



energy innovation
integrity

COMMERCIAL & INDUSTRIAL ENERGY EFFICIENCY PROGRAM PROGRAM PARTICIPATION AGREEMENT

SEND TO:

Enovity, Inc.

ATTN: CPAU Energy Program
100 Montgomery Street, Suite 600
San Francisco, CA 94104-4331

FAX: 415-974-0399

Email: rchristenson@enovity.com

For additional information, contact:

Rachel Christenson
Utility Program Manager
415-983-3604
rchristenson@enovity.com
enovity.com/programs/cpau.html



City of Palo Alto Utilities supports the Commercial & Industrial Energy Efficiency Program through Public Benefits Charges. Enovity is working with CPAU to support our customers by assisting their efforts in energy efficiency.

FACILITY INFORMATION

Facility Name _____

Facility Address _____

City _____ State _____ Zip Code _____

Mailing Address _____

City _____ State _____ Zip Code _____

CPAU Utility / Contract Account - located on utility bill

Natural Gas _____

Electric _____

Primary Use of Facility _____

CPAU Account Representative _____

How did you hear about the Program? _____

CONTACT INFORMATION

Primary Contact _____

Title _____

Email Address _____

Primary Phone _____ Secondary Phone _____

Fax _____

Secondary Contact _____

Title _____

Email Address _____

Primary Phone _____ Secondary Phone _____

Fax _____

ENERGY EFFICIENCY OPPORTUNITIES

If known, what are the specific energy efficiency opportunities you would like evaluated for this facility? _____

If energy efficiency opportunities are found at your facility, what is the required payback to implement? _____

Do you currently have funds available to implement energy efficiency upgrades? If so, how much is available? _____

Are there any other restrictions or budgeting time frame requirements? _____

AGREEMENT

The purpose of this Program Participation Agreement (“Agreement”) is to confirm and document that the customer signing below (“Customer”) is interested in participating in some or all of the initial qualifying activities for Enovity, Inc.’s (“Enovity”) Commercial & Industrial Energy Efficiency Program (“Program”). This Agreement does not commit the Customer to any specific Program project nor to any Program implementation activity(ies). As used throughout this document, the term “Party” means Enovity and Customer collectively referred to as “Parties.” Enovity does not warrant the Facility will qualify for the Program. Enovity hereby agrees to make a good faith effort to determine whether the Facility is eligible for Program participation.

By signing this Agreement, Customer hereby agrees only to provide Enovity staff and agents reasonable access to the facility (“Facility”) described on page 1 of this Agreement, for the purpose of performing Program eligibility evaluation activities (“Evaluation”). Reasonable access includes ingress and egress from the Facility during normal business hours to carry out the Evaluation, and to direct Customer’s Facility management personnel and Facility operations and maintenance personnel, along with any other necessary employees and contractors, to cooperate with Enovity in the conduct of this Evaluation. Such cooperation includes discussing Facility operations and equipment with Enovity as long as these discussions and site activities do not significantly impact normal building operations.

Evaluation activities include but are not limited to field facility and equipment surveys, short-term equipment monitoring, review and analysis of City of Palo Alto Utilities (CPAU) electricity and/or gas bills, interviews of facility staff, energy savings calculations, capital cost estimates, estimates of incentives, and reporting.

The following terms will govern this Evaluation:

CUSTOMER UNDERSTANDS, ACKNOWLEDGES, AND AGREES:

