

**TOWN OF NORTH HEMPSTEAD
220 PLANDOME ROAD
MANHASSET, NEW YORK 11030**

REQUEST FOR PROPOSALS FOR

**NOTICE TO ENERGY SERVICES COMPANIES
GENERAL INFORMATION AND REQUEST FOR
PROPOSALS FOR MUNICIPAL ENERGY PROJECT**

PROPOSAL DUE DATE:

JUNE 17, 2013 at 3:00 PM

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NOTICE

TOWN OF NORTH HEMPSTEAD

NOTICE TO ENERGY PERFORMANCE SERVICES COMPANIES

**GENERAL INFORMATION AND REQUEST FOR PROPOSALS
FOR AN ENERGY PERFORMANCE CONTRACT
INCLUSIVE OF ENERGY EFFICIENT BUILDING UPGRADES**

The Town of North Hempstead, New York is issuing this Request for Proposals (RFP) for the selection of an Energy Performance Contractor (EPC) to perform facility upgrades. Proposals must be received at the Municipal Offices *no later than June 17, 2013 at 3 pm*. Late proposals will be returned unopened. You are invited to submit a proposal in accordance with this RFP for the following Project:

**MUNICIPAL IMPLEMENTATION OF
ENERGY CONSERVATION MEASURES
ON A PERFORMANCE CONTRACTING BASIS AT THE
TOWN OF NORTH HEMPSTEAD, NEW YORK.**

All proposals should be addressed to:

Ms. Maria Gomes
Procurement Supervisor
North Hempstead Town Hall
Purchasing Division
220 Plandome Road
Manhasset, New York 11030

*Please see note below for proper submission information.

Proposals may be mailed or hand delivered. No proposal will be accepted by electronic mail or facsimile. **Note: The mailing address for the proposals is the Town of North Hempstead, North Hempstead Town Hall, Purchasing Division, 220 Plandome Road, Manhasset, New York 11030. The address where the proposals can be dropped off at the Town of North Hempstead, North Hempstead Town Hall, Purchasing Division, 220 Plandome Road, Manhasset, New York 11030. All proposals must be received by the Town no later than the designated proposal opening date and time, regardless of the manner of submission.**

The Town of North Hempstead reserves the right to amend this RFP for any reason or based upon questions and issues raised at the pre-proposal meeting and/or received in writing during the proposal process. Participating Energy Performance Contractors represented at the pre-proposal conference will receive any such amendments in writing. If you have any questions concerning this RFP, please contact

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

David Newman at ECG Engineering, PC, 222 Middle Country Road, Suite 318, Smithtown, New York 11787 at telephone number (631) 360-0006.

This RFP does not commit the Municipality to award a contract, pay any cost incurred in the preparation of a proposal in response to this RFP, or to procure or contract for services. The Municipality intends to award a contract on the basis of the best interest and advantage to the Municipality, and reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with all qualified Proposers/Respondents (hereinafter referred to interchangeably as "Proposer" and/or "Respondent"), or to cancel this RFP in part or in its entirety, if it is in the best interest of the Municipality to do so. The Municipality may select as the successful Proposer that proposal which, in the Municipality's sole discretion and with whatever modifications the Municipality and the Proposer may mutually agreed upon, best meets the Municipality's requirements whether or not that proposal is the lowest priced. No Proposer shall have any legal, equitable, or contractual rights of any kind arising out of its submission of a proposal except as and to the extent that the Municipality, in its sole discretion, shall enter into a contract with the Proposer that it selects as the successful Energy Performance Contractor.

All contracts submitted as a result of this Request for Proposals are subject to the review and approval of the Municipality's legal counsel.

**TOWN OF NORTH HEMPSTEAD
220 PLANDOME ROAD
MANHASSET, NEW YORK 11030**

PROPOSAL INSTRUCTIONS AND CONDITIONS

**REQUEST FOR PROPOSALS FOR AN ENERGY PERFORMANCE CONTRACT
INCLUSIVE OF ENERGY EFFICIENT BUILDING UPGRADES
AT THE TOWN OF NORTH HEMPSTEAD, NEW YORK**

I. PROJECT NOTICES

Please note that this RFP requires adherence to the NY Energy Law § 9-103: Energy performance contracts, as amended and Section 2 of the General Municipal Law, which sets forth the following requirements:

- The amortization period shall not exceed the term of the energy performance contract;
- The Energy Performance Contractor must guarantee the recovery of contract costs from energy savings over the term of the energy performance contract, which shall not exceed 35 years; and in accordance with subdivision 1 of Section 9-103 of the NY Energy Law § 9-103: Energy performance contracts.
- The development and approval of an energy performance contract in accordance with subdivision 2, 4, 5, 6 & 7 of Section 9-103 of the NY Energy Law § 9-103: Energy performance contracts.

Respondents shall be aware of and responsible for complying with all laws, rules, regulations and orders, as amended, that affect the scope of work to be performed pursuant to this Request for Proposals.

The Municipality reserves the right to accept this Proposal by item or as a whole, or at its discretion, reject any or all Proposals and to re-advertise for new proposals, if in its opinion the best interest of the Municipality is promoted. The Municipality reserves the right to waive any informality in any Proposal and to change the quantity or delete any item from the Proposal.

Any Proposal submitted cannot be withdrawn for ninety (90) days subsequent to the date of the RFP due date.

Respondents must become fully acquainted and familiar with the conditions as they exist and the character of the operations to be carried on under the proposed contract, and make such on-site investigations as it deems fit so that the Respondent may fully understand the facilities, difficulties and restrictions affecting the execution of the work under these specifications.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

Respondents shall thoroughly examine and be familiar with all the specifications. The failure or omission of any Proposer to receive or examine the specifications, or to visit the site and become acquainted with the conditions there existing, shall in no way relieve the Proposer from any obligations with respect to the performance of the proposed contract and the contemplated work therein, for the consideration set forth in this RFP.

Failure to complete and to follow the RFP format provides grounds for disqualification.

As with any capital construction project, the EPC should comply with the New York State Energy Law Article 9 – “Energy Performance Contracts In Connection With Public Buildings And Facilities on the development and implementation of an energy performance contract”.

II. INTRODUCTION AND BACKGROUND

The objective of this RFP is to solicit proposals for a project to assist the Municipality to become as energy efficient as possible through installation of energy conservation measures, upgrades, and implementation of optimal operation and maintenance procedures. The Municipality wishes to implement the proposed comprehensive energy project on an energy performance contract basis. (See State Energy Law, Article 9, attached as **Appendix A**). Only projects which have a return investment (of less than 35 years), and reduce real energy consumption, and are funded under a guaranteed performance basis will be considered.

The Project Goals include, but are not limited to: (1) improving comfort conditions and indoor air quality; (2) replacing and/or upgrading old and/or inefficient systems; (3) improving utilization of technology; (4) upgrading air conditioning systems where applicable; (5) collecting and managing building/facility information in “real time”; (6) minimizing financial and technical risk; (7) establishing current base usage for energy (oil, gas and electricity); and (8) reducing energy usage.

Under this solicitation, it is expected that only one Energy Performance Contractor will be selected to perform all of the work for the Municipality. The Municipality will consider energy performance contract proposals based on either a guaranteed savings agreement or a shared savings agreement. For either form of agreement, Section 9-103(2) of the Energy Law requires an executory clause under which payments are subject to annual appropriations. It is expected that savings or guarantees provided by the Energy Performance Contractor selected will fully offset the project costs involved for the Municipality.

It is currently planned that the Municipality will purchase, finance, and own any new equipment installed as a result of this Project. The Municipality reserves the right to consider its options relative to the purchase, finance, and ownership of any new equipment installed. Proposals are expected to include the Proposer's services in connection with such arrangements. All services shall be stated separately. Proposers may wish to propose alternative arrangements (as long as they are permitted under New York State laws and regulations) for acquisition, financing, and ownership of such equipment.

Proposals should include financing provided directly by the EPC or through a third party. All guarantees shall be first party guarantees with the EPC as first party. Proposers must demonstrate how the project

proposed is guaranteed. *Municipality will only consider contract proposals based on a first party guaranteed savings agreement. The firm proposing any guaranteed savings must directly maintain guarantee liability. No third party guarantees will be accepted.* The Municipality further reserves the right to finance and/or refinance any energy performance contract, in part or in whole, as may be in the best interest of the Municipality to obtain the lowest cost possible. Such determination shall be at the sole discretion of the Municipality.

III. REQUIRED PROCEDURES

Communication Between Municipality and Respondent

All communications including questions to Municipality relating to this RFP shall be in writing to David Newman, Vice President of Engineering, ECG Engineering, PC., 222 Middle Country Road, Suite 318, Smithtown, NY 11787 through e-mail at dnewman@ecgengineering.com or fax at (631) 360-0277. ECG will provide written answers to questions to all Respondents.

The Municipality reserves the right to amend the RFP based on questions and issues raised prior to the Proposal Due Date. The Municipality will provide such amendments in writing to all Respondents.

Walk-Through and Facility Conditions

Respondents shall be given access to walk through the municipal facilities for the purpose of gathering information and conducting a preliminary assessment of the energy efficiency opportunities available at the municipality, including a list of the energy efficient measures to be implemented with the estimated implementation cost and the energy cost savings. This information shall be included in the Proposal.

Generally, walk throughs must be performed during hours when municipal facilities are not in use or times as mutually agreed upon with municipality officials. Specific arrangements for building walk throughs can be made by contacting Ms. Janine Glaser, Assistant to Councilman Thomas Dwyer at 516-869-7702.

Respondents must be fully familiar with the conditions as they exist and the character of the operations required as part of the Project and make such on-site investigations as they deem fit, so that the Respondents may fully understand the facilities, difficulties, and restrictions affecting the execution of the work required pursuant to the Project.

Respondents shall thoroughly examine and be familiar with the terms, instructions, and specifications included in this RFP, and any other information necessary to interpret this RFP and submit a responsive Proposal.

Proposal Submission

Proposals must be received on or before on the Proposal Due Date. All timely proposals will be considered to have been received on the Proposal Due Date, regardless when a proposal is submitted. Late proposals will be returned unopened.

Respondent must submit an original and four (4) copies of the proposal to the Municipal Official identified in section VI. To prevent opening by unauthorized individuals, the proposal should be identified on the envelope or other wrapper as "Proposal, Energy Performance Project for The Town of North Hempstead, New York."

Respondent shall provide proposal security with the proposal, as required in Section IV.C.

By submitting a proposal, Respondent shall warrant and represent that it has become fully familiar with the conditions and operations related to the Project, including but not limited to the location, condition, layout and nature of the Work required to performed, the site, generally prevailing climatic conditions in the area, anticipated labor supply and cost, availability and cost of materials, tools and equipment, the character, quality and quantity of surface and sub-surface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, the specific conditions under which the Work is to be performed, and all matters which may in any way affect the Work or its performance, and has examined the RFP and all information contained herein. The Respondent further represents that as a result of such examinations and investigations, it thoroughly understands the Project and its intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations, and rules as that apply to the Work, and that the Respondent will abide by same. The failure or omission of any Respondent to receive or examine the specifications, or to visit the site and become acquainted with the conditions there existing, shall in no way relieve the Respondent from any obligations relating to the performance of the Project Work, or any contract related to the Project. No subsequent claims will be recognized for additional costs of labor, materials, appliances, equipment, etc., or for difficulties encountered that could have been foreseen had such an examination been made.

Proposal Review

The Municipality plans to review all valid and timely proposals, using the evaluation criteria defined in Section V. Failure to meet the minimum Energy Performance Contractor qualifications set forth in Section V and follow the Proposal format in Section VII shall be grounds for disqualification. Nevertheless, the Municipality reserves the right to waive any informality in any proposal and to change the quantity or delete any item from the proposal.

The Municipality reserves the right to accept this Proposal by component or part or whole or, at the Municipality's discretion, reject any or all proposals and to re-advertise for new proposals, if in its opinion the best interests of the Municipality are promoted.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

This RFP does not commit the Municipality to award a contract, pay any cost incurred in the preparation of a Proposal, Investment Grade Audit, Comprehensive Energy Audit, or to procure or contract for services.

Architect/Engineer Services

The Energy Performance Contractor shall not be required to perform professional services that constitute the unlawful practice of architecture or engineering. Instead, the Energy Performance Contractor shall cause such services, or any required certifications to be provided by ECG Engineering, at the cost and expense of the Energy Performance Contractor. Cost shall be 5% of construction costs charged by Proposer for projects over \$3 million, 7% of construction costs for projects \$3 million - \$1 million, or 10% of construction costs for projects less than \$1 million in accordance with the following fee schedule:

- 25% upon Municipality signing contract with ESCO
- 25% upon submittal of plans and specifications
- 25% upon completion of plans and specifications
- 15% upon substantial completion
- 10% upon final completion

Accordingly, the Energy Performance Contractor will retain the services of ECG Engineering, P.C. as a representative of Municipality, to prepare and submit all necessary design work to the Municipality as required. Attachment 1, Scope 1, Scope of Engineering Services and Attachment 2, Scope of Construction Services delineates the minimum terms and conditions of ECG Engineering services to be provided to the Municipality. The Energy Performance Contractor shall incorporate the terms and conditions thereof to any agreement between the Energy Performance Contractor and ECG Engineering. ECG Engineering shall be aware of and bound by the terms and conditions of the services as provided by Attachment 1 and Attachment 2.

In addition to any other legal requirements, pursuant to the General Municipal Law, and NY Energy Law § 9-103, as amended concerning energy performance contracts, the architect and/or engineer of record shall certify that he or she is free from financial interest in the energy performance contractor which conflicts with the proper completion of the audit and any design work associated with the energy performance contract and that full disclosure has been made to the Municipality detailing all financial compensation received from the energy performance contractor.

