

# PCEF Energy Friendly Homes Contractor Participation Agreement



The Portland Clean Energy Community Benefits Fund ("PCEF") Energy Friendly Homes Program ("Program") provides funds ("Incentives") for home energy retrofits in the City of Portland to help qualifying homeowners reduce the amount of energy they use to heat, cool, and light their homes. The Program is also available to qualifying contractors ("Participating Contractors") who, if accepted into the Program, may be assigned to participating homeowners ("Client(s)") to provide home energy retrofits in accordance with Program criteria and quality assurance oversight. The cost of the retrofit is either paid in full or in part by Evergreen with Program funding depending on the eligibility tier of the Client and is subject to Program funding levels. Your ("Applicant") selection as a Participating Contractor in the Program does not guarantee a minimum level of work.

**Program Administrator.** The City of Portland has contracted with Evergreen Consulting Group I, LLC DBA Evergreen Energy Partners ("Evergreen") to act as the Program Administrator and has authorized Evergreen and its subcontractors to administer the Program including, but not limited to, such activities as: reviewing, processing, and approval of Participating Contractor payments; Client and Participating Contractor applications; qualifying and training of Participating Contractors; pre-inspections of Client home or site, and project information requests from Clients. The City of Portland has contracted other parties to administer Client navigator provider and quality assurance provider roles outside Evergreen administration. Evergreen is not responsible for negligence of program's other agents nor the Applicant's agreement with the Client.

**Program Implementers.** Evergreen and other authorized Program representatives under contract with the City of Portland or Evergreen are referred to as "Program Implementers" in this Agreement. Program Implementers include, but may not be limited to, Evergreen, City of Portland, City of Portland contractors for Client navigator provider and quality assurance provider, and Evergreen's subcontractors.

**Agreement.** This Energy Friendly Homes Program Contractor Participation Agreement ("Agreement") sets forth the terms and conditions governing Applicant's relationship to the Program's provision of services to Clients. By signing below, you ("you", "your" or "Applicant") are applying to participate in the Program as a Participating Contractor and, if selected, agree to comply with and be bound by these terms and conditions for the duration of your participation in the Program. Program Implementers are entitled to enforce this Agreement against you on behalf of the Program.

- 1. Services.** As an approved Participating Contractor in the Program, Applicant must enter into project agreements directly with eligible Clients to provide the following services to those eligible Clients:

  - Provide support and assistance to eligible Clients in identifying energy-saving opportunities and installing energy efficiency upgrades. This includes, but is not limited to, performing a Building Performance Institute ("BPI") home energy assessment — comprising blower door testing and other diagnostic evaluations — to assess the home's energy efficiency, health, and safety; developing an energy model and scope of work using Program-approved modeling software; and implementing approved upgrades in accordance with Program guidelines.
    - Complete scope of work within timeframes and parameters outlined in the Energy Friendly Homes Program Contractor Handbook ("Contractor Handbook").
    - Distribute approved educational materials, adhere to marketing and communication guidelines, and ensure completion of approved Program documentation.
- 2. Benefits.** If approved as a Participating Contractor, Applicant is eligible to receive the benefits described in the Contractor Handbook, subject to such further terms and conditions as may be set out in the Contractor Handbook. Benefits may include promotion of Contractor's business on the Program's website, directing Client leads, and access to Program support, Program training opportunities, and Program modeling software.
- 3. Participating Contractor (Applicants) Qualification Requirements.** Applicant must always demonstrate and maintain the following requirements during participation in the Program (Sections 3-6):

  - Existing infrastructure (licensed and qualified personnel and equipment) sufficient to support whole-home energy upgrades or the ability and willingness to subcontract with bonded, licensed, and insured providers.
  - At least one current employee who maintains BPI Building Analyst Professional certification or Home Energy Rating System (HERS) Rater certification.
  - Understanding and adhering to the PCEF wage requirements and the Contractor Handbook requirements.
- 4. Licensing.** Applicant must at all times during their participation in the Program maintain:

