



Consent Item 9

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| To: | Ava Community Energy Authority |
| From: | Dan Bertoldi, Electrification Program Manager |
| Subject: | Approving a Resolution to authorize the Chief Executive Officer to Enter into a Two Year Agreement with SolarAPP+ Foundation |
| Date: | November 20, 2024 |

Summary/Recommendation

Approve a Resolution (Attachment A) authorizing the CEO to negotiate and execute a Consulting Services Agreement with SolarAPP+ Foundation to develop and integrate automated permitting for residential heat pump hot water heaters into its existing SolarAPP+ software, and to train relevant agencies and contractors in the Ava service area on the new features, with compensation not to exceed an amount of \$350,000.

Financial Impact

The proposed, not to exceed amount of the Agreement with SolarAPP Foundation is \$350,000 over a two-year term. Funds previously allocated to the Local Development Programs for Building Electrification will be used for this work, so no additional allocation is required.

Analysis and Context

The Bay Area Air Quality Management District (BAAQMD) is considering phasing out the sale of fossil fuel powered hot water heaters (FFWH) for residential homes in its district in 2027. Alameda County, which makes up a large part of Ava's service area, is within the BAAQMD's boundaries. While a phase out of FFWH would significantly reduce local air pollution, improve health outcomes, and reduce greenhouse gas emissions, it would increase demand on local permit center and building department resources. Currently, slow and inconsistent permitting for residential heat pump hot water heaters (HPWHs), the alternative to FFWHs, adds significant

installation costs and delays, which presents a barrier to residential electrification, especially in low-income households.

Ava seeks to mitigate this challenge by building on the previous success of solar permitting streamlining to facilitate more rapid, lower cost solar permitting. The National Renewable Energy Labs (NREL) built SolarAPP+ software, in collaboration with industry and building safety stakeholders, to automate the permitting of residential rooftop solar and energy storage installs on single family homes. SolarAPP+ is currently adopted or being adopted in almost 200 cities and counties in 12 states, including 13 of 16 currently enrolled Ava member agencies. Because of SolarAPP+'s success with solar installation permit streamlining and its broad reach across Ava's member agencies, Ava has a unique opportunity to partner with SolarAPP Foundation to address HPWH permitting barriers, both within Ava's service area and across the State.

Contingent upon Board and General Counsel approval, Ava will partner with the SolarAPP Foundation to build out the features in the existing SolarAPP+ software to enable automated permitting for residential HPWH in single family homes. This would help provide fast, transparent, and consistent permitting for HPWH, which can benefit Authorities Having Jurisdiction (AHJs), contractors, and residents.

As part of the proposed scope of work under the Agreement, Ava member agencies who have adopted SolarAPP+, as well as contractors in Ava's service area, will be offered the opportunity to participate in a Specification Development Working Group to define how the HPHW functionality will be structured. Furthermore, all AHJs and contractors in the service area will have an opportunity to pilot and provide feedback to the HPWH features when ready for "beta" testing.

Incorporating the work of the Specification Development Working Group and feedback gained from the beta pilot, SolarAPP Foundation will provide in-person trainings and/or webinars for applicable Ava member agency staff. Additionally, they will develop online learning modules to assist contractors and inspectors on automated permitting and inspection requirements.

Ava has begun negotiating a Consulting Service Agreement (CSA) with SolarAPP Foundation (Attachment B), including a scope of work. Contingent upon Board approval, Ava will complete negotiations and execute the CSA.

Attachments

- A. Draft Resolution
- B. Draft Consulting Service Agreement

RESOLUTION NO. R-2024-XX

A RESOLUTION OF THE BOARD OF DIRECTORS

OF AVA COMMUNITY ENERGY AUTHORITY TO AUTHORIZE THE CEO TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE SOLARAPP+ FOUNDATION TO DEVELOP AND INTEGRATE AUTOMATED PERMITTING FOR HEAT PUMP HOT WATER HEATERS INTO ITS EXISTING SOFTWARE AND PROVIDE RELEVANT TRAINING

WHEREAS Ava Community Energy Authority (“Ava”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, under the Joint Exercise of Powers Act, California Government Code section 6500, *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of Ava and parties to the Joint Powers Agreement (“JPA”) in March of 2020. The city of Stockton was added as a member to Ava in September of 2022. The city of Lathrop was added as a member to Ava in October of 2023. San Joaquin County was added as a member to Ava in July 2024. On October 24, 2023, Ava legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

