

ENTERPRISE COMMUNITY PARTNERS, INC.

GREEN COMMUNITIES INITIATIVE

REQUEST FOR PROPOSALS

**FOR TECHNICAL ASSISTANCE PROVIDERS TO DELIVER HOME ENERGY
RATING SYSTEM (HERS) AND
ENERGY STAR HOMES CERTIFICATION
SERVICES**

This document is intended as an example only.



REQUEST FOR PROPOSALS

1. Project Background

1.1. Enterprise Green Communities

Enterprise Community Partners, Inc. (formerly the Enterprise Foundation, Inc.) is a national nonprofit organization with 25 years of experience in support of community development and affordable housing. We are the leading provider of capital and expertise for affordable housing and community development. For more information about Enterprise Community Partners visit <http://www.enterprisecommunity.org/>.

Enterprise Green Communities is an initiative of Enterprise Community Partners, and the first national green building program developed specifically to help developers, investors, builders and residents make the transition to a greener future for affordable housing. We focus on the use of environmentally sustainable materials, reduction of negative environmental impacts and increased energy efficiency. For more information about the Enterprise Green Communities program and the Green Communities qualification criteria visit <http://www.greencommunitiesonline.org/>.

1.2. Purpose of RFP

Section 5 of the Green Communities Criteria currently requires participating projects to demonstrate energy efficiency by meeting the HERS Index specified by ENERGY STAR standards for the climate zone of the location. Typically, this criteria is met by a project successfully completing the ENERGY STAR certification and labeling process through a RESNET accredited HERS Provider (hereinafter “Provider” or “Providers”).

However, Enterprise does not specifically require that the ENERGY STAR certification and labeling process be followed in its entirety due to the difficulty of obtaining the services of accredited Providers and certified HERS Raters in areas not currently supported by a well developed HERS infrastructure (or the state or utility sponsored programs that often act as catalysts for the growth of that capacity). The cost of engaging energy raters to perform the necessary ENERGY STAR analysis, training, inspection and certification services can become prohibitive when raters must travel long distances to support individual projects. For their part, rating providers are often reluctant to establish operations in areas with limited volume opportunity (and therefore no economy of scale).

This pilot initiative is intended to overcome these barriers by “aggregating” the Green Communities projects within a defined geographic area, soliciting bids and awarding contract(s) to perform all associated energy rating and ENERGY STAR certification services for those projects. It is Enterprise’s intention that such an approach will provide a sufficient economic basis to represent a viable business proposition for all parties.

1.3. Qualifications

- Vendors must provide evidence of qualification to do business in the state of [State];
- Vendors must provide evidence that they are accredited by the Residential Energy Service Network (RESNET) to provide Home Energy Ratings in the state of [State] as a HERS Provider in good standing, including a current license for use of a RESNET accredited Home Energy Rating System software;
- If Vendor is proposing to employ an inspection sampling protocol when applicable, Vendor must also provide evidence of RESNET accreditation as a HERS Sampling Vendor in good standing; and
- Vendors must identify the Quality Assurance Designee and Certified HERS Rater(s) in good standing who will be responsible for the work. Enterprise must be informed immediately if this information changes prior to or during implementation of the work. Substitutions of Quality Assurance Designee and Certified HERS Rater(s) will be allowed only when Enterprise specifically agrees to the substitution in writing or due to an emergency circumstance.

All proposed substitutes must have qualifications at least equal to that of the person initially proposed and evaluated and accepted in the Contract. The burden of illustrating this comparison shall be the vendor's. All proposed substitutions for other than emergency situations must be submitted in writing, at least 15 business days in advance of the proposed substitution, to Enterprise. Enterprise must agree to the substitution in writing before such substitution shall become effective.

2. **Scope of Work**

2.1. Technical Standards

The vendor shall perform all rating services in accordance with the latest standards promulgated by RESNET (available for review at <http://www.resnet.us/standards/>), including:

- The 2006 Mortgage Industry National Home Energy Rating Systems Standards and all subsequent amendments; and
- The RESNET Home Energy Rating Standards of Practice and Rating Code of Ethics.