IV. GENERAL INFORMATION

Proposals are requested for the provision of services for the reduction of energy consumption and for maintenance and operational services on a performance contracting basis at school buildings and facilities owned by the Municipality. Specifically, the Energy Performance Contractor selected as a result of this RFP will be expected t

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

A. **Project Parameters**

Provide comprehensive energy services for buildings and facilities serving the Municipality, including but not limited to:

- Performance of a Comprehensive Energy Audit.
- Services in connection with the design and specification of equipment and systems to be used in providing energy efficiency services.
- Procurement and installation of new equipment and refurbishing existing equipment. All new and refurbished equipment must be consistent with the existing equipment at the facility.
- Commissioning of the equipment, as per USGBC-LEED and ASHRAE Guideline I-1996 standards.
- Preventive and emergency maintenance and servicing of the equipment installed only through warranty period and no reductions in staffing.
- Staff training.
- Services in connection with arrangement of financing of the equipment.
- Energy savings performance guarantees.
- Identification of available financial incentives or rate reductions from companies supplying oil, gas, electricity, or transmission or distribution service for gas or electricity.
- The energy services company must work cooperatively with facility management and the Municipality in coordinating this project.
- All paperwork necessary for obtaining any necessary permits and assistance in obtaining any eligible form of energy aid or incentives available.
- The ESCO has the obligation to determine if hazardous materials/wastes will be disturbed or handled/disposed of in performing the project. Hazardous materials/wastes includes, but is not limited, to asbestos, lead paint, mercury and PCBs. If hazardous materials/wastes must be disturbed, removed and/or remediated and/or or disposed of, the ESCO must advise the Municipality beforehand and perform such activities in accordance with all federal and State regulations and pay for the cost of said activities out of the project savings.
- Operating and Maintenance (O&M) costs may be included in cash flow or ECM proposals. Estimates of Operating and Maintenance cost savings must be listed individually for each ECM and clearly indicate the source and basis of such savings.
- Interest or Discount Rates shall be assumed to be 4.0%.
- Financing Term shall be assumed to be **15 years**.
- Two percent (2%) escalation of energy cost per year is permitted.
- No escalation of project costs or maintenance costs.
- List estimate of available rebates. Subtract estimated rebates from Total Project Cost to determine Net Project Cost upon which lease payments are based.
- Base price for oil should be \$2.80 per gallon or the actual market price paid by the Municipality over the last 12 months, whichever is less.
- Heating season should be generally assumed to be: September 15th to May 31st.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

- Cooling season, as applicable should be generally assumed to be: June 1 to September 30.
- Actual baseline operation hours must be determined by the ESCO for each building and area based on functional purpose of the building and Municipality's hours of operation.
- Assume one year of interest accrual for the construction period in your financial Pro-Forma.
- You may use the Municipality's 2011-2012 **calendar years** as the baseline for your energy usage in the EPC project response. In order to omit irregular usage patterns during Superstorm Sandy, the yearly energy use shall be based on 12 months beginning on July 1st 2011 and ending on June 30th 2012.
- Please include Measurement and Verification (M&V) costs for 3 years as part of your proposal. M&V methods must be in accordance with the North American Energy Measurement and Verification Protocol (NAEMVP) as appropriate. Indicate in your RFP response the M&V Option being employed for each measure. At no time may measures be simply noted as "stipulated savings".
- Please break out all proposed Energy Conservation Measures, ECM's (electric or thermal) separately, noting savings and costs for each individually.

B. Scope of Work

Identify the most effective measures that can be taken to reduce consumption and costs for heating, cooling, ventilation, lighting, water and sewer treatment and usage, solid waste handling systems and transportation, metering systems, traffic and street lighting, water heating and other energy uses in each facility. The proposal should address consumption of all energy sources including oil, propane, natural gas and electricity. Measures may involve controlling, modifying, adding or replacing equipment and systems. Establish consumption levels for all current services as a baseline for measurement of savings. The Municipality desires to undertake the largest possible project without deficit or negative cash flow at any time during the project term, as opposed to a maximization of cash flows.

The technical strategies addressed by the proposal must include, but are not limited to, the following items as applicable:

- Lighting and lighting controls, including fixture replacement, occupancy sensors and day lighting.
- Street area lighting and lighting controls, including fixture replacement.
- Traffic signaling, flashers and road signage.
- Water distribution pump stations, potable water treatment systems and delivery infrastructure.
- Wastewater distribution and treatment systems and solid waste handling systems.
- Water distribution leak detection and automated remote metering.
- All major heating and cooling equipment, including, HVAC, air handling and related insulation.
- Installation of computerized environmental control and energy management systems and calibration and repair of existing temperature control systems.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

- Envelope components such as roofs, doors, windows, insulation and weatherization.
- Demand limiting strategies, including cogeneration and scheduling of process equipment, if appropriate.
- Assistance with the procurement of electric, gas, oil, biofuels and other utilities.
- In a building served by a steam system, the condition of the system, traps, condensate, pumps, etc.
- Roof replacements.
- Photovoltaic systems installation
- Geothermal systems installation.

All applicable codes and standards must be adhered to. Existing ventilation code requirements not met shall be identified as such. Failure to do so may subject RFP submission to be non-complete.

Note: The replacement of equipment or disturbance of materials is the ESCOs responsibility and must be performed in a manner that prevents the release of asbestos, lead, PCB's, mercury, and/or other hazardous materials and provide for their proper disposal. The Municipality requires a chain of custody of all materials from source removal to disposal.

Each building, identified in this solicitation must be evaluated for any potential savings.

Building square footages, Contact Information and Energy Consumption/Cost Data, are included in the various appendices.

Proposals shall guarantee recovery of contract costs from energy savings realized by the Municipality during the term of the energy performance contracts, which shall not exceed 18 years.

C. **Bonding and Insurance Requirements**

Proposal Security

Each Respondent shall submit with its proposal assurance that its proposal will remain valid for at least ninety (90) days after the proposal due date. Such assurance shall be equal to ten percent (10%) of the total amount of the Project in Respondent's proposal, and shall be in the following form:

- A standard bid bond issued by a qualified insurer that has an A.M. Best rating of "secure" and A-VII, or better, and is licensed in NY State.
- Cashier's check drawn on a New York bank.

In the event the Respondent attempts to withdraw the proposal, or the Energy Performance Contractor fails to execute a contract within the timeline provided in the RFP, the proposal security shall be forfeited as liquidated damages to the Municipality.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

Insurance Requirements:

The Energy Performance Contractor, at its sole cost and expense, shall provide the Municipality with the following insurance coverage whether the operations to be covered thereby are through the Energy Performance Contractor or by a Subcontractor and/or Architect/Engineer or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

Commercial General Liability insurance from a New York State admitted carrier covering the liability of the Energy Performance Consultant including Contractual insurance defending, indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Contract with a combined single limit (bodily injury/property damage) of TWO MILLION (\$2,000,000.00) DOLLARS and each occurrence of ONE MILLION (\$1,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.

Professional Errors and omissions insurance in the minimum of ONE MILLION (\$1,000,000.00) DOLLARS.

Automobile Liability combined single limit of ONE MILLION (\$1,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.

Excess Liability in the form of umbrella form of FOUR MILLION (\$4,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.

Worker's Compensation Insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to the State Workers' Compensation Law §57(2).

Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to State Workers Compensation Law 220(2).

Valuable Papers insurance in the minimum amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

Builder's Risk Coverage Amount sufficient to repair or replace the work, such amount to be approved by the Municipality, the Municipality, written on a Builder's Risk Completed Value Form equivalent to at least I.S.O. form CF 11 02 (ED. 05/77).

Such insurance shall indemnify and save harmless the Municipality in law from all suits, actions or proceedings of every description, in law or equity, brought against the Municipality, or any officer or officers, agents, servants, servants thereof, for or on account of any injuries or damages received or sustained by any person, structure, or property, by or from the proposer, his servant or agent, in the prosecution of the work, by or in consequence of any act or commission or omission of the bidder, his servants or agents and conditioned as well for the payment of all claims for materials and all laborers' wages by the bidder.

The Energy Performance Contractor shall require the Architect and/or Engineer selected by the Town and compensated by the Energy Performance Contractor, to maintain the following minimum insurance coverage:

The Architect/Engineer shall maintain professional liability insurance (errors and omissions) in an amount no less than \$2,000,000, worker's compensation in amounts required by law, and general liability insurance (including owned, non-owned, and hired motor vehicles) in a single limit amount of no less than \$1,000,000.

Coverages shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment.

The insurance required to be procured by the Energy Performance Contractor shall be purchased from and maintained by an insurance carrier licensed to do business in the State of New York with an A.M. Best rating of "secured" or better. The Energy Performance Contractor must submit insurance to the Municipality for its approval prior to the commencement of any work.

All insurance coverage to be provided by the Energy Performance Contractor, subcontractors and the Architect/Engineer shall include a cancellation notice to the Municipality of at least sixty days.

All insurance coverage to be provided by the Energy Performance Contractor shall name the Municipality, its officers, agents, employees and volunteers as additional insureds, on a primary non-contributory basis. Likewise, the Architect and/or Engineer's insurance coverage shall name the Municipality, its officers, agents, employees and volunteers as additional insureds. With respect to each policy in which the Municipality, its officers, agents employees and volunteers are required to be named as additional insureds, the Energy Performance Contractor shall provide a policy endorsement (not a certificate of insurance) to document such coverage. Additionally, the insurance coverage to be provided by the Energy Performance Contractor shall state that the Energy Performance Contractor's coverage shall be the primary coverage for the Energy Performance Contractor's work.

In the event that any of the insurance coverage to be provided by the Energy Performance Contractor and/or Architect/Engineer to the Municipal contains a deductible, the Energy Performance Contractor and/or Architect/Engineer shall indemnify and hold the Municipality and the Architect/Engineer harmless from the payment of such deductible, which deductible shall in all circumstances remain the sole obligation and expense of the Energy Performance Contractor.

The Energy Performance Contractor acknowledges that its failure to obtain or keep current the insurance coverage required and/or its failure to ensure that its subcontractors and/or Architect/Engineer maintain the required coverage, shall constitute a material breach of contract and subjects the Energy Performance Contractor to liability for damages, including but not limited to direct, indirect, consequential, special and such other damages the Municipality sustains as a result of such breach. In addition, the Energy Performance Contractor shall be responsible for the indemnification to the Municipality of any and all costs associated with the aforementioned lapse in coverage, including but not limited to reasonable attorneys' fees and expenses.

The Energy Performance Contractor shall require all subcontractors to carry similar insurance coverages and limits of liability as set forth herein and adjusted to the nature of subcontractors' operations and submit same to the Municipality for approval prior to start of any work. In the event the Energy Performance Contractor fails to obtain the required certificates of insurance and/or policy endorsements from its Subcontractors and/or Architect/Engineer, and a claim is made or suffered, the Energy Performance Contractor shall indemnify, defend, and hold harmless the Municipality, its board, officers, agents or employees from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation that will be provided for in the Contract.

The Energy Performance Contractor assumes responsibility for all injury or destruction of the Energy Performance Contractor's materials, tools, machinery, equipment, appliances, shoring, scaffolding, false and form work, and personal property of Energy Performance Contractor's employees from whatever cause arises. Any policy of insurance secured covering the Energy Performance Contractor or Subcontractors leased or hired by them and any policy of insurance covering the Energy Performance Contractor or Subcontractors against physical loss or damage to such property shall include an endorsement waiving the right of subrogation against the Municipality for any loss or damage to such property.

The Municipality in good faith may adjust and settle a loss with the Energy Performance Contractor's insurance carrier. The Energy Performance Contractor waives all rights against the Municipality, its board, officers, agents, employees and volunteers for damages caused by fire or other perils to the extent of actual recovery of any insurance proceeds under any insurance policy procured or other property insurance applicable to the Energy Performance Contractor's work.

Before commencement of its work, the Energy Performance Contractor, its Architect/Engineer, and its subcontractors shall obtain and pay for such insurance as may be required to comply with the contract documents requirements.

If the scope of the work involves the removal of asbestos or other hazardous materials, the following provision should be inserted:

In addition to the coverages required and under the same terms and requirements of such coverages, the Energy Performance Contractor shall provide hazardous material liability insurance as follows: \$1,000,000 occurrence/\$2,000,000 aggregate, including products and completed operations. Such insurance shall include coverage for the Energy Performance Contractor's operations including, but not

limited to, removal, replacement enclosure, encapsulation and/or disposal of asbestos, or any other hazardous material, along with any related pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. If a retroactive date is used, it shall pre-date the inception of the Contract. If motor vehicles are used for transporting hazardous materials, the Energy Performance Contractor shall provide pollution liability broadened coverage (ISO endorsement CA 9948) as well as proof of MCS 90. Coverage shall fulfill all requirements set for the herein and shall extend for a period of three (3) years following acceptance by the Municipality of the Certificate of Completion.

In the event that the Project involves removal of asbestos or other hazardous materials, the Energy Performance Contractor shall coordinate any asbestos/hazardous material testing and sampling with the Municipality's Environmental Consultant. All asbestos abatement work shall be performed in strict accordance w/ all applicable federal, state and local regulations but not limited to New York State Industrial Code 56 (NYS ICR 56), and all other agencies having jurisdiction. ESCO shall be responsible for obtaining all necessary variances prior to any abatement work taking place. All costs associated with such testing/sampling shall be the responsibility of the Energy Performance Contractor.

Under no circumstances shall the successful energy performance contractor limit its liability to the amount of its primary comprehensive general liability policy limits.

Project Bond

To support the requirements of removing all financial and technical risk for Municipality. The following areas must be addressed, but not limited to:

Your contractual documents;

Show proof of single project bond-ability of \$2,000,000, or 125% of proposed contract, whichever is higher. All bonds for this Project shall be issued by a qualified insurer that has an A.M. Best Rating of "secure" or better and a Rating of (A-)(VII) or better, and is licensed in New York State. All bonds shall be in a form satisfactory to the Municipal Attorney.

D. **Contract Financial Structure**

Structure the terms of the Municipality's obligation to pay for the services provided on a performance contracting basis and submit a suggested performance contract and if necessary, ancillary agreements that specifically meet the needs of the Municipality. Proposers may substitute an example of an executed performance contract with any ancillary agreements that would be the basis for negotiation of a contract with this Municipality. All contracts and ancillary documents are subject to the review modification and approval of the Municipality's legal counsel and shall incorporate the terms and conditions of this RFP, including the minimal terms and conditions of Appendix E attached hereto. Payments from the Municipality to the Energy Performance Contractor selected under the RFP must be based on guaranteed savings.

Proposer's attention is directed to Article 9 of the New York State Energy Law, governing energy performance contracting in connection with public buildings and facilities. All proposed energy performance contracts and other financing arrangements proposed must be capable of being implemented under the laws, rules and regulations of the State of New York.

Proposal shall list the costs for all (1) sub-contractors; (2) Energy Performance Contractor Project Management; and (3) overhead & profit. Such costs shall be stated separately for each measure.

The savings guarantee must be integrated into the financing to guarantee coverage of all Municipality costs each year during the term of the contracts, and for the entire Project.

Each Municipality's building identified in **Appendix B** of this solicitation must be evaluated for any potential savings. **Appendix B** also includes the square footage for each building. At the time of the pre-proposal conference or shortly thereafter, the Municipality will either provide copies of fuel, electric, oil or other utility bills as needed or provide the Energy Performance Contractor with letters of authorization allowing the Energy Performance Contractor to obtain such information directly from the utility companies. For proposal preparation, this may require up to two years of billing data. Proposers are expected to prepare a baseline and usage profile from this information.

