



TO: BOARD OF DIRECTORS

FROM: STEVE LIDGARD, EXECUTIVE DIRECTOR – BUSINESS SERVICES 

SUBJECT: PAXIS INSTITUTE – PROFESSIONAL SERVICES CONSULTANT

DATE: AUGUST 15, 2017

TYPE: ACTION NEEDED

Attached is a copy of a Professional Services Consultant agreement with Paxis Institute to provide a training on September 1, 2017. Also attached is a memo from Jennifer Allen, Principal of Twin City Elementary School and Colleen Keller, Principal of Utsalady Elementary School, explaining the program and the funding source for the training.

Recommendation:

We recommend the board move to approve the contract with Paxis Institute.

TWIN CITY ELEMENTARY SCHOOL

JENNIFER ALLEN, PRINCIPAL



DATE: August 10, 2017

TO: Dr. Jean Shumate, Superintendent
Stanwood-Camano School Board Members

FROM: Jennifer Allen, Principal
Colleen Keller, Principal

RE: PAX Training

We are requesting permission to bring a trainer from the Paxis Institute to provide PAX Good Behavior Game training on Friday, September 1, 2017. The cost of the trainer, travel, and supporting materials cost \$5850.

The PAX Good Behavior Game is a self-regulation, behavior management program for students. We believe that this school-wide adoption of a positive behavior management program will improve the culture of our school and behaviors of our students.

Funding for this training will be split between Colleen Keller and Jennifer Allen's building budget. A purchase order will be issued dividing the cost of the training pending Board Approval.

Sincerely,

Jennifer Allen, Principal
Twin City Elementary School

Colleen Keller, Principal
Utsalady Elementary School

**AGREEMENT BETWEEN STANWOOD-CAMANO
SCHOOL DISTRICT AND PROFESSIONAL SERVICES CONSULTANT**

The "Effective Date" of this Agreement is: 9/1/17

The "Parties" to this Agreement are

The "School District": Stanwood-Camano School District No. 401
26920 Pioneer Highway
Stanwood, WA 98292

The "Consultant": Name Paxis Institute
Billing address P.O. Box 31205
Tucson, AZ 85751-1205

The "Consultant's representative": Beatrice Ramirez

The "Project": PAX Training

The "Scope of Services": See Exhibit 'A' for "Services"

The Consultant's "Fee" (either):

Hourly, up to a not-to-exceed amount of: \$0

or

Stipulated Sum: \$5850

The "Date of Completion": 9/1/17

Minimum Required Insurance:

Commercial General Liability: At least \$1 million per occurrence and \$2 million aggregate for personal injury, bodily injury and property damage

Automobile Liability: At least \$1 million combined single limit and aggregate

Workers' Compensation (industrial insurance): At least the State statutory amount

Employer's Liability: At least \$1 million

Professional Liability: *per \$1M AA approved by Steve Lidgard* At least \$2 million per claim and in the aggregate (AZ)

Additional Insureds: School District and Paxis Institute

The School District and Consultant agree as follows: (Include contract commencement and termination dates, also include extension options if any.)

TERMS AND CONDITIONS OF AGREEMENT

ARTICLE I CONSULTANT'S RESPONSIBILITIES AND SERVICES

1.1 The Services consist of those performed by the Consultant, Consultant's employees, and Consultants subconsultants, if any, as enumerated in this Agreement and Exhibit 'A.' To the extent the requirements of this Agreement conflict with the terms of any exhibit or attachment, the terms of this Agreement shall control.

1.2 The Consultant represents that it is qualified and capable in all respects to perform the Services and has an established record of providing the type of services covered by this Agreement. Each person who performs the Services on behalf of the Consultant shall be experienced and qualified to perform the Services he or she performs, and the School District shall be entitled to rely on any assistance, guidance, direction, and advice provided by any such person. If requested by the School District, the Consultant shall remove from the Services, without cost to the School District or delay to the Services, any person whose removal the School District reasonably requests.

1.3 The Services shall be performed in a good, professional, and workmanlike manner, in accordance with the applicable standard of care, and with skill and diligence. The Consultant shall complete its Services by the Date of Completion specified on the cover page.