The vendor shall perform all ENERGY STAR Home certification services in accordance with the latest standards for single family homes and multifamily buildings up to three floors, as promulgated by the EPA (available for review at http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters_homes_guidelns), including:

- The National Performance Path;
- The National Prescriptive Path;
- The EPA Thermal Bypass Checklist;

- Guidelines for Attached, Manufactured and Modular homes; and
- The EPA approved Sampling Protocol (Chapter 6 of the RESNET standards, above).

Note: The EPA accepts or requires specific regional variations of the ENERGY STAR national standard for California, Hawaii, the Pacific Northwest, Idaho and Montana. This RFP will specify any necessary modifications if intended to cover any part of those regions.

2.2. Technical Implementation

The vendor will perform the following discrete tasks which are identified within the ENERGY STAR Homes process and corresponding with billable line items under this Scope of Work (see Appendix A):

- An *Initial Project Analysis* to determine project level upgrades for each model, which may consist of either:
 1. A rating from plans and specifications on a “worst case” basis, i.e. the least efficient model with the least energy efficient options and orientation; or
 2. A review of plans and specifications for compliance with the EPA Builder Option Package.

Using either method, this activity shall result in documentation of a final “package” of upgraded specifications and performance requirements necessary to meet all program requirements, which must be agreed to in writing by the builder or developer responsible for the project’s participation in the program.

The builder shall be presented with alternative upgrades where possible in order to allow them to choose the most cost effective or practical solution for their application. Provider shall respond in a timely manner to any builder questions in order to determine the final upgrade package.

Note: Multifamily buildings up to three floors with common entrance(s) shall be analyzed on a “whole building” approach (i.e. a single rating for the whole building).

- A *Pre-Construction Orientation* meeting for each project at a time convenient to the builder and their sub contractors. Pre-Construction meetings are conducted to explain to the builder and trade sub contractors the details of program requirements, the specific upgrades required for the project, and the application of building science principals to meeting program standards. This meeting may be repeated as a *Mid-Construction Orientation* in the event that substantial changes occur in the builder’s site personnel or trade subcontractors during construction of the project, or to provide additional on-site training in order to address ongoing compliance issues.
- A *Pre-drywall Inspection* to verify compliance of features visible at the framing and rough mechanical stage of construction prior to sheetrock, including but not limited to insulation quality, EPA Thermal Bypass Checklist items, duct sealing and other items visible at this time on which the agreed Upgrade Package were based.

- A *Final Inspection* to verify the final performance of the home and compliance of features visible after sheetrock and finishing, including but not limited to envelope leakage (blower door), duct leakage (e.g. Duct Blaster™), equipment efficiencies, and all remaining items on which the agreed Upgrade Package were based.
- *Re-inspections* may occur when the pre-drywall or final inspections identify issues serious enough to require verification that corrections have been implemented before continued construction renders verification impossible.
- Other *Special Inspections* may be needed on an occasional basis, for example to verify a single item such as the builder’s approach to slab insulation.

In all cases, inspections must be documented for the purposes of completing final ratings (or BOP verification), builder notification of any compliance issues, and billing.

- *Final Certification* as an ENERGY STAR Home shall be based on:
 1. Issuance of a Home Energy Rating Certificate documenting compliance with the maximum HERS Index for the location; or
 2. Compliance with the requirements of the Builder Option Package if the BOP path was followed; and
 3. Compliance with the Thermal Bypass Checklist and all other prescriptive requirements for ENERGY STAR labeling.

Final certification shall include the provision of all applicable EPA and RESNET labels.

2.3. Inspection Sampling

Inspections may be “sampled” in compliance with the protocols defined in Chapter 6 of the RESNET Standards. Some situations may represent “ideal” conditions for sampling efficiencies – such as high volume townhome developments and low rise multifamily buildings with stable contractor crews and site staff. However, it should be noted that because this RFP is specifically aimed at markets that have had little exposure to the ENERGY STAR Homes program to date, builders and their trade contractors may face a significant learning curve.

Therefore, Enterprise will require that the Rating Provider demonstrate evidence of a consistent level of quality performance by the builder within each subdivision or development prior to beginning sampling. Such evidence shall at least meet the definition contained in section 603.1.7.3 of the standard as well as any other criteria deemed necessary by Enterprise. Approval to utilize inspection sampling may be granted or withdrawn by Enterprise at its sole discretion.