Upon review of proposals received in response to this RFP, the Municipality expects to select a single Energy Performance Contractor to conduct a Comprehensive Energy Audit of the facilities to verify that the estimates in the proposal are valid. **There shall be no charge to the Municipality for the Comprehensive Energy Audit and any cost associated with the Audit and the Report.** If a viable project is identified, the Municipality expects to negotiate a performance contract through its legal counsel with the Energy Performance Contractor to provide for the implementation of the proposed Project.

E. **Conditions to be Maintained**

The following energy end use conditions must be maintained at the facility. Any efficiency measures proposed must allow for the maintenance of these conditions, as well as comply with State and all Local Code requirements:

- **Minimum Temperature:** Temperatures in occupied areas during the hours of 7:00 AM to 8:00 PM must be maintained at no less than 68 degrees F during the heating season from September 15th through May 31st
- **Maximum Temperature:** Temperatures in occupied areas during the hours of 7:00 AM to 8:00 PM, or during scheduled activities must be maintained at no more than 78 degrees F during the cooling season (where air conditioning equipment is located).
- **Water Heating:** Hot water for kitchen use must be supplied at a temperature between 140 and 160 degrees F for wash tank use and

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

between 180 and 190 degrees F for final rinse hot water. Domestic hot water must be delivered at a temperature between 100 and 115 degrees F.

- Indoor and Outdoor Lighting: State Code lighting level standards must be maintained.
- Air Changes/Ventilation Requirements: Within code at all times, including ASHRAE standards for fresh air ventilation.
- Existing ventilation code requirements not met shall be identified as such. Failure to do so will subject bid to be non-compliant.

The Municipality reserves the right to increase or decrease the minimum and maximum temperatures provided above.

F. Final Acceptance Requirements

The successful Respondent will conduct testing prior to acceptance.

In no case will Municipality acceptance be sooner than thirty (30) days after installation, initiation of service, and receipt of all required material and training defined herein. The term of the contract will not begin until vendor receipt of acceptance letter from the Municipality. The Respondent at no charge will provide all labor and material required to repair defects to the system during the acceptance period to the Municipality. Warranty and regular maintenance support will start after acceptance by Municipality.

Maintenance agreements must provide two (2) hour response to any service interruption problem from the time of notification of system outage or other major system failure that involves the loss or significant interruption or slowdown of any service to any municipal location. Full restoration needs to occur in no more than four (4) hours from notification.

Maintenance agreements must provide four (4) hour maximum response from the time of notification for a minor failure or intermittent failures that involve any service other than a loss of connectivity. If the day following notification of any problem that is not interrupting service is not a regular workday, the Respondent shall cause its personnel to be at the Municipality site by 8:00 am on the succeeding workday.

The vendor shall provide written documentation of the system and installation, including but not limited to:

- Test Results;
- Equipment specifications; and
- Authority over all sequence of operations; and
- Multiple licenses and software; and

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- Back-up copies of all software programming provided on non-magnetic media; and
- All documentation, maintenance manuals, and as-builts; and
- System configurations and equipment locations.

G. Project Phases

RFP Phase:

To be eligible to submit a proposal and Respondent must schedule walk throughs of the Municipality's facilities. Based on information gathered during the RFP phase, Respondent will provide a preliminary assessment of the energy efficiency opportunities available at all Municipality buildings identified in **Appendix B**, based on the information provided in this RFP, a tour of the facilities, and any additional information provided by the Municipality. Respondent must submit a list of the energy efficiency measures to be implemented under its proposal with the estimated implementation cost and the energy cost savings. **The estimated cost and cost savings must be submitted as part of the written proposal in the format specified in Section VII. Failure to include the same may be grounds for rejection of the proposal.**

The Energy Performance Contractor will be selected from the qualified Respondents based on the written proposal, interviews with top candidates, and a reference check, using evaluation criteria defined in Section V.

The Energy Performance Contractor will be responsible for the entire Project, but may use qualified subcontractors to perform component parts of the Project provided it receives written approval from the Municipality. If Respondent intends to use Subcontractors for the Project, the Respondent must include in its proposal full information regarding all proposed Subcontractors, as required by Section V, explaining the component parts of the Project on which each subcontractor is to be involved. The Energy Performance Contractor will remain responsible for the entire Project, including any portion performed by a subcontractor. All subcontractors must be approved by the Municipality.

The proposal must include a description for the performance and presentation of results of a Comprehensive Energy Audit for the municipal facilities identified in **Appendix B**. The selected Energy Performance Contractor will gather and analyze information and data and propose a Project to the Municipality in the form of a Comprehensive Audit Report that will reduce the Municipal's expenses for energy. As part of the Audit, the Energy Performance Contractor will conduct an on-site survey of the facilities and will interview appropriate personnel to learn the operating characteristics of the facility and the existing equipment and systems therein.

Comprehensive Energy Audit Report – Post Selection of Energy Performance Contractor:

The Comprehensive Energy Audit Report will present a thorough analysis and discussion of the Energy Performance Contractor's proposed energy efficiency measures and solutions for each building. The Report will detail the Energy Performance Contractor's proposed methodology for

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the calculation of baseline energy use and, at a minimum, a description of physical conditions, equipment counts, nameplate data, and control strategies prior to Project implementation as described further below. The energy use allocation must be based on generally accepted engineering practices and must be reconciled with historic usage. In addition to presenting how the proposed baseline is derived, the proposal must define under what conditions it will be adjusted; for example, changes in weather, occupancy, number of users, and equipment usage.

For each measure recommended, the Comprehensive Energy Audit Report shall provide a detailed description to include: total implementation costs for each measure, equipment counts, performance characteristics and efficiency levels of the equipment comprising the proposed measure, installation and maintenance costs, its useful life, and energy and cost savings. Projected energy savings calculations must specifically account for on and off-peak savings, demand savings, and the interaction between recommended measures.

The Report will include an executive summary which lists all proposed energy efficiency measures with the total implementation cost of each measure, energy savings, energy cost savings, useful life of the equipment and the simple payback (individual and interactive). This summary will use the spreadsheet formats provided in section VII of this RFP. Failure to follow this format may result in RFP being dismissed as non-responsive.

It is the Municipality's intent to enter into an Energy Performance Contract with the Energy Performance Contractor for the entire Project, including energy work, to refine and verify the Project scope, engineering and design, and final cost and terms. After submittal of the final Project Development Plan as a result of the Comprehensive Energy Audit performed by the Respondent, and approval, of the same by the Municipality, the Municipality may, in its sole discretion, decide:

- To go forward with the construction/ implementation/ financing of the Project, subject to the required approvals, or;
- Not to go forward with the Project with the Energy Performance Contractor, **in which case the Municipality shall not be responsible for any costs or expenses incurred by the Energy Performance Contractor.**

Installation Phase:

- A. If the Municipality decides to go forward with the Energy Performance Contractor, the Installation Phase will require an Energy Performance Contract (eighteen years maximum term). The Contract will incorporate the terms and conditions of this RFP, including, the Municipality's Minimum Standard Contract Terms in **Appendix C** and further, be subject to the review and approval of the Municipality's legal counsel. This Request for Proposal for Municipality Implementation of Energy Conservation Measures on a Performance Contracting Basis, together with the respective Energy Performance Contractor's response to this RFP shall be attached to and become part of the Energy Performance Contractor Agreement. In the event that the terms of

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

this RFP and/or the RFP submission conflict with the terms of the Energy Performance Contractor Agreement, the terms more favorable to the Municipality shall prevail.

The Energy Contract must be submitted with a complete description of the Scope of the Work, together with the energy conservation measures utilized by the Energy Performance Contractor and other required documentation for approval, of any Authority having jurisdiction. Upon approval,, the Energy Contract will be executed to implement the Project in accordance with the Comprehensive Energy Audit Report. In the event approval is not obtained, the Energy Contract will not be executed and the Municipality shall **not be liable for any cost or expense** incurred by the Energy Performance Contractor. A key responsibility of the Energy Performance Contractor is to assist the Municipality in obtaining the requisite approvals.

This project is subject to the prevailing wage rate laws and regulations for public work in accordance with Article 8 of the New York State Labor Law.

Service Phase:

Upon completion of the Installation Phase, the Energy Performance Contractor will perform ongoing services detailed in the energy contract to assure savings and guarantees are met, together with the required and appropriate staff training, maintenance services only as required by warranty, and measure and verification (M&V) services. M&V services must adhere to all federal M&V protocol standards and scalability for M&V of the energy baseline, adjustment factors, and energy cost savings. All maintenance and monitoring costs must be stated separately in the Energy Performance Contract in a clear and conspicuous manner. Final payment will not be made until all documentation, licenses, copies of software, maintenance manuals and as-built drawings are received by the Municipality. The Municipality requires back-up copies of all software programs on non-magnetic media.

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V. THE SELECTION PROCESS

Timetable

The Municipality expects to undertake the selection process according to the following schedule:

The Municipality must provide the dates to be inserted into the timetable. The Municipality will consider the regularly scheduled Town Board meetings when determining the timeline.

- Issuance of RFP: April 17, 2013
- Deadline for submission of proposals: June 17, 2013 at 3:00 PM

Provisions must be made for off-hours and after hours work scheduling during the facilities work time, in accordance with the work and access rules included in the final contracts. The above schedule is subject to modification as deemed necessary by the Municipality. Notwithstanding, work will commence upon approval of all authorities having jurisdiction. The Energy Performance Contractor shall be required to perform its work with no interruption to the Municipality's operations, including its administrative and business operations. Any work which will interfere with the Municipality's operations and/or which is to be performed when the municipal facilities are in operation shall be performed on evenings and weekends. Additionally, the Energy Performance Contractor shall conduct its work during hours that are in compliance with federal, state, county or local, laws, rules, regulations, codes and ordinances. All costs incurred by the Municipality, including overtime costs for Municipality personnel, to make the facilities available during evening and weekends shall be borne by the Energy Performance Contractor. The Municipality reserves the right to determine what work will interfere with its operations and said determination shall be final.

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Proposal Evaluation Criteria

Proposals will be evaluated and scored on the basis of the following criteria, which will be accorded the relative weight indicated in parentheses; the evaluation information should be clearly demonstrated within the submitted qualification proposal format. Refer to the Evaluation Form at Appendix D.

To submit a proposal, the Respondent must meet the following minimum qualifications. The proposal must establish how the Energy Performance Contractor meets the qualifications, including whether Respondent or one of its subcontractors meets a particular qualification. If not met, the Municipality reserves the right to reject a Respondent's proposal.

Minimum Qualifications:

The following are minimum qualifications, and if not met, the Municipality reserves the right to reject an Energy Performance Contractor:

- Energy Performance Contractor shall have a minimum net asset value in excess of \$2,000,000.
- Energy Performance Contractor shall have a branch office within one hundred (100) miles of the Municipality.
- Energy Performance Contractor shall have been in business in excess of ten (10) years and shall demonstrate a history of performance contracting for a minimum of 10 years.
- The Energy Performance Contractor must be eligible to do business in the State of New York.
- The Energy Performance Contractor must guarantee answering emergency calls within two (2) hours of the original call and next day service for a routine service call.
- The Energy Performance Contractor must have manufacturer-trained mechanics for the products being provided as in the response to the RFP. In the event the Energy Performance Contractor finds it necessary to utilize a subcontractor, they must comply with all terms and conditions contained herein as well as Attachments 1 and 2.
- Energy Performance Contractor must supply the Names & Contact Information of at least five (5) Clients that have completed a contract of similar scope within the past seven (7) years. Preference will be given to municipal projects..
- Energy Performance Contractor must submit a copy of their maintenance contract with the RFP.
- Energy Performance Contractor shall demonstrate the financial ability to provide guarantees of energy savings (no third party insurance will be permitted) and a history of at least five (5) others guarantees and the dollar amount.

Evaluation Points and Criteria

Proposals will be evaluated using the factors and sub-factors specified below. Project Management (80 points), Technical (175 points), and Performance Risk (65 points) and additional Qualifications of Energy Performance Contractor (90 points). The sub-factors contained under each factor are of equal importance.

Project Management Factor (80 Points)

The management factor considers the degree to which the proposed management and implementation approach provide for effective organization, management, and control to accomplish the proposed Project. Information considered in evaluation of this factor and sub-factors includes the proposed management organization, roles and responsibilities, qualifications and experience of key personnel, proposed selection and quality control for subcontractor's work, installation and implementation schedule, and impact on facilities and operations.

Overall Criteria

- Sub-factor 1: The degree to which the proposal demonstrates the adequacy of the proposed organization to manage and accomplish the proposed measures.
- Sub-factor 2: The degree to which the proposal demonstrates the qualifications and experience of key personnel to meet the technical requirements of the proposed Project measures.
- Sub-factor 3: The degree to which the proposal demonstrates the ability to provide a turnkey Project, engineering, Project management, measurement & verification, and financing.

Evaluation Criteria Points System

- Clear assignment of responsibility for various project tasks to specific individuals and assignment of qualified individuals to fulfill designated responsibilities.
- Percentage of time key personnel is assigned to the Project.
- Ability to manage construction, repairs, regular service, and emergencies effectively.
- Demonstrated ability to adhere to project schedules and complete all phases on schedule.
- Responsiveness to the specific objectives and concerns in the Request for Proposals.
- Quality of communication skills with the Energy Performance Contractor's representatives at the oral interviews.
- Ability to coordinate project construction with local utilities, subcontractors, equipment suppliers and facility personnel.
- Experience with training organizational staff and quality of EPC trainers.

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Technical Factor (175 Points)

Information considered in evaluation of this factor and sub-factors includes depth of the proposed solution, the energy conservation measure (ECM) description, selected equipment, **proposed energy cost savings**, proposed energy baseline and adjustment factors, proposed method and schedules for annual energy audit and verification of energy and operational cost savings and Energy Performance Contractor's proposed operation and maintenance programs.

Overall Criteria

- Sub-factor 1: The degree to which the proposal demonstrates the technical feasibility, suitability, reasonableness, comprehensiveness, and acceptability of the proposed ECM's, and proposed selected equipment for the Project ECM's.
- Sub-factor 2: The degree to which the proposed energy analysis demonstrates sound engineering principles, and the reasonableness of the proposed savings.
- Sub-factor 3: The degree to which the proposed Measurement and Verification (M&V) Plan adheres to all Federal M&V protocol standards and demonstrates scalability for measurement and verification of the proposed energy baseline, adjustment factors, and energy cost savings.
- Sub-factor 4: The degree to which the proposed measures meet the future and changing needs of the Municipality.

