

Wattsmart New Homes Program Builder Participation Agreement

Company information

Business name: _____ DBA: _____ License #: _____

Contact name: _____ Title: _____ Phone #: _____

Business address: _____ City: _____ State: _____ Zip: _____

Mailing address: _____ City: _____ State: _____ Zip: _____

Website: _____ Email: _____

 I wish to receive program correspondence via email.

Email policy: The program does not share your email address or contact information. Builders must indicate if they would like to be contacted via email and receive program correspondence electronically.

Contact information

Primary contact: _____ Phone #: _____ Email: _____

Construction contact: _____ Phone #: _____ Email: _____

HERS® Rater information

Company name: _____ Contact name: _____ Phone #: _____

Additional documents

Verify all required documentation is provided in order to reduce any delays.

- Proof of valid state contractor license*
- Completed W-9, <https://www.irs.gov/pub/irs-pdf/fw9.pdf>

*Owner/Builders may participate in HERS measures without a contractor license provided they work with a program-approved Rater.

I have read and understood the Builder Participation Agreement (the “**Agreement**”) and agree to comply with all requirements herein, including all supporting policies referenced in this Agreement. I acknowledge that I have had the opportunity to consult with independent legal counsel. I agree that the Program Administrator may modify the terms of this Agreement at any time during the Term of this Agreement. I certify, under penalty of law, that the information I have provided is true and correct. I understand that by signing this Agreement I consent to additional inquiry to verify or confirm the information I have provided. I would like to participate in the Program and commit to the requirements outlined above. I certify that I am authorized to sign this Agreement.

Authorized signature: _____ Date: _____

Printed name: _____

Authorized CLEARResult signature: _____ Date: _____

Printed name: _____

Please sign and return this Agreement: Email wattsmartnewhomes@rockymountainpower.net

Rocky Mountain Power – Wattsmart New Homes Program Builder Participation Agreement
100 S.W. Main Street Suite 1500, Portland, OR 97204 Phone 1-800-942-0281

Terms and Conditions

These Terms and Conditions and the Builder Participation Agreement (collectively, the “**Agreement**”) are made and entered into by and between CLEAResult Consulting Inc., a Texas corporation (the “**Program Administrator**”), and the builder (“**Builder**”). CLEAResult administers the Wattsmart New Homes Program (the “**Program**”) on behalf of Rocky Mountain Power.