1. City of Palo Alto Council Authority to Modify: This Application shall at all times be subject to changes or modifications by the City of Palo Alto Council as it may from time to time direct in the exercise of its jurisdiction.
2. Program Dates:
 - The Program runs from May 18, 2009 through December 31, 2011.
 - Customer understands that this Program has limited funding, and that customers will be served on a first-come, first-served basis until allocated funds are depleted. This Program may be modified or terminated without notice.
3. Eligibility: Only City of Palo Alto Utilities customers with commercial or industrial facilities greater than 30,000 square feet and/or greater than 50 kW maximum demand are eligible to participate in this Program.
4. Life of Product: Customer acknowledges and agrees that incentive payments are based on related energy benefits over the life of the product. Customer further agrees that in the event 1) Customer does not provide CPAU with 100% of the related benefits for the life of the product or a period of five (5) years, whichever is less, or 2) Customer ceases to be a distribution customer of CPAU during said time period, Customer shall refund a prorated amount of incentive payment(s) to CPAU based on the actual period of time for which Customer provided the related energy benefits as an electric customer of CPAU.
5. No Double Dipping: Customer acknowledges and agrees that Customer cannot receive incentives for the same product, equipment or service from more than one City of Palo Alto Utilities or third party energy efficiency program offering incentives for the same product, equipment, or service.
6. Energy Savings: If Enovity is implementing the Project on Customer’s behalf, Customer understands and agrees that Enovity is solely responsible for ensuring Project savings are calculated using the appropriate baseline and the Project is installed according to Customer’s specifications and is delivering the estimated savings. Customer understands and agrees that incentives will be paid only for energy savings that exceed California Title 20 and Title 24 standards, or industry standards in the absence of applicable local, state or federal standards.
7. Equipment Ownership: Customer has no ownership, interest or title in monitoring equipment installed (if any) and shall permit removal of any monitoring equipment installed by Enovity.
8. Qualifying Equipment: Customer is solely responsible for checking the product/equipment specification to make sure that all requirements are met. New products ordered, purchased and installed prior to May 18, 2009 or after December 31, 2011 do not qualify for an incentive. Resale products, products leased, rebuilt, rented, received from warranty or insurance claims, exchanged, won as a prize, or new parts installed in existing products do not qualify.
9. Project Commitment: In order to qualify for incentives, a Detailed Investigation must be completed by Enovity to quantify projected savings. Once the Detailed Investigation is completed, the Customer will be issued a Detailed Investigation Report and Project Installation Agreement, and can purchase specified equipment for the energy efficiency project. If equipment is purchased prior to the issuance of the Project Installation Agreement, the Customer will be ineligible to receive incentives for the energy efficiency project from the Program.

10. **Payment of Incentives:** Upon completion of the Project, Enovity will conduct a Post Installation Inspection and/or Measurement and Verification and issue a Final Report. Once Enovity is satisfied that the project is installed as outlined in the Project Installation Agreement and achieving savings, and the Final Report has been reviewed and approved, an incentive check will be issued to the Customer. If Customer wishes to specify an alternative payee, a Payment Release Authorization must be submitted to the Enovity prior to the Final Report being issued.
11. **Submittal Requirements:** To be eligible for the incentives, Customer agrees to provide necessary Project documentation to Enovity including, but not limited to; utility bill data, data necessary to quantify potential energy savings such as equipment runtime, purchase orders or construction contracts, final project invoices, etc.
12. **Site Access:** Customer will allow, if requested, a representative from CPAU, the City of Palo Alto Council, Enovity, or any authorized subcontractor reasonable access to Customer's property to verify the installed product.
13. **Advertising:** Customer agrees not to use the names, identifying characteristics, logo, service mark or trademark of Enovity or CPAU for advertising, sales promotion or other publicity without the Enovity or CPAU's written approval.
14. **If Customer is a Tenant:** If a tenant, Customer is responsible for obtaining the property owner's permission to install the measure(s) for which Customer is applying for an incentive payment. By signing this Agreement, Customer represents that Customer has obtained such permission.
15. **If Property Manager:** If the Facility is managed by a Property Manager, the Owner's Property Manager who controls the Facility, by executing this Agreement, assumes the rights and obligations of the Owner hereunder.

ENOVITY AGREES:

16. **Customer Convenience:** To coordinate visits to the Facility with the Customer, so as to minimize any disruptions or inconvenience to the Customer.
17. **Installation:** To install, operate and maintain any test or monitoring equipment necessary for the Evaluation in a manner that is acceptable to the Customer.
18. **Costs:** To bear all of the actual Enovity costs associated with performing the Evaluation.
19. **Compliance with Laws:** Enovity agrees to comply with all federal, state, and municipal codes, acts, laws, ordinances, statutes, rules, orders, and regulations, which apply to its actions at the Facility or to the Project.
20. **Advertising:** Enovity agrees not to use the names, identifying characteristics, logo, service mark or trademark of the Customer's Facility for published project reports (except to fulfill reporting requirements to CPAU and/or the City of Palo Alto Council), advertising, sales promotion or other publicity without the Customer's written approval.
21. **Confidentiality:** Not to use, disclose or allow to be disclosed at any time, either prior to or after the termination or completion of this Agreement, without Customer's prior express written consent: any confidential or proprietary information or trade secret regarding Customer's products, business, customers, processes, techniques or operations learned by Enovity incident to its performance hereunder.
22. **Removal:** To remove the monitoring equipment (if any) upon completion of the Evaluation, and to leave the Facility in substantially the same condition it was prior to the Evaluation.

