

RESOLUTION NO. 5325

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SOLEDAD
APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE COUNTY OF
MONTEREY CITIES REGARDING CREDIT GUARANTY FOR MONTEREY BAY
COMMUNITY POWER AND AUTHORIZING THE CITY MANAGER TO EXECUTE
THE AGREEMENT ON BEHALF OF THE CITY OF SOLEDAD**

WHEREAS, on February 1, 2017, Council approved Resolution No. 5272 Approving a Joint Powers Agreement (JPA) establishing the Monterey Bay Community Power (MBCP) Authority; and

WHEREAS, subsequent to the above approval, and pursuant to discussions among the MBCP Policy 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; and

WHEREAS, 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; and

WHEREAS, the attached Agreement is an agreement regarding reimbursement provisions between the County and participating cities.

BE IT HEREBY RESOLVED by the City Council of the City of Soledad hereby, that the Memorandum of Agreement Between the County of Monterey Cities Regarding Credit Guaranty for Monterey Bay Community Power, a copy of which is attached hereto as **Exhibit A**, and by this reference incorporated herein, is hereby approved, and the City Manager is authorized and directed to execute the same on behalf of the City.


PASSED AND ADOPTED by the City Council of the City of Soledad at an adjourned special meeting duly held on the 19th of July, 2017 by the following vote:

AYES, and in favor thereof, Councilmembers: Carla Stewart, Anna Velazquez and Chris Bourke

NOES, Councilmembers: None

ABSENT, Councilmembers: Ledesma, Chavez

ABSTAIN, Councilmembers: None



FRED J. LEDESMA, Mayor

ATTEST:



MICHAEL MCHATTEN, City Clerk



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 19th day of July, 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 (1/11th) 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

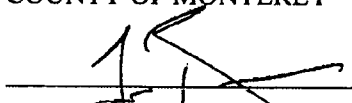
8. This Agreement may be amended or modified only by an instrument in writing signed by all of the Parties.
9. The Parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

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

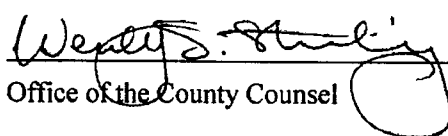


 Lew C. Bauman, County Administrative Officer

9/5/17

 Date

APPROVED AS TO FORM:



 Office of the County Counsel

9/5/17

 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

Aug. 17, 2017
Date

CITY OF SAND CITY

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

Bill Kampe
Mayor Bill Kampe

7/21/17
Date

CITY OF SALINAS

Mayor Joe Guñter

Date

CITY OF SAND CITY

CITY OF GONZALES

Mayor Maria Orozco

Date

CITY OF GREENFIELD

Mayor John P. Huerta, Jr.

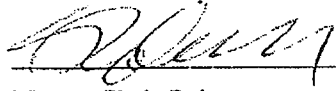
Date

CITY OF MARINA

Mayor Bruce Delgado

Date

CITY OF MONTEREY



Mayor Clyde Roberson

August 28, 2017
Date

CITY OF PACIFIC GROVE

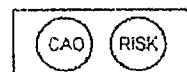
Mayor Bill Kampe

Date

CITY OF SALINAS

Mayor Joe Gunter

Date



Mayor Steve Dallas

Date

CITY OF GONZALES

Mayor Maria Orozco

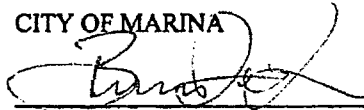
Date

CITY OF GREENFIELD

Mayor John P. Huerta, Jr.

