



## **REQUEST FOR PROPOSAL**

**For**

### **Ava Community Energy Authority Financial Audit Services**

**RESPONSE DUE**

by

**5:00 PM PT**

on

**March 13, 2024**

**For complete information regarding this project, see RFP posted at [avaenergy.org](http://avaenergy.org) or contact the Ava representative listed below. Thank you for your interest!**

Jason Bartlett | Sr. Finance Manager, Ava

510.650.7584

[finance@avaenergy.org](mailto:finance@avaenergy.org)

## **GENERAL REQUEST**

Ava Community Energy Authority is seeking proposals from qualified CPA consultants or firms (“Consultant”) to provide auditing services of our financial statements for the period from July 1, 2023 through June 30, 2024. This audit is to be performed in accordance with auditing standards generally accepted in the United States of America.

### **I. BACKGROUND**

Ava Community Energy Authority (“Ava”) is a public government agency headquartered in Oakland that operates a Community Choice Aggregator (CCA) energy program for Alameda County and fifteen incorporated cities, serving more than 640,000 residential and commercial customers. Ava initiated service in June 2018 and is one of 25 CCA programs operating in California. CCAs are expediting the climate action goals of their communities and those of California. Ava is committed to providing clean power at competitive rates while reinvesting in our local communities.

Ava is governed by a board of directors (Board) consisting of elected representatives from each participating jurisdiction. The JPA authorizes Ava with the rights and powers to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations.

For more information about Ava Community Energy, visit <https://avaenergy.org/>.

## **II. STATEMENT OF WORK**

### **A. Proposed Scope of Work**

- a. The Consultant is desired to express an opinion on Ava’s basic financial statements in conformity with generally accepted accounting principles. Ava will provide the Consultant with full disclosure to all relevant financial information.
- b. Following the completion of the audit, the Consultant shall issue a report on the fair presentation of the financial statements in conformity with generally accepted accounting principles. This report shall include, at a minimum,
  - i. Management’s Discussion and Analysis,
  - ii. Basic Financial Statements,
  - iii. Notes to the Basic Financial Statements
  - iv. Consultant shall issue a report, a letter, or a discussion of any deficiencies in internal controls,
  - v. Discussion on any required compliance audits, if applicable.
- c. The Consultant may be required to meet, independent of Ava staff, with Ava Board members to discuss details of scope, intent, or expectations on behalf of the Board. This may be done remotely. However, the Consultant must be able to attend, in person, the final presentation of the audited financial statements to

the Board at the end of the project. Additional meeting attendance may be required. Sufficient advance notice will be provided by Ava staff.

- d. All working papers and reports must be retained, at the Consultant's expense, for a minimum of seven (7) years, unless the firm is notified in writing by Ava of the need to extend the retention period. The Consultant will be required to make working papers available, upon request, to Ava or its designees.

## **B. Ava Project Timeline**

The audit must be completed by October 29, 2024, with no exceptions due to our reporting requirements with counterparties. As such, the following is Ava's expected timeline to ensure project completion.

- July 1, 2024: Start of work
- Before July 31, 2024: First ad-hoc committee meeting with Board members
- September 25, 2024: Draft submission of report to Ava management for review
- September 27, 2024: Second ad-hoc committee meeting with Board members
- October 9, 2024: Completion of report
- October 16, 2024: Presentation to Ava Board
- October 29, 2024: Last day to deliver report to counterparties (ABSOLUTE DEADLINE)

Ava is open to proposals with alternative timelines, as long as they are reasonable in execution and ensure final submission does not exceed absolute deadline above.

## **C. Term of Agreement**

The initial term of the Agreement(s) shall be for one year. Ava reserves the right to extend the agreement(s) for up to 4 additional years.

# **III. EVALUATION CRITERIA**

## **A. Technical Evaluation**

Evaluations will be based upon the information provided in the proposals and such other information requested by Ava, or as deemed appropriate by Ava. Proposals must provide clear, concise information and sufficient detail to enable reviewers/evaluators to evaluate the responsiveness and quality of the proposals to all RFP requirements. Evaluators will also review the proposals for format to ensure conformance with the RFP requirements. Proposals that fail to meet RFP requirements could be rejected. Ava may waive minor irregularities in proposals if doing so would be in the best interest of Ava. Evaluators may recommend discontinuing evaluation of any proposal that is considered not in compliance with the RFP requirements.

The review/evaluation team will select the proposal that offers the greatest value to Ava based on an analysis of the criteria in the following table. The technical evaluation will be the basis for the short list selections for interview.

	Technical Evaluation Criteria	Weighting
1.	Management, personnel, and experience	30%
2.	Understanding of the scope of work required	20%
3.	Consultant's Capabilities	25%
4.	Cost Proposal	25%
	<b>TOTAL</b>	100%
	<b>Bonus Points Available</b>	
a.	Businesses within Ava Service Territory	5.0%
b.	Union Labor	2.5%
c.	Disabled Veteran Business Enterprises	2.5%
d.	Disadvantaged Communities	2.5%
	<b>BONUS TOTAL</b>	12.5%

## B. Interview Evaluation

Presentations may be held in-person at a location to be determined, or remotely using Microsoft Teams or Zoom platforms, and will be arranged and initiated by Ava. The Interview shall be attended by no more than five (5) representatives of the proposing organization. The presentation duration shall be a maximum of 45 minutes, which will be followed by a question-and-answer session lasting up to approximately 45 minutes. The interview will include two components:

### 1. Presentation by Proposing Organization

The presentation is an opportunity to communicate the proposed approach and team, highlighting qualifications and communication style, related accounting experience, financial management techniques, approach to diversity and inclusion, and unique/creative approaches to work. It will be evaluated based on content and effectiveness.