Evaluation Criteria Points System

- Quality of proposal acceptability, comprehensiveness, and reasonableness.

Proposal demonstrates:

- Clarity & sound engineering practices
- Reasonableness of energy savings

Quality of:

- Savings methodology
- M&V compliance
- Demonstrate technology with ability to adapt to changing/future needs.
- Reliability of equipment performance of Energy Performance Contractor's past retrofit projects.
- Documented energy and performance savings, budget control for previous retrofit projects.

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- Comprehensiveness of approach.

Energy savings calculations:

- Quality and reasonableness of the calculation methodology
- Clarity of the methodology
- Reasonableness of control strategies to enhance project performance.
- Ability to integrate energy use monitoring and verification software/hardware with organizational requirements.

Performance Risk-Assessment Considerations (65 Points)

The performance risk-assessment considers the Energy Performance Contractor's past and present performance as related to the probability of successfully accomplishing the proposed effort. The company's financial soundness and strength, their ability to achieve the guaranteed energy and operational savings, Municipality satisfaction and quality standards for performance are all considered in this section.

The Municipality reserves the right to assign representatives to verify the qualifications listed below and to visit locations now serviced by the Energy Performance Contractor.

Provide a minimum of five (5) guaranteed performance contracts for Townwide or Municipal systems listing scope, capital cost, energy and operational savings within a 150-mile radius of the Municipality that were implemented. *Energy audits will not be considered if the actual energy performance contract was not installed.* Also provide a list of all other guaranteed projects for institutional and commercial facilities. Respondents should emphasize their comprehensive offerings that may benefit this Project and future Municipality initiatives.

Overall Criteria

Sub-factor 1: Degree of financial strength, bonding capability and financial resources.

Sub-factor 2: Demonstrates track record of successful project implementation.

Sub-factor 3: Demonstrates industry leadership and expertise.

Sub-factor 4: Ability to achieve projected savings and guarantee work.

Sub-factor 5: Service Capabilities.

Evaluation Criteria Points System

- Financial soundness and stability of the EPC.
- Completeness of most recent audited financial report.
- Demonstrated ability to provide or arrange project financing.

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- Soundness and cost-effectiveness of proposed financing arrangement.
- Clarity and reasonableness of the method for reconciling accounts for adjusting windfalls/shortfalls in project cash flow.
- Potential net financial benefit to our organization.
- Clarity of sample project invoice.

Additional Energy Performance Contractor Qualifications/ Contractual Approach (90 points) –
 These qualifications are in addition to the minimum qualifications listed at page 18.

- Provide explanation of the reasons for past projects being incomplete or not meeting their targeted energy savings.
- Provide explanation of the circumstances involving past or current legal or administrative adverse actions.
- Flexibility of contractual provisions to accommodate changes in building energy use, utility rates, occupancy, operating schedules and future additions.
- Flexibility of legal agreements to accommodate needs of the Municipality.

Evaluation Form

- See **Appendix D**.

VI. RFP PROCEDURES

Submission of Proposals

Proposals must be received from the Energy Performance Contractors by May 13, 2013 at 3 pm. Late proposals will be returned unopened.

An original and four (4) copies of the proposal are required. To prevent opening by unauthorized individuals, your proposal should be identified on the envelope or other wrapper as follows:

Proposal - Energy Project

Proposals should be addressed to:

Ms. Maria Gomes
 Procurement Supervisor
 North Hempstead Town Hall
 Purchasing Division
 220 Plandome Road
 Manhasset, New York 11030

*Please see note below for proper submission information.

Proposals may be mailed or hand delivered. No proposal will be accepted by electronic mail or facsimile.

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Note: The mailing address for the proposals is the Town of North Hempstead, North Hempstead Town Hall, Purchasing Division, 220 Plandome Road, Manhasset, New York 11030. The address where the proposals can be dropped off at the Town of North Hempstead, North Hempstead Town Hall, Purchasing Division, 220 Plandome Road, Manhasset, New York 11030. All proposals must be received by the Town no later than the designated proposal opening date and time, regardless of the manner of submission.

Proprietary Information

The New York State Freedom of Information Law, Public Officers Law, Article 6, provides for public access to information. Public Officers Law, Section 87(d) (2) provides for exceptions to disclosure for records or portions thereof that are "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise." Information that the proposer wishes to have treated as proprietary and confidential trade information should be identified and labeled "Confidential" or "Proprietary" on each page at the time of submittal. This information should include a written request to except it from disclosure, including a written statement of the reasons why the information should be excepted. The designation of information by the proposer as "confidential" or "proprietary" does not guarantee that it is, in fact, confidential or proprietary. Such information will be treated in accordance with the provisions of Public Access Law, Section 89 (5).

VII. PROPOSAL FORMAT AND CONTENTS

Proposals must be submitted in the format outlined in this section. Each of the described parts and sections must be completed in full. Each proposal will be reviewed to determine if it is complete prior to actual evaluation. The Municipality reserves the right to eliminate from further consideration any proposal deemed to be non-responsive to the requests for information contained herein.

Each of the parts and sections described below should begin on a separate page, and each page should clearly state the name of the Proposer.

Within the Proposal format described in Section VII, Respondent must establish how it meets the minimum qualifications in Section V, and demonstrate an understanding of the evaluation criteria in Section V. The Municipality reserves the right to eliminate from further consideration any Proposal deemed to be non-responsive to any portion of this RFP.

Section A - Energy Performance Contractor Background and Qualifications

Section A-1 (Project Management Summary) of the proposal must contain a Project Management Summary, including the make-up of the Project team and the proposed assignment of responsibility for the major tasks involved in the total Project. Include resumes for each of the individuals listed as lead personnel in Section A-1 as "Exhibit 1" to the proposal.

If the Proposer will have single source responsibility for all portions of the Project, they need only respond to Part I. If the proposal anticipates the use of subcontractors, describe the selection process for selection of these subcontractors in Part II.

PART I: Project Team Information: Part I should describe the overall make-up of the Project Team and each member's areas of responsibility with addresses, telephone numbers, cellular phone numbers, names of contact persons and of lead personnel. Include a chart depicting the management structure envisioned for the Project as "Exhibit 2" to the proposal.

PART II: Subcontractor Information: Part II should describe the process to be followed in selecting and managing subcontractors, if any, and provide information about the areas of responsibility for additional subcontractors and the process to be followed in their selection. Identify each subcontractor, and in "Exhibit 3" provide information similar in Part I regarding the Respondent. The Municipality reserves the right to reject the use of any proposed subcontractors.

In a section to be labeled **Section A-2 – Annual Reports/Financial Statements**, include the most recent annual reports, financial statements, or other financial information sufficient to permit the Municipality to evaluate the financial strength of the Proposer. If the Proposer is a joint venture or other entity with no prior financial history, submit information with respect to constituent or parent entities.

In a section to be labeled **Section A-3 – Work Experience**, describe the prior relevant experience of the Proposer or of the partners or parent thereof. For each organization include the information listed below. (If more than ten (10) projects are relevant to this RFP, remaining examples of experience may be briefly summarized):

- Customer's name.
- Total Project capital cost at proposal stage and at final contract.
- Type of contract (e.g., guaranteed saving, sale, etc.).
- Name and telephone number of references for the Project.
- Brief description of the Project's scope of services and status. (Include type of facility at which Project was implemented, whether the Project was timely completed and whether significant problems occurred that affected Project performance. As appropriate, identify all prime contractors or subcontractors and their role in each Project.)
- Level of energy cost savings projected in Comprehensive Energy Audit Report and the level actually achieved subject to M&V.

The right to call the references provided by the Proposer will be presumed by the Municipality.

Section B - Technical Aspects of the Proposal

Your proposal must explain the approach your organization will take in delivering the comprehensive technical services required to design, install, and maintain the proposed energy efficiency improvements. Actual designs/specifications are not required at this time.

In a section to be labeled **Section B-1 - Audit Baseline and Energy Savings**, describe the Comprehensive Energy Audit that will be conducted for this Project after selection of an Energy Performance Contractor on the basis of this RFP. Your proposal must include information on the systems to be covered, the personnel to be involved, the general method to be used and the time frame for completion of each item. The proposal must detail the Respondent's methodology for the calculation of the baseline. The baseline used will be provided by the municipal and is given in the RFP. Describe in detail the method you will use to compute the energy baseline. Attach a sample computation from a previous project performed by your firm, with full documentation of methods, assumptions and input data.

In a section to be labeled **Section B-2 - Proposed Energy Efficiency Measures**, provide a preliminary assessment of the energy efficiency opportunities available at the municipality, based on the information provided in this RFP and a tour of the facilities. List the energy efficiency measures to be implemented under your proposal with the estimated implementation cost and the energy cost savings, including detailed energy savings calculations, **must be included with each proposal. Failure to include the estimated cost and cost savings may be grounds for rejection of the proposal.** Are there any potential improvements your company will not consider? If so, these improvements must be listed.

In a section to be labeled **Section B-3 - Description of Ongoing Services**, describe the ongoing project monitoring and maintenance services your company will provide. Specifically, describe the personnel, schedules, conditions, equipment covered, and extra costs (if any) of the following services:

- Scheduled preventative maintenance. Warranty work only; No service contracts.
- Emergency service;
- Training of on-site staff; and,
- Monitoring of energy use.

Identify who will have supervisory responsibility for your firm's maintenance and monitoring operations in this Project. Indicate how this work will be coordinated with the daily operations of the facility.

Section C - Financial Aspects of the Proposal

The Municipality seeks to enter into a project arrangement under which the Municipality will assume ownership of the energy efficiency improvements upon their installation and acceptance by the Municipality. The Municipality also seeks to structure compensation to the Energy Performance Contractor such that payments to finance equipment and public works services plus payments for ongoing Project Management Services, if requested by the Municipality will be paid in full or in part by the value of measured energy savings resulting from the Project. Payment terms shall be determined at the discretion of the Municipality.

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The Respondent may propose any underlying project financing mechanism so long as it meets the objectives above and complies with Federal and New York State laws, rules, regulations and all applicable codes. The Municipality may, in its sole discretion, opt to finance and/or refinance any or all of the project in an effort to obtain the lowest possible cost to the Municipality.

Detailed Financial Information Required: In a section to be labeled **Section C-1 - Cost and Savings Analysis**, based on the information provided in this RFP and your inspection of the facilities, **estimate the following costs**: *(It is required to list each facility improvement measure separately with installed cost and associated return on investment.)*

Please adhere to the following format:

Annual Costs:

- Capital and interest payments;
- Maintenance costs- warranty only, no reductions in staff;
- Training costs;
- Architect / Engineering costs;
- Energy Savings Measurement and Verification costs; and,
- Other service fees, if any (If applicable, specify each service fee separately.)

Annual Savings:

- Energy;
- Parts and Labor; and
- Other, if applicable.

Net Annual Project Cost or Savings

- Total Cost;
- Total Savings; and
- Net Cost or Savings.

Utility Rebates

- All utility rebates that will be directly paid to the Municipality.

In a section to be labeled **Section C-2 - Financial Projections**, please complete the annual financial projections indicated below for the length of the proposed contract. Use a discount rate of 4.0 percent. Assume an interest rate of 4.0 percent and that payments will be made annually at the end of the period. . The format shall include the following:

YEAR	1	2	3	4	5 ...18
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- Recurring, Management and Maintenance Contract Options – three (3) year agreement @ per year multiplied by 3 years = For system wide above ECM work covered under M&V

In a section to be labeled **Section C-3 - Financial and Contract Terms**, outline the proposed terms of the Contract with the Municipality covering:

- Duration of the contract;
- Methods by which the level of payments to the Energy Performance Contractor will be determined including: level of guarantees, methods by which energy savings will be evaluated (i.e., values to be used for unit prices of fuels and electricity); and,
- The nature and operation of any guarantee provisions, including conditions under which the guarantee can be invoked and the methods for adjusting payments to the Energy Performance Contractor.

In addition, describe the Respondent's approach to the financial terms, savings guarantees, and other contractual terms. Respondent must provide an example of an energy performance contract and lease. The Respondent shall submit an Energy Performance Contract and a letter of intent with its proposal.

The proposal shall include a sample invoice.

Section D - Schedule for Construction and Completion

In a section to be labeled **Section D**, the Proposer must provide a complete schedule for achievement of all major project milestones including:

- Commencement and completion of comprehensive energy audits;
- Preparation of list of proposed improvements, baseline calculations, and final contract proposal;
- Execution of energy performance contract;
- Providing a timeline Gantt chart for the overall project;
- Obtaining all required permits and government approvals;
- Procurement of all major equipment;
- Commencement and completion of construction;
- Training of municipal personnel; and,
- Commissioning and commencement of normal operation.

Section E - Official Statement of Proposer

In a section to be labeled **Section E**, the Proposer must provide statements to the following effect signed by an individual authorized to bind the Proposer:

The Proposer shall include a statement to the effect that the proposal is a firm offer for a minimum 90-day period. The proposal shall also provide the following information: Name, title,

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address and telephone number of individual(s) with authority to negotiate and contractually bind the company and also who may be contacted during the period of proposal evaluation.

The Proposer shall specifically state acceptance of the minimum standard clauses intended to be used by the Municipality. The minimum standard clauses are included here as **Appendix C** and are subject to modification by the Municipality's legal counsel. Failure to include any clause in Appendix C on the Municipality's part, shall not waive the Municipality's ability to later require additional clauses in the contract(s). Note that all energy conservation measures and calculations must be contained in the final Energy Performance Contract.

The Proposer shall specifically guarantee:

- Total energy savings projected in plan will be at least 95.0% of the savings projected in the proposal; and
- Project will be self-funding over an 18-year financial term.

If these conditions are not met, the Municipality may: terminate the agreement to conduct an agreement without cost or penalty; renegotiate with the Energy Performance Contractor; or begin negotiations with another Energy Performance Contractor.

The Respondent shall specifically state that it will be able to provide all certifications required by Federal and New York law, rules and any other authority having jurisdiction.

The respondent shall identify and explain in detail any exceptions and/or deviations to the statement required by this section E.