BOTH PARTIES AGREE:

23. **No Consequential or Incidental Damages/No Warranty:** Enovity is receiving funds from CPAU for this Project, but the Parties acknowledge and agree that CPAU shall not be liable to any Party for any losses or damages, including incidental or consequential damages, arising from or relating to this Agreement. CPAU makes no representation or warranty, and assumes no liability with respect to quality, safety, performance, or other aspect of any design, system or appliance installed pursuant to this Agreement, and expressly disclaims any such representation, warranty or liability.
24. **Responsibility of Project and Measures:** CPAU's and/or its consultant's review of the design, construction, operation or maintenance of the Project, Energy Efficiency Measures, or demand response measures does not constitute any representation as to the economic or technical feasibility, operational capability, or reliability of the Project measures. The Installing Contractor is solely responsible for the economic and technical feasibility, operational capability and reliability of the Project and measures.
25. **Cogeneration or Self-Generation:** If Customer has existing on-site cogeneration or self-generation, Enovity shall not pay incentives for energy savings that exceed Customer's annual energy usage from CPAU. The annual energy usage shall be determined by Customer's last 12 months of energy usage as determined as of the date on which Customer signed this Agreement. This policy is subject to change with 30 day written notice to Customer.
26. **Incentive Amount:** The incentive amount cannot exceed the Project cost. Customer must submit Project invoice(s) which include: vendor name/address/phone, itemized listing of product(s) including quantity, product description(s), manufacturer, model #, and other identifying information as appropriate, incremental Project cost, date invoice paid or payment terms, and installation date.
27. **Term of Agreement:** The term of this Agreement shall cease on December 31, 2011.
28. **Incentive Terms and Conditions:** The terms and conditions for receiving the incentive will be based upon the Project being installed and fully operational within the Program period.
29. **Termination:** Either Party shall have the right to terminate this Agreement at any time. In the event of termination, Enovity shall be granted access to the Facility in order to remove the Equipment. Furthermore, the provisions of this Agreement regarding use of names and shall remain in force following termination.



PROGRAM PARTICIPATION AGREEMENT

- 30. Ownership of Information: Enovity may provide the Customer with information about its findings regarding this Evaluation, but Enovity shall have all ownership rights, including exclusive copyright ownership, in all data, reports, research results, summaries, information, or other written, recorded, photographic or visual materials (hereinafter "Information") produced and collected, exclusively by Enovity, during the term of this agreement. Enovity shall not publish information without providing Customer with copies of the proposed publication or presentation and Customer will have thirty (30) days after receipt to object because the same contains confidential information or patentable subject matter. Enovity will remove any confidential information and will refrain from publication/presentation for a period not to exceed ninety (90) days to enable Customer to obtain protection directed to confidential subject matter contained in the proposed publication or presentation.
- 31. General: This Agreement shall be binding upon and inure to the benefit of any successors, transferees, heirs and assigns of the Parties. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any third party. This Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of laws of another jurisdiction.
- 32. Entire Agreement: This Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of the Agreement.

AGREED AND ACCEPTED:

Customer

Name: _____
 Title: _____
 Signature: _____ Date: _____

Enovity

Name: **Rachel Christenson**
 Title: **Program Manager**
 Signature: _____ Date: _____

BUSINESS PAYEE TAX INFORMATION:

Tax Status

Individual/Sole Proprietor Corporation Non-corporation Exempt (tax exempt non-profit)

Taxpayer ID if Customer is Individual/Sole Proprietor or Non-corporation _____

Incentives greater than \$600 are taxable and will be reported to the IRS unless the Customer qualifies as exempt. Enovity will report incentive payments as income to the Customer on IRS form 1099 unless Customer checks either the "Corporation" or "Exempt" tax status box above, and regardless of whether the incentive payment is made directly to Customer or to a third party. Customer is urged to consult a tax advisor concerning the taxability of incentives. Customer is responsible for any taxes that may be imposed as a result of incentive payments received from this program.