Date

CITY OF MARINA



Mayor Bruce Delgado

7/31/17

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 Steve Dallas

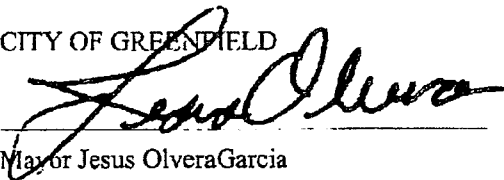
Date

CITY OF GONZALES

Mayor Maria Orozco

Date

CITY OF GREENFIELD



Mayor Jesus Olvera Garcia

July 25, 2017

Date

CITY OF MARINA

Mayor Bruce Delgado

Date

CITY OF MONTEREY

Mayor Clyde Roberson

Date

CITY OF PACIFIC GROVE

Mayor Bill Kampe

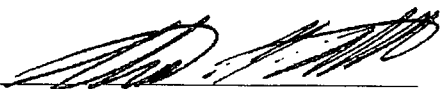
Date

CITY OF SALINAS

Mayor Joe Gunter

Date

CITY OF SAND CITY



Mayor Steve Dallas

8/10/17

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 Gujter

Date

CITY OF SAND CITY

Mary Ann Carbone
Mayor Mary Ann Carbone

Aug 2, 2017
Date

CITY OF SEASIDE

Mayor Ralph Rubio

Date

CITY OF SOLEDAD

Mayor Fred Ledesma

Date

CITY OF SAND CITY

Mayor Mary Ann Carbone

Date

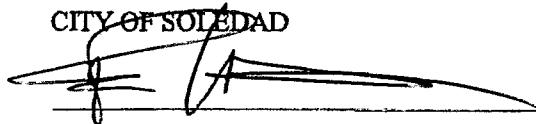
CITY OF SEASIDE



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-Revolver Credit Guaranty

[Placeholder for Exhibit B]

EXHIBIT B
NON-REVOLVING CREDIT GUARANTY

This NON-REVOLVING CREDIT GUARANTY is made effective as of _____ (“*Guaranty*”) by the County of [] (the “*Non-Revolving Credit Guarantor*”) in favor and for the benefit of Lender under the Credit Agreement (each as hereinafter defined).

RECITALS

A. Pursuant to a certain credit agreement dated as of [] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof in effect, the “*Credit Agreement*”) by and between Monterey Bay Community Power (“*Borrower*”) and River City Bank (“*Lender*”), Lender has agreed to make certain Advances to Borrower. Capitalized terms not defined herein have the meanings ascribed to them in the Credit Agreement.

B. It is a requirement under Section 8.2 (a) of the Credit Agreement that the Non-Revolving Credit Guarantor shall execute and deliver a Guaranty and that this Guaranty shall be in full force and effect.

C. This Guaranty is given by the Non-Revolving Credit Guarantor in favor of Lender to guaranty all of the Obligations of Borrower under the Non-Revolving Credit in accordance with the terms of the Credit Agreement.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Non-Revolving Credit Guarantor hereby agrees as follows:

1. Guaranty. (a) To induce Lender to make the Advances upon the terms and conditions set forth in the Credit Agreement, and in consideration thereof, the Non-Revolving Credit Guarantor hereby unconditionally and irrevocably severally (based on Non-Revolving Credit Guarantor’s percentage responsibility set forth on Exhibit A attached hereto (each a “*Guarantor’s Share*”)) (i) guarantees to Lender and its successors, transferees and assigns, the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) and at all times thereafter of the Obligations of Borrower (including amounts which would become due but for the operation of the automatic stay under Section 362(a) of the United States Federal Bankruptcy Code of 1978, as amended, or any state bankruptcy statute) under the Non-Revolving Credit; and (ii) agrees to pay any and all reasonable expenses (including reasonable attorneys’ fees and disbursements and expert witnesses’ fees and disbursements) which may be paid or incurred by Lender in enforcing any rights with respect to, or collecting, any or all of the Obligations under the Non-Revolving Credit and/or enforcing any rights with respect to, or collecting against, Non-Revolving Credit Guarantor under this Guaranty (collectively, the “*Guaranteed Obligations*”).

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(b) Non-Revolving Credit Guarantor agrees that this Guaranty constitutes a guaranty of payment when due and not of collection and waives any right to require that any resort be had by Lender to any security held for payment of any of the Guaranteed Obligations or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other Person.