WHEREAS slow and inconsistent permitting for residential heat pump water heaters adds significant installation costs and delays, thereby presenting a significant barrier to residential electrification, especially in low-income households; and

WHEREAS SolarAPP+ is a permit automation software developed by the National Renewable Energy Labs (NREL) and licensed to the non-profit SolarAPP+ Foundation; and

WHEREAS SolarAPP+ has been adopted by thirteen (13) Ava member agencies to automate permitting of residential rooftop solar and energy storage installations on single family homes; and,

WHEREAS Ava seeks to execute a Consulting Services Agreement with the SolarAPP+ Foundation to address heat pump water heater permitting barriers by building additional functionality in SolarAPP+, and to train relevant Authorities Having Jurisdiction and contractors in Ava’s service territory on how to use the new features.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF AVA COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is authorized to negotiate and execute a Consulting Services Agreement with SolarAPP+ Foundation with compensation not to exceed \$350,000 over a term of two (2) years, subject to the approval of General Counsel.

ADOPTED AND APPROVED this 20th day of November 2024.

Jack Balch, Chair

ATTEST:

Adrian Bankhead, Clerk of the Board

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**Consulting Services Agreement for
Services By And Between Ava Community Energy Authority and SolarAPP
Foundation,**

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This Consulting Services Agreement ("Agreement") is made this [xx] day of [Month], 2024 ("Effective Date") by and between Ava Community Energy Authority, a joint powers authority formed under the laws of the State of California ("Ava") and SolarAPP Foundation, a not-for-profit company organized under the laws of Washington, D.C. ("Consultant") for the purpose of developing and implementing heat pump water heater permit streamlining functionality in the existing SolarAPP+ software and providing relevant training to Ava Member Agencies. Ava and Consultant are herein referred to as "Parties" or individually as a "Party."

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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 December 31, 2026, unless terminated earlier pursuant to Section 8.

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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

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(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.

Section 6. Compensation and Payment

6.1 The maximum compensation under this Agreement is ~~\$350,000.00.~~

~~6.2~~ 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 task or project to the satisfaction of Ava for full payment, unless other arrangements have been made.

~~6.3~~ 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.

~~6.4~~ The following are conditions on Ava's obligation to process any payments under this Agreement:

~~6.4.1~~ 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.

Commented [1]: Ava: The Foundation's subcontractors should not be required to directly indemnify Ava. The Foundation is responsible for the acts of its subcontractors, which addresses Ava's risk here.

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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 20th of the month following the month in which Consultant performed the Work. ¶

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Commented [2]: If subs are involved, I don't think we can remove this language.

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6.4.2 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.

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6.5 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. 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.

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6.6 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.

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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 Consultant 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. Consultant hereby grants to Ava a non-exclusive, non-transferable, worldwide license to use (but not distribute to third parties) the Work Products solely for the purposes described in Exhibit A. "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.

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Commented [5]: Given the nature of the relationship between parties, I am ok with these changes.

Commented [6]: I am thinking that if we agree to not take any IP or rights over the software, that the findings or work products completed under this agreement at the very least need to be released to Ava and/or the public.

Commented [A7R6]: **Ava:** Please note that, under Section 8.3 below, Ava may already require the Foundation to provide any finished or unfinished Work Product to Ava upon Termination, subject to this license. If this does not address Ava's concerns here, we're happy to discuss.

Commented [DB8R6]: I'm ok with that.

Deleted: 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.

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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 thirty (30) days following the date of the written notice.

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8.2 Either Party may terminate this Agreement immediately upon written notice for any material breach of this Agreement by the other Party.

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. IN THE EVENT CONSULTANT PROVIDES ANY SUCH UNFINISHED WORK OR WORK PRODUCT TO AVA, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, CONSULTANT PROVIDES THE WORK OR WORK PRODUCT ON AN "AS IS" AND "AS AVAILABLE" BASIS AND EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE.

8.4 Ava will pay Consultant the pro-rata amount for all services performed as of the effective date of termination, regardless of whether Consultant has delivered the applicable services. Ava will pay any such amounts within 45 days 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.

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 in performance of the services under this Agreement, it has not and will not discriminate against anyone based on his/her age, color religion, sex, sexual orientation, disability, race or national origin.

Commented [9]: I am ok with mutual termination without cause but need to check with legal.

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Commented [11R10]: I disagree, but in this case where no other vendor would be able to remedy based on the proprietary nature of the work, I am ok with removing this language.

Deleted: Consultant or any of its Subconsultants

Deleted: 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.

