



August 19, 2020

Dr. James Hall  
Chief Operating Officer  
Lowell Public Schools  
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978.869.1072

Reference: Lowell Public Schools - Covid Evaluation  
Lowell, Massachusetts  
F&T No. 200520.01

Subject: Engineering Fee Proposal

Dear James:

Thank you for considering Fitzmeyer & Tocci to provide engineering services for the above-referenced project. We propose to provide Mechanical Engineering services as described herein for the following fixed fees:

Basic Engineering Services	\$27,500
Estimated Reimbursable Expenses	\$2,200

## Scope of Work

The project, as we understand it, consists of providing engineering services to review and assess the existing HVAC systems infrastructure for the Lowell Public Schools in Lowell, MA. The intent of the investigation is to review the existing HVAC infrastructure types, configurations, and conditions; and provide recommendations to minimize the risk of COVID-19 spread. The buildings include twenty-nine (29) schools ranging from pre-K to 12<sup>th</sup> grade, and an approximate total size of 2.375million square feet. The scope herein includes:

- Phase 1: Assessment / Recommendation Phase:
  - Review of existing drawings, as-builts (as available), and previous design projects for the spaces under consideration.
  - Perform site visual inspections of the existing systems.
  - Review of existing HVAC system air balancing reports and equipment submittals to assist with the recommendations.
  - Develop a template assessment spreadsheet to communicate the evaluation results and recommended strategies. The intent is an easily understood snapshot of the existing systems conditions & capabilities, and the recommended actions to maximize safety of the occupants and minimize spread risk. The majority of the solutions will be HVAC-based, but will also include electrical and plumbing system and fixture improvements.
  - Maintain a running file of the assessment spreadsheet, adding each building as it is evaluated.

*Mechanical/Electrical Engineers*

## Services Not Included

The following services are not included in the fee:

- Phase 2: Implementation Phase
- Preparation of design documents
- Preparation of as-built drawings
- Physical testing services (e.g. test-and-balance)

## Additional Info Required

Our fee assumes that we will be provided, at no cost to us or as a reimbursable expense, the following:

- Complete set of electronic files of the building architectural or MEP as-built plans.

## Reimbursable Expenses

The following items are not included in the fee and shall be reimbursable to Fitzmeyer & Tocci Associates, Inc. on a monthly basis:

- Printing/plotting and reproduction costs
- Project IT costs
- Travel expenses (mileage, lodging, meals, etc.)
- Courier/delivery and Express Mail charges.

We estimate the reimbursable expenses to be approximately 8% of our fee based upon the items noted above. Reimbursable expenses associated with future change orders will be billed to the base project and will increase the reimbursable expense estimate proportionally. Reimbursable expenses may be billed for a period of time after completion of the study.

## Fee Schedule:

Billing will be monthly and will be proportional to the following schedule. Invoices are due within 30 days of the date of invoice:

<u>Milestone</u>	<u>Fee %</u>
Report	100

## Hourly Rate Schedule:

Any work or services requested in addition to, or not specifically listed above, shall be billed monthly at our standard hourly rates. Our current hourly rates (subject to change without notice) are:

<u>Position</u>	<u>Rate</u>
Principal/Vice President	\$300.00 per hour
Senior Market/Service Leader	290.00 per hour
Engineering Director	290.00 per hour
Market/Service Leader	270.00 per hour
Senior Project Manager	215.00 per hour
Commissioning Manager	210.00 per hour
Engineering Manager	210.00 per hour
Project Manager	195.00 per hour
Engineering Group Leader	195.00 per hour
Senior Engineer	195.00 per hour
BIM Manager	190.00 per hour

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Project Engineer	185.00 per hour
Design Engineer	140.00 per hour
Commissioning Engineer	140.00 per hour
Designer (Drafter/CAD Operator)	130.00 per hour
Clerical/Administration	105.00 per hour

Our proposal includes the services as described within this document and in accordance with the attached Terms & Conditions, which are made a part hereof. The proposal shall remain open and valid for a period of 30 days from the date hereof.

If this proposal is acceptable to you in its present form, please return one signed copy for our records. Please initial next to any of the optional services that are approved.

If you require any other standard form of agreement for services to be provided, please prepare the document and send it to us for review.

Please do not hesitate to call if you require any further information, or if you have any questions.

FITZEMEYER & TOCCI ASSOCIATES, INC.

