



November 1st, 2016

Nicholas D'Andrea
Executive Director
Plant Manager – College Point
One New York Times Plaza
Flushing, NY 11354

**Re: Proposal – Treatment of Air Cooled Condensing Units
One New York Times Plaza, Flushing NY**

Dear Nicholas,

Herein we propose to treat the air-cooled condenser coils part of the HVAC unit listed below located at your facility at One New York Times Plaza. We are familiar with the condition of this unit following a site survey conducted on Friday, August 7th, 2015. The treatment will include mechanical and chemical cleaning, restoration of the coil assembly, re-alignment of fins as necessary, and coating of the coil assembly with our coating product. The project will carry a ten-year warranty. The total cost of performing this project is \$228,172 USD.

Over the life of the ten-year warranty, the project will yield an **estimated savings of \$1,721,496 USD** in energy cost reduction alone. The blended **project payback is under 1.4 years**.

This savings is based on the condition of the coil (corrosion level, fin alignment, and level of soiling), a blended electricity rate of \$0.115/kWh as per the supplied utility invoices, and the unit operating 24/7 while the outside air dry-bulb temperature is above 50°F. Additionally, this savings does not factor in dollar savings associated with reduced frequency of compressor replacement, deferment of capital expenditure to replace the entire coil, and electricity price escalation, which has averaged 3% per year historically.

It should also be understood that energy savings in only one side of the efficiency equation (cooling output divided by electricity input). The other side is the increased cooling output, which will result in cooler, less humid air. A twenty-year-old unit may only provide half of its rated capacity.

Presented below is the list of the units to be treated at your facility.

Unit Tag	Make	Vintage	Nominal Tonnage	Year 1 Savings	Year 10 Savings
ACU-01	Mammoth	1996	150	\$8,292	\$89,887
ACU-02	Mammoth	1996	150	\$8,292	\$89,887
ACU-03	Mammoth	1996	150	\$8,036	\$87,115
ACU-04	Mammoth	1996	150	\$6,100	\$66,128
ACU-05	Mammoth	1996	150	\$7,562	\$81,968
ACU-06	Mammoth	1996	150	\$8,292	\$89,887
ACU-07	Mammoth	1996	150	\$8,292	\$89,887
ACU-08	Mammoth	1996	150	\$7,562	\$81,968
ACU-09	Mammoth	1996	150	\$8,292	\$89,887
ACU-12	Mammoth	1996	90	\$6,071	\$65,812
ACU-13	Mammoth	1996	130	\$7,503	\$81,334
ACU-15	Mammoth	1996	160	\$8,845	\$95,880
ACU-16	AAON	1996	40	\$2,796	\$30,306
ACU-18	AAON	1996	60	\$4,340	\$47,042
ACU-23	AAON	1996	50	\$3,495	\$37,882
ACU-24	AAON	1996	70	\$5,063	\$54,883
ACU-25	AAON	1996	25	\$1,504	\$16,301
ACU-27	Mammoth	1996	150	\$6,831	\$74,048
ACU-28	Mammoth	1996	150	\$8,292	\$89,887
ACU-29	Mammoth	1996	150	\$9,023	\$97,807
ACU-30	Mammoth	2007	50	\$1,572	\$21,109
ACU-31	Mammoth	2007	110	\$2,944	\$39,531
ACU-32	Mammoth	2007	110	\$3,416	\$45,873
ACU-33	AAON	2007	40	\$1,147	\$15,399
ACU-34	Mammoth	2007	170	\$5,523	\$74,161
ACU-35	Mammoth	2007	170	\$5,036	\$67,627
Total:			3,075	\$154,121	\$1,721,496

As per the custom pricing schedule in the initial proposal, the total price of treatment of the condenser coils of the project in its entirety is \$300,000. Accounting for the treatment of ACU-10, ACU-11, and ACU-14, the current project price is tabulated below:

\$300,000 for the project in its entirety
 - \$43,612 for ACU-11 and ACU-14
 - \$28,216 for ACU-10

\$228,172 for treatment of remaining units listed above
Project Payback: 1.4 years

Scope of Service

Coil treatment services to include the following:

1. Site safety measures and protection of surrounding environment
2. Disassembly of protective grids (as required)
3. Disassembly of ventilator(s) or fan(s) (as required)
4. Use of protection foil and absorbing filter mats (as needed) to protect surrounding area
5. Work on all coil surfaces to be treated:
 - a. Mechanical removal of corrosion and loose dirt,
 - b. Detergent cleaning,
 - c. Deoxidization of fins,
 - d. High-pressure wash cleaning (where applicable),
 - e. Alignment of fins (as needed),
 - f. Application of thinner and primer, and other surface preparation,
 - g. Drying of the unit in between steps, with air compressor if necessary,
 - h. Application of topcoat.
6. Final drying of all treated units (ventilation),
7. Re-assembly of all disassembled parts,
8. Removal of Ener.co equipment and materials, and site clean-up.