1. **Acceptance.** Builder must return a signed Agreement prior to participation in the Program. Any acceptance of this Agreement is limited to acceptance of the express terms contained on the face and back hereof. Any proposal for additional or different terms or any attempt by Builder to vary in any degree any of the terms and conditions of this offer is hereby rejected, and by signing this Agreement, Builder agrees to the terms set forth herein.
The Program and Builder acknowledge that from time to time it may be necessary to revise the terms of the Agreement. The Program Administrator may amend the Agreement by modifying program participation requirements or terms and conditions of this Agreement. The Program Administrator will distribute amendments by mail to all participating Builders.
2. **Term of Agreement.** This Agreement shall be effective upon the date of execution until terminated in accordance with the terms set forth herein or upon termination of the Program.
3. **No endorsement.** This Agreement is not an endorsement by the Program or the Program Administrator of Builder’s services, products, reputation or reliability.
4. **Termination for convenience.** The Program Administrator reserves the right to terminate this Agreement or any part hereof for its sole convenience. In the event of such termination, Builder shall immediately cease participation in the Program, including any applicable use of the Rocky Mountain Power logo, the Wattsmart program logo or other advertising tools, and incentive forms. Builder shall not be paid for incentives dated and submitted after receipt of notice of termination nor for any costs incurred for which the Builder could reasonably have avoided.
5. **Termination for cause.** The Program reserves the right to terminate this Agreement for cause in the event of any default by Builder, or if Builder fails to comply with any of the terms and conditions of this Agreement. Causes allowing the Program Administrator to terminate this Agreement include, but are not limited to, failure to submit properly completed incentive forms, failure to properly process incentives, loss of certifications necessary for participation in the Program, insolvency, and failure to provide the Program, upon request, with reasonable assurances of future performance. In the event of termination for cause, Builder shall be liable to the Program for any and all damages sustained by reason of the default, which gave rise to termination.
6. **Proprietary information.** The Program may provide logo artwork files to Builder for the use specified in this Agreement. Only artwork files provided by the Program may be used. Images captured from websites, publications and other sources may not be used. Builder shall consider all information furnished by the Program to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing the terms and conditions of this Agreement, unless Builder obtains prior written permission from the Program Administrator to do so.
7. **Non-waiver.** The failure of the Program Administrator to insist on or enforce, in any instance, strict performance by Builder of any of the terms of this Agreement, or to exercise any rights herein conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such terms or rights on any future occasion.
8. **Independent Builder.** In rendering services hereunder, Builder shall properly represent the relationship of Builder to Rocky Mountain Power, the Program and the Program Administrator, this relationship being that Builder is an independent Builder participating in the Program. Builders shall not represent themselves as employees or agents working for, approved by, or certified by Rocky Mountain Power or the Program Administrator. As an independent Builder, Builder shall have no authority, express or implied, to commit or obligate Rocky Mountain Power, the Program or Program Administrator in any manner whatsoever. Nothing contained in this Agreement shall be construed or applied to create a partnership. Builder shall be responsible for the payment of all federal, state or local taxes payable with respect to all amounts paid to Builder under this Agreement. Builder shall maintain any relevant licenses required by federal, state, county or municipal governments or any other agencies with jurisdiction over work performed in the Program.
9. **Insurance.** Without limiting any of the other obligations or liabilities of Builder under this Agreement, Builder will maintain, and will require all of its subcontractors at any tier to maintain, throughout the entire term of this Agreement, without interruption, insurance of the types and in the amounts set forth below. Payment of all insurance costs, deductible amounts and/or self-insured retentions shall be Builder’s sole responsibility. Builder shall maintain general liability insurance and workers’ compensation coverage as required by state and/or municipal law and produce evidence of current coverage upon request by Rocky Mountain Power, the Program or Program Administrator.
10. **Program participation.** Builder acknowledges that participation in the Program is a privilege, and Rocky Mountain Power, the Program or Program Administrator may suspend or terminate Builder’s participation in the Program for any reason, including failure to maintain the Program standards. In all cases involving a Builder’s participation status, or denial of Program incentives, the Program Administrator’s written decision is final. The Program Administrator reserves the right to make changes to the Program upon notice to Builder. Such notification shall be by email and/or U.S. Postal Service. It is expressly understood that the Program and Program Administrator will not initiate any processing of any work until Builder supplies a completed application and any other required documents.

Builder acknowledges that failure to follow the Program requirements and procedures, including provision of required documents, will result in a loss of applicable incentives and possible disciplinary action.