Outline of Proposal Contents

The following is an outline of the required proposal contents as detailed above:

Section A – Energy Performance Contractor Background and Qualifications

Section A-1	
Part I:	Project team information
Part II:	Subcontractor information
Section A-2	Annual reports/financial statements
Section A-3	Work experience

Section B - Technical Aspects of the Proposal

Section B-1	Audit baseline and energy savings
Section B-2	Proposed energy efficiency measures
Section B-3	Description of on-going services

Section C - Financial Aspects of the Proposal

Section C-1 Cost and savings analysis
Section C-2 Financial projections
Section C-3 Financial and contract terms

Section D - Schedule for Construction and Completion

Section E - Official Statement of the Proposer - Attach a suggested energy performance contract with proposed terms and conditions

Appendices - Organizational Chart
 Resumes of key personnel
 Other relevant documentation

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SITE VISITS

Each ESCO shall be given access walk through facilities by making separate arrangements with the Ms. Janine Glaser, Assistant to Councilman Thomas Dwyer. Municipality officials and project consultants will be present to answer questions regarding the RFP and the project. ESCOs interested in attending the conference must contact ECG Engineering, P.C., Ashley Heintz at (631) 360-0006 or via email at ashley@ecgengineering.com, no later than 24 hours prior to pre-proposal conference.

[END OF DOCUMENT]

APPENDIX A

New York State Energy Law

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

NEW YORK STATE ENERGY
LAW
ARTICLE 9 - ENERGY PERFORMANCE
CONTRACTS IN CONNECTION WITH PUBLIC
BUILDINGS AND FACILITIES

Section

9-101. Purpose

9-102. Definitions

9-103. Energy Performance Contracts

§ 9-101. Purpose

The purpose of this article is to obtain long-term energy and cost savings for agencies and municipalities by facilitating prompt incorporation of energy conservation improvements or energy production equipment, or both, in connection with buildings or facilities owned, operated or under the supervision and control of agencies or municipalities, in cooperation with providers of such services and associated materials from the private sector. Such arrangements will improve and protect the health, safety, security, and welfare of the people of the state by promoting energy conservation and independence, developing alternate sources of energy, and fostering business activity.

§ 9-102. Definitions

For the purposes of this article, the following words and phrases shall have the following meanings unless a different meaning is plainly required by the context.

1. "Agency" means any state department, agency, board, commission, office, or division.
2. "Municipality" means a municipal corporation, as defined in section two of the general municipal law, school district, board of cooperative educational services, fire district, district corporation or special improvement district governed by a separate board of commissioners.
3. "Public authority" means any public authority, public benefit corporation, or the port authority of New York and New Jersey, to the extent its facilities are located within the state of New York.
4. "Energy performance contract" means an agreement for the provision of energy services, including but not limited to electricity, heating, ventilation, cooling, steam or hot water, in which a person agrees to install, maintain or manage energy systems or equipment to improve the energy efficiency of, or produce energy in connection with, a building or facility in exchange for a portion of the energy savings or revenues.

§ 9-103. Energy Performance Contracts

1. Notwithstanding any other provision of law, any agency, municipality, or public authority, in addition to existing powers, is authorized to enter into energy performance contracts of up to thirty-five years duration, provided, that the duration of any such contract shall not exceed the reasonably expected useful life of the energy facilities or equipment subject to such contract.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

2. Any energy performance contract entered into by any agency or municipality shall contain the following clause: "This contract shall be deemed Executory only to the extent of the monies appropriated and available for the purpose of the contract, and no liability on account therefore shall be incurred beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer creates any legal or moral obligation to request, appropriate or make available monies for the purpose of the contract."
3. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be an ordinary contingent expense, and shall in no event be construed as or deemed a lease or lease-purchase of a building or facility, for purposes of the education law.
4. Agencies, municipalities, and public authorities are encouraged to consult with and seek advice and assistance from the state energy office and New York state energy research and development authority concerning energy performance contracts.
5. Notwithstanding any other provision of law, in order to convey an interest in real property necessary for the construction of facilities or the operation of equipment provided for in an energy performance contract, any agency, municipality or public authority may enter into a lease of such real property to which it holds title or which is under its administrative jurisdiction as is necessary for such construction or operation, with an energy performance contractor, for the same length of time as the term of such energy performance contract, and on such terms and conditions as may be agreeable to the parties thereto and are not otherwise inconsistent with law, and notwithstanding that such real property may remain useful to such agency, municipality or public authority for the purpose for which such real property was originally acquired or devoted or for which such real property is being used.
6. In lieu of any other competitive procurement or acquisition process that may apply pursuant to any other provision of law, an agency, municipality, or public authority may procure an energy performance contractor by issuing and advertising a written request for proposals in accordance with procurement or internal control policies, procedures, or guidelines that the agency, municipality, or public authority has adopted pursuant to applicable provisions of the state finance law, the executive law, the general municipal law, or the public authorities law, as the case may be.
7. Sections one hundred three and one hundred nine-b of the general municipal law shall not apply to an energy performance contract for which a written request for proposals is issued pursuant to subdivision six of this section.
8. In the case of a school district or a board of cooperative educational services, an energy performance contract shall be developed and approved pursuant to the requirements of this section and pursuant to regulations promulgated by the commissioner of education in consultation with the New York state energy research and development authority. Such regulations shall include, but shall not be limited to: a list of the appropriate type of projects that qualify as energy performance contracts; an approval process that includes review of the type and nature of the proposed project, the scope and nature of the work to be performed, and a detailed breakdown of the energy savings to be derived each year and for the duration of the energy performance contract; and a process for ensuring that districts have obtained financing at the lowest cost possible. Such regulations shall require that all energy performance contracts which contain maintenance and monitoring charges as part of the energy performance contract price state such maintenance and monitoring charges separately in the contract in a clear and conspicuous manner. Such regulations shall not apply to energy performance contracts entered into prior to the effective date of such regulations, nor shall they apply to energy performance contracts for which a request for proposals was issued prior to such effective date. Added L. 1985, c. 733, § 2; amended L. 1989, c. 638, §§ 1,2; amended L. 1994, c. 368, §§ 1,2; amended L. 1995, c.83, §47; amended L. 1997, c. 436, §78.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

APPENDIX B

Facility Profile

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

APPENDIX B

TOWN OF NORTH HEMPSTEAD, NEW YORK

General Information – District Profile

*Town of North Hempstead
Town Hall
220 Plandome Road
Manhasset, New York 11030*

Facilities Contact Information:

*Mr. Paul DiMaria, P.E.
Commissioner of Public Works
(516) 739-6710
Email: dimariap@northhempsteadny.gov*

Town Hall

Address: 220 Plandome Road – Manhasset, NY 11030
Square Footage: 24,768

Building Department

Address: 210 Plandome Road – Manhasset, NY 11030
Square Footage: 17,720

Animal Shelter

Address: 85 Marino Avenue – Port Washington, NY 11050
Square Footage: 9,000

Clark Botanical Garden

Address: 193 I.U. Willets Road – Albertson, NY 11507
Square Footage: 6,200

Community Development Agency

Address: 51 Orchard Street – Roslyn Heights, NY 11577
Square Footage: 10,260

Clinton G. Martin Park

Address: 1601 Marcus Avenue – New Hyde Park, NY 11042
Square Footage: 25,340

Public Works

Address: 285 Denton Avenue – New Hyde Park, NY 11040
Square Footage: 37,900

Solid Waste Management Authority

Address: 802 West Shore Road – Port Washington, NY 11050
Square Footage: 12,505

Transportation Office

Address: 802a West Shore Road – Port Washington, NY 11050
Square Footage: 1,000

Automotive Shop

Address: 802 West Shore Road – Port Washington, NY 11050
Square Footage: 4,000

North Side

Address: 802 West Shore Road – Port Washington, NY 11050
Square Footage: 5,100

Automotive Shop

Address: 802 West Shore Road – Port Washington, NY 11050
Square Footage: 20,000

Dumpster Facility Office

Address: 802 West Shore Road – Port Washington, NY 11050
Square Footage: 2,400

Tully Park

Address: 1801 Evergreen Avenue – New Hyde Park, NY 11040
Square Footage: 53,900

DEPARTMENTS

Administrative Services - 220 Plandome Road - Manhasset, NY 11030

Building Department - 210 Plandome Road - Manhasset, NY 11030

Business And Tourism Dev. Corp. - 220 Plandome Road - Manhasset, NY 11030

Community Development Agency - 51 Orchard Street - Roslyn Heights, NY 11577

Community Services - Clinton G. Martin Park - 1601 Marcus Avenue - New Hyde Park, NY 11042

Transportation - 802a West Shore Road - Port Washington, NY 11050

Comptroller - 220 Plandome Road - Manhasset, NY 11030

CSEA Office - All Union Business - 210 Plandome Road - Manhasset, NY 11030

Dept Of Information Technology & Telecommunications - 220 Plandome Road - Manhasset, NY 11030

Finance - 220 Plandome Road - Manhasset, NY 11030

Highway Department - 285 Denton Avenue - New Hyde Park, NY 11040

HIGHWAY GARAGES

Automotive Shop - 802 West Shore Road - Port Washington, NY 11050

Denton Ave. Garage - 285 Denton Avenue - New Hyde Park, NY 11040

North Side - 802 West Shore Road - Port Washington, NY 11050

Southside - 285 Denton Avenue - New Hyde Park, NY 11040

Tree Crew - 802 West Shore Road - Port Washington, NY 11050

Sign Shop - 285 Denton Avenue - New Hyde Park, NY 11040

Westbury - 970 Brush Hollow Road - Westbury, NY 11590

Office Of The Registrar - 210 Plandome Road - Manhasset, NY 11030

Parks and Recreation Department - 1801 Evergreen Avenue - New Hyde Park, NY 11040

PARKS

Broadway Park - 151 Broadway - Garden City Park, NY 11040

Charles J. Fuschillo Park - 200 Carle Road - Carle Place, NY 11514

Clark Botanic Gardens - 193 I.U. Willets Road - Albertson, NY 11507

Clinton G. Martin Park - 1601 Marcus Avenue - New Hyde Park, NY 11042

Gerry Pond Park - 10 Paper Mill Road - Roslyn, NY 11576

Harbor Hills Park - 7 Shore Cliff Place - Great Neck, NY 11023

Harbor Links - 1 Fairway Drive - Port Washington, NY 11050

Manorhaven Beach Park - 158 Manorhaven Blvd - Port Washington, NY 11050

Martin "Bunky" Reid Park - Broadway & Urban Avenue - Westbury, NY 11590

Mary Jane Davies Green - Plandome Road & Manhasset Ave - Manhasset, NY 11030

Manhasset Valley Park - Northern Blvd & E Shore Road - Manhasset, NY 11030

Mill Pond Park - Shore Road & Millpond Road - Port Washington, NY 11050

North Hempstead Beach Park - 175 West Shore Road - Port Washington, NY 11050

Port Washington Parking District - 15 Vanderverter Ave - Port Washington, NY 11050

Ridders Pond Park - 1599 Marcus Ave - New Hyde Park, NY 11040

Searingtown Pond Park 1 Dogwood Road - Albertson, NY 11507

Senator John Caemmerer Park - 160 Wentworth Ave - Albertson, NY 11507

Senator Michael Tully Park - 1801 Evergreen Ave - New Hyde Park, NY 11040

Town Dock - 347 Main Street - Port Washington, NY 11050

Whitney Pond Park Northern Blvd & Community Drive, Manhasset, NY 11030

Yes We Can Community Center - 241 Garden Street, Westbury NY 11590

Building Department

Planning Department - 210 Plandome Road - Manhasset, NY 11030

Zoning And Appeals - 210 Plandome Road - Manhasset, NY 11030

Public Works

Parking Enforcement And Emergency Management - 285 Denton Avenue - New Hyde Park, NY 11040

Public Works - 285 Denton Avenue - New Hyde Park, NY 11040

Town Hall

Supervisor - 220 Plandome Road - Manhasset, NY 11030

Town Attorney - 220 Plandome Road - Manhasset, NY 11030

Town Board - 220 Plandome Road - Manhasset, NY 11030

Town Clerk - 200 Plandome Road - Manhasset, NY 11030

Receiver Of Taxes - 200 Plandome Road - Manhasset, NY 11030

Solid Waste Mgt. Authority - 802 West Shore Road - Port Washington, NY 11050

Public Safety - 498 Union Ave - Westbury, NY 11590

Animal Shelter - 85 Marino Avenue - Port Washington, NY 11050

APPENDIX C

Contract Requirements

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

MINIMUM STANDARDS CONTRACT CLAUSES

- A. Engineering Services
- B. Construction Management Services
- C. Compliance with Law
- D. Taxes
- E. Non-Discrimination
- F. Changes in Work
- G. Warranties
- H. Termination
- I. Insurance
- J. Payment and Performance Bond
- K. Severability
- L. Assignments
- M. Subcontracting
- N. Waiver
- O. Independent Contractor
- P. Approval of Contract
- Q. Non-Appropriation
- R. Third Party Beneficiaries
- S. Workers' Compensation Benefits
- T. Wage and Hour Provisions
- U. Non-Collusive Bidding Requirement
- V. International Boycott Prohibition
- W. Set-Off Rights
- X. Records
- Y. Governing Law
- Z. No Arbitration
- AA. Service of Process

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

A. ENGINEERING SERVICES:

The Energy Performance Contractor will consult with the Town and, with the Town's authorization, will arrange for design and engineering services to be performed by an engineer of the Town's selection. All costs associated with said engineering firm in connection with this project shall be the responsibility of the Energy Performance Contractor. It is understood and agreed that the Engineer shall provide services in connection with this contract pursuant to the requirements as set forth in a separate attachment to the energy performance contract to be provided by the Town Attorney.

B. CONSTRUCTION MANAGEMENT SERVICES

The Energy Services Company (ESCO) must provide Construction/Project Management Services throughout the construction phase.

C. COMPLIANCE WITH LAW:

Energy Performance Contractor shall comply with and obtain, at its expense, all licenses and permits required by Federal, State and local laws, rules, and ordinances in connection with the installation of the Energy Conservation Measures (ECM's). To the extent that the Energy Performance Contractor agrees to perform operations and/or maintenance of specified ECMs or other equipment, it shall comply with and obtain, at its expense, all licenses and permits which may be required by Federal, State and local laws, rules, and ordinances in connection with the operation and/or maintenance of such specified ECMs. In the event that Energy Performance Contractor cannot procure any such license or permit in light of a requirement that the Town is required to do so, the Town will procure the same. Energy Performance Contractor understands and agrees that this project must be performed in accordance with New York State Labor Law section 220, et. seq.

D. TAXES:

The Energy Performance Contractor shall pay all taxes, royalties and expenses incurred in connection with the services under this Contract, except as otherwise provided in the payment provisions.

The Town is exempt from payment of Sales and Compensating Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the Town. This exemption does not, however, apply to tools, machinery, equipment or other property, sold or leased to the Energy Performance Contractor or a subcontractor, or to materials and supplies of a kind which will not be incorporated into the completed project, and the Energy Performance Contractor and his subcontractors shall be responsible for and pay any and all applicable taxes including Sales

and Compensating Use Taxes, on such leased tools, machinery, equipment or other property or on such unincorporated materials and supplies, and the provisions set forth below will not be applicable to such tools, machinery, equipment, property and unincorporated materials and supplies.