Note: Scope of service does not include chemical removal of existing coating from previously coated surfaces.

Project Fee & Warranty

Ener.co will provide these services under 10 year limited warranty on a total lump sum fee basis, as follows:

This fee includes the following:

1. Labor and materials
2. Equipment transport to and from site
3. Logistics: Travel and lodging to be billed at cost with no mark-up.
4. Applicable taxes (exempt with certificate)

Scheduling & Kick-Off Meeting

The timing of work at your facilities and on specific units will be controlled by purchase orders issued by The New York Times. Upon approval and notice to proceed, we suggest that we jointly hold a kick-off meeting to include your facility managers and your engineer to discuss project logistics and timing of treatment for individual projects. By doing so we can fully consider mobilization, testing, operations and occupancy issues (such as weekend, off hours scheduling) to arrive at an overall plan for treatment. This will allow us to plan ahead for the availability of our treatment teams and batch production of coating. The schematic plan we jointly arrive at can then serve as a roadmap for the timing of work on batches of units.

Assumptions, Exclusions and Other Conditions

This proposal assumes the following:

1. This pricing proposal is for the project in its entirety. Ener.co can provide a separate fee proposal for treatment of these units separately upon request per the project pricing schedule.
2. Payment schedule: to be determined;
3. Total project duration is estimated at less than one week (assumes unrestricted access);
4. All work will be completed during designated hours as determined jointly by our team and your engineering personnel;
5. On site access to electricity and water to be provided by the client;
6. Any service not listed is not included;
7. Special equipment storage and temporary staging is not included and not anticipated;
8. Job site security is not included;
9. Work will be performed without interruption;
10. This proposal is good for 30 days from the date of this letter

Nick, this proposal is flexible and we are willing to amend it as necessary to meet your needs. We look forward to your response.

Sincerely,



Don Yeganeh, PE, CMVP
Chief Energy Engineer, Ener.co

Cc: Mr. James Lynn, New York Times
Mr. Tony Garbacki, New York Times
Mr. Patrick M. Rathje, Ener.co
Ms. Kristine Burke, Ener.co
Mr. Patrick Manian, Ener.co

TERMS AND CONDITIONS – QUOTED SERVICE

“Company” shall mean Ener.co, LLC dba Ener.co.

1. Acceptance; Agreement. These terms and conditions are an integral part of Company’s offer and form the basis of any agreement (the “Agreement”) resulting from Company’s proposal (the “Proposal”) for the services (the “Services”) on equipment listed in the Proposal (the “Covered Equipment”). **COMPANY’S TERMS AND CONDITIONS ARE SUBJECT TO PERIODIC CHANGE OR AMENDMENT.** The Proposal is subject to acceptance in writing by the party to whom this offer is made or an authorized agent (“Customer”) delivered to Company within 30 days from the date of the Proposal. If Customer accepts the Proposal by placing an order, without the addition of any other terms and conditions of sale or any other modification, Customer’s order shall be deemed acceptance of the Proposal subject to Company’s terms and conditions. If Customer’s order is expressly conditioned upon the Company’s acceptance or assent to terms and/or conditions other than those expressed herein, return of such order by Company with Company’s terms and conditions attached or referenced serves as Company’s notice of objection to Customer’s terms and as Company’s counter-offer to provide Services in accordance with the Proposal and the applicable Company terms and conditions in effect at the time of delivery or acceptance of the Services. If Customer does not reject or object in writing to Company within 10 days, the Company’s counter-offer will be deemed accepted. Customer’s acceptance of the Services by Company will in any event constitute an acceptance by Customer of Company’s terms and conditions. In the case of a dispute, the applicable terms and conditions will be those in effect at the time of delivery or acceptance of the Services. This Agreement is subject to credit approval by Company. Upon disapproval of credit, Company may delay or suspend performance or, at its option, renegotiate prices and/or terms and conditions with Customer. If Company and Customer are unable to agree on such revisions, this Agreement shall be cancelled without any liability, other than Customer’s obligation to pay for Services rendered by Company to the date of cancellation.

2. Services Fees and Taxes. Fees for the Services (the “Service Fee(s)”) shall be as set forth in the Proposal and are based on performance during regular business hours. Fees for outside Company’s normal business hours and any after-hours services shall be billed separately according to then prevailing overtime or emergency labor/labour rates. In addition to the stated Service Fee, Customer shall pay all taxes not legally required to be paid by Company or, alternatively, shall provide Company with acceptable tax exemption certificates. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due.

