

INDEPENDENT AUDITOR AGREEMENT

This INDEPENDENT AUDITOR AGREEMENT (this "Agreement"), is made and entered into as of this ___ day of _____, 2009 (the "Effective Date"), by and between the **Southeast Neighborhood Development Corporation** ("SEND") and _____ ("Auditor").

RECITALS

- A. SEND is responsible for distributing funding and selecting auditors for the Indiana Home Energy Conservation Program ("HEC").
- B. Auditor and/or its subcontractors (collectively, "Auditor") desires to perform audit services for weatherization projects under HEC.
- C. SEND desires to grant to Auditor the right to perform weatherization services pursuant to the terms and conditions set forth below.

AGREEMENT

1. **1. Auditor Services.**
2. 1.1 Projects. This Agreement contemplates that Auditor will, from time to time, perform HEC audit services (the "Services") for weatherization projects (each, a "Project"). Subject to determination and selection by SEND, SEND will award Projects to Auditor. For any Project that Auditor is awarded, Auditor will be responsible for performing all audit services that the Project requires, including without limitation, home inspections, including attic and crawl space evaluations, diagnostic testing, energy audits, and composing work orders.
3. 1.2 No Exclusivity. Auditor acknowledges and agrees that this Agreement does not grant it an exclusive right to perform audit services on Projects. Each Project will be awarded by SEND in SEND's discretion. This Agreement grants Auditor the right to be considered and selected by SEND for Projects and to service the Projects that SEND awards to it.
4. **2. Term and Termination.**
5. 2.1 Term. This Agreement shall be effective as of the Effective Date and shall continue until May 31, 2010. After the date set forth above, Auditor may reapply with the SEND to perform Services if SEND is selected to administer HEC funds in subsequent years.
6. 2.2 Termination. If Auditor fails to comply with the terms of this Agreement, SEND may, upon written notice to the Auditor of the breach, suspend Services, suspend payment in whole or in part, or terminate this Agreement. If SEND or Indiana Housing and Community Development Authority ("IHCDA") determines that any breach of this Agreement by Auditor endangers the life, health, or safety of the residents of the home where the work is being performed, of those working on the Project or any others, SEND

may terminate this Agreement immediately by orally notifying Auditor of the same and following it with written notice of termination.

7. 2.3 Effect of Termination. Unless otherwise agreed by the parties, upon termination of this Agreement, Auditor shall cease to provide any further Services on any Project. In the event of termination, SEND shall be entitled to all remedies available to it at law or in equity.

8. 2.4 Termination Upon Ceasing Business. Auditor agrees that SEND may terminate this Agreement if Auditor ceases doing business for any reason. The termination shall be effective from the date Auditor ceases doing business.

9. 2.5 No Assignment of Obligations. Auditor acknowledges and agrees that this Agreement may be terminated immediately by SEND should Auditor attempt to assign, transfer, convey, or encumber the Agreement in any way.

10. 2.6 Termination Due to Change to Business. Auditor shall provide written notice to SEND of any change in Auditor's address, legal name, or legal status including, but not limited to, a sale or dissolution of Auditor's business. SEND reserves the right to terminate this Agreement should Auditor's legal status change in any way.

11. **3. Payment**

12. 3.1 Payment Terms. Auditor shall be paid a flat fee for the Services provided under this Agreement. SEND agrees to pay Auditor for Services as set forth in the SEND HEC pay scale as set forth in Exhibit A attached hereto.

All invoices for Services must be submitted to SEND within thirty (30) calendar days after Services are performed. Subject to and upon approval and release of funds from IHCD to SEND, payment of invoices shall be made within sixty (60) days after Auditor submits all invoices and proper documentation. For purposes of this Agreement, "pay" shall mean the act of depositing checks in the mail for delivery to the Auditor or pick-up of checks by the Auditor from SEND.

1. 3.2 Billing of Labor and Materials. All invoices submitted by Auditor or its subcontractors to SEND shall itemize all costs associated with a Project, separating the cost of materials from cost of labor. Where payment of prevailing wage is required, the invoices shall also certify that Auditor has paid all its employees and subcontractors prevailing wages.

2. 3.3 Payment Upon Approval of Work. Neither Auditor nor its subcontractor(s) shall be paid for any work performed until all Auditor's invoices are submitted and SEND has performed an inspection and determined in writing that all Services have been completed, were performed in a satisfactory manner ("Final Inspection"), and comply with all HEC standards and guidelines. To the extent SEND or IHCD inspectors determine that Auditor's work is inadequate and Auditor fails to correct the work within three (3) days, SEND shall be entitled to have another auditor remedy Auditor's work, and Auditor shall be responsible for costs associated with bringing the work into compliance.

3. 3.4 Withholding of Payment and Repayment. SEND may withhold payment to Auditor if a claim submitted by Auditor is inaccurate or if Auditor has not complied with the claim

preparation instructions. Auditor shall, upon written demand, be required to repay SEND all sums paid to Auditor for which adequate fiscal and/or service delivery documentation is not in existence for any project and any time period audited.

1. **3.5 No Payment of Disallowed Costs.** Auditor shall not be entitled to payment for any disallowed costs, and SEND shall be entitled to set off any such amount against current or future allowable claims made to Auditor. For current claims, SEND shall have the right to withhold payment in a like amount to the disallowed cost pending resolution of the disputed amount. In the event no current or future claims are due or may become due to Auditor, SEND shall have the right to demand cash repayment from Auditor, which payment is due seven (7) days after SEND's demand of the same.

2. **3.6 Payment Based on Availability of Funds.** Auditor understands that all contracts awarded will be funded by the American Recovery and Reinvestment Act of 2009 ("ARRA"). Auditor understands and agrees that payment under this Agreement is subject to and conditioned upon the availability of funds. If federal funds are reduced or redistributed during the term of this Agreement, neither SEND, IHCDA nor any other agency shall have any obligation to make payment hereunder, except to the extent funds are available. In the event IHCDA determines funds are not appropriated or otherwise available to support continuation of performance of this Agreement, the Agreement shall be canceled. Such determination by IHCDA that funds are not appropriated or otherwise available shall be final and conclusive.

3. **3.7 Subcontracts.** To the extent Auditor subcontracts any of the work to be performed under this Agreement, any such agreement will be memorialized in a written contract, and a copy of the same and all other necessary documentation required under this Agreement shall be provided to SEND before any of Auditor's subcontractors perform any work. Auditor agrees it shall keep and maintain a copy of any contracts it enters into with subcontractor(s) and to provide a copy of the same to SEND upon SEND's request. To the extent any of Auditor's subcontractors breach any provisions of this Agreement or those set forth in the Home Energy Conservation Award Program Grant Award-Agreement Number: HEC-009-014 CFDA #81.042 between SEND and IHCDA, Auditor shall immediately notify SEND of the same and shall discontinue any contract with the specified subcontractor in the event of such a breach.

