

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of the _____ of April, 2021, by and between **Lewiston-Altura ISD #857** (the "District") and **InGensa, Inc.** ("Consultant").

RECITALS

- A. The District desires to obtain certain professional services in connection with preparing a plan for comprehensively improving its facilities and infrastructure (the "Plan"); and
- B. Consultant desires to provide such services and has the background and experience to do so.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Overview and Scope of Services

The District desires to develop and implement the Plan, including but not limited to: facilities and infrastructure assessment and planning, program management, architecture, engineering, construction management, and commissioning. To develop and implement the Plan in a timely and logical manner, the parties will undertake a two-phase approach.

The scope of work for Phase I is set forth on Attachment A hereto. The scope of work for Phase I services is referred to herein as the "Phase I Services". The purpose of Phase I is for Consultant to work with the District to formulate the Plan.

Although not part of the Phase I Services, it is anticipated that following completion of Phase I the District and Consultant will enter into definitive agreements for implementation of some or all of the facilities and infrastructure improvements identified in the Plan. Such implementation is generally referred to as Phase "II". Phase II services are contemplated to include: architectural services; mechanical, electrical, structural and civil engineering services; construction management services; and commissioning services (in accordance with Minn. Stat. § 123B.72). Phase II services would not include construction contracts. Any construction contracts associated with the implementation of Phase II work would be entered into by the District and separate construction contractors, in accordance with the District's procurement requirements.

It is the District's intent to negotiate in good faith with the Consultant in order for Consultant to provide to the District the Phase II services summarized above. Any Phase II services to be provided by Consultant to the District will be the subject of separate, mutually agreeable, definitive agreements between Consultant and the District. Any estimates of the cost of construction shall be only estimates and shall not constitute a representation or warranty regarding cost of the construction. The cost of construction of any potential project will be determined based upon competitive bids received from construction contractors for the work at issue in accordance with procurement statutes.

The District and Consultant acknowledge and agree that this Agreement and the Services furnished hereunder do not constitute the "privatization" of any of the District's government functions, or otherwise require or authorize Consultant to perform any such functions as defined in Minn. Stat. Chapter 13 ("Chapter 13") or otherwise. The District and Consultant acknowledge and agree that data created, collected, received, stored, used, maintained, or disseminated by Consultant in connection with this Agreement, but not conveyed to the District, is not subject to disclosure under Chapter 13. The District will promptly notify Consultant, and Consultant will promptly notify the District, of any Chapter 13 requests relating to the work hereunder.

2. Compensation

The District shall pay Consultant \$35,000 in consideration of the Phase I services. The total amount for Phase I services shall be payable within sixty (60) days of delivery to the District of the Plan. Such amount is referred to herein as the “PI Fee”. Notwithstanding the foregoing, in the event the District enters into definitive agreements with Consultant for Phase II services within sixty (60) days of the delivery of the Plan, the PI Fee shall not be payable hereunder but shall instead be added to the price of the Phase II services and shall be invoiced and collected in accordance with the definitive agreements for the Phase II services.

3. Time of Performance

All Services will be performed in a timely manner. It is contemplated that the Services will be completed and that the Plan will be provided to the District for Board of Education consideration on or before August, 2022. It is further contemplated that the Board will officially consider the Plan in 2022, unless an alternate time line is agreed to by the parties.

4. Access

The District will provide Consultant access to all applicable locations and facilities in order to enable Consultant to perform the Services.

5. Ownership of Work Product

The District and Consultant agree the work product created by Phase I and Phase II is proprietary information and may be copyrighted by Consultant. The District shall not sell, share or distribute the work product created as a result of Consultant's Services to any party, individual or entity, without the written consent of Consultant. The District has no right or title to the work product and shall not use the work product for any purpose other than in connection with a Phase II project with Consultant. Consultant has the right to use, reproduce, and to make derivative works from documents and other data generated or collected during Phase I. If Consultant seeks to use information collected during Phase I, and if such information is specific to the District or if it may be private or confidential information regarding students, employees or the District, then the consent of the District shall be required to use such information, and the District may elect not to provide consent to Consultant. Consultant shall provide, at the request of the District, electronic and hard copies of work product, including plans, specifications and construction documents, created during Phase I. The District may, after receiving Consultant's written consent, provide such documents to other professional service providers that the District may retain in order to assist with the construction, repair, maintenance, and preservation of its properties. Consultant's approval shall not be unreasonably withheld.

