

BayREN Heat Pump Water Heater Contractor Incentive Program

2021 – 2022 Contractor Participation Agreement

9/13/2021

Program Description

The Heat Pump Water Heater Incentive Program (hereafter referred to as the “Program”) supports the installation of Heat Pump Water Heaters (“HPWH”) in the San Francisco Bay Area. HPWHs provide high-efficiency water heating powered by electricity, which in the San Francisco Bay Area is now cleaner than natural gas in terms of greenhouse gas emissions. HPWHs also provide thermal storage, allowing electricity to be used only during low-emission and low-cost times of day, reducing demand during peak period.

The Program provides Incentives to contractors for selling qualifying HPWHs to residential electric customers receiving electricity from a Participating Agency for the purposes of a replacing a gas or propane heated water heater. Participating Agencies are local energy providers (either community choice aggregators (CCA) or publicly owned utilities (POU)) and other public agencies who have agreed to participate in the Program by providing incentive funding for installations in their service territory. The Program is funded by the Participating Agencies and administered by the Energy Council.

Cohen Ventures, Inc. dba Energy Solutions (hereinafter referred to as “Energy Solutions” or “Program Implementer”) is implementing the program on behalf of Energy Council. To participate in the Program, Contractors are required to sign this Participation Agreement agreeing to the terms and conditions of participation.

Contractor Information

Company Name (“Contractor”)			
Street Address	City	State	Zip
Mailing Address (if different from above)	City	State	Zip
Federal Tax ID Number	Tax Status (Circle one) Corporation, Partnership, Sole Proprietor, tax-exempt		
Contractor License #			

Primary Management Contact	Phone Number	Email Address
Secondary Management Contact	Phone Number	Email Address
Incentive Data Entry Contact	Phone Number	Email Address
Payee Name		Payee Title
Check Mailing Address		

Program Term

This Agreement is effective upon the date it is executed by Contractor and will continue until March 31, 2022 (“Program End Date”) unless earlier terminated in accordance with the provisions in this Agreement. The Program or this Agreement may be modified or terminated by Energy Solutions or Energy Council at any time without notice. Termination of this Agreement or expiration of this Agreement shall not relieve Contractor of any warranties or other obligations expressed herein which by their terms are intended to extend beyond termination

Program Services/Incentives

The Program provides the following support services and incentives to participating contractors:

1. **Technical & Program Support.** During regular business hours (holidays excluded), Energy Solutions shall make its personnel available to answer questions via telephone.
2. **Training.** The Program offers training for the Contractor’s technicians, sales, operations staff and Contractor subcontractors. All training sessions are free of charge and conducted during regular business hours (holidays excluded), unless otherwise agreed by the Parties. In order to be eligible to apply for a Program incentive, Contractor’s staff who will be working with the Program will be required to attend designated Program specific trainings. Details about Program training are included in Appendix A, **Procedures.**
3. **Program Incentives.** The Program offers an incentive of \$1,000 per installed HPWH that replaced an existing gas or propane water heater subject to the terms and conditions in this Agreement. All incentives paid under this Program are available on a first-come, first-served basis until allocated funds are depleted. Energy Solutions on behalf of the Program shall disburse incentives for installations satisfying all Program

requirements. The **“Procedures”** specifying the requirements that must be satisfied to receive incentive payments are outlined in Appendix A, which is incorporated into this Agreement by reference. All incentives are subject to approval by Energy Solutions and may be denied for any reason.

Definitions

When used in this Agreement, the following terms, with initial capitalization, have the meanings specified below:

“Participating Agency” means local energy providers (either community choice aggregators (CCA) or publicly owned utilities (POU)) and other public agencies who have agreed to participate in the Program by providing incentive funding for installations in their service territory. The current list of Participating Agencies is displayed in Appendix B, which is incorporated into this Agreement by reference.

“Qualifying Customer” means eligible residential customers that receive electricity from a Participating Agency.

“Incentive” or **“Incentive Payment”** is \$1,000 that complies with the criteria below.