(c) No payment or payments made by Borrower or any other Person or received or collected by Lender from any other Person by virtue of any action or proceeding or any set off or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of Non-Revolving Credit Guarantor hereunder which shall, notwithstanding any such payment or payments other than payments made to Lender by a Non-Revolving Credit Guarantor or payments received or collected by Lender from a Non-Revolving Credit Guarantor, remain liable for Guarantor's Share of the Guaranteed Obligations until the Guaranteed Obligations are indefeasibly paid in full in cash or cash equivalents.

(d) Non-Revolving Credit Guarantor understands, agrees and confirms that this is a guaranty of payment when due and not of collection and that Lender may, from time to time, enforce this Guaranty up to the full amount of Guarantor's Share of the Guaranteed Obligations owed to Lender without proceeding against any other Person, against any security for the Guaranteed Obligations, against any other guarantor or under any other guaranty covering the Guaranteed Obligations.

2. Waiver by Non-Revolving Credit Guarantor. Until the payment and satisfaction in full of all Guaranteed Obligations and the expiration or termination of any commitment to lend by Lender under the Credit Agreement, Non-Revolving Credit Guarantor hereby waives absolutely and irrevocably any claim which it may have against Borrower or any or its respective Affiliates by reason of any payment to Lender, or to any other Person pursuant to or in respect of this Guaranty, including any claims by way of subrogation, contribution, reimbursement, indemnity or otherwise.

Non-Revolving Credit Guarantor further agrees that Non-Revolving Credit Guarantor's liability as guarantor shall not be impaired or affected by any renewals or extensions which may be made from time to time, with or without the knowledge or consent of Non-Revolving Credit Guarantor of the time for payment of interest or principal under the Credit Agreement or by any forbearance or delay in collecting interest or principal under the Credit Agreement, or by any waiver by Lender under the Credit Agreement or any other Loan Documents, or by Lender's failure or election not to pursue any other remedies it may have against Borrower or Non-Revolving Credit Guarantor, or by any change or modification in the Credit Agreement or any other Loan Document, or by the acceptance by Lender of any additional security or any increase, substitution or change therein, or by the release by Lender of any security or any withdrawal thereof or decrease therein, except that payment in full of the indebtedness shall automatically release Non-Revolving Credit Guarantor of its obligations under this Guaranty, or by the application of payments received from any source to the payment of any obligation other than the indebtedness even though Lender might lawfully have elected to apply such