Commented [12]: I am not sure removing this has any substantive impact on either party, it just forces the timing of termination. If anything, it allows Ava notify termination earlier which should benefit the Foundation. Either way, will need to check with legal.

Commented [A13R12]: Ava: We reverted the suggested deletion here.

Commented [DB14R12]: Thank you.

Commented [15]: Ava: The Foundation is not able to make any guarantees about the quality of unfinished work or work product that Ava requests..

Commented [16R15]: I am ok with this but need to check with legal.

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Commented [17]: Our policy is Net45, even under termination procedures.

Commented [A18R17]: Ava: Change accepted.

Commented [DB19R17]: Thank you.

Deleted: 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.

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Commented [23]: We won't accept this change. It defeats the purpose of having insurance require... [1]

Commented [A24R23]: Ava: We reverted our deletion here.

Commented [DB25R23]: Thank you.

Commented [26]: Ok.

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10.2 Ava and Consultant each represent and warrant, 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 the other Party immediately if it identifies any conflicts of interest. Each Party understands that violations of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

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- Commented [28]: I am ok with this but need to check with legal.

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, 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 |
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Section 11. Confidentiality

11.1 Either Party may disclose or make available certain Confidential Information to the other Party for use in connection with the performance of the services under this Agreement. The receiving party will not use, disclose, disseminate, or distribute any Confidential Information for any other purpose without the prior written consent of the disclosing party. The receiving party will protect all Confidential Information any unauthorized use, disclosure, copying, dissemination, or distribution. Notwithstanding the foregoing, the receiving party may disclose or produce any Confidential Information to the extent required by any discovery request, subpoena, court order, or governmental action, provided the receiving party gives the disclosing party reasonable advance notice of the same. All Work Product under this Agreement is Confidential Information of Consultant. For the purposes of this Agreement, "Confidential Information" means information or materials of a Party that are not generally available to the public, are

Deleted: 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.

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disclosed to or acquired by the receiving Party prior to or during the term of this Agreement, and that the receiving party knows or has reason to know is confidential, proprietary, or trade secret information of the disclosing Party.

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, provided that disclosing Party provides the non-disclosing Party sufficient advanced notice such that the non-disclosing party has the opportunity to object to the disclosure. Ava acknowledges and agrees that, in regards to any California Public Records Act request for any Work Product or any pricing information related to this Agreement, the public interest is served by not disclosing such records and clearly outweighs the public interest served by disclosure of the records, and will thus seek to withhold the disclosure of such information under a discretionary exemption, unless otherwise mutually agreed by the Consultant and Ava in writing.**

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.

Commented [29]: I understand protection of trade secrets for software like this. This language is likely too broad reaching, as we are subject to CPRG. I think modification to Ava’s language or modification to the Foundation’s suggested language can find a way to protect what needs protecting without violating CPRG.

Commented [A30R29]: Ava: We are happy to review any of Ava’s proposed changes to this section.

Commented [DB31R29]: I will request our legal review this language or provide an alternative.

Commented [DB32]: Ava Legal staff: Please review suggested language and provide alternative language that meets their needs if protection of IP.

Commented [33]: I don’t think pricing can be non-disclosable. I would need to check with legal.

Commented [34]: Will need legal review.

Commented [DB35]: After negotiations, vendor agreed to indemnity section as is.

Commented [36]: These edits are substantial and Ava typically doesn’t allow modifications to this language. Will need legal counsel to review.

Commented [A37R36]: Ava: We have walked back some of our edits to more closely align to Ava’s original language. While we are happy to review any of Ava’s proposed changes to this section, we note that Ava’s ability to bring a claim for breach addresses many of the risks accounted for in the original language.

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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.

Commented [38]: Ava: Please note that the Foundation is already agreeing to indemnify Ava for the Foundation's negligence and willful misconduct above.

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.

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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

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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.

Consultant will make records or documents required to be kept pursuant to this Agreement available for audit at no cost to Ava, at any time during regular business hours, upon written request by Ava to the extent necessary to confirm that Consultant has properly invoiced Ava for the services provided pursuant to this Agreement. Copies of such records or documents shall be provided to Ava at Ava's offices unless an alternative location is mutually agreed upon.