4. **3.8 Purchase of Materials.** Where applicable, Auditor agrees to comply with all policies and procedures regarding procurement of materials to be used in performing Services under this Agreement. Auditor shall use the State of Indiana's centralized purchasing system ("Central Purchasing") to obtain weatherization materials unless an exemption is granted by IHCDA. Auditor understands that purchases of any materials from an outside source, that could have been obtained through Central Purchasing, may not be reimbursed.

5. **4. Auditor Warranties.** Auditor warrants to the SEND that:

6. 4.1 it has reviewed the rules and requirements for Auditors set forth in the Indiana Builders Association Home Energy Program and Contractual Request for Information and can and will comply with the same;

7. 4.2 it shall comply with all of the training and certification requirements specified in the Home Energy Conservation State Plan ("HEC State Plan"), Indiana Weatherization Field Guide, the Request for Proposals dated March 23, 2009 and issued by IHCDA ("RFP 9-70"), Weatherization Policy and Procedures Manual (the "Manual"), State

Weatherization directives and any notices, guidance, manuals, program rules or amendments related thereto (collectively “State Weatherization Plan”) and policies and all other rules and regulations set forth in paragraph 11.10 of this Agreement;

8. 4.3 it has obtained, or will obtain within the time periods set forth in the Manual, at least the minimum certifications required by Section 600 of the Manual, including certification through authorized agents of IHEDA;

9. 4.4 the Services will be performed diligently and in a good and workmanlike manner using reasonable care and in strict accordance with all applicable federal, state and local laws, rules, regulations, ordinances, and governmental and regulatory agency orders;

10. 4.5 it shall obtain all necessary written consents of the person receiving the Services, including the Client Consent Form Release of Liability and Waiver of Claims form attached hereto as Exhibit B and provide the documents specified therein. Auditor will provide in-home energy education regarding reducing energy consumption and health and safety concerns;

11. 4.6 it will perform and complete any necessary follow-up work to ensure the work performed is in compliance with the Auditor’s energy audits and HEC rules and regulations and will provide any documentation regarding the same;

12. 4.7 the Services will be performed in accordance with all HEC and ARRA rules, regulations, and guidelines, including the State Weatherization Plan and policies, Weatherization Auditor Training Handbook, and the WX Works! manual; and

13. 4.8 all work performed and materials supplied under this Agreement and the charges therefore are competitive with other contractors performing this type of work for similarly-situated customers in compliance with all applicable laws, including but not limited to 10 C.F.R. 600.236. Neither Auditor nor its subcontractors shall impose fees upon the recipients of any services provided through this Agreement except as explicitly authorized by IHEDA.

14. **5. Permits, Licensing, Certification and Accreditation**

15. 5.1 Permits. Auditor shall obtain, at its sole expense, all permits from all appropriate local, state and federal regulatory authorities required by applicable laws or otherwise reasonably required for the performance of the Services hereunder. Auditor warrants that it and its subcontractors shall obtain and maintain all required bonds, permits, licenses and approvals, and shall comply with all health, safety, and environmental statutes, rules or regulations in the performance of Services under this Agreement. Failure to comply with this provision is a material breach and grounds for immediate termination of this Agreement and denial of further work with SEND.

16. 5.2 Licenses, Certification and Accreditation. Auditor shall obtain and maintain, at its sole expense, necessary licenses, certifications and accreditations and any other standards or criteria that any applicable governmental entity requires for the performance of the Services hereunder. Auditor shall have the sole responsibility for assuring that all contracted agents or employees of Auditor meet this standard and comply with all applicable licensing standards, certification standards, accrediting standards, and any other standards or criteria that any applicable governmental entity requires of Auditor or its subcontractors to deliver Services pursuant to this Agreement. SEND shall not be required to reimburse Auditor for any services performed when Auditor or its employees or subcontractors are not in compliance with applicable licensing, certifying, or

accrediting standards. If licensure, certification, or accreditation expires or is revoked, Auditor agrees to notify SEND immediately thereof. Auditor shall establish to the SEND that Auditor is in compliance with all applicable laws and has the required licenses, permits, registrations and certifications prior to performing Services.

17. **6. Insurance.** Auditor agrees to provide and maintain during the term of this Agreement comprehensive general liability insurance coverage from a carrier satisfactory to SEND, with minimum aggregate limits of \$1,000,000 for bodily injury and property damage, and worker's compensation insurance in amounts required by state law. The policy shall include a contractual liability endorsement covering Auditor's obligations under this Agreement. Upon request by SEND, Auditor shall furnish to SEND true and correct copies of the certificates of insurance maintained in compliance with this section, that illustrate the types of coverage, limits of liability, expiration dates of policies and that such policies are in full force and effect. The certificates shall name the SEND as an additional insured, and shall contain a 30-day prior notice provision of cancellation, termination or material change in coverage.

18. **7. Indemnification.** Auditor shall indemnify, defend, and hold harmless SEND, IHCD, and the State of Indiana, and their employees, agents, and officials, against any and all actions, liabilities, injuries, claims, suits, losses, damages, judgments, causes of action, costs, or expenses (including reasonable attorneys' fees, court costs and out-of-pocket expenses) which they may sustain, incur, or be required to pay by reason of any person suffering bodily injury, death, or property loss or damage as a result of any act or omission of Auditor, or any officer, agent, employee, or subcontractor thereof, in carrying out activities under this Agreement. Auditor shall require any subcontractor to indemnify SEND, IHCD and the State of Indiana and their employees, agents and officials, as any part of any subcontract issued pursuant to this Agreement.

19. **8. Confidentiality.** Auditor will comply with all applicable state and federal laws, rules and regulations, including, but not limited to, those relating to the release of Social Security numbers in I.C. § 4-1-10 and the notice of security breach provisions in I.C. § 4-1-11. Confidential information means any individually identifiable information, whether oral or written, about the participants who receive services and/or assistance from IHCD, SEND and/or sub-recipients of the IHCD. Auditor shall comply with SEND's policies and procedures relating to handling, maintaining and disclosing confidential information and agrees to sign the Confidentiality Agreement attached hereto as Exhibit C ("Confidentiality Agreement"). Auditor will require any of its employees, agents, subcontractors or other representatives who require access to confidential client information to sign the Confidentiality Agreement and to provide executed copies of the same to SEND before any work is performed. To the extent Auditor breaches this

provision, Auditor agrees to indemnify, hold harmless and defend SEND for any damages arising therefrom.