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payments to any part or all of the indebtedness (in which case Non-Revolving Credit Guarantor will be automatically released), or by the failure or invalidity of, or any defect in, the Credit Agreement, or by any legal disability or other defense of Borrower, or by the cessation, limitation or termination from any cause whatsoever of any of the Obligations under the Credit Agreement, except upon payment in full of the indebtedness (in which case Non-Revolving Credit Guarantor will be automatically released), or by the application by Borrower of the proceeds of the Advances for purposes other than the purposes represented by Borrower to Lender or intended or understood by Lender or Non-Revolving Credit Guarantor, it being the intent hereof that Non-Revolving Credit Guarantor shall remain liable for its ratable share of obligations hereunder to the extent of Guarantor's obligations provided herein, notwithstanding any act or thing which might otherwise operate as a legal or equitable discharge of a surety. Non-Revolving Credit Guarantor hereby waives any and all rights or defenses based on, and understands and agrees that Non-Revolving Credit Guarantor's liability as guarantor shall not be impaired or affected by, an election of remedies by Lender, even though that election of remedies, such as a non-judicial foreclosure with respect to security for a guaranteed obligation, has destroyed Non-Revolving Credit Guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the California Code of Civil Procedure or otherwise, or the foreclosure of any of the security for the Advances, including without limitation the security described in any Security Agreement, or Non-Revolving Credit Guarantor's right to a fair value hearing under Section 580a of the California Code of Civil Procedure, it being intended that this Guaranty shall survive the realization upon any of the security for the Advances, including without limitation the security described in the Security Agreement, including without limitation non-judicial foreclosure, where applicable, and notwithstanding any defense, right, or claim that any such foreclosure satisfied the obligations secured thereby. Non-Revolving Credit Guarantor agrees that the payment of all sums payable under the Credit Agreement or any of the other Loan Documents or any part thereof or other act which tolls any statute of limitations applicable to the Credit Agreement or the other Loan Documents shall similarly operate to toll the statute of limitations applicable to Non-Revolving Credit Guarantor's liability hereunder. Without limiting the generality of the foregoing or any other provision hereof, Non-Revolving Credit Guarantor expressly waives to the extent permitted by law any and all rights and defenses that Non-Revolving Credit Guarantor may have if Borrower's debt is secured by real property. This means, among other things: (1) Lender may collect from a Non-Revolving Credit Guarantor without first foreclosing on any security for the Advances (whether such security is real or personal property) pledged by Borrower; and (2) if Lender forecloses on any real property security pledged by Borrower (including without limitation the real property described in a Deed of Trust), (A) the amount of the indebtedness may be reduced only by the price for which that security is sold at the foreclosure sale, even if the security is worth more than the sale price, and (B) Lender may collect from Non-Revolving Credit Guarantor even if Lender, by foreclosing on the real property security, has destroyed any right Non-Revolving Credit Guarantor may have to collect from Borrower. This is an unconditional and irrevocable waiver of any rights and defenses Non-Revolving Credit Guarantor may have if Borrower's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the California Code of Civil Procedure, and/or Sections 2787 to 2855, inclusive, 2899 and 3433 of the California Civil Code, or any of such sections. Non-Revolving Credit Guarantor

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further understands and agrees that Lender may at any time enter into agreements with Borrower to amend and modify the Credit Agreement, Loan Agreement, Security Agreement or other Loan Documents, and may waive or release any provision or provisions of the Credit Agreement, Loan Agreement, Security Agreement and other Loan Documents or any thereof, and, with reference to such instruments, may make and enter into any such agreement or agreements as Lender and Borrower may deem proper and desirable, without in any manner impairing or affecting this Guaranty or any of Lender's rights hereunder or Non-Revolving Credit Guarantor's obligations hereunder.

3. Consent by Non-Revolving Credit Guarantor. Non-Revolving Credit Guarantor hereby consents and agrees that, without the necessity of any reservation of rights against Non-Revolving Credit Guarantor and without notice to or further assent by Non-Revolving Credit Guarantor, any demand for payment of any of the Guaranteed Obligations made by Lender may be rescinded by Lender and any of the Guaranteed Obligations continued, and the Guaranteed Obligations, or the liability of any other party upon or for any part thereof, or any collateral security or guaranty therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by Lender; and the Credit Agreement or other guaranty or documents in connection therewith, or any of them, may be amended, modified, supplemented or terminated, in whole or in part, as Lender may deem advisable from time to time; and any guaranty or right of offset may be sold, exchanged, waived, surrendered or released, all without the necessity of any reservation of rights against Non-Revolving Credit Guarantor and without notice to or further assent by Non-Revolving Credit Guarantor, which will remain bound hereunder, notwithstanding any such renewal, extension, modification, acceleration, compromise, amendment, supplement, termination, sale, exchange, waiver, surrender or release. Lender shall have no obligation to protect, secure, perfect or insure any property at any time held as security for the Guaranteed Obligations. When making any demand hereunder against Non-Revolving Credit Guarantor, Lender may, but shall be under no obligation to, make a similar demand on Borrower, any other Person who at any time guarantees or pledges any assets to secure the Guaranteed Obligations, or any one or more of them (a "Credit Party") or any such other guarantor, and any failure by Lender to make any such demand or to collect any payments from such other Credit Party or any such other guarantor or any release of such other Credit Party or any such other guarantor or of Non-Revolving Credit Guarantor's obligations or liabilities hereunder shall not impair or affect the rights and remedies, express or implied, or as a matter of law, of Lender against Non-Revolving Credit Guarantor hereunder. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

