

# FINANCE COMMITTEE

JUNE 15, 2022

7:00

Aldermanic Chamber and Zoom

Join Zoom Meeting: <https://us02web.zoom.us/j/89522009857?pwd=aTREZW81VHdmUmNnV3RlVWh3cDV6Zz09>  
Meeting ID: 895 2200 9857 Passcode: 506795

By telephone: 1-929-205-6099  
Meeting ID: 895 2200 9857 Passcode: 506795

If there is a problem with the audio, please dial 603-589-3329 to advise.

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## ROLL CALL

## PUBLIC COMMENT

## COMMUNICATIONS

From: Kelly Parkinson, Purchasing Manager  
Re: Commissioning Services in the amount not to exceed \$27,550 funded from 53107 Architect & Engineering Services/DPW Facility (Economic Development)

## UNFINISHED BUSINESS

## TABLED IN COMMITTEE

## NEW BUSINESS – RESOLUTIONS

## NEW BUSINESS – ORDINANCES

## RECORD OF EXPENDITURES

## GENERAL DISCUSSION

## PUBLIC COMMENT

## REMARKS BY THE ALDERMEN

## ADJOURNMENT



**City of Nashua**  
Purchasing Department  
Administrative Services Division  
229 Main Street - Nashua, NH 03060

(603) 589-3330  
Fax (603) 594-3233

May 27, 2022  
Memo #22-291

TO: Mayor Donchess  
Finance Committee

SUBJECT: Commissioning Services in the amount not to exceed \$27550 funded from 53107 Architect & Engineering Services/DPW Facility

Please see attached communications from Tim Cummings, Director of Economic Development, dated May 24, 2022 for project specific details related to this purchase. Below please find a summary of the purchase approval request:

Item: Commissioning services to check & document design, installation and testing the DPW facility building systems against our requirements  
Value: not to exceed \$27,550  
Vendor: Fitzemeyer and Tocci  
Department: 160 Admin/Engineering  
Source Fund: 53107 Architect & Engineering Services/ DPW Facility

Ordinance: Pursuant to § 5-78 Major purchases (greater than \$25,000) A. All supplies and contractual services, except as otherwise provided herein, when the estimated cost thereof shall exceed \$25,000 shall be purchased by formal, written contract from the lowest responsible bidder, after due notice inviting bids.

A competitive bidding RFP for this project was issued on 3/23/2022 and the following bids were received:

Vendor	Location	Amount
Resilient Building Group, Inc.	Concord, NH	\$30,682
Harris Energy Solutions	Round Rock, TX	\$48,448
DuBois & King	S Burlington, VT	\$45,600
Sustainable Engineering Solutions, LLC	Berlin, CT	\$52,400
Colliers Project Leaders USA NE, LLC	Boston, MA	\$53,680
Fitzemeyer & Tocci Associates	Woburn, MA	\$27,550
CannonDesign	Boston, MA	\$24,200
P2S Commissioning	Long Beach, CA	\$48,130

We recommend this bid to be awarded to the vendor who best met the project requirements.

The Economic Development Division and the Purchasing Department respectfully request your approval of this contract.

Regards,  
*Kelly Parkinson*  
Purchasing Manager

Cc: T Cummings  
C O'Connor



# THE CITY OF NASHUA

*Office of Economic Development*

*"The Gate City"*

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**TO:** Jim Donchess, Mayor & Michael O'Brien, Chair

**FROM:** Tim Cummings, Economic Development Director

**Date:** May 24, 2022

**RE:** Approval of a Contract for Commissioning Services provided by Fitzemeyer and Tocci relative to the new DPW Administrative Office Building

The enclosed document is a not to exceed contract of \$27, 550.00 to Fitzemeyer and Tocci. The scope of work to be provide is for commission services.

Commissioning services is a process that checks and documents the design, installation and, testing of a building's systems according to the requirements of the owner. It includes training of the owner's appropriate staff in order to understand and operate the building systems efficiently and correctly. This is a best practice to ensure specifically the mechanical systems are working the way they were designed.

A Request for Proposals ("RFP") was released and there were eight responses and two rose to the top. Fitzemeyer and Tocci and Cannon were essentially the same price for services and ultimately I am recommending that this contract be awarded to Fitzemeyer and Tocci based on their familiarity with the city, price and knowledge in commissioning services specifically when it comes to mechanical systems.

THANK YOU.



## CONTRACT FOR PROFESSIONAL SERVICES

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A CONTRACT BETWEEN

**THE CITY OF NASHUA**  
**229 MAIN STREET, CITY HALL, NASHUA, NH 03060**

*AND*

*its successors, transferees and assignees (together "Professional Engineer")*

**FITZEMEYER & TOCCI**

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NAME AND TITLE OF PROFESSIONAL ENGINEER

**300 UNICORN PARK DRIVE 5<sup>TH</sup> FLOOR, WOBURN, MA 01801**

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ADDRESS OF PROFESSIONAL ENGINEER

**WHEREAS**, the City of Nashua, a political subdivision of the State of New Hampshire, from time to time requires the services of a Professional Engineer ; and

**WHEREAS**, it is deemed that the services of a Professional Engineer herein specified are both necessary and desirable and in the best interests of the City of Nashua; and

**WHEREAS**, Professional Engineer represents they are duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described;

**NOW, THEREFORE**, in consideration of the agreements herein made, the parties mutually agree as follows:

**1. DOCUMENTS INCORPORATED.** The following exhibits are by this reference incorporated herein and are made part of this contract:

Exhibit A--General Conditions for Contracts

Exhibit B--Scope of Services, i.e. Approach to Work/Schedule, Fee Proposal

The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, proposals, representations or agreements, either written or oral. Any other documents which are not listed in this Article are not part of the Contract.