The Energy Performance Contractor and his subcontractors shall complete the New York State Sales Tax Form ST120.1 (Contractor Exempt Purchase Certificate), and furnish such certificate to all persons, firms, or corporations from which they purchase materials and supplies for the performance of the work covered by this Contract; and

The Energy Performance Contractor and all subcontractors maintain and keep, for a period of six years after the date of final payment for the sale, or if a claim for Sales or Compensating Use Tax is pending or threatened at the end of such six (6) year period, until such claim is finally settled, records, which in the judgment of the Department of Taxation and Finance, adequately show (i) all materials and supplies purchased by them and (iii) all materials and supplies sold to the Town pursuant to the provisions of this Contract; and

E. NON-DISCRIMINATION:

The Energy Performance Contractor and any sub-contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Energy Performance Contractor will take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and the Energy Performance Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Town setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Energy Performance Contractor, the words EQUAL OPPORTUNITY EMPLOYER shall appear in type twice as large as that used in the body of the advertisement.

F. CHANGES IN WORK:

In any instance involving the Energy Performance Contractor's change orders, the Energy Performance Contractor is required to obtain written authorization from the Town as to the details and cost of the proposed change order prior to authorizing the Energy Performance Contractor or EMC to proceed with the work provided for under the change order. In those instances, when the Energy Performance Contractor must issue a change order on an emergency

basis, the Energy Performance Contractor shall contact the Town as soon as reasonably practical to obtain the Town's authorization to proceed with the work required by the change order and the Energy Performance Contractor shall certify to the Town the reason and basis for such emergency, that the Energy Performance Contractor, by error or omission, had not caused such emergency and that reasonable efforts were made to obtain authorization for such change from the Town. The authorization shall be confirmed in writing.

G. WARRANTIES:

Energy Performance Contractor warrants that the design, engineering, and installation services it performs will be performed consistent with good engineering practices and that such work is warranted to be free from defects in materials and workmanship for a period of two (2) years from the date of execution of the Delivery and Acceptance Certificate by the Town with respect to Substantial Completion. Any manufacturers' warranties which exceed this two (2) year period shall be assigned to Town to the extent allowed by the manufacturer.

H. TERMINATION:

The Town reserves the absolute right to terminate the services of the Energy Performance Contractor at any time. Termination shall be effective upon the service on the Energy Performance Contractor of a written notice of termination by certified mail from the Town. Upon termination, the Town shall pay for the services rendered by the Energy Performance Contractor to the date of termination in proportion of all services to be rendered and in accordance with the terms of this Contract. Any and all work performed by the Energy Performance Contractor up to the point of termination shall become the property of the Town and shall be delivered to the Town.

I. INSURANCE:

Energy Performance Consultant agrees to procure and maintain, with a New York State admitted carrier holding an "A" rating from AM Best Company or equivalent, the following insurance policies during the term of this Contract and furnish certificates of insurance evidencing its procuring of said policies:

1. Commercial General Liability insurance from a New York State admitted carrier covering the liability of the Energy Performance Consultant including Contractual insurance defending, indemnifying and holding harmless the Town, its agents, employees and representatives from any and all loss and/or damage arising out of the performance of this Contract with a combined single limit (bodily injury/property damage) of TWO MILLION (\$2,000,000.00) DOLLARS and

each occurrence of ONE MILLION (\$1,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.

2. Professional Errors and omissions insurance in the minimum of ONE MILLION (\$1,000,000.00) DOLLARS.
3. Automobile Liability combined single limit of ONE MILLION (\$1,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.
4. Excess Liability in the form of umbrella form of FOUR MILLION (\$4,000,000.00) DOLLARS. The Town shall be named additional insured in such policy.
5. Worker's Compensation Insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to the State Workers' Compensation Law §57(2).
6. Disability benefits insurance or proof of its not being required to secure same, as evidenced by certificates or affidavits approved by the State Workers Compensation Board pursuant to State Workers Compensation Law 220(2).
7. Valuable Papers insurance in the minimum amount of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

At the time of execution of this Contract, the Energy Performance Consultant shall furnish the Town with certificates of insurance evidencing the required coverage. All certificates of insurance shall provide that the policies shall not be changed or cancelled unless thirty (30) days prior written notice is given to the Town and the Town.

Before commencement of its work, the Energy Performance Contractor shall obtain and pay for such insurance as may be required to comply with the provisions outlined under the Contract.

J. PAYMENT AND PERFORMANCE BOND:

The Energy Performance Contractor shall furnish a faithful performance bond for an amount not less than one hundred percent (100%) of the contract amount and a labor and materials payment bond (for payment to all persons performing labor or furnishing materials in connection therewith) for not less than one hundred percent (100%) of the contract amount.

These bonds shall stipulate that they are for this Contract and that they will remain in effect for the duration of the Contract. The bonds shall be issued by a surety company acceptable to and

approved by the Town, conditioned upon the faithful performance by the Energy Performance Contractor, for the implementation of the ECM's as it may be from time to time modified by Change Orders, such bonds to be in such form and otherwise to contain such provisions as are reasonably satisfactory to the Town, subject to the approval of the Town and in a form satisfactory to the Town covering all aspects of the Contract, bearing the date herewith and forming part of this Contract.

A rider including the following provisions shall be attached to each Bond:

1. Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Such addition, alteration, change, extension of time, or other modification of the Contract Documents, or forbearance on the part of either the Owner or the Energy Performance Contractor to the other, shall not release the Surety of its obligations hereunder and notice to the Surety of such matters is hereby waived.
2. Surety further agrees that in event of any default by the Owner in the performance of the Owner's obligations to the Energy Performance Contractor under the Contract, the Energy Performance Contractor or Surety shall cause written notice of such default (specifying said default in detail) to be given to the Owner, and the Owner shall have thirty (30) days from time after receipt of such notice within which to cure such default, or such additional reasonable period of time as may be required if the nature of such default is such that it cannot be cured within thirty (30) days. Such Notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, first class postage prepaid, to Lender and the Owner.

The Energy Performance Contractor shall indemnify and hold harmless the Town, its employees, agents, and assigns against all claims, actions, damages, liabilities, and expenses, including reasonable attorney's fees as determined by court order, arising out of or related to any claims of patent infringement and any claims of construction or materialman's lien made by any subcontractor or materialman.

The Energy Performance Contractor shall indemnify and hold harmless Town, its officers, employees, agents and assigns from and against all claims, actions, damages, liabilities and expenses, including reasonable attorney's fees, arising out of or related to personal injury or property damage to the extent caused by the Energy Performance Contractor's negligence or misconduct in connection with this Contract.

K. SEVERABILITY:

If, for any reason, any terms or provisions of this Contract shall become or be declared void, illegal and of no effect or superseded by any modification or amendment, all the remaining terms and provisions of this Contract shall continue in full force and effect.

L. ASSIGNMENTS:

The Energy Performance Contractor shall not assign this Contract in whole or in part to any other party without first obtaining the written consent of Town.

M. SUB-CONTRACTING

In the event the Energy Performance Contractor desires to sub-contract for any of the services required by this Contract, even though this may be an accepted and usual practice of the profession, the Energy Performance Contractor shall advise the Town, in writing, as to the name and address of the proposed sub-Energy Performance Contractor and the exact scope of the work the sub-Energy Performance Contractor will perform. The Energy Performance Contractor shall not sub-contract with the sub-Energy Performance Contractor until the Town has given written approval of the sub-Energy Performance Contractor and the work to be performed. All work by sub-Energy Performance Contractors shall be performed at no additional cost to the Town except as herein elsewhere stated in this Contract. All sub-Energy Performance Contractors shall be required to furnish the Town with proof of insurance in the same manner and the amounts as required pursuant to Section 23 herein. All sub-Energy Performance Contractors shall be required to comply with the applicable terms and conditions of this Contract.

N. WAIVER:

The failure of the Town to require performance by the Energy Performance Contractor of any provision hereof shall in no way affect the right of the Town to enforce such provision. Waiver by the Town of any breach of any provision hereof shall not be construed a waiver of any succeeding breach of such provision of any other provision of this Contract.

O. INDEPENDENT CONTRACTOR:

The Energy Performance Contractor, in accordance with his status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Town by reason hereof, and that it will not by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Town, including but not limited to, Workmen's Compensation coverage, Unemployment Insurance benefits, Social Security or

Retirement membership or credit. The Energy Performance Contractor shall not engage, on a full time or part-time or other basis during the period of this Contract, any professional or technical personnel who are or have been at any time during the period of the Contract in the employ of the Federal Highway Administration or the Public Works organization of any State, County or City or Town except regularly retired employees, without the consent of the public employer of such person.

Nothing in this Contract shall be construed as reserving to Town any right to exercise any control over or to direct in any respect the conduct or management of business or operations of the Energy Performance Contractor on the Property. The entire control or direction of such business and operations shall be in and shall remain in the Energy Performance Contractor, subject only to the Energy Performance Contractor's performance of its obligations under this Contract. Neither the Energy Performance Contractor nor any person performing any duties or engaged in any work on the Property on behalf of the Energy Performance Contractor shall be deemed an employee or agent of Town.

Nothing in this Section shall be deemed to be a waiver of the Town of the right to use its property. The Town and the Energy Performance Contractor are independent of one another and shall have no other relationship relating to or arising out of this Contract. Neither Party shall have or hold itself out as having the right or authority to bind or create liability for the other by its intentional or negligent act or omission, or to make any contract or otherwise assume any obligation or responsibility in the name of or on behalf of the other Party.

It is understood and agreed that the Energy Performance Contractor, its employees, agents, subcontractors and employees of such agents and subcontractors, shall adhere to the Town's policies with respect to conduct on Town property as well as any and all federal, state, and local laws, rules, ordinances, Town policies and procedures applicable to construction projects on Town premises.

P. APPROVAL OF CONTRACT:

The Energy Performance Contractor and the Town acknowledge that this Contract may require the approval of the Town Building and Inspection Department. This Contract shall not be executory until all necessary permits and approvals are obtained. In addition, this Contract shall not be executory until approval is obtained from the Town Attorney. Prior to necessary approvals, it shall be the Energy Performance Contractor's sole responsibility to validate each energy conservation measure with the Town and gain their final approval of the savings numbers as outlined herein. The Energy Performance Contractor shall forward a copy of the specifications to the Towns attorney for review and approval prior to sending to any Town departments for review.

Notwithstanding the above, should any portion of this Contract fail to be approved by the Town, or, if the Scope of Work contained in this Contract is not approved by the Town in its entirety, the Town may, in its sole discretion, elect to terminate this Contract. The Energy Performance Contractor shall have no remedy at law or in equity for such termination.

Q. NON-APPROPRIATION:

Non-Liability of Appropriating Agency

The Energy Performance Contractor's compensation shall be paid by the Town out of such monies appropriated by the Town for the purposes herein provided. Members of any board, any other officer or agent duly authorized to act for and on behalf of the Town shall not, by virtue of such authority or action, be personally liable in any manner whatsoever to the Energy Performance Contractor.

R. THIRD PARTY BENEFICIARIES:

Except as may be specifically provided for in this Contract, the Parties hereto do not intend to create any rights for, or grant any remedies to, any third party beneficiary of this Contract.

S. WORKERS' COMPENSATION BENEFITS:

In accordance with Section 142 of the State Finance Law, this Contract shall be void and of no force and effect unless the Energy Performance Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

T. WAGE AND HOURS PROVISIONS:

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Energy Performance Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the State Employment Regulation and as set forth in prevailing wage and supplement schedules issued by the New York State Department of Labor. Furthermore, the Energy Performance Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the New York State Department of Labor in accordance with the Labor Law.

U. NON-COLLUSIVE BIDDING REQUIREMENT:

In accordance with Section 139-d of the State finance Law and/or Section 103 of the General Municipal Law, if this contract was awarded based upon the submission of bids, the Energy Performance Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. The Energy Performance Contractor further warrants that, at the time it submitted its bid, an authorized and responsible person executed and delivered to the Town a non-collusive bidding certification on Energy Performance Contractor's behalf.

V. INTERNATIONAL BOYCOTT PROHIBITION:

In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Energy Performance Contractor agrees, as a material condition of the contract, that neither the Energy Performance Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Energy Performance Contractor, or any of the aforesaid affiliates of Energy Performance Contractor, is convicted or is otherwise found to have violated said laws or regulations under the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contractors execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Energy Performance Contractor shall so notify the Town within five (5) business days of such conviction, determination or disposition of appeal.

W. SET-OFF RIGHTS:

The Town shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the Town's option to withhold for the purposes of set-off any moneys due to the Energy Performance Contractor under this contract up to any amounts due and owing to the Town with regard to this contract, any other contract with any Town, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Town for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The Town shall exercise its set-off rights in accordance with normal Town practices including, in cases of set-off pursuant to an audit, the finalization of such Town audit by the State agency, its representatives, or the State Comptroller.

X. RECORDS:

The Energy Performance Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General, and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Energy Performance Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The Town shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Energy Performance Contractor shall timely inform an appropriate Town official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records are exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the Town's right to discovery in any pending or future litigation.

Y. GOVERNING LAW:

This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

Z. NO ARBITRATION:

Disputes involving this contract including the breach or alleged breach thereof, may not be submitted to binding arbitration located in the County of the Town, but must, instead, be heard in a court of competent jurisdiction of the State of New York.

AA. SERVICE OF PROCESS:

In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Energy Performance Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Energy Performance Contractor's actual receipt of process or upon the Town's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Energy Performance Contractor must promptly notify the Town, in writing, of each and every change of address to which service of process can be made, Service by the Town to the last known address shall be sufficient. The Energy Performance Contractor shall have thirty (30) calendar days after service hereunder is complete in which to respond.