1. **9. Records**

2. **9.1 Maintaining Records.** In addition to providing SEND all necessary documentation, Auditor shall maintain its own books, records and documents, including but not limited to banking, accounting and payroll records, purchase orders and other documents, which are sufficient to reflect all costs attributed to the Services provided, document all Auditor's financial activities, substantiate payment for such Services and, if

applicable, confirm payment of prevailing wage. Auditor shall keep and maintain these records in accordance with generally accepted accounting procedures and practices and keep records for no less than three (3) years from the date SEND submits its final financial status report to IHCDA, or one year from the resolution of any outstanding administrative, program or fiscal audit question, or legal action, whichever is later.

3. 9.2 Failure to Provide Records. Auditor understands that prompt compliance by Auditor to submit program, financial or any other any necessary documentation is critical to this Agreement, and failure of Auditor to comply with any such request could result in immediate suspension of payment, non payment or termination of the Agreement.

4. 9.3 Inspection of Records. Auditor agrees that SEND, IHCDA, State of Indiana and the United States Government shall have the right to enter Auditor's premises, premises of Auditor's subcontractor(s), or the jobsite where services are being performed, to inspect or audit any records and property maintained by Auditor and its subcontractor(s) in connection with this Agreement. Auditor and its subcontractor(s) shall make all books, records, and documents that relate to their activities under this Agreement available for inspection, review, and audit when requested by authorized representatives of SEND, IHCDA, State of Indiana or United States Government.

5. 9.4 Compliance with Investigations. Auditor shall comply with any and all investigations by SEND, IHCDA, State of Indiana or United States Government, including the Office of the Inspector General. Such cooperation by Auditor in any investigation includes, but is not limited to, providing prompt responses to requests for information, reasonable access to Auditor's and its subcontractor's facilities, records and personnel. In addition to allowing any of the entities set forth above to inspect the records identified in Section 9.3, Auditor shall also ensure the cooperation of its employees, officers, board members and subcontractors in any review, audit, inspection or investigation and, if necessary, allow said individuals to be interviewed.

6. 9.5 Compliance with Recommendations and Findings. Auditor agrees that SEND, IHCDA, State of Indiana and United States Government have the right to make recommendations and findings in connection with the Services provided by Auditor, and Auditor agrees to comply with any corrective actions specified by any of the above entities within the time limits specified by the same.

1. **10. Independent Contractor.** In the performance of this Agreement, SEND and Auditor acknowledge and agree that they are acting in an individual capacity and not as agents, employees, partners, joint venturers, or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of another for any purposes whatsoever. The parties will not assume liability for any injury, including death, to any person, or damage to any property arising out of the acts or omissions of the agents, employees, or subcontractors of the other party.

2. **11. Compliance with Laws.**

3. 11.1 Non-Discrimination. Pursuant to Indiana Code § 22-9-1-10, Auditor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment or any matter directly or indirectly related to employment because of race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran. Auditor understands that the IHCDA, and SEND as administrator, are

recipients of federal funds. Pursuant to that understanding, Auditor and its subcontractors agree that if Auditor employs fifty (50) or more employees and does at least \$50,000 worth of business with the State of Indiana, and is not exempt, Auditor will comply with the affirmative action reporting requirements of 41 C.F.R. § 60-1.7. Breach of this covenant may be regarded as a material breach of contract. IHEDA, SEND, Auditor and its subcontractors shall comply with Section 202 of Executive Order 11246, as amended, 41 C.F.R. § 60-250, and 41 C.F.R. § 60-741, as amended, which are incorporated herein by specific reference.

Auditor further agrees to comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 et seq.), The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), the Drug Abuse Prevention and Treatment Amendments of 1978 (21 U.S.C. § 1101 et seq.), the Public Health Service Act of 1944 (42 U.S.C. §§ 290dd through 290dd-2) 10 C.F.R., Part 1040, and all other non-discrimination regulations of the United States Government to ensure that no person shall, on the grounds of race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran, be excluded from participating in or denied the benefit of Services under this Agreement, or otherwise be subjected to discrimination under any program or activity for which Auditor or its subcontractors receive, directly or indirectly, federal or state financial assistance. Auditor agrees to immediately take measures to effectuate this provision.

Auditor agrees that any publicity release or other public reference, including media releases, informational pamphlets, etc., relative to the Services provided under this Agreement, will clearly state that all services are provided without regard to race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran.

1. 11.2 Employment of Illegal Aliens. Unless specifically exempted, Auditor, on behalf of itself and its subcontractors, hereby certifies that it does not employ, contract with or use any unauthorized alien, pursuant to Indiana Code § 5-22-1.7.
2. 11.3 Compliance with Indiana Secretary of State. Auditor shall comply with all laws governing entities doing business in the State of Indiana, including those found in Indiana Code Titles 23 and 24. Prior to contracting, owners of businesses doing business in this State, except sole proprietorships, must be registered and in good standing with the Indiana Secretary of State. Auditor affirms that if it is an entity described in Indiana Code Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
3. 11.4 Toxic Substances Control Act. Auditor shall comply with applicable provisions of the Toxic Substances Control Act (15 U.S.C. § 2681 et seq.), and implementing regulations at 40 C.F.R. Part 745, and any other applicable regulations. Auditor agrees to utilize Lead-Safe Work Practices in any dwelling constructed prior to 1978. Failure to properly follow Lead-Safe Work Practices when indicated in the work order will result in termination of the Agreement and shall result in Auditor being responsible for all lead remediation and lead clearance expenses that may be incurred.

Auditor agrees that it shall provide or confirm that all necessary disclosures to the homeowner regarding lead hazards are met before work commences.

4. 11.5 Workers Compensation and Unemployment Compensation. Auditor shall provide Workers' Compensation Insurance or supply a workers' compensation exemption certificate prior to the award of any contract. Auditor agrees to pay unemployment compensation as required by law.

5. 11.6 Davis-Bacon Act Compliance. The Davis-Bacon Act and related acts (collectively, "Davis Bacon") require that laborers and mechanics employed directly on site of ARRA-assisted construction, alteration or repair activities, receive no less than the locally prevailing wages and fringe benefits. Such workers must be paid unconditionally on not less than a weekly basis. Prevailing wages are computed for each classification of work, using wage categories that are most applicable. IHCD has identified the wage categories corresponding to the counties in SEND's service area that are most applicable to weatherization activities as of the date of this Agreement. A copy of the wage determinations are attached hereto as Exhibit D.

