
Terms & Conditions
City of Palo Alto Utilities 2009-11

**COMMERCIAL & INDUSTRIAL
ENERGY EFFICIENCY PROGRAM**

PREPARED FOR:



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1.0 PROGRAM OVERVIEW

1.1 INTRODUCTION

The Commercial & Industrial Energy Efficiency Program (C&I EEP) offers expert engineering support at no cost to City of Palo Alto Utilities (CPAU) customers. Enovity's experienced team is here to help customers identify and implement energy efficiency upgrades that will result in energy savings and operations and maintenance improvements for their facilities. The Program assists customers through the entire process, offering technical and management support to overcome the typical hurdles of getting projects developed, approved, and installed. Finally, it offers cash incentives to buy down the cost of projects. The Program runs from May 18, 2009, until December 31, 2011, or until Program funds are depleted.

1.2 PROGRAM EFFECTIVE DATES

The Program runs from May 18, 2009 through December 31, 2011 or until Program funds are depleted. Incentives are available on a first-come, first-serve basis until fully committed. The Program is subject to be modified or terminated without notice.

1.3 FUNDING

The Program is funded by City of Palo Alto Utilities' ratepayers in the form of the Public Benefit Charges (PBC).

1.4 ENERGY EFFICIENCY MEASURES

Most projects that result in quantifiable energy savings (above standard requirements) for a facility are eligible for incentives under the Program. Eligible energy efficiency measures include, but are not limited to:

- Lighting controls and retrofits
- HVAC retrofits, including chillers, air handlers, and packaged units
- Boiler replacements, heat recovery, combustion controls and steam trap replacements
- Variable frequency drives
- Control setting changes and optimization
- Hardware repair
- Insulation of pipes and tanks
- Compressed air system retrofits
- Facility retro-commissioning

Please contact a Program representative to confirm eligibility of a particular measure. Though this Program does not provide incentives for solar photovoltaic (PV) or solar water heating systems, combined heat and power systems, or any other co-generation or self-generation projects, incentives may be available via other City of Palo Alto Utilities programs. Enovity recommends contacting your CPAU account representative to determine if incentives are available for your particular project.

1.5 SERVICES

Services offered at no cost to qualifying CPAU commercial and industrial customers include:

- Customized analysis and measurements to determine system efficiency
- Detailed investigation and recommendations for energy efficiency projects



- Implementation coordination assistance
- Report on reductions in energy, cost, and greenhouse gas emissions
- Independent verification of energy savings achieved after installation
- Cash incentives to help buy down the cost of energy efficiency upgrades

Enovity's experienced team of mechanical, systems and controls engineers can also provide turn-key project implementation services for an additional fee. For a detailed outline of the Program process, see Section 3.0 Program Process.

1.6 INCENTIVES

The Program offers incentives at the rate of \$0.10 per kilowatt hour (kWh) of electricity and \$1.00 per therm of natural gas saved over one year. Actual incentive amounts are calculated based on installed and verified energy savings. Incentives are capped at 100% of the cost of the project that is associated with energy efficiency ("incremental project cost"). See Section 4.0 Incentives for more details about the Program's incentives.

1.7 CONTACT

Any questions, comments or concerns regarding this Program should be directed to:

Enovity, Inc.
100 Montgomery Street Suite 600
San Francisco, CA 94104-4331

Rachel Christenson
Utility Program Manager
Phone: (415) 983-3604
Fax: (415) 974-0399
RChristenson@enovity.com
www.enovity.com/programs/cpau.html

1.8 DISPUTE RESOLUTION

Enovity is committed to the highest level of customer service. Any questions, comments, or concerns regarding the Program should be directed to the contact provided in Section 1.7 Contact. All concerns or complaints are addressed by telephone within 24 hours.

1.9 ADDITIONAL TERMS AND CONDITIONS

See the Program Participation Agreement and Project Installation Agreement for additional terms and conditions for participating in the Program and receiving incentives.



2.0 ELIGIBILITY REQUIREMENTS

2.1 ELIGIBLE CUSTOMERS

The Program is available to commercial and industrial customers of CPAU that have facilities larger than 30,000 square feet and/or with a maximum electric demand greater than 50 kW. Customers must have financial resources available to implement energy efficiency projects.

2.2 ELIGIBLE PROJECTS

The Program covers most projects that will result in quantifiable natural gas or electricity savings above pre-established baselines, such as Title 20, Title 24, and applicable portions of the City of Palo Alto's Green Building Ordinance. In order to qualify for incentives, the Program must complete a Detailed Investigation for the project to quantify energy savings prior to the issuance of a purchase order or execution of a construction contract. Following the Detailed Investigation, the Program will issue a Detailed Investigation Report and Project Installation Agreement to the customer.

A customer cannot receive incentives for the same product, equipment or service from more than one CPAU or third party energy efficiency program.

