
Better Buildings Partnership - New Construction

Constructed Savings Guidelines for the BBP - NC incentive payment

The Better Buildings New Construction Program (BBP - NC) has the goal of achieving improved energy efficiency in new building construction. To help achieve this goal, the BBP - NC is providing incentive payments where it can be demonstrated that a new building will use less electricity than a similar building designed to the minimum requirements of the Ontario Building Code.

To qualify for this incentive, the building design process should have included an integrated design process and energy simulation modeling.

Energy savings for the purposes of the project shall be calculated using the current version of commercial building analysis software known as EE4-CBIP, EE4-Code, or CBIP EE Wizard, DoE 2, eQuest or equivalent. The modeling report must include the electricity savings calculated based on the Ontario Building Code in effect when the project received a building permit.

Eligible buildings must have a building permit issued on or after July 17, 2006 and no later than December 31, 2010 and construction must be completed and all application documentation submitted by September 30, 2012. The incentive will be paid once the building construction has been completed and the modeled energy savings have been verified.

The energy modeling report must include projected CO₂ savings, energy savings in kWh and peak kW demand reduction, by season. "Peak" means the period occurring from 7 a.m. until 7 p.m., Monday through Friday. When construction is completed, an energy modeling report confirming the as constructed projected energy use of the building should be submitted along with an energy modeling report that represents the building if it had been built to meet the minimum requirements of the Ontario Building Code. The reports submitted may be reviewed by a third party. Applicants will be advised if a third party review is being undertaken. The energy saving measures incorporated in the building may be verified by permit drawing review and/or site visit.

The applicant must agree to assign any and all Environmental Attributes (i.e. Carbon Credits) generated from measures which the incentive supported to the Ontario Power Authority, free and clear of all liens, claims and encumbrances. A definition of Environmental Attributes can be found in the terms of agreement section of this application.

The BBP - NC funding is subject to acceptable documentation substantiating the peak kW energy savings being submitted. The applicant must agree that no other application for incentive payment for peak kW savings are being made for the building from any Ontario electricity rate payer based funding source. If you require clarification on your eligibility for an incentive please contact the BBP - NC at 416-392-7003.

When the building construction is completed and acceptable documentation is submitted, the owner of the building will be paid up to \$ 350/peak kW reduction or \$0.04 per annual kwh reduction in the building's energy demand as compared to the demand projected if the building had been built to meet the minimum requirements of the Ontario Building Code. Details on the performance based incentive levels are available at Toronto.ca/BBP - NC. Upon receipt of the required energy modeling reports and application the BBP - NC will advise the owner of the building of the eligible incentive and the owner will invoice the BBP - NC for this amount.

Disclosure of Information:

The information provided in your application is subject to disclosure under the Municipal Freedom of Information and Protection of Privacy Act and may also be shared with other funders.

Please note that the Terms of Agreement attached hereto require a waiver by the Participant of its rights under the Personal Information and Protection and Electronic Documents Act (Canada) and all other privacy Laws and Regulations with respect to information to be obtained by the City and for the purposes of supplying such information to the Ontario Power Authority.

Jan. 2008

Better Buildings New Construction Program

Application for Constructed Savings Incentive

Date:

Building Owner:

Business Address:

Business Telephone No.:

Address of Building:

Size of Building (m2):

Type of Use(s):

Building Permit Application Number:

Date Issued:

Construction Completed/Occupancy Date:

Energy Modeller:

Business Address:

Business Telephone No.

Application is for (choose one):

- a Peak kW incentive (\$350 per peak kW)
- OR**
- annual kwh savings incentive (\$0.04 per annual kwh savings)

I certify that I have not received and will not accept any Ontario-wide electricity ratepayer funding for the electricity saving measures incorporated into the construction of this building other than pursuant to this BBP - NC incentive application.

I agree to transfer and assign any and all right, title and interest in and to all Environmental Attributes (as defined in the Terms of Agreement attached to this Application) that may arise from the measures undertaken as a result of the BBP - NC incentive payment, to the Ontario Power Authority (OPA), free and clear of all liens, claims and encumbrances (other than those in favour of the OPA).

I have attached energy modeling simulation reports based on the as constructed building and a reference building that meets the basic requirements of the Ontario Building Code in effect at the time the project's building permit was issued. Energy savings have been calculated using the current version of commercial building analysis software known as EE4-CBIP, EE4-Code, or EE Wizard, DoE 2, eQuest or equivalent. The report includes the projected CO2 emission reduction, the projected kWh and peak kW of electricity used as compared to the electricity that would be used if the building had been built to meet the basic requirements of the Ontario Building Code, a description of the energy efficiency measures used with their incremental cost with payback period estimates.

I agree that representatives of the City of Toronto Energy Efficiency Office can review the documentation and drawings for the building on file with the City of Toronto Buildings Division, for the purpose of verifying the implementation of the energy savings design features of the building. I further agree that verification of the electricity savings may require a site visit. This site visit will be arranged with the applicant.