All ARRA-funded construction, alteration or repair contracts totaling more than \$2,000 are subject to the Davis-Bacon requirements. Auditor must include the contract provisions in 29 CFR 5.5(a) in any contracts entered into under this Agreement. Such provisions include, but are not limited to, the requirements of payment of minimum wages to all laborers and mechanics employed or working upon the site of the work, the right to withhold an amount from the contract as is necessary to pay laborers and mechanics the full wages due, and the proper maintenance and submission of payroll records. Auditor shall consult with the IHCD Compliance Monitor to determine the applicability of Davis-Bacon requirements to the project and for compliance assistance. By executing this Agreement, Auditor certifies that it has read the provisions attached to this Agreement relating to Davis-Bacon, fully understands the provisions set forth therein and agrees to comply with Davis Bacon.

11.7 State, Federal and Local Laws. Auditor shall comply with all applicable federal, state, and local laws, rules, regulations, administrative procedures and ordinances, including, without limitation, the ARRA, Davis-Bacon, and the Immigration and Nationality Act (8 U.S.C. § 1101 et. seq.), and all provisions required thereby to be included herein are hereby incorporated by reference. Services on Projects shall also comply with federal and state statutes and regulations including 42 U.S.C. § 6861 et seq.; 45 C.F.R. Part 440 and 600; the requirements specified in the Office of Management and Budget ("OMB") Circular A-110, now reported at 2

C.F.R. Part 215; the "Common Rule," OMB Circular A-122, now reported at 2 C.F.R Part 230, the ARRA, and all other applicable federal, state, and local laws, rules, regulations, administrative procedures, guides, manuals, program rules, regulations, and definitions, and any amendments thereto. Auditor specifically acknowledges that it must comply with all applicable federal, state, and local laws, rules, and regulations pertaining to wages, hours, conditions of employment and all health and safety standards.

The enactment of any state or federal statute or the promulgation of regulations thereunder after execution of this Agreement shall be reviewed by the State of Indiana, IHCD and SEND to determine whether the provisions of this Agreement require formal

modification.

1. 11.8 State Ethics Laws. Auditor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with IHCDA, as set forth in Indiana Code § 4-2-6 et seq., Indiana Code § 4-2-7, et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If Auditor is not familiar with these ethical requirements, it should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If Auditor or its agents violate any applicable ethical standards, SEND may, at its sole discretion, terminate this Agreement. In addition, Auditor may be subject to penalties under Indiana Code §§ 4-2-6, 4-2-7, 4-2-6-12, and 35-44-1-3, as well as any other applicable laws.

2. 11.9 Conflicts of Interest. Auditor acknowledges and agrees that no employee, agent, representative or subcontractor of Auditor who may be in a position to participate in the decision-making process of Auditor or its subcontractors, may derive an inappropriate personal or financial interest or benefit from any activity funded through this Agreement, either for itself or for those with whom it has family or business ties.

1. 11.10 Program Rules and Regulations. In performing Services under this Agreement, Auditor shall comply with all rules, regulations and guidelines under ARRA and HEC including, but not limited to the State Weatherization Plan as defined in Section 4.2, Weatherization Auditor Training Handbook, the WX Works!, the IHCDA Request for Proposal dated March 23, 2009,"), the Home Energy Conservation Award Program Grant Award-Agreement Number: HEC-009-014 CFDA #81.042 between SEND and IHCDA, and any other guides, manuals, program rules, regulations and definitions, and any notices, guidance, manuals, program rules or amendments thereto.

2. 11.11 Lobbying Activities. Pursuant to 31 U.S.C. § 1352, and any regulations promulgated there under, including 10 C.R.F. Part 601, Auditor hereby assures that no federally appropriated funds have been paid, or will be paid, by or on behalf of Auditor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative Agreement.

If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, Auditor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying." If Auditor is required to submit Standard Form-LLL, the form and instructions for preparation of the form may be obtained from IHCDA.

Auditor shall require that the language of the certification required under this section

11.11 be included in the award documents for sub-awards at all tiers (including

subcontracts, sub grants, and contracts under grants, loans, and cooperative Agreements) and that all sub-recipients shall certify and disclose accordingly.

The foregoing certification is a material representation of fact upon which reliance was or will be placed when entering into this Agreement and any transactions with IHCDA. Submission of this certification is a prerequisite for making or entering into any transaction as imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

1. 11.12 Religious Activities. Auditor agrees that activities conducted with funding obtained through this Agreement shall be non-sectarian in nature and that religious activities shall not be included in any activities to be conducted hereunder.
2. 11.13 Political Activities. Auditor certifies that the funding provided by IHCDA through this Agreement shall not be used to further any type of political or voter activity. Auditor further agrees to comply with applicable provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7326), which limits the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
3. 11.14 Drug-Free Workplace Certification. Auditor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Auditor will give written notice to the SEND within ten (10) days after receiving actual notice that an employee has been convicted of a criminal drug violation occurring in Auditor's workplace.

A. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the contract or Agreement and/or debarment of Auditor from doing further business with SEND and IHCDA for a period of up to three (3) years.

B. In addition to the provisions of the above paragraphs in section 11.14, if the total contract amount of Auditor's work is in excess of \$25,000, Auditor hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all grants from the IHCDA in excess of \$25,000.00. No award of a contract or grant shall be made, and no contract, purchase order, or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Auditor and made a part of this Agreement as part of the grant documents.

The Auditor certifies and agrees that it will provide a drug-free workplace by:

- .(1) Publishing and providing to all of its employees a statement notifying employees

that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in Auditor's workplace and specifying the actions that will be taken against employees for violations of such prohibition.

.(2) Establishing a drug-free awareness program to inform employees of (i) the dangers of drug abuse in the workplace; (ii) Auditor's policy of maintaining a drug-free workplace; (iii) any available drug counseling, rehabilitation, and employee assistance programs; and (iv) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace.

.(3) Notifying all employees in the statement required by subparagraph (1) above that as a condition of continued employment the employee will (i) abide by the terms of the statement; and (ii) notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction.

.(4) Notifying in writing SEND, IHCD and Indiana Department of Administration within ten (10) days after receiving notice from an employee under subparagraph (3) above, or otherwise receiving actual notice of such conviction.