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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: Dan Bertoldi
Ava Community Energy
1999 Harrison Street, Suite 2300
Oakland, CA 94612
Email: dbertoldi@avaenergy.org
Phone: 510-393-0474

Deleted: [relationship owner]

Deleted: [your email]

Deleted: [your number]

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Consultant

Attn: ~~Matthew McAllister~~,
~~SolarAPP Foundation~~
~~1425 K ST NW STE 1000~~,
~~Washington DC, 20005~~,
Email: ~~matthew@solarappfoundation.org~~,
Phone: ~~303-956-0100~~

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.

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- Deleted: [Vendor legal name]¶
[Vendor address]
- Deleted: ¶
- Formatted: Not Highlight
- Deleted: [Vendor address]¶
- Deleted: [vendor relationship owner email]
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- Commented [DB39]: SolarAPP To provide
- Deleted: [vendor relationship number]
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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

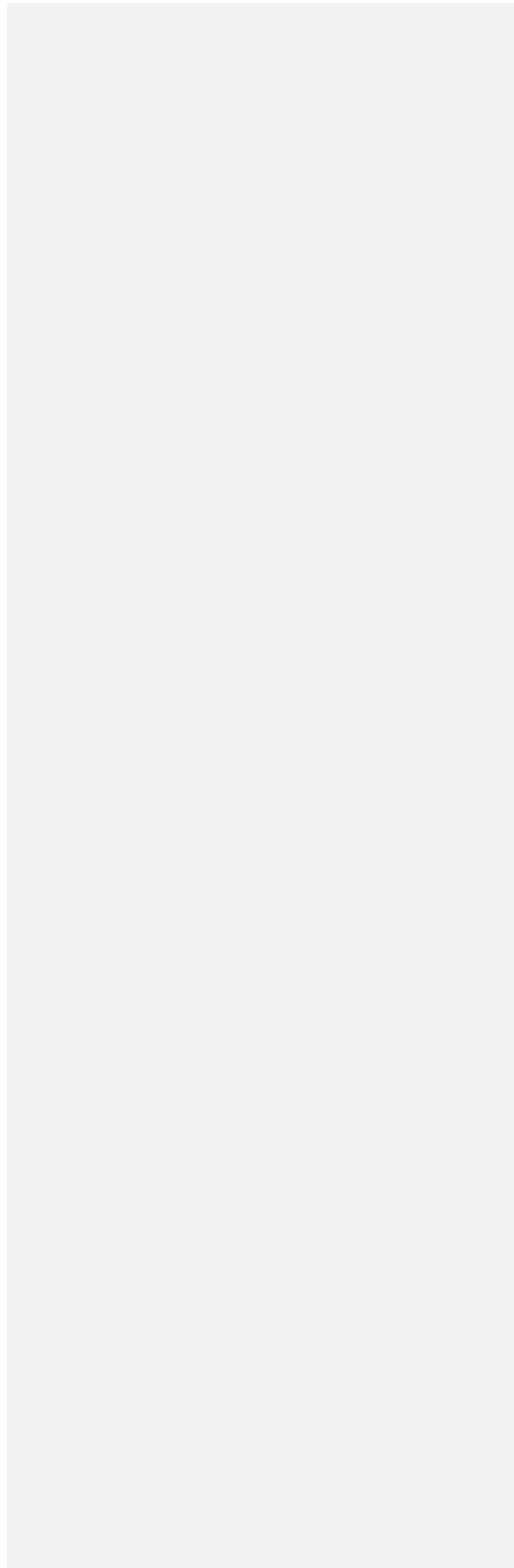
15.1 Proper Countersignatures

| 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. | | |
| | Column A | AND | Column 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. | |

[signatures on following page]