“AHRI” means the Air-conditioning, Heating, and Refrigeration Institute.

“Qualifying Contractor” means an entity that installs Qualifying Equipment for Qualifying Customer. Contractors must meet the following requirements to be considered a Qualifying Contractor:

1. Hold an active General B, C-20, or C-36 license (or any combination thereof); and
2. Have no unresolved claims with the Better Business Bureau (BBB).

“Qualifying Equipment” means a HPWH that meets the following criteria:

- Storage Heat Pump Water Heater
- UEF of 3.1 or greater
- Grid-connection capability

For the purposes of this Program, grid-connection capability means the HPWH has the ability to be controlled remotely via a CTA-2045 connection. The HPWH does not need to be actively communicating with the internet at the time of installation to be eligible for an incentive. Refer to the Qualified Products List for a full list of Qualifying Equipment. The Qualified Products List is a list that is maintained by Energy Solutions and is available on the website. It is subject to change due to periodic updates.

“Qualifying Facility” means the residence where the Qualifying Equipment is being installed.

“Open Permit” means permit that has been issued by a County or Municipal building department but has not yet been formally finalized in accordance with established guidelines, typically by means of a final inspection.

“Permit Closure Rate” means the rate at which permits related to submitted projects are closed within 6 projects of application submission date

Terms and Conditions for Participation

Subcontracting

Contractor may use subcontractors to install Qualifying Equipment, provided the Contractor takes full responsibility for the service provided by their subcontractor. Contractor represents and warrants to Energy Solutions and Energy Council that subcontractors will perform their services in a professional manner and with the degree of skill and care that is consistent with current, good, and sound professional procedures and practices.

Qualifying Customers

A Qualifying Customer receives electricity from one of the Participating Agencies. It is the Qualifying Contractor’s responsibility to supply customer information in the online Application, including the correct customer name, street address of the residence where the equipment is installed, equipment sales date, and to identify a customer’s residence as a Qualifying Customer. Incorrect or insufficient information may result in rejection of the Incentive for the equipment installed for that customer.

Installations at multi-family residences are eligible assuming each installed HPWH serves an individual residential unit. Contractor must receive permission from Energy Solutions prior to applying for incentives for more than five (5) installations at an individual multi-family facility.

Program Incentives and Qualifying Equipment

The Program offers an incentive of \$1,000 per installed HPWH that replaced an existing gas or propane water heater and that meets the minimum performance and characteristic thresholds specified for Qualifying Equipment. A HPWH installed to replace an existing electric water heater is not eligible for incentives. Incentives shall only be paid after Energy Solutions confirms the application contains all the necessary information outlined in the Procedures.

Changes to Program

Energy Council may, in its sole discretion, make changes to the Program at any time, including, without limitation, modifying incentive amounts, and adding or removing Qualifying Equipment from the Program. The date of such change(s) will take effect on the earlier of (a) the date the change is posted on the Program website, or (b) the date the Contractor receives written notice of such change and will apply to any installations completed on or after the date the change takes effect regardless of date the incentive is applied for.

Insurance Requirement

Contractor and any party engaged by Contractor shall carry and maintain throughout the Program Term, insurance meeting at least the minimum coverage amounts set forth below. All

policies shall be written only by insurers admitted to do business in the state of California and having a rating of at least "A" and a financial rating of at least "VIII" on the most current edition of Best's Key Rating Guide or comparable rating by another generally recognized rating agency. Energy Solutions shall be given no less than thirty days advance written notice of cancellation or material change in coverage. Contractor shall send certificates of insurance to Energy Solutions upon completion of this Agreement and prior to submitting an Application for any incentive, unless otherwise specified.

Insurance Minimum Coverage Amounts

Contractor shall obtain, and maintain the following:

- a. Commercial general liability insurance with coverage of at least \$1,000,000 per event of bodily injury, property damage or personal injury or death.
- b. Worker's compensation and employers' liability insurance with coverage in accordance with statutory minimums, but no less than \$1,000,000 per event of injury or death each accident.
- c. Automotive liability insurance with coverage of at least \$300,000 per event of bodily injury or property damage.