3. Payment. Payment is due upon receipt of Company’s invoice or upon the terms outlined in a signed Company proposal letter. Company reserves the right to add to any account outstanding for more than 30 days a service charge equal to the lesser of the maximum allowable legal interest rate or 1.5% of the principal amount due at the end of each month. Customer shall pay all costs (including attorneys’ fees) incurred by Company in attempting to collect amounts due or otherwise enforcing these terms and conditions. “Payment shall be made in accordance with the following schedule: (i) 50% (\$114,086) upon the signing of the Agreement by both parties; (ii) 25% (\$57,043) upon completion of 50% of the Services; and (iii) 25% (\$57,043), plus additional tenting/heating costs (not to exceed \$10,000) upon 100% completion of the Services to Customer’s satisfaction.”

4. Customer Breach. Each of the following events or conditions shall constitute a breach by Customer and shall give Company the right, without an election of remedies, to terminate this Agreement or suspend performance by delivery of written notice declaring termination, upon which event Customer shall be liable to the Company for all Services furnished to date and all damages sustained by Company (including lost profit and overhead): (1) Any failure by Customer to pay amounts when; or (2) any general assignment by Customer for the benefit of its creditors, or if Customer becomes bankrupt or insolvent or takes the benefit of any statute for bankrupt or insolvent debtors, or makes or proposes to make any proposal or arrangement with creditors, or if any steps are taken for the winding up or other termination of Customer or the liquidation of its assets, or if a trustee, receiver, or similar person is appointed over any of the assets or interests of Customer; (3) Any representation or warranty furnished by Customer in connection with this Agreement is false or misleading in any material respect when made; or (4) Any failure by Customer to perform or comply with any material provision of this Agreement. “Any failure by Company to perform or comply with any material provision of this Agreement shall constitute a breach by Company and shall give Customer the right, without an election of remedies, to terminate this Agreement by delivery of written notice, upon which event Company shall be liable to Customer for damages sustained by Customer.”

5. Performance. Company shall perform the Services in accordance with industry standards generally applicable in the area under similar circumstances as of the time Company performs the Services. Company is not liable for any claims, damages, losses, or expenses, arising from or related to work done by or services provided by individuals or entities that are not employed by or hired by Company. Company may refuse to perform any Services or work where working conditions could endanger property or put at risk the safety of people. Unless otherwise agreed to by Customer and Company, at Customer’s expense and before the Services begin, Customer will provide any necessary access platforms, catwalks to safely perform the Services in compliance with OSHA or state industrial safety regulations.

6. Exclusions. Unless expressly included in the Proposal, the Services do not include, and Company shall not be liable for, any of the following:

- (a) Any guarantee of room conditions or system performance;
- (b) Inspection, operation, maintenance, repair, replacement or performance of work or services outside the Services;
- (c) Damage, repairs or replacement of parts made necessary as a result of the acts or omission of Customer or any Event of Force Majeure;
- (d) Any claims, damages, losses, or expenses, arising from or related to conditions that existed in, on, or upon the premises before the effective date of this Agreement (“Pre-Existing Conditions”) including, without limitation, damages, losses, or expenses involving a Pre-Existing Condition of building envelope issues, mechanical issues, plumbing issues, and/or indoor air quality issues involving mold/mould and/or fungi; and
- (e) Replacement of refrigerant is excluded, unless replacement of refrigerant is expressly stated as included with the Proposal.

7. Limited Warranty. Company warrants that: (a) the material manufactured by Company and furnished hereunder is free from defects in material and manufacture under normal use and service, subject to the conditions and time periods set forth herein, and (b) the labor/labour portion of the Services have been properly performed, subject to the conditions and time periods set forth herein (the “Warranty”). Company’s exclusive and sole obligation shall be limited to furnishing replacement for any Company coating which our inspection shows to be defective. Defects must be reported to Company within the Warranty period. Company’s obligation under the Warranty is limited to repairing or replacing the defective coating at its option and to correcting any improperly performed labor/labour. No liability whatsoever shall attach to Company until the Services have been paid for in full. This limited warranty does not cover the cost of labor for any adjustments or service calls unrelated to defective coating. This limited warranty does not apply if the product has been subjected to misuse, misapplication, abuse, neglect, accident or alteration.

THIS EXPRESS LIMITED WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OR MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE, WHICH ARE HEREBY EXCLUDED. ENER.CO SHALL NOT UNDER ANY CIRCUMSTANCES BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES FROM ANY CAUSE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, COMMERCIAL PROFITS, OR CUSTOMER GOODWILL.

8. Indemnity. Company and Customer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of the indemnifying party, and/or its respective employees or authorized agents in connection with their activities within the scope of this Agreement. Neither party shall indemnify the other against claims, damages, expenses, or liabilities to the extent attributable to the acts or omissions of the other party. If the parties are both at fault, the obligation to indemnify shall be proportional to their relative fault. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

9. Limitation of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE (INCLUDING WITHOUT LIMITATION REFRIGERANT LOSS, PRODUCT LOSS, LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY OR FACTS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY DAMAGES RESULTING FROM MOLD, FUNGUS, BACTERIA, MICROBIAL GROWTH, OR

OTHER CONTAMINATES OR AIRBORNE BIOLOGICAL AGENTS.