If Consultant or the District receives information specifically designated by the other party as “confidential” or “business proprietary,” the receiving party shall, subject to the Minnesota Government Data Practices Act, keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to further efforts undertaken pursuant to this Agreement, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

6. Relationship with Others

Consultant shall cooperate fully with the District, other consultants on adjacent projects, municipalities, local government officials, public utility companies, and others as may be directed by the District. This shall include attendance at meetings, discussions, and hearings as may be requested by the District, furnishing data as may be requested from time to time by the District to effect such cooperation and compliance with all directives issued by the District.

7. Termination

Either party may terminate this Agreement for any reason by giving written notice to the other party at least fifteen (15) days prior to the effective date of termination. In the event of termination, the District acknowledges that InGensa, Inc. will have incurred costs and expenses in connection with providing the Services prior to such termination and, accordingly, Consultant shall be entitled to payment from the District in an amount equal to such costs and expenses plus a 20% mark-up thereon for profit and overhead. The District shall make such payment no later than five (5) days after the effective date of termination.

8. Independent Contractor

The relationship of the parties hereunder shall be that of independent contractors. Nothing in this Agreement shall be deemed to create a partnership, joint venture, fiduciary, or similar relationship between the parties. Neither Consultant nor any of its employees, agents, subcontractors or representatives shall be considered employees, agents, or representatives of the District. Except as otherwise provided herein, Consultant shall maintain, in all respects, its present control over the means and personnel by which it performs under this Agreement. From any amounts due Consultant, there shall be no deductions for federal income tax or FICA payments nor for any state income tax, nor for any other purposes which are associated with an employer/employee relationship unless otherwise required by law. Payment of federal income tax, FICA payments, state income tax, unemployment compensation taxes, and other payroll deductions and taxes are the sole responsibility of Consultant.

9. Changes; Extra Services

In the event that a substantial change is made in the scope, complexity or character of the Services contemplated under this Agreement, or if it becomes necessary for Consultant to make substantial revisions to documentation completed or in progress and which have been approved by the District, such Services will be deemed "extra services". Consultant must notify the District in writing in the event of such circumstances and Consultant and the District shall negotiate in good faith the extent of such extra services and any associated adjustments to contract time and compensation.

10. Power & Authority

Each party represents and warrants to the other that (i) it has all requisite power and authority to execute and deliver this Agreement and perform its obligations hereunder, (ii) all corporate, board, body politic, or other approvals necessary for the execution, delivery, and performance of this Agreement have been obtained, and (iii) this Agreement constitutes its legal, valid, and binding obligation.

11. Warranty of Services

Consultant warrants that the Services shall be performed in accordance with all applicable laws and in a timely, professional, and skilled manner that adheres to standards not less than those generally accepted in the industry. Consultant shall promptly correct any failure of the Services to conform to this warranty.

12. Indemnity and Limitation of Liability

Consultant shall indemnify and hold the District, its Board, officers, agents, and employees harmless against liability, causes of action, claims, damages or cost and expense arising from any professional errors and omissions and/or negligent acts and omissions of Consultant in the performance of this Agreement.

CONSULTANT SHALL NOT BE LIABLE TO DISTRICT, NOR SHALL THE DISTRICT BE LIABLE TO THE CONSULTANT FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR THE LIKE) ARISING IN ANY MANNER FROM THIS AGREEMENT OR THE SERVICES HEREUNDER REGARDLESS OF HOW CHARACTERIZED AND REGARDLESS OF WHETHER THE CONSULTANT OR DISTRICT OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. CONSULTANT'S TOTAL LIABILITY TO THE DISTRICT AND THE DISTRICT'S TOTAL LIABILITY TO CONSULTANT FOR DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE GREATER OF (i) \$25,000.00, OR (ii) THE AGGREGATE AMOUNTS PAID TO CONSULTANT PURSUANT TO THIS

AGREEMENT. The foregoing waivers and limitations are fundamental elements of the basis for this Agreement between Consultant and the District, and each party acknowledges that the other party would not have entered into this Agreement without such waivers and limitations.