1.4 The Consultant's Representative specified on the cover page shall be responsible for and in charge of the Services. The Consultant's Representative shall not be changed for the duration of the Services without prior written approval from the School District.

1.5 At the time of performance, the Consultant shall be properly licensed, as required by applicable law, and properly equipped, organized, and financed to perform the Services. The Consultant shall also acquire and pay for (as part of Consultant's Fee) any and all permits required by applicable law for the Consultant to properly perform the Services. The Consultant is responsible for ensuring that its Services are performed in accordance with all applicable School District policies and procedures.

1.6 The Consultant shall, at no cost to the School District, promptly and satisfactorily correct any Services that are defective or not in conformity with the requirements of this Agreement. The obligation of the Consultant to correct defective or nonconforming Services shall not in any way limit any other obligations of the Consultant and is in addition to any and all other rights and remedies available to the School District under this Agreement or by law and shall in no event be construed or interpreted as obligating the School District to make any correction of defective or nonconforming Services.

1.7 The Consultant accepts the relationship of trust and confidence between the Consultant and the School District established in this Agreement. The Consultant shall cooperate with the School District and its employees, and the School District's other consultants, contractors, subcontractors, suppliers, and others involved with or impacted by the Services, and shall use its best efforts to maintain a positive working relationship with each.

1.8 The Consultant shall be and operate as an independent contractor in the performance of the Services and shall have responsibility for all personnel performing the Services. The Consultant shall perform the Services in accordance with its own methods in an orderly and professional manner. In no event shall the Consultant be authorized on behalf of the School District to: (1) enter into any agreements; (2) waive any provisions of any agreements or receive or accept notice on behalf of the School District; (3) authorize any payments or accept or approve any documents, work, services, goods, or materials on behalf of the School District, or (4) act as or be an agent or employee of the School District.

1.9 The Consultant may designate and subcontract with subconsultants with the School District's prior written consent. The Consultant shall not subcontract with 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 its Services into its subcontracts, if any. Any subcontracting of any of the Services shall not relieve the Consultant from its responsibilities under this Agreement.

ARTICLE 2
ADDITIONAL SERVICES

2.1 Additional Services, and any other services involving compensation beyond the Consultant's Fee, shall be provided if authorized in writing by the School District. The School District shall pay for Additional Services only to the extent not caused by the errors, omissions, malfeasance, or negligence of the Consultant.

2.2 The Consultant shall not move forward in rendering Additional Services without the written permission of the School District. The Consultant shall notify the School District prior to providing any Services requiring an adjustment in the Consultant's Fee. Failure to provide such timely written notice before providing such Services shall be a waiver of any right to payment for Additional Services. If requested by the School District in writing, the Consultant shall proceed with such Additional Services even if the parties have not yet agreed to a change in compensation. If the School District deems that all or a part of such Additional Services are not required, the School District shall give prompt written notice to the Consultant, and the Consultant shall have no obligation to provide, and the School District shall have no obligation to compensate the Consultant for those Services.

ARTICLE 3
SCHOOL DISTRICT'S RESPONSIBILITIES

3.1 To the extent not already provided, the School District shall provide full information regarding requirements for and limitations on the Services, including the School District's objectives, schedule, constraints, and criteria, and will respond to any questions from the Consultant regarding such information.

3.2 The School District shall pay the Consultant the Consultant's Fee specified on the cover page, in accordance with Article 9, for the Consultant's proper performance of the Services.

ARTICLE 4
USE OF CONSULTANT'S
INSTRUMENTS OF SERVICE

4.1 Any documents, reports, information, data, drawings, specifications, maps, models, photographs, studies, and/or other work product, including those in electronic form, prepared (whether completed or partial) by the Consultant and its subconsultants, if any, as a part of the

Services are the Instruments of Service. The Instruments of Service shall become the joint property of the School District and Consultant and, unless otherwise provided, the Consultant shall be deemed the author of these Instruments of Service and shall retain all common law, statutory, and other reserved rights, including the copyright, to the extent not modified herein. To the extent necessary, the Consultant grants to the School District a non-exclusive license to use and reproduce at no additional cost the Instruments of Service for purposes of constructing, completing, using, maintaining, renovating, and/or adding to the Services. Reproducible copies of the Instruments of Service may be retained by the School District and the School District is entitled to make and retain copies and reproduce them for its own use.

