



### Consent Item 10

<b>To:</b>	Ava Community Energy Authority
<b>From:</b>	Rusty Mills, Senior Vice President and Chief Financial Officer
<b>Subject:</b>	Approval of Financial Services Agreement for energy prepayment financing transactions over the next 12 months
<b>Date:</b>	June 17, 2026

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#### **Summary/Recommendation**

Adopt a Resolution authorizing the execution and delivery of a Financial Services Agreement with PFM Financial Advisors LLC, (“PFM”), as Ava’s Municipal Financial Advisor, to support Ava’s energy prepay financing activity through June of 2027.

#### **Background and Discussion**

Energy prepayment financings are unique financing structures that provide a mechanism under which tax-exempt entities that sell power to end-use customers can reduce their cost of power by realizing energy savings on their long-term contracts. These are complex transactions with several entities. At a minimum, an energy project participant (e.g. Ava), a commodity supplier, a conduit bond issuer (e.g. CCCFA), and a third-party trustee and custodian are involved.

Ava has executed five prepay transactions, including the first ever Community Choice Aggregation (CCA) prepay in 2021, and then subsequent transactions in 2022, 2023, and 2025. Many of the CCA’s in California have utilized this structure to provide discounted power and further enable a value proposition for CCA customers. The bonds have been sold through the California Community Choice Financing Authority (CCCFA) as a conduit issuer, which was initially set up to enable these transactions.

Ava and its customers benefit from tax-exempt municipal bonds, which allow the energy supplier to secure funding at a lower cost than available in taxable markets or through internal capital. The project participant (e.g. Ava) commits to buying a commodity over a 30-year period and receives a discount on its contracted price throughout the term, lowering current and future energy costs. The commodity supplier often enters a separate funding agreement with a creditworthy third-party funding recipient, who receives a lower cost of funding benefit from the issuance and commits to make fixed payments that ultimately support the debt service of the underlying bonds.

In each of the 5 previous energy prepay financings, Ava has engaged PFM to support Ava in the following aspects of the transaction:

- Project management of prepay bond financing process
- Documentation and Planning
- Financial Planning and Modeling
- Certain prepay structure transaction execution support

In each of these financings, as is anticipated in upcoming financings, PFM's fees are paid out of proceeds from the transaction.

### **Authorization**

The details of the requested board approval are as follows: Adopt the Resolution which authorizes Ava to negotiate and execute the Financial Services Agreement with PFM that will authorize Ava to utilize the financial advisory services of PFM for up to three prepay transactions through 6/30/2027, with fees capped at \$250,000 per transaction. The maximum fees under this agreement will be \$750,000, if three prepays are completed.

### **Financial Impact**

The purpose of pursuing the prepay transaction is to achieve meaningful energy procurement cost savings. These transactions are targeting an 8-12% discount at the outset, which translates to approximately \$4-6 million of annual savings. Ava has saved \$34.3 million from 2022 through December 2025 on the energy purchased through the five prepays it has closed, and savings are now expected to average \$22.5 million annually for the next 5 years. With the addition of prepays 6 and 7, savings will be expected to rise to approximately \$30-35 million annually on energy purchased through the Power Supply Contracts during the next five years.

Most of the parties assisting Ava with the prepay will be paid from the proceeds of the prepay bonds, including PFM. Each prepay will have services capped at \$250,000 from PFM. Fees will only be paid when bonds are issued, and Ava is under no obligation to complete all three transactions. Certain fees, such as rating agency fees and green bond designation fees, are not contingent on a successful prepay transaction closing. Ava negotiated to have the prepay

supplier(s) split these costs with Ava if the deal does not close. To minimize this modest risk, Ava will only authorize these fees when necessary.

Additionally, it is important to note that the prepay transaction itself is non-recourse to Ava. The ultimate counterparty with the Prepay Supplier is the CCCFA JPA, so CCCFA is therefore the counterparty to all the underlying agreements. CCCFA is a public entity separate and apart from the parties to the JPA Agreement, and the debts, liabilities and obligations of CCCFA will not constitute debts, liabilities or obligations of Ava or any representative of Ava serving on the governing body of Ava.

**Attachments**

- A. Resolution
- B. Financial Services Agreement with PFM Financial Advisors LLC

**RESOLUTION NO. R-202x-XX**

**A RESOLUTION OF THE BOARD OF DIRECTORS**

**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCIAL SERVICES AGREEMENT WITH PFM FINANCIAL ADVISORS LLC, AS MUNICIPAL FINANCIAL ADVISOR, TO SUPPORT AVA'S ENERGY PREPAY FINANCING ACTIVITY THROUGH JUNE OF 2027.**

**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 sections 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** pursuant to the provisions of the Act, Ava and certain other California “community choice aggregators” entered into a joint powers agreement (the “Joint Powers Agreement”) pursuant to which the California Community Choice Financing Authority (the “Issuer”) was organized for the purpose, among other things, of entering into contracts and issuing bonds to assist Ava in financing the acquisition of supplies of clean energy;

**WHEREAS** the Issuer is authorized by its Joint Powers Agreement to acquire supplies of clean energy by any means and to issue revenue bonds to finance the cost of acquisition of such supplies, and is vested with all powers necessary to accomplish the purposes for which it was created;