## 2. Question and Answer Session

This session will address communication skills, ability to interact with Ava personnel, and other related questions regarding Ava, this RFP, and the firm's proposal.

## C. Additional Details on Evaluation

As reflected in the Technical Evaluation Criteria, contract award will not be based solely on cost, but on a combination of factors as determined to be in the best interest of Ava. Ava will not be bound to award the contract(s) based solely on the lowest bid submitted.

### Management, Personnel, and Experience Expectations

- Please provide resumes for all staff to be assigned to the project, including the principal, supporting associates, and any analysts.
- Please discuss level of commitment and involvement by each assigned staff
- Please be sure to highlight any experience related to energy, power, or public utilities.
- Please provide three relevant and recent references
- Please include any additional details of the team that would bring benefit to the project or highlight areas of expertise, such as firm and individual credentials, awards, titles, and accolades.

### Understanding the Scope of Work Requirements Expectations

- Please describe details of how your firm can complete the work requested.
- Please provide your response in the requested format described in section IV.B of this request.
- Please provide a detailed understanding of expected engagements with the Board of Directors and subcommittees. Please provide any additional suggestions to this understanding.
- Please describe any additional details that would provide insight into confirming an understanding of the work to be done.

### Consultant Capabilities Expectations

- Please describe details on how the work is to be preformed, including where consultant staff will be stationed for work, software to be used, and any other relevant operational detail.
- Please detail methodology and approach on how the audit is to be conducted. Please note any significant needs from Ava such as data, material deadlines not in timeline, and any legal or compliance deadlines not otherwise discussed,
- Please discuss your firm's ability to complete the work withing Ava's expected timeline.
- Please discuss any familiarity with California energy market finance practices

### Cost Expectations

- Please submit costs for proposed services with the consideration for one, three, and five-year engagements.
- Please list any additional expected pass-through costs, rates, or fees that may need to be recovered.
- Please describe any additional cost needs to ensure a full picture is presented for an expected “all-in” amount.

Ava’s standard Consulting Services Agreement is attached as Attachment A and includes Ava’s current insurance requirements. Please note that these requirements are subject to change by Ava prior to execution of a contract with a selected proposer and may require annual updating during the term of a Consulting Services Agreement. Consultants are expected to note any exceptions to the Consulting Services Agreement in the Consultant’s response and failure to do so may preclude consideration of any requested change at a later date.

After evaluating the proposals and discussing them further with the finalists or the tentatively selected Consultant(s), Ava reserves the right to further negotiate the proposed work and/or method and amount of compensation. Ava further reserves the right to consider the changes make to the Consulting Services Agreement in its

### **MINIMUM CONSULTANT QUALIFICATIONS**

All proposers should be legally certified to perform financial auditing services for government agencies within in the State of California or be able to show certification will be attained by the July 1, 2024 start date. In addition, the firm should affirm all staff to be assigned to the project are properly licensed and legally able to practice in California. All proposers should be able to show the following minimum insurance requirements will be maintained through the duration of the project:

- \$1,000,000 of Commercial General Liability and a general aggregate limit of \$2,000,000 per project or location
- \$1,000,000 of Automobile Liability for any owned, non-owned, or hired vehicle to be used in connection with the performance of this project
- \$1,000,000 of Worker’s Compensation as required by the State of California
- \$2,000,000 of Professional Liability/Errors & Omissions

### **GENERAL EXPECTATIONS OF THE CONSULTANT**

It is expected that the Consultant will have good standing in the community regarding integrity of work, independence of Ava as defined by generally accepted auditing standards, no pending investigations, and preferably no pending litigations.

The Consultant will be expected to work directly with Ava’s accountant, Maher Accounting, Ava’s Senior Finance Manager, Jason Bartlett, and Ava’s COO, Howard

Chang, and possibly other Ava staff on a regular and professional basis. Regular, preferably weekly, consultations may be required. In addition, the Consultant shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

Due to the nature of Ava's operations, a non-disclosure agreement will need to be signed in relation to any information the Consultant may be privy to regarding Ava customer information.

## IV. SUBMITTAL PROCEDURES

### A. Submittal of Proposals

All bids must be received at Ava Community Energy by 5:00 p.m. PST on March 13, 2024. Bids will be received only at the addresses shown below any bid received after that time and date or at a place other than the stated address will not be considered and will be returned to the bidder unopened. **Electronic bids must be submitted in a non-alterable format such as a .pdf.**

1. Bidders **must** submit an electronic copy of their proposal via email to the following:  
**Jason Bartlett, Senior Finance Manager - Ava: [finance@avaenergy.org](mailto:finance@avaenergy.org)**
2. Bidders are responsible for all their costs required for the preparation and submission of a bid.
3. Only one bid response will be accepted from any one person, partnership, corporation, or other entity; however, several alternatives may be included in one response. For purposes of this requirement, "partnership" means, and is limited to, a legal partnership formed under one or more of the provisions of the California or other state's Corporations Code or an equivalent statute.
4. All other information regarding the bid responses will be held as confidential until the Review Committee has completed its evaluation, a recommended award has been made by the Ava Board of Directors, and the contract has been fully negotiated.
5. California Government Code Section 4552: In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.
6. Bidder expressly acknowledges that it is aware that if a false claim is knowingly submitted (as the terms "claim" and "knowingly" are defined in the California

False Claims Act, Cal. Gov. Code, §12650 et seq.), Ava will be entitled to civil remedies set forth in the California False Claim Act. It may also be considered fraud and the Consultant(s) may be subject to criminal prosecution.