By: \_\_\_\_\_



Matthew R. Merli, PE  
Principal

Date: \_\_\_\_\_

**TERMS AND CONDITIONS**

**1. Scope of Services:** Consultant, as representative of Client, shall perform only those consulting services described in the attached Proposal. Any additional services Client wishes Consultant to perform shall be deemed Changes and entitle Consultant to additional compensation under the Proposal, or as otherwise agreed to by Consultant and Client. The Consultant represents that it is properly licensed in the jurisdiction where the project is located to provide the services required or shall cause such services to be performed by appropriately licensed design professional. The Client acknowledges that the Consultant may, at the Consultants discretion, utilize third party resources for certain service and software capacities to assist with the professional services it provides. Client agrees to third party resources by agreeing to the attached proposal.

**2. Standard of Care:** Client acknowledges that the Services provided for in this Agreement may require Consultant to make decisions based on experience and engineering judgment, rather than on precise scientific or empirical criteria. Consultant shall endeavor to perform the Services to be under this Agreement in a manner consistent with that level of care and skill ordinarily exercised by other professional consultants performing such Services within the limits prescribed by the Client or set forth in the Proposal, at the same time, in the same locality at the site, and under the same or similar circumstances and conditions. Consultant makes no other representations, either express or implied, as to the findings, recommendations, plans, specifications, professional advice, or other services provided under this Agreement.

**3. Additional Services:** Client may, at any time, by written order, make changes within the general scope of this agreement in the services or work to be performed. If changes cause an increase in Consultant's cost, or time required for performance, of any services under this Agreement, whether or not changed by any order, an equitable adjustment shall be made, and this Agreement shall be modified in writing accordingly. In the event Client executes a change order for the purpose of, or which has the effect of, replacing Consultant with another consultant, then such a change order shall be treated as a breach of contract.

**4. Cost Estimates:** Since Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s)' methods of determining prices or over competitive bidding or market conditions, any opinion of construction cost provided for herein are to be made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as an experienced and qualified professional consultant, familiar with the construction industry; but Consultant cannot and does not guarantee that proposals, bids or actual Construction Costs will not vary from opinions of probable cost prepared by Consultant. If Client wishes greater assurance as to Construction Costs Client shall employ an independent cost estimator. Client further understands and agrees that the Consultant has no control over the actual operating costs of any systems designed hereunder. Any estimates of operating costs provided by the Consultant are based upon information provided by manufacturers and utility companies, and the Consultant's experience and qualifications. Consultant cannot and does not warrant that operating costs will not vary from any estimates provided by Consultant.

**5. Billing and Payment:** Client shall pay Consultant in accordance with the rates and charges set forth in the Proposal. Consultant will submit to Client, at agreed to regular intervals, an invoice of services rendered, and expenses incurred during the previous period. Payment will be due upon receipt of Consultant's invoice. In the event Client fails to pay Consultant within thirty (30) days after invoices are rendered, Client agrees that Consultant shall have the right to consider

that event a total breach of this Agreement and upon seven (7) days written notice, the duties, obligations and responsibilities of Consultant under this Agreement may be either suspended or terminated. The Client shall not withhold amounts from the Consultant's compensation to impose a penalty or liquidated damages on the Consultant, or to offset sums requested by or paid to contractors for the cost of changes in the work, unless the Consultant agrees or is liable for the amounts. If applicable, invoice payments from the Client to the Consultant must be current (up-to-date) before Consultant shall submit documents for permit.

**6. Suspension/Termination:**

A. If the Project is suspended or abandoned in whole or in part, Consultant shall be compensated for all services performed prior to receipt of written notice from the Client of such suspension or abandonment, together with reimbursable expenses then due, and project close-out costs. If the Project is resumed after being suspended for more than sixty (60) calendar days, Consultant shall be entitled to start-up costs and Consultant's compensation shall be equitably adjusted between the Client and Consultant.

B. Client may terminate this Agreement for convenience, at its option, by sending a written Notice of Termination to Consultant. The Notice of Termination shall specify when and which work will be discontinued and when termination shall be effective, provided that no termination shall be effective less than ten (10) calendar days after receipt of the Notice of Termination. No later than thirty (30) calendar days after termination, Client shall pay Consultant for all services performed and charges incurred prior to termination, plus all consequential damages incurred by Consultant indirectly or directly as a result of such termination, including, without limitation, costs and expenses related to putting Project documents in order and rescheduling personnel and equipment.

C. Either party shall have the right to terminate this Agreement for cause if the other party commits a material breach of this Agreement and fails to cure such breach within the time period hereinafter described. A Notice of Default, containing specific reasons for termination, shall be sent to the non-defaulting party, and both parties shall cooperate in good faith to cure the default or defaults stated in the Notice of Default. Termination shall not be effective if the breach has been remedied within ten (10) days after the non-defaulting party's receipt of the Notice of Default or the later date specified in the Notice of Default, or, if the defaulting party has begun to cure such default within such period and diligently prosecutes curing such default to completion (provided that such provision shall not apply to Client's failure to timely pay an invoice). In the event of termination for cause, Consultant shall be paid the same as in the case of termination for convenience and the parties shall have their remedies at law as to any other rights and obligations between them, subject to the other terms and conditions of this Agreement.