I have read, understand and accept all of the Terms of Agreement attached to this application.

I agree that any and all funding that may be payable by the City of Toronto to me pursuant to and in accordance with the terms of this Application and Terms of Agreement shall at all times be subject to receipt of funds by the City of Toronto from the OPA and that the City shall not be obligated to fund this program unless and until it has received funds from the OPA. I also understand that the City of Toronto and at the OPA reserve the option of discontinuing this program. I also understand that neither the OPA nor the City of Toronto will be responsible for any costs occurring due to delays in approvals or denial of incentives.

Owner of the Property Company name:

Name of authorized representative:

Position:

I have authority to bind the corporation:

Signature:

Date:

Jan 2008

BBP - NC - TERMS OF AGREEMENT

1.0 INCENTIVE PAYMENT: City of Toronto shall pay the Applicant a financial incentive payment for the completion of the Project described in Part 1 – Project Application ("Project Application") ("the Project") following the Expected Project Completion Date identified in the Project Application, subject to the City of Toronto verifying and confirming that the Project has attained the claimed peak demand reduction identified in the Project Application. The Project must have a building permit issued prior to December 31, 2010. The agreed upon amount of the financial incentive will be provided in the form of a lump sum payment. The incentive payment is inclusive of all applicable taxes. City of Toronto will not be responsible for any tax liability imposed on the Applicant as a result of any incentive given pursuant to this Agreement. City of Toronto shall have no liability for any amounts in connection of the Project in excess of the incentive payment. Notwithstanding anything else contained in this Agreement, the Applicant agrees and acknowledges that City of Toronto shall have no obligation to pay any monies hereunder until it has determined in its reasonable discretion that the Project has attained the peak electricity demand reduction as set out in the Project Application. All invoices for financial incentive payment must be submitted to the City of Toronto by September 30, 2012.

2.0 APPLICANT ACKNOWLEDGEMENTS: The Applicant acknowledges and agrees that: (a) City of Toronto alone shall submit the incentives paid under this Agreement for credit or recognition by the Ontario Power Authority; and (b) the energy efficiency measure(s) incorporated into the project in connection with the payment of the BBP - NC incentive has (have) not and shall not receive funding in or from any other Ontario Power Authority sponsored energy efficiency incentive program.

3.0 COVENANTS OF APPLICANT: The Applicant covenants and agrees that it shall:

- (a) comply with all applicable laws and requirements of all governmental authorities, and obtain and maintain all permits, licences, insurance and approvals as may be required in connection with the Project, during the Term of this Agreement;
 - (b) maintain all the equipment of the Project in good working order and maintain the Project as determined by this Agreement without any modification, for a continuous period of at least 36 months following the financial incentive payment by City of Toronto failing which the applicant shall be deemed to be in default and City of Toronto may request repayment of all or a portion of the financial incentive from the Applicant. This section shall survive the Term of this Agreement;
 - (c) maintain complete and accurate records for City of Toronto to verify the completion of the Project and attainment of peak demand reduction for three (3) years following payment of the incentive, and provide City of Toronto with reasonable access to such records, or answers to questions regarding same, as may be necessary. This section shall survive the Term of this Agreement; and
 - (d) agrees to transfer and assign to the OPA, unconditionally and absolutely, all of its right, title and interest in and to all Environmental Attributes arising from the Project and covenants and agrees:
 - (i) not to sell, supply or deliver any of such transferred Environmental Attributes to the IESO-Administered Markets, other markets or any other Person, or to retire any of such transferred Environmental Attributes, unless the OPA has requested and approved such sale, supply, delivery or retirement;
 - (ii) not to participate in any voluntary programs with respect to any of such transferred Environmental Attributes without the prior written consent of the OPA, which consent may be unreasonably withheld or delayed in the OPA's sole discretion;
 - (iii) to deliver all such transferred Environmental Attributes to the OPA free and clear of all liens, claims and encumbrances (other than those in favour of the OPA); and
 - (iv) that, upon request by the OPA, it shall use commercially reasonable efforts to ensure the ownership by the OPA of all such transferred Environmental Attributes, including:
 - (A) on behalf and in the name of or in trust for the OPA, quantifying, verifying, certifying and registering with the relevant Governmental Authorities or other agencies all such transferred Environmental Attributes,
 - (B) obtaining, registering, certifying or delivering all such transferred Environmental Attributes or any evidence of the OPA's right, title and interest thereto to the OPA, to the IESO-Administered Markets or other markets, or to any Person as the OPA may direct, on behalf, or for the benefit, of the OPA, and/or
 - (C) assisting the OPA in doing any of the foregoing, for which the Applicant shall be reimbursed by the OPA for all reasonable expenses incurred in respect thereof.
- Section 3.0 (d) shall survive the Term of this Agreement.