7. The undersigned Bidder certifies that it is, at the time of bidding, and throughout the period of the contract, licensed by the State of California to do the type of work required under the terms of the Contract Documents. Bidder further certifies that it is regularly engaged in the general class and type of work called for in the Bid Documents.
8. It is understood that Ava reserves the right to reject this bid and that the bid shall remain open to acceptance and is irrevocable for a period of one-hundred and eighty (180) days, unless otherwise specified in the Bid Documents.

## **B. Response Format**

Bid responses are to be straightforward, clear, concise, and specific to the information requested:

- Title Page: Describing the title of the document, the proposer's name, address, contact information, and date of proposal
- Transmittal Letter: Briefly introducing the proposer, stating an understanding of the work to be done, and a statement of why the proposer believes they are the best fit to perform the engagement, including a statement of meeting independence requirements.
- Technical Proposal: (In any order)
  - An outline of the Scope of Work to be done
  - Staff to be assigned to the project, with qualifications
  - Firm or Consultant proposer qualifications and related experience
  - Commitment levels and involvements by each staff assigned
  - A statement of direct experience working in the power sector, public power agencies, and other CCA's, if applicable
  - Commitment to support on any required compliance items or additional audits
- Description of Qualifications (can be an appendix)
  - Confirmation of meeting the Minimum Consultant Qualifications stated above
  - Acknowledgement of understanding of the General Expectations stated above
  - A description of any subcontractors that may be used in relation to this project and the capacity in which they will be employed
  - Years of operation and directly related experience, or most significant engagements, performed in the last five (5) years.
  - Three (3) references
    - Please highlight any references related to energy or municipal entities



- Sample of work
- Project Timeline: Not to exceed the absolute deadline in EBCE's project timeline
- Project Budget: With a not to exceed, staffing cost table, subcontractor passthroughs (if applicable), and estimated hours

### **C. Ava Contact**

The evaluation phase of the competitive process will begin upon receipt of bids until a contract has been awarded. Bidders must not have any contact with Ava personnel nor should they lobby evaluators or any member of the staff or Board of Directors during the evaluation process. Any communications outside of the procedures set forth in this RFP may result in disqualification of bidder.

All questions regarding these specifications, terms and conditions are to be submitted in writing, via e-mail, by 5:00 p.m. PST on Wednesday March 6, 2024, for answer distribution on March 8, to:

Attn: Jason Bartlett  
Ava Community Energy Authority  
E-Mail: [finance@avaenergy.org](mailto:finance@avaenergy.org)

The Ava website will be the official notification posting place of all Requests for Interest, Proposals, Quotes and Addenda. Go to <https://avaenergy.org/solicitations/> to view current opportunities.

## **V. LEGAL TERMS AND CONDITIONS**

### ***Consultant Services***

Ava intends to award one Consulting Services Agreement based upon overall evaluation of proposals as they comply with the intent of the request. The selected consultants shall comprise a shortlist of available consultants.

### ***Incurring Cost***

This RFP does not commit Ava to award or pay any cost incurred in the submission of the proposal, or in making necessary studies or designs for the preparation thereof, nor procure or contract for services or supplies. Further, no reimbursable cost may be incurred in anticipation of a contract award.

### ***Claims Against Ava***

Neither your organization nor any of your representatives will have any claims whatsoever against Ava or any of its respective officials, agents, or employees arising out of or relating to this RFP or these RFP procedures, except as set forth in the terms of a definitive agreement between Ava and your organization.

***Guarantee of Proposal***

Responses to this RFP, including proposal prices, will be considered firm and irrevocable for one hundred eighty (180) days after the due date for receipt of proposals.

***Basis for Proposal***

Only information supplied by Ava in writing by the Contact in connection with this RFP should be used as the basis for the preparation of Consultant(s)'s proposal.

***Form of Proposals***

Proposals must be submitted electronically by e-mail to [finance@avaenergy.org](mailto:finance@avaenergy.org).

***Amended Proposals***

Bidders may submit amended proposals before the Deadline to Submit Proposals. Such amended proposals must be complete replacements for previously submitted proposals and must be clearly identified in a written format. The Contact will not merge, collate, or assemble proposal materials.

***Withdrawal of Proposal***

Bidders may withdraw their proposals at any time prior to the Deadline to Submit Proposals. The Consultant(s) must submit a written withdrawal request signed by the Consultant(s)'s duly authorized representative addressed to and submitted to the Contact.

***Late Responses***

To be considered, proposals must be received electronically by email and (optional) in person or via courier/mail or to the place specified by 5:00 p.m. PT on Wednesday, March 13, 2024. No late responses will be considered.

***California Public Records Act (CPRA)***

All proposals become the property of Ava, which is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Consultant(s) proprietary information is contained in documents submitted to Ava, and Consultant(s) claims that such information falls within one or more CPRA exemptions, Consultant(s) must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, Ava will make best efforts to provide notice to Consultant(s) prior to such disclosure. If Consultant(s) contends that any documents are exempt from the California Public Records Act (CPRA) and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief, or other appropriate remedy from a court of law in Alameda County, before Ava's deadline for responding to the CPRA request. If Consultant(s) fails to obtain such remedy within Ava's deadline for responding to the CPRA request, Ava may disclose the requested information.