10. Asbestos and Hazardous Materials. Company's services expressly exclude any identification, abatement, cleanup, control, disposal, removal or other work connected with asbestos or other hazardous materials (collectively, "Hazardous Materials"). Should Company become aware of or suspect the presence of Hazardous Materials, Company may immediately stop work in the affected area and shall notify Customer. Customer will be responsible for taking any and all action necessary to correct the condition in accordance with all applicable laws and regulations.

Customer shall be exclusively responsible for any claims, liability, fees and penalties, and the payment thereof, arising out of or relating to any Hazardous Materials on or about the premises, not brought onto the premises by Company. Company shall be required to resume performance of the services only when the affected area has been rendered harmless.

11. Insurance. Company agrees to maintain the following insurance during the term of the contract with limits not less than shown below and will, upon request from Customer, provide a Certificate of evidencing the following coverage:

Commercial General Liability	\$2,000,000 per occurrence
Automobile Liability	\$2,000,000 CSL
Workers Compensation	Statutory Limits

If Customer has requested to be named as an additional insured under Company's insurance policy, Company will do so but only subject to Company's manuscript additional insured endorsement under its primary Commercial General Liability policies. In no event does Company waive its right of subrogation

12. Force Majeure. Company's duty to perform under this Agreement is contingent upon the non-occurrence of an Event of Force Majeure. If Company shall be unable to carry out any material obligation under this Agreement due to an Event of Force Majeure, this Agreement shall at Company's election (i) remain in effect but Company's obligations shall be suspended until the uncontrollable event terminates or (ii) be terminated upon ten (10) days notice to Customer, in which event Customer shall pay Company for all parts of the Services furnished to the date of termination. An "Event of Force Majeure" shall mean any cause or event beyond the control of Company. Without limiting the foregoing, "Event of Force Majeure" includes: acts of God; acts of terrorism, war or the public enemy; flood; earthquake; lightning; tornado; storm; fire; civil disobedience; pandemic insurrections; riots; labor disputes; labor or material shortages; sabotage; restraint by court order or public authority (whether valid or invalid), and action or non-action by or inability to obtain or keep in force the necessary governmental authorizations, permits, licenses, certificates or approvals if not caused by Company and the requirements of any applicable government in any manner that diverts either the material or the finished product to the direct or indirect benefit of the government.

13. General. Except as provided below, to the maximum extent provided by law, this Agreement is made and shall be interpreted and enforced in accordance with the laws of the state or province in which the Services are performed. Any dispute arising under or relating to this Agreement that is not disposed of by agreement shall be decided by litigation in a court of competent jurisdiction located in the state or province in which the Services are performed. To the extent the premises are owned and/or operated by any agency of the Federal Government, determination of any substantive issue of law shall be according to the Federal common law of Government contracts as enunciated and applied by Federal judicial bodies and boards of contract appeals of the Federal Government. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. This Agreement contains all of the agreements, representations and understandings of the parties and supersedes all previous understandings, commitments or agreements, oral or written, related to the subject matter hereof. Except as provided for Service Fee adjustments, this Agreement may not be amended, modified or terminated except by a writing signed by the parties hereto. No documents shall be incorporated herein by reference except to the extent Company is a signatory thereon. If any term or condition of this Agreement is invalid, illegal or incapable of being enforced by any rule of law, all other terms and conditions of this Agreement will nevertheless remain in full force and effect as long as the economic or legal substance of the transaction contemplated hereby is not affected in a manner adverse to any party hereto. Customer may not assign, transfer, or convey this Agreement, or any part hereof, without the written consent of Company. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement may be executed in several counterparts, each of which when executed shall be deemed to be an original, but all together shall constitute but one and the same Agreement. A fully executed facsimile copy hereof or the several counterparts shall suffice as an original. No modifications, additions or changes may be made to this Agreement except in a writing signed by Company.

14. Equal Employment Opportunity/Affirmative Action Clause. Company complies fully with Executive Order 11246, as amended, and the applicable regulations contained in 41 C.F.R. Parts 60-1 through 60-60, 29 U.S.C. Section 793 and the applicable regulations contained in 41 C.F.R. Part 60-741; and 38 U.S.C. Section 4212 and the applicable regulations contained in 41 C.F.R. Part 60-250 in the United States and with Canadian Charter of Rights and Freedoms Schedule B to the Canada Act 1982 (U.K.) 1982, c. 11 and applicable Provincial Human Rights Codes and employment law in Canada.