Note that if approved for sampling, sample sets may be drawn from within a single development or subdivision only and not from a mix of project locations within a metropolitan area (as would otherwise be allowable by section 603.1.5 of the standard).

2.4. Multifamily Buildings Over Three Floors

Residential structures four stories or above must conform to the modeling and verification procedures of the EPA ENERGY STAR Multifamily High Rise Pilot (MFHRP) and exceed ASHRAE 90.1-2004 by 20%.

Enterprise (or its designated agent) proposes to function as the EPA Partner responsible for administration and QA of these buildings under the MFHRP Program. The vendor should indicate their capability and experience level performing the energy modeling and verification scope of work required by the HRMFP (summarized in brief below). Enterprise understands that not all Providers will have this capability, which will not disqualify their response to the balance of the RFP not related to the MFHRP.

The vendor is expected to make:

- A determination of the initial simulation baseline consumption from the design team's existing plans using the ASHRAE Standard 90.1-2004 Appendix G protocol and EPA ENERGY STAR Simulation Guidelines for the MFHRP;
- A proposed design model following the same procedures that projects the energy consumption of the proposed building design and compares it to the projected consumption of the simulation baseline;
- A projection of the incremental construction costs for each of the recommended measures compared with the corresponding components in the baseline model, using EPA ENERGY STAR Incremental Cost Guidelines for the MFHRP;
- Random inspections of the work performed under the Pilot to ensure that each energy efficiency measure in the proposed design has been installed to meet the specification, using EPA ENERGY STAR System Performance Testing Protocols for the MFHRP. Inspections should be conducted throughout the project construction phase at times best suited to determine whether the energy efficiency elements are installed to specification. Some elements may require multiple site visits; and
- An as-built model of the project that properly represents the actual building and ensures that the Performance Target has been achieved.

Note: Pricing for technical implementation (modeling, verification and certification) of multifamily buildings over four floors will be determined on a case by case basis due to the size and variability of these projects.

2.5. Manufactured (“Modular”) Housing

EPA guidelines require that “features that will not be verified on-site, such as insulation levels and compliance with the Thermal Bypass Checklist,” must be verified in the plant by a HERS Rater or a plant representative (for example by the Plant Production/Engineering Staff). Vendor shall approve the verification of such features in the plant by a HERS Rater or a plant representative

The Provider shall determine the level of inspection and should begin coordination with the plant in advance of the first unit's production.

2.6. Scheduling of Inspections

The Provider shall schedule inspections and other site visits at the builder's request based on timing and notification procedures established with the builder's site personnel. Inspections are time sensitive. The Provider will be responsible for making reasonable best efforts to track the progress of each project and initiate contact with the builder as necessary to schedule inspections at the appropriate stages of construction.

Provider shall maintain sufficient resources to meet each project's needs and to complete all inspections within 3 days of the builder's initial request for inspection.

2.7. Quality Assurance

Vendor(s) should provide in their response the name and affiliation of the Quality Assurance Designee who will be responsible for quality oversight of their Energy Ratings. If the QA Designee is from a third party, please also include a letter from them acknowledging this role.

Provider(s) shall maintain their Quality Assurance activities in accordance with the Quality Assurance Plan they submitted to RESNET for accreditation, and in compliance with all current RESNET QA requirements and protocols. Quality Assurance reports, and any RESNET Quality Assurance monitoring results, shall be available to Enterprise for review upon request. Enterprise or its agent may, at its discretion, conduct field and/or office reviews of Provider's energy rating activities related to this Scope of Work.

2.8. Tracking & Reporting

Provider(s) shall maintain records of all activities performed under this Scope of Work and submit documentation as back-up to invoices, including but not limited to:

- An "upgrade letter" signed by both the Rater and Builder identifying the features and specifications agreed to by the Builder to meet the requirements of the ENERGY STAR Homes program and the projected rating developed by the initial analysis;
- An dated attendance sheet and list of topics addressed for each pre-construction or mid-construction orientation meeting performed;
- A dated inspection record for each completed inspection documenting compliance and pass/fail status, signed by the rating inspector and builder's site representative;
- A dated EPA Thermal Bypass Checklist for each completed unit documenting compliance and pass/fail status, signed by the rating inspector and builder's site representative; and

- A copy of the final Home Energy Rating Certificate and RESNET Standard Disclosure form for each certified home, signed by the responsible certified Home Energy Rater.