Consultant(s) further agrees that it shall defend, indemnify, and hold Ava or its agents, harmless against any claim, action, or litigation (including, but not limited to, all judgments, costs, fees, and attorney's fees) that may result from Ava's assertion of an exemption or privilege as a basis for withholding any information marked confidential by the Consultant(s).

DO NOT MARK YOUR ENTIRE BID CONFIDENTIAL. ONLY MARK THOSE PAGES THAT YOU BELIEVE CONTAIN PROPRIETARY INFORMATION.

***Confidentiality***

All data and information obtained from or on behalf of Ava by the Consultant(s) and its agents in this RFP process, including reports, recommendations, specifications, and data, shall be treated by the Consultant(s) and its agents as confidential. The Consultant(s) and its agents shall not disclose or communicate this information to a third party or use it in advertising, publicity, propaganda, or in another job or jobs, unless written consent is obtained from Ava.

Generally, each proposal and all documentation, including financial information, submitted by a Consultant(s) to Ava is confidential until a contract is awarded, when such documents become public record under State and local law, unless exempted under CPRA.

***Electronic Mail Address***

Most of the communication regarding this procurement will be conducted by electronic mail (e-mail). Potential Bidders agree to provide the Contact with a valid e-mail address to receive this communication.

***Ava Rights***

Ava and its Contact reserve the right to do any of the following at any time:

- a. Reject any or all proposal(s), without indicating any reason for such rejection;
- b. Waive or correct any minor or inadvertent defect, irregularity, or technical error in a proposal or the RFP process, or as part of any subsequent contract negotiation;
- c. Request that Bidders supplement or modify all or certain aspects of their proposals or other documents or materials submitted;
- d. Terminate the RFP, and at its option, issue a new RFP;
- e. Procure any equipment or services specified in this RFP by other means;
- f. Modify the selection process, the specifications or requirements for materials or services, or the contents or format of the proposals;
- g. Extend a deadline specified in this RFP, including deadlines for accepting proposals;
- h. Negotiate with any or none of the Bidders;
- i. Modify in the final agreement any terms and/or conditions described in this RFP;

- j. Terminate failed negotiations with any Consultant(s) without liability, and negotiate with other Consultant(s);
- k. Disqualify any Consultant(s) on the basis of a real or apparent conflict of interest, or evidence of collusion that is disclosed by the proposal or other data available to Ava;
- l. Eliminate, reject, or disqualify a proposal of any Consultant(s) who is not a responsible Consultant(s) or fails to submit a responsive offer as determined solely by Ava or its representative; or
- m. Accept all or a portion of a Consultant(s)'s proposal.

***Supplier Diversity***

Pursuant to California Senate Bill 255, Community Choice Aggregators (CCAs) are required to report to the California Public Utilities Commission on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, Bidders that execute a contract with Ava will be required to complete a Supplier Diversity Questionnaire. Ava will not consider race, sex, color, ethnicity, or national origin in procurement decisions; providing such information will not impact the selection process or good standing of executed contracts.

Ava encourages all eligible parties to get certified with the CPUC as a women, minority, disabled veteran and/or LGBT -owned business enterprise (WMDVLGBTBE). For overview information on the CPUC Supplier Diversity Program, please visit the program homepage (<https://www.cpuc.ca.gov/supplierdiversity/>). For information on the certification process and requirements, please visit the Certifications page ([www.cpuc.ca.gov/Certifications/](http://www.cpuc.ca.gov/Certifications/)).

## **Attachment A**

### **Ava Consulting Services Agreement Consulting Services Agreement for Services By and Between Ava Community Energy Authority and [Vendor's Legal Name]**

This Consulting Services Agreement (“Agreement”) is made this [xx] day of [Month], 202X (“Effective Date”) by and between Ava Community Energy Authority, a joint powers authority formed under the laws of the State of California (“Ava”) and [Vendor's Legal Name], a [legal form of business, state of formation, i.e. a California corporation] (“Consultant”) for the purpose of providing [brief description of services i.e. regulatory support, videography, etc] services to Ava. Ava and Consultant are herein referred to as “Parties” or individually as a “Party.”

#### **Section 1. Recitals**

1.1 Ava is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) with the power to conduct its business and enter into agreements.

1.2 Consultant possesses the skill, experience, ability, background, certification and knowledge to complete the Work described in this Agreement pursuant to the terms and conditions described herein.

**NOW THEREFORE**, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties to this Agreement, agree as follows:

#### **Section 2. Term**

The term of this Agreement is from the Effective Date of this Agreement through [termination date], unless terminated earlier pursuant to Section 8.

#### **Section 3. Scope of Work/Compliance with Laws and Regulations**

3.1 Consultant agrees to perform the scope of work (the “Work”) in Exhibit A in accordance with the compliance schedule in Exhibit B.

3.2 Consultant represents and warrants that it has the skill and expertise to perform the Work. Consultant agrees to obtain any and all necessary licenses, approvals or permits necessary to perform the Work.

**3.3** Consultant and its sub-suppliers, affiliates, agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively “Subconsultants”) must comply with all federal, state and local laws and regulations in performing the Work under this Agreement.