**WHEREAS** Ava has determined that it is desirable to acquire long-term supplies of clean energy from the Issuer;

**WHEREAS** Ava is requesting that the Issuer agree to enter into one or two transactions to (i) purchase certain quantities of clean energy from a Delaware limited liability company (the “Prepaid Supplier”) the sole member of which is Morgan Stanley Capital Group Inc., a Delaware corporation (“MSCG”) on a prepaid basis and to sell such clean energy to Ava, as described herein (the “MS Project”) and/or (ii) purchase certain quantities of clean energy from a Delaware limited liability company, the sole equity member of which is J. Aron & Company LLC, a New York limited liability

company (the “Electricity Supplier”) on a prepaid basis and to sell such clean energy to Ava, as described herein (the “GS Project” and together with the MS Project, the “Projects”);

**WHEREAS** Ava has determined to authorize a total of two transactions, consisting of one MS Project and one GS Project or, in the alternative two MS Projects or two GS Projects;

**WHEREAS** Ava is requesting that the Issuer finance the costs of the Projects with the proceeds of two separate series of its Clean Energy Project Revenue Bonds, Series 2026 (together, the “Bonds”);

**WHEREAS** Ava has determined to authorize the officers of Ava to take all necessary action to accomplish the purchase of clean energy from the Issuer and to assist the Issuer in the issuance, sale and delivery of the Bonds; and

**WHEREAS** there have been made available to the Board of Directors of Ava for approval forms of the following agreement to which Ava is a party: Financial Services Agreement.

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

Section 1. The proposed form of the Ava Document, as made available to the Board of Directors for this meeting, is hereby approved. Any of the Chief Executive Officer, Chief Financial Officer or Chair of the Board (each an “Authorized Officer”) is hereby authorized and directed, for and on behalf of Ava, to execute and deliver the Ava Documents in substantially said form, with such changes and insertions therein as the Authorized Officer executing the same may approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 2. The proposed agreement will expire on June 30<sup>th</sup> of 2027 and provides the following services to Ava for energy prepay financings: project management; documentation and planning; and financial planning and modelling. The fees for these services shall only be payable from financing proceeds.

Section 3 The not-to-exceed is \$750,000 over the term or \$250,000 per financing.

ADOPTED AND APPROVED this 17<sup>th</sup> day of June 2027.

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Betsy Andersen, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

## FINANCIAL SERVICES AGREEMENT

THIS AGREEMENT (“Agreement”), is made as of the date of the last signature affixed hereto (“Effective Date”), by and between the AVA COMMUNITY ENERGY AUTHORITY, a joint powers authority (“Ava”) and PFM FINANCIAL ADVISORS LLC, a Delaware Limited Liability Company whose address is 222 N. Pacific Coast Hwy., 10<sup>th</sup> Floor El Segundo, CA 90245 (“PFMFA”), together with its affiliate, PFM Swap Advisors LLC whose address is 1735 Market Street, 42<sup>nd</sup> Floor, Philadelphia PA 19103 (“PFM Affiliate” or “PFMSA”). The parties shall be collectively referred to as the “Parties” and each individually as a “Party”).

PFMFA and PFM Affiliate shall both be bound to the terms and conditions of this Agreement; provided, however, that each will provide its services pursuant to a separate scope of work (“Scope of Work”), included in Exhibit “A” to this Agreement. Collectively, PFMFA and PFM Affiliate shall be referred to throughout this Agreement as “Consultant”.

### RECITALS:

A. Ava is an independent public agency 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.

B. Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

C. Ava and Consultant desire to enter into an agreement for Municipal Advisor and Swap Advisor services with Consultant upon the terms and conditions herein in connection with the proposed issuance of bonds by California Community Choice Financing Authority, a conduit joint powers authority (“Issuer”) selected by Ava to issue bonds (the “Bonds”) as part of a prepayment transaction for the purchase of electricity.

NOW, THEREFORE, the Parties mutually agree as follows:

#### 1. **TERM**

The term of this Agreement shall commence on the Effective Date, and shall terminate on June 30, 2027, unless terminated earlier as set forth herein.

**2. SERVICES TO BE PERFORMED**

Consultant shall perform each and every service set forth in Exhibit "A" pursuant to the schedule of performance set forth in Exhibit "B," both of which are attached hereto and incorporated herein by this reference. Upon request of Ava, Consultant or an affiliate of Consultant or a third party referred or otherwise introduced by Consultant, may agree to additional services to be provided by Consultant or an affiliate of Consultant or third party, by a separate writing, including separate scope and compensation, between Ava and Consultant or its respective affiliate or third party. For the sake of clarity, any separate agreement between Ava and an affiliate of Consultant or third party shall not in any way be deemed an amendment or modification of this Agreement.

**3. COMPENSATION TO CONSULTANT**

Consultant shall be compensated for services performed pursuant to this Agreement in a total amount not to exceed Seven Hundred and Fifty Thousand and 00/100 dollars (\$750,000) based on the rates and terms set forth in Exhibit "C," which is attached hereto and incorporated herein by this reference.

**4. TIME IS OF THE ESSENCE**

Consultant and Ava agree that time is of the essence regarding the performance of this Agreement.

**5. STANDARD OF CARE**

Consultant agrees to perform all services required by this Agreement in a manner commensurate with the prevailing standards of specially trained professionals in the San Francisco Bay Area under similar circumstances and in a manner reasonably satisfactory to Ava and agrees that all services shall be performed by qualified and experienced personnel. Consultant shall be responsible to Ava for any errors or omissions in the performance of work pursuant to this Agreement. Should any errors caused by Consultant be found in such services or products, Consultant shall correct the errors at no additional charge to Ava by redoing the professional work and/or revising the work product(s) called for in the Scope of Services to eliminate the errors. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by Ava, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, Ava may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

**6. INDEPENDENT PARTIES**

Ava and Consultant intend that the relationship between them created by this Agreement is that of independent contractor. The manner and means of conducting the work are under the control of Consultant, except to the extent they are limited by statute, rule or regulation and the express terms of this Agreement. No civil service status or other right of employment will be acquired by virtue of Consultant's services. None of the benefits provided by Ava to its employees, including but not limited to, unemployment insurance, workers' compensation

plans, vacation and sick leave are available from Ava to Consultant, its employees or agents. Deductions shall not be made for any state or federal taxes, FICA payments, PERS payments, or other purposes normally associated with an employer-employee relationship from any fees due Consultant. Payments of the above items, if required, are the responsibility of Consultant. Consultant shall indemnify and hold harmless Ava and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of Ava officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. Ava shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to Ava from Consultant as a result of Consultant's failure to promptly pay to Ava any reimbursement or indemnification arising under this section.