.(5) Within 30 days after receiving notice of a conviction under subparagraph (3) above, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (i) take appropriate personnel action against the employee, up to and including termination; or (ii) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purpose by a federal, state, or local health, law enforcement, or other appropriate agency.

.(6) Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (1) through (5) above.

1. **12. Mechanic's Liens.** Auditor agrees to waive any right that it may have to assert a mechanic's or other lien against the property where Auditor's Services are being provided and/or improvements are performed. Waiver of Auditor's right shall include, but not be limited to the work itself and/or any materials provided. Auditor shall cause a similar provision, waiving any right to a mechanic's or other lien against the property, to be included in all contracts with material providers, with Auditor's subcontractors, and any second-tier contractors and below.

2. **13. Miscellaneous.**

3. **13.1 Entire Agreement.** This Agreement constitutes the entire agreement between SEND and Auditor with respect to the subject matter hereof and there are no representations, understandings, or agreements that are not fully expressed in this Agreement.

4. **13.2 Modification of Agreement.** The parties acknowledge that this Agreement is subject to modification by mutual agreement of the parties. Such modifications, if any, shall be set forth in writing and shall become a part of this Agreement upon execution by the parties. Such modifications shall also be subject to review upon any subsequent renewal of this Agreement; however, nothing in this Agreement shall be construed as a commitment to execute future agreements with Auditor or to extend this Agreement in any way.

5. **13.3 Remedies Not Impaired/Waiver.** No delay or omission by SEND in exercising any right or remedy available under this Agreement shall impair any such right

or remedy, or constitute a waiver of any default or any acquiescence thereto. No right conferred under this Agreement shall be deemed waived, and no breach of this Agreement excused, unless such waiver or excuse shall be in writing and signed by the party claimed to have waived such right.

6. 13.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Indiana without regard to its conflict of laws provisions, and suit, if any, must be brought in the State of Indiana. Each party hereby submits itself for the sole purpose of this Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the State of Indiana serving the county of Marion, and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or forum not convenient or otherwise) to the exercise of such jurisdiction over it by any such courts.

7. 13.5 Severability. The invalidity of any section, subsection, clause, or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions of the Agreement.

8. 13.6 Assignment. Auditor acknowledges that the Services to be rendered by it are unique and personal. Accordingly, Auditor may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the SEND. This Agreement shall inure to the benefit of the SEND and to the SEND's successors, assigns or affiliates.

9. 13.7 Notice. Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof, (b) if by mail, five business days after deposit in the United States mail, postage prepaid, certified mail, return receipt requested, (c) if by facsimile transmission, upon electronic confirmation thereof, or (d) if by next day delivery services, upon such delivery. All notices shall be addressed as follows (or to such other addresses as either party may in the future specify in writing to the other):

10. 13.8 Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute the entire agreement between the parties hereto.

11. 13.9 Survival. All provisions of this Agreement relating to warranties and indemnification obligations shall survive the termination or expiration of this Agreement.

If to the SEND: Indiana Builders Association 101 West
Ohio Street, Suite 1111 Indianapolis, IN
46204

If to Auditor: _____

13.10 Authority to Bind. The signatory for the Auditor represents that she/he has been duly authorized to execute this Agreement on its behalf.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

INDIANA BUILDERS ASSOCIATION

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AUDITOR

By:
Name:
Title:

DAVIS-BACON ACT

§ 5.5 Contract provisions and related matters.

[PUBLISHER’S NOTE: Paragraph (a)(1)(ii) was suspended indefinitely at 58 FR 58954, 58955, Nov. 5, 1993.]

.(a) The Agency head shall cause or require the contracting officer to insert in full in any contract in excess of \$ 2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to the labor standards provisions of any of the acts listed in § 5.1, the following clauses (or any

modifications thereof to meet the particular needs of the agency, Provided, That such modifications are first approved by the Department of Labor):

.(1) Minimum wages. (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- .(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - .(2) The classification is utilized in the area by the construction industry; and
 - .(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- .(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the

Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

.(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30day period that additional time is necessary.

.(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable

standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

.(2) Withholding. The (write in name of Federal Agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the (Agency) may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

.(3) Payrolls and basic records. (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency). The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the (write in name of appropriate federal agency) if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit them to the applicant, sponsor, or owner, as the case may be, for transmission to the (write in name of agency), the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or

owner).

.(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

.(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

.(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

.(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

.(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

.(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the (write the name of the agency) or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

.(4) Apprentices and trainees -- (i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force

under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

.(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not

less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize

trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

.(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

.(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the (write in the name of the Federal agency) may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

.(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

.(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

.(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

.(10) Certification of eligibility. (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

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Exhibits to Auditor Agreement

| | |
|-----------|--|
| Exhibit A | IBA Home Energy Conservation Program Auditor Pay Scale |
| Exhibit B | IBA Home Energy Conservation Program Client Consent Fo |
| Exhibit C | IBA Confidentiality Agreement |
| Exhibit D | Wage Determinations |

Exhibit A

SEND Home Energy Conservation Program Auditor Pay Scale

Deferral Audit - \$150.00 Auditor inspects house, deems it a deferral, completes and has client sign SEND's Moisture Assessment Form, and submits all documentation required by SEND's Deferral Procedures.

Initial Audit - \$400.00 Auditor inspects house, installs/repairs smoke detectors, provides client education, completes and has client sign SEND's Client Consent Form, completes all initial testing requirements and inspection forms, produces a work order, and submits all documentation required for an initial audit.

Interim Audit - \$150.00 Auditor inspects each mechanical item on work order and checks off that it was completed appropriately, completes all tests and forms required for mechanical work, completes daily safety test-out procedures and summary sheet, runs an interim blower door test, and submits all documentation required for an interim audit.

Final Audit - \$300.00 Auditor inspects each item on work order and checks off that it was completed appropriately, completes daily safety test-out procedures and summary sheet, runs a final blower door test, and submits all documentation required for final audit.

Call Back Audit - \$150.00 Auditor is instructed by SEND that job is ready for a final audit, however, upon inspection and testing, items must be corrected and/or finished before final audit can be done. Auditor documents items that need corrected and/or finished and submits all documentation required.

No Answer/Not Home - \$0.00

Auditor shows up at client property for scheduled appointment and no one is home, no one will answer, or not allowed access onto the property.

Quality Control Inspection – \$0.00 Previously completed job is pulled for an inspection by the Department of Energy, IHCD, and/or SEND and auditor's participation is necessary.