In the event of a conflict between the terms of the Proposal and the terms of this Agreement, a written change order and/or fully executed City of Nashua Purchase Order, the terms of this Agreement, the written change order or the fully executed City of Nashua Purchase Order shall control over the terms of the Proposal.

**2. WORK TO BE PERFORMED** Except as otherwise provided in this contract, Professional Engineer shall furnish all services, equipment, and materials and shall perform all operations necessary and required to carry out and perform in accordance with the terms and conditions of the contract the work described.

**DESCRIPTION OF WORK:**

PLEASE SEE ATTACHED SCOPE OF WORK UNDER EXHIBIT B (APPROACH TO WORK)

**3. PERIOD OF PERFORMANCE.** Professional Engineer shall perform and complete all work by **April 30, 2023** which date shall only be altered by mutually approved written agreement to extend the period of performance or by termination in accordance with the terms of the contract. Professional Engineer shall begin performance upon receipt of an Executed Contract **and** a valid Purchase Order issued from the City of Nashua.

**4. COMPENSATION.** Professional Engineer agrees to perform the work for a total cost not to exceed

**(\$27,550.00 )**

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The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work.

Unless Professional Engineer has received a written exemption from the City of Nashua, Professional Engineer shall submit monthly requests for payment for services performed under this agreement in accordance with the values stated in the Agreement. Such requests shall be supported by such data substantiating the Professional Engineer's right to payment as the City of Nashua may reasonably require. Professional Engineer shall submit monthly requests for payment for services performed under this agreement shall be submitted as follows:

➤ Electronically via email to [VendorAPInvoices@NashuaNH.gov](mailto:VendorAPInvoices@NashuaNH.gov)

**OR**

➤ Paper Copies via US Mail to:

**City of Nashua, City Hall  
Accounts Payable  
229 Main Street  
Nashua, NH 03060**

***Please do not submit invoices both electronically and paper copy.***

In addition, and to facilitate the proper and timely payment of applications, the City of Nashua requires that all submitted invoices contain a valid **PURCHASE ORDER NUMBER**.

Requests for payment shall be submitted no later than fifteen (15) days after the end of each month and must include a detailed summary of the expenditures reported in a form that supports the

approved budget. Specifically, Professional Engineer agrees to provide the following with each request for payment:

1. Appropriate invoice forms. The forms shall include the project purchase order number, a listing of personnel hours and billing rates, and other expenditures for which payment is sought.
2. A progress report. The report shall include, for each monthly reporting period, a description of the work accomplished, problems experienced, upcoming work, any extra work carried out, and a schedule showing actual expenditures billed for the period, cumulative total expenditures billed and paid to date under the contract, and a comparison of cumulative total expenditures billed and paid to the approved budget.

The City of Nashua will pay for work satisfactorily completed by Professional Engineer. The City of Nashua will pay Professional Engineer within **30** days of approval by the City of Nashua of the submitted invoice forms and progress reports. The City of Nashua will make no payments until the invoice forms and progress reports have been submitted and approved.

**5. EFFECTIVE DATE OF CONTRACT.** This contract shall not become effective until executed by the City of Nashua.

**6. NOTICES.** All notices, requests, or approvals required or permitted to be given under this contract shall be in writing, shall be sent by hand delivery, overnight carrier, or by United States mail, postage prepaid, and registered or certified, and shall be addressed to:

CITY OF NASHUA REPRESENTATIVE:

Tim Cummings  
Director of Economic Development  
P: 603.589.3072

PROFESSIONAL ENGINEER REPRESENTATIVE:

Nathaniel Fanning  
Energy & Infrastructure  
P: 781.285.2300 / E:nfanning@f-t.com

Any notice required or permitted under this contract, if sent by United States mail, shall be deemed to be given to and received by the addressee thereof on the third business day after being deposited in the mail. The City of Nashua or Professional Engineer may change the address or representative by giving written notice to the other party.

**IN WITNESS WHEREOF**, the parties hereto have caused this contract to be signed and intend to be legally bound thereby.

\_\_\_\_\_  
*City of Nashua, NH (signature)*

\_\_\_\_\_  
*(signature)*

\_\_\_\_\_  
*James W. Donchess, Mayor*  
*(Printed Name and Title)*

\_\_\_\_\_  
*(Printed Name and Title)*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**EXHIBIT A  
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## **General Terms and Conditions**

1. **DEFINITIONS** Unless otherwise required by the context, "Professional Engineer", and its successors, transferees and assignees (together "Professional Engineer") includes any of the Professional Engineer's consultants, sub consultants, contractors, and subcontractors
  
2. **PROFESSIONAL ENGINEER STATUS** The parties agree that Professional Engineer shall have the status of and shall perform all work under this contract as a Professional Engineer, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the City of Nashua and Professional Engineer, and nothing in this contract shall create any contractual relationship between the City of Nashua and Professional Engineer's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Professional Engineer is not a City of Nashua employee and that there shall be no:
  - (1) Withholding of income taxes by the City of Nashua;
  - (2) Industrial insurance coverage provided by the City of Nashua;
  - (3) Participation in group insurance plans which may be available to employees of the City of Nashua;
  - (4) Participation or contributions by either the Professional Engineer or the City of Nashua to the public employee's retirement system;
  - (5) Accumulation of vacation leave or sick leave provided by the City of Nashua;
  - (6) Unemployment compensation coverage provided by the City of Nashua.
  