**7. Ownership of Documents:**

A. All documents, including drawings, specifications, estimates, field notes, and other data, prepared or furnished under this Agreement by Consultant, and Consultant's independent contractors and consultants pursuant to this Agreement, are instruments of service in respect of the Project and shall remain the property of the Consultant whether or not the Project is completed. Consultant shall retain ownership of all documents, and any copyright thereto. Client may make and retain copies thereof as is necessary to occupy and operate the Project by Client or others, however, such documents are not intended or represented to be suitable for additions, extensions, alterations, or completion of the Project by another consultant, or use on any other project. Any reuse without written verification or adaptation by Consultant for the

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specific purpose intended shall be at user's sole risk and without liability or legal exposure to Consultant or its independent contractors or consultants. The Client shall indemnify, defend, and hold harmless Consultant and its independent contractors and consultants from all claims, damages, losses, and expenses, including attorney's fees arising out of or resulting therefrom. Any such verification or adaptation will entitle Consultant to further compensation at rates to be agreed upon by Client and Consultant.

B. The Client recognizes that data, plans, specifications, reports, documents, or other information recorded on or transmitted as electronic media ("CADD Documents") are subject to undetectable alteration, either intentional or unintentional, due to, among other causes, transmission, conversion, media degradation, software error, or human alteration. Accordingly, the CADD Documents are provided to the Client for informational purposes only and not as an end product. The CADD Documents are instruments of professional service, and shall not be used, in whole or in part, for any project other than that for which they were created, without the express written consent of Consultant. Accordingly, the Client agrees to waive any and all claims against Consultant resulting in any way from the unauthorized alteration, misuse or reuse of the CADD Documents, and to defend, indemnify, and hold Consultant harmless for any claims, losses, damages, or costs, including attorney's fees, arising out of the alteration, misuse or reuse of any CADD Documents.

**8. Limitation of Liability:** To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, employees, agents, and independent professional associates and consultants, and any of them, to Client and any one claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Consultant's services, the project or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, breach of warranty of Consultant or Consultant's officers directors, employees, agents or independent professional associates or consultants, or any of them, shall not exceed the total compensation received by Consultant under this Agreement, or the amount of available insurance proceeds, whichever is greater.

**9. Mediation:** Prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes, or controversies arising out of, or in relation to the interpretation, application, or enforcement of this Agreement to mediation. Mediation shall be conducted under the auspices of the American Arbitration Association in accordance with its existing terms and procedures. The cost of mediation shall be borne equally by the parties. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement and the American Arbitration Association. This Article shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the laws of the Commonwealth of Massachusetts.

**10. Non-Solicitation:** To the fullest extent permitted by law, throughout the duration of this Agreement and for a period of eighteen (18) months immediately thereafter, the Client shall not directly solicit, induce, recruit, hire or encourage such any employees of the Consultant to leave the employment of the Consultant for positions of employment with the Client. In the event this provision is found to be in violation of applicable law, then this provision shall be deemed

narrowed to the extent necessary to comply with and be enforceable under applicable law.

**11. Legal Actions:** All legal actions by either party against the other for breach of this Agreement or failure to perform in accordance with the standard of care, however denominated, shall be barred three (3) years from the day after the time Client knew or should have known of its claim or the Date of Substantial Completion, whichever is earlier. Should it become necessary for Consultant to enforce any term of the provisions of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, including but not limited to witness fees, court costs, and attorney's fees shall be paid by Client.

**12. Insurance:** Consultant is protected by Worker's Compensation Insurance, Employer's Liability Insurance and Professional Liability Insurance. Consultant will furnish certification upon written request. Client agrees that Consultant will not be liable or responsible to Client for any loss, damage, or liability beyond the amounts, limits, exclusions, and conditions of such insurance. To the extent that any damages sustained by Consultant or Client are covered by property insurance, the Client and Consultant waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. The Client and Consultant shall require their contractors, consultants, agents and employees to make similar waivers in favor of the other parties.

**13. Entire Agreement:** This Agreement represents the entire and integrated Agreement between Client and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral, and may be amended only by written instruments signed by both Client and Consultant.

**14. Applicable State Law:** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts.

**15. Headings:** Paragraph or section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of the Agreement or for any other purpose.

**16. Waiver:** A waiver or failure to strictly enforce any breach or omission shall not constitute a waiver of any subsequent breach or omission unless specifically agreed to in writing by the parties.