**7. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF Ava**

Ava is organized as Joint Powers Authorities in accordance with the Joint Powers Act of the State of California (Government Code Section 6500 et seq.) pursuant to Joint Powers Agreement dated December 1, 2016, and is a public entity separate from its constituent members. Ava shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Ava's constituent members in connection with this Agreement.

**8. NON-DISCRIMINATION**

In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor or applicant for employment because of race, color, religious creed, sex, gender, gender identity, gender expression, marital status, national origin, ancestry, age, physical disability, mental disability, medical condition, genetic information, sexual orientation or other basis prohibited by law.

**9. HOLD HARMLESS AND INDEMNIFICATION**

General Indemnification. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify Ava and their elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and agents serving as independent contractors in the role of Ava officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the negligence or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, but only to the extent of Consultant's liability, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

Consultant's indemnifications and obligations under this section shall survive the expiration or termination of this Agreement.

**10. INSURANCE**

A. General Requirements. On or before the commencement of the term of this Agreement, Consultant shall furnish Ava with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of insurance coverage in compliance with the requirements listed in Exhibit "D," which is attached hereto and incorporated herein by this reference. Such insurance and certificates, which do not limit Consultant's indemnification obligations under this Agreement, shall also contain substantially the following statement: "Should any of the above insurance covered by this certificate be canceled or coverage reduced before the expiration date thereof, the insurer affording coverage shall provide thirty (30) days' advance written notice to Ava by certified mail, Attention: Chief Executive Officer." Consultant shall maintain in force at all times during the performance of this Agreement all appropriate coverage of insurance required by this Agreement with an insurance company that is acceptable to Ava and licensed to do insurance business in the State of California. Endorsements naming Ava as additional insured shall be submitted with the insurance certificates.

B. Subrogation Waiver. Consultant agrees that in the event of loss due to any of the perils for which he/she has agreed to provide comprehensive general and automotive liability insurance, Consultant shall look solely to its insurance for recovery. Consultant hereby grants to Ava, on behalf of any insurer providing comprehensive general and automotive liability insurance to either Consultant or Ava with respect to the services of Consultant herein, a waiver of any right to subrogation which any such insurer of Consultant may acquire against Ava by virtue of the payment of any loss under such insurance.

C. Failure to Secure or Maintain Insurance. If Consultant at any time during the term hereof should fail to secure or maintain the foregoing insurance, Ava shall be permitted to obtain such insurance in the Consultant's name or as an agent of the Consultant and shall be compensated by the Consultant for the costs of the insurance premiums at the maximum rate permitted by law and computed from the date written notice is received that the premiums have not been paid.

D. Additional Insured. Ava, and its members, officers, employees and volunteers shall be named as additional insureds under all insurance coverages, except any professional liability insurance, required by this Agreement. The naming of an additional insured shall not affect any recovery to which such additional insured would be entitled under this policy

if not named as such additional insured. An additional insured named herein shall not be held liable for any premium, deductible portion of any loss, or expense of any nature on this policy or any extension thereof. Any other insurance held by an additional insured shall not be required to contribute anything toward any loss or expense covered by the insurance provided by this policy.

E. Sufficiency of Insurance. The insurance limits required by Ava are not represented as being sufficient to protect Consultant. Consultant is advised to confer with Consultant's insurance broker to determine adequate coverage for Consultant.

F. Maximum Coverage and Limits. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the additional insureds. Furthermore, the requirements for coverage and limits shall be the minimum coverage and limits specified in this Agreement, or the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

## **11. CONFLICT OF INTEREST**

Consultant warrants that it, and to its best knowledge, its officers, employees, associates and subcontractors, presently have no interest, and will not acquire any interest, direct or indirect, financial or otherwise, that would conflict in any way with the performance of this Agreement, and that it, its officers, employees, associates and subcontractors, will not employ any person having such an interest. Consultant and its officers, employees, associates and subcontractors, if any shall comply with all conflict of interest statutes of the State of California applicable to Consultant's services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar services for other clients. Consultant shall incorporate a clause substantially similar to this section into any subcontract that Consultant executes in connection with the performance of this Agreement. Consultant understands that it may be required to fill out a conflict of interest form if the services provided under this Agreement require Consultant to make certain governmental decisions or serve in a staff position, as defined in Title 2, Division 6, Section 18700 of the California Code of Regulations.

## **12. PROHIBITION AGAINST TRANSFERS**

Consultant shall not assign, sublease, hypothecate, or transfer this Agreement, or any interest therein, directly or indirectly, by operation of law or otherwise, without prior written consent of Ava. Any attempt to do so without such consent shall be null and void, and any assignee, sublessee, pledgee, or transferee shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. However, claims for money by Consultant from Ava under this Agreement may be assigned to a bank, trust company or other financial institution without prior written consent. Written notice of such assignment shall be promptly furnished to Ava by Consultant.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Consultant, or of the interest of any general partner or joint venturer or syndicate

member or cotenant, if Consultant is a partnership or joint venture or syndicate or co-tenancy, which shall result in changing the control of Consultant, shall be construed as an assignment of this Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

### **13. SUBCONTRACTOR APPROVAL**

Unless prior written consent from Ava is obtained, only those persons and subcontractors whose names are attached to this Agreement shall be used in the performance of this Agreement.