Provider is responsible for all required RESNET and EPA reporting.

3. Contract and Compensation

3.1. Contract for Services

The work will be conducted under the terms of Enterprises' standard contract for services with a task order issued to cover the tasks required under this RFP. A standard contract will be provided to selected respondent(s), identifying the specific project(s), geographic area and/or other criteria for inclusion within the scope of the award.

See Appendix B for the location and description of the included projects known at the time of this RFP release (others may be added as approved).

See Appendix C for contract minimum insurance requirements.

See Appendix D for Contracts Terms and Conditions.

3.2. Contract Term

The contract term shall be for [two years or until completion of construction and certification of the specified projects].

3.3. Price

Green Communities will establish the Technical Assistance Provider rates based on an agreed upon scope of work and price negotiated with the qualified consultant(s) who are selected to perform this work.

Please provide rates for services in the format prescribed by the Price Page in Appendix A.

In addition, bidders may propose alternative approaches to the service delivery and/or pricing structure, together with a basis for comparison with the prescribed approach.

4. RFP Process

4.1. Submission Requirements

Vendors are encouraged to submit a response to this RFP that conveys organizational qualifications and project experience. Responses are limited to 10 pages of substantive content directly addressing the scoring criteria defined below. Resumes, references, sample

support materials (e.g. field verification forms), etc. may be attached as addenda if necessary. The attachments are not deemed substantive content for purposes of the page count.

The responses should address each of the following areas in the same order in which they are set forth below. Information must be included for each party represented in the proposal if, for example, the Provider, HERS Raters and/or QA Designee are from different entities. The prime vendor (responsible for the contractual relationship with Enterprise) should be clearly identified.

1. Organizational profile and contact information includes:
 - i. Vendor's date of formation;
 - ii. Type of entity (partnership, professional corporation, etc.);
 - iii. Organizational history and services provided;
 - iv. Number of employees; and
 - v. Audited Financial Statement (prime bidder only)
2. Qualifications (see section 2.1).
3. Resumes of key personnel to be assigned to the contract.
4. Experience performing work of similar scope.
5. Statement about the capacity and resources of the Vendor to deliver the scope of work for the projects or area described in Appendix B within the time frames specified.
6. Approach to implementation as described in sections 2.2-2.8. Include any proposed alternative approaches or other relevant information.
7. Completed price page (Appendix A).

4.2. Evaluation Criteria

All proposals received in response to this solicitation will be evaluated according to these criteria. (The evaluation will be of the Vendor and any subcontractor the Vendor proposes to use to perform any of the deliverables to be provided under the contract that results from this RFP). A contract will be awarded to the vendor whose proposal is determined to be the most advantageous to Enterprise considering price and the evaluation of the proposal using the unranked criteria described below:

- A. Vendor's Qualifications;
- B. Vendor's experience performing work of similar scope, including relevant experience in the affordable construction market;
- C. Vendor's capacity and commitment to deliver services within the timeframes specified in the location(s) specified in Appendix B throughout the duration of the contract; and
- D. Price.

4.3. Intellectual Property

The Vendor hereby agrees and acknowledges that all materials, reports documents and other deliverables developed or produced by the Vendor under the contract and the copyrights thereto, are the sole and exclusive property of Enterprise. The Vendor shall not reproduce, publish or otherwise use the work products or any portion thereof, or allow others to reproduce, publish, or otherwise use the work products or any portion thereof, without the prior written permission of Enterprise.

4.4. Submission Information

Proposals to undertake this scope of work must be submitted electronically no later than 3:00 p.m. on [Date] with [TA HERS Proposal] as the subject heading to:

greencommunities@enterprisecommunity.org.

All email deliveries received before 3:00 p.m. will be acknowledged by Enterprise as received. Inquiries must be directed to Enterprise at the email address below:

Green Communities Initiative

greencommunities@enterprisecommunity.org

Applicants will be notified [during the first quarter of 2009].