If any policy of insurance required under any provision of this agreement is subject to a general aggregate limit, then such aggregate limit shall be at least twice the event itself.

Contractor as Service Provider

Contractor specifically agrees and acknowledges that neither the Program, Energy Council, Participating Agencies, nor Energy Solutions is in the business of installing HPWH systems or servicing such systems. In performing any Program service, Contractor shall represent to its Customers that such services are provided by Contractor alone, and not by any of the aforementioned entities.

Waiver of Damages

Contractor acknowledges and agrees that although Energy Solutions is receiving funds from Energy Council and Participating Agencies to pay Incentives, neither Energy Council, Participating Agencies, nor Energy Solutions are liable to Contractor for any losses or damages, including incidental or consequential damages, arising from this Agreement. Furthermore, neither Energy Council, Participating Agencies, nor Energy Solutions makes any representation or warranty, or assumes any liability with respect to quality, safety, performance, or other aspect of any design, system or appliance for which an incentive payment was received pursuant to this Agreement, and expressly disclaim any such representation, warranty or liability.

Indemnity

To the fullest extent permitted by law, Contractor shall indemnify, defend (with counsel agreed to by Energy Council), and hold harmless, jointly and severally, the Energy Council, the Participating Agencies, Energy Solutions, and their officers, officials, agents, employees, and volunteers (collectively and/or individually "Agency") from and against any and all liability, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs (including, without limitation, costs and fees of litigation) of any kind whatsoever without restriction or limitation, incurred in relation to, as a consequence of or arising out of or in any way attributable actually, allegedly or impliedly, in whole or in part,

to the performance of this agreement or any of its officers, employees, servants, agents, or subcontractors, or the failure of the same to comply with any of the obligations contained in this agreement, except such loss or damage which was caused by the sole negligence or sole willful misconduct of the Energy Council or the Participating Agencies or Energy Solutions. The duty to defend applies immediately, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend as stated herein.

Preservation of Records

Contractor shall preserve all records of sales of equipment for which an incentive was received under this Program for a period of seven years after termination of this Agreement. Energy Council's authorized representatives shall have the right to inspect and to reproduce any such accounts and records related to equipment purchase, sales, rebates processed, or the incentives received in connection with the Program. All financial statements, reports, records and other documents provided by Contractor shall properly reflect the true facts about all activities and transactions for which the Contractor issued a point-of-sale rebate and received an incentive as a Qualifying Contractor.

Refunds and Adjustments

The payment of Incentives are dependent upon the Application being approved and verified by Energy Solutions. Details of the Program verification steps are outlined in Appendix A, **Procedures**. Energy Solutions and Energy Council are entitled to a prompt refund from Contractor of any and all incentive amounts paid to the Contractor for Qualifying Equipment should it be determined that information submitted as part of the project verification requirements is determined to be fraudulent. Any refund of incentive amounts paid to Contractor to which Energy Solutions and Energy Council becomes entitled will be deducted as an adjustment from Contractor's future incentive payments, if applicable, or through a request for immediate reimbursement by Energy Solutions. Either option is at the sole discretion of Energy Council.

Warranty

Contractor shall provide Qualifying Customers a warranty on Qualifying Equipment that is the subject of an incentive payment pursuant to this Agreement that all materials and equipment furnished are new, free from faults and defects and of good quality and further warrant against any defect in materials, manufacture, design or installation for a period of one (1) year from the date the materials are provided and/or installed, whichever is later.

Termination

Energy Solutions reserves the right to terminate this Agreement or any part of this Agreement for any reason or for no reason in its sole discretion. In the event of such termination, the Contractor shall immediately cease participation in the Program, including but not limited to any applicable use of Program materials such as announcement flyers, program website material or any other physical or digital material containing program details. Energy Solutions will not pay Contractor incentives for any Applications dated and submitted after receipt of notice of termination or for any costs incurred by the Contractor post-termination.