2.3 ELIGIBLE EQUIPMENT

The following equipment is not eligible for incentives under this Program:

- New products ordered, purchased and installed prior to May 18, 2009 or after December 31, 2011
- Resale products
- Leased products
- Rebuilt products
- Rented products
- Products received from warranty or insurance claims
- Exchanged products
- Products won as a prize
- New parts installed in existing products

Customers are encouraged to contact the Program to ensure equipment eligibility.

3.0 PROGRAM PROCESS

3.1 OVERVIEW

The Program process is designed to assist customers in meeting their efficiency needs and also to ensure that the greatest amount of cost-effective energy savings are identified, quantified, achieved and sustained. Enovity makes every effort to coordinate with the customer to minimize interruptions to operations and to meet installation timeframe requirements. The following table shows a typical timeframe for the Program process.

Figure 3.1.1 Program Timeframe

Activity	Duration
Customer Sign-Up	1 - 2 weeks
Initial Site Assessment	2 weeks
Detailed Investigation	3 - 8 weeks
Customer Project Commitment	2 - 4 weeks
Customer Budget Approval	2 - 8 weeks
Equipment Order	2 weeks
Equipment Lead Time	4 - 12 weeks
Installation of Upgrades	2 - 4 weeks
Post-Install Measurement & Verification	3 - 8 weeks
Incentive Payment	2 - 6 weeks
Total Time Elapsed	23 - 56 weeks

3.2 CUSTOMER SIGN-UP

Customers may learn about the Program through their CPAU account representative, Enovity’s website, or other marketing efforts. Interested parties should contact the Program either directly or through their CPAU account representative to schedule an initial meeting. During this meeting (or conference call), Program representatives explain the process and eligibility requirements, and collect some facility information to determine customer eligibility. The customer signs a Program Participation Agreement to indicate interest in the Program and allow Enovity access to the facility for performing Program services.

3.3 INITIAL SITE ASSESSMENT

The Initial Site Assessment is a high-level evaluation of the facility to identify potential energy efficiency opportunities. Through utility bill analysis, customer provided data, engineering assumptions, and rule of thumb estimates, Enovity develops a list of energy efficiency measures applicable to the site and an estimate of the facility’s energy savings potential. If the customer demonstrates A) interest to move forward on one or more of the identified measures and B) financial resources to implement these measures, the Program then moves forward to a Detailed Investigation.

3.4 DETAILED INVESTIGATION

The Detailed Investigation is the heart of the Program process. The Detailed Investigation is a financial-grade assessment that includes on-site measurements and/or monitoring of the facilities’ energy consuming equipment, along with a calculation of energy savings, costing, and a payback analysis for each energy efficiency measure. After this analysis, Enovity submits a Detailed Investigation Report to the Customer that summarizes the findings.

3.5 PROJECT COMMITMENT

With Detailed Investigation Report in hand, the customer can make an investment decision based on estimated energy and cost savings, incentive amounts, project cost, and greenhouse gas reductions, and approve the project for implementation. Along with the report, Enovity issues a Project Installation Agreement outlining the measures that are to be implemented and the projected incentive amounts. By signing this agreement, the customer can reserve the incentive amount, making the monies unavailable to other CPAU customers. For more information about the Project Installation Agreement, see Section 5.2 Project Installation Agreement.

3.6 IMPLEMENTATION

The cost of implementation falls outside of the scope of the no-cost Program services and is the responsibility of the customer. The Program is vendor-neutral and projects can be installed by any contractor of the customer's choice. As a licensed contractor and leading retro-commissioning firm, Enovity can provide turn-key project implementation services for an additional fee. This can often streamline the installation process, ensuring that project specifications do not get "lost in translation" and that the installation happens in line with the requirements to receive the specified incentive amount. If the customer should select an alternate contractor to implement the project, the Program will coordinate with them during the process to ensure that all criteria are met for receiving the incentive. The Program can assist by reviewing proposals and equipment data sheets, attending job walks with vendors, or even assist with the bidding or quoting process. Once the project is fully implemented, the customer should contact Enovity. At this point, the Program prepares a Measure Installation Checklist (see Section 5.3 Measure Installation Checklist) for the customer to verify that the project is ready for Measurement and Verification.

3.7 MEASUREMENT & VERIFICATION

Once the project is implemented, the Program performs post-installation Measurement and Verification (M&V) to verify the final energy-saving results of the project. The results are summarized in a Measurement and Verification Report, which is submitted to the customer after the M&V process is completed, and includes energy and cost savings, greenhouse gas reductions, incentive amounts, and project payback.

3.8 PROJECT CLOSE-OUT

With the final incentive amount calculated during the M&V process, the Program submits an Incentive Release Form to the customer. This allows the customer to designate a payee for the incentive. Once this form is filled out, signed, and submitted to Enovity, it is forwarded to CPAU for processing. CPAU then sends the incentive check to the customer or appointed payee, usually within four to six weeks.