The anticipated term of the contract shall be from the anticipated contract award date of [] to []. The successful Vendor for this service will be expected to sign a contract with Enterprise no later than []. A blank sample contract is enclosed as Appendix D to this RFP. Upon selection of the Vendor, Enterprise will complete the contract and submit it to the successful Vendor for signature. In addition to pertinent details of the successful Vendor's proposal, the completed contract may have additional clarifying language concerning Enterprise's ownership of contract deliverables and indemnification.

APPENDIX A: PRICE PAGE

Vendor Name: _____

Pricing for services to location(s) specified in Appendix B:

Task (Buildings up to 3 floors only)	Unit	Unit Price
Initial analysis – Single Family rating from plans	Per SF Model	\$
Initial analysis – Single Family BOP	Per SF Model	\$
Initial analysis – Multifamily whole building rating	Per MF Building	\$
Pre/mid construction orientation meetings	Per Meeting	\$
Pre-drywall inspections – Single Family	Per Inspection	\$
Pre-drywall inspections – Multifamily	Per inspection	\$
Final inspection – Single Family	Per Inspection	\$
Final inspection - Multifamily	Per Inspection	\$
Intermediate, Special and Re-inspections	Per Inspection	\$
Final certification/labeling – Single Family	Per Unit	\$
Final certification/labeling – Multifamily	Per Building	\$

Please estimate TOTAL COST based on projected line item volumes for the projects specified in the RFP. This estimate will not be considered a fixed price bid.

Estimated Total Cost: \$ _____

Please propose hourly rate(s) for work not covered by the above:

APPENDIX B: PROJECT LOCATION(S)

This RFP is for projects located in the area defined as:

[Define geographic area of coverage or other grouping criteria here]

At the time of issuing this RFP, the known projects within this area include the following:

Project 1.

Project Name:.....

Location:

Builder/Developer:.....

Estimated construction start date:

Estimated construction end date:

Building description/number of units:

Building description/number of units:

Building description/number of units:

Other project information:

Project 2.

Project Name:.....

Location:

Builder/Developer:.....

Estimated construction start date:

Estimated construction end date:

Building description/number of units:

Building description/number of units:

Building description/number of units:

Other project information:

APPENDIX C: MINIMUM INSURANCE REQUIRMENTS

Insurance for **individuals**:

Benefits/Insurance. Enterprise is not responsible for any fringe benefits or insurance, including, but not limited to, social security, workers' compensation as applicable, state unemployment, federal and state income tax withholdings, retirement, leave benefits, general liability, automobile, and professional liability, for the Vendor. The Vendor assumes full responsibility for the provision of all such insurances and fringe benefits for Vendor.

Insurance for **companies**:

Benefits/Insurance. Enterprise is not responsible for any fringe benefits or insurance, including, but not limited to, social security, workers' compensation, state unemployment, federal and state income tax withholdings, retirement, leave benefits, general liability, automobile, and professional liability, for the Vendor or employees of the Vendor. The Vendor assumes full responsibility for the provision of all such insurances and fringe benefits for Vendor and all the Vendor's employees. The Vendor maintains, and shall maintain throughout the term of this Contract, commercial general liability insurance, automobile insurance (or hired and non-owned coverage on the commercial general liability insurance policy), miscellaneous professional liability insurance and workers' compensation insurance each in an amount not less than \$1,000,000.00 (except that the coverage for workers' compensation shall be in accordance with statutory requirements) to cover its activities under this Contract. Vendor shall name Enterprise as an additional insured on its commercial general liability insurance and commercial automobile insurance. Within 48 hours of Enterprise's request, Vendor shall provide Enterprise with a certificate of insurance evidencing it having all the foregoing required coverages.

Appendix D

Contract Terms and Conditions

1. Confidential Information. "Confidential Information" is information which Enterprise, in its sole determination, regards as confidential or proprietary including, but not limited to, borrower, grantee, or contractor/subcontractor information, information regarding Enterprise's financial and strategic planning, staffing and other data, files, and/or other material, both tangible and intangible, in writing and orally imparted. The Subcontractor hereby agrees that Subcontractor shall not disclose or divulge any Confidential Information or any part thereof to any other person or entity or use any Confidential Information for its pecuniary benefit or for any other purpose without the prior written consent of Enterprise. Upon the request of Enterprise, Subcontractor shall promptly deliver to Enterprise all documents or other materials in its possession, and all copies thereof, constituting or containing Confidential Information.