Smoke Detectors Installation / Replace Batteries – Actual cost SEND will reimburse auditors for the purchase of smoke detectors and batteries needed to meet smoke detector requirements in non-deferred clients' homes. Auditors will need to provide receipts for reimbursement.

SEND Home Energy Conservation Program Auditor Pay Procedures

- . • Auditor submits all documentation necessary for audit.
- . • SEND reviews audit and approves/denies.
- . • Auditor submits invoice for approved audits, including receipts for smoke detectors and/or battery replacement in client's existing smoke detectors.
- . • SEND submits approved audits payment request to IHCD for

reimbursement.

• SEND issues payment to auditor once IHCDA reimbursement is received by SEND.

Approved audits will be bundled per auditor and submitted weekly to IHCDA. It is anticipated that remittances will occur within 30 days from SEND's weekly submission.

Auditor Pay Scale & Procedures – Revision 3

September 8,
2009

Exhibit B

IBA Home Energy Conservation Program Client Consent Form

**CLIENT CONSENT FORM
RELEASE OF LIABILITY AND WAIVER OF CLAIMS**

NOTICE: The health and safety of the building, the occupants, or the energy conservation team shall not be compromised by any retrofit material, technique or practice. To ensure health and safety, air quality assessments will be conducted as part of all building analysis. Some energy conservation activities may create dust or other airborne particles, including but not limited to: insulation, mold, or lead. All measures installed in the building will alleviate and/or not promote the growth of new airborne particles.

FOR AND IN CONSIDERATION of the State of Indiana, the Indiana Housing and Community Development Authority and the Indiana Builders Association, hereafter referred to as IBA, its agents and employees assisting in the provision of energy conservation services to our dwelling, I/WE DO HEREBY RELEASE the State of Indiana, the Indiana Housing and Community Development Authority, and its agents and employees from any and all liability for losses, damages, costs, personal injury, property damage, or other claims because of, or in relation to the installation, location, or malfunction of measures performed.

I understand that by participating in the IBA Home Energy Conservation Program measures performed will become my personal property and it is my responsibility to maintain and repair installed measures and keep the building systems in working condition.

Please initial where applicable:

_____ I have received a copy of the EPA pamphlet, "Renovate Right, Important Lead Hazard Information for Families, Child Care Providers and Schools", informing me of the potential risk of lead hazard from energy conservation activities to be performed on my dwelling. I confirm that I have received this pamphlet before energy conservation work began on my home.

_____ I have received a copy of the EPA pamphlet, "Mold, Moisture, and Your Home", informing me of the potential risks of mold and high moisture levels in my home. I have also received a copy of the assessment form that was completed on my home.

_____ I understand that smoke detectors installed in my home are my personal property and must be maintained in order to continue good working conditions. An operational test was performed and the detectors were working properly when installed.

My signature below denotes that I fully understand the above waiver and its release of liability and have chosen to go forward with the energy conservation process, accepting any and all risks of injury or damage.

Client Signature: _____ Client Printed Name: _____

Date: _____ Client/ Job Application ID: _____

Address: _____

Exhibit C

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (the "Agreement") is entered into on the _____ day of _____, 200__ and effective as of the _____ day of _____, 200__ (the "Effective Date"), by and between the Indiana Builders Association ("IBA") and _____ ("Contractor"). (IBA and Contractor may be collectively referred to as "Parties" or singly as "Party").

WHEREAS, the IBA has been selected by the Community Development Department of the Indiana Housing and Community Development Authority ("IHCDA") to administer the Energy Conservation Program ("Program") for low-income individuals under the American Recovery and Reinvestment Act ("ARRA");

WHEREAS, as part of the IBA's administration of the Program, confidential information will be disclosed to the Contractor that is required to be kept confidential pursuant to the Program;

WHEREAS, Contractor agrees that confidential information of participants of the Program ("Participants") will be disclosed to it while performing services for IBA;

WHEREAS, Contractor agrees that this confidential information is essential to performing services to the IBA and Participants under the Program; and

WHEREAS, the IBA and Contractor desire to set forth in writing the terms and conditions of their agreement with respect to the confidential information;

NOW THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Confidential Information.** "Confidential Information" as used in this Agreement means any individually identifiable information, whether oral or written, about participants who receive services and/or assistance from the IBA or any other grantee and/or any sub-recipients of the IHCDA, including but not limited to the names, addresses, social security numbers, financial information, dates of birth, and other information or the Participants involvement in the Program.
2. **Non-Disclosure of Confidential Information.** Contractor shall not disclose Confidential Information to anyone, with the exception of the IBA, IHCDA or other federal, state and local governmental agencies (including their employees and representatives). Only to the extent it is necessary to Contractor's performance of work on Participant's home, Contractor may disclose Confidential Information to other Contractors involved with the Program, provided they have executed and are subject to the terms of a Non-Disclosure and Confidentiality Agreement with the IBA in advance of Contractor sharing the Confidential Information.
3. **Use of Confidential Information.** The use of the Confidential Information disclosed to Contractor shall be strictly limited to accomplish the Contractor's duties under the Program and may not be used by Contractor for its own purpose or benefit.

4. **Compliance with Applicable Laws.** Contractor shall ensure that all Confidential Information is handled and maintained in a confidential manner in compliance with the requirements of all applicable state or federal laws, rules, and regulations, including but not limited to, those relating to the release of Social Security numbers in I.C. § 4-1-10 and the notice of security breach provisions in I.C. §4-1-11.
5. **Compliance with IBA Policies.** Through the execution of this Agreement Contractor represents that it has reviewed the IBA's policies and procedures regarding the disclosure of Confidential Information and agrees to comply with the same.
6. **Application to Contractor's Employees and Subcontractors.** To the extent Contractor's employees, agents, subcontractors, subcontractor's employees or other individuals performing work for Contractor require access to a Participant's Confidential Information, Contractor shall require these individuals to each sign a Non-Disclosure and Confidentiality Agreement provided by the IBA and submit a copy of the same to the IBA.
7. **Violation.** Any violation of the terms of this Agreement is subject to the penalties imposed by applicable federal, state and local laws regarding disclosure of Confidential Information. In the event Contractor improperly discloses Confidential Information, Contractor must report unauthorized disclosure to the IBA immediately.
8. **Indemnification, Hold Harmless and Defense.** Contractor shall indemnify, defend and hold the IBA, its employees, agents, officers and officials, harmless from and against all actions, liabilities, injuries, claims, suits, losses, damages, judgments, costs, and expenses (including reasonable attorneys' fees, court costs and other out-of-pocket expenses) which it may sustain, incur, or be required to pay by reason of the disclosure of Confidential Information by Contractor, its employees, subcontractors, agents or representatives.
9. **Entire Agreement.** The Parties agree that with respect to the subject matter hereof this Agreement constitutes their entire agreement with respect to the subject matter hereof and that it supersedes any prior agreements or understandings between them, whether written or oral.
10. **Waiver.** No waiver of any of the provisions of this Agreement will be deemed to constitute a waiver of any other provision, whether or not similar, nor will any partial waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by an authorized representative of the Party making the waiver. The failure of either Party in any one or more instances to insist upon strict performance of any of the terms or conditions of this Agreement will not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.
11. **Modification of Agreement.** This Agreement may not be amended except in writing and must be signed by authorized representatives of both Parties.
12. **Governing Law.** Indiana law shall govern the interpretation and implementation of this Agreement and the resolution of any dispute between the parties regarding

