



**HOMEBUILDER AGREEMENT:**  
**2019 TEXAS-NEW MEXICO POWER (TNMP)**  
**HIGH-PERFORMANCE HOMES PROGRAM**

To qualify for participation in the 2019 TNMP High-Performance Homes Program, this Agreement, and (the Agreement”) is made by and between \_\_\_\_\_ (“Homebuilder”) and ICF Resources, L.L.C. (“ICF”). ICF is the Program Administrator (“Program Administrator”) of TNMP’s 2019 High-Performance Homes Program (“Program”).

- 1. Participation Award.** For each home that meets the Program Requirements (as hereinafter defined), the Program hereby agrees to pay an Incentive Payment (as hereinafter defined), as applicable, based on the 2019 financial incentive schedule listed below. In recognition that applications to participate may exceed available incentive availability, TNMP will allocate incentive dollars based on each application received throughout the Program year. The total amount of any Incentive Payments that Homebuilder is eligible to receive will be posted to the Program reporting database once an application has been reviewed and approved. Upon approval, the Homebuilder shall be notified through automatic e-mail sent from the database. Incentive amounts are subject to adjustment at any time by the Program Administrator based on compliance with milestones, changes in incentive budget, or other factors that may arise during the Program year and are not guaranteed. Incentive Payments may be paid to Homebuilder for qualified homes that meet the Program Home Eligibility Requirements outlined here and in subsequent announcements.
- 2. 2019 Financial Incentives.** TNMP will offer incentives to reward Homebuilders who deliver homes that meet current Program guidelines (kilowatt hour (kWh) savings). The number of incentives awarded to each Homebuilder is determined through a competitive bid and scoring process.

The incentive structure is designed to measure kWh savings achieved above 2019 Texas Baseline Reference Home (TBRH), which is equivalent to the 2015 IECC, as set by the Texas Technical Reference Manual (TRM) v6.0. To be eligible for participation, a home must achieve at least a five percent (5%) savings over the 2019 TBRH. Incentives are then paid based on the as shown below in Table 1. An optional method to comply is with ENERGY STAR® v3.1 certification.

**Table 1: 2019 Incentive Structure for Whole House New Construction**

<b>Mandatory Program Requirements</b>	
Minimum Cooling SEER Value	16
Grade 1 Wall Insulation	Yes
Grade 1 Ceiling insulation	Yes
<b>Elective Requirements</b>	
<b>Must meet 4 out of 5</b>	
Duct Leakage CFM/100 sq. ft.	≤ 4
Infiltration ACH50	≤ 4.5
Average Window SHGC	≤ .24
Average Rated Wall + Sheathing R Value	≥ 15
High Efficiency Lighting %	≥ 90%
<b>Innovation Options</b>	
<b>Choosing One Innovation Option will replace the Elective Requirements</b>	
Foam Encapsulated Envelope, R-13 walls and R-21 ceiling or ENERGY STAR v3.1	
<b>Incentive Amount</b>	
<b>\$225.00</b>	
<b>Additional Bonus Incentives</b>	
<b>Right Sized HVAC</b>	
<b>\$15.00</b>	

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Additional details on Program incentives are listed below.