APPENDIX D

Evaluation Form

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

Contractor Name: _____

EVALUATION FORM

Name of ESCO:			
Section	Complete (Yes/No)	Pass	Fail
Cover Page			
Corporate Letter			
Table of Contents			
Executive Summary			
Qualifications Content			
Validation of Minimum Project Terms and Conditions			

The point value associated with each of the following criteria follows:

Evaluation Criteria and Points
(References will be considered throughout the scoring process)

MAXIMUM POINT VALUES PER CRITERION		
Criterion	Point Value	Total Points
1. Project Management Approach		80
a. Assignment of appropriate staff	10	
b. Time allocated by key personnel	10	
c. Ability to manage construction, repairs, regular service and emergencies effectively	10	
d. Ability to meet project schedules	10	
e. Responsiveness to specific objectives and concerns in the RFQ	10	
f. Quality of communication skills	10	
g. Ability to coordinate project construction with utilities, subcontractors, equipment suppliers and facility personnel	10	
h. Experience with training staff	10	
2. Technical Approach		175
a. Quality of proposal acceptability, comprehensiveness, and reasonableness	10	

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

b. Proposal demonstrates: 1. Clarity & sound engineering practices	10	
c. Quality of: 1. Savings methodology 2. M&V compliance	10	
d. Demonstrate technology with ability to adapt to changing/future needs	20	
e. Reliability of equipment performance of ESCO's past retrofit projects	20	
f. Documented energy and performance savings, budget control for previous retrofit projects	20	
g. Comprehensiveness of approach	10	
h. Energy savings calculations		
i. Quality and reasonableness of the calculation methodology	30	
ii. Clarity of the methodology	30	
i. Reasonableness of control strategies to enhance project performance	10	
j. Ability to integrate energy use monitoring and verification software/hardware with organizational requirements	5	
3. Performance Risk Assessment		65
a. ESCO Financial Strength	20	
b. Completeness of recent audited financial report	10	
c. Demonstrated ability to provide or arrange project financing	5	
d. Soundness and cost-effectiveness of proposed financing arrangement	10	
e. Clarity and reasonableness of the method for reconciling accounts	5	
f. Potential financial benefits to our organization accounts	10	
g. Clarity of sample project invoice	5	
4. Legal/Contractual Approach		90
a. Contractual flexibility to accommodate changes in building energy use, utility rates, occupancy and operating schedules	20	
b. Contractual flexibility to accommodate needs of our organization	20	
c. Quality and reasonableness of provisions for early termination of the contract	20	

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

d. Reasonableness of the causes for incomplete projects or project failures	10	
e. No past or current legal or administrative adverse actions	20	
Grand Total	410	

Point Consideration

The Evaluation Committee will award points based on the following considerations:

- 1. Fail: 0-49 percent of the maximum points for the criterion*
- 2. Below Average: 50-59 percent of the maximum points for the criterion*
- 3. Average: 60-69 percent of the maximum points for the criterion*
- 4. Above Average: 70-89 percent of the maximum points for the criterion*
- 5. Exceptional: 90-100 percent of the maximum points for the criterion*

Total Score – Possible 410 Points

Contractor Name: _____

Project Management _____

Technical _____

Performance Risk _____

Legal _____

Total Score _____

APPENDIX E

Facility Energy Data

Available Upon Request
Due to the Size and
Extent of the Data

ATTACHMENT 1

Scope of Engineering Services

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

SCOPE OF ENGINEERING SERVICES

1.1 DEFINITION

1.1.1 The Scope of Services consist of those described in Paragraphs 1.2 through 1.5, and include normal structural, mechanical and electrical engineering services.

1.1.2 The Energy Performance Contractor shall not be required to perform professional services which constitute the unlawful practice of architecture or engineering. Instead, the Energy Performance Contractor shall cause such services or any required certifications to be provided by a properly licensed design professional approved and selected by the Municipality and retained as a sub-consultant at the cost and expense of the Energy Performance Contractor.

1.2 PRE-DESIGN SERVICES

Upon request by the Municipality the Energy Performance Contractor shall provide the following services to assist the Municipality in establishing the Municipality's program and the financial and time requirements and limitations for the Project prior to beginning design:

1.2.1 Project Administration services consisting of pre-design administrative functions including:

1. Project-related research
2. Conferences
3. Visit to sites to obtain information on building services and equipment
4. Agency consultations
5. Research of critical applicable regulations
6. Preparation of written and graphic explanatory materials
7. Verification of proposed locations of power requirements for each room

1.2.2 Programming services required to establish the following detailed requirements for the Project including:

1. Design objectives, limitations and criteria
2. Flexibility and expandability

1.2.3 Presentations consisting of presentations of Pre-Design Phase analyses and recommendations by the Energy Performance Contractor to the Municipality and such other entities as the Municipality may require.

1.3 SCHEMATIC DESIGN PHASE

1.3.1 The Energy Performance Contractor, in consultation with the Municipality and other persons or entities designated by the Municipality, shall develop a written program for the project to ascertain the Municipality's needs and to establish the requirements for the project, and shall arrive at a mutual understanding of such requirements with the Municipality

1.3.2 The Energy Performance Contractor shall review with the Municipality alternative approaches to design and construction of the Project.

1.3.3 Based on the mutually agreed-upon program schedule and construction budget requirements, the Energy Performance Contractor shall prepare, for approval by the Municipality, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

1.4 DESIGN DEVELOPMENT PHASE

1.4.1 Based on the approved Schematic Design Documents and any adjustments authorized by the Municipality in the program, schedule or construction budget, the Energy Performance Contractor shall prepare, for approval by the Municipality, Design Development Documents consisting of drawings and other documents to fix and describe the size and character of the Project as to engineering, architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

1.5 CONSTRUCTION DOCUMENTS PHASE

1.5.1 Based on the approved Design Development Documents and any further adjustments to the scope or quality of the Project or in the construction budget authorized by the Municipality, the Energy Performance Contractor shall prepare, for approval by the Municipality and/or its Construction Manager, if any, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project. The design documents shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations in effect on the date of execution of this Agreement. The Energy Performance Contractor shall prepare and submit all documents, applications, and other submittals as the same may be required by the Municipality Building Departments and any other governmental agency, State or Federal, having jurisdiction over the projects(s).

1.5.2 The Energy Performance Contractor with the assistance of the Municipality in connection with the Municipality's responsibility under law shall file all documents required for the approval of governmental authorities having jurisdiction over the project.

1.5.3 The Energy Performance Contractor shall include in the bidding documents, information, plans and/or specifications, a requirement that all contractors provide operation manuals and adequate training for the Municipality in the operation of mechanical, electrical, heating, ventilating and other systems.

1.5.4 Any defective drawings, specifications or other documents furnished by the Energy Performance Contractor shall be promptly corrected by the Energy Performance contractor and/or its subcontractor at no cost to the Municipality. Subject to the provisions concerning Warranty, Liability and Force Majeure, Insurance, Indemnity of this Agreement, nothing contained herein shall preclude a claim against the Energy Performance Contractor by the Municipality for damages arising from defective drawings, specification or any other of the contract documents furnished by the Energy Performance Contractor. Change orders and/or construction change directives resulting from the Energy Performance Contractor's oversight, error or omissions shall not be subject to any additional Energy Performance Contractor's fees. The Municipality's approval, acceptance, use of or payment for all or any part of the Energy Performance contractor's services or of the project shall not in any way alter the Energy Performance Contractor's obligations or the Municipality's rights hereunder.

1.5.5 To the extent that the following consultants are, in the Energy Performance Contractor's professional judgment, required for proper performance of the Energy Performance contractor's services, such consultants shall be retained by the Energy Performance Contractor as a basic service: acoustics, civil engineering, electrical engineering, lighting, mechanical engineering, equipment, roofing, and specifications, structural engineering, and cost estimating.

1.5.6 The Energy Performance Contractor shall furnish the services of other consultants when such services are reasonably required by the scope of the Project.

ATTACHMENT 2

Scope of Construction Services

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

SCOPE OF CONSTRUCTION SERVICES

2.1 DEFINITIONS

2.1.1 "Energy Performance Contractor" shall mean _____

2.1.2 "Engineer" shall mean the design professional engaged by _____ and approved by the Owner to perform the design work of the within agreement.

2.1.3 "Owner" or "Municipality" shall mean the Board of Education of the School Municipality.

2.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY ENERGY PERFORMANCE CONTRACTOR

2.1 DEFINITIONS

2.1.1 "Energy Performance Contractor" shall mean _____

2.1.2 "Engineer" shall mean the design professional engaged by _____ and approved by the Owner to perform the design work of the agreement.

2.1.3 "Owner" or "Municipality" shall mean the Town Board of the Municipality.

2.2 REVIEW OF CONTRACT DOCUMENT AND FIELD CONDITIONS BY ENERGY PERFORMANCE CONTRACTOR

2.2.1 The Energy Performance Contractor shall, prior to starting work on any single portion of the Work, and at frequent intervals during progress of the Work, carefully study and compare the Contract Documents with each other and with information furnished by the Municipality pursuant to Subparagraph 2.2.1 and shall at once report to the Municipality, in writing, errors, inconsistencies or omissions that may be discovered. The Energy Performance Contractor shall be liable to the Municipality for damage resulting from errors, inconsistencies or omissions in the Contract Documents.

2.2.2 The Energy Performance Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Energy Performance Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be corrected at once.

2.3 SUPERVISION AND CONSTRUCTION PROCEDURES

2.3.1 The Energy Performance Contractor shall supervise and direct the Work, using the Energy Performance Contractor's best skill and attention. The Energy Performance Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless Contract Documents give other specific instructions concerning these matters. Where the Contract Documents refer to particular construction means, methods, techniques, sequences and procedures or indicate or imply that such are to be used in the Work, such reference is intended only to indicate that the operations of the Energy Performance Contractor shall be such as to

produce at least the quality of work implied by the operations described, but the actual determination of whether or not the described operations may be safely or suitably employed in the Work shall be the sole responsibility of the Energy Performance Contractor.

2.3.1.1 The Energy Performance Contractor shall, prior to start of any portion of the Work, review any specified construction or installation procedures, including those as may be recommended by the proposed manufacturer.

2.3.1.2 Subject to the provisions concerning Warranty, Liability and Force Majeure, Insurance, and Indemnity of this Agreement, loss, damage, or liability, including reasonable attorneys fees, construction litigation support fees and other expert witness fees, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Energy Performance Contractor.

2.3.2 The Energy Performance Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

2.4 LABOR AND MATERIALS

2.4.1 Unless otherwise provided in the Contract Documents, the Energy Performance Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

2.4.2 The Energy Performance Contractor shall enforce strict discipline and good order among the Energy Performance Contractor's employees and other persons carrying out the work of this Agreement. The Energy Performance Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

2.4.3 The Energy Performance Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Energy Performance Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

1. If the Work is to be performed by trade unions, the Energy Performance Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Municipality and without recourse to the Municipality, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.
2. In case the progress of the Work is affected by any undue delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Municipality may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order or Construction Change Directive.

2.4.4 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been

Request for Proposals, Energy Performance Project at the Town of North Hempstead, New York

selected to have a coordinated design in relation to the overall appearance of the building.

2.5 WARRANTY

2.5.1 The Energy Performance Contractor warrants to the Municipality that materials and equipment furnished under the Contract will be of good quality and new, and of recent manufacture, unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Energy Performance Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Energy Performance Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. If required by Municipality the Energy Performance Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2.5.2 The Energy Performance Contractor will be responsible for and shall make good any defects due to faults in labor and materials which may occur within one year after substantial completion except where sections of the specifications call for a longer period of time.

2.5.3 The warranty provided in this agreement shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law. The warranties required under the Contract Documents shall be extended to include the performance of any and all items of work specified under the "proprietary", "patented", and other specified method as well as procedures specifically required by the Contract Documents, thereby not relieving the Energy Performance Contractor of its general warranty obligations.

2.5.4 The Energy Performance Contractor shall procure and deliver to the Municipality no later than the date claimed by the Energy Performance Contractor as the date of final completion, all normal and special warranties required by the Contract Documents.

2.6 TAXES

2.6.1 The Municipality is a municipal corporation, and a not for profit educational institution and is, therefore, tax exempt in accordance with the applicable laws of the State of New York and with Chapter 32 of the Internal Revenue Code, as most recently amended, for collection of all sales and excise taxes. Exemption certificates will be furnished to the Energy Performance Contractor by the Municipality.

2.7 PERMITS, FEES AND NOTICES

2.7.1 Unless otherwise provided in the Contract Documents, the Energy Performance Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded, but in any case prior to the start of any construction operations.

2.7.1.2 The Energy Performance Contractor shall, if required by ordinances, laws, codes, rules, and/or regulations of the governing agencies having jurisdiction over this project, retain a licensed professional

engineer of the Municipality's selection to supervise the construction of this project including, but not limited to, foundations, structural work, soils, welding, reinforced masonry and the like at the sole cost of the Energy Performance Contractor. The prime Energy Performance Contractors responsible shall pay fees and fines to the County Fire Marshal's Office for inspections of any work related to this agreement after the date of substantial completion. Said inspection will occur prior to Delivery and Acceptance, but in no event more than one (1) year from the date of substantial completion the Project.

2.7.2 The Energy Performance Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on performance of the Work. If the Energy Performance Contractor fails to give such notices, it shall be liable for and shall indemnify and hold harmless (1) the Municipality, its consultants, employees, officers and agents against any resulting fines, penalties, judgments, or direct damages, including reasonable attorney's fees, imposed on or incurred by the parties indemnified hereunder. The Energy Performance Contractor shall pay any direct costs or fees incurred in such compliance and any fines or penalties imposed for violation thereof and any direct costs or fees incurred by the Municipality due to such violation to the extent such violation is directly attributable to the Energy Performance Contractor.

2.7.3 It is the Energy Performance Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations.

2.7.4 If the Energy Performance Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Municipality, the Energy Performance Contractor shall assume full responsibility for such Work and shall bear the attributable costs and shall bear the total cost for correction of same.

2.7.5 The Energy Performance Contractor shall secure approval of and comply with requirements of all authorities and deliver certificates of approval to the engineer, and shall prepare all documents, including drawings, necessary to secure such approval as required to achieve final completion of the Project.

2.7.6 In the event any violations are placed upon the premises by any public authority as a result of the Energy Performance Contractors fault, in connection with the Work, the Energy Performance Contractor shall be solely responsible therefore and shall bear all costs attributable thereto. Final payment in an amount at least sufficient to correct such violations as determined by the Owner shall be withheld until all such violations are cured of record.

2.8 SUPERINTENDENT

2.8.1 The Energy Performance Contractor shall employ a competent, full-time superintendent, and such necessary assistants who shall be in attendance at each project site whenever and wherever work is in progress, during progress of the Work to provide for the expeditious completion of the work. The superintendent shall not be changed, except with the written consent of the Municipality, unless the superintendent or such assistant proves to be unsatisfactory to the Energy Performance Contractor and ceases to be in its employ. The superintendent shall represent the Energy Performance Contractor, and communications given to the superintendent shall be as binding as if given to the Energy Performance Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

2.8.2 The Energy Performance Contractor shall coordinate and supervise the work performed by its subcontractors so that the work is carried out without conflict between trades and so that no trade, at any time, causes delay to the general progress of the work. The Energy Performance Contractor and all subcontractors shall afford each trade reasonable opportunity for the installation of their work and the storage of their materials.