In the event that Consultant employs subcontractors, such subcontractors shall be required to furnish proof of workers' compensation insurance and shall also be required to carry general, automobile and professional liability insurance in substantial conformity to the insurance carried by Consultant. In addition, any work or services subcontracted hereunder shall be subject to each provision of this Agreement.

Consultant agrees to include within their subcontract(s) with any and all subcontractors the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, to the extent they apply to the scope of the subcontractor's work. Subcontractors hired by Consultant shall agree to be bound to Consultant and Ava in the same manner and to the same extent as Consultant is bound to Ava under this Agreement. Subcontractors shall agree to include these same provisions within any sub-subcontract. Consultant shall provide a copy of the Indemnity and Insurance provisions of this Agreement to any subcontractor. Consultant shall require all subcontractors to provide valid certificates of insurance and the required endorsements prior to commencement of any work and will provide proof of compliance to Ava.

### **14. REPORTS**

A. Each and every report, draft, work product, map, record and other document, hereinafter collectively referred to as "Report", reproduced, prepared or caused to be prepared by Consultant pursuant to or in connection with this Agreement, shall be the exclusive property of Ava. Consultant shall not copyright any Report required by this Agreement and shall execute appropriate documents to assign to Ava the copyright to Reports created pursuant to this Agreement. Any Report, information and data acquired or required by this Agreement shall become the property of Ava, and all publication rights are reserved to Ava. Consultant may retain a copy of any Report furnished to Ava pursuant to this Agreement.

B. All Reports prepared by Consultant may be used by Ava in execution or implementation of: (1) The original project for which Consultant was hired; (2) Completion of the original project by others; (3) Subsequent additions to the original project; and/or (4) Other Ava projects as Ava deems appropriate in its sole discretion.

C. Consultant shall, at such time and in such form as Ava may require, furnish reports concerning the status of services required under this Agreement.

D. All Reports shall also be provided in electronic format, both in the original file format (e.g., Microsoft Word) and in PDF format.

E. No Report, information or other data given to or prepared or assembled by Consultant pursuant to this Agreement that has not been publicly released shall be made available to any individual or organization by Consultant without prior approval by Ava.

F. Ava shall be the owner of and shall be entitled upon request to immediate possession of accurate reproducible copies of Reports or other pertinent data and information gathered or computed by Consultant prior to termination of this Agreement or upon completion of the work pursuant to this Agreement.

**15. RECORDS**

Consultant shall maintain complete and accurate records with respect to costs, expenses, receipts and other such information required by Ava that relate to the performance of services under this Agreement, in sufficient detail to permit an evaluation of the services and costs. All such records shall be clearly identified and readily accessible. Consultant shall provide free access to such books and records to the representatives of Ava or its designees at all proper times, and gives Ava the right to examine and audit same, and to make transcripts therefrom as necessary, and to allow inspection of all work, data, documents, proceedings and activities related to this Agreement. Such records, together with supporting documents, shall be maintained for a minimum period of five (5) years after Consultant receives final payment from Ava for all services required under this Agreement.

**16. PARTY REPRESENTATIVES**

The Chief Executive Officer of Ava (“Ava Representative”) shall represent Ava in all matters pertaining to the services to be performed under this Agreement. Michael Berwanger, Managing Director, PFM Financial Advisors LLC and [George Hu, Senior Managing Consultant], PFM Swap Advisors LLC (“Consultant Representatives”) shall represent Consultant in all matters pertaining to the services to be performed under this Agreement.

**17. INFORMATION AND DOCUMENTS**

A. Consultant covenants that all data, reports, documents, discussion, or other information (collectively “Data”) developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by Ava, unless disclosure is required by law or judicial or regulatory process. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from Ava Representative or unless requested in writing by Ava Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within Ava. Response to a subpoena or court order shall not be considered “voluntary,” provided, to the extent not legally prohibited,

Consultant gives Ava notice of such court order or subpoena.

B. To the extent not legally prohibited, Consultant shall promptly notify Ava should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within Ava. Ava may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to reasonably cooperate with Ava and to provide Ava with the opportunity to review any response to discovery requests provided by Consultant. However, Ava's right to review any such response does not imply or mean the right by Ava to control, direct or rewrite the response.

C. In the event Ava gives Consultant written notice of a "litigation hold", then as to all data identified in such notice, Consultant shall, at no additional cost to Ava, isolate and preserve all such data pending receipt of further direction from Ava.

D. Consultant agrees to comply with the confidentiality provisions set forth in Exhibit "E," attached hereto and incorporated herein by this reference.

E. Consultant's covenants under this section shall survive the expiration or termination of this Agreement.

## **18. NOTICES**

Any notice, consent, request, demand, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective:

(a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and Ava's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

TO AVA  
1999 Harrison Street, Suite 2300  
Oakland, CA 94612  
Attention: Chief Executive Officer

TO CONSULTANT:  
PFM Financial Advisors LLC  
222 N. Pacific Coast Hwy., 10<sup>th</sup> Floor  
El Segundo, CA 90245 Attn: Managing  
Director

## **19. TERMINATION**

In the event Consultant fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Consultant shall be deemed in default in the performance of this Agreement. If Consultant fails to cure the default within the time specified (which shall be not less than 10 days) and according to the requirements set forth in Ava's written notice of default, and in addition to any other remedy available to Ava by law, Ava Representative may terminate the Agreement by giving Consultant written notice thereof, which shall be effective immediately. Ava Representative shall also have the option, at its sole discretion and without cause, of terminating this Agreement by giving seven (7) calendar days' prior written notice to Consultant as provided herein. Upon receipt of any notice of termination, Consultant shall immediately discontinue performance.