4.0 CONFIDENTIALITY: Each party shall maintain in strict confidence any and all proprietary and confidential information it may receive about the other party under this Agreement, and will not disclose such confidential information to any other party without the prior written consent of the disclosing party. Notwithstanding the foregoing, City of Toronto shall be permitted to disclose confidential information regarding this Agreement to the Ontario Power Authority and to use information provided in aggregate form for the purpose of BBP - NC program analysis and promotion. The Applicant further acknowledges that City of Toronto is subject to the Municipal Freedom of Information and Protection of Privacy Act (Ontario) and the Personal Information Protection and Electronic Documents Act (Canada) and may be required to disclose confidential information concerning this Agreement in accordance with the provisions thereof. This section shall survive the Term of this Agreement.

5.0 LIABILITY AND INDEMNITY: The Applicant does hereby indemnify and save harmless City of Toronto and its Representatives from all liability and all loss, cost or damages, including consequential damages, expenses and costs for injury to or death of any person, or damage to or destruction of property of any person arising from or occurring by reason of (i) the Applicant's misrepresentation or breach of a covenant or material obligation under this Agreement or (ii) the Applicant's actual or alleged implementation of the Project and its operation or any matter contemplated by this Agreement, the Application or attachments thereto, whether negligent or otherwise. Notwithstanding the fact that City of Toronto may have reviewed the information contained in the Application for the purpose of assessing the possible reduction of peak demand as a result of implementing the Project, it is understood and agreed that City of Toronto shall not be held liable for, and makes no representation or warranty regarding the Project, expressed or implied, including, but not restricted to, any representation or warranty as to the fitness of the design or the capability of the material, equipment or workmanship in any features or measures included in the Project or with respect to the expected or anticipated energy demand reduction, nor does City of Toronto warrant or certify that any equipment, features or measures included in the Project will satisfy the requirements of any law, rule, specifications or contract. This section shall survive the termination of this Agreement.

6.0 ASSIGNMENT: The Applicant may not assign any of its rights or obligations hereunder without the prior written consent of the City of Toronto.

7.0 AMENDMENTS: This Agreement may be amended only by mutual written agreement of the parties.

8.0 NON-WAIVER: No failure to exercise and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term.

9.0 TERM: Subject to any termination rights herein, and those provisions that survive the termination of this agreement, the term of this Agreement shall commence on the date of acceptance of the application by City of Toronto, as evidenced by City of Toronto's approval of the Application and shall terminate on September 31, 2012 or following "completion" of the Project by the Applicant, whichever is earlier. "Completion" means that the Applicant has submitted reports required to verify performance and the financial incentive claimed and that the peak load reduction has been achieved and verified by City of Toronto.

10.0 TERMINATION: The City shall have the right, in its discretion, to terminate this Agreement by giving a written notice of termination to the Applicant, where the Applicant has breached any covenant or material obligation under the Agreement and such breach has not been remedied within 15 days after written notice thereof by the Applicant.

11.0 INDEPENDENT CONTRACTORS: Nothing in this Agreement shall be deemed to constitute a partnership or a joint venture or to create any agency or fiduciary relationship between the parties.

12.0 GENERAL TERMS: This Agreement (comprising of the Project Application, Guidelines and Terms of Agreement) constitutes the entire agreement between the parties with respect to the subject matter and supersedes all prior agreements, negotiations, discussions, representations, warranties and understandings, whether written or verbal. This Agreement is governed by, and is to be construed and interpreted in accordance with, the laws of Ontario. If any term of this Agreement is or becomes illegal, invalid or unenforceable, the illegality, invalidity or unenforceability will be deemed severable and will not affect any other term of this Agreement.

13.0 DEFINITIONS: In addition to terms defined in the body of the Agreement:

"Representatives", in reference to a party, means the party's directors, officers, employees, agents, contractors and volunteers, the party's Affiliates (as defined in the Ontario Business Corporations Act) and such Affiliates' respective directors, officers, employees, agents, contractors and volunteers, and "Environmental Attributes" means all benefits or entitlements associated with decreased environmental impacts now or in the future, direct or indirect, arising as a result of, relating to or in connection with the measures undertaken due to the BBP - NC incentive, and the right to quantify and register such benefits and entitlements with competent authorities, including (a) all right, title, interest and benefit in and to any renewable energy certificate, credit, reduction right, offset, allocated pollution right, emission reduction allowance or other proprietary or contractual right, whether or not tradeable, (b) rights to any fungible or non-fungible attributes or entitlements relating to environmental impacts, however arising; (c) any and all rights, title and interest relating to the nature of an energy source as may be defined and awarded through applicable laws or voluntary programs, including all emission reduction credits; and (d) all revenues, entitlements, benefits, and other proceeds arising from or related to the foregoing. For greater certainty, in the event that any government or non-government agency, whether provincial, federal, national or international in scope or authority, creates or sanctions a registry, trading system, credit, offset or other program relating to Environmental Attributes or their equivalent, the term "Environmental Attributes" shall include the right or benefits created or sanctioned under any such program or programs to the extent available as a result of, or arising from, any Program

14.0 EXECUTION: This Agreement may be executed in counterparts and delivered by facsimile transmission, and the counterparts together shall constitute an original.

Jan 2008