  - All state and all local business licenses required by the City of Portland;
  - Valid/active Construction Contractors Board (CCB) license with the State of Oregon, General Contractor endorsement;
  - Valid/current Lead-Based Paint Renovator (LBPR) license to work on homes built before 1978;
  - Bonding – per state (or local) requirements.
- 5. Insurance.** Applicant must at all times during their participation in the Program maintain in full force, at the Applicant's expense, the required insurance identified below. Applicant's insurance coverage will be primary insurance coverage at least as broad as ISO CG 20 01 04 13. The City of Portland and Program Implementers reserve the right to require additional insurance coverage in their sole discretion to meet project requirements. Applicant may not start work or begin participation in the Program until insurance certificates satisfactory to the City of Portland and Program Implementers have been provided and approved:

  - Commercial General Liability (GCL) coverage in an amount not less than \$2,000,000 per occurrence for damage to property or personal injury arising from Applicant's work under this Agreement or the Program. In limited cases, using a PCEF-provided process, the Program may provide exceptions to accept a different insurance coverage amount. The Program reserves the right to change insurance coverage requirements.

- Workers' compensation insurance sufficient to comply with Oregon workers' compensation law, ORS Chapter 656, as it may be amended. Applicant must maintain a current and valid certificate of workers' compensation insurance on file with Evergreen for the entire period during which work is performed under this Agreement or Program. Coverage must be maintained at an amount not less than \$500,000 each accident, \$500,000 disease each employee, and \$500,000 disease policy limit.
- Commercial Automobile liability insurance to cover bodily injury and property damage in an amount not less than \$1,000,000 for each accident. The insurance must cover damages or injuries arising out of Applicant's use of any vehicle.
- Additional insured endorsement for commercial general liability coverages naming Evergreen (14845 SW Murray Schools Drive, Suite 110, PMB #513, Beaverton, OR 97007) and the City of Portland (1810 SW 5th Ave., Suite 710 Portland, OR 97201) together with their respective officers, agents, and employees as Additional Insureds. Copies of Certificate of Insurance (COI) can be sent to [info@energyfriendlyhomes.com](mailto:info@energyfriendlyhomes.com).

6. **References.** Applicant must provide at least three project references for home performance upgrades following BPI standards from the last two years.
7. **The Energy Friendly Homes Program Contractor Handbook.** Applicant will at all times comply with the requirements outlined in the Contractor Handbook, which is incorporated herein by reference as if set forth in full, and which may be amended from time to time in Evergreen's and the City of Portland's sole discretion. The Contractor Handbook may be found at <https://energyfriendlyhomes.com/contractor-handbook>. Requirements categories of the Contractor Handbook include, but are not limited to:
  - Home Eligibility
  - Scope of Work Approval & Quality Assurance Review Process
  - Eligible Measures
  - Measure Prioritization
  - Minimum Savings
  - Critical Repair Allowance
  - Client Eligibility
  - Maximum funding per home
  - Client cost share requirements & co-funding
  - Contractor Communication Protocols
  - Conflict Resolution Procedures
  - Invoice Requirements
8. **Independent Contractor.** Applicant will at all times be an independent contractor and Applicant's participation in the Program does not and is not intended to make Applicant nor any of its employees or contractors an employee, agent, partner or joint venturer of the Program or of any Program Implementers. Accordingly, Applicant has no, and will not hold itself out as having any, power or right to bind the Program or any Program Implementer.
9. **Payments.** Subject to the requirements in the Contractor Handbook, Evergreen, as Program Administrator, may provide a down payment upon approval of the Scope of Work and a completion payment upon completion of Program Quality Assurance post-installation review and approval. The total of all Energy Friendly Homes' Payments will not exceed the balance of the installed cost (for that scope of work) minus any Client co-funding or incentive funding committed through grants from utility incentive programs, local, state, or federal incentive or grant programs, or any other outside funding for the cost of eligible measures.
  - To receive payment, Applicant must provide an IRS Form W-9 request for Taxpayer Identification Number and Certification, bank account and routing number for ACH direct payments, and complete required documentation as outlined in the Contractor Handbook.
  - Payments will be made in the form of direct ACH payments and Evergreen will make commercially reasonable efforts to remit payments within 30 days of receipt of required Program approvals and funding authorization. See the Contractor Handbook for requirements. Payments are contingent on funding being available to Evergreen from the Program