Energy Solutions reserves the right to terminate this Agreement for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any of the terms and conditions of this Agreement. Examples of cause include, but are not limited to (a) failure to properly complete incentive forms; (b) failure to properly process incentives; (c) loss of certifications necessary for participation in the Program, insolvency; or (d) failure to provide Energy Solutions reasonable assurances of future performance. In the event of termination for cause, the Contractor shall be liable to the Program for any and all damages sustained by reason of the default, which gave rise to termination.

Permits

Contractor shall comply with any and all applicable laws, codes and ordinances and obtain all required licenses, finalized permits or approvals from the appropriate authorities.

Confidential Data

Customer account numbers and customer names are considered confidential data and may not be provided via email. If any transfer of confidential data is required, Energy Solutions will setup a secure file transfer website for Contractor to use to transfer data.

Hazardous materials regulations

Contractor attests that they conform to industry regulations for treating hazardous or environmentally harmful materials at all times during participation in the Program and their employees are properly trained.

Safety Regulations

Contractor attests that they conform to industry regulations for working safely at all times during participation in the Program and their employees are properly trained.

Complaint Resolution

Contractor is responsible for maintaining quality relationships with Customers, and will not hold the Program responsible for outstanding issues with Customer as a result of their participation in the Program. Contractor shall diligently resolve any Customer complaints in a way that preserves Customer satisfaction. Failure to resolve Customer complaints may result in termination from participation in the Program.

Governing Law; Jurisdiction and Venue

This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by, the laws of the State of California, without reference to its conflicts of law principles. Contractor irrevocably consents to the jurisdiction of the state and federal courts located in the State of California, USA, in connection with all actions arising out of or in connection with this Agreement, and waives any objections that venue is an inconvenient forum. Contractor further agrees that it will not initiate any action against Energy Solutions in any other jurisdiction.

Waiver

Delay or failure to enforce or insist on strict compliance with any provision of this Agreement does not constitute a waiver or otherwise modify this Agreement. Waiver of any right granted under

this Agreement on one occasion will not: (i) waive any other right; (ii) constitute a continuing waiver or (iii) waive that right on any other occasion.

Severability

If any provision of this Agreement is found to be invalid or otherwise unenforceable, that provision will be modified to the extent necessary for it to be enforceable. However, such a finding will not affect the validity of any other provision of this Agreement, and the rest of this Agreement will remain in full force and effect.

Notices

Notices under this Agreement shall be via email to Contractor's "Primary Management Contact" specified above. When receipt of an e-mail is confirmed by the recipient, it shall be deemed received. In addition, notice may be given either personally, by certified mail, return receipt requested, or by overnight express carrier. The notice shall be deemed to have been given and received on the date delivered in person or the date upon which the postal authority or overnight express carrier indicates that the mailing was delivered to the address of the receiving party. Notices to the Program shall be sent to the Program Implementer contact.

Taxable Income

Incentive payments may be taxable. Payments will be reported to the IRS unless Contractor is exempt. The Program will report incentive payments as income on IRS Form 1099, unless the Contractor is in an exempt based on the tax status box in the Contractor Information section above is checked. Please consult your tax advisor concerning the taxability of incentives. The Program is not responsible for any taxes that may be imposed on Contractor as a result of Contractor's receipt of incentive payment(s).

Completion Requirements, Commencement of Participation and Duration of Agreement

In order for this Agreement to be accepted and considered in effect, Energy Solutions must review and verify all documentation requested on page 1 of this contract, in the section Contractor Information. Energy Solutions will notify an applicant of their approval or denial via email to the Primary Management Contact within 5 business days of submitting their completed Agreement.

By signing below, Contractor agrees to be bound by the terms and conditions of this Participation Agreement, including all associated Exhibits and Appendices, and has caused this Participant Agreement to be executed by its duly authorized representative.