effect of the Agreement. Each Party hereby submits itself for the sole purpose of the Agreement and any controversy arising hereunder to the exclusive jurisdiction of the federal or state courts located in the State of Indiana serving the county of Marion and any courts of appeal therefrom, and waives any objection (on the grounds of lack of jurisdiction, or forum not convenient or otherwise) to the exercise of such jurisdiction over it by any such courts.

13. **Severability.** Should any clause, portion or paragraph of this Agreement be unenforceable or invalid for any reason, such unenforceability or invalidity will not affect the enforceability or validity of the remainder of this Agreement, and any court having jurisdiction is specifically authorized and encouraged by the Parties to enforce and inviolate all portions of this Agreement that are valid and enforceable with due consideration of any invalid or unenforceable portions hereof.
14. **Remedies.** In the event of a breach or threatened breach by Contractor of its obligations and covenants under this Agreement, the IBA shall be entitled to injunctive relief against Contractor; provided, however, nothing herein shall be interpreted as prohibiting the IBA from pursuing any and all other rights or remedies that it may have against Contractor, including monetary damages and reasonable attorneys' fees and other costs of litigation and investigation incurred by the IBA in connection with such breach or threatened or potential breach of this Agreement.
15. **Attorney Fees.** In any litigation arising from or relating to this Agreement, the IBA is entitled to recover from Contractor all costs and expenses, including attorney's fees, incurred in the course of such proceedings.

The undersigned acknowledges that it has read the Agreement and is executing it with a full understanding of its provisions.

Signature

Printed Name

Date Signed

Exhibit D

SEND Home Energy Conservation Program Prevailing Wage Policy & Procedures

- 1) Comply with all requirements identified in the Davis-Bacon Act (29 CFR 5.5(a)). More information is available at www.dol.gov
- 2) Display “Employee Rights Under the Davis-Bacon Act” poster as required by the Department of Labor. Available for free downloading and printing on: <http://www.dol.gov/esa/whd/regs/compliance/posters/davis.htm>
- 3) Pay laborers and mechanics weekly at not less than the U.S. Department of Labor Prevailing Wage Rate Determinations (Decision date 8/31/2009, expiration date 3/3/2010). See pages 2-3.
- 4) Submit certified payroll information as required. Procedure is still being established. Additional information will be disseminated as it is finalized. Information that will be required to be reported can be found on:
 - .a. Form WH-347 – <http://www.dol.gov/esa/whd/forms/wh347.pdf>
 - .b. Instructions for Completing Payroll Form, WH-347 - <http://www.dol.gov/esa/whd/forms/wh347instr.htm>
- 5) Maintain an I-9 form for every employee. I-9 forms must be kept by the employer either for three years after the date of hire or for one year after employment is terminated, whichever is later. I-9 Form - <http://www.uscis.gov/i-9>

Indiana Residential Weatherization Wage Determination

This project wage determination is issued in response to a request from the Department of Energy (DOE) for prevailing wage rates specific to weatherization of residential structures as those structures are defined in the All Agency Memorandum 130 and 131. This wage determination has application only to weatherization construction projects on existing residential structures as described in the SF 308 submitted by DOE. The primary purpose of the project for which this wage determination is being issued is weatherization and is not for the renovation, repair, or new construction of residential structures. All other types of residential construction projects are subject to the published general residential wage determinations for the State of Indiana found on www.wdol.gov.

Weatherization work for purposes of this wage determination is defined as minor repairs, batt insulation, blown insulation, window and door repair, and weather stripping, solar film installation, air sealing, caulking, minor or incidental structural repairs, duct sealing, installation of light bulbs, and installation of smoke detectors. In Indiana, the Department's recent survey determined as a matter of prevailing practice that these duties are performed by a weatherization worker classification. The survey also found specialty weatherization work performed on weatherization construction projects. Specialty weatherization work is the (1) replacement of doors and windows; (2) installation and repair of furnace/cooling (HVAC) systems and all associated work involved with the installation of the HVAC system including electrical, pipe, and duct work. Classifications performing this work are also listed on this project wage determination.

Wage payment data submitted for the State of Indiana included wage data information for a weatherization crew chief classification. This classification of worker is essentially a working foreman who performs the same tasks as the weatherization worker, but who is responsible for supervision, job oversight, forms completion, work assignments, and quality assurances. The additional duties are not "laborer or mechanic" work as defined by the Davis-Bacon and related Acts regulations, but are more supervisory in nature. The Department issues various classifications of workers when the duties are defined and distinct to warrant the issuance of a separate classification on the wage determination. The "laborer or mechanic" duties of the crew chief are not sufficiently distinct to warrant the issuance of a separate classification on the wage determination. Moreover, the Department does not issue separate wage determinations based on a worker's skill, experience or individual training. Therefore, the weatherization crew chief is not listed as a separate classification of worker. The weatherization crew chief must be classified as a weatherization worker and paid at least the applicable wage determination rate of the weatherization worker when performing weatherization work. There is no restriction, however to paying the weatherization crew chief more than the weatherization worker wage rate listed on the wage determination.

DESCRIPTION OF WORK: Weatherization construction on existing residential structures to include minor repairs, batt insulation, blown insulation, window and door repair, and weather stripping, solar film installation, air sealing, caulking, minor or

incidental structural repairs, duct sealing, installation of light bulbs, and installation of smoke detectors. This also includes (1) the replacement of doors and windows and the repair; (2) the installation of hot water heaters and the installation and repair of furnace/cooling (HVAC) systems and all associated work involved with the installation of the HVAC system including electrical, pipe, and duct work.

