

## AGREEMENT FOR CONSULTANT SERVICES

### WOODLAND SCHOOL DISTRICT

THIS AGREEMENT is entered into as of *September 24, 2012* by and between Woodland School District ("School District") and ("Consultant").

*A. The School District desires to engage the Consultant to perform certain technical, professional or other services described in this Agreement ("Services") on the Yale School Gym Project ("Project").*

*B. The Consultant represents that it is in all respects qualified to perform, is capable of performing the Services, has an established record of consulting for the type of services covered by this Agreement, and is not contractually or otherwise financially associated with the School District.*

*C. The employee of the Consultant assigned to this Project who will be primarily responsible for the Services is Eric Lanciault, Architect ("Project Consultant").*

*D. The School District agrees to pay the Consultant a fee, based on time-and-materials, ("Fee") not to exceed \$43,264.39 as full and complete compensation for the Services, including reimbursable expenses.*

*E. The Services will be completed by: October 25, 2012*

### AGREEMENT

#### **1. Contractual Relationship**

The Consultant shall be and operate as an independent contractor and shall have control over and responsibility for the conduct of all personnel performing the Services. The Consultant shall perform the Services in accordance with its own methods in an orderly and professional manner. The Consultant is not an agent or employee of the School District for any purpose, and is not authorized on behalf of the School District to enter into any agreements, to waive any provisions of the Contract Documents, to receive or accept contractual notice, to authorize payment, or to accept or approve any change in the price or time of the Contract Documents. The Consultant acknowledges the relationship of trust and confidence established between the Consultant and the School District by this Agreement. Accordingly, the Consultant's acts shall be consistent with this relationship. The Consultant shall further the interest of the School District through efficient business administration and management.

#### **2. Scope of Service**

a. **Services.** The Consultant shall perform Services pursuant this Agreement as more fully described in Attachment "A" hereto.

b. **Timing.** The timing for performing the Services is critical to the District's interests.

c. Performance. All of the Services will be performed by or through the Consultant in a satisfactory and proper manner, as determined by the School District. None of the Services shall be subcontracted without prior written approval of the School District. The Consultant shall perform the Services with a high standard of care, skill and diligence. At the time of performance, the Consultant shall be properly licensed, equipped, organized and financed to perform the Services.

d. Correction. The Consultant shall, at no cost to the School District, promptly and satisfactorily correct any Services found to be defective or not in conformity with the requirements of this Agreement.

e. Compliance. The Consultant shall comply, and shall contractually require that the Services of all its subconsultants to comply, with applicable federal, state and local laws, regulations, codes and orders. School District approval of documents does not imply such documents conform to applicable laws, regulations, codes or orders.

f. Conflicts. The Consultant has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner with the performance of the Services. The Consultant will not employ any person in the performance of this Agreement having any such interest.

### **3. Responsibilities of the School District**

a. The School District shall provide information in its possession regarding requirements for the Project.

b. The School District shall designate a representative authorized to act in the School District's behalf with respect to the Project. The School District or such authorized representative shall examine the documents submitted by the Consultant and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Consultant's services.

c. The School District shall furnish all required information as expeditiously as necessary for the orderly progress of the Work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.

### **4. Personnel**

a. The Consultant will secure at its own expense all personnel required to perform the Services. These personnel shall not be employees of, or have any contractual relationship with, the School District or the Contractor, and they shall be experienced, fully qualified and authorized under applicable law to perform their portion(s) of the Services. The School District shall be entitled to rely upon any assistance, guidance, direction, advice or other Services provided by any such personnel. The Consultant's key personnel shall remain assigned for the duration of the work unless otherwise agreed to in writing by the School District. The School District shall not unreasonably withhold approval of staff changes. The Consultant shall, if so requested by the School District, upon reasonable notice in writing, remove from the Services any person the School District deems incompetent, careless or otherwise objectionable, after allowing a reasonable period for adjustments and/or corrections.

b. The Services will be suitable for the intended purpose. At the time of performance, the Consultant shall be properly licensed, equipped, organized and financed to perform the Services. The Project Consultant shall not be changed without the School District's written consent.