4.2 Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project are not to be construed as publication in derogation of the either parties' reserved rights.

4.3 Upon request by the School District, the Consultant shall provide electronic copies of its Instruments of Service, including AutoCAD, Word, Excel and similar files to the School District as part of Services.

ARTICLE 5
DISPUTE RESOLUTION

5.1 Any claim, dispute, or other matter in question between the School District and the Consultant, including Consultant's subconsultants, arising out of or related to this Agreement ("Disputes"), shall be exclusively subject to the following alternative dispute resolution procedure in an effort to reduce the incidence and costs of extended Disputes and as a condition precedent to the institution of legal or equitable proceedings by either party. This requirement cannot be waived except by an explicit written waiver signed by the School District and the Consultant.

5.2 The School District and Consultant shall endeavor to resolve Disputes through good-faith negotiation. If negotiations are not successful, each party shall continue to perform its obligations under this Agreement and the School District and Consultant shall endeavor to resolve such Disputes by mediation, which, unless the parties mutually agree otherwise, shall be in accordance with the Washington Uniform Mediation Act and the Construction Industry Mediation Rules of the

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5/10/17
Change
approved by
Steve
Lidgard

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American Arbitration Association currently in effect. A request for mediation shall be filed in writing with the other party to this Agreement. If the parties are unable to select a mutually acceptable mediator within *thirty (30) days* of the request for mediation, the request may then be filed with the American Arbitration Association. Mediation shall proceed in advance of legal or equitable proceedings.

5.3 A principal of the Consultant and the Superintendent or designee of the School District, both having full authority to settle the Dispute, must attend the mediation session. To the extent there are other parties in interest, such as subconsultants, contractors, subcontractors, and suppliers, their representatives, each with full authority to settle all pending disputes or claims, shall also be encouraged to attend the mediation session.

5.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Seattle, Washington, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

5.5 The Consultant and the School District mutually waive punitive and consequential damages, including, without limitation, all such damages due to either party's termination. This waiver does not, however, limit a party's ability to recover third-party damages caused by the other party.

ARTICLE 6

TERMINATION AND SUSPENSION

6.1 Suspension: If any undisputed amount remains due and owing after a period of *sixty (60) days* from the date the Consultant submits an invoice, the Consultant may cease performing Services until all undisputed monies due are paid in full. The Consultant will not incur any liability for damages due to delay as a result of stopping performance of Services due to the School District's failure to pay undisputed amounts for Services rendered.

6.2 Termination by the School District: The School District may, at its sole discretion, terminate all or a portion of the Services not then properly performed under this Agreement at any time with or without cause upon written notice to Consultant. All Instruments of Service shall thereupon become the property of the School District, and the School District shall indemnify and hold harmless the Consultant, its agents and employees, from any claims arising from the School District's subsequent use of the Instruments of Service after termination.

6.3 Compensation: In the event of a termination without cause, the School District shall be liable to the Consultant only for Services properly completed prior to termination; this compensation shall not exceed the percentage of total Services properly completed at the time of termination multiplied by the Consultant's Fee.

ARTICLE 7

MISCELLANEOUS PROVISIONS

7.1 This Agreement shall be governed by the internal law of the State of Washington, without regard to its choice-of-law provisions.

7.2 The School District and Consultant waive all rights against each other and against the contractors, subconsultants, agents, and employees of the other for damages, to the extent covered by property insurance during construction, except such rights as they may have to the proceeds of such insurance as set forth in the Contract for Construction. The School District and Consultant each shall require similar waivers from their contractors, subconsultants, agents, and employees.

7.3 The School District and Consultant bind themselves, and their partners, successors, assigns, and legal representatives, to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Neither the School District nor the Consultant shall assign this Agreement without the written consent of the other.