4. Waivers; Successors and Assigns. Non-Revolving Credit Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by Lender upon this Guaranty or acceptance of this Guaranty, and the Guaranteed Obligations shall conclusively be deemed to have been created, contracted or incurred in reliance upon this Guaranty, and all dealings between Non-Revolving Credit Guarantor and any other Credit Party, on the one hand, and Lender, on the other hand, shall likewise be conclusively presumed to have been had or consummated in reliance upon this Guaranty. Non-Revolving Credit Guarantor waives diligence, presentment,

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protest, demand for payment and notice of default or non-payment to or upon any Credit Party or Non-Revolving Credit Guarantor with respect to the Guaranteed Obligations. This Guaranty shall be construed as a continuing, absolute and unconditional guaranty of payment without regard to the validity, regularity or enforceability of the Credit Agreement, the other Loan Documents, any of the Guaranteed Obligations or any guaranty therefor or right of offset with respect thereto at any time or from time to time held by Lender and without regard to any defense (other than the defense of payment), set-off or counterclaim which may at any time be available to or be asserted by any Credit Party against Lender, or by any other circumstance whatsoever (with or without notice to or knowledge of Non-Revolving Credit Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Guaranteed Obligations, or of Non-Revolving Credit Guarantor under this Guaranty, in bankruptcy or in any other instance, and the obligations and liabilities of Non-Revolving Credit Guarantor hereunder shall not be conditioned or contingent upon the pursuit by Lender or any other Person at any time of any right or remedy against any Credit Party or against any other Person which may be or become liable in respect of all or any part or the Guaranteed Obligations or against any collateral security or Guaranty therefor or right of offset with respect thereto. This Guaranty shall be a primary obligation of Non-Revolving Credit Guarantor to secure the payment of the Guaranteed Obligations and Lender shall have no obligation whatsoever to seek payment of the Guaranteed Obligations from Borrower in the event an Event of Default has occurred and is continuing. This Guaranty shall remain in full force and effect and be binding in accordance with and to the extent of its terms upon Non-Revolving Credit Guarantor and the successors and assigns thereof, and shall inure to the benefit of Lender, and their respective successors, transferees and assigns (including each holder from time to time of Guaranteed Obligations), until all of the Guaranteed Obligations and the obligations of Non-Revolving Credit Guarantor under this Guaranty shall have been satisfied by indefeasible payment in full in cash or cash equivalents, notwithstanding that from time to time during the term of the Credit Agreement any Credit Party may be released from all of its Guaranteed Obligations thereunder.

5. Effectiveness; Reinstatement. This Guaranty shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Guaranteed Obligations is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of any Credit Party, or upon or as a result of the appointment of a receiver, intervenor or conservator of; or trustee or similar officer for, any Credit Party or any substantial part of its property, or otherwise, all as though such payments had not been made.

6. Payments of Guaranteed Obligations. Non-Revolving Credit Guarantor hereby guarantees that its Guarantor's Share of the Guaranteed Obligations will be paid for the benefit of Lender without set-off or counterclaim in lawful currency of the United States of America at the office of Lender located at 2485 Natomas Park Drive, Sacramento, California 95833. Non-Revolving Credit Guarantor shall make any payments required hereunder within thirty (30) calendar days of receipt of written notice thereof from Lender; provided, however, that such written notice may only be sent after the occurrence and during the continuation of an Event of Default and provided, further, however, that the failure of Lender to give such notice shall not affect Non-Revolving Credit Guarantor's obligations hereunder.