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

SOLARAPP FOUNDATION

A Washington, D.C. Not-for-Profit Company

By _____
Title _____
Date _____

By _____
Title _____
Date _____

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

AVA COMMUNITY ENERGY AUTHORITY

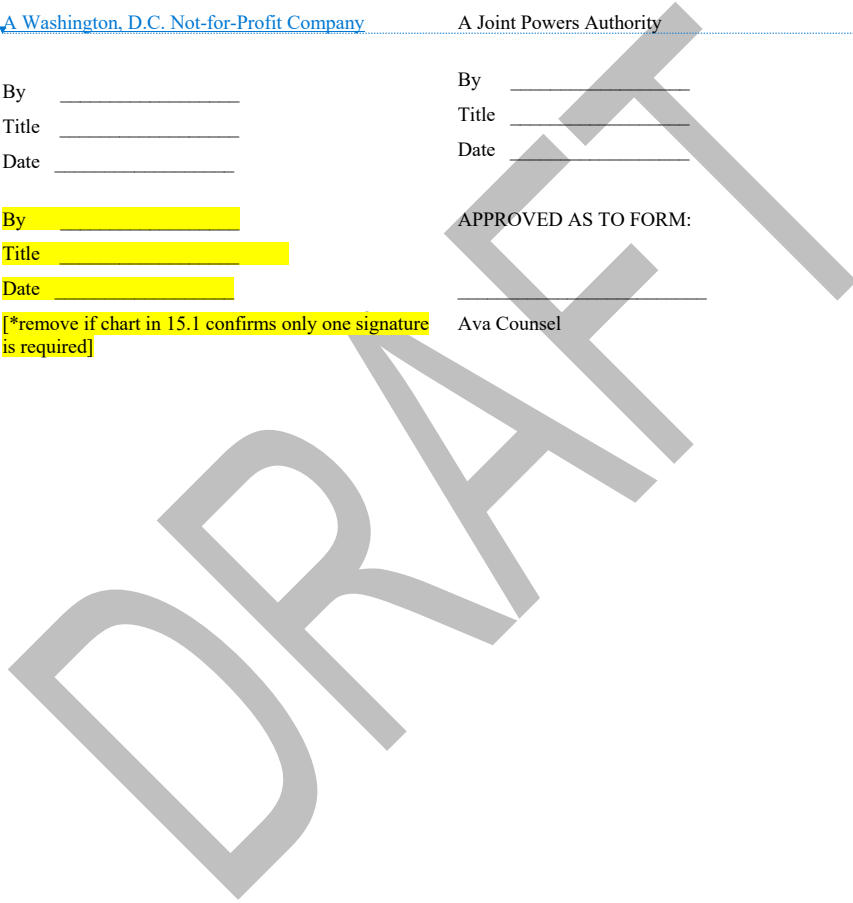
A Joint Powers Authority

By _____
Title _____
Date _____

APPROVED AS TO FORM:

Ava Counsel

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Deleted: Legal form of business, state of formation



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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

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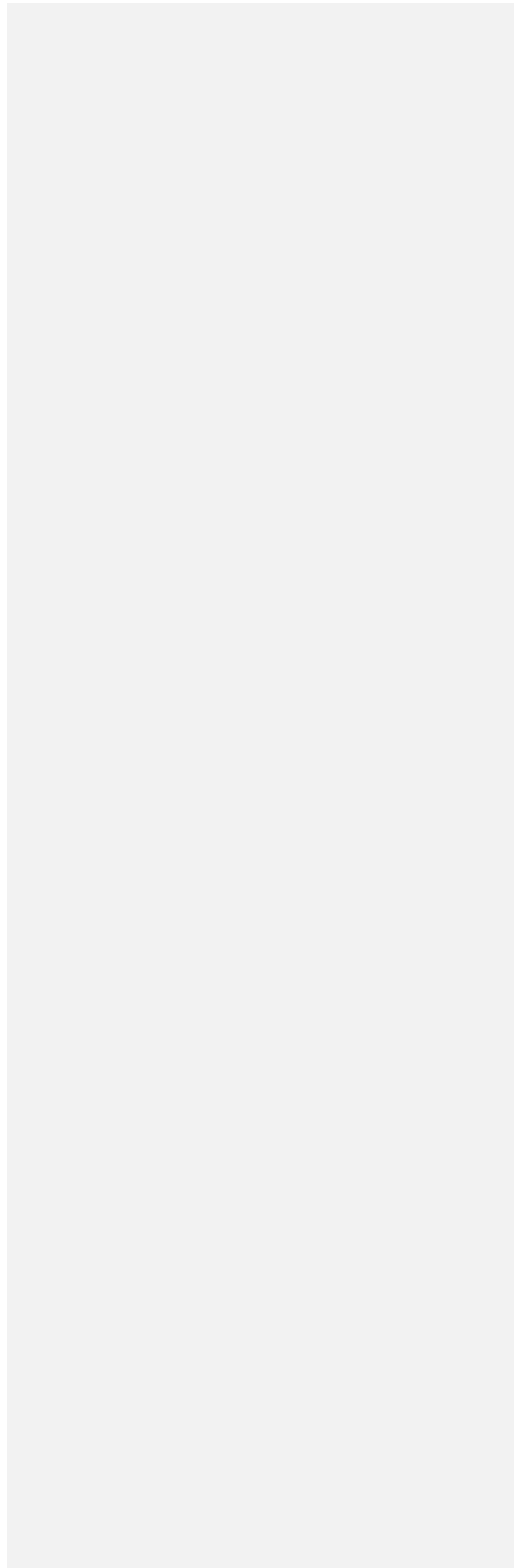


Exhibit A

SCOPE OF WORK

SolarAPP+ Foundation will build out the features to enable automated permitting for heat pump hot water heaters into its existing SolarAPP+ software, and train relevant Authorities Having Jurisdiction (AHJs) and contractors in the Ava service territory on how to use the new feature.