- 11. Indemnity; limitation on damages.** Builder shall defend, protect, indemnify, and hold harmless Rocky Mountain Power and Program Administrator, their respective officers, directors, agents, and employees, and each of their parents and affiliates, and each of their respective officers, directors, agents, and employees (collectively, the “Indemnified Parties”) from and against any and all claims, losses, expenses, attorneys’ fees, damages, demands, judgments, causes of action, suits, and liability in tort, contract, or any other basis and of every kind and character whatsoever (“Claims”) arising out of Builder’s, or its agents’ or subcontractors’, acts or omissions, including, but not limited to, any violation of labor or employment laws, incident to or related in any way to, directly or indirectly, the services provided in connection with the Program, this Agreement and/or the Program. Builder acknowledges and agrees that with respect to any Claims brought against the Indemnified Parties, Builder will be required to waive as to the Indemnified Parties any defense it may have by virtue of the Workers’ Compensation Laws of any state, to the extent allowed by law. PROGRAM ADMINISTRATOR AND ROCKY MOUNTAIN POWER SHALL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED REVENUE, PROFITS, OR GOODWILL, WHETHER ARISING IN NEGLIGENCE, BREACH OF CONTRACT, OR UNDER STATUTE OR RULE. 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 on behalf of Program Administrator or Rocky Mountain Power. Builder is solely responsible for any damage incurred by customers as a result of Builder’s services under the Program. Neither Program Administrator nor Rocky Mountain Power is responsible for customer complaints or damages. The parties agree that Rocky Mountain Power is a third party beneficiary of this Section.
- 12. Jury waiver.** To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.
- 13. Miscellaneous.** This Agreement shall be governed by and construed under the laws of the of the state in which work is performed, without regard to conflict of law rules. Any dispute or claim that relates to this Agreement, its interpretation or breach, or to the existence, scope, or validity of this Agreement or this arbitration provision, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court with jurisdiction. The Parties acknowledge that mediation helps Parties settle their disputes, and any Party may propose mediation whenever appropriate through the Arbitration Service of Portland, Inc., or any mediator mutually selected by the Parties. Any dispute or claim for which a party seeks injunctive relief, even if contrary to the language of this Section, may be brought in the state and federal courts in Multnomah County, Oregon, and such courts shall be the proper and exclusive forum for any such action. Builder shall not assign this Agreement, in whole or in part, voluntarily or involuntarily (including a transfer to a receiver or bankruptcy estate) without the prior written permission of Program Administrator. This Agreement supersedes all previous signed agreements between the Parties and sets forth the entire agreement of the Parties with respect to the subject matter hereof and may not be altered, changed abridged or amended other than in writing signed by the Parties.

Builder agrees to:

1. Construct and submit homes for Program incentives that comply with state building code, or the authority having jurisdiction, and follow all Program requirements per Rocky Mountain Power Tariff 111, and when applicable construct homes to current version of ENERGY STAR® Certified New Homes certification guidelines.
2. Maintain relevant licenses required by federal, state, county or municipal governments or any other agencies with jurisdiction.
3. Work only with HERS® Raters in good standing with RESNET® and the Program.
4. Keep current W-9 information on file with Program.
5. Provide the Program a good faith forecast of the number of homes in Rocky Mountain Power service territory that applicant is reasonably likely to construct and submit for incentives.
6. Comply with Program Field and File Quality Assurance requirements and coordinate with Program staff on inspections. Ensure Program staff has access to each home, prior to occupancy. For the purpose of quality assurance testing and inspections, documentation requested from Builder and designated HERS Raters includes, but is not limited to:
 - a) Copy of the house plans for each home; and
 - b) Copy of the energy modeling file (i.e., REM/Rate™ HERS file) for each home.
7. Respond to and fulfill information requests from the Program. Failure to do so may result in delayed or rejected incentive payments to Builder.
8. Not refer to homes as ENERGY STAR certified or Rocky Mountain Power Wattsmart New Homes qualified unless certified as such. References include advertising copy, other promotional material or verbal representation.
9. Make good faith efforts to promote the benefits, features and label of the Program, and if applicable, include ENERGY STAR Certified New Homes messages in marketing, sales materials and sales tactics.
10. Not state or imply to dwelling occupants or others that Builder is an agent, employee or representative of Rocky Mountain Power or

Program Administrator.

11. Be responsible for the payment of all federal, state or local taxes applicable to incentives paid to Builder through the Program.
12. Work with Program Administrator to resolve any questions, conflicts, and/or issues that may arise.

Rocky Mountain Power agrees to:

1. Provide an incentive for eligible homes that qualify for the Program, as directed by the tariff. Once Program Administrator approves the application, incentive funds will be allocated and paid to Builder by Program Administrator, provided the application and home meet all of the Program requirements, which includes submitting all required forms and information to Program Administrator. Incentives are limited and will be awarded to applicants that submit all required application materials. Incentive payments shall only be paid to Builders with a signed and approved participation agreement on file with Program Administrator.
2. Provide technical and sales support to Builder to cost-effectively construct and sell qualified homes.