3. **STANDARD OF CARE** Professional Engineer shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all work performed under this contract. Professional Engineer warrants that all work shall be performed with the degree of professional skill, care, diligence, and sound practices and judgment that are normally exercised by recognized professional firms with respect to services of a similar nature. It shall be the duty of Professional Engineer to assure at its own expense that all work is technically sound and in conformance with all applicable federal, state, and local laws, statutes, regulations, ordinances, orders, or other requirements. In addition to all other rights which the City of Nashua may have, Professional Engineer shall, at its own expense and without additional compensation, re-perform work to correct or revise any deficiencies, omissions, or errors in the work or the product of the work or which result from Professional Engineer's failure to perform in accordance with this standard of care. Any approval by the City of Nashua of any products or services furnished or used by Professional Engineer shall not in any way relieve Professional Engineer of the responsibility for professional and technical accuracy and adequacy of its work. City of Nashua review, approval, or acceptance of, or payment for any of Professional Engineer's work under this contract shall not operate as a waiver of any of the City of Nashua's rights or causes of action under this contract, and Professional Engineer shall be and remain liable in accordance with the terms of the contract and applicable law.

Professional Engineer shall furnish competent and skilled personnel to perform the work under this contract. The City of Nashua reserves the right to approve key personnel



assigned by Professional Engineer to perform work under this contract. Approved key personnel shall not be taken off of the project by Professional Engineer without the prior written approval of the City of Nashua, except in the event of termination of employment. Professional Engineer shall, if requested to do so by the City of Nashua, remove from the job any personnel whom the City of Nashua determines to be incompetent, dishonest, or uncooperative.

4. **CITY OF NASHUA REPRESENTATIVE** The City of Nashua may designate a City of Nashua representative for this contract. If designated, all notices, project materials, requests by Professional Engineer, and any other communication about the contract shall be addressed or be delivered to the City of Nashua Representative.
5. **CHANGES TO SCOPE OF WORK** The City of Nashua may, at any time, by written order, make changes to the general scope, character, or cost of this contract and in the services or work to be performed, either increasing or decreasing the scope, character, or cost of Professional Engineer's performance under the contract. Professional Engineer shall provide to the City of Nashua within 10 calendar days, a written proposal for accomplishing the change. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Engineer should proceed with any or all of the proposed change. If the change causes an increase or a decrease in Professional Engineer's cost or time required for performance of the contract as a whole, an equitable adjustment shall be made and the contract accordingly modified in writing. Any claim of Professional Engineer for adjustment under this clause shall be asserted in writing within 30 days of the date the City of Nashua notified Professional Engineer of the change.

When Professional Engineer seeks changes, Professional Engineer shall, before any work commences, estimate their effect on the cost of the contract and on its schedule and notify the City of Nashua in writing of the estimate. The proposal for a change shall provide enough detail, including personnel hours for each sub-task and cost breakdowns of tasks, for the City of Nashua to be able to adequately analyze the proposal. The City of Nashua will then determine in writing if Professional Engineer should proceed with any or all of the proposed change.

Except as provided in this paragraph, Professional Engineer shall implement no change unless the City of Nashua in writing approves the change. Unless otherwise agreed to in writing, the provisions of this contract shall apply to all changes. The City of Nashua may provide verbal approval of a change when the City of Nashua, in its sole discretion, determines that time is critical or public health and safety are of concern. Any verbal approval shall be confirmed in writing as soon as practicable. Any change undertaken without prior City of Nashua approval shall not be compensated and is, at the City of Nashua's election, sufficient reason for contract termination.

6. **CITY OF NASHUA COOPERATION** The City of Nashua agrees that its personnel will cooperate with Professional Engineer in the performance of its work under this contract and that such personnel will be available to Professional Engineer for consultation at reasonable times and after being given sufficient advance notice that will prevent conflict with their other responsibilities. The City of Nashua also agrees to provide Professional

Engineer with access to City of Nashua records in a reasonable time and manner and to schedule items that require action by the Board of Public Works and Finance Committee in a timely manner. The City of Nashua and Professional Engineer also agree to attend all meetings called by the City of Nashua or Professional Engineer to discuss the work under the Contract, and that Professional Engineer may elect to conduct and record such meetings and shall later distribute prepared minutes of the meeting to the City of Nashua.

7. **DISCOVERY OF CONFLICTS, ERRORS, OMISSIONS, AMBIGUITIES, OR DISCREPANCIES** Professional Engineer warrants that it has examined all contract documents, has brought all conflicts, errors, discrepancies, and ambiguities to the attention of the City of Nashua in writing, and has concluded that the City of Nashua's resolution of each matter is satisfactory to Professional Engineer. All future questions Professional Engineer may have concerning interpretation or clarification of this contract shall be submitted in writing to the City of Nashua within 10 calendar days of their arising. The writing shall state clearly and in full detail the basis for Professional Engineer's question or position. The City of Nashua representative shall render a decision within 15 calendar days. The City of Nashua's decision on the matter is final. Any work affected by a conflict, error, omission, or discrepancy which has been performed by Professional Engineer prior to having received the City of Nashua's resolution shall be at Professional Engineer's risk and expense. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination of the City of Nashua. Professional Engineer is responsible for requesting clarification or interpretation and is solely liable for any cost or expense arising from its failure to do so.

8. **TERMINATION OF CONTRACT**

**A. TERMINATION, ABANDONMENT, OR SUSPENSION AT WILL.** The City of Nashua, in its sole discretion, shall have the right to terminate, abandon, or suspend all or part of the project and contract at will. If the City of Nashua chooses to terminate, abandon, or suspend all or part of the project, it shall provide Professional Engineer 10 day's written notice of its intent to do so.

If all or part of the project is suspended for more than 90 days, the suspension shall be treated as a termination at will of all or part of the project and contract.

Upon receipt of notice of termination, abandonment, or suspension at will, Professional Engineer shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Place no further orders or subcontracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
3. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or subcontracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City of Nashua any orders or subcontracts specified in the notice, and revoke agreements specified in the notice.
4. Not resume work after the effective date of a notice of suspension until receipt of a written notice from the City of Nashua to resume performance.