## **10. Warranty and Disclaimers.**

- See Contractor Handbook for Warranty requirements. At a minimum, Applicant will offer to each Client the following:
  - 1 year workmanship and labor on installations
  - Pass-through of manufacturers' warranties.
- NEITHER THE PROGRAM, CITY OF PORTLAND, PCEF, NOR ANY PROGRAM IMPLEMENTER MAKES ANY WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND APPLICANT WILL NOT ASSERT OR IMPLY TO THE CLIENT OR TO ANY OTHER PERSON THAT ANY SUCH WARRANTY IS APPLICABLE.
- Applicant acknowledges that neither the Program, City of Portland, PCEF, nor any Program Implementer guarantees or represents that any upgrade(s) will, in fact, save any level of energy or result in a lowering of the Client's energy bills, and Applicant will not make any representation to a Client to the contrary. Applicant will make it clear to the Client that the information provided in the Applicant's proposal is for informational purposes only, and the Client's actual energy savings may vary based on numerous determining factors including but not limited to weather, changes to Client utility rates, or building use and resident behavior.

**11. Permits-Licenses-Safety.** Applicant will procure all necessary permits and licenses, pay all charges and fees, and give all notices necessary and incident to the due and lawful performance of the work as required by the state, City of Portland, or other applicable local permitting requirements. In the performance of the work to be done under this Agreement, Applicant will use every reasonable and practicable means to avoid damage to property and injury to persons. Applicant will use no means or methods which will unnecessarily endanger either persons or property.

**12. Compliance.** Applicant will comply with all federal, state, and local building, fire, electrical, and environmental codes, all other applicable laws and regulations and manufacturer's instructions applicable to all installed equipment in performing Program work for Clients. Additional details on installation terms and conditions are available as part of the Contractor Handbook. All construction and installation scopes of work will include proper permit, licensing, insurance and bonding requirements and rules.

## **13. Compliance with Non-Discrimination Laws and Regulations.**

- **Non-discrimination.** Applicant will comply with all applicable federal, state and City non-discrimination and civil rights laws. Applicant will not unlawfully discriminate on the basis of any protected class or characteristic including race, color, national origin (including limited English proficiency), sex, sexual orientation, gender identity, age, religion or non-religion, disability, marital status, family status, or source of income. This non-discrimination obligation is a material condition of Applicant's participation in the Program and applies to all aspects of the Applicant's operations including employment practices, selecting and retaining subcontractors, procuring materials, provision of services, leasing equipment, and the use of Program funds.

**14. Hold Harmless and Indemnification.** Applicant will indemnify, defend and hold harmless the Program, the City of Portland, Program Implementers, and their respective officers, employees, and representatives, from all claims, demands, suits, and actions for all losses, damages, liabilities, costs and expenses (including all attorneys' fees and costs), resulting from or arising out of the actions, errors, or omissions of Applicant or its officers, employees, subcontractors, or agents under this Agreement, including, but not limited to, all work performed for Clients.

**15. Tax Indemnity.** Applicant will indemnify, defend, and hold harmless the City of Portland against any taxes, premiums, assessments, and other liabilities (including penalties and interest) that any of them may be required to pay arising from Goods and Services provided or work performed by Applicant under this Agreement. The City of Portland is a tax-exempt unit of local government under the laws of the State of Oregon and is not liable for any taxes.

**16. Program Reporting and Workforce Requirements.** Applicant agrees to adhere to the following reporting and workforce requirements, together with the requirements of the Contractor Handbook, as a provision of receiving payment for work performed as a Participating Contractor.

- **Program Wage and Review Requirements.**

- **PCEF Family Wage Requirement:** All workers must be paid a minimum of 180% the relevant state minimum wage for time worked as defined by the Oregon Bureau of Labor & Industries ("BOLI") for PCEF-funded work performed through this agreement.
- **Wage Reporting:** Evergreen will work with Applicant on reporting needs and frequency options, along with any wage reporting details as part of the Contractor Handbook for ease of wage reporting. Applicant will track hourly wage paid to each worker for work performed through this agreement. Applicant will maintain payroll records for six years after the end of the project.
- **Wage Records Review.** Program Implementers, either directly or through a designated representative, may examine and copy Contractor books, documents, papers, and records relating to wages paid to workers performing Program funded work, at any time, during the contract period upon a thirty (30) Calendar Day notice.

