

EMPLOYMENT AGREEMENT FOR CHIEF EXECUTIVE OFFICER

THIS EMPLOYMENT AGREEMENT (“Agreement”) is entered into by and between the Ava Community Energy Authority (“Ava”), formerly known as East Bay Community Energy (“EBCE”), and Howard Chang, an individual (“Employee”). Ava and Employee are sometimes collectively referred to herein as the “Parties.” For identification purposes, this Agreement is dated June 12, 2024.

RECITALS

This Employment Agreement is entered into on the basis of the following facts, understandings and intentions of the Parties:

A. The Alameda County Board of Supervisors and the City Councils of the City of Albany, the City of Berkeley, the City of Dublin, the City of Emeryville, the City of Fremont, the City of Hayward, the City of Livermore, the City of Newark, the City of Oakland, the City of Piedmont, the City of Pleasanton, the City of Lathrop, the City of San Leandro, the City of Stockton, the City of Union City, and the City of Tracy (respectively, “Member”; or collectively, “Members”), adopted ordinances authorizing the implementation of a Community Choice Aggregation Program (“CCA Program”) to be operated by EBCE, pursuant to California Public Utilities Code Section 366.2(c)(12).

B. On December 1, 2016, eleven of the Members entered into an East Bay Community Energy Authority Joint Powers Agreement (the “JPA Agreement”) pursuant to the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (the “Act”) to operate and administer the CCA Program; since that date four additional Members have joined the JPA Agreement. EBCE subsequently changed its name to Ava Community Energy Authority or Ava in 2023.

C. Section 4.10 of the JPA Agreement provides that the Ava Board shall appoint a Chief Executive Officer (“CEO”) for the Ava, who shall be responsible for the day-to-day operation and management of the Ava and the CCA Program, and provides for the powers and authority of the CEO.

D. On June 12, 2024, Ava appointed Howard Chang (“Employee”) as CEO of Ava.

E. Employee possesses the skill, experience, ability, background and knowledge to perform the duties and services provided by this Agreement as the CEO of Ava.

F. Ava desires to continue to retain the services of Employee as its Chief Executive Officer on the terms provided by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and mutual promises and conditions in this Agreement, it is agreed as follows:

1. Incorporation of Recitals. The foregoing Recitals, and each of them, are incorporated herein as though set forth in full.
2. Duties and Authority. Ava shall employ Employee as the Chief Executive Officer of Ava, with the full power and authority to perform all of the duties of the Chief Executive Officer, as provided in the JPA Agreement and as determined by the Board of Directors (“Board”).
3. Restrictions on Outside Business Activities and Conflicts. During his employment, Employee shall devote his full energies, interest, abilities, and productive time to the performance of the Agreement and shall not, without Ava’s prior written consent, tender to other services of any kind for compensation, or engage in any other business activity. Prior to engaging in any outside activity, Employee shall obtain approval from an ad hoc committee consisting of the Chair, Vice Chair, and one additional board member to be appointed by the Chair.

In addition, Employee shall not engage in any activity, for compensation or otherwise, that would interfere or conflict with the performance of his duties under this Agreement, including activities that may reasonably be expected to conflict with the Chief Executive Officer’s duties. Without limitation to the foregoing, a conflict includes, but is not limited to, a conflict of interest under the California Political Reform Act, Government Code § 1090 or other state or federal laws.

4. Term. Unless earlier terminated as provided in this Agreement, the term of this Agreement shall be from the Effective Date of this Agreement until July 1, 2027. This contract may be extended by one year thereafter on July 1, 2027 and July 1, 2028.
5. Salary. Effective June 12, 2024 (“Effective Date”), Ava will pay Employee an annual base salary of four hundred forty-five thousand dollars (\$445,000), prorated and paid on Ava’s normal paydays, subject to legally permissible or required deductions. Employee’s salary is compensation for all hours worked and for all services under this Agreement. Employee shall be exempt from overtime pay provisions of California law (if any) and federal law.

Starting on July 1, 2025, and at the beginning of each fiscal year thereafter, Employee’s salary shall increase by the published percentage change in the U.S. Department of Labor All Urban Consumers Index for the San Francisco-Oakland-San Jose Area for the prior 12 month period (generally calculated from April to April). This cost of living adjustment shall never be lower than zero percent or greater than four percent (4%).

Employee is entitled to an annual bonus of ten percent (10%) of the base salary to be awarded each year of the Agreement starting July 1, 2025. This bonus shall be issued based upon performance metrics to be established by the Board of Directors in partnership with CEO.