In the event of a termination, abandonment, or suspension at will, Professional Engineer shall receive all amounts due and not previously paid to Professional Engineer for work satisfactorily completed in accordance with the contract prior to the date of the notice and compensation for work thereafter completed as specified in the notice. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work.

**B. TERMINATION FOR CAUSE** This agreement may be terminated by the City of Nashua on 10 calendar day's written notice to Professional Engineer in the event of a failure by Professional Engineer to adhere to any or all the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner. Professional Engineer shall be given an opportunity for consultation with the City of Nashua prior to the effective date of the termination. Professional Engineer may terminate the contract on 10 calendar days written notice if, through no fault of Professional Engineer, the City of Nashua fails to pay Professional Engineer for 45 days after the date of approval by the City of Nashua of any Application for Payment.

Upon receipt of notice of termination for cause, Professional Engineer shall:

1. Immediately discontinue work on the date and to the extent specified in the notice.
2. Provide the City of Nashua with a list of all unperformed services.
3. Place no further orders or sub-contracts for materials, services, or facilities, other than as may be necessary or required for completion of such portion of work under the contract that is not terminated.
4. Immediately make every reasonable effort to obtain cancellation upon terms satisfactory to the City of Nashua of all orders or sub contracts to the extent they relate to the performance of work terminated, abandoned, or suspended under the notice, assign to the City of Nashua any orders or sub contracts specified in the notice, and revoke agreements specified in the notice.
5. Not resume work after the effective date of a notice of termination unless and until receipt of a written notice from the City of Nashua to resume performance.

In the event of a termination for cause, Professional Engineer shall receive all amounts due and not previously paid to Professional Engineer for work satisfactorily completed in accordance with the contract prior to the date of the notice, less all previous payments. No amount shall be allowed or paid for anticipated profit on unperformed services or other unperformed work. Any such payment may be adjusted to the extent of any additional costs occasioned to the City of Nashua by reasons of Professional Engineer's failure. Professional Engineer shall not be relieved of liability to the City of Nashua for damages sustained from the failure, and the City of Nashua may withhold any payment to the Professional Engineer until such time as the exact amount of damages due to the City of Nashua is determined. All claims for payment by the Professional Engineer must be submitted to the City of Nashua within 30 days of the effective date of the notice of termination.

If after termination for the failure of Professional Engineer to adhere to any of the terms and conditions of the contract or for failure to satisfactorily, in the sole opinion of the City of Nashua, to complete or make sufficient progress on the work in a timely and professional manner, it is determined that Professional Engineer had not so failed, the termination shall be deemed to have been a termination at will. In that event, the City of Nashua shall, if

necessary, make an adjustment in the compensation paid to Professional Engineer such that Professional Engineer receives total compensation in the same amount as it would have received in the event of a termination-at-will.

**C. GENERAL PROVISIONS FOR TERMINATION** Upon termination of the contract, the City of Nashua may take over the work and prosecute it to completion by agreement with another party or otherwise. In the event Professional Engineer shall cease conducting business, the City of Nashua shall have the right to solicit applications for employment from any employee of the Professional Engineer assigned to the performance of the contract.

Neither party shall be considered in default of the performance of its obligations hereunder to the extent that performance of such obligations is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of such party. Delays arising from the actions or inactions of one or more of Professional Engineer's principals, officers, employees, agents, subcontractors, consultants, vendors, or suppliers are expressly recognized to be within Professional Engineer's control.

9. **DISPUTE RESOLUTION** The parties shall attempt to resolve any dispute related to this contract as follows. Either party shall provide to the other party, in writing and with full documentation to verify and substantiate its decision, its stated position concerning the dispute. No dispute shall be considered submitted and no dispute shall be valid under this provision unless and until the submitting party has delivered the written statement of its position and full documentation to the other party. The parties shall then attempt to resolve the dispute through good faith efforts and negotiation between the City of Nashua Representative and a Professional Engineer Representative. At all times, Professional Engineer shall carry on the work under this contract and maintain and complete work in accordance with the requirements of the contract or determination or direction of the City of Nashua. If the parties are unable to resolve their dispute as described above within 30 days, if requested in writing by either the City of Nashua or the Professional Engineer within 14 days after the 30 days described above, the parties shall attempt to resolve the dispute by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties, which agreement shall not be unreasonably withheld. If the parties cannot agree to a mediator within 30 days or the dispute cannot be settled within a period of thirty (30) days with the mediator, the parties' reserve the right to pursue any available legal and/or equitable remedies for any breaches of this contract except as that right may be limited by the terms of this contract.
10. **NO DAMAGES FOR DELAY** Apart from a written extension of time, no payment, compensation, or adjustment of any kind shall be made to Professional Engineer for damages because of hindrances or delays in the progress of the work from any cause, and Professional Engineer agrees to accept in full satisfaction of such hindrances and delays any extension of time that the City of Nashua may provide.
11. **INSURANCE** Professional Engineer shall carry and maintain in effect during the performance of services under this contract:
  - General Liability insurance in the amount of \$1,000,000 per occurrence; \$2,000,000 aggregate;
  - \$1,000,000 Combined Single Limit Automobile Liability;

**\*Coverage must include all owned, non-owned and hired vehicles.**

- \$1,000,000 Profession Liability;
- and Workers' Compensation Coverage in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

Professional Engineer shall maintain in effect at all times during the performance under this contract all specified insurance coverage with insurers. None of the requirements as to types and limits to be maintained by Professional Engineer are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Professional Engineer under this contract. The City of Nashua shall not maintain any insurance on behalf of Professional Engineer. Professional Engineer shall require Subcontractors to carry appropriate and lawful amounts of insurance for the services they are providing. Professional Engineer will ensure compliance with this section and shall receive valid certificates of insurance from all Subcontractors as proof that coverage is in place..