**17. Inclusive Contracting and Workforce Agreement.**

- **Safe and Respectful Jobsite Policy.** Applicant will promote a safe, respectful, and inclusive work environment for all employees.
- **Training.** Applicant will ensure all workers, including apprentices and on-the-job trainees, who will work on Program projects complete a PCEF Safe and Respectful Workforce Training before beginning work.
- **Protection from Environmental Hazards.** Applicant will promote worker protections related to environmental hazards and climate-related events (e.g., heat, air quality, vector-borne diseases, etc.)
- **Construction Contractor Compliance.** For any contractors and subcontractors engaged by Applicant, before construction or physical improvement work begins, Applicant will confirm that contractors and subcontractors comply with requirements in Section 4.

**18. Term.** This Agreement is effective on the date stated in the approval notice to Applicant and will continue until February 28, 2030, unless terminated earlier in compliance with Program requirements or when the Program ends, whichever occurs first. Program Implementers will review Applicant's status in the program on a periodic basis for compliance with Program requirements and with the Contractor Handbook. Failure to comply with such terms may be grounds for removal from participating in the Program and may result in additional legal liabilities. The Applicant may withdraw from this agreement with a 30-day written notice to Evergreen.

**19. Notice.** Any notice under this Agreement will be in writing and will be delivered via electronic mail to the address specified at the end of this Agreement.

**20. No Waiver; Changes.** The failure of the City of Portland or Program Implementers to exercise or enforce any provisions or rights under this Agreement will not operate as a waiver of their right to exercise or enforce such provisions or rights in that or any other instance. Changes in the Program requirements and changes to the Contractor Handbook will be deemed to amend this Agreement. This Agreement may not be orally modified.

**21. Disputes and Jurisdiction.** Applicant irrevocably submits to the exclusive jurisdiction of the Multnomah County Circuit Court or the United States District Court in Portland, Oregon, to resolve any suit, action or proceeding arising out of or relating to this Agreement and confirms that such court will have personal jurisdiction over it.

**22. Cancellation and Rescheduling.** Unless otherwise set forth in the Handbook, Evergreen reserves the right to cancel or reschedule any Client assignment on behalf of the Program without penalty or charge, by giving written notice to Applicant at any time in advance of scheduled date. Violation of rules or conduct can result in immediate cancellation, barring any Disputes and Jurisdiction terms above. Program Implementers will attempt to resolve out of compliance items related to assignment or Quality Assurance process, prior to issuing program removal or notices.

**23. Assignment.** Applicant will not assign this Agreement or any right or interest in this Agreement without the prior written consent of Evergreen. This Agreement will be binding upon, inure to the benefit of, and be enforceable by the successors, permitted assigns and legal representatives of Applicant.

**24. Severability and Survival.** If any provision of this Agreement will be held illegal, invalid, or unenforceable, the remaining provisions of this Agreement will remain in full force and effect. All obligations that may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, including without limitation Sections 10, 14, and 21, will survive the completion, termination, or cancellation of this Agreement.

**25. Entire Agreement.** The terms and conditions set forth in this Agreement, including all incorporated references, constitute the entire understanding between the parties with respect to the subject matter of this Agreement and supersede all other agreements, communications, or understandings, whether written or oral.

**26. Project Requests.** Client work will be distributed based on the lead disbursement protocol in the Contractor Handbook and program availability, program needs and timeliness of the program and its goals stated within.

**I certify that I am an authorized representative of Applicant and have authority to bind Applicant to this Participating Contractor Agreement/Application.**

I have read, understand, and agree to be bound by and comply with the terms set forth herein, including the program requirements and the Contractor Handbook. The information provided by Applicant in connection with this Agreement is accurate and complete and I will notify Evergreen or another Program Implementer designated by Evergreen immediately of any changes to the information.

I authorize the use of Applicant's company, primary contact, service territory and specialty information provided in the Application to be listed be listed on program or promotional materials as deemed appropriate by the Program Implementers.

By typing my name in the field above and checking the box below, I understand and agree to sign this form electronically and that my electronic signature is the legal equivalent of my handwritten signature.