Beginning in Fiscal Year 2025/2026 and paid at the beginning of each fiscal year from that point forward, Employee is eligible for an automatic retention bonus if Employee is retained as CEO. Notwithstanding the foregoing, if the Board of Directors takes action to determine that the Employee’s performance is unsatisfactory, the retention bonus shall not be paid. The retention bonus is 5% of the base salary in FY 2025/2026, 10% of the base salary in FY 2026/2027, and 15% of the base salary each year thereafter.

6. Evaluation of Performance. The Board shall evaluate the performance of Employee before or around the start of each new fiscal year. Evaluations may be conducted more often at the Board's discretion. Employee will request and schedule the minimum required evaluations as appropriate under the Ava's agenda procedures or as otherwise directed by the Board.

7. Benefits. During the Term of this Agreement, Employee shall be entitled to participate in any group insurance plan (including medical, dental, vision, life and disability), retirement program or similar plan or program of Ava established by the Board during the term of this Agreement to the extent Employee is eligible under its provisions. In the event Ava establishes a separate benefit program for executive and management employees, Employee shall be entitled to participate only in such benefit program. Ava may establish additional benefit programs and may modify, reduce or eliminate any benefit plan or program in its discretion, in accordance with applicable law. In addition, Employee shall be entitled to the following benefits:

a. Vacation. Employee shall receive 6 weeks of vacation leave annually. Except as otherwise provided in this Agreement, vacation leave shall be subject to any Ava vacation policy applicable to employees generally.

b. Sick Leave. Employee shall be entitled to sick leave in the amount of one day per month, a total of 96 hours annually, prorated and credited each pay period. Except as otherwise provided in this Agreement, sick leave shall be subject to any Ava sick leave policy applicable to full-time employees generally. This benefit will be interpreted and applied consistent with the minimum requirements of California law requiring paid sick leave.

c. Holiday Leave. Employee shall be entitled to the following paid holidays: New Year's Day, Martin Luther King Jr.'s Birthday, President's Day, Cesar Chavez Day,, Memorial Day, Juneteenth, Independence Day, Labor Day, Indigenous People's Day, Veteran's Day, Thanksgiving, Friday after Thanksgiving, Christmas Day, and New Year's Eve, and any other holiday applicable to employees generally. In the event a holiday falls on a weekend or another question arises in the administration of a holiday, the holiday will be administered as applicable to employees generally. In addition, on July 1 of each year, Employee will be credited with four floating holidays for use during the year from July 1 – June 30. Employee must be employed on July 1 to be eligible to receive any floating holidays. Floating holidays are not prorated.

d. Retirement. Employee will be eligible to participate in any public retirement program or similar plan for which Ava employees become eligible to participate. Subject to IRS limits, Employee is eligible to participate in Ava's program in which Ava will contribute 8% in lieu of Social Security and 15% of base salary to 401a and 415m retirement accounts on behalf of Employee. Employee shall make the maximum allowed contribution to a 457b retirement account. Employee may use Ava sponsored retirement accounts or establish such additional retirement savings accounts as necessary to implement this section.

e. Transportation Allowance. Employee's duties require that he have available exclusive and unrestricted use of an automobile for business purposes and Employee agrees to have a personal vehicle available for such use. Employee is also encouraged to utilize public transportation in the performance of his duties. In consideration of this, Ava agrees to pay to Employee, during the term of this Agreement and in addition to other salary and benefits, a transportation allowance of Six Hundred Dollars (\$600.00) per month. The transportation allowance is in addition to reimbursement of mileage or transportation costs by Ava pursuant to Section 9 of this Agreement. Employee shall maintain automobile liability insurance limit of at least \$250,000 per person and \$500,000 per accident. Employee shall submit proof of insurance on request.

f. Professional Organizations. Subject to availability of funds and with prior approval, Ava agrees to pay or to reimburse Employee for any budgeted, reasonable and necessary membership dues in professional organizations. The Ava Board of Directors shall budget up to \$25,000 annually to provide professional/executive coaching to the CEO during the term of this Agreement.

9. Expenses. During the employment term, and subject to the availability of funds, Ava shall reimburse Employee for budgeted and reasonable out-of-pocket expenses incurred in connection with Ava's business, including reasonable expenses for travel, food, and lodging while away from home, subject to such policies as Ava may from time-to-time reasonably establish for its employees. Additionally, Employee shall be entitled to Board-approved or budgeted and reasonable reimbursement for continuing education expenses, and for attendance at conventions, and conferences. Employee may, upon request and prior approval by the Ava Chair of the Ava Board, be reimbursed for budgeted and reasonable expenses incurred in attending additional events that are appropriate to Ava's goals.