In the event of Ava's termination of this Agreement due to no fault or failure of performance by Consultant, and subject to the ultimate issuance of the Bonds, Consultant shall be paid for services satisfactorily performed up to the effective date of termination solely from the Bond proceeds. Upon termination, Consultant shall immediately deliver to Ava any and all copies of studies, computations, and other material or products, whether or not completed, prepared by Consultant or given to Consultant, in connection with this Agreement. Such materials shall become the property of Ava. Consultant shall have no other claim against Ava by reason of such termination, including any claim for compensation.

## **20. COMPLIANCE WITH LAWS**

Consultant shall keep itself informed of all applicable federal, state and local laws, ordinances, codes, regulations and requirements which may, in any manner, affect those employed by it or in any way affect the performance of its services pursuant to this Agreement. Consultant shall, at all times, observe and comply with all such laws and regulations. Ava, and its officers and employees, shall not be liable at law or in equity by reason of the failure of the Consultant to comply with this paragraph.

Consultant represents and agrees that all personnel engaged by Consultant in performing services are and shall be fully qualified and are authorized or permitted under state and local law to perform such services. Consultant represents and warrants to Ava that it has all licenses, permits, certificates, qualifications, and approvals required by law to provide the services and work required to perform services under this Agreement, including a business license. Consultant further represents and warrants that it shall keep in effect all such licenses, permits, and other approvals during the term of this Agreement.

## **21. CONFLICT OF LAW**

This Agreement shall be interpreted under, and enforced by the laws of the State of California. The Agreement and obligations of the Parties are subject to all valid laws, orders, rules, and regulations of the authorities having jurisdiction over this Agreement (or the successors of those authorities). Any suits brought pursuant to this Agreement shall be filed with the Superior Court of the [County of Santa Clara], State of California.

## **22. ADVERTISEMENT**

Consultant shall not post, exhibit, display or allow to be posted, exhibited, displayed any signs, advertising, show bills, lithographs, posters or cards of any kind pertaining to the services performed under this Agreement unless prior written approval has been secured from Ava to do otherwise.

**23. WAIVER**

A waiver by Ava of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein, whether of the same or a different character.

**24. INTEGRATED CONTRACT**

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the Parties, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any modification of this Agreement will be effective only by a written document signed by both Ava and Consultant.

**25. AUTHORITY**

The individual(s) executing this Agreement represent and warrant that they have the legal authority to do so on behalf of their respective legal entities.

**26. INSERTED PROVISIONS**

Each provision and clause required by law to be inserted into the Agreement shall be deemed to be enacted herein, and the Agreement shall be read and enforced as though each were included herein. If through mistake or otherwise, any such provision is not inserted or is not correctly inserted, the Agreement shall be amended to make such insertion on application by either Party.

**27. CAPTIONS AND TERMS**

The captions in this Agreement are for convenience only, are not a part of the Agreement and in no way affect, limit or amplify the terms or provisions of this Agreement.

**28. AVA'S RIGHTS TO EMPLOY OTHER CONSULTANTS**

Ava reserves the right to employ other consultants in connection with the subject matter of the Scope of Services.

**29. EXHIBITS**

The Exhibits referenced in this Agreement are attached hereto and incorporated herein by this reference as though set forth in full in the Agreement. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

**30. FORCE MAJEURE**

Consultant shall not be liable for any failure to perform its obligations under this Agreement if Consultant presents acceptable evidence, in Ava's sole judgment, that such failure was due to acts of God, embargoes, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

**31. FINAL PAYMENT ACCEPTANCE CONSTITUTES RELEASE**

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of Ava from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or services. However, approval or payment by Ava shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by Ava for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

**32. SEVERABILITY**

If any provision in this Agreement is held by a court of competent jurisdiction to be illegal, invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**33. SUCCESSORS AND ASSIGNS**

The terms and conditions of this Agreement shall be binding on the successors and assigns of the Parties to this Agreement.

**34. NO THIRD PARTY BENEFICIARIES INTENDED**

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

**35. COUNTERPARTS; FACSIMILE/PDF/ELECTRONIC SIGNATURE**

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which will constitute one and the same instrument. The Parties agree that a facsimile, PDF or electronic signature may substitute for and have the same legal effect as the original signature.

**36. DRAFTING PARTY**

This Agreement shall be construed without regard to the Party that drafted it. Any ambiguity shall not be interpreted against either Party and shall, instead, be resolved in accordance with other applicable rules concerning the interpretation of contracts.

**37. INFORMATION TO BE FURNISHED TO CONSULTANT**

All information, data, reports, and records in the possession of Ava or any third party necessary for carrying out any services to be performed under this Agreement (“Data”) shall be furnished to Consultant. Consultant may rely on the Data in connection with its provision of the services under this Agreement and the provider thereof shall remain solely responsible for the adequacy, accuracy and completeness of such Data.