Contractor Signature _____
Title _____
Print Name _____
Date _____

Completion Check-List

1. Fill out Page 1 in the Contractor Information section
2. Sign Page 9
3. Email completed agreement to Program Implementer listed below
4. Mail a physical copy of the agreement to the Program Administrator listed below

Program Contact Information

If you have question about the Program, please call the Program Implementer first, before calling the Program Administrator.

Program Implementer
Peter Florin
Energy Solutions
449 15th St.
Oakland, CA 94612
510-482-4420 ex 227
Pflorin@energy-solution.com

Program Administrator
Jennifer West
StopWaste
1537 Webster St.
Oakland, CA 94612
510-891-6555
jwest@stopwaste.org

Appendix A

BayREN Heat Pump Water Heater Contractor Incentive Program Procedures

Applications for Incentives must be submitted online. The URL for the online rebate Application is www.bayareahpwhincentives.com. All Applications must be entered and submitted on or before March 31st, 2021.

By submitting an application, you acknowledge and accept the Terms and Conditions of the Iris online incentive claim-processing platform listed on the website. When you accept the Terms and Conditions, the rebate Application becomes a legally binding contract between you and Energy Solutions. If the Program Implementer enters an Application online for you, you agree to review what was entered and confirm it is correct, and that that Application is legally binding as if you had entered it personally.

You may only enter an Application after receiving a username and password for the Program. You should change your password before submitting your first Application. You will be responsible for maintaining privacy and the privacy of your password and for each Application submitted using your password.

Failure to meet any of the requirements of these Procedures or take appropriate action to resolve a non-conforming item(s) identified will result in delays and/or loss of the incentive payment.

The following information will be required as part of a complete Application:

1. Customer Name
2. Customer Utility Account number
3. Customer Address
4. Photo of the customer utility bill showing enrollment with one of the Participating Agency
5. Customer email
6. Single Family or Multifamily property
 - a. If Single Family home: if the Customer is on a CARE rate
 - b. If Multifamily Property: if it is an affordable property
7. Water heater manufacturer and model
8. Photo of previously installed gas or propane water heater
9. Photo of installed HPWH
10. Total project cost
11. Project invoice number
12. Installation date
13. Permit Number, including copy of permit showing final Building Official approval (does not apply to projects completed in EBCE and MCE territory)
14. Photo of completed permit application (does not apply to projects completed in EBCE and MCE territory)
15. Whether or not a thermostatic mixing valve was included in the install
16. Grid-connectivity infrastructure installed, if any (i.e. CTA-2045 adaptor + communicating device)

Contractor is responsible for supplying accurate customer information when submitting applications or having applications submitted on your behalf by the Program Implementer.

Verification

The following requirements will need be verified as part of an Application review and approval process:

1. The equipment was installed for a Qualifying Customer
2. The equipment installed is Qualifying Equipment
3. The equipment replaced an existing natural gas or propane water heater
4. The Qualifying Equipment is installed in good working order

The sections below detail how each of the above requirements are verified:

The Program requires that the Qualifying Equipment is installed for a Qualifying Customer only and that the Qualifying Equipment is installed in place of an existing natural gas or propane water heater. The Program requires that the Qualifying Equipment is installed in working order. The Program requires the Application to contain information that allows for the Program team to verify that these requirements are met.

The Customer Utility Account number and a photo of the customer utility bill showing enrollment with one of the Participating Agencies will verify that the equipment was installed for a Qualifying Customer.

The Contractor will review the Qualified Products List and will have to choose from among the Qualifying Equipment on the list to submit as part of an Application. Any product listed on the Qualified Product List is considered a Qualifying Equipment. If the Contractor submits an Application for a model not listed on the Qualified Product List, it is the responsibility of the Contractor to provide technical documents clearly showing that the equipment meets the specifications outlined in the definition of Qualifying Equipment; the final determination will be made by Energy Solutions in its sole discretion.

