

## **AGREEMENT FOR PROFESSIONAL SERVICES**

THIS AGREEMENT, effective on June 23, 2021, by and between THOMPSON & LITTON, INC., hereinafter referred to as "CONSULTANT" and the CITY OF KINGSPORT, hereinafter referred to as "OWNER".

WITNESSETH:

WHEREAS, OWNER has need for professional services and other adjunct services as may be authorized by OWNER for DOBYNS BENNETT HIGH SCHOOL GYMNASIUM DOME RE-ROOF, and;

WHEREAS, CONSULTANT desires to provide such services and being competent to do so;

NOW THEREFORE, OWNER and CONSULTANT in consideration of the mutual covenants and agreements herein contained, do hereby agree as follows:

### **ARTICLE I SCOPE OF SERVICES AND SCHEDULE**

- 1.1 The work and services to be performed (hereinafter referred to as "Services") by CONSULTANT shall be in accordance with CONSULTANT's Scope of Work, as detailed in Appendix A attached hereto and made a part hereof as though fully set out in the body of this Agreement.
- 1.2 On receiving authorization to proceed with the work, CONSULTANT shall proceed with the Scope of Work contained in Appendix A.
- 1.3 CONSULTANT shall proceed on a schedule mutually agreed with OWNER.

### **ARTICLE II INDEPENDENT CONTRACTOR**

2.1 CONSULTANT warrants to be an independent contractor and responsible for its Services, and not as the agent of OWNER, in performing the Agreement, maintaining complete control over its employees and all of its subcontractors. Nothing contained in this Agreement or any subcontract awarded by CONSULTANT shall create any contractual relationship between any such subcontractor and OWNER. CONSULTANT shall provide services in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. The CONSULTANT shall review State of Tennessee and City of Kingsport laws and regulations applicable to its services.

CONSULTANT agrees to comply with all applicable Federal, State and Local codes and ordinances, including all applicable requirements of the Americans with Disabilities Act, in the design or implementation of the Project.

### **ARTICLE III COMMITMENT OF PERSONNEL**

- 3.1 CONSULTANT represents that it has, or will secure at its own expense, the qualified personnel required in performing the Services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with OWNER.
- 3.2 All the Services required hereunder will be performed by CONSULTANT or subcontractors under their supervision and all personnel engaged in the Services shall be fully qualified and shall be authorized or permitted under State of Tennessee and local laws to perform such Services.

### **ARTICLE IV COMPENSATION**

- 4.1 OWNER agrees to compensate CONSULTANT for Services performed pursuant to Article I, which Services are identified in Appendix A, for a lump sum amount of THIRTY THOUSAND FIVE HUNDRED TWENTY SIX DOLLARS AND FORTY FOUR CENTS (\$30,526.44) with reimbursable expenses not to exceed TWO THOUSAND DOLLARS (\$2,000.00). Said fee is inclusive of all labor, expenses and subcontracts to complete all elements of the Services for the Scope of Work, (Appendix A) except as may be identified in OWNER'S Responsibilities section of Appendix A, if such is included.
- 4.2 CONSULTANT shall submit periodic invoices in a form consistent with OWNER'S needs. Invoices for work performed shall indicate the time period during which the work was performed. The invoices are to be signed and certified as to their accuracy.
- 4.3 OWNER will promptly review monthly invoices. OWNER may require any additional information deemed necessary and appropriate to substantiate the invoice. OWNER shall have ten (10) work days from date of receipt from CONSULTANT of an invoice to reject all or any part of the invoice. OWNER shall pay the undisputed amounts to CONSULTANT within thirty (30) days of receipt of the invoice. The invoice shall show the percentage of completion of the Services as of the end of the period covered by the invoice. OWNER is not required to pay more than 90% of the compensation set out in 4.1 above until approval of Final Payment. Final payment, constituting the entire unpaid balance of the amount set out in 4.1 above, shall be made by OWNER to CONSULTANT only after CONSULTANT has fully performed and achieved Final Completion of the Services, and has provided OWNER all documents required by this Agreement.
- 4.4 CONSULTANT shall be responsible for alerting OWNER in any instance when it

anticipates exceeding the budget amount; shall provide justification for same; and shall do so prior to expending 100% of the amount set out in 4.1 of this Agreement. The Agreement may be amended as the work progresses, provided CONSULTANT receives written authorization from OWNER to make such amendments.

## **ARTICLE V PERIOD OF PERFORMANCE**

5.1 The Scope of the Services to be performed by CONSULTANT shall be fully and finally completed in accordance with Appendix A. Final completion is the completion of all Services and all contract requirements by CONSULTANT.