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7. **Representations and Warranties.** To induce Lender to enter into the Credit Agreement and to make the Advances thereunder, Non-Revolving Credit Guarantor represents and warrants to Lender that, as to Non-Revolving Credit Guarantor, the following statements are true, correct and complete on and as of the date hereof:

(a) **Organization and Qualification; Authority; Consents.** Non-Revolving Credit Guarantor is a City or County duly organized, validly existing under and operating pursuant to the laws of the State of California, has full and adequate power to own its Property and conduct its business as now conducted, and is duly licensed or qualified and in good standing in each jurisdiction in which the nature of the business conducted by it or the nature of the Property owned or leased by it requires such licensing or qualifying unless the failure to be so licensed or qualified would not have a material adverse effect on its business, operations or assets. Non-Revolving Credit Guarantor has full right and authority to enter into this Guaranty and to perform each and all of the matters and things herein provided for; and this Guaranty does not, nor does the performance or observance by Non-Revolving Credit Guarantor of any of the matters or things herein or therein provided for, contravene any provision of law or any organizational document of Non-Revolving Credit Guarantor or any covenant, indenture or agreement of or affecting Non-Revolving Credit Guarantor or any of its Properties. The execution, delivery, performance and observance by Non-Revolving Credit Guarantor of this Guaranty and any other instruments and documents executed by Non-Revolving Credit Guarantor in connection with this Guaranty do not and, at the time of delivery hereof, will not require any consent or approval of any other Person, other than such consents and approvals that have been given or obtained.

(b) **Legal Effect.** This Guaranty constitutes a legal, valid and binding agreement of Non-Revolving Credit Guarantor, enforceable in accordance with its terms, subject to laws relating to bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally and the application of equitable remedies if equitable remedies are sought.

(c) **Litigation.** There is no litigation or governmental proceeding pending, nor to the knowledge of Non-Revolving Credit Guarantor threatened in writing, against Non-Revolving Credit Guarantor which if adversely determined would result in any material adverse change in the financial condition, Properties, business or operations of Non-Revolving Credit Guarantor.

(d) **Compliance with Laws.** Non-Revolving Credit Guarantor is in compliance with the requirements of all federal, state and local laws, rules and regulations applicable to or pertaining to its Properties or business operations (including, without limitation, laws and regulations establishing quality criteria and standards for air, water, land and toxic or hazardous wastes and substances), non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Non-Revolving Credit Guarantor. Non-Revolving Credit Guarantor has not received notice to the effect that its operations are not in compliance with any of the requirements of applicable federal, state or local environmental, health and safety statutes and regulations or are the subject of any governmental investigation evaluating whether any remedial action is needed to respond to a release of any toxic or hazardous waste or substance into the environment, which non-compliance or remedial action

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could have a material adverse effect on the financial condition, Properties, business or operations of Non-Revolving Credit Guarantor.

(e) Other Agreements. Non-Revolving Credit Guarantor is not in default under the terms of any covenant, indenture or agreement of or affecting Non-Revolving Credit Guarantor or any of its Properties, which default if uncured would have a material adverse effect on the financial condition, Properties, business or operations of Non-Revolving Credit Guarantor.

8. Covenants. Non-Revolving Credit Guarantor agrees that so long as any credit is available to or in use by Borrower under the Credit Agreement, except to the extent compliance in any case or cases is waived in writing by Lender:

(a) Financial Reports. Non-Revolving Credit Guarantor shall maintain a standard system of accounting in accordance with GAAP and shall furnish to Lender and its duly authorized representatives any publicly available information respecting the business and financial condition of Non-Revolving Credit Guarantor as Lender may reasonably request.

(b) Compliance with Laws. Non-Revolving Credit Guarantor shall comply in all respects with the requirements of all laws, rules, regulations, ordinances and orders applicable to or pertaining to its Properties or business operations, non-compliance with which could have a material adverse effect on the financial condition, Properties, business or operations of Non-Revolving Credit Guarantor or could result in a Lien upon any of its Property.