- A. Incentive Payments are subject to the submission of required documentation, and cooperation with random QA/QC (Quality Assurance/Quality Control) verification inspections. Required documentation includes: (a) Completed database forms for each home/unit address; (b) Uploaded address-specific Ekotrope ID for each home/unit.
  - B. Any home with a documented minimum of five percent (5%) savings over the 2019 Texas Baseline Reference Home, completes Section 3 (Fully-Aligned Air Barriers) and Section 5 of the most current revision of the ENERGY STAR Thermal Enclosure System Rater Checklist, AND performs both Blower Door and Duct Blaster Testing (including leakage to outside) shall be eligible for incentives. All homes must meet the minimum energy code applicable to where home is constructed in addition to the above requirements.
  - C. Successful completion of the most current revision of the ENERGY STAR Version checklists including: (a) Rater Design Review Checklist and Rater Field Checklist; (b) HVAC Design Report; and (c) HVAC Commissioning Checklist. Upon request, a copy of the completed and signed inspection forms and checklists shall be made available to Program staff within 3 business days.
  - D. All evaporators and condensing units shall be properly matched as demonstrated by an AHRI certificate.
  - E. Multi-family incentives are paid at fifty percent (50%) of single-family incentive structure. Attached residential units, with greater than two units per building and three stories or less. All units must be individually metered. Customized incentive packages may be required dependent on project size and other factors.
  - F. Right-sizing incentives are available for homes that have submitted an ACCA approved Manual J. Systems installed will be required to be sized according to *ANSI/ACCA 3 Manual S – 2014* sizing standards noted in *Table N2-1, Sizing Limits for Cooling Equipment Only*. All submittals must be reviewed and approved to have met all requirements before incentives are awarded.
3. **Home Eligibility Requirements.** For purposes of this Agreement, the term "Eligibility Requirements" or "Home Eligibility Requirements" means (i) a home must be served by TNMP in a TNMP service territory as evidenced by town, zip code and ultimately a permanent meter number or ESI ID number associated with the home; (ii) the home has not received incentives from any other TNMP energy efficiency Program as evidenced by the permanent meter number or ESI ID number submitted through the Program's online system; (iii) a home's construction must be completed and a permanent meter requested from TNMP between September 1, 2018 and November 30, 2019; (iv) the final HERS Rating for the home must be performed and dated between October 1, 2018 and November 30, 2019; and (v) the home must satisfy all Program requirements. TNMP will offer incentives to reward Homebuilders who deliver homes that meet the Program guidelines kilowatt hour (kWh) savings. The number of incentives awarded to each Homebuilder is determined through a competitive bid and scoring process. The incentive structure is designed to measure kWh savings achieved above the minimum Texas Baseline Reference Home. To be eligible for participation, a home must achieve at least a five percent (5%) savings over the 2019 Texas Baseline Reference Home and meet all energy code requirements.

4. **Incentive Payments – Documentation.** The required Documentation (as hereinafter defined) for Incentive Payments must be submitted electronically through the Program’s online system. The Homebuilder acknowledges and agrees that the Documentation for the applicable Incentive Payment request must be submitted in compliance with Performance Milestone Date Requirements, and in no event later than November 30, 2019, to qualify for Incentive Payments. The Homebuilder is responsible to have its contracted HERS Rater submit Documentation when appropriate through the online system and to ensure timely delivery of the final and proper address specific Ekotrope software file with other required database details. ICF shall verify documentation meets Program Requirements within thirty (30) days of receipt and will notify Homebuilder of any discrepancies.

Homebuilder acknowledges that Incentive Payments are paid directly by TNMP in accordance with the ICF-TNMP High-Performance Homes Program Market Transformation Agreement. Homebuilder shall receive payment directly from TNMP within thirty (30) calendar days, after verification by TNMP of the required data, provided the Homebuilder has made timely submission of Documentation in the required manner and all Program Requirements have been met.

5. **Performance Milestone Date Requirements.** To qualify for Incentive Payments, Homebuilder must meet the following Performance Milestone Date Requirements:

Date	Performance Milestone Date Requirements
<b>April 30, 2019</b>	At least 20% of total committed homes must be <b>entered</b> on the Program’s online system; Homebuilder must have selected at least one preferred HERS Rater on the online system.
<b>June 28, 2019</b>	At least 60% of total committed homes must be <b>entered</b> on the Program’s online system <b>and</b> the required documentation for the invoiced homes must be uploaded on the online system.
<b>September 30, 2019</b>	At least 85% of total committed homes must be <b>invoiced</b> on the Program’s online system <b>and</b> the required documentation for the invoiced homes must be uploaded on the online system.
<b>November 30, 2019</b>	100% of total committed homes must be <b>invoiced</b> on the Program’s online system <b>and</b> the required documentation for the invoiced homes must be uploaded on the online system.