Some customers may be asked to participate in a post-project survey regarding their satisfaction with the Program. This information helps the Program continuously improve its processes and service offerings to meet the evolving needs of customers.

3.9 PROMOTING PROJECT RESULTS

If desired, Enovity staff can assist customers in developing case studies, press releases, etc. to promote the results of the Project.

4.0 INCENTIVES

4.1 RATES

The Program offers incentives at the rate of \$0.10 per kilowatt hour (kWh) of electricity and \$1.00 per therm of natural gas saved over one year. Actual incentive amounts are calculated based on installed and verified energy savings above standard requirements. The total incentive amount cannot exceed the cost of the project that is associated with energy efficiency (“incremental project cost”).

4.2 CALCULATION

See below for incentive calculation examples.

Figure 4.2.1 Incentive Example A

	kWh	Therms
Energy Savings	25,000	5,000
Incentive Rate	\$0.10	\$1.00
Potential Incentive Amount	\$2,500.00	\$5,000.00
Total Potential Incentive	\$7,500.00	
Incremental Project Cost	\$10,000.00	
Actual Incentive Amount	\$7,500.00	

Figure 4.2.1 Incentive Example B

	kWh	Therms
Energy Savings	25,000	10,000
Incentive Rate	\$0.10	\$1.00
Potential Incentive Amount	\$2,500.00	\$10,000.00
Total Potential Incentive	\$12,500.00	
Incremental Project Cost	\$10,000.00	
Actual Incentive Amount	\$10,000.00	

In the first example, a project saves 25,000 kWh and 5,000 therms per year. This calculates to an incentive amount of \$7,500.00. Since this is less than the project cost, the customer is paid the full \$7,500.00. In the second example, the incentive amount is capped at 100% of the incremental project cost.

4.3 PAYMENT PROCESS

Upon CPAU approval of the Measurement and Verification Report, Enovity will submit an Incentive Release Form to the Customer. The Customer will fill the Incentive Release Form out, designating a payee and signing off on the final incentive amount. CPAU will then send a check directly to the customer’s designated payee indicated on the Incentive Release Form for the incentive amount specified. The turn-around time for CPAU to pay the incentive is approximately four weeks.

4.4 TAXABILITY

Incentives greater than \$600 are taxable and will be reported to the IRS unless the customer qualifies as exempt (federal tax status is either “Corporation” or “Exempt”). Such incentive payments are taxable as income to the customer regardless of whether the payment is made directly to the customer or to a third party payee. Unless the customer qualifies as exempt, CPAU will report incentive payments as income to the customer on IRS form 1099.

5.0 PROGRAM DOCUMENTS

5.1 PROGRAM PARTICIPATION AGREEMENT

The Program Participation Agreement collects information about a candidate facility. By signing, the customer indicates that they would like to participate in the Program and have Enovity come on-site to evaluate the facility for energy efficiency opportunities. This agreement does not commit a customer to any specific project nor obligate a customer to implement any of the recommended measures, but simply acts as a site access and confidentiality agreement for both parties (Enovity and the Customer). Customers may submit the signed agreement by fax or email to get a head start on the process, however the Program also requires the signed original (a “wet signature”) document for its records. A sample Program Participation Agreement is included as Attachment 1.

5.2 PROJECT INSTALLATION AGREEMENT

Measures selected by a customer for implementation are grouped into a project by the Project Installation Agreement. This document includes, for each measure selected from the Detailed Investigation Report for implementation, a measure description and estimate of the incentive amount. This amount is an estimate only; the final incentive amount will be calculated based on installed and verified energy savings. By signing the agreement, the customer reserves the estimated incentive amount and makes that money unavailable to other customers. There is no fee or penalty for failure to implement a project, however Enovity requests to be notified of inability to implement so that the reserved incentive amount can be released and made available to others. A sample Project Installation Agreement is included as Attachment 2.

5.3 MEASURE INSTALLATION CHECKLIST

The Measure Installation Checklist is drafted by Enovity and sent to the customer as the implementation phase nears completion. By completing and signing this document, the customer certifies that, for each implemented measure, the system is fully operational and all affected employees have received any necessary training, and that the project is ready for Measurement and Verification. This checklist requires the customer’s signature, however a faxed or emailed version of this document is acceptable. A sample Measure Installation Checklist is included as Attachment 3.

5.4 INCENTIVE RELEASE FORM

Upon approval of the Final Measurement and Verification Report by CPAU, Enovity drafts and submits to the customer the Incentive Release Form. This documents the final incentive amount and allows the customer to designate a payee for the incentive. The form requires the signature of the customer, however a faxed or emailed version is acceptable. A sample Incentive Release Form is included as Attachment 4.