(c) Notices of Claims and Litigation. Non-Revolving Credit Guarantor shall promptly inform Lender in writing of (1) all material adverse changes in Non-Revolving Credit Guarantor's financial condition and (2) all existing litigation and all written threats of litigation, claims, investigations, administrative proceedings or similar actions affecting Non-Revolving Credit Guarantor which could materially affect the financial condition of Non-Revolving Credit Guarantor.

9. Expenses. If: (a) this Guaranty is placed in the hands of an attorney for collection or is collected through any legal proceeding; (b) an attorney is retained to represent Lender in any bankruptcy, reorganization, receivership, or other proceedings affecting creditors' rights and involving a claim under this Guaranty; or (c) an attorney is retained to represent Lender in any proceedings whatsoever in connection with this Guaranty and Lender prevails in any such proceedings, then Non-Revolving Credit Guarantor shall pay to Lender (as the case may be) upon demand Non-Revolving Credit Guarantor's Share of all reasonable attorney's fees, costs and expenses incurred in connection therewith (all of which are referred to herein as "*Enforcement Costs*"), in addition to all other amounts due hereunder, regardless of whether all or a portion of such Enforcement Costs are incurred in a single proceeding brought to enforce this Guaranty as well as the other Loan Documents.

10. No Waiver. No failure to exercise and no delay in exercising, on the part of Lender, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege preclude any other or further exercise

thereof, or the exercise of any other power or right. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

11. Notices. All notices, demands, instructions or other communications required or permitted to be given to or made upon any party hereto shall be given in accordance with the provisions of the Credit Agreement and at the address set forth therein or as provided on the signature page hereof.

12. Amendments, Waivers, etc. No provision of this Guaranty shall be waived, amended, terminated or supplemented except by a written instrument executed by Non-Revolving Credit Guarantor and Lender.

13. GOVERNING LAW. THIS GUARANTY SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CALIFORNIA WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS.

14. CONSENT TO JURISDICTION AND SERVICE OF PROCESS. ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST NON-REVOLVING CREDIT GUARANTOR WITH RESPECT TO THIS GUARANTY AGREEMENT SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COUNTY OF SACRAMENTO, CALIFORNIA, AND BY EXECUTION AND DELIVERY OF THIS GUARANTY AGREEMENT NON-REVOLVING CREDIT GUARANTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, GENERALLY AND UNCONDITIONALLY, THE NONEXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. THE PARTIES HERETO HEREBY IRREVOCABLY WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY SUCH ACTION OR PROCEEDING IN SUCH RESPECTIVE JURISDICTIONS. NOTHING HEREIN SHALL AFFECT THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

15. Counterparts. This Guaranty and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

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County of []

By: _____

Its: _____

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EXHIBIT A
GUARANTOR'S SHARE

<u>Guarantor</u>	<u>Guarantor's Share of the Obligations</u>
County of Santa Cruz	36.36%
County of Monterey	45.46%
Total	81.82%

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Exhibit C
Credit Support Table

Proposed Monterey Bay Community Power Credit Allocation by Jurisdiction				
		Seats on Board	Credit Support	
			Percentage	Amount
<u>Santa Cruz County</u>				
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	<u>0.50</u>	<u>4.55%</u>	<u>136,364</u>
<i>Subtotal - Santa Cruz County</i>		<i>4.00</i>	<i>36.36%</i>	<i>\$ 1,090,909</i>
<u>Monterey County</u>				
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	<u>0.33</u>	<u>3.03%</u>	<u>90,909</u>
<i>Subtotal - Monterey County</i>		<i>5.00</i>	<i>45.45%</i>	<i>\$ 1,363,636</i>
<u>San Benito County</u>				
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	<u>0.50</u>	<u>4.55%</u>	<u>136,364</u>
<i>Subtotal - San Benito County</i>		<i><u>2.00</u></i>	<i><u>18.18%</u></i>	<i><u>\$ 545,455</u></i>
Total		11.00	100.00%	\$ 3,000,000