Professional Engineer will provide the City of Nashua with certificates of insurance for coverage as listed below and endorsements affecting coverage required by the contract within ten calendar days after the City of Nashua issues the notice of award. The City of Nashua requires thirty days written notice of cancellation or material change in coverage. The certificates and endorsements for each insurance policy must be signed by a person authorized by the insurer and who is licensed by the State of New Hampshire. **General Liability and Auto Liability policies must name the City of Nashua as an additional insured** and reflect on the certificate of insurance. Professional Engineer is responsible for filing updated certificates of insurance with the City of Nashua's Risk Management Department during the life of the contract.

- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
- If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Professional Engineer must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
- The specified insurance requirements do not relieve Professional Engineer of its responsibilities or limit the amount of its liability to the City of Nashua or other persons, and Professional Engineer is encouraged to purchase such additional insurance, as it deems necessary.
- The insurance provided herein is primary, and no insurance held or owned by the City of Nashua shall be called upon to contribute to a loss.
- Professional Engineer is responsible for and required to remedy all damage or loss to any property, including property of the City of Nashua, caused in whole or part by Professional Engineer or anyone employed, directed, or supervised by Professional Engineer.

12. **INDEMNIFICATION** Regardless of any coverage provided by any insurance, Professional Engineer agrees to indemnify and hold harmless the City of Nashua, its agents, officials, employees and authorized representatives and their employees from and against any and all suits, causes of action, legal or administrative proceedings, arbitrations, claims, demands, damages, liabilities, interest, attorney's fees, costs and expenses of any kind or nature in any manner caused, occasioned, or contributed to in whole or in part by reason of

any negligent act, omission, or fault or willful misconduct, whether active or passive, of Professional Engineer or of anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this contract. Professional Engineer's indemnity and hold harmless obligations, or portions thereof, shall not apply to liability caused by the sole negligence or willful misconduct of the party indemnified or held harmless.

13. **FISCAL CONTINGENCY** All payments under this contract are contingent upon the availability to the City of Nashua of the necessary funds. This contract shall terminate and the City of Nashua's obligations under it shall be extinguished at the end of any fiscal year in which the City of Nashua fails to appropriate monies for the ensuing fiscal year sufficient for the performance of this contract.

Nothing in this contract shall be construed to provide Professional Engineer with a right of payment over any other entity. Any funds obligated by the City of Nashua under this contract that are not paid to Professional Engineer shall automatically revert to the City of Nashua's discretionary control upon the completion, termination, or cancellation of the agreement. The City of Nashua shall not have any obligation to re-award or to provide, in any manner, the unexpended funds to Professional Engineer. Professional Engineer shall have no claim of any sort to the unexpended funds.

14. **COMPENSATION** Review by the City of Nashua of Professional Engineer's submitted monthly invoice forms and progress reports for payment will be promptly accomplished by the City of Nashua. If there is insufficient information, the City of Nashua may require Professional Engineer to submit additional information. Unless the City of Nashua, in its sole discretion, decides otherwise, the City of Nashua shall pay Professional Engineer in full within **30 days of approval** of the submitted monthly invoice forms and progress reports.

15. **COMPLIANCE WITH APPLICABLE LAWS** Professional Engineer, at all times, shall fully and completely comply with all applicable local, state and federal laws, statutes, regulations, ordinances, orders, or requirements of any sort in carrying out the obligations of this contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all immigration and naturalization laws, and the Americans With Disabilities Act. Professional Engineer shall, throughout the period services are to be performed under this contract, monitor for any changes to the applicable laws, statutes, regulations, ordinances, orders, or requirements, shall promptly notify the City of Nashua in writing of any changes to the same relating to or affecting this contract, and shall submit detailed documentation of any effect of the change in terms of both time and cost of performing the contract.

16. **NONDISCRIMINATION** If applicable or required under any federal or state law, statute, regulation, order, or other requirement, Professional Engineer agrees to the following terms. Professional Engineer will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. Professional Engineer agrees to take affirmative action to employ, advance in employment, or to otherwise treat qualified, handicapped individuals without discrimination based upon physical or mental handicap in all employment practices, including but not limited to the following: employment,

upgrading, demotion, transfer, recruitment, advertising, layoff, termination, rates of pay, or other forms of compensation and selection for training, including apprenticeship.

Without limitation of the foregoing, Professional Engineer's attention is directed to "Title 41 "Public Contracts and Property Management" C.F.R. Subtitle B "Other Provisions Relating to Public Contracts" Section 60 "Office of Federal Contract Compliance Programs, Equal Employment, Department of Labor" which, by this reference, is incorporated in this contract.

Professional Engineer agrees to assist disadvantaged business enterprises in obtaining business opportunities by identifying and encouraging disadvantaged suppliers, consultants, and sub consultants to participate to the extent possible, consistent with their qualification, quality of work, and obligation of Professional Engineer under this contract.

In connection with the performance of work under this contract, Professional Engineer agrees not to discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or sexual orientation. This agreement includes, but is not 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 selection for training, including apprenticeship.

Professional Engineer agrees, if applicable, to insert these provisions in all subcontracts, except for subcontracts for standard commercial supplies or raw materials. Any violation of any applicable provision by Professional Engineer shall constitute a material breach of the contract.