6.0 FREQUENTLY ASKED QUESTIONS

Q: Who is Enovity?

A: Enovity is an energy engineering firm headquartered in San Francisco with offices in Irvine, Sacramento, Phoenix, and Seattle. Enovity's staff of 75 professional mechanical and control systems engineers, architects, energy analysts, utility program specialist and building technicians offer comprehensive services in the following areas:

- Building Commissioning
- Energy Services
- Utility Incentive Programs
- Building Automation
- Operations & Maintenance
- LEED™ Management

Q: What can this Program do for me?

A: The C&IEEP offers expert engineering support at no cost to you. The Program's experienced team is here to help you identify and implement energy efficiency upgrades that will result in energy savings and operations and maintenance improvements for your facility. The Program also provides cash incentives to buy-down the cost of implementing energy efficiency projects.

Q: What are the requirements?

A: The Program is available to commercial and industrial customers of the City of Palo Alto Utilities with buildings that are 30,000 square feet or larger and/or have a maximum demand of 50 kW or greater.

Q: What kind of projects do you look at?

A: The Program evaluates most energy efficiency projects that will result in quantifiable energy savings related to a facility's energy-using systems including lighting, HVAC and process loads. It also offers retro-commissioning of building controls and thorough evaluation of boiler systems.

Q: What is retro-commissioning?

A: Retro-commissioning (RCx) is the process of optimizing the operation of a building's systems (typically HVAC and lighting) to bring the building up to the design intentions of its current usage. It focuses on low-cost measures, such as control setting changes and operations and maintenance items.

Q: How is this Program different than the audit program offered by CPAU?

A: Energy audits provide initial identification and assessment of potential energy efficiency projects at a facility. This Program combines that initial assessment with a detailed investigation of the opportunities, implementation support, and post-installation measurement and verification of the project. The Program can assist you through the entire process, offering technical and management support to overcome the typical hurdles of getting projects developed, approved, and installed. If your facility has already had an energy audit, the Program can use that as a starting point to further develop the potential projects and even identify additional opportunities as part of the Detailed Investigation.



Q: Can I use a different contractor?

A: The Program is vendor-neutral and will work with any contractor of the customer's choice.

Q: What does this cost?

A: The Program's technical services are offered at no-cost. The customer is only responsible for the implementation of the energy efficiency measures.

Q: How do you get paid?

A: Enovity is paid by CPAU.

Q: How do I start this process?

A: The first step to participate is to contact a Program representative and sign and submit a Program Participation Agreement.

Q: How long will it take?

A: The time for participation depends on the complexity of the project and the data that the customer has available. Plan four to six weeks at a minimum for the Detailed Investigation.

Q: How can I request Program marketing materials or to have a Program representative to present at an event?

A: Marketing requests should be directed to the Program Manager, Rachel Christenson, at (415) 983-6304 or RChristenson@enovity.com.

Q: I'm a contractor. How can I work with the Program to get incentives for my customers?

A: The Program is vendor-neutral and will coordinate with any contractor of the customer's choice. The most important thing is to get us involved early, as a Detailed Investigation must be completed and a Project Installation Agreement issued before any equipment can be ordered. Contact the Program today to get started.



7.0 KEY TERMS

Contractor – A firm or individual contracted by the Customer to implement energy efficiency measures.

CPAU – City of Palo Alto Utilities.

Customer – A customer of CPAU that participates in the Program.

Energy Efficiency Measure (EEM) – A specific facility modification, improvement, upgrade, repair or operational change made with the express purpose of reducing a facility's energy consumption.

Enovity – An energy efficiency and sustainability consulting firm based on San Francisco contracted by CPAU to provide administrative, marketing and technical services for this Program.

HVAC – Heating, Ventilation and Air Conditioning.

Incentive – A one-time monetary award designed to encourage utility customers to choose more efficient equipment and/or operational options for their facility. Calculated as the incentive rate per energy product (electricity or natural gas) multiplied by the annual energy savings achieved above standard requirements. Incentives are different from rebates in that incentives must be applied for before measures can be implemented.

Incremental Project Cost – The cost of a Project that is directly associated with energy efficiency. The difference between a Customer's least expensive, least efficient option and the proposed, more efficient option.

Program – The Commercial and Industrial Energy Efficiency Program, funded by City of Palo Alto utility customers and implemented by Enovity.

Project – A group of energy efficiency measures selected for implementation, as defined by a Project Installation Agreement.

Wet Signature – An original document that bears the actual signature (in pen) of the signee.



8.0 ATTACHMENTS

8.1 PROGRAM PARTICIPATION AGREEMENT



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: _____

Title: _____

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.



8.2 PROJECT INSTALLATION AGREEMENT



8.3 MEASURE INSTALLATION CHECKLIST



8.4 INCENTIVE RELEASE FORM