If Homebuilder fails to meet the performance date requirements, ICF may withdraw some or all of the Incentive Payments for homes for which Documentation has not yet been submitted. If ICF withdraws potential Incentive Payments it may, in its sole discretion, allow Homebuilder to reclaim a portion of any withdrawn Incentive Payments if Homebuilder exceeds future Performance Milestone Date Requirements.

6. **Homebuilder Participation Requirements.**
- A. **EPA Agreement.** Homebuilders participating in the Program, and wishing to build and market ENERGY STAR qualified homes, must have submitted a signed Environmental Protection Agency (“EPA”) “ENERGY STAR Partnership Agreement” and must remain on active status with EPA’s voluntary Program during the term of this Agreement ([www.energystar.gov](http://www.energystar.gov)).
  - B. **Building Permits.** Homebuilders are responsible for obtaining building permits, if required by the applicable municipality, for each home for which an Incentive Payment is requested.
  - C. **Home Production Reports.** Upon request from ICF, Homebuilder agrees to provide to ICF a home production report on the first of each month. The report will include the total number of eligible home

starts and completions in the TNMP service territory for the preceding month. The report shall include model/plan number, address, city and zip code for each eligible home. Homebuilder also agrees to provide ICF with a list of eligible homes and planned communities during each Performance Milestone. ICF will use this information to help confirm communities are within TNMP's service territory.

- D. **Home Forecasts.** Homebuilder agrees to provide ICF with good faith forecasts of the number of eligible homes in the TNMP service territory that Homebuilder expects to complete by November 30, 2019. Forecasts are due at each Performance Milestone Date. Except as provided in paragraphs 5 and 6C herein, Homebuilder shall have no liability for the forecast provided to ICF and/or TNMP.
- E. **Sales Training / Presentation.** Homebuilder agrees to allow ICF to meet with its salespersons at a time designated by Homebuilder regarding High-Performance homes and the benefits thereof. Homebuilder agrees to make information regarding High-Performance homes available to its customers by displaying High-Performance information provided by ICF and approved by Homebuilder in a location in Homebuilder's sales offices as determined by Homebuilder. Nothing herein shall obligate Homebuilder to orally inform its customers of the benefits of High-Performance.
- F. **Documentation.** Homebuilder agrees to provide the following for each home for which Homebuilder seeks an Incentive Payment (collectively, the "Documentation"): (i) entry of required home data in TNMP's online 2019 High-Performance Program database system, and (ii) a completed site-specific Ekotrope software file will be provided by the Homebuilder's HERS Rater. Homebuilders will be responsible for entering all home starts into the system at least monthly. Homebuilders should coordinate with their HERS Rater to insure all completed homes are invoiced each month to be eligible for Incentive Payments. Within thirty (30) calendar days after the Homebuilder submits an electronic invoice through the online system, TNMP will confirm the documentation for the home meets the Eligibility Requirements of this Agreement and does not provide duplicate information concerning a previously submitted home.
- G. **Use of RESNET Approved Rater.** Homebuilder agrees to use a RESNET approved HERS Rater(s) to provide testing on its Program homes and a HERS Rating Provider(s) to prepare accurate, site specific HERS ratings through Ekotrope software. The Homebuilder's chosen HERS Rater(s) must be registered with the Program in order to be eligible to submit Documentation on behalf of the Homebuilder. HERS Raters are responsible for providing the address-specific Ekotrope File, Fuel Summary report and all required data inputs in the "Rating Information" section of the database. Neither TNMP nor ICF shall be responsible for the agreement between Homebuilder and its chosen Raters/Providers. Additionally, neither TNMP nor ICF make any claims or warranties as to testing provided on Program homes.
7. **Term.** This Agreement shall remain in effect until December 31, 2019; provided, however, any payments due for Documentation submitted prior to November 30, 2019 shall still be due and owing. Homebuilder acknowledges that ICF reserves the right to terminate the Agreement, or modify this Agreement at any time, without prior notice, as may be required by governmental regulatory action; provided, however, if this Agreement is modified, Homebuilder shall have the right to terminate the Agreement if the modified Agreement is unacceptable to Homebuilder.
8. **Notices:** Sent to contacts as entered into the Program database.
9. **Indemnity.**