#### **Section 4. Consultant Staffing**

Exhibit C contains a list of Consultant’s project manager and all team members. Consultant will not change or substitute the project manager or any team members or add additional team members without consultation with Ava.

#### **Section 5. Subconsultants**

**5.1** Consultant agrees to use only those Subconsultants listed on Exhibit D. Consultant shall notify Ava within a reasonable period of time of any changes, additions, or removals of a Subconsultant.

**5.2** Consultant agrees to require all Subconsultants to comply with the terms of this Agreement, including without limitation, maintaining insurance in compliance with the insurance obligations under Section 9, the Confidentiality requirements under Section 11 and indemnifying Ava under Section 12.

#### **Section 6. Compensation and Payment**

**6.1** The maximum compensation under this Agreement is [\$\$\$\$].

**6.2** If the Work under this Agreement is to be performed on a time and materials basis, Consultant must submit invoices to Ava on a monthly basis, complete with the name of the individual that conducted the Work, the time spent, and a brief description of the tasks performed during that time. On all invoices, Consultant must include the contract number provided by Ava and the total compensation left on the Agreement after deducting the amount of the invoice. Notification to Ava is required once the contract budget has been used up by 80% (including invoiced work and work that may not have been invoiced yet) which is \$ [ ] for this Agreement. Invoices must be submitted to Ava by the 20<sup>th</sup> of the month following the month in which Consultant performed the Work.

**6.3** If the Work under this Agreement is to be performed on a task or project basis, the Consultant will submit an invoice within thirty (30) days of completing the project to the satisfaction of Ava for full payment, unless other arrangements have been made.

**6.4** Ava will not agree to pay any markups on Subconsultant services or supplies unless such markups are included in Exhibit E, Compensation/Budget and such markups were included in Consultant's bid, if applicable.

**6.5** The following are conditions on Ava's obligation to process any payments under this Agreement:

**6.5.1** If the Consultant is a U.S. based person or entity, the Consultant must provide to Ava a properly completed Internal Revenue Service Form W-9 before Ava will process payment. If the Consultant is a U.S based person or entity but has neither a permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant must provide Ava with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income before Ava will process payment.

**6.5.2** If the Consultant is not a U.S. based person or entity, the Consultant must provide Ava with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before Ava will process payment.

**6.6** Ava agrees to pay invoices within forty-five (45) days of receipt. Invoices may be sent to Ava by U.S. mail or electronic mail to [AP@avaenergy.org](mailto:AP@avaenergy.org). Invoices will be deemed received on the next business day following the date of transmission via electronic mail or three days after placement in the U.S. mail.

**6.7** Ava, as a Joint Powers Authority, is a separate public entity from its constituent members and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant acknowledges that it will have no rights and agrees not to make any claims, take any actions or assert any remedies against any of Ava's constituent members in connection with this Agreement.

## **Section 7. Records Retention and Ownership of Work Product**

**7.1** The Consultant must retain all ledgers, books of accounts, invoices, vouchers, cancelled checks, background materials, or other records relating to its performance under this Agreement for a period of three years following termination of this Agreement.

**7.2** Ava owns all rights, including without limitation, all licenses, copyrights, service marks and patents, in and to all Work Product(s), whether written or electronic, without restriction or limitation upon their use and immediately when and as created by the Consultant, any Subconsultants, or any other person engaged directly or indirectly by the Consultant to perform under this Agreement. "Work Product(s)" means all writings, reports, drawings, plans, data, video, media, photographs, renderings, plans, software, models, and other similar documents and materials developed or created by Consultant or its Subconsultants on behalf of or for use by Ava under this Agreement. All Work Product(s) will be considered "works made for hire," and

together with any and all intellectual property rights arising from their creation will be and remain the property of Ava without restriction or limitation upon their use, duplication or dissemination by Ava. Consultant agrees not to obtain or attempt to obtain copyright protection in its own name for any Work Product.

## **Section 8. Termination**

**8.1** Ava may terminate this Agreement for any reason by giving Consultant written notice. The termination notice may set the date of termination, but if no such date is given, termination is effective seven (7) days following the date of the written notice.

**8.2** Ava may terminate this Agreement immediately upon written notice for any material breach of this Agreement by Consultant or any of its Subconsultants. If Ava terminates this Agreement for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess costs in addition to any other remedies available to Ava.

**8.3** Upon termination for any reason, Ava has the option of requiring the Consultant to complete work up to the date of termination or to cease work immediately. Ava has the further option to require Consultant to provide Ava any finished or unfinished Work or Work Product prepared by the Consultant up to the date of termination.

**8.4** Ava will pay Consultant the reasonable value of services satisfactorily rendered by the Consultant to Ava up to the date of written notice of termination. If Ava authorizes Consultant to continue performing the Work through the date of termination, Ava will pay Consultant the reasonable value of services satisfactorily rendered up through the date of termination, providing such services are in compliance with the Compensation/Budget in Exhibit E.

**8.5** Upon termination of this Agreement, and at no cost to Ava, Consultant, its Subconsultants and anyone working for Ava under control of Consultant must return all Work Product to Ava. Consultant may only retain copies of the Work Product by express written permission of Ava.

## **Section 9. Insurance**

**9.1** Consultant must procure, maintain and comply with the insurance requirements in Exhibit F throughout the full term of this Agreement. Consultant must provide proof of insurance either in the form of a certificate of insurance or, if requested by Ava, a copy of the insurance policy, prior to performing any work under this Agreement.