c. The Consultant shall not utilize any employee who has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under Chapter 9A.42 RCW, the physical injury or death of a child under Chapter 9A.32 RCW or Chapter 9A.36 RCW (except motor vehicle violations under Chapter 46.61 RCW), sexual exploitation of a child under Chapter 9A.68A RCW, sexual offenses under Chapter 9A.44 RCW where a minor is a victim, promoting prostitution of a minor under Chapter 9A.88 RCW, the sale or purchase of a minor child under Chapter 9A.64.030 RCW, or violation of similar laws of another

jurisdiction. The Consultant shall remove from the Services any employee or other person who has engaged in such actions or who the School District reasonably considers objectionable at no cost to the School District. Failure to comply with these requirements is grounds for immediate termination of the Agreement.

d. The Consultant may designate and appoint subconsultants after conferring with the School District regarding their selection. The Consultant shall not appoint a subconsultant to which the School District has a reasonable objection. The Consultant shall incorporate the provisions of this Agreement and a scope of Services consistent with the requirements of the Project into the contracts with subconsultants. The Consultant shall furnish the School District, upon request, a copy of the Consultant's contract(s) with the subconsultants prior to execution. Any subcontracting of any of the Services shall not relieve the Consultant from its responsibility for the performance of the Services in accordance with the terms of this Agreement nor from its responsibility for the performance of any of its other obligations under the Agreement. The Consultant shall incorporate the provisions of this Agreement and a scope of services consistent with the requirements of the Project into the contracts with subconsultants. The Consultant shall furnish to the School District, upon request, a copy of the Consultant's contract(s) with the subconsultants prior to execution. Key personnel of subconsultants shall remain assigned for the duration of the work unless otherwise agreed to in writing by the School District. The School District shall not unreasonably withhold approval of staff changes. The School District may require substitution of any subconsultant provided that the School District has first notified the Consultant in writing and allowed a reasonable period for adjustments and/or corrections.

## 5. Time of Performance

The timing of the Services is critical to the success of the Project. The Services shall be undertaken so as to assure their expeditious completion in the light of the purpose of this Agreement. The Services will be completed by, and the Agreement shall remain in effect until the Completion Date unless cancelled prior to that date pursuant to this Agreement.

## 6. Compensation

a. Fee. The School District will pay the Fee for Services satisfactorily rendered. Any costs incurred by the Consultant in excess of the Fee are the responsibility of Consultant unless approved in writing by the School District prior to being incurred.

b. Changes in Services. Additional compensation for a pre-authorized Change in Services shall be paid as agreed in writing prior to commencement of the Services. The Consultant will not, however, be entitled to additional compensation for Services incurred because of the fault of the Consultant.

c. Method of Payment. The Consultant will submit a monthly written request for payment and a progress report certifying that it has performed the designated Services under the Agreement, and that it is entitled to receive the amount requested. Payment will be made on the basis of the actual Services the School District approves as satisfactorily completed. The School District will pay the Consultant within 30 days of receipt of the request and report. Payments due but unpaid shall bear interest at the statutory rate pursuant to RCW 39.76, not to exceed Bank of America prime rate plus 2%, starting 30 days after receipt of the request and report.

d. Reimbursable Expenses. In addition to the Fee, the School District agrees to pay the Consultant for the following Reimbursable Expenses to the extent reasonably incurred and paid by the Consultant in the interest of the Project: **Three dimensional renderings, models, reproduction and reprographics, delivery and shipping, prints and copies and mileage at direct cost plus 10%.**

## 7. Changes in Services

The School District may, at any time, require changes in the scope of the Services. A Change in Services, including any increase or decrease in the Consultant's compensation and/or time of performance, will be incorporated in written amendments to this Agreement when mutually agreed upon by both parties. Change in Services will be billed at the following rates:

Principal	\$ 155
Project Architect	\$ 105
Designer	\$ 72.50
Drafter	\$ 55.00
Administration Support	\$ 42.50

## 8. Indemnification

The Consultant shall indemnify and hold harmless the School District, its agents, directors and employees, successors and assigns, from and against all claims, damages, losses and expenses, direct or indirect, or consequential, including costs and attorneys' fees incurred on such claims and in proving the right to indemnification, to the extent they are caused or alleged to be caused by any negligent or wrongful act or omission of the Consultant, its employees, agents or anyone acting on its behalf.