7.4 This Agreement represents the entire and integrated agreement between the School District and Consultant and supersedes all prior negotiations, representations, and agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the School District and the Consultant.

7.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the School District or the Consultant.

7.6 The Consultant's Services shall be performed in accordance with generally accepted standards of professional practice, any applicable statutory or regulatory standards, and the terms and conditions of the Agreement. The Consultant shall be solely responsible for the safety of its own personnel, equipment, agents, independent contractors, and subconsultants, and shall be solely responsible for public health, safety, and welfare related to or arising from its acts or omissions at the site. The Consultant understands and agrees that it shall abide by all federal, State, and local laws and requirements, including without limitation those related to worker and site safety laws and regulations.

7.7 The School District reserves the right to contract with other consultants, contractors, subcontractors, and suppliers for services.

7.8 The Consultant certifies that it, and its employees and subconsultants, as applicable, are not prohibited from working at a public school site or from having unsupervised contact with children during the course of their employment and have not pled guilty to nor been convicted of any of the crimes listed in RCW 28A.400.322. Pursuant to RCW 28A.400.303, the Consultant and its employees and subconsultants providing Services who will have unsupervised access to children are required to have successfully completed a background record check through the Washington State Patrol Criminal Identification System and through the Federal Bureau of Investigation in accordance with RCW 43.43.830 through .834, RCW 10.97.30 and RCW 10.97.50. The Consultant shall provide the School District with the background check results prior to such individuals performing Services on site. Failure to comply with this Section shall be grounds for the immediate termination of this Agreement for cause.

7.9 To the extent required by applicable law and as requested by the School District, the Consultant shall comply, and shall assist the School District in complying, with the Washington Public Records Act, Chapter 42.56 RCW. In addition, the Consultant agrees, on behalf of itself and its subconsultants of any tier, that the invocation of any rights under RCW 42.56 by the Consultant or a subconsultant of any tier at any time shall initiate an equivalent right to disclosures from the Consultant and

Subcontractors of any tier for the benefit of the School District.

7.10 The Consultant shall comply with all applicable provisions of Chapter 49.60 RCW, the Law Against Discrimination, and shall not discriminate on the basis of race, creed, color, national origin, sex, sexual orientation, marital status, age, veteran status, or disability. This is in accordance with Title VI of the 1964 Civil Rights Act; Section 504 of the Rehabilitation Act, 1973, as amended; the Americans with Disabilities Act, July 26, 1990, P.L. 101-336; and Title IX of the Education Amendments of 1972, as amended.

7.11 Certification Regarding Debarment: The Consultant certifies that neither the Consultant nor any of its principals are presently debarred, suspended, proposed for debarment, or declared ineligible, or voluntarily excluded for the award of contracts, by any Federal governmental agency or department. For the purposes of this certification, "principals" refers to the officers, directors, owners, partners, and persons having primary management or supervisory responsibilities within a business entity. The Consultant shall provide immediate written notice to the School District if, at any time during the term of this Agreement, the Consultant learns that its certification was erroneous when made or has become erroneous by reason of a changed circumstance. The Consultant's certification is a material representation upon which the School District has relied in entering into this Agreement. Should the School District determine, at any time during the term of this Agreement, that this certification is false, or should it become false due to changed circumstances, the School District may immediately terminate this Agreement for cause.

ARTICLE 8

INSURANCE AND INDEMNIFICATION

8.1 **INSURANCE:** The Consultant shall, at its sole cost and expense, secure and maintain at least the insurance types and limits identified on the cover page, on an occurrence basis, to protect the School District, its successors, assigns, and the respective directors, employees, and agents of each of the foregoing (such as by naming them as additional insureds), from and against any and all claims, losses, harm, costs, liabilities, damages, and expenses arising from the Consultant's Services.

8.1.1 The Consultant shall maintain professional liability insurance (errors and omissions) from

the Effective Date through *six (6) years* after the Date of Completion, with limits of at least those identified on the cover page, for claims that may result in any way from Consultant's negligent performance of its obligations under this Agreement.