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Purpose and Objectives of Services

The Bay Area Air Quality Management District (BAAQMD) plans to phase out the sale of fossil fuel powered hot water heaters for residential homes in its district by 2027. Much of the Ava service territory is in the BAAQMD boundaries. This phase out would significantly reduce local air pollution, improve health outcomes, and reduce greenhouse gas emissions. Currently, slow and inconsistent permitting for residential heat pump hot water heaters adds significant cost and delay to the installation of residential heat pump hot water heaters, which has a particularly pernicious effect on low income households. In addition, faced with this challenging permitting environment, many contractors chose not to pull permits which increases the risk of installs being done poorly and not being up to code.

The National Renewable Energy Labs (NREL) built SolarAPP+ software, in collaboration with industry and building safety stakeholders, to automate the permitting of residential rooftop solar and energy storage installs on single family homes. In January, 2024 NREL licensed the SolarAPP+ software to the SolarAPP+ Foundation. SolarAPP+ is currently adopted or being adopted in almost 200 cities and counties in 12 states, including all the AHJs in the Ava service area except Alameda County and the City of Emeryville. Ava is contracting with the SolarAPP+ Foundation to build out the features in the existing SolarAPP+ software to enable automated permitting for residential heat pump hot water heaters in single family homes. This would help provide lightning fast, transparent and consistent permitting for residential heat pump hot water heaters in single family homes for most communities in the Ava service area.

Tasks and Deliverables

| Task # | Task Name | Description of Task | Deliverable |
|--------|------------------------|--|---|
| 005 | Start Project | Create organizational structure, workflows, budgets, roster, file structure | |
| 010 | Building Code Research | Phone calls, emails, and web searches to permitting authorities within the expected service territory to determine the commonalities among code enforcement, explore | Memo outlining relevant sections of building code that need to be incorporated into SolarAPP+ to automate permitting for heat pump water heaters. |

| Task # | Task Name | Description of Task | Deliverable |
|--------|---|---|--|
| | | variances in requirements, and identify barriers to permitting | |
| 015 | Create and convene Spec Development Working group | Recruit a team of subject matter experts representing product manufacturers, installation contractors, and regulatory officials with the knowledge and expertise to develop the specification for automated code compliance in the subject area. Include regulatory officials and installation contractors from AVA service territory. | List of members of SME working group |
| 020 | Develop specification | Review model building, fire, and electrical codes for the set of rules used to authorize a permit. Incorporate product safety standards, manufacturer's instructions, and local amendments as applicable to the technology. Develop the specification for automated review by identifying the inputs, calculations, deliverables, and supporting documentation required to support code compliance. | Spreadsheet with details of specification, representing consensus interpretation of building codes and necessary input parameters to validate code compliance for heat pump hot water install. |
| 025 | 3rd party validation of specification | Evaluation of the specification by a third-party with expertise in reviewing building plans for accuracy and adherence to the provisions of the code. Feedback from third-party evaluators is sent back to the Spec Development working group for inclusion into the specification. Approval from the third-party evaluator is required to move the specification to the production environment. | Confirmation from 3rd party of specification validation |
| 030 | Software feature development | The Software development team creates the features requested by the specification development working group, including connections to external databases, maps, and third-party software. | n/a |
| 035 | 3rd party software audit | Evaluation of the production software by a third-party with expertise in reviewing building plans for accuracy and adherence to the provisions of the code. Feedback from third-party evaluators is sent back to the Spec Development working group for | Confirmation from 3rd party of software audit |