The waiver of consequential damages and limitation of liability set forth in this Agreement are fundamental elements of the basis for this Agreement. District agrees that Consultant would not be able to provide the Services on an economic basis, and would not have entered into this Agreement, without such limitations. The parties also agree that the terms of this Section 12.

13. Insurance

Consultant shall not commence Services under this Agreement until it has obtained at its own cost and expenses all insurance required herein. All insurance coverage is subject to approval of the District and shall be maintained by Consultant until final completion of the Services. Consultant further agrees that to protect itself, as well as the District under the indemnity section set forth above, subject to the policy terms and conditions, it shall at all times during the term of this Agreement have and keep in force:

- A. Commercial General Liability, including contractual liability
 - 1. Bodily Injury and Property Damage: \$1,000,000 per occurrence
\$1,000,000 products & completed operations aggregate
 - 2. Personal Injury Liability Limit: \$1,000,000 per occurrence

- B. Commercial Automobile Liability (Owned, Non-owned, Hired)
 - Bodily Injury and Property Damage: \$1,000,000 per accident

- C. Professional Liability
 - Professional liability insurance for negligent acts, errors and omissions arising out of Professional services provided by the Consultant under this Agreement with a combined single limit of \$1,000,000 per claim, \$2,000,000 aggregate.

- D. Workers' Compensation

Consultant shall obtain and maintain for the duration of this Agreement statutory workers' compensation insurance and employer's liability insurance as required under the laws of the State of Minnesota.

Insurance certificates evidencing that the above insurance is in force shall be submitted for examination and approval prior to the execution of this Agreement. The District's failure to require certificates or other evidence of insurance demonstrating conformance to the coverage levels specified above alters Consultant's responsibility to comply with the insurance specifications. The District may withhold payment for failure of Consultant to furnish certificates of insurance as required above.

14. Choice of Law

This Agreement shall be construed in accordance with the laws of the State of Minnesota applicable to contracts made and performed in the State or Minnesota.

15. Dispute Resolution

Any differences, claims, or matters in dispute arising between or among the parties out of or in connection with this Agreement shall be submitted to arbitration by a single Arbitrator mutually selected by the parties. If a single Arbitrator cannot be agreed upon, each party shall select an Arbitrator. The Arbitrators selected by the parties shall select a third Arbitrator. Each party shall be responsible for compensation of the Arbitrator selected by that party. The parties shall each be responsible for one-half of the compensation of a single Arbitrator or a third Arbitrator. Each party shall pay its own attorneys' fees. The law applicable to the arbitration, including the administration and enforcement thereof, is the Federal Arbitration Act, 9 U.S.C. §§ 1-16, as amended from time to time. The arbitrator(s) will have the authority to apportion liability between the parties, but will not have the authority to award any damages or remedies not available under the express terms this Agreement. The arbitration award will be presented to the parties in writing, and upon the request of either party, will include findings of fact and conclusions of law. The award may be confirmed and enforced in any court of competent jurisdiction. Any post-award proceedings will be governed by the Federal Arbitration Act. The location of the arbitration shall be in the Minneapolis/St. Paul area.

16. Equal Employment and Nondiscrimination and Affirmative Action

In connection with the Services under this Agreement, Consultant agrees to comply with the applicable provisions of state and federal equal employment opportunity and nondiscrimination statutes and regulations.

17. Severability; Waiver

In the event that any clause, provision, or portion of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or materially impair the benefits intended to inure to either party under this Agreement. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

18. Covenant Against Contingent Fees

Consultant warrants that it has not employed or retained any company or person other than a bona fide employee working solely for Consultant to solicit or secure this Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee working solely for Consultant a fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the District shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the Agreement price or consideration or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts or contingent fee.

19. Authorized Agent of the District

The District shall appoint an authorized agent for the purpose of administration of this Agreement. Consultant is notified of the authorized agent of the District is as follows:

Gwen Carman and/or Superintendent of Schools
Superintendent of Schools

20. Modification of Agreement

Any alterations, variations, modifications, or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing and signed by the District and by Consultant.