## 9. Insurance

a. Certificates. The Consultant shall not commence performance of Services under this Agreement until all required insurance has been obtained and a certificate has been submitted to the School District. A certificate of insurance reflecting the insurance required below, identifying the School District as additional insured and indicating that the insurance is primary and non-contributing, shall be provided prior to execution of this Agreement. All certificates must provide 45 day's prior notice to the School District of cancellation, nonrenewal, or material alteration of the insurance. All insurance is to be provided by insurance companies with an A.M. Best's rating of not less than A- VII. The insurance requirement shall not reduce the obligations of the indemnification agreement set out in paragraph 7. Lapse of coverage or failure to furnish satisfactory evidence of insurance is cause for termination of this Agreement.

b. Coverage. The Consultant, at its own cost, shall maintain public liability insurance for bodily injuries (including sickness or death) and property damages in the minimum amount of \$1,000,000 combined single limit per occurrence, and in the minimum of \$2,000,000 in the aggregate, Employers Liability (Washington Stop-Gap) in the amount of no less than \$1,000,000 per occurrence, and auto bodily injury and property damage liability in a minimum amount of \$1,000,000 per accident for owned, non-owned, and hired automobiles. In addition, the Consultant shall maintain professional liability (malpractice) insurance in a minimum amount of \$1,000,000 per claim.

## 10. Dispute Resolution

a. Mediation. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall first be subject to nonbinding mediation. A request for mediation shall be filed in writing with the other party to the Contract, and the parties shall promptly attempt to mutually agree upon a mediator. If the parties have not reached agreement on a mediator within thirty days of the request, either party may file the request with the American Arbitration Association with a copy to the other party, and the mediation

shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association.

b. Mediation Procedure. An officer or principal of the Consultant and the Superintendent or designee of the School District, both having full authority to settle the claim, must attend the mediation session. To the extent there are other parties in interest, such as subconsultants, the Contractor, and/or designers, their representatives, with full authority to settle the claim, shall also attend the mediation session.

c. Litigation. The Consultant may not bring litigation on claims unless they have been properly raised and considered in the above mediation procedure.

d. No Waiver. The requirements of this paragraph cannot be waived except by an explicit written waiver signed by the School District.

## **11. Termination**

a. Termination by Consultant. Should the School District fail substantially to perform in accordance with the terms of this Agreement through no fault of the Consultant, the Consultant may terminate this Agreement by giving written notice of such termination and specifying the effective date thereof as a date certain at least twenty (20) days after the notice, during which period the School District shall have the right to cure the default.

b. Termination by School District. The School District may, at its option, terminate all or a portion of the Services not then performed under this Agreement at any time with or without cause by notifying the Consultant in writing. All work products given to, prepared or assembled by or for the benefit of the Consultant under this Agreement shall, at the option of the School District, thereupon become its property.

c. Compensation. The School District shall be liable to the Consultant for the Consultant's just and equitable compensation for all Services satisfactorily completed prior to termination, but this compensation shall not exceed the percentage of total Services satisfactorily completed at the time of termination times the total compensation payable under this Agreement. In no event shall the School District be liable for any consequential or incidental damages, including but not limited to loss of profit on other projects or of reputation incurred by the Consultant as a result of such termination.

## **12. Miscellaneous**

a. Assignment. The Consultant shall not assign or transfer any interest in this Agreement without the prior written consent of the School District.

b. Governing Law. This Agreement shall be governed by the internal laws of the State of Washington, not including its choice-of-law provisions.

c. Nondiscrimination. The Consultant shall comply with all applicable provisions of RCW 49.60 as well as other State, local and Federal civil rights laws.

d. Material Created During Performance of Contract. All data, designs, drawings, tracings, plans, layouts, programs, flow charts, specifications, computer software, documentation, work product, and any and all memoranda, including but not limited to, physical and electronic copies, and any and all written information which may be produced, prepared, or designed by the Consultant in connection with the services to be performed hereunder, shall, upon creation, become, and remain the exclusive property of the School District, and shall be available to the School District at all times. Upon the termination or completion of the Agreement, any and all material referred to in this paragraph, together with all copies in the Consultant's possession, custody, or control, shall be promptly transferred and delivered to the School

District, upon the School District's request, and the Consultant shall thereafter make no further use, either directly or indirectly, of such material, except that the Consultant may retain one archival copy to be used only in case of a dispute concerning this Agreement.

e. Accounting. Upon request, the Consultant shall provide the School District with an accounting of Services, which shall detail the Services performed, the amounts paid to any subconsultants (supported by copies of all paid invoices) and such other information as the School District may reasonably request. Upon request, the Consultant shall provide the School District with access to the books and records related to the Services of Consultant and its subconsultants for inspection, audit, and reproduction.