**9.2** Consultant agrees to stay in compliance with the insurance coverage requirements during the term of this Agreement. Consultant must give Ava ten (10) days written notice and



obtain Ava’s written approval prior to making any modifications that would reduce its insurance coverage.

**9.3** Consultant must either include Subconsultants under its insurance policies or require each Subconsultant to comply with the insurance obligations in Exhibit F.

**Section 10. No Discrimination or Conflict of Interest**

**10.1** Consultant represents and warrants, on behalf of itself and its Subconsultants, that it has not and will not discriminate against anyone based on his/her age, color religion, sex, sexual orientation, disability, race or national origin.

**10.2** Consultant represents and warrants, on behalf of itself and its Subconsultants, that it is familiar with local, state and federal conflict of interest laws, that in entering into this Agreement it is not violating any of the conflict of interest laws, that it will avoid any conflicts of interest during the term of this Agreement, and that it will notify Ava immediately if it identifies any conflicts of interest Consultant understands that violations of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

**10.3** In accordance with the California Political Reform Act (Cal. Gov’t Code section 81000 *et seq.*), Consultant will cause each of the following people performing services under this Agreement to file a Form 700 within 30 days after the person begins performing services under this Agreement and subsequently on an annual basis in conformance with the requirements of the Political Reform Act by filing the original with the Ava Clerk to the Board of Directors. Form 700 submissions should be sent to [cob@avaenergy.org](mailto:cob@avaenergy.org), with carbon copy to the AVA contact. Each of the identified positions must disclose interests in accordance with the AVA Resolution-2018-7, Conflict of Interest Code, which may be amended from time to time. For the work currently outlined in Exhibit A, this Agreement **does/ does not** require the Filing of Form 700 at this time.

Name	Position or Assignment

**Section 11. Confidentiality**

**11.1** Except as authorized by Ava or as otherwise required by law, Consultant shall not disclose to any third party/ies any draft or final Work Product, discussions or written correspondence between Consultant and its Subconsultants or discussions or written correspondence between Consultant and Ava staff. In the event Consultant receives a request from any third party requesting disclosure of any Work Product, discussions, communications or any other information Consultant is prohibited from disclosing, Consultant will immediately notify Ava and wait for direction from Ava before disclosing the information.

**11.2** For the purposes of this Section 11, “third parties” refers to any person or group other than Ava staff and Board members. For example, “third parties” include community groups, Board advisory groups, other governmental agencies, other consultants or members of the community.

**11.3** This Section 11 will survive the expiration or termination of this Agreement.

**11.4** **The Parties acknowledge that this Consulting Services Agreement, and any future agreement between the Parties, will be subject to public disclosure under the California Public Records Act.**

**Section 12. Indemnity**

**12.1** Except with regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by Ava, and protect and hold harmless Ava, its officers, directors, employees, agents, attorneys, designated volunteers, successors and assigns, and those Ava agents serving as independent contractors in the role of Ava staff (collectively “Ava Indemnitees”) from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, penalties, judgements, liens and losses of whatever nature (“Claims”) that arise, directly or indirectly, in whole or in part, out of or are in any way related to Consultant’s or Subconsultant’s performance or failure to perform the Work under this Agreement, regardless of whether the Consultant or its Subconsultants acted or failed to act intentionally, willfully, recklessly or negligently. Consultant agrees that its indemnity and defense obligations include all costs and expenses, including all attorney fees, expert fees, mediation, arbitration, or court costs in connection with the defense. Consultant further agrees to indemnify, defend, protect and hold harmless Indemnitees from and against any breach of this Agreement and any infringement of patent rights, trade secret, trade name, copyright, trademark, service mark or any other proprietary right of any person(s) caused by Ava’s use of any services, Work Product or other items provided by Consultant or its Subconsultants under this Agreement.

**12.2** With regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by Ava, and

protect and hold harmless the Ava Indemnitees from and against any and all Claims to the extent arising out of or resulting from Consultant's or Subconsultant's negligence, recklessness, or willful misconduct. In no event shall the cost to defend charged to Consultant exceed the Consultant's proportionate percentage of fault.

**12.3** Consultant's obligations in Subsection 12.1 and 12.2 do not apply to the extent any Claim results from the negligence or willful misconduct of the Ava Indemnitees.

**12.4** Except as limited by Subsection 12.2, Consultant's obligation to defend Ava applies to the maximum extent allowed by law and includes defending Indemnitees as set forth in California Civil Code sections 2778 and 2782.8.

**12.5** The Consultant's obligations under Section 12 applies regardless of the existence or amount of insurance the Consultant carries or has made available to Ava.

**12.6** The Parties agree that this Section 12 survives the expiration or earlier termination of the Agreement.

### **Section 13. Consultant is an Independent Contractor**

**13.1** Consultant and its Subconsultant(s) are and at all times will be independent contractors. Consultant has complete control over its operations and employees and is not an agent or employee of the Ava and must not represent or act as the Ava's agent or employee. Consultant agrees, on behalf of itself and its employees and Subconsultants, that it does not have any rights to retirement benefits or other benefits accruing to Ava employees, and expressly waives any claim it may have to any such rights.

**13.2** As an independent contractor, Consultant has complete control over its Subconsultants. Subject to the requirements of Section 5 of this Agreement, Consultant is solely responsible for selecting, managing and compensating its Subconsultants, and for ensuring they comply with this Agreement.