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

PFM FINANCIAL ADVISORS LLC  
A Limited Liability Company

By: \_\_\_\_\_ Name: Michael Berwanger  
Title: Managing Director  
Date: \_\_\_\_\_

PFM SWAP ADVISORS LLC  
A Limited Liability Company

By: \_\_\_\_\_ Name: George Hu  
Title: Director  
Date: \_\_\_\_\_

AVA COMMUNITY ENERGY  
AUTHORITY  
A Joint Powers Authority

By: \_\_\_\_\_  
Name: Howard Chang Title: Chief  
Executive Officer  
Date: \_\_\_\_\_

APPROVE AS TO FORM:

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Inder Khalsa, General Counsel

**Exhibit A**  
**Consultant Work Orders**  
**(See Following Pages)**

**WORK ORDER #1**  
**PFM FINANCIAL ADVISORS LLC**

The terms and conditions of the Agreement between Ava, PFMFA and PFMSA are incorporated into this Scope of Services by reference.

Working with PFMSA, PFMFA will provide the following portion of the Scope of Services:

**PFM Financial Advisors LLC (as Municipal Advisor)**

**Scope of Services Transaction Services**

**PFM will take the lead role acting as Project Manager throughout the prepay bond financing process.**

**Documentation and Planning**

- Develop a financing plan in concert with Ava staff which would include recommendations as to the timing and number of series of bonds to be issued.
- Review transaction legal documentation provide suggestions, modifications and enhancements where appropriate and assist with the negotiation of terms with associated counterparties.
- Coordinate with Ava staff and other advisors as respects the furnishing of data for offering documents, it being specifically understood that PFM is not responsible for the inclusion or omission of any material in published offering documents.
- In coordination with the deal team, develop credit rating presentation and coordinate with Ava the overall presentation to rating agencies.
- Assistance with putting together the necessary disclosure related to Ava (separately and together, if and where relevant) in the disclosure documents.
- Arrange for the closing of the transaction including, but not limited, to bond printing, signing and final delivery of the bonds.

**Financial Planning and Modelling**

- Advise as to the various financing alternatives available to Ava staff.
- Develop alternatives related to debt transaction including evaluation of maturity schedule and cash flow requirements.
- Assist Ava in the procurement of ancillary services relating to debt issuance such as printing, trustee, paying agent, registrar, etc.
- Analyze financial and economic factors to determine if the issuance of prepayment bonds is appropriate.

- Provide financial modeling services and comparables on deal pricing and deal economics.
- As applicable, advise Ava on the condition of the bond market at the time of sale, including volume, timing considerations, competing offerings, and general economic considerations.
- Assist and advise Ava in negotiations with investment banking groups regarding fees, pricing of the bonds and final terms of any security offering, and make recommendations regarding a proposed offering to obtain the most favorable financial terms based on existing market conditions.

**FINANCIAL ADVISORY REQUIRED DISCLOSURES:**

PFMFA is a registered municipal advisor with the Securities and Exchange Commission (the “SEC”) and the Municipal Securities Rulemaking Board (the “MSRB”), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. If Ava has designated PFMFA as its independent registered municipal advisor (“IRMA”) for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the “IRMA exemption”), then services provided pursuant to such designation shall be the services described in this Work Order #1, subject to any agreed upon limitations. Verification of independence (as is required under the IRMA exemption) shall be the responsibility of such third party seeking to rely on such IRMA exemption. PFMFA shall have the right to review and approve in advance any representation of its’s role as IRMA to Ava.

MSRB Rules require that municipal advisors make written disclosures to their clients of all material conflicts of interest, certain legal or disciplinary events and certain regulatory requirements. Such disclosures are provided in PFMFA’s Disclosure Statement delivered to Ava prior to or together with this Agreement.

**Team Members:**

*Michael Berwanger, Managing Director*  
*James Carbone, Senior Managing Consultant*  
*Faisal Alif, Analyst*  
*Other personnel to be assigned as necessary*

**WORK ORDER #2**  
**PFM SWAP ADVISORS LLC**

The terms and conditions of the Agreement between Ava, PFMFA and PFMSA are incorporated into this Scope of Services by reference.

Working with PFMFA, PFMSA will provide the following portion of the Scope of Services:

**PFM Swap Advisors LLC ( as Swap Advisor and QIR)**  
**Scope of Services Transaction Services**

- PFMSA will serve Ava as Municipal Advisor and designated Qualified Independent Representative (“QIR”) in the provision of general swap advisory services related to any swap-related communication, interaction or other discussion (“Swap Communication”) between Ava and Swap Dealers (as such term is defined by the Securities and Exchange Commission (“SEC”) and the Commodity Futures Trading Commission (“CFTC”)). PFMSA is obligated to comply with the applicable requirements of CFTC Regulation 17 CFR 23.450(b)(1) in providing QIR services to Ava.
- As QIR to Ava, PFMSA will make available qualified professionals to participate in discussions and other interactions with Swap Dealers as Ava finds necessary or desirable. Additionally, PFMSA will assist Ava with analysis of any proposals from Swap Dealers. PFMSA may assist Ava with other swap related tasks such as helping write a swap policy or other related analysis upon Ava’s request. PFMSA will also assist Ava, as needed, in completing the ISDA Dodd-Frank Protocols and other matters to comply with the regulatory requirements imposed under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
- Analyze and model alternative hedge structures and provide price indications;
- Review and comment on all hedge documentation and business terms;
- Assist in counterparty selection and developing terms for a request for bids (if desired);
- Review competitive bids and make a recommendation for award or if so determined;
- Negotiate the pricing terms and structure with the Counterparty(s);
- Coordinate the closing of the transaction.

**SWAP ADVISORY REQUIRED DISCLOSURES**

PFMSA agrees that it will not deal with itself or with any other affiliated company or individual in making purchases or sales of the Swaps or any securities pursuant to this engagement, nor will it take a long or short position in securities subject to purchase or sale in connection with the

Swaps. PFMSA confirms that it has no interest in the purchase or sale of the Swaps other than as described in this Work Order and except for any financial or investment advisory agreement between Ava and PFMSA affiliates, or PFM Financial Advisors LLC.