2. Payment. Payments shall not be made without Enterprise's receipt of a completed W-9 form which is consistent with the subcontractor's name stated herein, a signed contract and acceptance by Enterprise of the work performed. When submitting invoices, subcontractor should use the attached Enterprise Request for Payment form. If subcontractor chooses to use their own form, invoices shall reference the contract number, award value and period of performance on each invoice. Subcontractor shall also submit all invoices within 60 days of the end of the contract's period of performance. Subcontractor agrees that Enterprise will be under no obligation to pay for any invoice that is not timely submitted and received by Enterprise within the aforementioned 60 day period.

3. Ownership of Deliverables. The Subcontractor hereby agrees and acknowledges that all documents and other Deliverables developed or produced by the Subcontractor under this Contract and the copyrights thereto, are the sole and exclusive property of Enterprise. The Subcontractor shall not reproduce, publish or otherwise use the work products or any portion thereof, or allow others to reproduce, publish, or otherwise use the work products or any portion thereof, without the prior written permission of Enterprise.

4. Subcontractor's Performance. Enterprise expects Subcontractor to perform in a high quality manner and in accordance with the standards set by the Contract Administrator. If the performance of the Scope of Work or Deliverable does not meet Enterprise's standards, Enterprise reserves the right to avail itself of all administrative, contractual, legal and equitable remedies, including, but not limited to, reducing or withholding payment to Subcontractor, canceling the Contract, and hiring another party to complete the Scope of Work.

5. Use of Subcontractors. If the Subcontractor retains a subcontractor to perform any portion of the Scope of Work, it shall first request approval from Enterprise, which shall not be unreasonably withheld.

6. Return of Documents. The Subcontractor shall deliver all records, notes, data, memoranda, models and equipment of any nature that are in the Subcontractor's possession or under the Subcontractor's control and that are Enterprise's property or relate to Enterprise's business upon Enterprise's request or the completion of this Contract.

7. Right to Audit/Record Retention. Subcontractor shall keep (a) accurate documentation in connection with the Scope of Work to be performed herein, and (b) a legible set of books of account in accordance with generally accepted accounting principles for a minimum of three (3) years from the end date of the period of performance, Subcontractor's documentation and books of account shall be open for inspection by Enterprise or its auditors to assure that the work has been properly performed and that funds are being paid in the proper manner for the work performed,

8. Benefits/Insurance. Enterprise is not responsible for any fringe benefits or insurance, including, but not limited to, social security, workers' compensation, state unemployment, federal and state income tax withholdings, retirement, leave benefits, general liability, automobile, and professional liability, for the Subcontractor or employees of the Subcontractor. The Subcontractor assumes full responsibility for the provision of all such insurances and fringe benefits for Subcontractor and all the Subcontractor's employees. The Subcontractor maintains, and shall maintain throughout the term of this Contract, commercial general liability insurance, automobile insurance (or hired and non-owned coverage on the commercial general liability insurance policy), miscellaneous professional liability insurance and workers' compensation insurance each in an amount not less than \$1,000,000.00 (except that the coverage for workers' compensation shall be in accordance with statutory requirements) to cover its activities under this Contract. Subcontractor shall name Enterprise as an additional insured on its commercial general liability insurance and commercial automobile insurance. Within 48 hours of Enterprise's request,

Subcontractor shall provide Enterprise with a certificate of insurance evidencing it having all the foregoing required coverages.

9. W-9 Form / Federal Tax Identification Number. Subcontractor shall provide Enterprise with a signed and completed W-9 Form. Payment shall be made payable to the name and corresponding Federal Tax Identification number found on the W-9 Form which must match the information contained herein. Subcontractor hereby agrees to notify Enterprise immediately upon any change of taxpayer information in Subcontractor's W-9 Form. *NOTE: PAYMENT SHALL NOT BE MADE TO SUBCONTRACTOR WITHOUT ENTERPRISE'S RECEIPT OF A COMPLETED W-9 FORM WHICH MATCHES SUBCONTRACTOR'S NAME STATED HEREIN.*

10. Relationship of the Parties. For purposes of this Contract, the Subcontractor is not an agent of Enterprise and Enterprise is not an agent of the Subcontractor. Neither party has the right or authority to bind the other party through its actions or any other contracts or communications.