8.1.2 All such insurance shall be placed with insurers and under such forms and limits of policies as may be reasonably acceptable to the School District. Within *ten (10) days* of execution of this Agreement and annually thereafter, the Consultant shall deliver to the School District certificates of insurance (including renewal or replacement certificates), bearing all required endorsements, acceptable to the School District and signed by the insurer or its authorized representative, certifying that the policies are in full force and effect. The policies shall not be canceled or materially changed without the Consultant providing the School District with at least *thirty (30) days'* prior notice of such cancellation or change. The School District, and any additional parties identified on the cover page, shall be named as additional insureds on all applicable policies. The foregoing requirements as to insurance and acceptability to the School District of insurers and insurance to be maintained by the Consultant shall not in any manner limit or qualify the liabilities or obligations assumed by the Consultant under this Agreement.

8.2 INDEMNIFICATION: The Consultant hereby releases and agrees to defend, indemnify, and hold the School District, its successors and assigns, and the School District's Board, directors, officers, agents, and employees of each of the foregoing ("Indemnified Parties") harmless, from and against: (1) any and all claims of third parties; and (2) losses, harm, costs, liabilities, damages, and expenses arising or resulting from such claims of third parties, including attorneys' fees, costs, and others litigation expenses ("damages"), to the extent arising out of or in connection with any willful misfeasance, bad faith, or negligence in, or reckless disregard of: (i) the performance of the Services by, (ii) the obligations of, or (iii) the acts or omissions of the Consultant or any of its subconsultants of any tier, their respective successors and assigns, the directors, officers, employees, and agents of each of them, or anyone acting on the Consultant's behalf in connection with this Agreement or its performance (the "Indemnifying Parties"); PROVIDED, however, that the Consultant is not required to so defend, indemnify, or hold harmless any of the Indemnified Parties against claims or damages caused by or resulting from the sole negligence of the Indemnified Parties; and PROVIDED FURTHER that if such claims or damages are caused by or result from the concurrent

negligence of the Indemnified Parties and the Indemnifying Parties then the Consultant's defense, indemnity, and hold harmless obligations hereunder shall be limited to the proportionate extent of the negligence of the Indemnifying Parties.

8.2.1 In claims against any person or entity indemnified under this Section 8.2 by an employee of the Consultant, any of its subconsultants of any tier, anyone directly or indirectly employed by them or anyone for whose acts they are liable, the obligations under this Section 8.2 shall not be limited by the amount or type of damages, compensation or benefits payable by or for the Consultant or a subconsultant under workers' compensation acts, disability benefit acts, or other employee benefit acts. After mutual negotiation of the parties, the Consultant expressly waives immunity as to the School District under Title 51 RCW, "Industrial Insurance."

ARTICLE 9 PAYMENTS TO CONSULTANT

9.1 PROGRESS PAYMENTS ON ACCOUNT OF SERVICES: Progress payments are due and payable to the Consultant within *thirty (30) days* of receipt of the Consultant's invoice, provided that Consultant's invoice is received by the School District by the *tenth (10th)* of the month and provided that the Consultant is entitled to payment as provided in this Agreement. Amounts unpaid *sixty (60) days* after the invoice receipt date shall bear interest at the Bank of America Prime Rate plus 2%.

9.1.1 Consultant's invoices shall include the description and value of Services completed during the previous month, the percent of Services completed through the previous month, and the balance of Services remaining. Invoices, including Reimbursable Expenses, shall be accompanied by receipts or records documenting those expenses. Invoices for Additional Services, as authorized under Article 2, shall be accompanied by supporting information, such as time sheets or invoices, as necessary to substantiate the Additional Services.

9.2 CLAIMS: If the Consultant believes that it is entitled to any additional compensation, such as payment for which the Consultant considers to be Additional Services, the Consultant shall timely notify the School District in writing of such claims for compensation as provided in Section 2.2. Failure of the Consultant to timely provide such written notification to the School

District shall constitute a waiver of the Consultant's rights to seek additional compensation. In no event shall the Consultant have the right to seek such additional

compensation from the School District after acceptance of final payment by Consultant for Services.