MSRB Rules require that municipal advisors make written disclosures to its clients of all material conflicts of interest and certain legal or disciplinary events and certain regulatory requirements. Such disclosures are provided in PFMSA's Disclosure Statement delivered to Ava prior to or together with the Agreement.

PFMSA is a registered municipal advisor with the SEC and the Municipal Securities Rulemaking Board (the "MSRB"), pursuant to the Securities Exchange Act of 1934 Rule 15Ba1-2. As of the date of the Agreement, Ava has **not** designated PFMSA as its independent registered municipal advisor ("IRMA") for purposes of SEC Rule 15Ba1-1(d)(3)(vi) (the "IRMA exemption."). Ava agrees not to represent that PFMSA is Ava's IRMA with respect to any aspect of a municipal securities issuance or municipal financial product, without PFMSA's prior written consent.

**Team Members:**

*George Hu, Director*

*Other personnel to be assigned as necessary*

**Exhibit B**  
**Schedule of Performance**

Tasks will be performed at the direction of Ava staff.

**Exhibit C**  
**Compensation**

The compensation to be paid to Consultant under this Agreement, including the services provided by PFM Swap Advisors LLC, for all services described in Exhibit "A" and reimbursable expenses shall not exceed a total of Seven Hundred and Fifty Thousand and 00/100 dollars (\$750,000), as set forth below. Any work performed or expenses incurred for which payment would result in a total exceeding the maximum amount of compensation set forth herein shall be at no cost to Ava unless previously approved in writing by Ava. Consultant compensation will be allocated between PFM Financial Advisors LLC and PFM Swap Advisors LLC based upon final known distribution of work between the two parties for their respective scopes of work.

The compensation to be paid to Consultant under Work Orders #1 and #2 for all services and reimbursable expenses shall not exceed a total of Two Hundred and Fifty Thousand and 00/100 dollars (\$250,000.00), per prepayment transaction, as set forth below. Fee is expected to be split \$225,000 for PFM Financial Advisors LLC and \$25,000 for PFM Swap Advisors LLC.

**Payment**

All compensation to be paid to Consultant, including payment to PFM Swap Advisors LLC by Ava under this Agreement shall be paid upon closing of the Bonds and shall be payable solely from the proceeds of the Bonds. In the event that the Bonds do not issue or close for any reason neither Ava nor the Issuer shall owe any monies to Consultant for the services provided pursuant to this Agreement.

**Reimbursable Expenses**

Administrative, overhead, secretarial time or overtime, word processing, photocopying, in house printing, insurance and other ordinary business expenses are included within the scope of payment for services and are not reimbursable expenses. Travel expenses must be authorized in advance in writing by Ava.

**Additional Services**

Consultant shall provide additional services outside of the services identified in Exhibit A only by advance written authorization from Ava Representative prior to commencement of any additional services. Consultant shall submit, at Ava Representative's request, a detailed written proposal including a description of the scope of additional services, schedule, and proposed maximum compensation. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

**Exhibit D**  
**Insurance Requirements and Proof of Insurance**

**Insurance Statement**

PFM Financial Advisors LLC (“PFM”) has a complete insurance program, including property, casualty, general liability, automobile liability and workers compensation. PFM maintains Professional (E&O)/Cyber Liability coverage which total \$5 million single loss/ aggregate.

Our Professional/Cyber Liability policies are a “claims made” policy and our General Liability policy claims would be made by occurrence.

**Deductibles/SIR:**

Automobile \$100 comprehensive & \$1,000 collision  
General Liability \$0  
Professional (E&O)/ Cyber Liability \$250,000  
Crime \$50,000

**Insurance Company & AM Best Rating**

Professional Liability (E&O)..... AIG Specialty Insurance Company; (A; Stable)  
Cyber Liability..... AIG Specialty Insurance Company (A; Stable)  
Crime..... Berkley Regional Insurance Company; (A+; Stable)  
General Liability..... The Phoenix Insurance Company; (A++ Stable)  
Automobile Liability..... St. Paul Protective Insurance Company (A++ Stable)  
Excess /Umbrella Liability..... Travelers Property Casualty Company of America;  
(A++ Stable)  
Workers Compensation..... Travelers Casualty Ins Co of America; (A++ Stable)  
& Employers Liability

**Exhibit E**  
**Confidentiality Requirements**

Subject to the terms and conditions of the Agreement, current proprietary and confidential information of Ava regarding customers of Ava (“Ava Customers”) and/or other confidential information (collectively “Confidential Information”) may be disclosed to Consultant from time to time in connection herewith solely for the purposes set forth in the Agreement. Such disclosure is subject to the following legal continuing representations and warranties by Consultant:

1. The Confidential Information disclosed to Consultant in connection herewith may include, without limitation, the following information about Ava Customers: (a) names; (b) addresses; (c) telephone numbers and email addresses; (d) service agreement numbers and account numbers; (e) meter and other identification numbers; (f) Ava-designated account numbers; (g) electricity and gas usage (including monthly usage, monthly maximum demand, electrical or gas consumption, HP load, and other data detailing electricity or gas needs and patterns of usage); (h) billing information (including rate schedule, baseline zone, CARE participation, end use code (heat source) service voltage, medical baseline, meter cycle, bill cycle, balanced payment plan and other plans); (i) payment / deposit status; (j) number of units; and (k) other similar information specific to Ava Customers individually or in the aggregate. Confidential Information shall also include specifically any copies, drafts, revisions, analyses, summaries, extracts, memoranda, reports and other materials prepared by Consultant or its representatives that are derived from or based on Confidential Information disclosed by Ava, regardless of the form of media in which it is prepared, recorded or retained.
2. Except for electric and gas usage information provided to Consultant pursuant to this Agreement, Confidential Information does not include information that Consultant proves (a) was properly in the possession of Consultant at the time of disclosure; (b) is or becomes publicly known through no fault of Consultant, its employees or representatives; or (c) was independently developed by Consultant, its employees or representatives without access to any Confidential Information.
3. From the Effective Date, no portion of the Confidential Information may be disclosed, disseminated or appropriated by Consultant, or used for any purpose other than the purposes set forth in the Agreement.
4. Consultant shall, at all times keep the Confidential Information in the strictest confidence and shall take all reasonable measures to prevent unauthorized or improper disclosure or use of Confidential Information. Consultant shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure and prohibits the use of the data for purposes not set forth in the Agreement. Specifically, Consultant shall restrict access to Confidential Information, and to materials prepared in connection therewith, to those employees or representatives of Consultant who have a “need to know” such Confidential Information in the course of their duties with respect to the Consultant program and who agree to be bound by the nondisclosure and confidentiality obligations of this Agreement. Prior to disclosing any Confidential Information to its employees or representatives, Consultant shall require such employees or representatives to whom Confidential Information is to be disclosed to review this Agreement and to agree to be bound by the terms of this Agreement. Consultant shall not

disclose Confidential Information or otherwise make it available, in any form or manner, to any other person or entity that is not Consultant's employee or representative (a "Third Party"), except where that Third Party has separately entered into a nondisclosure agreement with Ava.

5. Notwithstanding the above, Consultant may disclose Confidential Information to the extent required by an order, subpoena, or lawful process requiring the disclosure of such Confidential Information issued by a court or other governmental authority of competent jurisdiction, provided that, to the extent not legally prohibited, Consultant notifies Ava promptly upon receipt thereof to allow Ava to seek protective treatment for such Confidential Information.
6. Consultant shall immediately notify Ava if it reasonably believes that there has been unauthorized access to the Confidential Information by a non-authorized person that could reasonably result in the use, disclosure, or theft of the Confidential Information.
7. It shall be considered a material breach of this Agreement if Consultant engages in a pattern or practice of accessing, storing, using, or disclosing the Confidential Information in violation of the contractual obligations described herein. Consultant understands that if Ava finds that Consultant is engaged in a pattern or practice of accessing, storing, using, or disclosing Confidential Information in violation of this Agreement Ava shall promptly cease all disclosures of Confidential Information to Consultant. Consultant further understands that if Ava receives a customer complaint about Consultant's misuse of data or other violation of the Disclosure Provisions, Ava shall promptly cease disclosing that customer's information to Consultant and shall notify the California Public Utilities Commission of the complaint.
8. Consultant shall be liable for the actions of, or any disclosure or use by, its employees or representatives contrary to this Agreement; however, such liability shall not limit or prevent any actions by Ava directly against such employees or representatives for improper disclosure and/or use. In no event shall Consultant or its employees or representatives take any actions related to Confidential Information that are inconsistent with holding Confidential Information in strict confidence. Consultant shall immediately notify Ava in writing if it becomes aware of the possibility of any misuse or misappropriation of the Confidential Information by Consultant or any of its employees or representatives. However, nothing in this Agreement shall obligate Ava to monitor or enforce the Consultant's compliance with the terms of this Agreement.
9. Consultant shall comply with the consumer protections concerning subsequent disclosure and use set forth in Attachment B to California Public Utilities Commission (CPUC) Decision No. 12-08-045.

10. In addition to any other requirements set forth in the Agreement, within ten (10) business days of receipt of Ava's written request, and at Ava's option, Consultant will either return to Ava all tangible Confidential Information, including but not limited to all electronic files, documentation, notes, plans, drawings, and copies thereof, or will provide Ava with written certification that all such tangible Confidential Information of Ava has been destroyed; provided, however, the foregoing shall not include (i) such copies as Consultant is required to retain by law or regulation, (ii) copies automatically saved electronically as part of a computer disaster recovery or similar back-up system or internal document retention and business continuity policies and procedures, or (iii) materials prepared by Consultant or its advisors for its board of directors or any board committee or other applicable decision-making body to the extent such materials contain Confidential Information.
11. Consultant acknowledges that disclosure or misappropriation of any Confidential Information could cause irreparable harm to Ava and/or Ava Customers, the amount of which may be difficult to assess. Accordingly, Consultant hereby confirms that Ava shall be entitled to apply to a court of competent jurisdiction or the California Public Utilities Commission for an injunction, specific performance or such other relief (without posting bond) as may be appropriate in the event of improper disclosure or misuse of its Confidential Information by Consultant or its employees or representatives. Such right shall, however, be construed to be in addition to any other remedies available to Ava, in law or equity.
12. In addition to all other remedies, Consultant shall indemnify and hold harmless Ava, its officers, employees, or agents from and against and claims, actions, suits, liabilities, damages, losses, expenses and costs (including reasonable attorneys' fees, costs and disbursements) attributable to actions or non-actions of Consultant and/or its employees and/or its representatives in connection with the use or disclosure of Confidential Information.
13. When Consultant fully performs the purposes set forth in the Agreement, or if at any time Consultant ceases performance or Ava requires Consultant cease performance of the purposes set forth in the Agreement, Consultant shall promptly return or destroy (with written notice to Ava itemizing the materials destroyed) all Confidential Information then in its possession at the direction of Ava, subject to Section 10 above. Notwithstanding the foregoing, the nondisclosure obligations of this Agreement shall survive any termination of this Agreement.