| Task # | Task Name | Description of Task | Deliverable |
|--------|--|--|--|
| | | inclusion into the specification. | |
| 040 | Messaging | Emails, newsletters, and other materials to promote the use of a new feature or technology eligible for automated permitting. Direct and indirect outreach to SolarAPP+ jurisdictions, and their Permit Management System software providers, where notification or approval from the AHJ is required to activate new features or technologies. | Copies of materials produced |
| 045 | Software feature released in Beta | Deployment of the software to the demonstration environment. Enabling of features and technologies for those authorized and/or eligible to use the new features and updates. | Feature in SolarAPP+ software to automate permitting of heat pump water heaters (beta) |
| 050 | Feedback from AHJs & Contractors in Ava Service Area | Pilot features in Beta with a jurisdiction and select partner pilot contractors. Discuss and incorporate feedback from jurisdictions and contractors as determined through a consensus process. | Memo outlining feedback from AHJs and Contractors and action to be taken by SolarAPP+ in response to feedback, where relevant. |
| 055 | Software feature development | Deployment of the software to the public-facing production environment. | Memo confirming software deployed to the public-facing production environment. |
| 060 | Software feature released | Enabling of features and technologies for those authorized and/or eligible to use the new features and updates. | Feature in SolarAPP+ software to automate permitting of heat pump water heaters (released) |
| 065 | Training Materials Developed | Incorporating the work of the specification development working group and feedback gained from the Beta Pilot, develop online learning modules to assist contractors and inspectors on automated permitting and inspection requirements. Through the customer service function, develop FAQs, host a resource library, and assist contractors in completing their permit applications. | Copy of training materials |

| Task # | Task Name | Description of Task | Deliverable |
|--------|---|---|---|
| 070 | Training for AHJs & Contractors in Ava Service Area | In Person training and/or webinars in addition to the self-service LMS portal, hosted by Interstate Renewable Energy Council, for contractors and inspectors. | Memo explaining trainings made available for AHJs and Contractors |

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Opportunities for Ava Jurisdiction & Local Contractor Participation

Cities in Ava’s service territory who have adopted SolarAPP+ will be offered the opportunity to participate in the Specification Development Working Group. All cities in AVA’s service territory will be given the opportunity to pilot the feature to automate permitting for residential heat pump hot water heaters in single family homes when the software feature is released in Beta and provide feedback.

Contractors installing residential heat pump hot water heaters in single family homes in Ava’s service territory will be offered the opportunity to participate in the Specification Development Working Group. All contractors installing residential heat pump hot water heaters in single family homes in AVA’s service territory will be given the opportunity to pilot the feature to automate permitting for residential heat pump hot water heaters in single family homes when the software feature is released in Beta and provide feedback.

Any Other Conditions

Following the end of this contract, the SolarAPP+ Foundation plans to continue to work on and improve the feature of automated permitting for heat pump hot water heaters.

The SolarAPP+ Foundation intends to provide the feature of automated permitting for heat pump hot water heaters for free to AHJs, both inside and outside Ava’s service territory. SolarAPP+ Foundation intends to charge contractors processing heat pump hot water heaters a fee, similar to how it charges contractors to possess a rooftop solar or energy storage fee.

The SolarAPP+ Foundation has a license to commercialize SolarAPP+ from NREL, attached as Schedule XYZ.

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Exhibit B**SCHEDULE**

| Task # | Task Name | Duration (days) | Start* | Finish |
|---------------|--|------------------------|---------------|---------------|
| 005 | Start Project | 0 | 10/01/2024 | 10/01/2024 |
| 010 | Building Code Research | 20 | 10/01/2024 | 10/21/2024 |
| 015 | Create and convene Spec Development Working group | 45 | 10/21/2024 | 12/05/2024 |
| 020 | Develop specification | 90 | 12/05/2024 | 03/05/2025 |
| 025 | 3rd party validation of specification | 45 | 03/05/2025 | 4/19/2025 |
| 030 | Software feature development | 30 | 4/19/2025 | 5/19/2025 |
| 035 | 3rd party software audit | 15 | 5/19/2025 | 6/3/2025 |
| 040 | Messaging | 30 | 11/29/2024 | 12/26/2024 |
| 045 | Software feature released in Beta | 5 | 6/3/2025 | 6/8/2025 |
| 050 | Feedback from AHJs & Contractors in Ava Service Area | 60 | 6/8/2025 | 8/7/2025 |
| 055 | Software feature development | 15 | 6/8/2025 | 6/23/2025 |
| 060 | Software feature released | 5 | 8/7/2025 | 8/12/2025 |
| 065 | Training Materials Developed | 30 | 6/23/2025 | 7/23/2025 |
| 070 | Training for AHJs & Contractors in Ava Service Area | 60 | 8/12/2025 | 10/11/2025 |

*Dates subject to change based on contract signing date.

Exhibit C

CONSULTANT STAFFING

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

Commented [DB41]: SolarAPP foundation to provide.

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Exhibit D

SUBCONSULTANTS

Subconsultants must be authorized in advance, in writing by Ava.