## **ARTICLE VI LIABILITY AND INSURANCE**

6.1 Public and Professional Liability - CONSULTANT shall fully indemnify, defend and save harmless OWNER, its Board of Mayor and Aldermen, employees and agents from and against damages, liabilities, expenses, compensations, claims, demands, suits or judgments of sums of money, including but not limited to court costs and reasonable counsel fees, to any party for loss of life or injury or damage to persons or property to the extent caused by, any negligent act, error, omission, of CONSULTANT, its agents, servants, or employees while engaged upon or in connection with the Services required or performed by CONSULTANT. The provisions of this Article VI shall survive the termination or expiration of this Agreement.

6.2 Insurance - Prior to beginning these Services, CONSULTANT shall, at CONSULTANT'S expense, obtain, keep in force during the term of this Agreement the following minimum amounts of insurance:

1. General Liability - occurrence basis bodily injury, personal injury and property damage - \$500,000 – \$1,000,000 combined single limit per occurrence;
2. Automobile liability - owner, hired, and non-owned bodily injury and property damage - \$500,000 – \$1,000,000 combined single limit per occurrence;
3. Workmen's compensation with statutory limits and employer's liability insurance with minimum limits of \$500,000, to provide for the payment of employees of CONSULTANT employed on or in connection with the work and/or to their dependents, of worker's compensation benefits, including when required, occupational disease benefits in accordance with the U. S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act. With the prior approval of OWNER, CONSULTANT may substitute different types of coverage for those specified as long as the total amount of required protection is not reduced.

OWNER, its Board of Mayor and Aldermen, its employees, and agents shall be named as

additional insured on the certificates of insurance (General Liability or Automobile Liability) for such policies, and a certified copy of such certificates shall be provided to OWNER by CONSULTANT prior to the start of Services. CONSULTANT shall provide OWNER, upon its request, a certified copy of any insurance policy required by this Agreement. Any failure or non-coverage by such policy or the limit of any such insurance shall not limit the liability of CONSULTANT to OWNER. The policy, or policies, shall contain a provision that such policy or policies may not be cancelled without thirty (30) days prior written notice of such cancellation to OWNER. Insurance required hereunder shall be in companies reasonably acceptable to OWNER.

## **ARTICLE VII TERMS AND CONDITIONS**

- 7.1 Successors and Assigns - This Agreement and all of its terms and conditions shall extend to and be binding upon the parties hereto and upon their respective heirs, executors, administrators, successors, and assigns.
- 7.2 Subletting, Assignment, or Transfer - This Agreement may not be sublet, assigned or transferred, changed, modified, or amended, in whole or in part, except as may be agreed, in writing, and signed by all the parties hereto.
- 7.3 Extent of Agreement - This Agreement constitutes the entire and integrated agreement between OWNER and CONSULTANT and no other written or oral understanding shall constitute part of this Agreement.
- 7.4 Severability - To the extent that any provision of this Agreement is finally adjudged invalid or unenforceable by a tribunal of competent jurisdiction, such provision shall be deemed modified to the extent necessary to make it enforceable.
- 7.5 Compliance of Laws - CONSULTANT shall comply with applicable laws, ordinances, rules, regulations and requirements of all federal, state and local governments, courts, boards, commissions or any other body exercising functions similar to the foregoing insofar as carrying out the provisions of this Agreement.
- 7.6 Termination – If through any cause, either party shall fail to fulfill in timely and proper manner the obligations, agreements or stipulations of this Agreement, the other party shall thereupon have the right to terminate this Agreement by filing written notice to the party in breach of such termination and specifying the effective date thereof, at least five days before the effective day of such termination.

In such event, all finished or unfinished documents, data, studies, and reports prepared by CONSULTANT under this Agreement shall, at the option of OWNER, become its property and CONSULTANT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents. Notwithstanding the foregoing,

CONSULTANT shall not be relieved of liability to OWNER for damages sustained by virtue of any breach of the agreement by CONSULTANT and OWNER may withhold any payments to CONSULTANT for the purpose of set off until such time as the exact amount of damages due OWNER from CONSULTANT is determined.

- 7.7 Governing Law - This Agreement shall be interpreted under and governed by the laws of the state of Tennessee.
- 7.8 Right to Rely – The CONSULTANT shall have the right to reasonably rely upon the accuracy and completeness of the services and information furnished by the OWNER. The CONSULTANT shall provide prompt written notice to the OWNER if the CONSULTANT becomes aware of any errors, omissions or inconsistencies in such services or information. Nothing herein shall be construed so as to release CONSULTANT from its responsibility or liability.
- 7.9 Dispute Resolution – In the event that a conflict arises that cannot be resolved between the parties, OWNER and CONSULTANT agree that all disputes arising out of or relating to this Agreement or the Project shall be first submitted to non-binding mediation, unless the parties mutually agree otherwise. The mediation shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period of agreement of the parties or court order.
- 7.10 Waiver of Consequential Damages – Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the OWNER nor the CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