SCHOOL DISTRICT

By: Jennifer Allen
(Signature)
Jennifer Allen
(Printed name)
SCSD Principal
(Title)
5/1/17
(Date)

(Purchase Order No.)

(Account Code)

CONSULTANT

By: Dennis D. Embry
(Signature)
Dennis D. Embry
(Printed name)
President
(Title)
8/10/17
(Date)
86-0921395
(Social Security or Tax ID #)

EXHIBIT A
Scope of Services

See attached proposal for training.

P.O. Box 31205
Tucson, AZ 85751-1205
(520)299-6770
invoicing@paxis.org

ADDRESS
Colleen Keller
Utsalady Elementary School
608 Arrowhead Road
Camano Island, WA 98282

SHIP TO
Colleen Keller
Utsalady Elementary School
608 Arrowhead Road
Camano Island, WA 98282

PROPOSAL #	DATE	EXPIRATION DATE
1744	06/15/2017	07/31/2017

DATE	ITEMS OR ACTIVITY	QTY	RATE	AMOUNT
09/01/2017	PAX GBG Training 1 Day of Professional Services	1	3,300.00	3,300.00

Introductory training on PAX Good Behavior Game for teachers, specialists, administrators and other school staff

One-day, on-site
8:00 a.m. - 4:00 p.m.

Date: September 1, 2017 (tentative)
Location: Camano Island, WA
Trainer: TBD (not guaranteed)
Venue: TBD

Includes:
A) One Purr-fect PAX Data System License for up to 10 classrooms for one year. Delivered via PAX Data app available after July 1, 2017.
B) Customized registration service with downloadable Excel spreadsheets

Training is capped at 40 participants unless special permission is granted by PAXIS Institute PRIOR TO THE EVENT.

DATE	ITEMS OR ACTIVITY	QTY	RATE	AMOUNT
09/01/2017	Technical Assistance for PAX GBG Implementation This is a resource for teachers and administrators as they move through the process of introducing PAX GBG kernels (strategies) and leading in to playing full games. It is designed to assist these professionals if they have questions about PAX or if help is needed working through any obstacles encountered that would keep them from full implementation. Package of 5 hours; Services can be delivered via email, phone or video conference platforms	2	375.00	750.00
09/01/2017	Estimated Expenses Expenses include airfare, hotel(s), car rental and fuel, travel day(s), per diem at current published GSA rate for Camano Island, mileage at current IRS rate, airport parking, baggage fees, service charges and miscellaneous as applicable. 2017 GSA published per diem rate for Camano Island is \$51 2017 IRS mileage rate is \$.53.5 per mile Expenses will be billed at actual cost plus a 10% service fee	1	1,800.00	1,800.00
09/01/2017	Cancellation Policy For all trainings scheduled in August or September, the grace period for cancellation is THREE WEEKS prior to the scheduled date. The grace period for remaining months is TWO WEEKS. A fee of 25% of the professional services will be assessed in the event of a cancellation. All expenses incurred to date will also be assessed including airline change fees if applicable.	1	0.00	0.00

DATE	ITEMS OR ACTIVITY	QTY	RATE	AMOUNT
09/01/2017	Terms and Conditions TERMS AND CONDITIONS In accepting this proposal, it is agreed that: A) The client is responsible for duplication costs of all handouts used in the training. PAXIS Institute will provide the digital files. B) The client is responsible for providing all A/V equipment needed along with other requested items. PAXIS Institute will forward a list of equipment and other items needed separately from this proposal. C) The client will provide the venue for the event(s) unless other arrangements have been agreed upon by both parties. D) The client will provide PAXIS Institute with a copy of all materials used to promote the event. E) The client will provide PAXIS with a list of attendees that includes email addresses. This is strictly to register participants for access to the PAX GBG website. PAXIS will not share names with any entity at any time because that would not be PAX.	1	0.00	0.00
09/01/2017	Materials have not been included in this proposal. Please contact our office to obtain a separate proposal for kits.			

This estimate is good for 90 days from the date shown here. Please notify Bea Ramirez at bea@paxis.org or 520-299-6770 to accept this proposal.

TOTAL

USD 5,850.00

Accepted By

Accepted Date