### **Section 14. Miscellaneous Terms and Conditions**

#### **14.1 Ava Authority.**

The Chief Executive Officer or his/her designee is authorized to take all actions under this Agreement, including without limitation, amendments that fall within the Chief Executive Officer's signing authority, termination or modification of terms.

#### **14.2 Waiver.**

Waiver by either party of any one or more conditions, Sections, provisions or performance of this Agreement will not be a waiver of any other provision; nor will failure to enforce a provision or Section in one instance waive the right to enforce such provision or Section in the future. In

no event will payment by Ava to Consultant constitute or be construed as a waiver by Ava of any breach or default of this Agreement, nor will such payment prejudice any of Ava's other rights or remedies.

**14.3 Governing Law.**

Consultant and Ava agree that this Agreement will be interpreted under the laws of the State of California.

**14.4 Venue.**

Any litigation resulting from this Agreement will be filed and resolved by a state court in Alameda County, California, or if appropriate, the federal courts in the Northern District of California located in San Francisco.

**14.5 Audit Rights.**

All records or documents required to be kept pursuant to this Agreement must be made available for audit at no cost to Ava, at any time during regular business hours, upon written request by Ava. Copies of such records or documents shall be provided to Ava at Ava's offices unless an alternative location is mutually agreed upon.

**14.6 Recitals and Exhibits.**

The Recitals in Section 1 above are intentionally made a part of this Agreement. All Exhibits and any other documents incorporated by reference are a part of this Agreement.

**14.7 Notices.**

Any notices required to be given under this Agreement must be made in writing and may be delivered a) personally, in which case they are effective upon receipt; b) by U.S. Mail, in which case they are effective three (3) days following deposit in the U.S. Mail, unless accompanied by a return receipt in which case, they are effective upon the date on the receipt; or c) by electronic mail, in which case they are effective upon confirmation of receipt, and if no confirmation of receipt, they are effective one day after transmission, providing that a hard copy is also sent via U.S. mail. All notices must be sent to the addresses below:

AVA

Attn: [relationship owner]  
Ava Community Energy  
1999 Harrison Street, Suite 2300  
Oakland, CA 94612  
Email: [your email] @avaenergy.org  
Phone: [your number]

Consultant

Attn: [relationship owner with vendor]  
[Vendor legal name]  
[Vendor address]  
[Vendor address]  
Email: [vendor relationship owner email]  
Phone: [vendor relationship number]

**14.8 Assignment.**

Except to the extent this Agreement authorizes Consultant to use Subconsultants, Consultant will not assign any part of this Agreement without Ava's prior written consent. Ava, at its sole discretion, may void this Agreement if a violation of this provision occurs.

**14.9 Integrated Agreement.**

The Recitals, this Agreement and the Exhibits attached to this Agreement contain the complete understanding between Ava and Consultant and supersedes any prior or contemporaneous negotiations, representations, agreements, understandings and statements, written or oral respecting the Work up through the Effective Date of this Agreement.

**14.10 Amendments.**

Any and all amendments or modifications to this Agreement must be made in writing and signed by each Party before such amendment will be effective.

**14.11 Government Claims Act.**

Nothing in this Agreement waives the requirements to comply with the California Government Claims Act (Government Code Section 810 et seq.) , where applicable.

**14.12 Severability.**

If a court of competent jurisdiction holds any Section or part of this Agreement to be invalid or unenforceable for any reason and the Work can still be performed, the Parties agree to sever the invalid or unenforceable Section from this Agreement and that all remaining Sections or parts of this Agreement will continue to be enforceable.

**14.13 Counterparts.**

This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument and each of which will be deemed an original.

**14.14 No Party Deemed Drafter.**

This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and will not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

**14.15 Supplier Diversity.**

Ava is required to report to the California Public Utilities Commission ("CPUC") on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, Consultant agrees to document and provide information to Ava regarding Consultant's status and any engagement of women, minority, disabled veteran, and LGBT owned business enterprises in its completion of the Work under this Agreement. Specifically, Consultant agrees to complete Ava's Supplier

Diversity questionnaire, which may be updated or revised during the term of the Agreement, and otherwise reasonably cooperate with Ava to provide the information described above. Consultant shall provide such information in the timeframe requested by Ava and in no event later than January 31 of the year following the Effective Date of this Agreement.

**Section 15. Authorized Signatories**

15.1 Proper Countersignatures

Type of Entity	Authorized Signatories		
For a corporation:	Pursuant to California Corporations Code Section 313 proof of authority to execute the Agreement is established if one of the corporate officers listed in Column A below and one of the corporate officers listed in Column B below both sign the documents.		
	<b>Column A</b>	<b>AND</b>	<b>Column B</b>
	Chairman of the Board, or		Secretary, or
	President, or		Assistant Secretary, or
	Vice President		Chief Financial Officer, or Assistant Treasurer
	If the agreement is signed by any combination of persons other than those listed above or by an individual, then the agreement must be accompanied by a copy of the Board minutes, resolution, Corporate Secretary’s certificate, or articles of incorporation stating that the signatories have the authority to bind the corporation.		
For a general partnership, a limited partnership, or a limited liability partnership:	All the general partners must sign the Agreement (a general partnership agreement is sufficient to establish the names of all general partners) unless the person signing the Agreement provides proof that he/she has authority to bind the partnership.		
For a limited liability company (LLC)	Copies of the following documents should be provided to establish who has authority to bind the LLC: (1) State Forms LLC-1 and LLC-12 if the company was formed in California; and (2) the operating agreement for the LLC – whether formed in California or another state.		
For a sole proprietor, or a sole proprietor doing business under another name:	Only the individual who owns the business can sign. Either a Fictitious Business Name Statement or a Business Tax Certificate is sufficient to establish the authority of an individual to bind a sole proprietorship.		