The U.S. Department of Labor Prevailing Wage Rate Determinations chart (Decision date 8/31/2009, expiration date 3/3/2011) identifies the determined wages. The first figure in each classification column is the hourly rate and the rate following the “+” is the fringe benefit rate. A blank in the classification column signifies that there is no or insufficient data from either source and therefore no applicable rate. Any unlisted classifications needed for work not included within the scope of the classifications listed below may be added after award only as provided in the labor standards contract clauses (29CFR 5.5(a)(1)(ii)).

SEND Prevailing Wage Policies – Revision I September 5, 2009
 U.S. Dept. of Labor Prevailing Wage Rate Determinations
 (Decision date 8/31/2009, expiration date 3/3/2010)

| | Hourly + Fringe | Doors and Windows | HVAC, Furnace, | | | |
|------------|-----------------|-------------------|---------------------|-----------|--------------------|---------|
| | Weatherization | Replacement | Heating and Cooling | | | |
| County | Worker | Worker | Installation Worker | Carpenter | Electrician | Plum |
| Blackford | \$11.78 + 1.09 | \$11.78 + 1.09 | \$17.00 + .65 | \$13.42 | \$15.30 + 6.76 | \$14. |
| Boone | \$17.12 + 6.03 | \$17.12 + 6.03 | \$13.97 + 3.27 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Carroll | \$10.00 | \$10.00 | \$20.00 + .05 | \$13.42 | \$18.80 + 7.09 | \$14. |
| Cass | \$12.06 + 3.73 | \$12.06 + 3.73 | \$20.00 + .05 | \$13.42 | \$18.80 + 7.09 | \$14. |
| Decatur | \$11.22 + 1.23 | \$11.22 + 1.23 | \$13.97+ 3.27 | \$13.42 | \$18.30+4.50+8.05% | \$14. |
| DeKalb | \$9.00 + .17 | \$9.00 + .17 | \$16.00 + 1.11 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Delaware | \$14.50 + .77 | \$14.50 + .77 | \$20.00 + .05 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Fayette | \$11.78 + 1.09 | \$11.78 + 1.09 | \$21.28 + .08 | \$13.42 | \$15.30 + 6.76 | \$14. |
| Fulton | \$11.78 + 1.09 | \$11.78 + 1.09 | \$17.00 + .65 | \$13.42 | \$18.80 + 7.09 | \$14. |
| Hamilton | \$17.12 + 6.03 | \$17.12 + 6.03 | \$13.97 + 3.27 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Hancock | \$10.30 + 3.43 | \$10.30 + 3.43 | \$13.97 + 3.27 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Hendricks | \$17.12 + 6.03 | \$17.12 + 6.03 | \$13.97 + 3.27 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Howard | \$17.12 + 6.03 | \$17.12 + 6.03 | \$13.97 + 3.27 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Huntington | \$11.78 + 1.09 | \$11.78 + 1.09 | \$17.00 + .65 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Jackson | \$11.22 + 1.23 | \$11.22 + 1.23 | \$13.97 + 3.27 | \$13.42 | \$17.10 + 7.62 | \$14. |
| Jasper | \$14.00 | \$14.00 | \$20.00 | \$13.42 | \$22.45 + 9.72 | \$14. |
| LaGrange | \$9.00 + .17 | \$9.00 + .17 | \$16.00 + 1.11 | \$13.42 | \$12.49 + 5.07 | \$14. |
| LaPorte | \$13.03 | \$13.03 | \$14.00 + 1.07 | \$13.42 | \$22.45 + 9.72 | \$14. |
| Madison | \$15.83 + 1.46 | \$15.83 + 1.46 | \$13.97 + 3.27 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Marion | \$17.12 + 6.03 | \$17.12 + 6.03 | \$13.97 + 3.27 | \$12.68 | \$10.33 | \$13. |
| Marshall | \$11.78 + 1.09 | \$11.78 + 1.09 | \$17.00 + .65 | \$13.42 | \$19.90 + 9.79 | \$14. |
| Montgomery | \$12.06 + 3.73 | \$12.06 + 3.73 | \$20.00 + .05 | \$13.42 | \$18.30+4.50+8.05% | \$14. |
| Newton | \$14.00 | \$14.00 | \$20.00 | \$13.42 | \$24.75 + 6.77 | \$14. |
| Noble | \$9.00 + .17 | \$9.00 + .17 | \$16.00 + 1.11 | \$13.42 | \$12.49 + 5.07 | \$14. |
| Owen | \$17.12 + 6.03 | \$17.12 + 6.03 | \$13.97 + 3.27 | \$13.42 | \$19.50 + 9.18 | \$14. |
| Parke | \$12.06 + 3.73 | \$12.06 + 3.73 | \$16.00 + .92 | \$13.42 | \$19.50 + 9.18 | \$14. |
| Posey | \$13.97 + 3.27 | \$13.97 + 3.27 | \$18.00 + .69 | \$12.90 | \$12.00 + 3.01 | \$11.06 |

| | | | | | | |
|-------------|----------------|----------------|----------------|---------|-----------------|---------|
| Pulaski | \$13.03 | \$13.03 | \$20.00+ .05 | \$13.42 | \$22.45 + 9.72 | \$14. |
| Starke | \$13.03 | \$13.03 | \$20.00 + .05 | \$13.42 | \$22.45 + 9.72 | \$14. |
| Steuben | \$9.00 + .17 | \$9.00 + .17 | \$16.00 + 1.11 | \$13.42 | \$12.49 + 5.07 | \$14. |
| Tipton | \$17.12 + 6.03 | \$17.12 + 6.03 | \$13.97 + 3.27 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Vanderburgh | \$13.79 + 3.54 | \$13.79 + 3.54 | \$18.00 + .69 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Vermillion | \$12.06 + 3.73 | \$12.06 + 3.73 | \$20.00 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Vigo | \$11.87 + 5.44 | \$11.87 + 5.44 | \$20.00 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| Wabash | \$11.78 + 1.09 | \$11.78 + 1.09 | \$17.00 + .65 | \$13.42 | \$30.60 + 10.77 | \$14. |
| Wayne | \$11.78 + 1.09 | \$11.78 + 1.09 | \$21.28 + .08 | \$13.42 | \$15.30 + 6.76 | \$14. |
| Wells | \$11.78 + 1.09 | \$11.78 + 1.09 | \$17.00 + .65 | \$12.90 | \$12.00 + 3.01 | \$11.06 |
| White | \$10.00 | \$10.00 | \$20.00 + .05 | \$13.42 | \$18.80 + 7.09 | \$14. |

SEND Prevailing Wage Policies Revision I