The Contractor will have to provide pictures of the equipment on site prior to the retrofit clearly showing the previously installed equipment manufacturer, model number and any other components that would show the pre-existing fuel type such as existing gas hookup. The Program Team will review the photos to verify that Qualifying Equipment was installed to replace an existing natural gas or propane water heater. If the model number on the pre-installed equipment is not legible, the Contractor will take effort in good faith to capture photos needed to verify the fuel type of the previously installed equipment.

The Program will confirm that the Qualifying Equipment installed matches what was submitted on the Application via two methods: by reviewing the photos of the installed equipment provided by the Contractor, which will be required to clearly show the equipment nameplate. Permits with final approval will also be provided as evidence that the equipment installed is in good working order.

If all the requirements listed above are verified, the Application will be approved and the Incentive payment will be provided to the Contractor assuming availability of funds.

In any cases where the provided information does not adequately allow for the Program to verify that any of the requirements are met, it will be the responsibility of the Contractor to provide additional evidence.

Permit Policy

The Program has adopted two permit policies, one that applies to projects completed for MCE and EBCE customers, and a separate policy applied to projects completed for SVP customers.

The following procedure applies for projects completed for **MCE and EBCE** customers:

As a part of the application process, contractors are required to submit valid permit numbers. In order to validate the permit status, the application processing team will review the permit in the city/county permit database monthly. Any permits listed with an "Open" status in the permit database will be placed on a list of "Open Permits," but will not delay incentive payments. Permits listed on the "Open Permits" list will be re-checked monthly. Permits that remain open for over six (6) months will be counted as "Unclosed" and will negatively impact a contractor's "Permit Closure Rate".

To remain in good standing, a contractor must maintain a Permit Closure Rate of above 75%.

If a contractor's Permit Closure Rate falls below 75%, the contractor will be notified and all subsequent payments will be paused until each of the outstanding pending permits have been inspected and closed. All new applications submitted during this time will require proof of permit closure. Once the contractor's Permit Closure Rate returns to over 75%, any paused applications will be released and new applications will no longer require proof of closure.

Energy Solutions will provide a monthly report showing the status of all open permits, including the number of months before they are considered unclosed.

Exceptions

A participating contractor's first submission starting from the time this policy goes into effect will not count against their unclosed permit count.

All projects completed for SVP customers will require proof of permit closure prior to incentive payment.

Program Provided Training

The Program will provide both Program-specific and equipment-specific training free of charge as part of the Contractor's participation in the program. The Program-specific training will include:

- Program background and overview of goals
- What constitutes a valid project
- How to submit an Application through the Online system
- How to track the status of existing Applications
- Question and Answers

Participation in one of the Program-specific training sessions, either in group or individual setting, will be required before a Contractor can submit their first Application.

The Program will also coordinate with equipment manufacturers and/or distributors to provide technical training for the participating Contractors. The Program topics will be decided in collaboration with the manufacturers and distributors and may include topics such as (but not limited to) how to properly size the equipment and how to sell the equipment.

Good Faith Statement

Contractor warrants all incentive application information is submitted in good faith as true and correct and all the Qualifying Equipment listed in each incentive application is new and was sold to a Qualifying Customer who installed the Qualifying Equipment at a Qualifying Facility. Contractor will take appropriate internal administrative steps to avoid duplicate entries of Incentive applications that may be created due to Contractor's current paperwork processes, personal organization of assigned administrative support, and potentially fraudulent activity.

Appendix B

Participating Agencies

The current Participating Agencies include:

1. MCE
2. East Bay Community Energy (EBCE)
3. Silicon Valley Power (SVP)

Energy Solutions will communicate any additions to this list as they join the program and will provide 30 days notice if any of the active Participating Agencies leave the program.

The map below illustrates the general area served by the Participating Agencies at this time. Note that not all residents in the areas shown on the map are served by Participating Agencies. Exact service territory may change over time- please refer to the each participating Agency's website or contact Energy Solutions to receive an updated list of counties served as needed'

MCE: <https://www.mcecleanenergy.org/>

EBCE: <https://ebce.org/>

SVP: <https://www.siliconvalleypower.com/>