2.8.3 It is required of any and all supervisory personnel proposed for use by any Energy Performance Contractor be versed in the English language or, said Energy Performance Contractor shall furnish a full- time on-site interpreter to facilitate communications with the Municipality's representative.

2.9 ENERGY PERFORMANCE CONTRACTOR'S CONSTRUCTION SCHEDULES

2.9.1 The Energy Performance Contractor, promptly after being awarded the Contract, shall prepare and submit for the Municipality's information and use a construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

2.9.2 The Energy Performance Contractor shall conform to the most recent schedules.

2.9.3 The construction schedule shall be in a detailed precedence style critical path method (CPM) or primavera type format satisfactory to the Municipality which shall also: (1) provide a graphic representation of all activities and events that will occur during performance of the Work; (2) identify each phase of construction and occupancy; and (3) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as Milestone Dates). Upon review and acceptance by the Municipality of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit "A". If not accepted the construction schedule shall be promptly revised by the Energy Performance Contractor in accordance with the recommendation of the Municipality and re- submitted for acceptance. The Energy Performance Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Municipality of any delays or potential delays. The accepted construction schedule shall be dated to reflect actual conditions. In the event any progress report indicates any delays, the Energy Performance Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Municipality and authorized pursuant to Change Order.

2.9.4 In the event the Municipality determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Municipality shall have the right to order the Energy Performance Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities and (3) other similar measures (hereinafter referred to collectively as Extraordinary Measures). Such Extraordinary measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Municipality's right to require Extraordinary Measures is solely for the purpose of ensuring the Energy Performance Contractor's compliance with the construction schedule.

1. The Energy Performance Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Municipality under or pursuant to this Paragraph.
2. The Municipality may exercise the rights furnished the Municipality under or pursuant to this Paragraph as frequently as the Municipality deems necessary to ensure that the Energy Performance Contractor's performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents.

2.9.5 The Municipality shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Municipality's premises or any tenants or invitee thereof. The Energy Performance Contractor shall, upon the Municipality's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling or performance of the Work under this Paragraph may be grounds for an extension of the Contract Time, if permitted under this agreement, and an equitable adjustment in the Contract Sum if: (1) the performance of the Work was properly scheduled by the Energy Performance Contractor in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is required for the convenience of the Municipality.

2.9.6 The Energy Performance Contractors shall be responsible for the coordination and orderly arrangement of the various equipment, lines and piping and engineering features, and to avoid any unsightly arrangements in exposed work.

2.10 DOCUMENTS AND SAMPLES AT THE SITE

2.10.1 The Energy Performance Contractor shall maintain at the site for the Municipality one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Municipality and shall be submitted to the Municipality upon the Energy Performance Contractors completion of the Work.

2.10.2 Energy Performance Contractor shall maintain at the Project site, and shall make available to Municipality one record copy of the Drawings (the "Record Drawings") in good order. The Record Drawings shall be prepared and updated during the prosecution of the Work. The prints for Record Drawing use will be a set of black line prints provided by Engineer to Energy Performance Contractor at the start of construction. Energy Performance Contractor shall maintain said set in good condition and shall use colored pencils to mark up said set with "record information" in a legible manner to show: (i) deviations from the Drawings made during construction; (ii) details in the work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on any existing drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub-outs; and (v) such other information as either Municipality may reasonably request. At the completion of the work, Energy Performance Contractor shall deliver all Record Drawings to Municipality Final payment and any retainage shall not be due and owing to Energy Performance Contractor until the final Record Drawings marked by Energy Performance Contractor as required above are delivered to Municipality.

2.10.3 The Energy Performance Contractor shall maintain all approved permit drawings in a manner so as to

make them accessible to government inspectors and other authorized agencies. All approved drawings shall be wrapped, marked and delivered to the Municipality within sixty (60) days of final completion of the Work.

2.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

2.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Energy Performance Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

2.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Energy Performance Contractor to illustrate materials or equipment for some portion of the Work.

2.11.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

2.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Energy Performance Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents.

2.11.5 The Energy Performance Contractor shall review, approve and submit to the Municipality Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Municipality

2.11.6.1 If the Energy Performance Contractor elects to release work without approvals, same shall be at his own risk and expense.

2.11.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Energy Performance Contractor represents that the Energy Performance Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

2.11.8 When professional certification of performance criteria of materials, systems or equipment is required of the Energy Performance Contractor, the Municipality shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such calculations and certifications. In the event an J11d all such calculations and/or certifications are found to be inaccurate and/or incomplete, the Energy Performance Contractor shall assume full responsibility and bear all costs attributable or related thereto.

2.11.9 The Energy Performance Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Municipality or applicable law, by a licensed engineer.

2.11.10 Unless otherwise directed or specified, the submittal shall be in the form of one (1) sepia and three (3) prints. Six (6) copies of catalogs and catalog data shall be submitted.

2.12 USE OF SITE

2.12.1 The Energy Performance Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and shall not unreasonably encumber the site with material or equipment.

2.12.1.1 The Energy Performance Contractor's right to entry and use thereof arises solely from the permission granted by the Municipality under this agreement.

2.12.2 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Energy Performance Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Energy Performance Contractor.

2.12.2.1 The Energy Performance Contractor shall provide all required temporary access walkways, both interior and exterior, temporary partitioning and the like necessary to complete the operations. The Energy Performance Contractor shall maintain in an unobstructed condition all entrances and/or exits from present buildings.

2.12.3 The Energy Performance Contractor and any entity for whom the Energy Performance Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Municipality which may be withheld in the sole discretion of the Municipality

2.12.4 Without prior approval of the Municipality the Energy Performance Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Municipality Without limitation of any other provision of the Contract Documents, the Energy Performance Contractor shall use its best efforts to comply with all rules and regulations promulgated by the Municipality in connection with the use and occupancy of the Project site and the Building as amended from time to time. The Energy Performance Contractor shall immediately notify the Municipality in writing if during the performance of the Work the Energy Performance Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Municipality may, in the Municipality's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The Energy Performance Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the Building.

2.12.4.1 All Energy Performance Contractors shall confine their use of the premises, for all purposes, to the areas occupied by the construction and related storage areas as and if shown.

2.12.5 Energy Performance Contractors, their workers, suppliers, etc. will be held to adhere strictly to the requirements hereinbefore stated, and shall not occupy or carry on traffic through other parts of the site or interior of present buildings, except by specific permission of the Owner.

2.12.6 The Energy Performance Contractor shall repair or replace any existing trees, shrubbery or other planting damaged by operations and/or workers employed in performance of its contract.

2.12.7 Energy Performance Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Energy Performance Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Building in the event of partial occupancy.

2.12.8 Employees, vehicles, equipment and material of the Energy Performance Contractor and of all others utilized by the Energy Performance Contractor for the performance of its work shall enter onto the construction site only at those locations designated or approved by the Municipality

2.12.9 The Energy Performance Contractor shall familiarize itself with the access and storage requirements of the Municipality and shall be subject to them. The Energy Performance Contractor shall properly maintain all access to work and storage areas so that there will be continuous unimpeded access to the work site in all seasons of the year, on all regular working days and during all regular working hours of any and all trades employed by any Energy Performance Contractor during work at this site.

2.12.10 Only such vehicles, trucks and equipment shall be parked or stored within the work area as are absolutely necessary for performing the work, for the length of time that particular phase of work is performed. All other Energy Performance Contractors' vehicles and/or employees and/or workers' vehicles, including passenger cars shall be parked off the site There are no exceptions to the rule.

2.12.11 It shall be the responsibility of the Energy Performance Contractor to provide necessary and required security measures to adequately safeguard the construction site from vandalism and intrusion of unauthorized persons.

2.12.11.1 The Energy Performance Contractor shall submit means and methods of security to the Municipality for approval.

2.12.11.2 All workers and employees of any Energy Performance Contractor are prohibited from :

1. trespassing or leaving any vehicle on any property not assigned by the Municipality as set aside for the use of the Energy Performance Contractor .
2. leaving any vehicle on the grounds unless it is locked and the ignition keys removed.
3. smoking is not permitted.

2.12.11.3 All employees or persons entering the property surrounding the facilities affected by the construction are restricted to the immediate area of work. Only persons having official business will be admitted to the construction site.

2.13 CUTTING AND PATCHING 2.13.1 The Energy Performance Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

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2.13.2 Only trades persons skilled and experienced in cutting and patching shall perform such work.

2.14 CLEANING UP

2.14.1 The Energy Performance Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Energy Performance Contractor shall remove from and about the Project waste materials, rubbish, the Energy Performance Contractor's tools, construction equipment, machinery and surplus materials, and shall leave the entire area clean or its equivalent.

2.14.2 All Energy Performance Contractor's work areas shall be kept clean each day, of refuse including containers, cups and the like. The facilities will remain in operation during the course of the entire construction operation. All Energy Performance Contractors performing work on this contract shall schedule their work so as to not interfere with any traffic to and from the required areas of use. The Energy Performance Contractor shall be responsible for maintaining all traffic, and shall provide all required barriers and protection as required to safeguard the work and the public and the occupants of the building during construction. The prime Energy Performance Contractors shall comply with all fire code regulations during construction. They include vehicular parking, smoke partitions, rescue window obstructions, use of extension cords. The fire code is available for reference at the office of the Director of School Facilities and Operations.

2.14.3 If the Energy Performance Contractor fails to clean up as provided in the Contract Documents, the Municipality may do so and the cost thereof shall be charged to the Energy Performance Contractor.

2.15 ACCESS TO WORK

2.15.1 The Energy Performance Contractor shall provide the Municipality and Engineer access to the Work in preparation and progress wherever located.

2.16 SUBCONTRACTORS

2.16.1.1 As soon as practicable after receipt of Letter of intent to Award, Notice to Proceed or other form of official notice of award of the Contract, but not more than thirty (30) days after receipt of official notice of award of the Contract, the Energy Performance Contractor shall furnish the Municipality, in writing, with (1) the name, trade and subcontract amount for each subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the name of the installing subcontractor. Copies of all subcontractor contracts, fully executed, are to be provided to the Municipality, including but not limited to all addenda, appendices, and/or exhibits including scope of work sheets. All such subcontracts shall be submitted to the Municipality within thirty(30) days of the Municipality's award of the contract to the Energy Performance Contractor.

2.16.1.2 Upon review of the Energy Performance Contractor's list of Subcontractors, the Municipality will advise the Energy Performance Contractor in writing stating whether or not the Municipality, after due investigation, accepts or rejects, any proposed subcontractor. Subcontractors will not be acceptable unless, when requested by the Municipality, evidence is furnished that the proposed subcontractor has satisfactorily completed similar subcontracts as contemplated under this Contract, and has the necessary experience,

personnel, equipment, plant, and financial ability to complete the subcontract in accordance with the intent to the Documents. As verification of financial ability, the Municipality reserves the right to request and receive up to five (5) years worth of financial statements, bank references, bond/insurance company references and all other information required to assess financial ability.

2.16.1.3 If the Municipality has reasonable objection to a person or entity proposed by the Energy Performance Contractor, the Energy Performance Contractor shall propose another to whom the Municipality have no objection. No increase in the contract sum shall be allowed where a sub-contractor is rejected by the Municipality who is (1) deemed unqualified to perform the particular work subcontracted by the Energy Performance Contractor, (2) does not have the necessary experience, personnel, equipment, plant and financial ability to complete the subcontract, or (3) has a history of poor performance in work of similar nature. Upon receipt of a rejection of a subcontractor by the Municipality, the Energy Performance Contractor shall have the right to request a meeting with the Municipality to discuss the reasons it believes the subcontractor is qualified to perform the work. Upon review of such reasons, the Municipality shall re- consider its determination and shall advise the Energy Performance Contractor of its determination upon such review. If the Municipality still finds that such subcontractor does not meet the requirements above- stated, it shall advise the Energy Performance Contractor. The Municipality's determination upon such review shall be final and binding on the Energy Performance Contractor and its subcontractor and the Energy Performance Contractor hereby waives any and all claims it or its subcontractor might have against the Municipality concerning the rejection of such subcontractor and shall require its subcontractors to execute such similar waiver in its agreement with the Energy Performance Contractor.

2.16.1.4 The Energy Performance Contractor shall not change a subcontractor, person or entity previously selected if the Municipality makes reasonable objection to such change.

2.16.2 By appropriate agreement, the Energy Performance Contractor shall require each subcontractor to be bound to the Energy Performance Contractor by terms of the Energy Performance Contractor's agreement with the Municipality, and to assume toward the Energy Performance Contractor all the obligations and responsibilities which the Energy Performance Contractor, by said agreement, assumes toward the Municipality. Each subcontract agreement shall preserve and protect the rights of the Municipality and the Energy Performance Contractor's agreement with the Municipality so that subcontracting thereof will not prejudice such rights, and shall allow the subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Energy Performance Contractor that the Energy Performance Contractor, by its agreement with the Municipality, has against the Municipality. However, the subcontract agreement between the Energy Performance Contractor and the subcontractor shall not provide, nor shall this Agreement be deemed to provide any rights, remedies or redress by the subcontractor(s) against the Municipality. Where appropriate, the Energy Performance Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors.

2.16.3 The Energy Performance Contractor shall promptly notify the Municipality of any material defaults by any Subcontractors and/or whether it has terminated its agreement with any of its subcontractor for any reason.

2.16.4 The Energy Performance Contractor hereby assigns all of its rights in its agreements with its subcontractor(s) and hereby does assign, transfer and set over to the Municipality all of its rights and/or interests in its agreements with its subcontractor(s), but only in the event of termination of the Energy Performance Contractor's agreement with the Municipality pursuant to Article 17, paragraph A of these General Conditions of the Contract for Construction and only to the extent the Municipality implements its

rights to take such assignment of contract by notifying the subcontractor in writing of its intention to do so. Such an assignment is subject to the prior rights of the surety, if any, obligated to the Municipality pursuant to a performance bond submitted in connection with the Energy Performance Contractor's work.

2.16.5 If the work in connection with a subcontract has been suspended for more than ninety (90) days after termination of the Contract by the Municipality and the Municipality accepts assignment of such subcontract, the subcontractor's compensation shall not be adjusted for any increase in direct costs incurred by such subcontractor as a result of the suspension.

2.16.6 It shall be the Energy Performance Contractor's responsibility, when sub-contracting any portion of its work, to arrange or group items of work under particular trades to conform to the prevailing customs of the trade, regardless of the particular divisions and sections of the specifications in which the work is described.

2.16.7 All subcontracts over \$5,000 shall be in writing.