**Consultant: Eric Lanciault, Architect**

By: *Eric Lanciault*

Its: PRINCIPAL

Date: 17 SEPTEMBER 2012

**Woodland School District**

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

Its: \_\_\_\_\_

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

**Attachment A**  
**Scope of Services**

**Michael Green**  
Superintendent  
Woodland School District  
800 3<sup>rd</sup> Street  
Woodland, Washington 98674

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Re: Yale Elementary School Gymnasium

Dear Michael:

I am very pleased to present the following fee proposal for the design of the Yale School Gym project. I am looking forward to working with you on a very successful project that enhances safety, education and community use and pride.

This proposal is for Pre-Design services. These services are a precursor to design services and will be used to establish project scope, schedule and budget.

### Pre-Design

#### *Charrette*

To kick off the project, we will organize and facilitate a charrette for the students. The purpose of the charrette is to give the children the opportunity to participate in the project's design process in a creative and fun way. We intend to use the imagery that will come out of this charrette in community presentations and as part of a project display in the school.

#### *Options*

During our interview with your selection committee, we presented five design options that identified various opportunities and challenges for the gym project. We understand that some of these options may be the basis of further exploration using a cost modeling approach. The options consider various site arrangements, building massing, site approach, and building orientations. These options are very broadly defined in nature and will serve as a platform for further design development.

### **Eric Lanciault, Architect**

3016 nw gravenstein street

camas, washington 98607

voice: 360.798.3801

### *Cost Models*

We will work with you to develop cost models that may be used to evaluate the early, general direction of design. There will be two phases in the cost modeling effort.

Phase one: We will develop high, medium and low costs per square foot that can be applied, generally, to any scheme under consideration. The costs per square foot will consider quality and durability of systems such as HVAC, electrical, exterior construction and interior finishes. You will be able to apply the low, medium and high costs to any options you select. By applying the high, medium and low models to a specific option, you will be able to quickly see the impact of project size, scope and finish on the project budget. You will be able to make an informed decision about each design concept and will be able to avoid supporting a design concept that cannot fall within the District's budget.

Phase two: After you have identified a few design options for further investigation, we will construct a cost estimate for each specific option based on the combination of low, medium or high systems that you select. We will provide you with a preliminary building construction cost for each option. With this information, we anticipate that you will establish a construction budget and select a single design option that will be the basis of conceptual design going forward.

### *Conceptual Design*

We will develop up to three conceptual designs based on the single design option identified at the conclusion of cost modeling. The three conceptual designs will illustrate different solutions for building massing, interior and exterior character, spatial organization and flow, daylighting, and other pertinent aspects of the proposed building.

### *Community Presentation*

After you have selected a preferred conceptual design, we will provide the information and imagery that you request for a community presentation. We anticipate that this will include presentation plan drawings, elevations and three-dimensional rendered imagery.

### *Jurisdictional Requirements*

The first jurisdictional review that will be required for the project is a Pre-Application conference with Cowlitz County staff. This review will give us an early indication of jurisdictional requirements for the project. These requirements will shape design decisions.

At the conclusion of Pre-Design, the Yale Gym team will have a single, clear project vision, an established budget, a design concept that appeals to the Yale community and momentum to move quickly into Project Design and Contract Documents.

## **Schedule**

The overall schedule for the project assumes an early October, 2013 building occupancy. To achieve this schedule, the team must remain aggressive to make good decisions in a timely manner. A schedule is attached to this proposal.

We anticipate Pre-Design to be completed by October 25, 2012.

## **Compensation**

We propose providing these services on a time and materials basis with a not-to-exceed limit of \$43,264.39.

This compensation is based on the following fees:

Architectural	\$25,322.50
Structural	\$1,298.24
Mechanical	\$1,925.00
Electrical	\$3,850.00
Civil	\$1,045.00
Cost Estimating	\$4,753.65
Fire Suppression Design	\$1,000.00
Septic System Design	\$4,070.00

## **Hourly Rates**

### Architectural

Principal	-	\$155
Project Architect	-	\$105
Designer	-	\$72.50
Drafter	-	\$55.00
Administration Support	-	\$42.50

Consultant rates are available when requested.

## **Reimbursables**

In addition to the above, costs for three dimensional renderings, models, reproduction and reprographics, delivery and shipping, prints and copies, and mileage are considered reimbursables and are provided at direct cost plus ten percent (10%).

## **Changes in Scope**

Changes in scope of work or services, work performed out of sequence, revisions to the project, or inclusions of additional services will be considered changes to the above scope. Fees will be adjusted in accordance with our standard hourly fee, as agreed upon prior to the service being performed.