17. **ENDORSEMENT** Professional Engineer shall seal and/or stamp and sign professional documents including drawings, plans, maps, reports, specifications, and other instruments of service prepared by Professional Engineer or under its direction as required under the laws of the State of New Hampshire.
18. **ASSIGNMENT, TRANSFER, DELEGATION, OR SUBCONTRACTING** Professional Engineer shall not assign, transfer, delegate, or subcontract any rights, obligations, or duties under this contract without the prior written consent of the City of Nashua. Any such assignment, transfer, delegation, or subcontracting without the prior written consent of the City of Nashua is void. Any consent of the City of Nashua to any assignment, transfer, delegation, or subcontracting shall only apply to the incidents expressed and provided for in the written consent and shall not be deemed to be a consent to any subsequent assignment, transfer, delegation, or subcontracting. Any such assignment, transfer, delegation, or subcontract shall require compliance with or shall incorporate all terms and conditions set forth in this agreement, including all incorporated Exhibits and written amendments or modifications. Subject to the foregoing provisions, the contract inures to the benefit of, and is binding upon, the successors and assigns of the parties.
19. **CITY INSPECTION OF CONTRACT MATERIALS** The books, records, documents and accounting procedures and practices of Professional Engineer related to this contract shall be subject to inspection, examination and audit by the City of Nashua, including, but not limited to, the contracting agency, the Board of Public Works, Corporation Counsel, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.

20. **DISPOSITION OF CONTRACT MATERIALS** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials, including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the exclusive property of the City of Nashua and all such materials shall be remitted and delivered, at Professional Engineer's expense, by Professional Engineer to the City of Nashua upon completion, termination, or cancellation of this contract. Alternatively, if the City of Nashua provides its written approval to Professional Engineer, any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract must be retained by Professional Engineer for a minimum of four years after final payment is made and all other pending matters are closed. If, at any time during the retention period, the City of Nashua, in writing, requests any or all of the materials, then Professional Engineer shall promptly remit and deliver the materials, at Professional Engineer's expense, to the City of Nashua. Professional Engineer shall not use, willingly allow or cause to have such materials used for any purpose other than the performance of Professional Engineer's obligations under this contract without the prior written consent of the City of Nashua.

21. **PUBLIC RECORDS LAW, COPYRIGHTS, AND PATENTS** Professional Engineer expressly agrees that all documents ever submitted, filed, or deposited with the City of Nashua by Professional Engineer (including those remitted to the City of Nashua by Professional Engineer pursuant to paragraph 20), unless designated as confidential by a specific statute of the State of New Hampshire, shall be treated as public records and shall be available for inspection and copying by any person, or any governmental entity.

No books, reports, studies, photographs, negatives or other documents, data, drawings or other materials including but not limited to those contained in media of any sort (e.g., electronic, magnetic, digital) prepared by or supplied to Professional Engineer in the performance of its obligations under this contract shall be the subject of any application for a copyright or patent by or on behalf of Professional Engineer. The City of Nashua shall have the right to reproduce any such materials.

Professional Engineer expressly and indefinitely waives all of its rights to bring, including but not limited to, by way of complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the City of Nashua or any of its officers or employees, in either their official or individual capacity of the City of Nashua, for violations of or infringement of the copyright or patent laws of the United States or of any other nation. Professional Engineer agrees to indemnify, to defend, and to hold harmless the City of Nashua, its representatives, and employees from any claim or action seeking to impose liability, costs, and attorney fees incurred as a result of or in connection with any claim, whether rightful or otherwise, that any material prepared by or supplied to Professional Engineer infringes any copyright or that any equipment, material, or process (or any part thereof) specified by Professional Engineer infringes any patent.

Professional Engineer shall have the right, in order to avoid such claims or actions, to substitute at its expense non-infringing materials, concepts, products, or processes, or to



modify such infringing materials, concepts, products, or processes so they become non-infringing, or to obtain the necessary licenses to use the infringing materials, concepts, products, or processes, provided that such substituted or modified materials, concepts, products, or processes shall meet all the requirements and be subject to all the terms and conditions of this contract.

22. **FINAL ACCEPTANCE** Upon completion of all work under the contract, Professional Engineer shall notify the City of Nashua in writing of the date of the completion of the work and request confirmation of the completion from the City of Nashua. Upon receipt of the notice, the City of Nashua shall confirm to Professional Engineer in writing that the whole of the work was completed on the date indicated in the notice or provide Professional Engineer with a written list of work not completed. With respect to work listed by the City of Nashua as incomplete, Professional Engineer shall promptly complete the work and the final acceptance procedure shall be repeated. The date of final acceptance of a project by the City of Nashua shall be the date upon which the Board of Public Works or other designated official accepts and approves the notice of completion.
23. **TAXES** Professional Engineer shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work performed under the contract and make any and all payroll deductions required by law. The contract sum and agreed variations to it shall include all taxes imposed by law. Professional Engineer hereby indemnifies and holds harmless the City of Nashua from any liability on account of any and all such taxes, levies, duties, assessments, and deductions.
24. **NON-WAIVER OF TERMS AND CONDITIONS** None of the terms and conditions of this contract shall be considered waived by the City of Nashua. There shall be no waiver of any past or future default, breach, or modification of any of the terms and conditions of the contract unless expressly stipulated to by the City of Nashua in a written waiver.
25. **RIGHTS AND REMEDIES** The duties and obligations imposed by the contract and the rights and remedies available under the contract shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
26. **PROHIBITED INTERESTS** Professional Engineer shall not allow any officer or employee of the City of Nashua to have any indirect or direct interest in this contract or the proceeds of this contract. Professional Engineer warrants that no officer or employee of the City of Nashua has any direct or indirect interest, whether contractual, noncontractual, financial or otherwise, in this contract or in the business of Professional Engineer. If any such interest comes to the attention of Professional Engineer at any time, a full and complete disclosure of the interest shall be immediately made in writing to the City of Nashua. Professional Engineer also warrants that it presently has no interest and that it will not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract. Professional Engineer further warrants that no person having such an interest shall be employed in the performance of this contract. If City of Nashua determines that a conflict exists and was not disclosed to the City of Nashua, it may terminate the contract at will or for cause in accordance with paragraph 8.