**IN WITNESS WHEREOF**, the Parties have caused the Agreement to be executed as of the date set forth above.

**[VENDOR’S LEGAL NAME]**

AVA COMMUNITY ENERGY AUTHORITY

**Legal form of business, state of formation**

A Joint Powers Authority

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

By \_\_\_\_\_

APPROVED AS TO FORM:

Title \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_

**[\*remove if chart in 15.1 confirms only one signature is required]**

Ava Counsel

**LIST OF EXHIBITS**

EXHIBIT A: SCOPE OF WORK

EXHIBIT B: SCHEDULE

EXHIBIT C: CONSULTANT STAFFING

EXHIBIT D: SUBCONSULTANTS

EXHIBIT E: COMPENSATION/BUDGET

EXHIBIT F: INSURANCE REQUIREMENTS



**Exhibit A**

**SCOPE OF WORK**

[Draft Scope of Work here and remove italicized language below when finalizing]

*A Scope of work should aim to be as concise as possible while ensuring all necessary details of the services are captured. A good Scope should include:*

- *Summary of Services*
- *Purpose and Objectives of Services (This could be in narrative form and provide the general purpose of the services)*

*And may include:*

- *Definitions of any Critical Terms (Any definitions, clarifications could be included here)*
- *List of any Supplemental Documents (If there is a lengthy document that does not make sense to copy and paste into the Scope of Work it could be referenced here)*
- *Tasks and Deliverables*
  - *List each task (and any related subtasks)*
  - *List required updates/reports on progress*
  - *List deliverable for each task*
  - *List schedule/due date for each task and for each deliverable*
  - *List any other milestone dates*
- *Exclusions/Exceptions and Additional Services (If there is anything that is specifically excluded from the Scope of Work that can be listed here. If there are additional services or costs (such as new services or travel costs), we can list the proposed costs and the process for selecting them here)*
- *Any Other Conditions (If there is something unique to the project that does not fit into the other categories).*

**Additional Services:**

Consultant will not provide additional services outside of the services identified in Exhibit A, unless it obtains advance written authorization from the project manager or lead Ava representative prior to commencement of any additional services.

**Exhibit B**

**SCHEDULE**

[Schedule - can be detailed or as simple as "As directed by Ava."]

**Exhibit C**

**CONSULTANT STAFFING**

[Include names of all team members who will be providing Ava services.]

**Exhibit D**

**SUBCONSULTANTS**

[If subconsultants are authorized in advance, they should be listed here, otherwise it can state either of these: "Subconsultants are not authorized under this Agreement." or "Subconsultants must be authorized in advance, in writing by Ava."]

**Exhibit E**

**COMPENSATION/BUDGET**

[If the compensation is hourly, a table of hourly rates by title should be included. If fixed fee, describe what amounts are to be paid based on what milestones]

The maximum compensation under this Agreement is [\$\$\$\$].

**Exhibit F**

**INSURANCE REQUIREMENTS**

A. Minimum Scope and Limits of Insurance. Consultant must procure, and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Consultant is a limited liability company, the commercial general liability coverage must be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. If Consultant has no employees while performing the Work under this Agreement, workers' compensation policy is not required, but Consultant must execute a declaration that it has no employees.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Exhibit F must be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured/Additional Named Insured. The automobile liability policies must contain an endorsement naming Ava, its officers, employees, agents and volunteers as additional insureds. The commercial general liability policy must contain an endorsement naming Ava, its officers, employees, agents and volunteers as additional named insureds.

D. Primary and Non-Contributing. The insurance policies required under this Agreement must apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to Ava. Any insurance or self-insurance maintained by Ava, its officers, employees, agents or volunteers, will be in excess of Consultant's insurance and will not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Agreement will not prohibit Consultant and Consultant's employees, agents or Subconsultants from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against Ava.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by Ava. At Ava's option, Consultant must either reduce or eliminate the deductibles or self-insured retentions with respect to Ava, or Consultant must procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant agrees not to cancel any insurance coverage during the term of this Agreement. Consultant further agrees not to reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement, without the prior written approval of Ava. The commercial general and automobile liability policies required under this Agreement must be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to Ava. If any insurance policy required under Agreement is canceled or reduced in coverage or limits, Consultant must, within two business days of notice from the insurer, phone and notify Ava via electronic mail and certified mail, return receipt requested, of the cancellation of or reductions to any policy.

H. Ava Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements of this Exhibit F, Ava may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, Ava may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant must promptly reimburse Ava for any premium paid by Ava or Ava, in its sole discretion, may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of the Work under this Agreement, Consultant must furnish Ava with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under

this Agreement. The endorsements are subject to Ava's approval. Ava may request, and Consultant must provide complete, certified copies of all required insurance policies to Ava. Consultant must maintain current endorsements on file with Ava. Consultant must provide proof to Ava that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant must furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant will not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify Ava under Section 12 of this Agreement.

K. Subconsultant Insurance Requirements. Consultant's insurance coverage must include its Subconsultants or Consultant must require each of its Subconsultants that perform Work under this Agreement to maintain insurance coverage that meets all the requirements of this Exhibit F.