10. Termination of Agreement.

a. Termination by Ava. Employee is employed at the pleasure of the Board, and is thus an at-will employee. The Board may terminate this Agreement and the employment relationship at any time with or without cause, and with or without prior notice.

b. Termination on Resignation. Employee may terminate the Agreement by giving Ava at least 60 days (or more if possible) prior written notice. Ava may accelerate the effective date of resignation to any date after the receipt of written notice or, upon request, may reduce the notice period, at its discretion.

c. Termination on Death. If Employee dies during the term of this Agreement, this Agreement shall be terminated on the date of Employee's death. All warrants or checks for accrued salary, accrued vacation or other items shall be released to the person designated in writing by Employee pursuant to Government Code Section 53245 or, if no designation is made, to Employee's estate.

11. Severance. Ava shall pay Employee for all services through the effective date of termination. Employee shall have no right to any additional compensation or payment, except as provided below and except for any accrued and vested benefits.

a. If Ava terminates this Agreement (thereby terminating Employee's Employment) without cause, Ava shall pay Employee a lump sum severance benefit. If Ava terminates this Agreement within one year of the Agreement, on June 12, 2025, Employee will be entitled to a severance benefit equal to three months of Employee's base salary. Thereafter, the severance benefit will be equal to six months of Employee's base salary.

b. If Ava terminates this Agreement (thereby terminating Employee's Employment) with cause, Employee shall not be entitled to any severance. As used in this Agreement, cause shall mean termination due to:

(1) A conviction, plea bargain, judgment or adverse determination by any court, the State Attorney General, a grand jury, or the California Fair Political Practices Commission involving any felony, intentional tort, crime of moral turpitude or violation of any statute or law constituting misconduct in office, misuse of public funds or conflict of interest;

(2) Conviction of a felony;

(3) Conviction of a misdemeanor arising out of Employee's duties under this Agreement and involving a willful or intentional violation of law;

(4) Willful abandonment of duties;

(5) A pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted policy decisions of the Board made by the Board as a body or persistent and willful violation of properly established rules and procedures; and

(6) Any other action or inaction by Employee that materially and substantially harms Ava's interests, materially and substantially impedes or disrupts the performance of Ava or that is detrimental to employee safety or public safety.

c. If Employee terminates this Agreement (thereby terminating Employee's Employment), Employee shall not be entitled to any severance.

d. Any other term of this Agreement notwithstanding, the maximum severance that Employee may receive under this Agreement shall not exceed the limitations provided in Government Code Sections 53260 - 53264, or other applicable law. Further, in the event Employee is convicted of a crime involving an abuse of office or position, Employee shall reimburse the Ava for any paid

leave or cash settlement (including severance), as provided by Government Code Sections 53243 - 53243.4.

12. Miscellaneous Provisions.

- a. Integration. Subject to all applicable Government code sections, the Agreement contains the entire agreement between the Parties and supersedes all prior oral and written agreements, understandings, commitments and practices between the Parties before the date of this Agreement. No amendments to this Agreement may be made except in writing signed by the Parties.
- b. Severability. If any provision of this Agreement is held invalid or unenforceable, the remainder of the Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect in all other circumstances.
- c. Notices. Any notices required or permitted under this Agreement must be in writing and shall be deemed effective on the earlier of personal delivery (including personal delivery by facsimile or similar means intended to provide actual delivery on the same day) or the third day following mailing by first class mail to the recipient. Notice to Avashall be addressed to the Secretary of the Board of Directors at the Ava's then principal place of business. Notice to Employee shall be addressed to his home address, as then shown in Ava's files.
- d. Agreement is Binding. This Agreement shall be binding upon and inure to the benefit of Ava, its successor and assigns, and shall be binding upon Employee, his administrators, executors, legatees, heirs, and assigns.
- e. Waiver. The failure of either PARTY to insist on strict compliance with any of the terms, covenants or conditions of this Agreement by the other PARTY shall not be deemed a waiver of that term, covenant or condition, nor a waiver or relinquishment of any right or power.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

Chair Jack Balch
East Bay Community Energy Authority

Howard Chang

DATE: _____, 2024

DATE: _____, 2024

APPROVED AS TO FORM:

Inder Khalsa, General Counsel

ATTEST:

Adrian Bankhead, Clerk of the Board