In the event Professional Engineer (or any of its officers, partners, principals, or employees acting with its authority) is convicted of a crime involving a public official arising out or

in connection with the procurement of work to be done or payments to be made under this contract, City of Nashua may terminate the contract at will or for cause in accordance with paragraph 8. Upon termination, Professional Engineer shall refund to the City of Nashua any profits realized under this contract, and Professional Engineer shall be liable to the City of Nashua for any costs incurred by the City of Nashua in completing the work described in this contract. At the discretion of the City of Nashua, these sanctions shall also be applicable to any such conviction obtained after the expiration or completion of the contract.

Professional Engineer warrants that no gratuities (including, but not limited to, entertainment or gifts) were offered or given by Professional Engineer to any officer or employee of the City of Nashua with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or making of any determinations with respect to the performance of this contract. If City of Nashua determines that such gratuities were or offered or given, it may terminate the contract at will or for cause in accordance with paragraph 8.

The rights and remedies of this section shall in no way be considered for be construed as a waiver of any other rights or remedies available to the City of Nashua under this contract or at law.

27. **THIRD PARTY INTERESTS AND LIABILITIES** The City of Nashua and Professional Engineer, including any of their respective agents or employees, shall not be liable to third parties for any act or omission of the other party. This contract is not intended to create any rights, powers, or interest in any third party and this agreement is entered into for the exclusive benefit of the City of Nashua and Professional Engineer.
28. **SURVIVAL OF RIGHTS AND OBLIGATIONS** The rights and obligations of the parties that by their nature survive termination or completion of this contract shall remain in full force and effect.
29. **SEVERABILITY** In the event that any provision of this contract is rendered invalid or unenforceable by any valid act of Congress or of the New Hampshire legislature or any court of competent jurisdiction, or is found to be in violation of state statutes or regulations, the invalidity or unenforceability of any particular provision of this contract shall not affect any other provision, the contract shall be construed as if such invalid or unenforceable provisions were omitted, and the parties may renegotiate the invalid or unenforceable provisions for sole purpose of rectifying the invalidity or unenforceability.
30. **MODIFICATION OF CONTRACT AND ENTIRE AGREEMENT** This contract constitutes the entire contract between the City of Nashua and Professional Engineer. The parties shall not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth in this contract. No changes, amendments, or modifications of any terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties.
31. **CHOICE OF LAW AND VENUE** This contract shall be governed exclusively by the laws of the State of New Hampshire and any claim or action brought relating to this contract, the work performed or contracted to be performed thereunder, or referable in anyway thereto

shall be brought in Hillsborough County (New Hampshire) Superior Court Southern Judicial District or in the New Hampshire 9th Circuit Court—Nashua and not elsewhere.

*Section 4*

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Project Approach & Schedule



## TEAM ORGANIZATION

### Principal in Charge – Thomas Tsaros

- The officer-in-charge will serve as the overall supervisor of the project team, ensuring the incorporation of all client requirements, direct and review all project deliverables and coordinate and monitor all design and construction activities. The officer-in-charge is responsible for client satisfaction and will be in direct contact with the owner during the entire duration of the project.

### Energy & Infrastructure Service Leader – Nathaniel Fanning

- The commissioning engineering department manager is responsible for the daily execution of the commissioning process by the commissioning team. This team members serves as the direct liaison between the commissioning engineering team and the owner, design and construction teams. The department manager ensures that project commissioning resource needs are met and that the quality of service proposed by the firm is delivered upon.

### Commissioning Engineer – Patrick Huston

- The commissioning engineer will be responsible for the development of commissioning documentation, execution of functional testing and associated field work. The commissioning engineer works in close coordination with the commissioning department manager to plan and schedule work and with the principal-in-charge to ensure all aspects of project scope and contractual obligations are executed to the satisfaction of the client.



## PROPOSED SCHEDULING

- Anticipated engagement of the commissioning team – 04/2022
- Anticipated start of design phase – 04/2022
  - Development of commissioning specification and design reviews
- Anticipated start of construction phase – 04/2022
  - Progress meetings and periodic site visits to monitor construction and review start-up activities
  - Functional testing will be conducted subsequent to the conclusion of testing and balancing and point-to-point checkout
- Anticipated project completion – 02/2023
  - A final report will be developed and submitted after the closeout of non-conformance log items.
- Anticipated warranty (post-commissioning) phase completion – 02/2024
  - Perform trend and data reviews as requested



## ENGINEERING AND COMMISSIONING SERVICE EXECUTION

Commissioning service execution is efficiently integrated into the construction process when there is buy-in established by all parties early in the development of the project. Buy-in should not be forced, rather established by the commissioning team communicating that the objective of commissioning is not to solely find issues during the construction process, but rather to demonstrate the successful execution of work by design and construction team members. When work is not completed properly or successfully our team's role is to first identify these items, but more importantly we must serve as an active member in formulating and executing remedial action.



## COMMISSIONING SERVICE INTEGRATION

Commissioning should not be merely a one-line item in a construction schedule. As clearly stated in the scope of work, there are numerous activities associated with the execution of commissioning services. Construction phase commissioning activities should be clearly itemized within the construction schedule as soon as a formalized schedule is developed. Lines items should include:

- Testing and balancing broken out on a per floor or per equipment type basis.
- Point-to-point checkout on a per floor or per equipment type basis.
- Functional testing broken out on a per floor, phase or equipment type basis. This breakout will include duration of testing
- Training duration broken out on a per trade basis.
- Line item, including estimated duration for non-conformance item closeout.



## TEAM BUILDING

**Design team** - Fitzmeyer & Tocci is a full-service engineering consulting firm with a primary focus on design. Because the firm is accustomed to working with commissioning agents on design projects, our dedicated commissioning team is constantly reviewing the commissioning approach with our design groups to ensure the delivery of our commissioning service is collaborative with designers. This evaluation activity has resulted in a design review processes that numerous third-party design engineers have provided very positive feedback on.

