agreement is also contingent upon the execution of the Cities Agreement. The purpose of the Shared Financial Agreement is to formalize the understanding of the Counties among themselves regarding the provisions of the Credit Guaranty.

The execution of the Non-Revolving Credit Guaranty between the County and RCB is contingent upon the full execution of the Cities Agreement between the County and all participating Monterey County cities, as well as the Shared Financial Agreement between the three counties. Per the terms of the Credit Guaranty, each of the counties will provide only its allocated share of the guarantee and will not be liable for the other two counties' allocated share. If the required dollar amount of the Credit Guaranty is less than \$3 million, the allocated share of each county shall be reduced corresponding to the percentage allocation above.

The MBCP Authority staff has requested the approval and execution of these agreements by all applicable parties in the month of August. Staff has distributed the Cities Agreement to the cities, and the city councils are considering the agreement in July or August.

DISCUSSION:

Cities Agreement

Per the terms of the Cities Agreement (Attachment A), if MBCP defaults on payment of the Non-revolving line of credit and RCB collects upon the Non-Revolving Credit Guaranty, the County will collect each city's monetary obligation based upon their pro-rata share, as seen in Exhibit C of the Cities Agreement. The dollar amounts shown in Exhibit C are estimates based on the total credit guarantee of \$3 million. The actual amount will be determined by the amount actually advanced to the MBCP Authority, as well as interest and enforcement costs accrued at the time of default, which could exceed or be less than the dollar amounts shown in Exhibit C.

Under the Cities Agreement, participating cities shall reimburse the County by depositing funds equal to their share within 30 days of written notice by the County. Additionally, the agreement authorizes the County to secure payment from each city by withholding property taxes collected on behalf of each City in the event and to the extent that reimbursement has not been paid directly. This method of reimbursement was modeled after the 2009 Next Generation Radio System Agreement between the County and Monterey County cities. The Cities Agreement will only become effective on the date that the County and all participating cities have approved and executed the agreement and will remain effective until the guaranty is released by RCB. The Cities Agreement was distributed to the cities for review on June 29. The Monterey County Cities have indicated to staff that they anticipate bringing the Cities Agreement to their respective city councils on the following dates:

- Carmel-by-the-Sea: August 8
- City of Gonzales: July 17

- City of Greenfield: July 25
- City of Marina: July 18
- City of Monterey: August 1
- City of Pacific Grove: July 19
- City of Salinas: August 15
- City of Sand City: August 1
- City of Seaside: TBD
- City of Soledad: July 19

Shared Financial Agreement

Contingent on the adoption of the Cities Agreement, the Counties of Monterey, Santa Cruz, and San Benito will enter into a Shared Financial Agreement (Attachment B), by and among the three counties. By adopting the Shared Financial Agreement, the counties agree to be responsible only for the proportional amount of their pro-rata share of the Credit Guarantee, unless the manner of which the guarantee is collected justifies a different disbursement, where a separate agreement would be drafted. The Shared Financial Agreement will become effective from the date that all counties adopt the agreement, and will remain in effect until the Credit Guarantee is released by RCB. The Santa Cruz County Board of Supervisors adopted the Shared Financial Agreement on June 27, 2017. The County of San Benito has indicated to staff that they will bring the agreement to their board on July 18, 2017.

Non-Revolving Credit Guaranty

The Monterey County CAO and representatives from the Counties of Santa Cruz and San Benito formed a Financing Ad Hoc Subcommittee to oversee necessary documents and timeline required for MBCP Agency start-up funding. The MBCP Financing Ad Hoc Subcommittee is in the process of negotiating with River City Bank to receive a non-revolving line of credit up to \$3 million for start-up and initial working capital funds. Under the proposed terms of the non-revolving line of credit, RCB requires the execution of a Non-Revolving Credit Guaranty (Attachment C) from the Counties of Monterey and Santa Cruz. The County of San Benito will enter into a separate agreement to deposit funds directly to RCB to cover their portion of the Credit Guarantee. The pro-rata share of the Credit Guarantee for each county member is as follows:

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

The actual amount would be contingent on the amount actually advanced to the MBCP Authority, as well as interest and enforcement costs accrued at the time of default. Execution of the Credit Guaranty is contingent on the adoption of Cities Agreement by the County and all Monterey County member cities, as well as the Shared Financial Agreement between the three counties.

OTHER AGENCY INVOLVEMENT:

The MBCP Authority is comprised of the following agencies:

- 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

The Auditor-Controller, Treasurer-Tax Collector, CAO Budget & Analysis Division, CAO-Intergovernmental and Legislative Affairs Division, and County Counsel have been involved in evaluating the River City Bank proposal. County Counsel and CAO staff drafted the Cities Agreement. In addition, staff has had extensive discussion regarding the MBCP Credit Guaranty with the Counties of Santa Cruz and San Benito.

FINANCING:

If MBCP fails to generate sufficient revenue to repay the loan from RCB, within 30 days of written notice the County would be required to pay up to \$1,363,636, plus a proportional share of any accrued interest and enforcement costs. Per the terms of the Cities Agreement, each of the participating Monterey County cities would reimburse the County their pro-rata share of the guarantee. The total remaining amount of the County's principal share of the Credit Guaranty is up to \$272,727. This actual amount could exceed that estimate with accrued interest and reasonable enforcement costs, or be less if the outstanding balance at the time of default of MBCP is less than \$3 million. The non-revolving line of credit, as proposed, is for one year. The terms are still under negotiation. The total estimated amount of the County's monetary risk will be categorized as a "Contingent Liability" and will not require funds to be sequestered.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

Activities of the Monterey Bay Community Power (MBCP) Authority are consistent with the Board of Supervisors' Strategic Initiatives for Economic Development, Administration, Infrastructure, and Health and Human Services. The MBCP JPA is expected to directly affect customer utility rates and increase the use of renewable energy, thus impacting the economic well-being of Monterey County utility customers, and promoting a sustainable and healthy environment.

Check the related Board of Supervisors Strategic Initiatives:

- X Economic Development
- X Administration
- X Health & Human Services
- X Infrastructure
- __ Public Safety

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Approved by: Nicholas E. Chiulos, Assistant County Administrative Officer

Attachments:

- a. Cities Agreement
- b. Shared Financial Agreement
- c. Non-Revolving Credit Guaranty