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Exhibit E**COMPENSATION/BUDGET**

| Task # | Task Name | Deliverable | Milestone Payment (at end of task) |
|---------------|--|--|---|
| 005 | Start Project | | \$150,000 |
| 010 | Building Code Research | Memo outlining relevant sections of building code that need to be incorporated into SolarAPP+ to automate permitting for heat pump water heaters. | |
| 015 | Create and convene Spec Development Working group | List of members of SME working group | |
| 020 | Develop specification | Spreadsheet with details of specification, representing consensus interpretation of building codes and necessary input parameters to validate code compliance for heat pump hot water install. | |
| 025 | 3rd party validation of specification | Confirmation from 3rd party of specification validation | |
| 030 | Software feature development | n/a | |
| 035 | 3rd party software audit | Confirmation from 3rd party of software audit | |
| 040 | Messaging | Copies of materials produced | |
| 045 | Software feature released in Beta | Feature in SolarAPP+ software to automate permitting of heat pump water heaters (beta) | |
| 050 | Feedback from AHJs & Contractors in Ava Service Area | Memo outlining feedback from AHJs and Contractors and action to be taken by SolarAPP+ in response to feedback, where relevant. | |
| 055 | Software feature development | Memo confirming software deployed to the public-facing production environment. | \$150,000 |
| 060 | Software feature released | Feature in SolarAPP+ software to automate permitting of heat pump water heaters (released) | |

|

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|-----|---|---|----------|
| 065 | Training Materials Developed | Copy of training materials | |
| 070 | Training for AHJs & Contractors in Ava Service Area | Memo explaining trainings made available for AHJs and Contractors | \$50,000 |

The maximum compensation under this Agreement is \$350,000.00.

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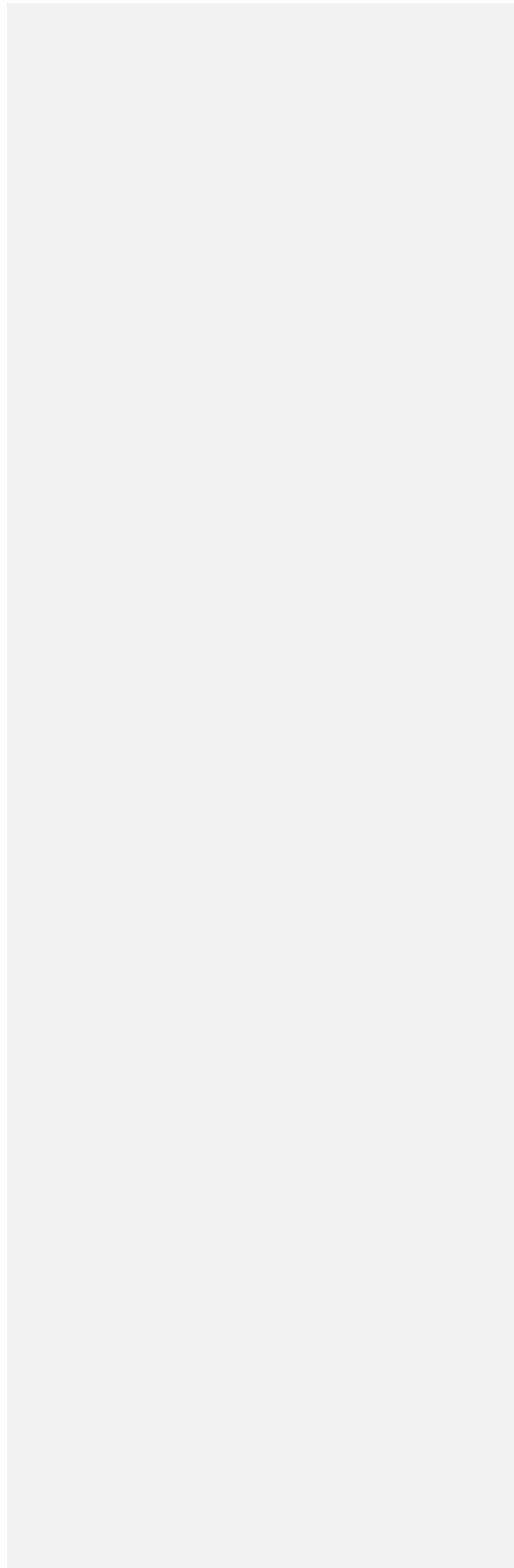


Exhibit F

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 E 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.