**Construction team** – The commissioning team at F&T is comprised of engineers with extensive field backgrounds, specifically focused on operations. Much of our team has direct, hands on experience in the maintenance and troubleshooting of mechanical and electrical equipment. This hands-on experience is beneficial in developing a level of trust with contractors and construction teams. Our team is rarely in the position of proposing solutions that we do not have direct experience with. The nature of commissioning requires us to be involved in contentious moments, but we are the first to promote contractors and team members that are collaborative and producing at a high level.



## COMMISSIONING EFFORT ALLOCATION

**Meetings** – Meeting quantity is developed based up the duration of construction. Typically commissioning meetings are conducted monthly through the first 75% of construction. These meetings increase in frequency to bi-weekly and weekly through the final weeks of construction, when functional testing and non-conformance resolution discussions are required.

**Functional testing** – Testing duration is based upon equipment types and counts. The equipment at the heart of distribution systems including, but not limited to boilers, chillers, and air handling units typically require a full day of testing per system or air handling unit. Unitary equipment such as fan coil units, variable air volume terminal units or heat pumps are typically tested in groups of 10-15 units per full day of testing.

**BID FORM**

Project Identification : 0249-040522  
Bid Identification Number: Commissioning Agent

This Proposal is submitted to: City of Nashua Purchasing Department  
229 Main Street, City Hall  
Nashua, NH 03061-2019

The undersigned Vendor proposes and agrees, if this Bid is accepted, to enter into an agreement with the City in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

Vendor accepts all of the terms and conditions of the Advertisement or Request for Proposal and Instructions to Vendors, including without limitation those dealing with the disposition of Bid security. The Bid will remain subject to acceptance for ninety (90) days after the day of proposal opening, or for such longer period of time that Vendor may agree to in writing upon request of the City.

In submitting this Proposal, Vendor represents, as set forth in the Agreement, that:

- Vendor has examined and carefully studied the Bidding Documents and the following Addenda, receipt of all which is hereby acknowledged.

<u>Addendum No.</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

Vendor is familiar with and is satisfied as to all federal, state and local Laws and Regulations that may affect cost, progress and performance of the bid.

The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance of the Work for which this Bid is submitted.

Vendor further represents that this Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Vendor has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid; Vendor has not solicited or induced any individual or entity to refrain from bidding; and Vendor has not sought by collusion to obtain for itself any advantage over any other Bidder or over the City.

**Submitted by:**

Name of Organization Fitzemeyer and Tocci Associates, Inc.  
Name & Title of Authorized Representative Nathaniel Fanning, Energy and Infrastructure Service Leader  
Address: 300 Unicorn Park Dr, 5th Floor, Woburn, MA 01801

Telephone/Email: 617-485-6591, NFanning@F-T.com

Fee Summary	
A. Limited Preparation Phase	\$ 2,900.00
B. Construction Phase	\$10,000.00
C. System Performance Testing	\$ 5,700.00
D. Mechanical Systems Training	\$ 1,000.00
E. Project Closeout and Post Occupancy	\$ 5,900.00
Total Lump Sum Fee: (estimated)	\$25,500.00
Estimated Reimbursable Costs (mileage, printing, copying, etc.)	\$ 2,050.00
Commissioning Services Fee Schedule	Attach your standard fee schedule

Acknowledgement is made of receipt of the following bid documents: Request for Proposal, Exhibit A (Scope of Work), Exhibit B (Bid Form), Appendix A (Contract, Terms & Conditions)

**Fitzemeyer and Tocci Associates, Inc. Nathaniel Fanning, Energy and Infrastructure Service Leader**

(Name of Bidding Vendor)  
 \_\_\_\_\_  
 \_\_\_\_\_  
 (Signature)

Immigration Reform and Control Act of 1986: The undersigned certifies that it does not and will not during the performance of this Contract violate the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.

Disqualification of Bidders: By signing this bid or proposal, the undersigned certifies that this person/firm/corporation is not currently barred from bidding on contracts by any Federal Agency or Agency of the State of New Hampshire, nor is this person/firm/corporation a part of any firm/corporation that is currently barred from bidding on contracts by any Federal Agency or Agency of the State of New Hampshire. We have attached an explanation of any previous debarment(s) and copies of notice(s) of reinstatement(s).

Bidding Organization **Fitzemeyer and Tocci Associates, Inc.**  
 Name & Title of Authorized Representative **Nathaniel Fanning, Energy and Infrastructure Service Leader**  
 Signature \_\_\_\_\_ Date **4/5/2022**



F&T 2022 STANDARD RATES  
 As of January 1, 2022

**Professional Fees**

• Principal/Vice President	\$325.00 per hour
• Market/Service Leader	300.00 per hour
• Senior Project Engineer	250.00 per hour
• Project Manager	200.00 per hour
• Commissioning Engineer	200.00 per hour
• BIM Manager	195.00 per hour
• Project Engineer	185.00 per hour
• Designer / Design Engineer	150.00 per hour
• Clerical/Administration	110.00 per hour

**Reimbursable Expenses**

• Copying and Laser Printing (using in-house equipment)	\$0.15 each
• Copying and Laser Printing (Outside Service)	Cost x 1.1
• Plotting (using in-house equipment):	
Bond Plots	\$1.25 per square foot
Vellum Plots	\$1.90 per square foot
• Plotting (Outside Service)	Cost x 1.1
• Express Mail	Cost x 1.1
• Courier	Cost x 1.1
• Overnight Travel	Cost x 1.1
• Local Travel	\$0.585 per mile plus parking and/or tolls
• Project IT Expense	4% fixed percentage mark-up for soft costs including CAD/BIM software and equipment, engineering software, and data backup, security, and management.
Miscellaneous Expenses	Cost x 1.1

The above rates are subject to change without notice.