HOMEBUILDER WILL RELEASE, INDEMNIFY, AND HOLD HARMLESS TNMP FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, EXPENSES, DAMAGES, ATTORNEYS' FEES, JUDGMENTS, COSTS, AND

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LEGAL LIABILITY ARISING FROM OR RELATED TO THE HOMEBUILDER AGREEMENT, THE HIGH-PERFORMANCE HOMES PROGRAM, OR ANY SERVICES OR PRODUCTS PROVIDED THEREUNDER, REGARDLESS OF ANY STRICT LIABILITY OR NEGLIGENCE OF TNMP, WHETHER ACTIVE OR PASSIVE, EXCEPTING ONLY SUCH CLAIMS AS MAY BE CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF TNMP.

#### 10. **Other Terms and Conditions.**

- A. **Assignment.** Neither ICF nor Homebuilder may assign this Agreement, except that Homebuilder or ICF may assign this Agreement to an affiliated company of such assignor. However, such assignment shall not release assignor from the terms herein.
- B. **Attorneys' Fees.** The expenses, including reasonable attorneys' fees, of any arbitration, suit or other action to enforce the terms of this Agreement or to collect any fees due pursuant to the terms of this Agreement shall be paid by the non-prevailing party in such suit or action.
- C. **Limitation on Damages.** Neither party shall be responsible for any special, incidental, or consequential damages, except in case of gross negligence or criminal or fraudulent acts in the performance of this Agreement.
- D. **No Joint Venture or Partnership.** No language in the Agreement shall be construed to make the parties legal business partners, joint ventures, representatives or agents of each other, nor shall either party so represent such to any third party.
- E. **Additional TNMP Terms.**
  - i. ICF represents, and Homebuilder acknowledges, that ICF is an independent contractor with respect to TNMP and the Program, and that ICF is not authorized to make representations or incur obligations on behalf of TNMP. Homebuilder further acknowledges that TNMP is not a party to this Agreement and that ICF and Homebuilder are solely responsible for performance hereunder. Homebuilder agrees that TNMP is a third-party beneficiary of this Agreement and, as such, may rely on the representations made herein by Homebuilder and enforce Homebuilder's obligations hereunder to the extent the same are applicable to TNMP.
  - ii. Homebuilder agrees upon three (3) calendar days' prior verbal notice, to provide TNMP, ICF and any independent measurement and verification person selected by the Public Utility Commission of Texas with full and complete access to any Program home for any purpose related to the Program. Access shall be in compliance with the Homebuilder's reasonable access requirements.
  - iii. ANY REVIEW, INSPECTION, OR ACCEPTANCE BY TNMP OF THE PROJECT SITE OR OF THE DESIGN, CONSTRUCTION, INSTALLATION, OPERATION OR MAINTENANCE OF ANY HIGH-PERFORMANCE<sup>®</sup> HOME, OR OTHER PROGRAM ELIGIBLE HOME, IS SOLELY FOR THE INFORMATION OF TNMP AND THAT, IN PERFORMING ANY SUCH INSPECTION OR REVIEW OR IN ACCEPTING A HIGH-PERFORMANCE HOME, OR OTHER PROGRAM ELIGIBLE HOMES, TNMP MAKES NO REPRESENTATIONS OR WARRANTY WHATSOEVER, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS TO THE ECONOMIC OR TECHNICAL FEASIBILITY, CAPABILITY, SAFETY, OR RELIABILITY OF THE HIGH-PERFORMANCE HOME OR ITS CONSTRUCTION BY HOMEBUILDER.