11. Solicitation. The Subcontractor hereby agrees not to solicit for employment any of Enterprise's employees either during the Term of this Contract or for one (1) year thereafter.

12. Termination. Either party may terminate this Contract without cause upon the delivery of written notice to the other party in accordance with the terms of this Contract ("Termination"). In such event, the Contract will terminate thirty (30) days after such written notice was received. Any such Termination by either party shall be subject to an equitable adjustment of the Compensation due. Any such Termination by either party shall also be subject to an equitable reimbursement of Compensation paid prior to Termination for future performance rendered impracticable by Termination of the Contract. All obligations which were to be performed as of the date of Termination are discharged but any right based on prior breach or performance survives.

13. Cancellation. Upon the occurrence of a material breach, Enterprise may cancel this Contract upon the delivery of written notice to the Subcontractor in accordance with the terms of this Contract ("Cancellation") and retain any remedy for breach of the whole Contract or any unperformed balance thereof.

14. Indemnification. Each party to this agreement shall indemnify, defend and hold harmless the other party and its directors, officers, agents and employees from and against any and all costs, liability, demands, claims, damages to persons or property, losses and liabilities, including reasonable attorney fees arising solely out of or solely caused by the indemnifying party's negligence or willful misconduct in connection with the scope of work or services contemplated by this agreement.

15. Arbitration. Any controversy or claim arising out of, or relating to, this Contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules in a forum located in Howard County in the State of Maryland. Judgment on an award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Any award rendered thereunder shall be final and binding on all parties thereto. The Subcontractor irrevocably waives 'any objection to, and any right of immunity for, the jurisdiction of such arbitration on the grounds of venue or convenience of forum.

16. Amendment. Both parties may amend this Contract or any part hereof so long as Amendments that affect the rights and obligations of either party are executed by both parties. Administrative changes or corrections that do not affect the rights and obligations of Subcontractor may be made unilaterally by Enterprise with notice to, but without consent of, Subcontractor.

17. Delegation; Assignment. Subcontractor shall not delegate any duties or assign any rights under this Contract without the prior written approval of Enterprise. A delegation of performance will not relieve Subcontractor of any duty to perform or any liability for breach of this Contract.

18. Governing Law; Venue. This Contract shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Maryland, exclusive of its conflicts of law rules. Subcontractor agrees that any litigation shall be brought and prosecuted in any District or Circuit Court of Maryland, as appropriate, or Federal District Court, with venue in the United States Court for the District of Maryland, Baltimore Division and the Subcontractor consents to the in personam jurisdiction of such courts. The Subcontractor irrevocably waives any objection to, and any right of immunity from, the jurisdiction of such courts or the execution of judgments resulting therefrom, on the grounds of venue or the convenience of the forum.

19. Nonwaiver. The failure of Enterprise in any instance to insist upon a strict performance of the terms of this Contract or to exercise any option hereunder shall not be construed as a waiver or relinquishment for the future of such term or option.

20. Notice. Any notice which either party desires to serve under the terms of this Contract shall be sufficiently given if in writing and delivered by certified mail, postage prepaid to the addresses in this Contract.

21. Authorizing Action, Parties Bound. The execution, delivery and performance by Subcontractor are within Subcontractor's powers and have been duly authorized by all necessary action. The terms and provisions of this Contract shall be binding upon the parties hereto, their legal representatives, successors and assigns.

22. Severability. If any paragraph of this Contract or application thereof to any person or circumstances is held invalid, such invalidity will not affect other paragraphs of this Contract that can be given effect without the invalid paragraph, and to this end the other paragraphs are deemed to be severable.

23. Entire Contract. This instrument contains the entire Contract between the parties. No statement, promises or inducements made by any party hereto, or agent of either party hereto, which is not contained in this Contract, shall be valid or binding; and this Contract may not be enlarged, modified or altered except in writing and signed by the parties.