21. Entire Agreement

It is understood and agreed that the entire agreement of the parties is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous contracts presently in effect between the District and Consultant relating to the subject matter hereof.

22. Counterpart Signatures

This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one single agreement between the parties.

[Remainder of page intentionally left blank. Signature page next follows.]

IN WITNESS WHEREOF, each party has caused this Project Development Agreement to be executed by its duly authorized representative as of the date first written above.

InGensa, Inc.

Independent School District No. 857

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: President & CEO

Title: Superintendent

PHASE I – Assessment

1.0 Data Gathering & Analysis

Data gathering and analysis during the Assessment Phase will focus on the following areas:

Facility Condition	Educational Adequacy
Deferred Maintenance	Space Programming
Operational Expense Audit	Safety & Security
IAQ & ADA Compliance	Building Capacity
Interiors/Structure/Envelope	Educational Support Areas
Technology	Instructional Aids
Lots/Walks/Fields	Classroom Size
Mechanical/Electrical	Physical Attributes

2.0 Development & Stakeholder Educational Adequacy Engagement

Consultant will facilitate a series of meetings with key stakeholder groups to gather their input. The stakeholder groups may include the Board of Education, Principals, Teachers, PTSA/Site Council Representatives, Union Representatives, Special Education Representatives, Community Members and Students. During Educational Adequacy engagement sessions, participants will complete facility needs assessments and provide feedback using a variety of consultant's tools. The output of these meetings is to define a collective vision for the District, from educational needs to facility improvements.

3.0 Communications

- 3.1 Present process overview and assessment updates to the District and, as necessary and in conjunction with the District, to other stakeholder groups
- 3.2 Organize tours of other school projects, as requested
- 3.3 Provide updates to the Board of Education, as requested

In order to help control costs during the Assessment Phase, the District agrees to provide access to District personnel and internal information to the extent permitted by the law. Consultant will maintain the confidentiality of all private or confidential information.

4.0 Deliverable

A comprehensive report containing findings and general recommendations based on the above-described assessment.

Phase I - Plan Evaluation

Utilizing the assessment report, Consultant will help the District formulate the Plan. Services include:

1.0 Presentation & Refinement of Assessment

- 1.1 Identify renovations and updates needed at each school, including cost estimates
- 1.2 Identify efficiency improvements and savings potential, including cost/benefit analysis
- 1.3 If new or replacement schools are contemplated, provide cost and budgetary estimates
- 1.4 Assist the District in identification and assessment of potential funding sources

2.0 Additional Development & Educational Adequacy Engagement Sessions

Utilizing professional consensus building tools and techniques, Consultant will facilitate a series of meetings, if necessary, to gather input on the preliminary assessment. The input from these meetings will be used to prepare a draft Plan. Based on feedback, Consultant will provide recommendations and revise the draft Plan as needed.

3.0 Communication

- 3.1 Facilitate consensus building
- 3.2 Provide input in regard to a District communications plan
- 3.3 Present draft Plan to the District and, as necessary and in conjunction with the District, to other stakeholder groups
- 3.4 Provide updates to the Board of Education, as requested

4.0 Deliverables

A Plan for comprehensively improving the District's facilities and infrastructure. It is expected that the Board will officially consider the Plan in 2022. Should the District elect to move forward with the Plan, the District and Consultant shall negotiate and enter into definitive contract documents for Phase II implementation within thirty (30) days of Consultant's delivery of the Plan to the District.

ISD #857 PROJECT DEVELOPMENT AGREEMENT (PDA)		
SERVICES	INCLUDED	COST
Educational & Facilities Visioning (Strategic Planning)	-	\$ -
Ongoing Community / Stakeholder Engagement	-	\$ -
Pre-Facilities Plan Communications	X	\$ -
Assessments	X	\$ 35,000
- Facilities (Includes OPs Audit & Surveys)		
- Educational Adequacy (Space Audit & Surveys)		
Plan Options Development / Financial Plan	X	\$ -
INGENSA PDA TOTAL		\$ 35,000