## **ARTICLE VIII OWNERSHIP OF DOCUMENTS**

- 8.1 All documents, reports and material prepared by CONSULTANT in the performance of this Agreement shall become the sole property of OWNER upon payment in full of all monies owed the CONSULTANT, provided CONSULTANT is not in breach of this Agreement. CONSULTANT hereby acknowledges that all right, title, and interest in the documents and all related reports, plans, drawings, technical memoranda and other directly

related documents of any kind prepared or made by CONSULTANT or its subcontractors in the performance of or in connection with CONSULTANT'S Services and duties under this Agreement shall be vested solely with OWNER, including the right to hold, use, or dispose of same as OWNER deems appropriate in its sole discretion, but if OWNER uses such documents for other than intended purpose, OWNER assumes any and all liabilities for such use of the documents and CONSULTANT waives any property rights and copyright to such documents.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound have caused their duly authorized representative to, set their hand this day, month, and year first above written.

THOMPSON & LITTON, INC.

CITY OF KINGSPORT

DocuSigned by:  
*Ron Helton*  
By: \_\_\_\_\_  
67F9EEB82C62434...

DocuSigned by:  
*Brent Morelock*  
By: \_\_\_\_\_  
D3996E7B0FAE41D...

Date: 6/23/2021

Date: 6/23/2021

ATTEST:

DS  
DocuSigned by:  
*Angie Marshall*  
City Recorder  
\_\_\_\_\_  
A99E467A1BDB489...

APPROVED AS TO FORM:

DocuSigned by:  
*J. Michael Billingsley*  
City Attorney  
\_\_\_\_\_  
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May 24, 2021

Mr. Brent Morelock, CPPO, CPPB  
Procurement Manager  
City of Kingsport  
225 West Center Street  
Kingsport, Tennessee 37660

Re: Renovations of Dobyons-Bennett High School  
Gymnasium Dome Reroofing  
Architectural and Engineering Services  
T&L Project #:16051

Dear Mr. Morelock:

Pursuant to our recent conversations and emails with you and David Frye, we understand that Kingsport City Schools (Client, KCS) wishes to proceed with re-roofing the gymnasium dome at Dobyons-Bennett High School (DBHS) based upon recommendations in Thompson & Litton's October 2020 Conditions Report. We further understand that the budget for the construction is based upon our study estimate of \$508,774.00. KCS desires that the dome project re-roofing be completed by June 2024. The construction and bidding market environment are currently volatile regarding material availability, lead times, and the availability of labor resources. The combination of these volatile conditions can cause unanticipated cost increases and delays. We are submitting this proposal for professional architectural and engineering services for the aforementioned project. Our services include:

1. A meeting with the City of Kingsport and Kingsport City Schools (Client) representatives to review the project scope and refine schedule.
2. Thompson & Litton's (T&L) team of an architect and an engineer will perform additional non-invasive observations of building roofs conditions. The site visit will include gathering information of roofing details.
3. T&L professional services for re-roofing the gymnasium dome includes preparation of bidding and construction documents; structural consulting for re-roofing the dome, recommendations for specification of shoring and bracing during the re-roofing, and repairs related to the substrate (decking) of the dome; assistance during advertising and bidding; and construction contract administration. Our proposed lump sum fee for these services is \$30,526.44 which is 6% of the estimated construction cost, excluding reimbursable expenses for mileage, meals, authorized overnight travel, newspaper advertising and bid set printing. We are prepared to commence our services as soon as an agreement is executed. T&L



Mr. Brent Morelock, CPPO, CPPB

May 24, 2021

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anticipates the project being ready for advertising for bids in approximately 120 days. Our scope of services includes two site visits/meetings during design, two site visits during bidding/procurement, and six site visits during construction over a period of 30 months. Our scope excludes inspecting for hazardous materials and abatement design.

4. T&L services include structural consulting for re-roofing the dome, recommendations for specification of shoring and bracing during the re-roofing, and repairs related to the substrate (decking) of the dome.
5. T&L estimates that reimbursable expenses for mileage, meals, authorized overnight travel, newspaper advertising and bid set printing will not exceed \$2,000.00
6. The Client will provide access to the school and spaces upon reasonable advanced notice from T&L. We will also request copies of as-built or original construction drawings, asbestos management reports, roof warranties, maintenance histories, and equipment warranties. The assistance of Client maintenance or facilities staff in unlocking doors, ladder(s), and access would be helpful and appreciated.

T&L further understands that the Client's attorney will prepare a new AIA Document B101 – 2017 Standard Form of Agreement Between Owner and Architect (Agreement). The Agreement will include the details regarding our scope of basic services, supplemental services, and compensation.

We look forward to providing architectural and engineering services to the City of Kingsport and Kingsport City Schools.

Sincerely,

Carl C. Gutschow, AIA, NCARB, LEED AP  
Director of Architecture/Associate